



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

22 January 2013

Trial Day 149

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

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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MS. GUISSÉ	French
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

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

2 (Court opens at 0906H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session, and as we  
5 scheduled and informed the parties yesterday, today the Chamber  
6 will continue the document hearing.

7 [09.07.38]

8 Ms. Se Kolvuthy, could you report the attendance of the parties  
9 to this case?

10 THE GREFFIER:

11 Mr. President, for today's proceeding all parties are present,  
12 except the accused, Ieng Sary, who is present in the holding cell  
13 downstairs due to his health reason.

14 The accused Nuon Chea and Khieu Samphan are absent due to health  
15 reason and they are being treated at the Khmer-Soviet Friendship  
16 Hospital. The two Accused submitted their waiver for this  
17 document hearing -- that is, document 258/2 and 223/4.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you.

21 The Chamber already ruled yesterday regarding the absence of the  
22 accused, Nuon Chea and Khieu Samphan, who have health issues and  
23 are being treated at the hospital, and they submitted their  
24 waiver to participate in the document hearing. So we can proceed  
25 with the document hearing in their absence.

1 [09.09.22]

2 We would like now once again give the floor to the Prosecutor to  
3 present their key documents regarding the military structure of  
4 the Khmer Rouge regime.

5 You may proceed.

6 MR. LYSAK:

7 Thank you, Mr. President. Good morning to all.

8 I would like to turn, now, to some documents from the period of  
9 June to December 1976. This is a period for which there are a  
10 number, significant number of surviving minutes of meetings  
11 between Son Sen and the division secretaries that showed the  
12 detailed reporting by the divisions as well as the communication  
13 and implementation of Party policies and lines by the military.  
14 The first is document E3/814 -- E3/814 -- which is the minutes of  
15 a meeting of all division committees held on the 1st of June  
16 1976. This meeting primarily concerned agricultural production,  
17 and it records the communication of the Party line or plan on  
18 agricultural production to the Centre military divisions.

19 [09.11.06]

20 Item 3 of the agenda for the meeting is -- quote: "A number of  
21 specific discussions related to the offensive to achieve three  
22 tons per hectare in the strategy of 100 per cent self-support and  
23 30 per cent support of Angkar." End of quote.

24 And in the report of Brother 89 on the second page in paragraph  
25 2B, which is titled "Nation building", Son Sen instructed the

1 divisions as follows -- quote:

2 "Our task is to increase production to three tons per hectare and  
3 to expand dyke systems by 30 per cent. The great leap movement is  
4 strong in the countryside already, and the movement to make the  
5 canals, the movement to build dykes, all these are very strong."

6 End of quote.

7 More detailed plans for rice production were provided by Son Sen  
8 to the division secretaries in a meeting held on the 18th of  
9 August 1976, which meeting is recorded in document E3/797; that  
10 meeting specified the amount of land to be cultivated each year  
11 and the goal of earning \$4.8 million in capital from rice yields  
12 over a four-year period.

13 [09.12.59]

14 The next document from this period is document E3/790 -- that's  
15 E3/790 -- which is the "Decisions of a Party Committee Conference  
16 of All Divisions" that was held from the 10th to 14th of July  
17 1976. And this was the second such conference of division  
18 committees, and the document refers to the first conference as  
19 having taken place in April 1976. And the document that resulted  
20 from this July 1976 conference is divided into a number of  
21 sections that discuss in detail the following duties of the RAK.  
22 First, the duty to continue the socialist revolution;  
23 Second section of the document is titled "The duty to defend the  
24 nation and build a revolutionary army to become a party's radical  
25 proletariat class dictatorship apparatus."

1 The third section is titled "The duty to launch a storming attack  
2 in constructing socialism, especially a storming attack in  
3 production of three tons per hectare."

4 Fourth is, "Duty to Build the Party";

5 And fifth is, "Duty to resist and eradicate all enemy's  
6 devastating intelligence infiltration."

7 [09.14.53]

8 Now, in section 2 of this document that discusses the duty to  
9 defend the nation -- and this is at Khmer ERN 00441999 through  
10 442000, English 00714788 through 714789, and French 00752245 --  
11 in this part of the document there is a list of five measures  
12 that were decided.

13 The first is -- quote: "Must pay special attention to the acts of  
14 enemy infiltration within our revolutionary army and ranks." End  
15 of quote.

16 And the fourth measure listed is -- quote:

17 "Must grasp-hold biographies of cadres and combatants strictly by  
18 starting to examine at their birthplaces and completely screening  
19 all disastrous elements against the revolution from the  
20 revolutionary ranks in order to make our army a proletariat class  
21 apparatus loyal to the party, socialist revolution lines,  
22 construction of socialism and party's national defence  
23 radically." End of quote.

24 [09.16.35]

25 Section 4 of the decisions from the July 1976 division conference

1 states in paragraph 1 titled "Political Ideology", and this may  
2 be found at Khmer page 00442011, English 00714793, and French  
3 00752251, which reads as follows -- quote: "In the next three  
4 months, must educate and disseminate the statues of the Communist  
5 Party of Kampuchea widely."

6 And also: "Must educate and disseminate widely the decisions made  
7 in this second division conference among the party, Communist  
8 Youth League of Kampuchea, and male and female combatants of the  
9 revolutionary army." End of quote.

10 And in regards to biographies, this document further instructs in  
11 paragraph 2A.2 of section 4 -- quote: "Must grasp-hold the  
12 biography of all old party members by assigning certain people to  
13 follow up the biography at the base." End of quote.

14 [09.18.27]

15 The last quote from this document I would like to present is  
16 paragraph 2E.2 of section 4 -- which is at Khmer page 00442014,  
17 English 00714795, and French 00752253 -- and this paragraph  
18 includes the following statement - quote:

19 "...it is necessary to have assigned study of the Party's documents  
20 every month" -- end of quote -- with a specific reference made to  
21 "documents from the 'Revolutionary Flag' or 'Revolutionary Youth'  
22 magazines."

23 Mr. President, the decisions of the July 1976 divisions  
24 conference are referenced in the next document I would like to  
25 present -- which is E3/795, E3/795 -- which is the minutes of a

1 meeting of the secretaries and deputy secretaries of the brigades  
2 and regiments that was held on the 2nd of August 1976. In this  
3 meeting, each of the divisions and independent regiments reports  
4 to Son Sen, Brother 89, on their completion of education or study  
5 sessions to instruct the cadres both on the Party statutes and on  
6 the decisions from the division conference that had taken place  
7 the prior month.

8 [09.20.31]

9 At the end of this meeting -- in section 3.1 of his concluding  
10 remarks -- Son Sen emphasizes the importance of continuing such  
11 political education on the Party lines, stating -- and I quote:  
12 "We must continue teaching the statute and the decision of the  
13 brigade conference further. There must be a plan once a month to  
14 study statute documents, brigade conference decisions, and  
15 various instructions of the General Staff. We must pay attention  
16 on how to organize class for cadres and male and female  
17 combatants to study the 'Revolutionary Flag' journal,  
18 'Revolutionary Youth' journal, and 'Revolutionary' newspaper  
19 continuously." End of quote.

20 The next document I would like to present is E3/798, E3/798 --  
21 which is the minutes of a meeting of the division and regiment  
22 secretaries and deputy secretaries that was held on the 30th of  
23 August 1976. And at this meeting, on the first page of the  
24 minutes, Son Sen or Brother 89 reported on -quote -- "enemy  
25 situations in the grassroots and in troop units or



1 organizations". He describes the arrest of 100 persons who had  
2 engaged in unrest on the border of Kandal Steung district in  
3 Sector 33, and the arrest of 60 persons in Sector 25, whose  
4 conduct he describes as follows -- quote:

5 [09.22.44]

6 "They raised a white banner with the slogans, 'Love Live  
7 Buddhism', 'Long Live the White Khmer Front of Liberation from  
8 Rice by the Can.' They were getting ready for major unrest on 20  
9 August." End of quote.

10 Son Sen states in this part of the meeting that there was a --  
11 quote -- "nexus between this situation and our army", and he  
12 indicates that some of the arrested people said in their  
13 responses that their leader was Chakrey, a reference to the  
14 former Secretary of Division 170, Chan Chakrey, who had been  
15 arrested earlier that year.

16 [09.23.42]

17 The minutes record five measures proposed by Son Sen in response  
18 to this situation -- which may be seen at Khmer page 00052380  
19 through 52381, English 00183966, French 00386196 through 97 --  
20 and the first measure proposed by Son Sen was - quote: "Give  
21 additional education about the spirit of vigilance. Do not allow  
22 pacifism." End of quote. The third measure was - quote:

23 "Divisions are to examine and keep track of no-good elements.  
24 Organize for them to be administered separately."

25 Later, in this same meeting in his concluding remarks -- which

1 can be seen at Khmer, 00052382; English, 00183968; French,  
2 00386199; Son Sen states -- quote:  
3 "The enemy would like to take the opportunity to gather up  
4 no-good elements, the status and rank-conscious, those whose  
5 families we have swept out, those whom we have removed from their  
6 positions, and those who have not internalized the revolutionary  
7 movement and can't keep up with the rest, and, at the same time,  
8 the New People who don't yet understand things, whom we are  
9 putting in difficulty and temporarily lack food." End of quote.  
10 Continuing a few paragraphs later, proposed measure 2B states:  
11 "It is imperative to conduct further purges of no-good elements.  
12 It is imperative to be absolute."  
13 [09.26.25]  
14 Next document is E3/1133 -- that's E3/1133 -- this is an example  
15 of the detailed reports regularly provided by divisions,  
16 including matters relating to arrests and interrogations of  
17 enemies. It is a September 1, 1976 report from Division 502  
18 Secretary, Sou Met, which describes in detail the arrests of two  
19 soldiers who had stolen chickens, rice, and weapons and reports  
20 on their confessions, which identified other enemies in their  
21 network who were subsequently arrested.  
22 Document E3/813 -- E3/813 -- is the minutes of a meeting between  
23 Son Sen and Division 164 that was held on the 9th of September  
24 1976. In this meeting, Division 164 provided a detailed report on  
25 the enemy situation in its area, including the capture of a small

1 boat with five Thai and one Khmer person at Koh -- Rong Sanlem  
2 Island.

3 In response to this incident, Son Sen proposed the following  
4 measure in section 4.1 of the minutes - quote: "Would like to ask  
5 the C Unit to be more vigilant. Please send the group of boats  
6 that came in Koh Rong Sanlem to Angkar for interrogation." End of  
7 quote.

8 The report from Division 164 at the same meeting also included  
9 the following statement at the end of section 3 of the minutes --  
10 quote: "Mostly, the civilians are good, but there are bad  
11 movements in the military. Recently, one soldier lieutenant of  
12 the former regime was discovered and arrested." End of quote.

13 [09.29.18]

14 On that same day, 9 September 1976, Son Sen also participated in  
15 a meeting with Division 703 Secretary, Pin; S 21 chairman, Duch;  
16 and S 71 chairman, Pang -- which was recorded in document E3/811  
17 -- E3/811 -- and this meeting concerned leaflets criticizing the  
18 regime that had been found near Wat Botum in Phnom Penh two days  
19 earlier. In this meeting, S 21 chairman, Duch, notes that cadres  
20 from Division 170 -- Chakrey's division -- had been arrested in  
21 relation to a prior incident involving similar leaflets. Son Sen  
22 identifies two networks of enemies that could be responsible --  
23 quote: "Links connected to Division 170" -- or -- quote -- "703's  
24 coming from Sector 25".

25 [09.30.42]

1 The measures decided at this meeting and recorded at the end of  
2 the minutes are noteworthy -- I quote:

3 "In terms of organizational problems, Comrades Pang and Kham My  
4 must recognize their heavy duties and go all out in doing  
5 constant political and ideological education. They must firmly  
6 grasp biographies." End of quote.

7 In relation to Division 703, Chairman Phim was directed to --  
8 quote -- "re examine his unit of organization", and the last  
9 measures recorded in the minutes are as follows -- quote: "As for  
10 security, I suggest that it increase its surveillance of enemy  
11 situations. I suggest Comrade Pang liaise with the various  
12 ministries. The 170s should be rounded up in one place." End of  
13 quote.

14 [09.31.56]

15 One week later, on the 16th of September 1976, a meeting was held  
16 between Son Sen; Duch; Division 170 Secretary, Sok; and Division  
17 290 Secretary, Tal; which is recorded in document E3/822 --  
18 that's E3/822. This meeting discussed the recent arrest of Sector  
19 24 Secretary, Chhouk, who had been implicated by Chakrey. The  
20 minutes expressly refer to a -- quote - "plan that Angkar had  
21 sent out pursuant to which" -- quote -- "all Chakrey connections  
22 have to be arrested." The meeting thus agreed on the arrest of  
23 four cadres from Division 290, 29 cadres from Division 170, whose  
24 names are recorded in the document, and the wife and niece of  
25 former division secretary, Chakrey. The minutes also note that in

1 a meeting held the previous day, the arrest of 11 additional  
2 people from Division 170 had been decided.

3 [09.33.36]

4 Document E3/800 is the next I will present -- E3/800. It is the  
5 minutes of a meeting of the division and independent regiment  
6 secretaries and deputy secretaries that was also held on the  
7 evening of 16 September 1976. In paragraph 3 of the concluding  
8 remarks by Brother 89, titled "Examination of our Army", Son Sen  
9 draws attention to the fact that the army includes no-good  
10 elements, deserters, and some 17 April People from Phnom Penh,  
11 and he proposes the following measure -- quote:

12 "Must keep a trace and have a good and thorough grasp of the  
13 biographies of the army, especially of those who have just been  
14 included by beating the drum after the day on which the whole  
15 country was liberated." End of quote.

16 Another good example of the structured and detailed reporting by  
17 division secretaries at joint meetings with Son Sen is document  
18 E3/810 -- that is E3/810 -- the minutes of a division secretaries  
19 meeting held on the 19th of September 1976. In these minutes, it  
20 can be seen how each of the divisions and independent regiments  
21 reported on the situations in their organizations, covering each  
22 of the following subjects in order. First, the enemy situation;  
23 second the food production situation; followed by the health  
24 situation; the food supply situation; and concluding with the  
25 Party situation.

1 [09.36.02]

2 The reports in this document show serious limitations in food  
3 supplies and significant health problems in the military.

4 Division 170 Secretary, Sok, reported -- quote: "Forty per cent  
5 of the brothers and sisters are sick with swelling, diarrhoea,  
6 and malaria. Ten have died this month."

7 Division 310 Secretary, Oeun, reported -- quote: "Two thousand  
8 and six hundred brothers and sisters are sick, of whom 400 are  
9 seriously ill and cannot work."

10 He also reported -- quote: "All food supplies will have been  
11 eaten during this September."

12 [09.37.01]

13 Division 450 Secretary Suong reports -- quote: "There are 300  
14 people sick at the division hospital. Including those at the  
15 regiments, there are 1,000 sick."

16 Continuing on: "During September, all [food supplies] have been  
17 drawn from General Staff Logistics; there are no food supplies of  
18 our own." End of quote.

19 Documents E3/1024 and E3/1101 -- let me repeat the two documents,  
20 E3/1024 and E3/1101 -- are examples of written instructions or  
21 orders communicated by Son Sen by telegram to divisions under the  
22 command of the Centre. These two documents are largely identical  
23 telegrams that were sent out by Son Sen under his alias Khieu, on  
24 the same day, the 23rd of September 1976: one of the telegrams  
25 going to Division 810 Secretary, Roeun, and the other going to

1 Division 920 Secretary, Chhin.

2 The instructions sent by Son Sen to these two divisions concerned  
3 revisionist enemies, in particular, Vietnamese who were  
4 identified as "the Sevens" or "Group Seven" who were - quote -  
5 "conducting liaison activities in order to go undercover and bore  
6 from within our army and grassroots" and who were encouraging the  
7 people to - quote -- "oppose cooperatives and oppose our line of  
8 socialist revolution".

9 [09.39.30]

10 In these telegrams, Son Sen instructs -- quote:

11 "It is imperative to maintain surveillance of any elements who  
12 have had contact with the Sevens or tendencies to prefer the  
13 Sevens to ensure they do not hold leadership positions in the  
14 army at any level whatsoever."

15 For such individuals, Son Sen further orders Divisions 801 and  
16 920 to - quote - "absolutely not allow them to bore from within  
17 among either cadres or combatants and in particular absolutely  
18 not to allow them to have any contact whatsoever with the  
19 divisions along the border". End of quote.

20 Document E3/801 is the minutes of a 30 September 1976 meeting of  
21 the divisions and the logistics office of the General Staff, also  
22 referred to as Office 62. For this document, I would refer the  
23 Chamber to the discussion of arrests, including S 21, that can be  
24 found in the first section of the minutes where all divisions  
25 reported on the enemy situation in their units.

1 [09.41.03]

2 For example, Division 310 reports on ill-disciplined elements who  
3 had not changed after repeated re education and sought Angkar's  
4 advice on those individuals. Division 170 reported that a person  
5 had been - quote -- "arrested and sent to S 21 on the 24th of  
6 September".

7 Document E3/820 -- E3/820 -- is a 1 October 1976 report regarding  
8 Division 170 that was written by witness, Ung Ren while on  
9 assignment at the General Staff office. Division 170, as noted in  
10 prior documents, is the division that had been commanded by  
11 Chakrey until his arrest earlier that year.

12 In section 1 of Ren's report, which consists of a review of the  
13 past month's work of the division, paragraph E states as follows  
14 -- quote: "The Party's discipline has been implemented in  
15 accordance with the Party's decision. This includes the removal  
16 of the cadres who have had political affiliation." End of quote.  
17 Section 3 of this report describes a criticism and self-criticism  
18 meeting in which division secretary, Sok, is criticized for  
19 failing to fully grasp biographies, especially -- quote: "The  
20 contemptible Chakrey's associates" -- and near the end of this  
21 report there is a description of various cadres from the division  
22 who were -- quote -- "sent to the division education site".

23 [09.43.22]

24 Document E3/1225 -- that's E3/1225 -- is a 6 October 1976  
25 telegram that was sent from Dim, the Deputy Secretary of Division



1 164. It is addressed to Brother Muth, the division secretary, and  
2 cc'd or copied to Brother Nuon and Brother Khieu. Paragraph 3 of  
3 that telegram discusses the use of children to search for bandits  
4 and concludes -- quote: "If we fail to meet those bandits, at  
5 least we will meet contemptible traitors burrowing within the  
6 village who would come to contact those bandits." End of quote.  
7 I would now like to turn to document E3/13 -- E3/13 -- which is a  
8 document I would like to cover in some detail. This document is  
9 the minutes of a 9 October 1976 meeting of the secretaries and  
10 deputy secretaries of the divisions and independent regiments.  
11 [09.45.00]  
12 Pursuant to the agenda for that meeting, the first item discussed  
13 was the upcoming ceremony for the Party anniversary that was to  
14 take place on the 11th of October, and the minutes note that the  
15 commemoration of the Party anniversary, whose date was actually  
16 the 30th of September, had been delayed that year because --  
17 quote -- "the organization has been busy" -- end of quote.  
18 And, in order to understand the context of the delay in the Party  
19 anniversary celebration that year, I would like to step back for  
20 a moment and present two other documents recording events that  
21 took place in the weeks leading up to the Party anniversary.  
22 The first of those documents is D288/6.5/2.22 -- let me repeat,  
23 D288/6.5/2.22, which is the S-21 confession file of Sector 24  
24 Secretary, Chhouk, who had been arrested on the 31st of August  
25 1976, and whose interrogation at S-21 was on-going in the month

1 of September 1976.

2 [09.46.41]

3 That file at Khmer 00038515, contains a 19 September 1976  
4 document, whose cover page is titled: "First Step of 8's  
5 Confession and Plans to Smash Brother No. 1, and Brother Number  
6 2, while travelling during a party assembly, the party  
7 anniversary or other celebrations during 1976".

8 And the document I would like to focus on is a 26 September 1976  
9 report written by Duch, which is addressed "To Respected  
10 Brother", and this report by Duch, can be found at Khmer pages  
11 00038660 through 38662; English pages 00831531 through 33.

12 The first paragraph of Duch's report stated that: "Brother Pho  
13 did act as an active mastermind and orchestrator of the plot to  
14 get rid of Brother I, Brother II, yourself, and some other  
15 leaders with intellectual background."

16 The second background document to help understand the events of  
17 this period is E3/192 -- that is E3/192. On the 27th of September  
18 1976, following the date of the document I just presented in  
19 which Duch reported to his superior on a purported assassination  
20 plan, a statement was issued by Khieu Samphan announcing that Pol  
21 Pot, premier of Democratic Kampuchea, was taking temporary leave  
22 from his task in order to take care of his health.

23 [09.49.19]

24 It also announces that Nuon Chea has been appointed to  
25 temporarily replace Pol Pot, as acting premier effective from the

1 27th of September 1976. And I present these two documents in  
2 order to understand the context of the time period during which  
3 the Party anniversary ceremony was delayed from the 30th of  
4 September, to the 11th of October 1976.

5 Returning now to E3/13, the minutes of the 9 October 1976  
6 division secretary's meeting, and in the middle of these minutes,  
7 beginning at Khmer 00052405; English 00183984; and French  
8 00334974 -- Son Sen provides a detailed report to the division  
9 leaders on - quote -- "a number of traitors in the Party whom we  
10 have been able to arrest" and on plans that were learned through  
11 their responses to interrogations.

12 [09.50.53]

13 And I will now read a number of excerpts from this part of Son  
14 Sen's report - quote: "First, we arrested the traitorous links in  
15 Division 170. You must take note with regard to this problem to  
16 maintain secrecy and not to disseminate to the lower levels".

17 Continuing a few paragraphs below -- quote:

18 "Previously there were incidents of guns being fired near the  
19 Fine Arts School, and leaflets being thrown near the Palace. Then  
20 in early April 1976, they threw grenades and threw leaflets  
21 again. We felt these were enemy activities. Those implicated in  
22 the answers of those we were able to arrest went right up to  
23 Chakrey."

24 And I would note here, that the initial person arrested following  
25 the grenade explosion at the Royal Palace that is described here,

1 was a cadre named Yim Sambath. His S-21 file, document  
2 D288/6.5/2.14 -- let me repeat, D288/6.5/2.14 -- includes a  
3 report by Duch dated the 6th of August 1976.  
4 [09.52.41]  
5 This report which can be found at Khmer, 00245206 through 245211;  
6 English, 00284003 through 08; and French, 00800759 through 64;  
7 this is a report written by Duch on August 6th, 1976 that  
8 describes in detail the history of arrests and confessions that  
9 eventually led to the arrest of Division 170 Secretary, Chakrey.  
10 It also, in this document, Duch forwarded to his superiors,  
11 letters that had been found in Chakrey's room after his arrest on  
12 the 20th of May 1976; and the information in this report is  
13 consistent with what is reported by Son Sen to the division  
14 secretaries at the 9th of October 1976 meeting.  
15 And returning, again, to the minutes of that meeting, E3/13, Son  
16 Sen provides a report regarding the arrest of Chakrey, which  
17 continues as follows at Khmer page 00052405 through 52406;  
18 English page 00183985; French page 00334975, and in this part of  
19 the minutes, Son Sen's statements are recorded as follows - quote  
20 -- these are Son Sen's statements regarding -- describing the  
21 arrest of Chakrey -- quote:  
22 [09.55.08]  
23 "Upon arrest, he responded clearly that he was a Seri link and  
24 that his boss was Chhouk, the Secretary of Sector 24. We arrested  
25 Chhouk and he responded that he had contacts with a Vietnamese to

1 make arrangements to attack our Party's leading apparatus. They  
2 would attack from the inside while Vietnam attacked from the  
3 outside. The Yuon was named Bai Map. Chhouk's responses  
4 ultimately implicated Ya. We arrested Ya, and he responded that  
5 he had been a traitor since 1962, along with somebody else named,  
6 Kev Meah. This network had created a new party back in 1962, and  
7 was linked with Eum Ovrai and Keum Saet. We could then see  
8 clearly what had been going on with the unrest in Koh Kong and  
9 the problem of contradictions between Sector 25 and Sector 33.  
10 "We have basically smashed the leadership links, but their  
11 henchman still exists..." End of quote.

12 On the next page of this document, at the bottom of Khmer 52407,  
13 Son Sen makes a statement regarding the forced movement of the  
14 Cambodian population from urban areas - and I quote:

15 "If we had left the people in and not evacuated them from cities  
16 and towns, we would not have the peace and quiet we enjoy today.  
17 If we had not been absolute about making cooperatives, not been  
18 absolute about making socialism, we would not be victorious."

19 [09.57.23]

20 And it is revealing in these minutes to look at the remarks of  
21 the division and regiment secretaries that followed Son Sen's  
22 announcement of the arrests of Chhouk and Ya, starting on Khmer  
23 page 00052408; English, 00183987; French, 00334978. In this part  
24 of the minutes, Division 170 Secretary, Sok, after this  
25 announcement noted -- quote: "Division 170 has purged 70

1 no-goods, and is keeping them in one place."

2 Division 290 Secretary, Tal, reports -- quote: "Company cadre  
3 manifested opposition activities by not disseminating the Party  
4 line within the unit of organization or not distributing the  
5 Banner's magazine".

6 [09.58.47]

7 On the next page of this document, Khmer, 52409; Division 703  
8 Secretary, Pin, states -- ERN is 00052409. And at this part of  
9 the minutes, Division 703 Secretary, Pin, states -- quote:

10 "As regards the problem of traitors and the Party's measures, I  
11 agree completely. The reason for the treason is these guys'  
12 contradictions about status and rank [...] even though we've  
13 arrested their bosses, they are continuing with their activities.  
14 "As for the problem of a grasp on the unit of organization, after  
15 repeated study and purges, it is possible to guarantee the  
16 defence of the Party." End of quote.

17 Division 450 Secretary, Suong, reports -- quote: "The no-good  
18 elements have been rounded up, but not yet entirely purged. I  
19 have a grasp on those who are liberal to a certain degree."

20 And on the next page, Khmer, 00052410; Division 310 Secretary,  
21 Oeun, makes the following statement -- quote:

22 [10.00.45]

23 "In the past, the Party gave repeated education about events  
24 taking place inside the Party and inside leading units of  
25 organization, about the enemies boring from within [...] However,

1 I never previously imagined that there was treason at such an  
2 important level as in the information that the Organization has  
3 gotten today."

4 Continuing later -- quote:

5 "...a number of cadres' biographies are not yet clearly grasped,  
6 and it's not known whether they are clean, reliable and  
7 enthusiastic, or not clean. There is the phenomenon of those who  
8 are concealing their biographies, all the way up to the company  
9 cadre level, those who originally were White Khmer or who have  
10 lived with the Vietnamese. In total, we have got 36 no-goods."

11 End of quote.

12 [10.01.50]

13 On the next page, at Khmer, 00052411; Division 502 Secretary, Sou  
14 Met, comments as follows -- quote: "After the Party revealed the  
15 upper traitorous links belonging to American imperialism and the  
16 revisionists, I was happy and had more faith in the Party."

17 Continuing later: "With regard to this problem, it can be  
18 stipulated that the enemies have been basically eliminated, but  
19 it is imperative to take further measures to prevent this from  
20 happening a second, a third, and a fourth and so on again time.

21 "It is imperative to dare absolutely to conduct purges." End of  
22 quote.

23 [10.02.51]

24 On this same page, Division 164 Secretary, Meas Muth, states --  
25 quote:

1 "I would like to say about the concern with activities of the  
2 traitors within the Party, that this has been a great victory for  
3 our Party. This lesson has strengthened another degree the  
4 standpoint of revolutionary vigilance.

5 "As for the problem of the grasp on the unit of organization,  
6 cadre and combatants, it is not yet firm. No-good elements or  
7 enemies are still camouflaged and infiltrated in the  
8 rank-and-file." End of quote.

9 And in Son Sen's concluding statements, at this meeting held on  
10 the 9th of October 1976, he makes the following remarks in  
11 section 1, which can be seen commencing at Khmer, 00052412  
12 through 52413; English, 00183991; French, 00334981. At this part  
13 of the meeting, Son Sen states - and I quote:

14 "Those present at the meeting are in unity with the Party in  
15 considering that the arrest of these traitors is a great victory  
16 over the revisionists who were following the secret road and had  
17 been infiltrating for more than 10 years already."

18 Continuing a couple of paragraphs below -- quote: "Another  
19 lesson results in our realizing that trivial activities attacking  
20 the revolution, such as stealing and speaking in hints that  
21 attack the revolution, all issue forth from such traitorous  
22 links." End of quote.

23 [10.05.17]

24 And the measures set forth in section 3 of Son Sen's concluding  
25 statements, include the following operational methods, which you



1 may find at Khmer page 00052414; proposed "Measures" reads – and  
2 I quote:

3 "It is imperative to purge no-good elements absolutely in the  
4 sense of an absolute class struggle. "The purge is premised on  
5 three principles:

6 "Category 1: The dangerous category: They must be absolutely  
7 purged.

8 "Category 2: The ordinary liberal category: They must be educated  
9 again and again in our education schools.

10 "Category 3: The category of those who have merely been incited  
11 by the enemy, merely believed the enemy incitement. As a first  
12 step, they should undergo refashioning to get them to no longer  
13 believe the enemy..." End of quote.

14 [10.06.34]

15 The next document I would like to turn to is document E3/815 --  
16 that is E3/815, which is the minutes of a meeting with the  
17 division secretaries and deputies that was held on the 18th of  
18 October 1976. At this meeting, Son Sen makes yet another  
19 presentation on the treasonous events in the army and in the base  
20 areas, which are attributed to two groups; first, the CIA; and  
21 second, the revisionist group, led by the Soviet Union and  
22 Vietnam.

23 The meeting also agreed on the following measure, which you can  
24 see at Khmer page 00095529 through 95530; English, 00877017; and  
25 French, 00623945 through 46. And the measure that is stated in

1 the minutes here reads as follows -- quote:

2 "With the entire country, let the military staff have discussion  
3 with the Zones. Wherever the Centre Army is located, we will take  
4 measures, especially in the defence of Phnom Penh. One division  
5 must prepare one battalion of forces weapons with ammunition and  
6 vehicles to be constantly on standby. This battalion specifically  
7 must prepare one company with the objective of defending the  
8 radio station, Angkar's location, and the Military Staff  
9 locations. Select people that are clean in terms of politics,  
10 ideology, and organization. Arm them with light weapons: AKs,  
11 light machine guns, M-79s, B-40s, B-41s. Deploy this force at the  
12 city's important target areas, and maintain constant radio  
13 contact with the Military Staff." End of quote.

14 [10.09.25]

15 Next document is E3/1135 -- that's E3/1135, which is another  
16 example of a military division report to Son Sen, which was then  
17 forwarded by Son Sen to other party leaders, in this case to the  
18 accused, Nuon Chea. This is a 19 October 1976 report that  
19 originates from Division 164 Secretary, Muth, to Brother 89,  
20 regarding certain individuals who had disappeared from the  
21 Division 164 hospital. And on the left margin of the document --  
22 if you would look at the left margin at the document -- there is  
23 a handwritten note sent the following day from Son Sen alias  
24 Khieu, to Bong Nuon, making a request for approval to search for  
25 two of the individuals listed in Meas Muth's report.

1 [10.10.45]

2 Document E3/1151, E3/1151, is an example of a telegram sent from  
3 Son Sen to Division 164 Secretary, Muth, communicating approval  
4 for measures that had been proposed. And this is a telegram from  
5 Brother 89 to comrade Muth, dated 4 November 1976, which states  
6 in the upper left hand corner, "Instruction for 164". And in the  
7 first sentence of the telegram, it identifies the specific  
8 telegram from Division 164 Secretary, Muth, to which it was  
9 responding.

10 In paragraph 3, Son Sen conveys approval for the measures that  
11 had been proposed by Muth, and then lists further measures  
12 relating to the issue of vessels entering Cambodian waters.

13 Documents E3/1585 -- that's E3/1585, is the attendance list for  
14 the First General Staff study session that began on the 20th of  
15 October 1976.

16 And documents E3/847 and E3/1142 are attendance records for the  
17 Second General Staff study session that commenced on the 23rd of  
18 November 1976. I will not discuss these documents further today,  
19 other than to note that they provide a useful record for the  
20 Chamber, by which to identify the various divisions and  
21 independent regiments and the individuals who served on the  
22 division regiment and battalion committees that formed the RAK in  
23 this time period.

24 [10.13.17]

25 The next document I would like to discuss is document E3/1164 --

1 that's E3/1164. This is a report dated 25 November 1976, from  
2 Division 801 Secretary, Roeun, to Brother 89. And at Khmer page  
3 00052327; English, 00516711; French, 00532754; the report  
4 proposes a number of organizational measures relating to enemies  
5 who had infiltrated the division including that -- quote: "Anyone  
6 who is suspicious of being an enemy must absolutely be arrested."  
7 End of quote.

8 And, that temporary arrests should be made of persons implicated  
9 in documents.

10 At the end of the document, the Division 801 Secretary states --  
11 quote:

12 "This is a report of Committee 801 regarding enemy activities and  
13 measures as stated above and we request that Uncle make remarks  
14 and comments. We look forward to receiving the Party's  
15 recommendations." End of quote.

16 [10.15.03]

17 Document E3/804, E3/804, is the minutes of a meeting of the  
18 secretaries and logistic officers of the divisions and  
19 independent regiments that was held on the 15th of December 1976.

20 And at paragraph 2a, of the concluding opinions of Brother 89  
21 regarding Party work, Son Sen discusses the result of efforts to  
22 date to screen biographies of military cadres and notes -- quote:  
23 "The results of grasping the biographies this time were good, but  
24 there are still some comrades who are hiding their histories. Be  
25 most careful about those whose mothers and fathers were purged or

1 whose siblings were purged."

2 And in paragraph 4, regarding military installations, Son Sen  
3 instructs -- quote: "Must prepare, especially for the  
4 intervention unit. Must screen it clean. Only when the General  
5 Staff sends orders to the division and the division give the  
6 order, can they go out on operations." End of quote.

7 [10.16.48]

8 Son Sen also discusses in Section 3 of these minutes, a number of  
9 Party circulars that had been received in which Angkar  
10 communicated decisions that pistols were not to be carried in  
11 general, and that the use of telephones was to be avoided for  
12 secrecy reasons.

13 An example of how information was reported up the chain of  
14 command can also be seen in documents E3/1079 and E3/1132. The  
15 first of these documents, E3/1079, is a report that was sent by  
16 Division 801 Secretary, Roeun, to Brother 89 on the 25th of  
17 December 1976.

18 The second document, E3/1132, is a report prepared by the General  
19 Staff, which is titled - quote: "Overall Situation in the Country  
20 and Along the Border Via Telegrams from the 01 to 31 December  
21 1976."

22 And in comparing these two documents, it can be seen that the  
23 information that was reported by the Division 801 Secretary in  
24 the first document, in paragraphs 2, 3, and 4 of his report, were  
25 then taken by the General Staff and included as part of their

1 overall report regarding the situation for that month, which you  
2 will see in the section for Division 801 in the General Staff  
3 report.

4 [10.18.53]

5 I will now turn to a few examples of documents -- military  
6 documents -- from 1977.

7 E3/807, I repeat E3/807 is the minutes of a division secretaries'  
8 meeting that was held on the 1st of March 1977. In section 1 of  
9 these minutes, there is extensive reporting of the on-going  
10 purges in the military. For example, Division 502 Secretary, Met,  
11 reports -- quote:

12 "It's obvious that a number of elements whom we had previously  
13 arrested really are enemy elements. More than 50 no-goods have  
14 been sent to S-21.

15 "There can only be reliability if five more platoon secretaries  
16 are removed." End of quote.

17 [10.20.04]

18 Secretary Chhin of Division 920, who, himself, would be arrested  
19 and sent to S-21 two weeks later, reports -- quote: "...those who  
20 came to us from the Vietnamese and the children of soldiers,  
21 sub-district chiefs and police were purged and sent to do  
22 production in one place." End of quote.

23 And Comrade Yan, from Division 450 reports: "Maybe 600 persons  
24 are elements who must be removed."

25 In this same meeting; and I would refer you to Khmer pages

1 00052306 and also 52308 through 09; English pages, 00183951  
2 through 53; and French pages, 00323925 through 27, Brother 89,  
3 Son Sen, advises the divisions as follows -- quote: "After we  
4 eliminated the Chhouk and Ya treasonous networks, we discovered  
5 another treasonous network which we have basically eliminated."  
6 Later, Son Sen continues to provide another detailed history of  
7 the purges within the Party, and his proposed measure states --  
8 quote: "Mere education is not enough. It is imperative to  
9 continue further with absolute purges."

10 [10.22.12]

11 Son Sen also instructs at this meeting that the duty of defending  
12 the country was now to take precedence over all other duties of  
13 the RAK.

14 And at Khmer page 00052310, Son Sen notes the distinction between  
15 antagonistic contradictions and internal contradictions, stating  
16 -- quote:

17 "It is imperative to grasp the antagonistic contradictions to the  
18 utmost degree. In the past, we have eliminated a lot of important  
19 traitorous links, but it is imperative to continue with further  
20 revolutionary vigilance because remnants still remain, and new  
21 traitors will continue to be born.

22 "Internal contradictions require education, whereas antagonistic  
23 contradictions require absolute organizational methods." End of  
24 quote.

25 [10.23.30]

1 Documents E3/1061 and E3/1060 are reports from Division 801 to  
2 Brother 89, dated the 24th of March 1977, and the 29th of March  
3 1977, both of which contain handwritten annotations forwarding  
4 those reports to Angkar.

5 In Section 3 of the 24 March 1977 report, which is document  
6 E3/1061, Division 801 Secretary, Roeun, reports on the capture of  
7 seven Vietnamese prisoners at the border, and on the results of  
8 the interrogation of those prisoners.

9 And in his 29 March 1977 report -- document E3/1060 -- he  
10 describes the enemy situation throughout the entire Northeast  
11 region, including the base.

12 [10.24.54]

13 The handwritten annotation in the upper left side of the first  
14 page of E3/160 -- I'm sorry; E3/1060. The handwritten annotation  
15 on the first page of that report forwards the document to Angkar  
16 and makes reference to Tuol Sleng.

17 And paragraph 5 at the very end of this report sums up the  
18 situation in the unit as follows -- quote: "We were following the  
19 trail of both new and old elements destroying the revolution.  
20 Those targets included those going against the revolutionary line  
21 and those newly and previously implicated by the enemy." End of  
22 quote.

23 [10.25.53]

24 In regards to how division secretaries were informed of persons  
25 in their divisions who had been implicated, I would like to now



1 present a few examples of annotations on S-21 confessions which  
2 reflect how division secretaries were informed by the Centre of  
3 people implicated.

4 First is document D43/4 Annex 22, we repeat D43/4 Annex 22, and  
5 this is a S-21 confession of a cadre from Division 502 named Sour  
6 Tuon alias Mao, and I would like if we can show on the screen  
7 please, Khmer page 00173999, 173999, which is English page,  
8 00224628; French, 00271447. And there is a handwritten note on  
9 the cover page of this confession from Son Sen to Division 801  
10 Secretary, Roeun, which reads as follows:

11 "Dear Comrade Roeun, please read this report of Mao and pick out  
12 the relevant names of Unit 801.

13 "I will help you tomorrow, as I am busy this afternoon.

14 "May you keep this confidential."

15 [10.28.02]

16 This note, which is in red, is signed by Khieu and dated the 2nd  
17 of June 1977.

18 Another example is document E3/150 -- that's E3/150 -- which is  
19 the S-21 confession of Division 164, Deputy Secretary Hang Doeun  
20 alias Dhoem, and the annotation I would like to present on this  
21 confession is at Khmer page 00174375 -- that's 174375; English,  
22 00224085; French, 00235668. And if you would look at this  
23 annotation, it includes the following statement -- quote: "To  
24 brother to be informed. About the plan, it is followed. Though  
25 some are the right people, some others, whom I have known, are

1 not. I will invite comrade Mut to check this together." End of  
2 quote.

3 [10.29.35]

4 Another example of the coordination between the Centre and  
5 divisions relating to persons implicated in S-21 confessions is  
6 document D43/4 Annex 99 -- that is, D43 Annex -- I'm sorry, D43/4  
7 Annex 99. And this is another confession of a Division 164 cadre,  
8 Khuon Dim (phonetic), and I would refer to the cover page, which  
9 is Khmer 00175293; English, 00822359; French, 00289872.

10 This page contains a handwritten note dated 10 September 1977,  
11 signed by Son Sen under his alias Khieu, and paragraph 2 of Son  
12 Sen's note states -- quote: "...22 as well as Division 164 of  
13 Comrade Muth are mentioned."

14 And in paragraph 3b of the note -- quote: "Contact Comrade Muth  
15 so that he can take measures. We have already basically removed  
16 all those on Comrade Muth's side."

17 And I would also note that at the top of the same page there is  
18 another annotation indicating that a copy of this confession was  
19 sent to Brother Nuon on the 10th of September 1977.

20 [10.31.47]

21 In addition to substantive annotations, like the ones just  
22 presented, there are other S-21 confessions that contain more  
23 basic annotations, simply recording that a copy of the confession  
24 was sent to the relevant division secretary. For example, D43/4  
25 Annex 91, is the confession of Chia Sun, a regiment secretary in

1 Division 703, and referring to the top of Khmer page 00174986,  
2 there is an annotation that reads – quote: "Copy for Comrade  
3 Pin." Similarly, document D302.5 -- that's D302.5, is the S-21  
4 confession of a Division 502 cadre, Srei Saroeun, and underneath  
5 the confession title at Khmer page 00235162, you will see the  
6 annotation -- quote: "One copy sent to Comrade Met." End of  
7 quote.

8 [10.33.25]

9 Before I conclude, Mr. President, I have a few more documents to  
10 present relating to the military structure from the 1977 time  
11 period. I have about five to 10 more minutes, so I can either  
12 continue now or finish after the break, at your discretion.

13 MR. PRESIDENT:

14 Thank you.

15 The time is now appropriate for adjournment. The Chamber will  
16 adjourn for 20 minutes, and we will resume at five to 11.00.

17 (Court recesses from 1034H to 1101H)

18 MR. PRESIDENT:

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

20 And the floor is once again given to the Prosecution to continue.

21 MR. LYSAK:

22 Thank you, Mr. President. I have just a few more documents left  
23 that relate to the military during the 1977 time period.

24 First, document E3/1168, that's E3/1168. It is a 30 March 1977  
25 report from Division 801 Secretary, Roeun, to Uncle 89. In this

1 document, the division secretary writes to seek approval to -  
2 quote:

3 "...remove a number of regimental and battalion cadre because these  
4 comrades' implementation of the line is mostly contrary to it,  
5 the masses have no faith in them, they do not improve through  
6 education and the direction of their evolution is backwards." End  
7 of quote.

8 [11.02.59]

9 Next, document E3/849, E3/849. This is a report prepared by the  
10 General Staff for March 1977 titled "Joint Statistics of Armed  
11 Forces." And it shows the number of forces in each RAK division,  
12 independent regiment and office, recording a grand total of  
13 61,189 persons in the RAK Armed Forces, as of that date.

14 Document E3/1199, E3/1199, is a telegram from Division 920  
15 Secretary, San, to Brother 89, dated the 6th of April 1977. And  
16 this telegram reports that after education of the division  
17 cadres, there was - quote: "More and more awareness and unmasking  
18 of traitors."

19 This telegram contains a handwritten annotation by Son Sen alias  
20 Khieu, sending the report to Angkar the following day. In  
21 addition, there is an annotation on the report that states -  
22 quote: "Arrest them."

23 [11.04.54]

24 Next, a document E3/1202, E3/1202, is a 4 June 1977 report to  
25 Brother 89 from the Division 170 Committee Secretary, Sok. In the

1 first section of this report regarding enemies, the report  
2 identifies 11 internal enemies of concern whose acts included  
3 that they - quote: "Talked, travelled and communicated freely."  
4 End of quote.

5 The report continues later on, on Khmer page 00033309, and this  
6 is English page 00828147; French, 00623394. And I would note here  
7 as well that it appears that the pages of the document are out of  
8 order, as they have been copied in the case file.

9 The report continues at this page - quote:

10 "The Committee agreed to request sending them to S-21. Some  
11 people among them are still in Kampong Chhnang, and we just had  
12 our people go get them. The details of the biographies and  
13 activities of each of them will be done later and sent along with  
14 them."

15 Concluding later - quote: "I request Brother's opinion in this  
16 regard." End of quote.

17 [11.07.09]

18 Next, document E3/1082 -- that's E3/1082, is a record of a 12  
19 August 1977 telephone report from Division 164 Secretary, Muth,  
20 regarding the capture of a Thai boat two kilometres from Koh  
21 Kong. The report indicates that four Thai and one Khmer person  
22 were arrested and being questioned. And in the left margin of the  
23 document, you will see an annotation from Son Sen alias Khieu, to  
24 Angkar requesting approval to - quote - "find inside networks" -  
25 end of quote.

1 [11.08.10]

2 Mr. President, the last document I would like to present today  
3 relates to the last quarter of 1977, the time period during which  
4 the Closing Order alleges that Son Sen had been relocated to the  
5 East Zone to oversee the conflict with Vietnam. And this is  
6 document E3/915, E3/915, which is a telegram from Division 164  
7 Secretary, Muth, dated the 31st of December 1977. Notably, this  
8 telegram from the division secretary is not addressed to Brother  
9 89 but instead is directly addressed to Committee 870, and it is  
10 copied to Uncle, Uncle Nuon, Brother Van, Brother Vorn, Brother  
11 Khieu, Office, and Documentation.

12 [11.09.25]

13 In his telegram to Committee 870, Division Secretary Muth states  
14 as follows - quote:

15 "We have received the guiding view and the declaration of the  
16 Party about the aggression of the Yuon who have come to swallow  
17 the territory of our Motherland.

18 "We, who have the duty to defend the maritime spearhead would  
19 like to:

20 "1. Be in total unity within the Party;

21 "2. Vow determination to fashion forces who are a tool absolutely  
22 to defend the Party, to defend the state power of the collective  
23 worker and peasants, and to defend the socialist Kampuchean  
24 motherland by sweeping cleanly away and without half-measures the  
25 uncovered elements of the enemy, whether the Yuon or other

1 enemies." End of quote.

2 [11.10.29]

3 Mr. President, that concludes our presentation of documents. We  
4 appreciate the time to present these documents relating to the  
5 military structure issues of the Closing Order. We are prepared  
6 to do additional presentations regarding force movements, but I'm  
7 not sure whether you want us to proceed now or whether the floor  
8 will be turned over to the other parties. That concludes our  
9 presentation on military structure.

10 MR. PRESIDENT:

11 Thank you.

12 Let us deal with one topic at a time, so that other parties would  
13 also have the opportunity to comment or to make their remarks.

14 The floor is now given to the Lead Co-Lawyers for the civil  
15 parties, if they wish to make any comment or to add to what has  
16 been presented by the Co-Prosecutor regarding the military  
17 structure of Democratic Kampuchea's army.

18 You may proceed.

19 [11.11.54]

20 MS. SIMONNEAU-FORT:

21 Good morning, Mr. President. Good morning, Your Honours, and good  
22 morning everyone.

23 We are not ready to present our documents now, because we thought  
24 that the prosecutors were going to present all their documents  
25 regarding the forced transfers and the military structure today.

1 We are not in a position to present today. We thought the  
2 prosecutor was going to present everything in one go.  
3 We would request that the prosecutor should continue making their  
4 presentations, and we will present ours subsequently. Thank you.

5 MR. PRESIDENT:

6 I just gave the instruction to the prosecutor that we deal with  
7 one theme at a time.

8 We would like now to give the floor to the Defence teams,  
9 starting from Nuon Chea's defence, so that you have the  
10 opportunity to make a comment or to object to the documents  
11 presented by the Prosecution regarding the military structure of  
12 the Democratic Kampuchea's army.

13 [11.13.45]

14 MR. SON ARUN:

15 Good morning, Mr. President, Your Honours. In the presentation by  
16 the Prosecution regarding the documents to be discussed before  
17 this Chamber, on behalf of Nuon Chea's defence, I would like to  
18 express our objections to one particular document, and that  
19 document is a key leading to several other documents, up to the  
20 listed number 67. That document has been discussed previously as  
21 well -- that is, since 15 December 2011. The document is E3/5  
22 dated August -- in the transcript of the hearing, the document  
23 was debated on the 15th of December 2011 around 12 o'clock, at  
24 noon.

25 Let me repeat; the document number is E3/5 -- that is the



1 "Revolutionary Flag". The ERN is 000633244 -- that's the Khmer  
2 ERN; English -- the French is 00538963.

3 [11.16.26]

4 In 2011, my client, Nuon Chea, himself made his statement and  
5 expressed his stern objection to this document, objecting to the  
6 document which is not the original document, and that is the very  
7 document we are discussing here today.

8 Nuon Chea stated, in paragraph 22 in the transcript, that: "Mr.  
9 President, the 'Revolutionary Flag' was not in this format. And  
10 this is a document which is not a book, and I do not know where  
11 it came from. This is not the format of the book format of the  
12 'Revolutionary Flag'. And if you have it, please show me.  
13 Otherwise, anybody can manufacture this kind of document."

14 [11.17.38]

15 Also, on the 15 December 2011, a little bit after that statement,  
16 Nuon Chea added that - in paragraph 2 on page 66 of the  
17 transcript, that:

18 "In order for everybody to clear on this matter, pursuant to the  
19 principle of this Chamber - that is, to ascertain the truth and  
20 justice - and, of course, I'd like to add that it is also for the  
21 interest of the people. Anybody can manufacture this kind of  
22 document. So that I repeatedly insist for the original document  
23 so that I can examine it, then I would know who the author was  
24 and how it was put into the form of the 'Flag' so that we can be  
25 sure that this is a Court which try to ascertain the truth and

1 justice and not just a show trial. And, if the Court cannot  
2 afford to give me the original document, I cannot accept this  
3 kind of document."

4 Also, on that same day, at 12.36 in paragraph 22, Nuon Chea also  
5 stated the following: "However, some words were left out. For me,  
6 I don't understand because there were only [...] to that  
7 sentence."

8 [11.19.52]

9 These statements from my client, Nuon Chea, indicate that Nuon  
10 Chea objects to this kind of document and that he refused to  
11 recognize that kind of "Revolutionary Flag" alleged to be written  
12 by himself and Pol Pot, and instead of that, the Chamber and the  
13 Prosecution insist on putting this kind of document on the case  
14 file in order to prosecute my client.

15 Nuon Chea also objects to any of the copied documents without its  
16 original version unless there is a concrete argument stating that  
17 it is an authenticated document or original document.

18 And on the 7 January 1979, and prior to that date, the Vietnamese  
19 troops intervened and had -- or engaged in a fierce attack  
20 against the Communist Party of Kampuchea and we all could not  
21 know for sure whether these foreigners manufactured any kinds of  
22 document from that date until the time that the Court was  
23 established to prosecute the Khmer Rouge leaders.

24 [11.21.52]

25 And since the opening of the Case 002, the -- does the

1 Prosecution still insist on using this kind of document, claiming  
2 that it is a reliable source of document to be put before this  
3 Chamber and any other similar documents submitted by the  
4 Prosecution in order to prosecute my client, Nuon Chea? I, on  
5 behalf of the Defence team, would strongly object to any kind of  
6 document without its original version for its use before this  
7 Chamber. And if the Chamber wishes our team to make such  
8 submission in writing, we will follow the instruction, and if the  
9 Chamber refuses to deny our request then we will appeal such a  
10 decision.

11 As for the books written about Democratic Kampuchea, with the  
12 names of the authors to be discussed before this Chamber, as well  
13 as media reports and articles presented by the Prosecution in  
14 order to prosecute my client, I, on behalf of Nuon Chea's  
15 defence, would like the Chamber to summon those authors of the  
16 books to be -- to testify before this Chamber. Otherwise, the  
17 effort that we have put in together in this Court is of no value  
18 and then the allegation by the Prosecution is extremely vague.  
19 And that leads to the serious violation of my client's right in  
20 that his right has been violated and continue to be violated in  
21 the future if that is the case.

22 For that reason, I urge the Chamber to consider our request and  
23 to dismiss these kinds of documents as proposed by the  
24 Prosecution.

25 [11.24.34]

1 So I, basically - or, our team basically objects to this  
2 particular document -- that is, E3/5 - and, of course, the  
3 subsequent documents are of a similar kind.

4 I'm grateful, Mr. President.

5 MR. PRESIDENT:

6 Thank you, Counsel.

7 The floor is now given to Ieng Sary's defence.

8 MR. KARNAVAS:

9 Good morning, Mr. President. Good morning, Your Honours, and good  
10 morning to everyone in and around the courtroom.

11 [11.25.15]

12 Let me just begin with some preliminary remarks, because I think  
13 it is necessary to keep something in mind, and that is, over the  
14 course of the last day or so, the Prosecution has begun, as they  
15 have in prior occasions when we deal with these issues, to give  
16 their closing argument. They provide not just a document and what  
17 the document contains but also their spin and how it connects or  
18 how it is linked to the indictment and to the events and to the  
19 Accused.

20 So, to that extent, while far be it for me to advise the Trial  
21 Chamber on how to proceed in conducting this trial, it is my  
22 obligation to point out that these remarks are only remarks by  
23 the Prosecution, they are not evidence, and as a consequence,  
24 little or no value should be given to those remarks.

25 Also, because the Prosecution seems to be intent on providing its

1 closing argument at this point in time, the Trial Chamber should  
2 be very mindful when it decides at the end of the case as to how  
3 much time it will give the Prosecution to argue its case, because  
4 that is exactly what they're doing on each and every one of these  
5 occasions.

6 [11.26.45]

7 That being said, yesterday, I made some very general remarks  
8 concerning these sorts of documents, and let me just repeat what  
9 I said yesterday to some extent, and this afternoon, I will go  
10 into some details with the 54 or 56 documents that we object to,  
11 which we feel have not been addressed. And, as I understand, the  
12 Trial Chamber is setting aside some time for me to make those --  
13 that presentation. I will only need about 15 or 20 minutes this  
14 afternoon.

15 It is our position that documentary evidence has to be admitted  
16 with great reservation. Authenticity and reliability is  
17 necessary. This documentary evidence should come in through  
18 witnesses in order to test the witnesses' knowledge of the  
19 content or at least to verify how the documents were produced. To  
20 the extent in any of these documents that are being submitted,  
21 without any testimonial evidence, we object, recognizing,  
22 however, that the Trial Chamber will indeed, as we are in the  
23 civil law system, admit everything, more or less, and that it is  
24 based on this tradition, this legal tradition, for it to review  
25 it at the end of the trial, under the free evaluation of the

1 evidence, that it be very circumspect as far as weight to be  
2 given to documents where the foundation has not been established  
3 for authenticity and reliability.

4 [11.28.31]

5 And that's all I have to say at this point in time. And I thank  
6 you for giving us this opportunity to respond very briefly to  
7 what has been going on thus far with the Prosecution in respect  
8 to this presentation. Thank you.

9 MR. PRESIDENT:

10 Thank you.

11 The defence team for Khieu Samphan, you may proceed.

12 MS. GUISSÉ:

13 Thank you, Mr. President. Good morning to you, the Bench, to the  
14 parties, and to everyone present.

15 I will be very brief, because I must say that I am somewhat  
16 perturbed because if I have understood, the purpose of this  
17 hearing in application to various memos, and I'm referring to  
18 E170, paragraphs 2 and 4; memo E163, paragraph 3; and E223,  
19 paragraph 4.

20 [11.29.44]

21 If I have properly understood the purpose of these memos, as to  
22 the purpose of this hearing, during which we are supposed to  
23 raise our objections on matters of admissibility, and in light of  
24 what we have seen today, the presentation of key documents by the  
25 parties who wish to do so, I must say that the position of the

1 Chamber was to present these key documents to the public and to  
2 give the parties an opportunity to plead and to respond, with the  
3 possibility given to the Accused to comment. And this is what  
4 transpires in the various memos prior to this hearing.

5 Under such conditions, Khieu Samphan's team is not ready to plead  
6 on issues of admissibility, presentation of key documents and the  
7 merits. In this regard, let me reiterate what I stated yesterday,  
8 that taking into account the position of the Chamber regarding  
9 the broad admissibility of documents, we will not be able to have  
10 a true debate on the probative value of the documents before this  
11 Chamber.

12 [11.31.09]

13 The point I want to make today is that, insofar as we are sitting  
14 to look at the different memos and the documents, I endorse  
15 entirely what my learned colleague, Karnavas, has stated. The --  
16 this is not an opportunity for the prosecutor and the civil  
17 parties to plead, which means that all documents that have been  
18 presented so far, and in regard to which we have remained silent,  
19 we would have to revisit those documents in order to plead. That  
20 is the first point.

21 The second point is this, bearing in mind the fact that my client  
22 is admitted to hospital, we cannot make any submissions at this  
23 stage. Thank you for your attention.

24 MR. PRESIDENT:

25 Thank you.

1 I now hand over to the Prosecution to respond to the various  
2 objections raised by parties. You may proceed.

3 [11.32.30]

4 MR. LYSAK:

5 Thank you, Mr. President.

6 I am not sure I understand why counsel for Khieu Samphan is  
7 perturbed. I think the Trial Chamber's memo was clear that we  
8 would present documents. This is not a closing argument, it was a  
9 presentation of documentary evidence, and that counsel would have  
10 an opportunity to respond and make observations; not, I believe,  
11 to debate admissibility, which has already been decided with  
12 respect to these documents, but to make any observations that  
13 they wish.

14 With regard to Nuon Chea's counsel, who focused on document E3/5,  
15 the August 1975 "Revolutionary Flag", the Court has already  
16 determined the admissibility of that document and rejected the  
17 arguments that documents need to be originals. I will,  
18 nonetheless, take that to be a comment still challenging the  
19 weight of the document. So I would make the following three  
20 observations, and I am glad that counsel reminded the Court of  
21 the disingenuous statements of Nuon Chea that were made at the  
22 outset of this trial regarding these documents.

23 [11.33.53]

24 First, colour copies have since been shown of some of the  
25 "Revolutionary Flags", from which it can be seen clearly that



1 this was a booklet that was then copied into black and white. So  
2 the assertion that these were booklets has been shown by some  
3 colour copies of the "Revolutionary Flag" that have been put  
4 before the Chamber.

5 In regards to the assertion that somehow we are not searching for  
6 the truth, that documents have been manufactured, that this is a  
7 show trial, these are incredibly disingenuous remarks. I would  
8 remind everyone the Court has heard testimony from witness Kim  
9 Vun, who worked at the office that printed "Revolutionary Flag".  
10 He came to this Court, he testified, he looked at these documents  
11 and he confirmed their authenticity.

12 And in regards to this particular document, the August 1975  
13 "Revolutionary Flag" that records a speech given to 3,000 cadres  
14 from the army in July 1975, we have heard recent testimony from  
15 one of the soldiers who confirms attending that meeting that is  
16 discussed in this issue of "Revolutionary Flag". So, for counsel  
17 to suggest that there is any question about this document is  
18 simply wrong.

19 And that is my response to the comments from the Defence.

20 MR. PRESIDENT:

21 Thank you.

22 (Judges deliberate)

23 [11.38.10]

24 MR. PRESIDENT:

25 According to the schedule of this document hearing, this

1 afternoon the Chamber will hear the presentation of documents by  
2 the defence team for Mr. Ieng Sary. There are altogether 56  
3 documents sought by the defence team for Ieng Sary, so the  
4 Chamber wishes to ask the defence team whether or not you are  
5 ready and this document can be presented this afternoon.

6 MR. KARNAVAS:

7 We are ready, Mr. President.

8 MR. PRESIDENT:

9 Thank you.

10 How about the Lead Co Lawyer for civil parties?

11 Just now you mentioned that you have not been ready on the  
12 comments or the presentation of documents concerning the facts  
13 relevant to the structure of the military of the Democratic  
14 Kampuchea. The Chamber wishes to ask whether or not you can  
15 present this document.

16 MS. SIMONNEAU-FORT:

17 Mr. President, we have to apologize, but I think that the rather  
18 hasty preparation for this hearing has led us into error, because  
19 we thought that our presentation would follow the overall  
20 presentation by the Prosecutors. Be that as it may, we have some  
21 things to say about military structures. We will be able to do  
22 this in the second part of the afternoon, if the Chamber would  
23 accept for us to do this after the Ieng Sary defence. And we can  
24 send the list of our documents to all of the parties. There  
25 aren't many of them. We can send them that over the lunch break,

1 if that is suitable.

2 The other possibility is for us to present all our documents,  
3 military structures and forced transfer, after the presentation  
4 by the Prosecution, which would make it possible for the Chamber  
5 to acquaint itself with our documents over a reasonable time  
6 before we come around to presenting them. We can do it either  
7 way, Mr. President. Thank you very much.

8 (Judges deliberate)

9 [11.42.10]

10 MR. PRESIDENT:

11 Thank you.

12 The time is now appropriate for lunch adjournment. The Chamber  
13 will adjourn now until 1.30 this afternoon.

14 The Court is now adjourned.

15 (Court adjourns from 1142H to 1341H)

16 MR. PRESIDENT:

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

18 This afternoon we will continue with the document hearing by  
19 hearing the presentation by Ieng Sary's defence of their  
20 submission regarding the military structure, the movement of  
21 population phases 1 and 2, and the killing site at Tuol Po Chrey.  
22 The floor is now given to Ieng Sary's defence to make the  
23 presentation regarding the documents. Counsel Michael Karnavas,  
24 please hold; I notice that the prosecutor is on his feet.  
25 You may proceed.

1 MR. DE WILDE D'ESTMAEL:

2 Thank you, Mr. President. Good morning to the Bench and to all  
3 parties before.

4 [13.43.43]

5 Ieng Sary's defence presents objections to the -- or talks about  
6 the 54 documents. I will try to look at the number of documents  
7 on the list; 24 of those documents have already been the subject  
8 of debate and even decisions of the Chamber. So in order that we  
9 do not lose time and discuss the same documents -- 12 documents  
10 were discussed yesterday during the afternoon session as well as  
11 other documents which were the subject of debate in 2012 -- may I  
12 take about 10 minutes to list the documents which, in my opinion,  
13 should not be discussed today?

14 [13.44.41]

15 So, I am in your hands, Mr. President. If you think it is useful  
16 for me to do so, so that we can limit today's discussions only to  
17 the 30 documents, I believe, and the footnotes of the -- of the  
18 footnotes. Twenty-four other documents have already been the  
19 subject of discussions and the Defence should not present those  
20 documents again or should not raise objections.

21 MR. PRESIDENT:

22 Counsel Michael Karnavas, you may respond.

23 MR. KARNAVAS:

24 Thank you, Mr. President.

25 First of all, it is not my intention to go through each and every

1 document and the gentleman knows that. Our position has always  
2 been that we would do it by topics.  
3 Secondly, the 54 documents that we include as part of this annex  
4 that we will be submitting to the Trial Chamber as part of our  
5 written submissions include documents that were in -- noted in  
6 the footnotes and when we look at your trial memorandum of  
7 E223/2, at paragraph 5, there seems to be an omission with  
8 respect to documents related to the military structures and so  
9 that was the purpose of that. Now, to the extent that there may  
10 be some overlap, that's unavoidable in some instances though we  
11 -- your -- we took the opportunity to look at the footnotes  
12 themselves.

13 [13.46.29]

14 This presentation does not include objections to Closing --  
15 Closing Order documents such as IS 5.53 or D125/217 which have  
16 been included in OCP's annex. And also we do not include witness  
17 statements requested by the Prosecution in its motion of E208 --  
18 E208/1 and E96/8 because we are -- we understand these will be  
19 the subject of future hearings.

20 That said, I will agree with the Prosecution that some of the  
21 topics of some of these documents are similar to the ones raised  
22 yesterday and I am perfectly happy to simply submit our annex --  
23 our motion with the annex and our remarks and sit down to save  
24 time if the Prosecution is worried that we will be consuming  
25 valuable Court time.

1 [13.47.41]  
2 But what -- the topics that I have here are telegrams. There are  
3 letters; one needs to be -- I need to -- to clarify something  
4 with the Court, a letter from Heder. Then there is a letter from  
5 a pastor. There are some witness statements. There are some  
6 documents from USAID, UNICEF, WHO, the U.S. State Department,  
7 World Vision. There are documents related to international  
8 communications from the French and U.S. State Departments, again,  
9 similar to what we did yesterday. These are all from the  
10 footnotes. There are some media articles including an article  
11 that was authored by Suong Sikoeun where we don't object to that  
12 being introduced and it sort of dovetails what he testified to,  
13 but we leave it to the Court's discretion. There are three CPK  
14 publications and minutes of -- of meetings. There's one video  
15 titled "What Happened to Cambodia" by Ronnie Yimsut -- or "Ronnie  
16 Yimsut's Story", I should say. And then there's a power  
17 delegation decision by Judge You Bunleng to Judge Lemonde  
18 allowing him to -- with respect to a letter that was authored by  
19 Mr. Heder.  
20 So, I'm in your -- in your hands; I can either go through my  
21 presentation or simply say that with respect to all of these  
22 documents or these -- these topics, we object based on what I've  
23 indicated yesterday, based on Rule 87.3, and based on the fact  
24 that some of the documents predate the temporal jurisdiction. And  
25 unless they meet certain criteria - that is, for background or

1 for context -anything that precedes the temporal jurisdiction of  
2 this tribunal should not be admitted.

3 [13.50.14]

4 With respect to the Heder letter, it is worth pointing out that  
5 this is a letter from Heder to the OCIJ while he was working for  
6 the OCIJ explaining certain matters and it bears underscoring  
7 that Heder's summaries of Becker's interview with Ms. Ieng  
8 Thirith was -- was not admitted because it was found to be  
9 unreliable. In other words, he was -- somehow he was transcribing  
10 or typing her notes and that was found unreliable and that's in  
11 E185.2.

12 Very briefly, again, to save time, since time seems to be of the  
13 essence, with respect to these documents from USAID, UNICEF and  
14 what have you, as I've indicated yesterday, we think the Trial  
15 Chamber should give little or no weight -- cannot -- should not  
16 take the content of these documents at face value. It is  
17 virtually impossible to test the validity of the -- of what is  
18 being reported. These documents and reports contain information  
19 and conclusions that are based not on direct observations.

20 Basically, well, these are my submissions.

21 And I see the Prosecution seems to be in a particularly combative  
22 mood this afternoon, so I'll allow him to make his observations.

23 MR. PRESIDENT:

24 Thank you.

25 The Co-Prosecutor, you may proceed.

1 MR. DE WILDE D'ESTMAEL:

2 Mr. President, I had made a motion before this Chamber and  
3 Counsel Karnavas was given the floor to respond to that motion  
4 and it appears that regarding all the motions, I think he should  
5 respond to my specific application. And, depending on the  
6 decision of the Chamber, I will be able to say which documents  
7 are duplicates or duplicate orders and then he can make his  
8 objections. I think he is mixing things up.

9 [13.52.55]

10 I still do not know whether the Chamber would like me to list  
11 documents that have already been the subject of hearings before.  
12 Thank you, Mr. President.

13 MR. PRESIDENT:

14 That is correct. If you object to certain documents and that it  
15 is not necessary for Ieng Sary's defence counsel to present those  
16 objections. In order to -- not to waste the time, you should list  
17 those documents so that the Chamber and all parties will get to  
18 understand clearly on this issue and if you just make a brief  
19 summary, then, the Chamber will not have the basis to make  
20 decision. You have to state that clearly.

21 [13.53.50]

22 For example, out of those 24 documents that you're saying are  
23 repetitious is to be presented by the defence counsel so that the  
24 counsel will have the opportunity to make their remark or  
25 observation so that we can then decide whether the Defence shall



1 make their objection in whole or in part. And if you make a brief  
2 response or remark like this, the Chamber will not have any  
3 grounds to make any ruling.

4 MR. DE WILDE D'ESTMAEL:

5 Thank you, Mr. President. Indeed, that was the main thrust of my  
6 application. I will move very quickly and in -- in an orderly  
7 manner regarding the -- the table given by the Defence.

8 The first document was on the table sent by email this morning,  
9 is D108/28/108. It already has an E3 number and this is E31750  
10 (phonetic), and it was presented before. This is a witness, Ms.  
11 Voeun, who was presented during the hearing of the 8th of August  
12 2012 by Judge Lavergne; E1/131.1, at about 11:50. There were no  
13 objections raised at the time regarding that document.

14 [13.55.42]

15 The second document which poses problems is number 3 on the list  
16 given by the Ieng Sary defence team. It's D108/31. I repeat  
17 D108/31.28. As a matter of fact, in this case, it is another  
18 version of a document that had already been a subject of a  
19 hearing. The same document that was presented at -- at another  
20 time, D08/7.3, and the exhibit number was given--

21 THE INTERPRETER:

22 The exhibit number was read too fast, Mr. President, so we  
23 couldn't retain it.

24 MR. DE WILDE D'ESTMAEL:

25 --that document was presented last year.

1 And then, as Ieng Sary's defence has pointed out, there are a  
2 number of witness statements on the list. The first witness  
3 statement which was the subject of a separate hearing is D125/97.  
4 It is a witness statement by TCW-231.  
5 [13.57.03]  
6 Then we have four documents that were discussed during  
7 yesterday's hearing before this Chamber. These documents begin  
8 with D199/26.2.  
9 The first, D199/26.2.209, was on the list presented yesterday in  
10 the annex, Annex 2A. The number is E223/2/1.2 and the number  
11 given to that document on the list was number 7. It is not  
12 necessary to revisit it because we talked about it yesterday.  
13 The second document is D199/26.2.219. It's in the same situation;  
14 it's on the annex we talked about yesterday. The number in the  
15 annex is number 8.  
16 Then you have D199/26.2.228, still in the same situation. We  
17 discussed it in yesterday's hearing in the afternoon. That  
18 document has a number. It's number 9 on Annex 2A. It has an  
19 exhibit number, 228/8.  
20 Then you have D199/26.1.216. It was discussed yesterday and it is  
21 number 11 on the list, the same Annex 2A.  
22 Then we have two other witness statements. They were -- they were  
23 interviewed by Co-Investigating Judges; D32/26 -- D232/26, and it  
24 is witness TCW-389. Then we have D233/8 and that is witness  
25 TCW-796. So these two witnesses will be the subject of a separate

1 hearing.

2 Then we have a document, D269/9.1.16. It was number 19 on the  
3 list produced by counsel for Ieng Sary. The E3 number is E3/1765,  
4 but it also has another exhibit number, E3/781.

5 And D366/7.1.157, as a matter of fact, this document is on our  
6 list of documents of July 2011; that is document E109/4.1 and it  
7 is in Annex 2 and this is number 16 on that annex. It was the  
8 subject of a hearing in January 2012.

9 [14.00.44]

10 And let me point out that the documents listed on the Defence  
11 list -- that is, D269/9.1.16, is absolutely identical with  
12 D366/7.1.157, so the E3 numbers were given to this document  
13 following its decision, decision 185 of April 2012.

14 On number 20 on the Ieng Sary list, we have number D299.1.15L. As  
15 a matter of fact, that document already has an E3 number and it  
16 is E3/3091R. E3/130R, that document is on our list of July 2011;  
17 D109/4.1, in Annex 16 and the number is 150 on that annex. The  
18 decision was therefore taken regarding that document and an E3  
19 number was given to it following adversarial discussions in March  
20 2012 and following a decision by the Chamber, E185.1.

21 [14.02.24]

22 On number 23 of Ieng Sary's list, we have document D304/1.3. That  
23 document is on our list of July 2011, D109/4.1, and Annex 12  
24 number 555. This is also a statement by an individual, but he  
25 didn't give a statement before the Investigating Judges and it

1 should be the subject of separate hearings for all documents on  
2 Annex 12 and Annex 13.

3 Of our July 2011 documents, there are eight documents that were  
4 discussed yesterday and I will simply give out -- read out the  
5 exhibit numbers and the references and the number in which -- in  
6 which they appear on Annexes A-B we discussed yesterday.

7 The first document is D313/1.2.65. It is on the table which we  
8 discussed yesterday, E223/2/1.2, and it is number 13 on that  
9 document.

10 14.03.55]

11 Then we have document D365/1.1.10. That document was presented  
12 yesterday, as well, and it is in the same annex; Annex A,  
13 E223/2/1.2, and it is number 18 on that document.

14 Document D365/1.15, that document is in the annex -- the same  
15 Annex A and it is number 19. It was discussed yesterday.

16 We have document D365/1.7, and it is number 21 on the Annex A  
17 which we discussed yesterday.

18 Document D365/1/123, that document is also on the annex we  
19 discussed yesterday and it is number 23; Annex A, and the  
20 reference is E223/1/1.2.

21 [14.05.12]

22 Then we have D365/1.1.28. It is number 26 on the same Annex A.

23 Then we have D365/1/1.3 is number 17 on the annex that was  
24 presented yesterday and discussed.

25 And then we have D365/1.1.34 and it is number 27 on the same

1 annex, Annex A.

2 And then we have a few other documents which have already been a  
3 subject of hearings. The first is a statement by a witness  
4 D369/6; that one has not been a subject of a hearing, but it has  
5 to be the subject of a separate hearing. It is also on Annex 12,  
6 and the number is 189 on our list of documents under E109/4.1.

7 [14.06.25]

8 I note that in the list that was given us today that the Ieng  
9 Sary defence entered a document E108/810. It is no longer on the  
10 list of documents discussed this afternoon.

11 And we have only three documents left. The first is a document  
12 with the reference IS 13.30 and the reference number is E3/800.  
13 It is a document that has already been the subject of a hearing  
14 in -- in mid-January 2012 and it is on our annex of E documents  
15 and it's E109/4.1 and it is Annex 3 and the reference and number  
16 on that document is 40. Your decision E196 in April 2012 has  
17 already determined that it is an admissible document, so it  
18 should not be the subject of debate any longer. The situation is  
19 similar for IS 13.1. It has another reference number and it is  
20 D248/6.1.5 and an E3 number was given to it and it is E3/822.

21 [14.08.06]

22 This document is on our list of documents dating back to July  
23 2011 and it's E109/4.1 and it is Annex 3, and the number is 40  
24 under reference D48.

25 The two documents IS 13.31 and D48 are identical in Khmer;

1 although in English, there is a difference in that one is longer  
2 than the other by a page. It's worth pointing this out.  
3 And the last document which should be presented in a separate  
4 hearing is a statement by a witness, TCW-325, and the reference  
5 is IS 19.71. The reference is D366/7.1.5870. This document is  
6 part of Annex 12 and the number is 488 on our list of E documents  
7 and it's E190/4.1, but as I pointed out, as is the case with  
8 other witness statements, it should be the subject of a separate  
9 hearing.

10 [14.09.38]

11 I have come to the end of my list. It was somewhat fastidious,  
12 but it was, I believe, useful.

13 MR. PRESIDENT:

14 Thank you.

15 I note the intention of the Lead Co-Lawyer for the civil parties.  
16 Do you have any observation you want to make? If not, we wish to  
17 hand over to the defence team to discuss the request for  
18 withdrawing certain documents for the reason that they have  
19 overlap.

20 Do you have any observation to make, Lead Co-Lawyers? Because  
21 just now we granted you the floor, but you did not react.

22 MS. SIMMONEAU-FORT:

23 I would have made the point if I had been authorized, Mr.  
24 President, but at this stage, I want to make a preliminary remark  
25 and have a clarification before a colleague from the Defence

1 makes his objections because it seems to me that he takes it for  
2 granted that he is entitled to submit objections in writing. But  
3 yesterday, the Chamber explained how the teams of Nuon Chea and  
4 Khieu Samphan could make objections in the future because their  
5 clients were not there, but I want to know if the Chamber does,  
6 in fact, authorize subsequent later written objections to be  
7 submitted by the defence of Ieng Sary because I think that that  
8 could otherwise modify the -- that could modify the oral  
9 discussion that we're having here today.

10 I'd be most grateful for clarification on that. Thank you very  
11 much.

12 [14.11.49]

13 MR. PRESIDENT:

14 Thank you.

15 Now, I hand over to the defence teams. Mr. Michael Karnavas, you  
16 can proceed.

17 MR. KARNAVAS:

18 Thank you, Mr. President.

19 It's my understanding that the Prosecution had the list of  
20 documents that we were -- the 54 documents as of yesterday. No  
21 complaints were raised at the time, and while -- as I indicated  
22 earlier, there may be some overlap.

23 [14.12.12]

24 We took it upon ourselves to go through the paragraphs dealing  
25 with military structures and tried to be as diligent as we

1 possibly could in identifying what we thought the documents that  
2 had not been discussed or not been admitted. So to the -- to the  
3 extent that we have listed here for our presentation which was, I  
4 should say -- although it's not an excuse -- put together in a  
5 rather rushed manner to the extent that we have presented  
6 overlapping documents, we apologize.

7 But be that as it may, we firmly submit that our presentation is  
8 based on topics and of course in the future, if the Prosecution,  
9 especially this particular prosecutor, is so concerned about  
10 time, then it would be useful if in advance they see that we have  
11 presented -- we are in error and they have sufficient time to  
12 point the error to us, we would gladly look at those submissions  
13 and -- so as not to waste anybody's time.

14 As for the civil party, yesterday I believe she was here. I  
15 thought I saw her here. I thought I saw her hear what I had to  
16 say concerning our written submissions and I believe in the past  
17 we have submitted written submissions and I don't recall ever  
18 hearing her ever raise an objection then and now she's seeking  
19 clarification.

20 [14.13.40]

21 However, if she had heard my submissions yesterday, she would  
22 have also heard that I too was seeking clarification of how is it  
23 that you wish us to proceed because it has been our particular  
24 habit that we submit in the -- in the past, we have submitted  
25 written objections to documents in addition to any oral



1 presentations.

2 If the Trial Chamber does not wish to have written submissions,  
3 then, we need some clear guidance. But we think it is useful,  
4 especially since we're dealing with so many documents; we're  
5 changing from Ds to Es. There's -- there's so much that can be  
6 lost by all parties concerned that having something in writing,  
7 especially if they are dealing with topics, might be useful. And  
8 I might add that this is the habit that it is employed by other  
9 tribunals dealing with war crimes.

10 [14.14.50]

11 Our submissions have already been made. I just made them prior to  
12 the prosecutor standing up for the second occasion. We've  
13 indicated our objections to the type of documents that we think  
14 should not come in.

15 If a -- if a witness is expected to come in and he hasn't come  
16 in, then those documents should not be used or introduced at this  
17 point in time. If they -- if and when they come, they can be  
18 shown the documents. The Prosecution or any party can move for  
19 the admission of those documents or statements.

20 As respect to all other types of documents, as I've indicated,  
21 letters, documents generated by governments or NGOs, we've  
22 already -- we are already on record as to why they should not be  
23 admitted.

24 And, again, to the extent that our list overlaps documents that  
25 have already been discussed, albeit under different names, we

1 take this opportunity to apologize for wasting everyone's time.

2 Thank you.

3 (Judges deliberate)

4 [14.17.24]

5 MR. PRESIDENT:

6 The Chamber has heard various issue raised by parties to the  
7 proceedings concerning the documents sought to be put before the  
8 Chamber as well as the submissions by party and response by  
9 various party to the oral application by the parties.

10 And, to ensure the smooth proceedings, the Chamber will adjourn  
11 now for deliberation until 20 to 3.00 - or, rather, until 3.00,  
12 and the Chamber will resume at 3.00.

13 The Court is now adjourned.

14 (Court recesses from 1418H to 1515H)

15 MR. PRESIDENT:

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

17 Just now, there was a request to the Chamber to clarify the  
18 procedure for presenting the documents before this Chamber.

19 To be precisely clear to all parties involved following the  
20 deliberation of the Judges of the Bench, the Chamber wishes to  
21 advise the party in relation to the objection as well as the  
22 submission of documents to be put before the Chamber.

23 And the Chamber wishes to hand over to Judge Silvia Cartwright to  
24 provide guidance to all parties in respect of this matter. I now  
25 hand over to Judge Cartwright.

1 [15.17.40]

2 JUDGE CARTWRIGHT:

3 Thank you, President.

4 The Chamber notes that there are two matters on which it needs to  
5 give guidance to the parties. These two topics are discussion of  
6 the admissibility of documents, and separate and independent from  
7 that, is the presentation of key documents. The Chamber's  
8 guidance refers first and solely to admissibility and then I will  
9 move to issues concerning key documents.

10 The Chamber notes that the OCP and the Lead Co-Lawyers have made  
11 oral submissions on objections to the admissibility of documents.  
12 It notes also that Ieng Sary has responded orally but that  
13 counsel for him has referred to the making of submissions in  
14 writing.

15 The Chamber would like Mr. Karnavas to confirm now, if that's  
16 practicable, if the written submissions are a reference to the  
17 annex to the email circulated today. Mr. Karnavas?

18 MR. KARNAVAS:

19 Thank you. It deals both with the annexes that the Prosecution  
20 submitted from yesterday's presentation and, of course, what was  
21 circulated by us this afternoon which, of course, we are in the  
22 process of double-checking now in light of the remarks that were  
23 made and decisions that have been taken.

24 [15.19.46]

25 JUDGE CARTWRIGHT:

1 Can I further clarify, then, how much time would you need to  
2 finalize this process?

3 MR. KARNAVAS:

4 Well, in light of what we heard this afternoon, we're in the  
5 process now of double-checking. We thought we had checked  
6 everything. Obviously, we missed some things, so we think that by  
7 tomorrow we should be able to have that completed.

8 We do have one issue that is unclear. For instance, it was  
9 mentioned that Judge Lavergne showed a document to a witness and  
10 nobody objected. Well, with all due respect, we cannot object to  
11 Judge Lavergne showing documents to witnesses and, of course, the  
12 question is: What becomes of that document once it goes from a  
13 "D" to an "E"? Is it deemed admitted or is it out there, in the  
14 stratosphere, for us to then try to move for its admission?  
15 And so we're having -- so that's one of the documents, but we are  
16 looking -- we hope to have a redacted and, hopefully, a proper  
17 annex by tomorrow.

18 [15.20.55]

19 JUDGE CARTWRIGHT:

20 Well, the -- I note that that's a rather subtle way of saying you  
21 wish to object to the document. Please deal with that in your  
22 written comments, please, Mr. Karnavas.

23 And the Chamber would like to take this opportunity of thanking  
24 you for the work that you have put in and the preparation that  
25 you have done to be ready to make your oral presentations and

1 respond thus far. Thank you for that.

2 MR. KARNAVAS:

3 Thank you.

4 But, Judge Cartwright, there is -- I may not necessarily want to  
5 object to a document, but where the - I think the Khieu Samphan  
6 team has filed submissions as to what becomes of the document.  
7 Once it's shown, either by a Judge or by a party, to a particular  
8 witness, are we to assume that the document is -- or at least a  
9 portion that was shown already admitted or is there still a need  
10 for the party to move for the admission of that document? And, if  
11 it comes from a Judge, obviously, the presumption is that the  
12 Judge wants the document in.

13 [15.22.07]

14 And so, if I may - and I hope that I'm not testing your patience,  
15 but at the ICTY, for instance, simply because you showed a  
16 document to a witness, that document would not necessarily come  
17 in. One would still have to make an application, and normally  
18 only the portion that was shown, and if you wanted other portions  
19 you would have to make some sort of a submission as to why those  
20 other portions were not shown or why they're deemed necessary.  
21 So, for us, it's a little bit unclear. So, if the Trial Chamber  
22 -- it need not give us an answer today but at least notify us, so  
23 we are aware in the future of what -- or how to deal with those  
24 documents.

25 But I certainly don't feel like standing up and objecting to a

1 document that Judge Lavergne is submitting, although I am tempted  
2 at times, but be that as it may, you know, I think the Judge is  
3 entitled to ask whatever questions, however objectionable I may  
4 find them to be, but that's their prerogative. It doesn't  
5 necessarily mean that the Judge is not cognizant of the fact that  
6 they may be asking a question that perhaps presses the limits as  
7 to whether it should be an appropriate question or not. But I'm  
8 speaking from my own system.

9 JUDGE CARTWRIGHT:

10 I see - I think we see your various points here, Mr. Karnavas.

11 [15.23.34]

12 MR. KARNAVAS:

13 Thank you.

14 JUDGE CARTWRIGHT:

15 However, we're dealing now with objections to the admissibility  
16 of documents and if no objection is made to a document presented  
17 by a Judge then that is the end of that issue.

18 So responses are a different matter, so I hope that that assists  
19 you to some degree.

20 MR. KARNAVAS:

21 It does, it does. Thank you.

22 JUDGE CARTWRIGHT:

23 Well, Mr. Karnavas, you certainly have until tomorrow to finalize  
24 the written portion and, as I said, the Chamber is grateful to  
25 you for the work that you have put in.

1 [15.24.13]

2 Now, the next issue on objections to admissibility of documents  
3 is this: The Khieu Samphan and Nuon Chea teams have both  
4 indicated their unreadiness to make oral submissions objecting to  
5 the admissibility of any documents.

6 Now, we do note that their respective clients have been  
7 hospitalized in the last week, however -- and moreover that the  
8 Trial Chamber brought forward the date for dealing with these  
9 objections to the admissibility of documents -- nonetheless, this  
10 has been an issue available since December of last year.

11 And so the Chamber has decided that the Khieu Samphan and Nuon  
12 Chea teams may file any objections they have to the admissibility  
13 of documents, in writing, by Friday the 8th of February. All  
14 parties will then have the opportunity to respond by Friday the  
15 22nd of February. The Chamber will then makes its decision  
16 concerning objections to the admissibility of documents and that  
17 will conclude this process.

18 [15.26.03]

19 The dates are: Khieu Samphan and Nuon Chea teams by the 8th of  
20 February, and all parties may respond by the 22nd of February. Is  
21 that right?

22 We now move to the second independent topic which is the  
23 presentation of key documents. The Chamber would like to remind  
24 the parties of the purpose of the hearings which have been  
25 dedicated to the presentation of documents considered to be of

1 particular relevance to a specific segment of the trial.

2 [15.27.00]

3 The first is that it gives the parties the opportunity to  
4 emphasize documents that they consider to be important to their  
5 respective cases. And the second purpose, which also answers the  
6 Khieu Samphan's defence concerns -- articulated earlier, is that  
7 the hearings are dedicated to the presentation of documents and  
8 are aimed to ensure a greater measure of public accessibility to  
9 the documentary aspect of the trial; meaning this gives a chance  
10 for the public to hear a summary of what these key documents are  
11 about, and further giving an opportunity to those parties who  
12 seek it to highlight for the Chamber key documents considered, as  
13 I have already said, to be particularly important to specific  
14 segments of the trial.

15 Whenever a document is presented by any party as part of this  
16 hearing, the accused will also be permitted to comment on the  
17 document if they choose to do so. And I refer, for example, to  
18 Memorandum E170, dated 9 February 2012.

19 [15.28.36]

20 The Chamber notes that, on a number of occasions, some of the  
21 accused have declined to comment on documents presented during  
22 such hearings, arguing that they intend to exercise their right  
23 to remain silent. While no discussion on the admissibility of  
24 documents presented during this stage is to be allowed unless the  
25 issue of admissibility has not previously been discussed or ruled



1 upon, it's clear that the Chamber has never prevented the Accused  
2 or their lawyers from discussing the relevance or the probative  
3 value of the documents.

4 It's been indicated on a number of occasions, for example, C --  
5 E233 paragraph 3 -- and I quote:

6 "The time allocated to the Defence includes the opportunity for  
7 the accused, where sought, to comment on any documents presented  
8 or previously put before the Chamber during this trial segment."

9 Now, that refers in general to the purpose of the portions of the  
10 hearings on presentation of key documents. The Chamber notes that  
11 the OCP has begun this process and that the Lead Co-Lawyers have  
12 indicated that they will be ready to make their presentation  
13 shortly.

14 [15.30.28]

15 In order to clarify the procedure in relation to key documents  
16 from this point on, it seems most efficient, given the inability  
17 of some of the parties to be ready to present their key  
18 documents, to ask the OCP to continue with its presentation on  
19 the Movement of Population Phase 1 and Tuol Po Chrey, then on the  
20 Movement of Population Phase 2. Then the Lead Co-Lawyers will be  
21 asked to complete -- to make their own presentations on those  
22 topics.

23 That leaves then the question of joint criminal enterprise and  
24 the roles of the accused, and I think, President, we were going  
25 to propose that those topics be presented also by OCP if they are

1 ready to do so, and the Lead Co-Lawyers. That then gives the  
2 defence teams' ample time to be ready by when we resume these  
3 hearings on the presentation of key documents and the Chamber  
4 will expect them to be ready to present their key documents or to  
5 make such comments on the documents as they wish to make.

6 So the question is to the OCP, would you be ready to proceed to  
7 joint criminal enterprise and the role of the accused when we  
8 have completed the Movements of Population and Tuol Po Chrey?

9 MR. RAYNOR:

10 Judge Cartwright, thank you. Can I answer that with a very simple  
11 answer, which is "no", but can I explain the position, please?

12 [15.32.48]

13 As the Trial Chamber will know, requests were made last week to  
14 the OCP in respect of the documents presentations that the Trial  
15 Chamber has heard in respect of military structure and the  
16 presentation that I'll be giving together with my national  
17 colleague in respect of forced movement 1, Tuol Po Chrey, and  
18 forced movement 2.

19 Can I explain, please, Judge Cartwright, that in taking the  
20 notice from the Court last week to prepare for these documents, a  
21 team was established by the OCP to prepare this presentation for  
22 this afternoon which involved -- which is not uncommon, I accept,  
23 by all counsel in this Court -- significant and substantial work  
24 literally from the time notification was given last week through  
25 to today, including substantial work on both Saturday and Sunday

1 to prepare this presentation.

2 [15.33.54]

3 Can I say this, that the OCP is of course mindful of the time  
4 constraints that the Court is under; we are mindful of the need  
5 for Court time to be utilized properly in the presentation of  
6 documents to the Trial Chamber.

7 We have discussed this very topic that you raise, Judge  
8 Cartwright, within OCP over the last few days, and the position  
9 is that we are not able to present within the timeframe that you  
10 have suggested but we are certainly willing to start preparation  
11 now to present such a presentation to the Trial Chamber, but we  
12 do ask for some forbearance in terms of time.

13 The presentation on the role of the Accused is, without a show of  
14 doubt, the most important documentation that the OCP will  
15 present. We -- can I say this -- preparation has already started  
16 on this. It is on-going preparation. I can tell the Trial Chamber  
17 even this, that certain of my fellow other counsel have been  
18 assigned portions of that presentation. They have started work on  
19 the presentation but we do ask for more time.

20 [15.35.18]

21 Can I please not be tied on what the time request is, as I  
22 haven't discussed this with the National-International  
23 Co-Prosecutors? I know that they would be willing, I'm sure, to  
24 clarify a request actually for more time tomorrow morning, and I  
25 can communicate that through to you Judge Cartwright tomorrow

1 morning.

2 So, in summary, we are not ready now. We are working on it, but  
3 we would very much appreciate some time to properly prepare for  
4 this presentation in order that Trial Chamber has, I hope, a  
5 reasonably polished presentation rather than one that is prepared  
6 in haste. Thank you.

7 JUDGE CARTWRIGHT:

8 Well, thank you very much for that indication. This was the  
9 purpose of making the enquiry.

10 [15.36.15]

11 The Chamber will await your indications as to how much time you  
12 need to be complete in that presentation and will then rule on  
13 that aspect.

14 But what the Chamber has not done as yet is to thank the  
15 prosecutors also for the work that they have put in in being  
16 ready for the objections to the admissibility of documents and  
17 also to the presentation of key documents. We appreciate that  
18 we've put a great deal of pressure and we, as with the Ieng Sary  
19 team, appreciate the effort that you have made.

20 So, for the moment, we will proceed with the presentation of key  
21 documents on the movement of population, phase 1, Tuol Po Chrey,  
22 movement of population, phase 2, followed by the Lead Co-Lawyers,  
23 and within the next few days following your indication to us of  
24 how much more time you need, we will give a timeframe for the  
25 remaining topics.

1 And then I am reminding defence teams that they have a lot work  
2 ahead of them because we will expect them to be ready to respond  
3 and/or present their own key documents, and sometimes it will be  
4 at quite short notice depending on health issues and other  
5 matters.

6 President, I hope that we have covered everything that you  
7 discussed during the afternoon adjournment?

8 [15.38.07]

9 MR. PRESIDENT:

10 Thank you, Judge Cartwright.

11 Defence counsel, you may proceed.

12 MS. GUISSÉ:

13 Thank you, Mr. President. I would like to simply clarify a point  
14 in what I said in the event where I wasn't clear.

15 I note the decision taken by the Chamber today, but regarding the  
16 mix-up we feel and the words that were quoted by Ms. Cartwright  
17 -- Judge Cartwright in paragraph 4 of Memo 170.

18 That was, of course, of the mix-up this morning. The kind of  
19 hearings that we are dealing with in these memos are stated in  
20 paragraph 4. This hearing does not have to deal with  
21 admissibility of documents in view of having them tendered into  
22 evidence, no time was allowed for responses by other parties. On  
23 this basis, we had envisaged that there will be hearings devoted  
24 to documents.

25 [15.39.19]

1 I'll try to slow down. I am having problems. I am speaking very  
2 fast.

3 Paragraph 4 of Memo E170: this hearing does not have to do with  
4 admissibility of documents in order to have them tendered into  
5 evidence. No time was allowed for responses by other parties and  
6 that is why we always envisaged that such hearings should be  
7 organized.

8 And our position, as I have pointed out sufficiently, is that we  
9 understood that the Accused were those who had to make comments  
10 and not defence teams. That is the cause of the mix-up because  
11 after reading your memos, we did not quite understand. We crave  
12 your indulgence for not having paid sufficient attention to what  
13 you stated in the memos.

14 (Judges deliberate)

15 [15.40.40]

16 MR. PRESIDENT:

17 I'd like to give the floor to Judge Lavergne so he can respond in  
18 French to the French-speaking counsel so that it is better for  
19 you to understand it.

20 Judge Lavergne, you may proceed.

21 JUDGE LAVERGNE:

22 Thank you, Mr. President. I am not quite sure I am in a position  
23 to respond correctly. I just want to be sure that the position of  
24 the Chamber is clear to all parties, including Khieu Samphan's  
25 defence team. Is it clear?

1 [15.41.20]

2 MS. GUISSÉ:

3 Of course, today the position is a lot clearer than in the past,  
4 a lot clearer than what we read in the memo. Our position was  
5 predicated on what the Chamber had stated, and if that is the  
6 case we would like to have to respond in hearings regarding  
7 presentation of documents. That was the purpose of what I stated.

8 JUDGE LAVERGNE:

9 Of course, I would like to point out that in the memos in  
10 question it is stated that whenever documents have to be  
11 presented by parties during hearings, the parties may make  
12 remarks on such documents expressly; it is stated "expressly".

13 [15.42.12]

14 So perhaps what you are saying is that you would like to also  
15 present documents?

16 MS. GUISSÉ:

17 I don't want us to prolong the debate, but our position was quite  
18 clear and was made so on several occasions. Perhaps our problem  
19 is with translation. Our position has always been clear. It  
20 appears that my learned friend, Vercken, explained why we're  
21 participating in such hearings, and on such - on that occasion  
22 the clarifications were not made as they have been expressly made  
23 today. We have the Accused, indeed, but the Accused have defence  
24 teams.

25 So in light of the paragraph I have just read out, we do not

1 understand that the defence counsel had to make responses, and  
2 I'm referring to paragraph 4 of E170. Now we have understood the  
3 position of the Chamber clearly.

4 (Judges deliberate)

5 [15.43.36]

6 MR. PRESIDENT:

7 We only have a short period of time for today's proceeding, so it  
8 is appropriate for an early adjournment. We shall adjourn today  
9 and we will resume tomorrow, starting from 9 a.m.

10 May all parties and the public be informed?

11 Security guards, you are instructed to take the accused, Ieng  
12 Sary, back to the detention facility and have him returned to the  
13 holding cell downstairs where he can participate remotely with  
14 the linking of the audio-visual means.

15 The Court is now adjourned.

16 THE GREFFIER:

17 (No interpretation)

18 (Court adjourns at 1544H)

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