



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

ថ្ងៃ ខែ ឆ្នាំ (Date): 01-Mar-2016, 14:03

CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

24 February 2016

Trial Day 372

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
SON Arun
Anta GUISSSE
KONG Sam Onn

Trial Chamber Greffiers/Legal Officers:
Evelyn CAMPOS SANCHEZ
EM Hoy

Lawyers for the Civil Parties:
Marie GUIRAUD
HONG Kimsuon
LOR Chunthy
PICH Ang
SIN Soworn
TY Srinna
VEN Pov

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

For Court Management Section:
UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Judge LAVERGNE	French
Mr. LYSAK	English
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer
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.

5 Today, the Chamber continues to hear the key document

6 presentation by the Lead Co-Lawyers for civil parties, as well as

7 the defence team for Khieu Samphan regarding the three targeted

8 groups; namely, the Cham, the Vietnamese, and the former

9 officials of the Khmer Republic regime.

10 Yesterday, the greffier received a request from the International

11 Deputy Co-Prosecutor for an additional time in relation to the

12 key document presentation on the treatment of the former

13 officials of the Khmer Republic regime, and we will make a ruling

14 on this before we hand the floor to the Lead Co-Lawyers for civil

15 parties and the defence team for Khieu Samphan.

16 Mr. Em Hoy, please report the attendance of the parties and other

17 individuals to today's proceedings.

18 [09.09.11]

19 THE GREFFIER:

20 Mr. President, for today's proceedings, all parties to this case

21 are present, except the defence counsel for Nuon Chea -- that is,

22 Counsel Victor Koppe, who is absent without reasons.

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

24 waived his right to be present in the courtroom. The waiver has

25 been delivered to the greffier.

2

1 Thank you.

2 [09.10.02]

3 MR. PRESIDENT:

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

5 The Chamber has received a waiver from Nuon Chea, dated 24

6 February 2016, which states that, due to his health, headache,

7 back pain, he cannot sit or concentrate for long. And in order to

8 effectively participate in future hearings, he requests to waive

9 his right to participate in and be present at the 24 February

10 2016 hearing.

11 He affirms that his counsel has advised him about the

12 consequences of this waiver, that it cannot in any account be

13 construed as a waiver of his rights to be tried fairly or to

14 challenge evidence presented to or admitted by this Court at any

15 time during this trial.

16 [09.11.00]

17 Having seen the medical report of Nuon Chea by the duty doctor

18 for the Accused at ECCC, dated 24 February 2016, which notes that

19 Nuon Chea has chronic back pain and it becomes severe when he

20 sits for long and recommends that the Chamber grant him his

21 request so that he can follow the proceedings remotely from the

22 holding cell downstairs. Based on the above information and

23 pursuant to Rule 81.5 of the ECCC Internal Rules, the Chamber

24 grants Nuon Chea his request to follow today's proceedings

25 remotely from the holding cell downstairs via audio-visual means.

3

1 The Chamber instructs the AV Unit personnel to link the
2 proceedings to the room downstairs so that Nuon Chea can follow.
3 This applies to the whole day.
4 And before we proceed, the Chamber would like to inform the
5 parties that, yesterday afternoon, we received a request from the
6 International Co-Prosecutor for additional time to present some
7 key documents in relation to the treatment of the former
8 officials of the Khmer Republic regime. In order to clarify the
9 matter, in particular, the nature of the -- the nature and the
10 arguments of the request, I'd like to hand the floor to the
11 International Co-Prosecutor to provide grounds for the request.
12 You may proceed.
13 [09.12.48]
14 MR. LYSAK:
15 Thank you, Mr. President. Good morning, Your Honours, counsel.
16 I'll be brief.
17 We apologize if we weren't clear yesterday what we were
18 suggesting.
19 The time that was allocated to us was sufficient for us to cover
20 the Cham and Vietnamese, which are two very big topics. The Lon
21 Nol is an additional topic, and we realized when Mr. Smith
22 addressed you yesterday that we weren't going to have time
23 yesterday to also cover the Lon Nol.
24 So this is at your discretion. This is something we could do at
25 another time. It's something we could do by a written Rule 92

4

1 submission, but we're not intending here to repeat matters that
2 have been presented before.

3 [09.13.39]

4 The focus of the presentation, if we do it today, and it would be
5 relatively short, 30 minutes to maybe 40 minutes, is to more --
6 to focus on the issue that has arisen in this trial about the Lon
7 Nol policy, and particularly in relation to the testimony that
8 there was an instruction -- alleged instruction some point two
9 months after April 1975 not to harm certain ranks of Lon Nol
10 military people.

11 So our presentation is focused on documents that relate to that
12 issue.

13 Now, it's, again, something we can do other times -- another
14 time. We know there is a schedule here today, so if there are --
15 if it would disrupt the plans to not finish at noon today, it's
16 something we can do at another time. But there are documents we
17 think are important on that issue that, at some point, we would
18 like to present helpful to Your Honours and I think helpful to
19 the Defence, too.

20 It's important, I think, for the Defence to also understand the
21 documents and evidence that we believe are particularly important
22 on this issue.

23 So that was the basis for our request, but we are at your
24 discretion.

25 [09.15.22]

5

1 MR. PRESIDENT:

2 Any observations from other parties regarding the request for
3 additional time for key documents on the treatment of the former
4 officials and officers of the Khmer Republic regime?

5 I'd like to now hand the floor to the Lead Co-Lawyers for civil
6 parties if you wish to make observations regarding this request.

7 MR. PICH ANG:

8 Good morning, Mr. President. Good morning, Your Honours.

9 The Lead Co-Lawyers do not have any objection to the request by
10 the Co-Prosecutors, and for our part, we only need a short time
11 to conclude our presentation.

12 Thank you.

13 MR. PRESIDENT:

14 And the defence team for Nuon Chea, do you wish to make any
15 observations?

16 [09.16.32]

17 MR. SON ARUN:

18 Good morning, Mr. President. Good morning, Your Honours and
19 everyone.

20 We, the defence team of Nuon Chea, do not have any observation to
21 make.

22 MR. PRESIDENT:

23 And what about the defence team for Khieu Samphan?

24 MS. GUISSSE:

25 I apologize, Mr. President, but I did not get the translation of

6

1 what my colleague, Son Arun, said.

2 Well, as far as the Khieu Samphan team is concerned, we had
3 objected the principle of revoking the policy towards the Khmer
4 Republic, so under these conditions, we are not going to object
5 provided we are provided explanations.

6 In any case, we're simply asking to have the possibility when it
7 will be our turn to respond to also be given extra time if this
8 were to provide specific elements to our answers.

9 [09.17.44]

10 MR. PRESIDENT:

11 The Chamber now decides to grant the request by the International
12 Co-Prosecutor for an additional 40 minutes for key document
13 presentation in relation to the treatment of the former soldiers
14 of the Khmer Republic regime after 1975.

15 You may proceed.

16 MR. PICH ANG:

17 Mr. President, do you wish to hand the floor to the Co-Prosecutor
18 or to the Lead Co-Lawyers to conclude my remaining part?

19 MR. PRESIDENT:

20 If that is the case, you may proceed so that you may conclude
21 your part and then the Co-Prosecutor can proceed.

22 So you have the floor first, Lead Co-Lawyer.

23 [09.18.44]

24 MR. PICH ANG:

25 Again, good morning, Mr. President, Your Honours, everyone in and

1 around the courtroom.

2 I will continue where I left off yesterday in relation to the
3 information by the civil party applicants. I have six additional
4 civil party applicants to cover.

5 The information I'd like to present is in relation to the
6 information of Dou Yang Aun -- that is, document E3/5587. The ERN
7 in Khmer is at 00416802 to 03, in English at 00426466 to 68,
8 French at 00455405. And I'd like to make the following quote:

9 [09.20.14]

10 Question: "Please clarify the event when your siblings and
11 parents were taken to be executed."

12 Answer: "On the night of 17 April 1975, all my family members
13 were evacuated. We were prohibited from taking belongings along
14 with us. We were told that we would return to them when it became
15 quiet, being afraid of Lon Nol aerial bombardments. One day I
16 went to build a dam and my parents were at home, and the elder
17 siblings went to the mobile units. When I returned home, I saw
18 the house became quiet. The neighbours, who were also Vietnamese,
19 told me that my parents and siblings were taken to be executed,
20 and they took me to hide."

21 Question: "Why did the Vietnamese who told you this news were not
22 taken to be executed?"

23 Answer: "When I arrived in Vietnam, the neighbours told me that
24 my family was accused of being Viet Cong soldiers, so they were
25 taken to be killed. My family was not linked to Viet Cong.

1 The neighbours also told me that my parents and siblings were
2 transported in ox carts by Khmer people who were Base People to
3 Kuoy village, Da commune, Kampong Leaeng district, under the
4 order of Ta Aok and Ta Peang. Ta Peang was a person in charge of
5 Kampong Leaeng district level. The persons in charge had held the
6 list of people for ages, so they knew who was who."

7 [09.22.22]

8 Question: "Please describe the events when you went to Vietnam."

9 Answer: "We were told not to work on the day after, and they did
10 not tell us any reason. On that day, people from all the
11 villagers who were Vietnamese came to attend a meeting at the
12 commune located in Khear mountain, with the participation of
13 commune chief called Ta Ben, Ta Aok, Ta Meang and Ta Mat; they
14 announced that we were taken by Vietnam back to the country. The
15 commune chief also said that the upper echelon also agreed with
16 this. The meetings were also held in the other commune with the
17 participation of the district leadership. At dawn, at 4 a.m., the
18 people walked to the riverbank at Kampong Hau in Kampong Leaeng
19 district. The people who walked at back told me when we met on
20 the ferry that the people at back were robbed of their
21 belongings. I saw there were approximately 7-8 ferries, roughly
22 200 people being transported in each ferry, so the people who
23 were placed in the lower floor were suffocated to death along the
24 way. On the ferries, there were Khmer Rouge in black clothes with
25 a cap, and they were armed. When arriving in K'am Samnar, the

1 people were told to walk up the island at the border. There I saw
2 a Vietnamese official named Nguyen Gia Dang alias Ti Kam; he told
3 me that we were exchanged with salt."

4 [09.24.30]

5 "My father and uncles mentioned the name of this person, and they
6 knew the person named Ti Kam because he controlled all Vietnamese
7 in Cambodia. On that island, the elderly told me that person was
8 Ti Kam. I did not know the level of the Vietnamese officials who
9 came to receive us, but they dressed as civilians."

10 During the - Question: "During the meeting to depart for Vietnam,
11 did the people have choices, or did they have to follow the
12 order?"

13 Answer: "No one dared to protest."

14 [09.25.14]

15 Question: "How was the selection at K'am Samnar done?"

16 Answer: "The people had to queue to enter the checkpoint one by
17 one with the presence of only Vietnamese officials. If the
18 Vietnamese did not accept them, the Khmer Rouge waiting outside
19 would receive them. There were Khmer spouses who were not allowed
20 to go with their family. The Khmer Rouge had already made a
21 selection at Khear mountain by putting Khmer people in one place
22 and Vietnamese people in another place. Those at Khear mountain
23 who managed to arrive at K'am Samnar were mistakenly identified
24 or disguised themselves with their family in order to go to
25 Vietnam together."

10

1 [09.26.16]

2 Question: "As for the inspecting officials, did the Vietnamese
3 side or Khmer side have stricter laws not allowing Khmer spouses
4 to go?"

5 Answer: "I saw that the Vietnamese officials were stricter; I did
6 not know what the agreement they had between the Khmer Rouge and
7 Vietnam."

8 And a bit further down, at question/answer number 10, and I
9 quote:

10 Question: "When you were at K'am Samnar, how did they test the
11 language?"

12 Answer: "During the inspection, the Vietnamese officials looked
13 at complexion and the language, and if one looked like Khmers, he
14 needed to have relatives who came with them to guarantee that the
15 person was their nephew or child before he was allowed to
16 proceed. Their relatives or the people who went there did not
17 come to receive them. At K'am Samnar, Khmer Rouge soldiers did
18 not check the language or the race because they had prepared the
19 list or had already known those people at Khear Mountain."

20 And there are written records of other civil parties who had a
21 similar account regarding the journey to Vietnam -- that is,
22 similar to this Le Yang Sour -- that is, E3/5626.

23 And this document also has another document ID -- that is,
24 E3/4574.

25 [09.28.10]

11

1 MR. PRESIDENT:

2 Hold on, Pich Ang.

3 And Judge Lavergne, you have the floor.

4 JUDGE LAVERGNE:

5 Yes, just a request for clarification in relation to the document
6 that you just read out.

7 First of all, I'd like to clarify that this is, indeed, a WRI,
8 not a civil party application. And also, I note in the list of
9 documents that you provided to us ahead of time that the person
10 involved, apparently, is deceased. So can you confirm that?

11 [09.28.48]

12 MR. PICH ANG:

13 Yes, Judge Lavergne, that is the written record of interview of
14 civil party with investigators of the Office of the
15 Co-Investigating Judges. And the civil party, Dou Yang Aun, is
16 deceased.

17 I hope the information is clear now for you, Your Honour.

18 And another information provided by a civil party in his written
19 record of interview of civil party Troeng Yang Yong, who is also
20 deceased -- that is, document E3/5588. Since the information is
21 similar, I will skip this part.

22 Now I move on to another civil party applicant, and I will brief
23 on that. This is in relation to the killing of the Vietnamese in
24 Prey Veng, as well as the anti-Vietnamese war and purge
25 propaganda.

12

1 I refer to the civil party application of Madam Chhay Eat -- that
2 is, document E3/6088.

3 She spoke about the events that happened to her husband, Chea
4 Choeun, when it happened in 1976 and '77 in Svay Chrum district
5 in Prey Veng province. And the relevant ERN in Khmer is at
6 00503242; English, at 01137798; and French -- I apologize. There
7 is no French ERN. However, the translation request has been made.
8 [09.31.17]

9 The information is part of the document on the list that I sent
10 to Your Honours and to the concerned parties, and allow me to
11 quote:

12 "In July 1976, Sun Vath, a commander of the platoon at Trea
13 village, captured and guarded my husband (as prisoner), with Ta
14 Tun and some other people whose names I have forgotten. Sun Vath,
15 the commander of the platoon at Trea village, told my husband
16 (Chea Choeun) to live separately from me. When the two of us met
17 each other, we did not dare to speak or communicate with one
18 another. Comrade Sun Vath made my husband work excessively such
19 as pulling out and transplanting rice seedlings, ploughing or
20 harrowing soil, carry earth, and making fertilizer without rest
21 and enough food to eat.

22 "In May 1977, my husband (Chea Choeun) was killed by the Khmer
23 Rouge. At first, Sun Vath, the commander of the platoon at Trea
24 village, accused him of being an enemy and a Vietnamese agent,
25 though he knew nothing about that kind of thing."

13

1 [09.32.40]

2 "Sun Vath had my husband join a meeting at Svay Chrum pagoda. Sun
3 Vath accused my husband of being an enemy and a Vietnamese agent,
4 and he had my husband join the meeting at Svay Chrum pagoda, Svay
5 Chrum village, Svay Chrum commune, Me Sang district, Prey Veng
6 province, with others whose names I have forgotten. When he
7 arrived, the soldiers in black clad arrested him and interrogated
8 him. He was beaten 50 times with a whip for each time he was
9 questioned. They said that if he confessed, they would allow him
10 to return home. Because the torture was severe, beyond his
11 ability to endure, he confessed that he was a Vietnamese agent,
12 even though he was not involved in that at all. In the same month
13 -- that is, in May 1977, those black-clad soldiers, who were
14 armed with guns, received orders from Sun Vath, the platoon
15 commander at Trea village, to walk my husband from Chres Kbot
16 cooperative in Chres village, Chres commune, Me Sang district,
17 Prey Veng province to Cheung Chap hill in Sampoar village, Prey
18 Totueng commune, Me Sang district, Prey Veng province. They led
19 him there to be beaten to death. My husband disappeared since
20 that time. That was what Ta Tun told me. He is now deceased."

21 [09.34.20]

22 Another civil party whose civil application is E3/6049, the civil
23 party's name is Yoeng Yang, and the Khmer ERN is 00500852 through
24 53; English ERN is 01137773. There is no French ERN, but we have
25 requested the translation into French. Let me quote as follows:

14

1 "In June 1976, Ol Yeung, who was my father, was taken by Mao
2 Pech, chairperson of Dom village cooperative, to Tuol Prey Angkor
3 security office, which was situated in Thlok village, Pean ROUNG
4 commune, Prey Veaeng district, Prey Veng province. Before he was
5 arrested by Mao Pech, my father was sent by him to work in a
6 craft factory in Dom village with other elderly people. He was
7 made to make some baskets, trays, shallow baskets, rakes,
8 ploughs, and shoveling baskets, without getting time to rest."

9 [09.36.20]

10 "Suddenly, in June 1976, my father was called to Tuol Prey Angkor
11 security office, around 4 p.m. in the afternoon. He was then
12 arrested and accused of being a Vietnamese. In fact, my father
13 was a pure Khmer person. From the day that my father was taken to
14 Tuol Prey Angkor security office in Thlok village, Pean ROUNG
15 commune to be educated, I have had no news about him."

16 Another civil party, Sum Soth, has also relevant information, and
17 let me quote the relevant ERN number: in Khmer, 00501122 through
18 23; English ERN is 01137782; French, 01155136 -- quote:

19 [09.37.45]

20 "Hong Heng, who was my husband when the Khmer Rouge took power,
21 was forced by Ta Eap Oeung and Ta Koeng to work excessively
22 without rest. Moreover, in November 1976, my husband, Hong Hen,
23 was accused by Eap Oeung and Ta Koeng of having a Khmer body with
24 a Vietnamese head, and they said that my husband wanted to rebel,
25 though he was actually innocent. Eap Oeung and Ta Koeng sent him

15

1 to Wat Phniet pagoda, Phniet village, Svay Chrum commune, Me Sang
2 district, Prey Veng province. Those who were accused were
3 gathered and not permitted to contact their siblings or children.
4 If they happened to see each other, they were to act as though
5 they did not know each other. Eap Oeung and Ta Koeng forced my
6 husband to work very hard. He was tasked with pulling,
7 transplanting the rice seedlings, carrying heavy loads,
8 ploughing, threshing, raising land with the others whom they had
9 gathered, including Ta Saom, Ta Yean, and others (whose names I
10 have forgotten). Each person has to work at maximum capacity to
11 show that they had refashioned themselves."

12 [09.39.20]

13 "In February 1977, my husband, Hong Heng, was sent by Eap Oeung
14 and Ta Koeng to Svay Chrum detention office, Svay Chrum village,
15 Svay Chrum commune, Me Sang district, Prey Veng province.
16 The Khmer Rouge violently interrogated him using a security
17 officer which name -- whose name I have -- I do not know -- I did
18 not know of Svay Chrum detention office. They asked him if he was
19 a secret agent for the Vietnamese and who was working with him.
20 But he rejected the accusations, saying that he was not a secret
21 agent and he did not know what they were talking about. After
22 that, they sent him to carry earth. Then he was interrogated
23 again at night time. They interrogated him until he gave his
24 confession. If he hadn't confessed, they would have stopped
25 hitting him. Since he was unable to withstand such harsh torture,

16

1 he eventually gave false answers, saying he had conspired with
2 those who had been executed earlier. The Khmer Rouge then he sent
3 him to carry earth with the others whom they had gathered, like
4 Ta Saom, Ta Yean, and others (whose names I have forgotten) for
5 many months. Then the Khmer Rouge sent him to make sewage at the
6 Choeur Teal in Kbal Kvek village, Svay Chrum commune, Me Sang
7 district, Prey Veng province."

8 [09.40.46]

9 "In June 1978, he returned home, but after only a few days, he
10 was sent to the Production Force at Phniet village. Ta Nean
11 called him to go to get the clothes at Wat Chy Phoch pagoda, Me
12 Sang district, Prey Veng province. On that day, my husband, Ta
13 Saom, and Ta Yean, left in the morning with the other gathered
14 people, whose name I have not known, and they have disappeared
15 since that time.

16 "According to the villagers from Chy Phoch (whose name I have
17 forgotten), they gathered the people who were to gather up and
18 who -- whom the Khmer Rouge had asked to go Wat Chy Phoch pagoda,
19 Me Sang district, Prey Veng province were all killed at a hill
20 which was located to the north of Wat Chy Phoch pagoda."

21 [09.41.48]

22 I will have two more civil party applications, which are very
23 short. The first one is civil party application of Phen San,
24 E3/6053; ERN in Khmer is 00501100 through 01; English, ERN is
25 01137778 through 79. There is no French ERN, but we have

17

1 requested the translation into French. Let me quote as follows:

2 "December 1976: Ta Pring, Ta Vong and Sin Vath accused my husband
3 of being a Vietnamese agent. My husband did not know anything
4 about this, but was taken to the gathered group at Svay Chrum
5 security office, Me Sang district, Prey Veng province. When he
6 was there he was forced by the Khmer Rouge to do really excessive
7 work. My husband said that he tried to work very hard, trying to
8 suppress his anger, never having the courage to complain or be
9 lazy, because he wanted to be restored. He was prepared to make
10 sacrifices for the Revolution. No matter how hard he worked, he
11 could not manage to be free from the conviction."

12 [09.43.25]

13 "January 1977: The Khmer Rouge sent my husband to a meeting in
14 Wat Svay Chrum pagoda in Svay Chrum village, Svay Chrum commune,
15 Me Sang district. However, actually, when he arrived there, the
16 Khmer Rouge, whose name I do not know, captured and violently
17 interrogated him. They hit him with a bamboo club, or a whip
18 (interrogating him at night time) and they did not permit him to
19 scream. When he cried out, they hit him again. The Khmer Rouge
20 asked him if he was really the Vietnamese agent. Whatever they
21 asked, he had to answer accordingly without diverting from the
22 questions at all. He could not endure the beating with the bamboo
23 club and the whip and so he just made up his answers. He said he
24 was from the Vietnamese line, though he was actually not."

25 [09.44.22]

18

1 Let me now move to the last civil party application. This is the
2 civil party Kung Von, document E3/5937A. This is a supplementary
3 information of this civil party, and I will quote from the page
4 -- from the page at Khmer ERN 00585239; English is 01137902
5 through 03; there is no French ERN, but we have requested a
6 translation into French. Let me quote as follows:
7 "When the Khmer Rouge evacuated them from Kaoh Kou" -- and the
8 English translation was written as "Puos Ko", but actually, it is
9 "Kaoh Kou" -- "they kept killing people, especially those who
10 tried to flee with the Vietnamese to Vietnam."
11 Let me quote again -- let me start again:
12 "When the Khmer Rouge evacuated them from Kaoh Kou village, they
13 kept killing people, especially those who tried to flee with the
14 Vietnamese to Vietnam. If these people were arrested, they were
15 killed.
16 "In November 1978, the Khmer Rouge transferred all the people
17 from Svay Rieng to Pursat and Battambang provinces. The
18 procession started from Chrey to Neak Leung. Then, the people
19 were loaded into the ferries and taken to Chbar Ampov. From
20 there, they went them to Prey Svay by train.
21 Upon arrival at Cham Ror-A, Phnum Kravanh district, Pursat
22 province, the Base People came to collect them at night. Everyone
23 from Svay Rieng was assigned to harvest rice. Then the Khmer
24 Rouge soldiers accused them of being the enemies with the Khmer
25 body and Vietnamese head.

19

1 After they did the harvesting, they told them to stand in rows
2 and they tied their hands up, then they walked them into the
3 forest and killed them."

4 [0946.57]

5 She, the civil party, witnessed the killings.

6 "Most of the people who were taken to be killed were males. Then
7 they killed their wives and children."

8 I am now concluded the presentation of the civil party
9 application. And Mr. President, my international colleague
10 requests to address the Chamber for a few minutes.

11 MS. GUIRAUD:

12 Mr. President, may I have a minute to make a presentation because
13 I forgot to inform the party and the Chamber of something
14 important.

15 I wanted to point out that the contents of all the documents that
16 we have presented -- that is, what we presented yesterday and
17 today, the contents of all the civil party applications and
18 additional information on civil parties was cross-checked ahead
19 of this hearing. Such cross-checking was done by the lawyers who
20 cross-checked the contents of the information all by members of
21 our team who also cross-checked the contents of the information
22 provided with the civil parties who, of course, were still alive.

23 [09.48.14]

24 I thank you, Mr. President, for giving me the additional time to
25 explain to you the methodology that we used in obtaining these

20

1 documents.

2 MR. PRESIDENT:

3 So the floor is now given to the International Deputy
4 Co-Prosecutor to present the key documents -- the last batch of
5 the key documents in relation to the treatment of the three
6 targeted groups.

7 You may now proceed.

8 [09.48.50]

9 MR. LYSAK:

10 Thank you, Mr. President, Your Honours, for the opportunity to
11 present on this last group, this last targeted group.

12 There are three groups of documents I'm going to discuss in this
13 presentation.

14 The first -- again, this is a presentation designed to provide
15 you with documents that would be relevant to the assertion we've
16 heard that two months, three months, some point after 17 April,
17 there was a meeting at which there was an instruction not to harm
18 Lon Nol people of certain rank. So I want to start with documents
19 from the period before that, the period of April to May 1975, a
20 very important period, and documents that show what the policy or
21 orders were in April and May 1975 relating to Lon Nol officers
22 and officials, evidence that shows that such persons were, in
23 fact, being gathered and killed pursuant to orders from the very
24 top leaders.

25 [09.50.04]

21

1 And I want to start, very briefly, with evidence relating to the
2 gathering of Lon Nol officers and officials in Phnom Penh on the
3 17th of April 1975, evidence showing that this was deliberate and
4 organized.

5 Jon Swain, the British journalist, his journal, document E3/51 --
6 E3/51; English, ERN S0003278; Khmer, S00644709 through 710;
7 French, 00597835; this is a journal entry for 4 p.m. on the 17th
8 of April -- quote -- and he's describing the scene at the
9 Ministry of Information, a place that Jon Swain and Sydney
10 Schanberg went at -- in the afternoon on the 17th of April. This
11 is how he described what was taking place -- quote:

12 [09.51.18]

13 "There were 50 prisoners lined up in front of the building. They
14 included Lon Non, Marshal Lon Nol's younger brother. There were
15 several generals, and Hou Hang Sin, director of the cabinet of
16 Long Boret.

17 "At the information ministry, a man in black about 35, and
18 clearly a leader, bawled through a bullhorn at the prisoners,
19 dividing them into three groups: military, political, and
20 ordinary civilians.

21 "The Khmer Rouge training their guns on them were tough,
22 strong-looking, in jungle green, Mao hats and the inevitable Ho
23 Chi Minh sandals. Each one was a walking arsenal." End of quote.
24 And also from Sydney Schanberg, he wrote an article, E3/3987, and
25 the source of that article, Your Honours, came from his diary,

1 E236/1/4/3.1. Let me repeat that, E236/1/4/3.1. The diary, which
2 I will quote from, is the original source. I raise this issue --
3 this was admitted during Sydney Schanberg's testimony, but based
4 on my checking, it doesn't appear to have an E3 number. I mention
5 that because those of us who were there know this diary was
6 admitted by the Chamber. We would suggest that the Court may wish
7 to assign an E3 number to it so it's clear that this is an
8 admitted document, if that hasn't taken place. To my knowledge, I
9 haven't found an E3 number for it.

10 [09.53.27]

11 The reference from Schanberg's diary is at Khmer, 00963956 to 57;
12 English, 00898278; French, 00955419; and this is again in
13 relation to the Ministry of Information gathering on the 17th of
14 April -- quote:

15 "The military leader, who appeared to be no more than 35, agreed
16 to talk to foreign newsmen. As the conversation continued, Lon
17 Non slips forward and quietly asks a French newsman to ask in the
18 insurgent leader if the prisoners here today, or other Cambodian
19 officials, can leave the country if they wish to. A few moments
20 later, the newsman gets a chance to ask the question. The
21 military leader laughs softly. 'It will depend on the
22 government', he says. 'They will make the regulations'. He says
23 he is only a military leader, adding that some of the top
24 political and governmental leaders are not far from the city, but
25 that they had let the military enter first to organize things."

23

1 End of quote.

2 [09.55.04]

3 Your Honours, I will just briefly reference, as we've talked
4 about these before, there is also evidence, of course, of what
5 took place at the French embassy, evidence that shows that the
6 Khmer Rouge were targeting and seeking to arrest officials who
7 had taken refuge in the embassy. E3/2694 is the telegram from the
8 French consul on the 18th of April 1975 identifying some of the
9 people who were -- officials who were in the embassy.

10 E3/2700 is a telegram from French consul, Jean Dyrac, on the 20th
11 of April 1975 indicating that they were going to have to leave --
12 let these -- have these people taken out of the embassy.

13 And what is of particulate note in this telegram -- E3/2700 --
14 Dyrac writes -- quote:

15 "Following my intervention this morning, the City Committee" --
16 this is referring to the Khmer Rouge -- "authorized the Cambodian
17 nationals who had taken refuge in our embassy to leave it freely,
18 with the exception of figures from the former regime who will
19 join another group." End of quote.

20 And Your Honours are aware of the subsequent admissions of
21 executions by Ieng Sary at document E3/604. I will not cover that
22 again.

23 [09.56.51]

24 Because the issue has arisen as to whether Ta Mok had given
25 different instructions to the Southwest Zone, I want to provide

24

1 you with a witness statement. This is document E319/23.3.42. Your
2 Honours have admitted this. This was admitted at the start of Sao
3 Van's testimony on the 1st of February 2016. This is a statement
4 from a witness who was a commander of a special platoon in
5 Division 1 of the Southwest army. The reference is at answers 29
6 to answer 37, and he is describing -- he was at Pochentong
7 Airport on the 17th of April 1975, as was Ta Mok. And this is
8 what the witness says took place at Pochentong Airport on 17
9 April, starting at answer number 30 -- quote:
10 "At around 9 a.m., Ta Mok, Sou Met and Meas Muth arrived at
11 Pochentong Airport. Ta Mok ordered all of the Lon Nol soldiers
12 and all of the pilots to board CMC trucks. Their weapons were
13 confiscated. They were sent to the west, having been told that
14 they were being sent to welcome Angkar." End of quote.
15 The witness goes on to testify that the Lon Nol soldiers and
16 pilots were taken away by a special unit under the direct command
17 of Ta Mok -- this is at answer 33 -- that there were around 30 or
18 40 people per truck. Each truck was packed full. Answer 37.
19 [09.58.53]
20 And at answers 34 to 35, he gives the following testimony:
21 Question: "Did you hear from the soldiers who transported those
22 people about what happened to the people?"
23 Answer: "Ta Mok himself said that those people were taken to be
24 smashed."
25 Question: "When did Ta Mok say that?"

1 Answer: "Ta Mok said that after those Lon Nol soldiers were
2 trucked away." End of quote.

3 And another piece of -- another document that tells us what was
4 going on with Southwest Zone military following 17 April 1975,
5 this comes from Henri Locard's book, "Prisoner of the Khmer
6 Rouge". This is document E3/2419, E3/2419; English, 00293762
7 through 63. There are no translations of this excerpt presently
8 available, but will be requested.

9 This is what Henri Locard wrote -- quote:

10 [10.00.14]

11 "On 20 April 1975, during a big rally at Veal Renh, the Khmer
12 Rouge leaders asked all Lon Nol soldiers present to enrol with
13 Angkar to recover territories allegedly taken by Vietnam. They
14 first had to be trained.

15 "Some gave their names although they were not members of the
16 army, and the -- or the military police, or even the ordinary
17 police. They filled a first contingent of about 20 trucks and,
18 according to witnesses, a second trip was made with 20 more
19 trucks.

20 "All were taken to the top of the Elephant Range at Bokor hill
21 station on 1,000 metre cliff overlooking the coast with its
22 casino. In actual fact, from that fatal 20th of April 1975,
23 during about a whole week, thousands of soldiers, with their
24 families, were slaughtered. They were first stripped of their
25 clothes and jewellery. There were heaps of clothes and a mound of

1 jewellery that formed a real stupa. Women received strokes of
2 rattan on the pubis under the very eyes of their husbands. The
3 victims were knocked senseless and thrown down from the top of
4 the cliff. Some children survived and tried to take refuge in
5 nearby villages. But the Khmer Rouge pursued them and executed
6 them all." End of quote.

7 [10.01.56]

8 Some documents, Your Honours, now showing who was responsible,
9 who was ordering and directing the killings of Lon Nol officials
10 and soldiers during this period:

11 First, there were some May 1975 news reports that described radio
12 communications that had been intercepted from the Khmer Rouge
13 leaders. E3/3393 is a Los Angeles Times article dated the 4th of
14 May 1975, and it is reporting on a Newsweek press release that
15 they heard about intercepted Khmer Rouge radio communications on
16 the killings of Khmer Republic officials and officers. I quote:

17 "The disclosures were said to have come from interceptions of
18 Khmer Rouge communications by U.S. intelligence. The first
19 victims of the bloodbath were said to be officers of the
20 Cambodian army and some government officials. All officers down
21 to the rank of second lieutenant were to be killed, along with
22 their wives, the intercepts were said to indicate."

23 [10.03.29]

24 "Newsweek quoted one official as saying, 'I am not speculating. I
25 am not dealing in third-hand reports. I am telling you what is

1 being said by the Cambodian -- Cambodians themselves in their own
2 communications'." End of quote.

3 E3/3364 is a Washington Post article two days later, the 6th of
4 May, relevant. It simply provided -- indicates that the White
5 House had provided confirmation about these intercepts.

6 And then, six days later, on the 12th of May 1975, the Washington
7 Post wrote a further article. This is document E3/3370, which
8 states -- quote:

9 "Not long after the Communists captured Phnom Penh and
10 consolidated their hold on Cambodia, they issued the following
11 secret instructions: 'Eliminate all high-ranking military
12 officials, government officials. Do this secretly. Also get
13 provincial officers who owe the Communist Party a blood debt.'
14 These are the words translated into English that were broadcast
15 over the Khmer Rouge communications network. U.S. Intelligence
16 intercepted the radio transmission and sent a translation to the
17 State Department by secret cable. We have obtained a copy of the
18 secret cable.

19 [10.05.08]

20 Other radio reports from the field indicate that the blood
21 reprisals have started. One unit, relaying orders from the
22 Communist high command, called for the execution of all military
23 officers from lieutenant to colonel, with their wives and their
24 children." End of quote.

25 There's evidence confirming this, Your Honours, document E389. I

1 will just reference. It's an interview of Ieng Sary by Steve
2 Heder that you're well familiar with at Khmer, 00062461; English,
3 00417606; French, 00332688. In a response to a question about a
4 decision of the Party leaders to extend executions beyond the
5 seven super-traitors, Ieng Sary made this admission -- quote:
6 "That decision was not made in advance. It was decided
7 afterwards, as far as I know, after 17 April, around the 20th, as
8 far as I know, meaning they decided to do whatever was required
9 to keep that group from being able to rise up and oppose the
10 revolution." End of quote.

11 [10.06.50]

12 Another Steve Heder interview, his interview of Ouk Bunchhoeun,
13 document E3/387, E3/387; Khmer, 00379486; English, 00350205; and
14 French, 00441418 -- quote:
15 "In April 1975, Pol Pot issued another secret policy; that was,
16 wiping out all elements in the Lon Nol regime. With respect to
17 civilian local administrators, they would be purged from
18 sub-district level to upper echelon. Regarding soldiers, they
19 would be swept clean from second lieutenants up to generals." End
20 of quote.

21 And a third interview of Mat Ly, who we talked about yesterday,
22 E3/390, English, ERN 00436867 through 868; Khmer, 00392094
23 through 95; French, 00479807 through 808 -- quote:
24 "Domestic policy: Starting from this, it was imperative to dig
25 the trunks out by the roots, dig out both trunks and roots, the

29

1 city people. They researched those people and, if they had even
2 been first lieutenants, second lieutenants or had worked in the
3 courts, they were killed. To be able to kill them, they
4 designated them all as enemies." End of quote.

5 [10.09.00]

6 Your Honours, the second group of documents I want to reference
7 are evidence -- is evidence related to Sector 13 and the
8 Southwest Zone. Sao Van has given evidence of an instruction from
9 the Sector 13 secretary. This is evidence that shows what was
10 going on -- actually going on in that sector and the Southwest
11 Zone.

12 First, starting with Sao Van's own district, Tram Kak, in
13 addition to the evidence you've heard in this courtroom, of
14 course, about what took place at Wat Champa and other locations,
15 an excerpt from Meng Try Ea's book, "The Chain of Terror". This
16 is a document E3/2120; also, E3/2121.

17 There are two different E3 numbers for this document. You need to
18 know that because the lengthier Khmer translation is in the
19 second one, but not the first -- not the first one.

20 [10.10.15]

21 Meng-Try Ea writes -- first of all, has an entire chapter in
22 which he talks about arrests, that the majority of those arrested
23 in mid-75 and '76 were Lon Nol soldiers and policemen. He goes on
24 to give some examples, which I will be referencing, starting
25 with, at English, ERN 00416383; Khmer, 01098794. There's no

1 French translation. Meng-Try Ea writes:

2 "Former Popel sub-district cadre Teng" -- he's referring here to
3 Popel commune, which was one of the communes in Tram Kak.

4 "Former Popel sub-district cadre Teng stated that, in mid-1975,
5 his sub-district chief organized the village and team chiefs to
6 obtain personal histories of the people in Popel. He explained
7 that in compiling histories, cadres obtained detailed information
8 on names, duties, spouses, children and occupations. 'After the
9 personal histories were done, Chun sent the reports to the
10 district committee and after that, those in Popel who had been
11 Lon Nol soldiers or policemen began regularly disappearing." End
12 of quote.

13 This -- the reference to Chun was to the Popel district -- Popel
14 commune chief who, incidentally, was the husband of Yeay Boeun,
15 who we heard in this courtroom. Yeay Boeun, of course, gave
16 testimony describing the same process.

17 [10.12.12]

18 Second from Tram Kak, a written record of interview from a
19 deceased witness, Iep Duch. This witness was the former youth
20 chairman of the district and a member of the Krang Ta Chan
21 Committee. This is interview E3/4627; English, 00223476 to 77;
22 Khmer, 00163493; French, 00651259 to 60.

23 Question: "Were the 17 April group arrested by the militia and
24 sent to Krang Ta Chan?"

25 Answer: "I don't know what level decided the plan. When they

31

1 arrived here, they had them make biographies, and anyone whose
2 biographies said they had been a soldier would disappear. Those
3 biographies were kept at the base level, but they, upper level,
4 decided what level had to be removed. The upper level that I'm
5 talking about sounded like and seemed to be nationwide, meaning
6 Centre level." End of quote.

7 Your Honour, some evidence from two other districts that were
8 also part of Sector 13 where this alleged --

9 [10.13.54]

10 MR. PRESIDENT:

11 Thank you, Deputy Co-Prosecutor.

12 Let we have a short break and resume at 10.30 to continue our
13 proceedings.

14 (Court recesses from 1014H to 1032H)

15 MR. PRESIDENT:

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

17 And I would like to give the floor to the International Deputy
18 Co-Prosecutor to present the key documents. You may now proceed.

19 MR. LYSAK:

20 Thank you, Mr. President. I was in the second group of documents.
21 This is documents -- evidence of -- relating to Sector 13 and the
22 Southwest Zone, showing that before, around the same time and
23 after the meeting alleged by Sao Van that, in fact, killings of
24 Lon Nol personnel continued and took place.

25 [10.33.13]

1 I want to turn to Angkor Chey district. This was another district
2 in Sector 13. It's the district where this alleged meeting took
3 place.

4 And document E319/19.3.125 is a statement from a person who was a
5 member of the commune committee in Angkor Chey district in Sector
6 13. At answers 10 through answer 17, answers 10 through answer
7 17, he describes how, one or two weeks after the fall of the Lon
8 Nol regime, pursuant to orders from the upper echelon, former Lon
9 Nol soldiers, and I quote, "holding ranks of Second Lieutenant
10 and higher", were called to a meeting, taken away and killed.

11 [10.34.20]

12 Another district in Sector 13 was Kiri Vong district. At document
13 E319/13.3.20 was a statement from a witness who was a chief of a
14 10 household unit in Lon Nol regime. And this is at answers 15
15 through answer 25 and answers 37 through answer 44 of the
16 statement.

17 He describes being part of a group of 180 Lon Nol soldiers as
18 well as 10 and 50 household unit chiefs who, in October of 1975,
19 were gathered at a pagoda in Kiri Vong by Yeay Baur. Yeay Baur,
20 who, at that time, was a member of the Kiri Vong district
21 committee.

22 He describes how this group of 180 Lon Nol soldiers and officials
23 were taken to the forest and killed. He was fortunate enough to
24 escape.

25 Yeay Baur, I will remind you, was the sister of Yeay Bouen, and

1 she was the person who became the district chief in Kien Svay
2 district, the district that Sao Van went to after Tram Kak.

3 [10.35.55]

4 Also from Kirk Vong district, document E3/9598, E3/9598, answers
5 14 through answer 15. This witness describes a meeting chaired by
6 Kiri Vong district secretary Ta Tith, who was the brother-in-law
7 of Ta Mok. This was a meeting in late 1976 or early 1977.

8 At answers 14 to 15, he states, quote:

9 "I attended a meeting chaired by Ta Tith at Wat Prey Rumdeng, and
10 Ta Tith declared Uy Sim, a former Lon Nol official, as a traitor.
11 At that meeting, Uy Sim was shackled and ordered to walk around
12 to identify those who had served in the Lon Nol administration. I
13 have never seen Uy Sim again. He must have been taken to be
14 killed. Ta Tith declared that he was Angkar's enemy."

15 And some references from some other districts that were also part
16 of the Southwest Zone, Batheay district in Sector 33 of the
17 Southwest Zone. And I'm writing -- reading here from Meng-Try
18 Ea's book, E3/2120 or 2121 -- and 2121.

19 Meng-Try Ea did extensive -- this is a book about Southwest Zone
20 security offices. And at English, 00416382; Khmer, 01098793; no
21 French translation; Meng-Try writes the following about Batheay
22 district, quote:

23 [10.38.03]

24 "Chhin, Batheay district chief from 1970 to '75, saw lists of
25 prisoners held at the district re-education centre. He explained

34

1 that those on the execution lists were listed by name and duty.
2 He observed that in early 1976, there were many more Lon Nol
3 soldiers and policemen than in other categories." End of quote.
4 On the same ERN pages, Meng-Try also writes about Prey Kabbas
5 district in Sector 33 of the Southwest Zone, quote:
6 "In mid-1975, Toy, chief of Kampeaeng sub-district, received the
7 district party's plan to seek out, arrest and send Lon Nol
8 soldiers to the upper echelon. After obtaining their personal
9 histories, Toy ordered the arrest of many, and sent reports on
10 them to the Prey Kabbas district committee."
11 [10.39.15]
12 And I'll note here, remind, Your Honours, that the chief of Prey
13 Kabbas district was Ta Mok's younger brother, Chong.
14 Last district that I will discuss from the Southwest Zone is Kien
15 Svay district, the very district that Sao Van and Yeay Baur, who
16 we talked about earlier, were assigned to in 1976.
17 E3/4659, E3/4659 is an interview of a Base Person from Kien Svay
18 district conducted by SOAS, and this is what that witness stated
19 took place after the Southwest -- after Baur and the Southwest
20 cadres came, quote:
21 "The Southwest Zoners replaced the East Zoners. The East Zoners
22 liberated this area, the troops of Chan Chakrey, who was later
23 arrested. Baur often came to inspect. She was fat, dark and
24 short, a good speaker, and vicious. If she pointed somebody out,
25 they were dead. The security office was established when Baur and

1 Thlang came."

2 This is a person who's identified as the security -- head of the
3 security office. Continuing:

4 [10.40.51]

5 "The Southwest Zoners began looking for teachers and others. The
6 chairmen of work units and cooperatives would make reports to
7 Thlang, and then they would be arrested. My brother-in-law, Nou
8 Yan, then about 50 plus, was arrested in Chheu Teal sub-district
9 at Ruessei Srok. He had worked as a minor functionary at public
10 works, and was accused by people in the village of being a
11 Major."

12 And I also refer, Your Honours, to a DC-Cam statement, E3/5637,
13 from another witness from Kien Svay district who also discusses
14 an incident in which information about prisoner arrests, accused
15 of being a Second Lieutenant.

16 Concluding with my third group of documents, on which I'll be
17 very brief, the third group of documents is evidence as to --
18 documentary evidence confirming that arrests and executions of
19 Lon Nol officers continued after May or June 1975, that is, after
20 the time of the meeting alleged by Sao Van.

21 [10.42.18]

22 There are three groups of documents I will briefly refer, Your
23 Honours, to, E3/832, E3/832. A document you're familiar with.
24 It's a list dated the 4th of June 1975, identifying 17 traitors
25 that the Party had examined and decided are to be smashed. It is

1 from Comrade Pin, who was the chairman or secretary of Division
2 703.

3 What I want to note about this document today is who the people
4 are. Of the 17 traitors on this list that the Party decided to
5 smash in June 1975, it includes one Colonel, five Lieutenant
6 Colonels, three Majors, one Captain, five First Lieutenants and
7 one Second Lieutenant. These are all people of ranks between
8 Second Lieutenant and Colonel, the group that Sao Van said were
9 not to be harmed.

10 S-21 records. Again, I will just briefly reference these. I've
11 used some of these in Court.

12 Document E3/1539, is a list of 162 Lon Nol soldiers, officials
13 and family members who were executed or died of sickness at S-21
14 between the 22nd and 30th of March 1976. And what I want to note
15 specifically for, Your Honours, today is that this list includes
16 four Colonels, 11 Lieutenant Colonels, five Majors, six Captains,
17 17 First Lieutenants and 14 Second Lieutenants, again clearly
18 proving that Lon Nol soldiers with these ranks were still being
19 arrested and killed following the meeting described by Sao Van.

20 [10.44.43]

21 Another S-21 document just to refer you to, E3/3973, E3/3973.

22 This is an S-21 execution log, and if you -- on pages Khmer,
23 0006642 through 6646; English, 00837571 through 581; French,
24 00875960 through 976.

25 This part of this execution log contains a list of 206 Lon Nol

1 military detained and executed at S-21. The same document also
2 has a list of 60 former civil servants of the old regime who were
3 executed.

4 Last, Your Honours, I will just make brief reference to the fact
5 that there are also records from Tram Kak district, Sao Van's
6 district, showing that in 1977, there were major arrests and
7 killings of Lon Nol officers.

8 [10.46.13]

9 I won't repeat this because this is something I have already done
10 a presentation to you. I'll simply remind you that one of those
11 documents, E3/2048, is a report from the very commune that Sao
12 Van came from, Cheang Tong commune, which refers to the, I quote,
13 "successive instructions from Angkar to purge enemy officers."

14 And I will conclude by referring you to research by Henri Locard
15 and Meng-Try Ea, both of whom reviewed the surviving Tram Kak and
16 Tram Kak -- sorry, the surviving Kraing Ta Chan and Tram Kak
17 records and found that half of the prisoners sent to Kraing Ta
18 Chan were former Lon Nol soldiers and policemen.

19 The references for you, Henri Locard's report titled, "Tram Kak
20 District in the Grip of the Khmer Rouge", document D -- I don't
21 have the E3 number, but I have the previous number --

22 D313/1.2.16,

23 and the Khmer ERN, 00739044; English, 00217700 through 701;

24 French, 00743759 through 760. And the same conclusion from

25 Meng-Try Ea, who reviewed those records in his book, "Chain of

1 Terror", E3/2120, and the reference I have for you is English,
2 00416399.

3 Your Honours, that concludes our presentation on the policy
4 targeting Lon Nol. I thank you for the time.

5 [10.48.39]

6 MR. PRESIDENT:

7 Thank you.

8 Now the Chamber gives the floor to the Defence Counsel for Khieu
9 Samphan. You may now proceed, Counsel.

10 MS. GUISSÉ:

11 Thank you, Mr. President. Good morning, everyone.

12 I will also engage in this fastidious exercise of reviewing a
13 number of documents.

14 Let me point out that it was very difficult and complicated for
15 the Khieu Samphan team to choose these documents because we
16 didn't know the final decision or position of the Chamber
17 regarding the appearance of certain expert witnesses. I'm
18 thinking of 2-TCE-92, 2-TCE-97 and 2-TCE-99.

19 [10.49.42]

20 And it is obvious that some documents can only be useful and
21 understandable if we know the position of the Chamber regarding
22 persons who have studied the matter in an in-depth manner.

23 In any case, on the Cham segment, the document that I would like
24 to present to the Chamber and to the parties is an extract of a
25 radio broadcast of Democratic Kampuchea of 23rd of October 1975,

1 document E3/272.

2 This document exists only in English, and the ERN is 00167520. It
3 is a broadcast, so it is propaganda, and I admit to that, but it
4 is important to note that, in such propaganda, they are referring
5 to Muslims.

6 [10.50.47]

7 The title of the broadcast is in English, and this radio
8 broadcast is relevant in that it shows that, on the 23rd of
9 October 1975, it was important to present the group of Cham
10 Muslims as part of the revolution and as persons participating in
11 the revolutionary effort. So they were, therefore, participating
12 in production in the country.

13 I also refer you to another document, the excerpt of a transcript
14 in 002/01, and that is why I'm referring you to it today. It is
15 document E1/192.1.

16 It is an excerpt of an interrogation of Short, and it was at
17 about 9.37. He was being questioned at the time by my colleague,
18 Koppe, and he refers to the issue of the Vietnamese and the Cham
19 in general terms. And the excerpt begins at 9.37.

20 I will focus on the last part of expert Short's answer. And the
21 question put to him by Mr. Koppe was as follows:

22 [10.52.20]

23 "To follow up on your answer on Monday, you, for now, said the
24 word begins with G-E-, that is, genocide. I will not put any
25 legal questions to you on that subject, of course. And I'm

40

1 speaking to the Chamber because I want the Chamber to clarify
2 whether or not a genocide was committed. In ERN 00396662, you
3 state that the Khmer Rouge did not try to exterminate an ethnic
4 or religious group or national group, whether we're talking of
5 the Vietnamese, the Cham or others. Are you categorical in saying
6 that, in your opinion, there was no such policy? By using (sic)
7 the word that begins with G-E, can you explain what you mean?"

8 And expert Short's answer was as follows:

9 "It is very difficult to answer the question without using that
10 term. I will quote George Orwell, 'there are times when the first
11 duty of a person is to say one thing or the other'; the
12 definition of the word can be very dangerous because the word may
13 not say what it really means.

14 "We were in a very turbulent zone, and it is very difficult. I am
15 convinced that there was no attempt to exterminate any ethnic
16 group, regardless of what it was.

17 [10.53.51]

18 "The situation in Cambodia is completely different from that of
19 Rwanda. In that case, we know that there was an attempt to
20 exterminate the Jews. (sic)

21 "As for the Tutsis, they were exterminated because they were
22 Tutsi. That did not happen in Democratic Kampuchea. The Chams are
23 often referred to as an example to prove that that was the case,
24 that there was an attempt -- it's said that there was an attempt
25 to exterminate them. For the Cham, the problem was that they were

41

1 deeply rooted in Cambodia which is different from that of the
2 Jews and the Tutsis.

3 "Pol Pot wanted to make everyone equal and there was pressure on
4 everyone to be equal. As for the Chams, they were dispersed
5 across the country as part of the savage rebellion -- savage
6 revolt against the revolution, but you cannot say that they were
7 trying to exterminate any particular group in a court." End of
8 quote.

9 [10.54.57]

10 That was the position of Mr. Short testifying in the First Trial
11 segment. Let me now talk about the segment on the Vietnamese. And
12 here I'll continue saying what expert Short said, and it's
13 document E3/9, an excerpt of the book, "Pol Pot: The Anatomy of a
14 Nightmare". The ERN in French, which is of relevance to us, is
15 00639721 up to 25; and in English it is, 00396406; and the
16 excerpt that is of interest to me continues up to 09.

17 Unfortunately, there is no Khmer translation of the document.

18 In the first extract, which is of relevance to me, expert Short
19 talks of the historic conflict between Cambodia and Vietnam, and
20 it is important to note that he confirms what we have heard
21 before this Chamber on several occasions in witness testimonies,
22 and I'll refer you to Prum Sarat at the hearing of E1/38/3.1
23 (sic), the 25th (sic) of January 2016, in which he explains that
24 he had heard of problems with Vietnam dating back to the time of
25 his father, at 09.24.24. It was also referred to by Meas Voeun at

1 the Hearing of --

2 [10.56.50]

3 INTERPRETER FRENCH-ENGLISH:

4 We didn't get the specific date.

5 MS. GUISSÉ:

6 I wanted to put in perspective regarding our presentation. ERN in
7 French, 00639722; and expert Short refers to what happened with
8 the Vietnamese under the Lon Nol regime and this is what he
9 states at the end of the page.

10 "When they discovered that cannon fodder wasn't sufficient
11 defence against the hereditary enemy, Lon Nol targeted civilians.
12 A curfew was imposed only to Vietnamese and for their security.
13 Entire families were housed in makeshift camps. Contrary to
14 previous protests against the coup d'état in which no-one had
15 been killed or wounded, this time we were facing a real pogrom."
16 And it continues giving an example as regards what happened with
17 bodies and the events of the 18th April -- or the 10th April
18 during the Lon Nol regime.

19 This is just to say that as regards the Vietnamese, the problems
20 certainly have occurred were not created by the Democratic
21 Kampuchea government, but that these excesses were committed
22 against the Vietnamese as part of problems that dated back before
23 the Khmer Rouge period."

24 [10.58.49]

25 This issue also comes up again in an article by Henri Locard, of

43

1 the "The Cambodia Daily", the 15th of April 2014, in document
2 E3/7283. ERN in English is, 00993774 and it continues on the next
3 page; ERN in Khmer, 0114245 (sic); and ERN in French --
4 particularly as regards the part of relevance to me -- there's --
5 unfortunately there's no French version.

6 It is an article that was written in English and was translated
7 into Khmer. In this article, Henri Locard revisits the issue of
8 Vietnamese under the Lon Nol regime, and he also talks about this
9 and we don't want to return to this later, he also says something
10 about the Cham.

11 And this part is quoted in English, 00993774. It's the last
12 paragraph on the page.

13 [11.00.08]

14 "As for the Vietnamese, they were the least unfortunate of all
15 Cambodian residents since the some 300,000 Vietnamese citizens
16 who had been spared the Lon Nol pogroms in 1970 were required to
17 leave the country. Not only did most of them take the opportunity
18 to run away from the hated regime, but Sino-Khmer or Khmers with
19 some with snippets of Vietnamese language also desperately tried
20 to go through the border. We must not forget either that
21 'genocide' is a politically charged term in this country and has
22 been used, since January 1979, for political expediency.

23 "As to the Chams, indeed they were victimized more than other
24 groups, but this was not because of their ethnicity but because
25 they rebelled en masse in Kroh Chhmar District in Kampong Cham

44

1 Province, for instance, and refused to abstain from performing
2 their daily prayers. All religions were banned except the
3 workshop of Angkar, with its rituals and vast meetings." End of
4 quote.

5 And Henri Locard continues in this article with the fact that
6 when we compare the massacres that took place with regard to the
7 other inhabitants, he cannot conclude that there was a specific
8 desire to exterminate the Cham.

9 [11.02.12]

10 And now I'd like to get back to another excerpt from Philip
11 Short's book, E3/9, in which he speaks about the repatriation of
12 about 150,000 Vietnamese people between 1973 and 1976.

13 And this excerpt, which is at French ERN, 00639840; English ERN,
14 00396506; is interesting because it refers to an incident that
15 was discussed or that -- by Witness Prum Sarat at the hearing of
16 27 January last, document E1/383.1, as of 11.10.04 in the
17 morning, when he was answering a question that was put to him by
18 Judge Lavergne. And this is the excerpt that I would like to
19 quote.

20 Here, the witness -- the expert witness is speaking about the
21 relations between Vietnam and Cambodia and he says:

22 [11.03.35]

23 "At the beginning of the month of August, Le Duan gave the
24 Cambodians the possibility when he travelled to Phnom Penh that
25 the Vietnamese paper 'Nhan Dan' call cordial. A few days, Nguyen

1 Van Linh announced to Nuon Chea that the Vietnamese units had
2 evacuated Wai Island and were getting ready to release 600
3 Cambodian prisoners of war." End of quote.

4 And I will stop here for a moment in order to tell you that it is
5 this incident that Prum Sarat described during the Hearing of 27
6 January that I was talking about. So let me get back.

7 "So the exchange of further messages contained clear messages of
8 solidarity and friendship, and liaison offices were established
9 in the border provinces and the border scuffles stopped. The
10 repatriation of Vietnamese families from Cambodia continued
11 however. We believe that between April and December a 150,000
12 Vietnamese went back to Vietnam whereas thousands of Cambodian
13 refugees who had fled the Khmer Rouge were travelling in the
14 other direction." End of quote.

15 So this is an excerpt that is important in historical terms to
16 remind the back-and-forth changes in the relations between
17 Vietnamese and Cambodians to confirm that there were indeed
18 Cambodian soldiers who had been captured and at one
19 point-in-time, at the very beginning at least when the Khmer
20 Rouge seized power, in Phnom Penh in any case, after 17 April
21 1975, there were negotiations that continued over several months
22 and it's -- this is something that I would like to focus on a
23 little bit later.

24 [11.05.28]

25 And another document that I would like to focus on is an excerpt

1 from an article by Francois Ponchaud, document E3/4589, at ERN
2 French, 00283070; Khmer ERN, 003223746 (sic) ; and English
3 00323699.

4 And what's interesting here is that this is an article that is
5 dated 10 January 1976, with all of the caution, of course, that
6 we must take with regard to statements made by refugees, in this
7 article, however, Francois Ponchaud describes what he heard from
8 certain refugees at the border, the Thai border.

9 And in this excerpt which ends at ERN 70 in French, page 17 in
10 the French version, in this excerpt he speaks about the presence
11 of Vietnamese in certain regions of Cambodia and -- at that date,
12 10 January 1976, and he is asking if they are still present, and
13 this is what Ponchaud writes.

14 [11.07.06]

15 "On the contrary, it seems that the Vietnamese from Cambodia had
16 the possibility of going back to their original country as of the
17 beginning of June. In Chamkar Leu, a Vietcong officer" -- he said
18 in this version -- "or the National Liberation Front of South
19 Vietnam, came on 3 June to tell the population that the three
20 peoples of Vietnam, Cambodia and Laos were brothers and that if
21 the Vietnamese wanted to go back to their country, they could.

22 Several people from Phnom Penh therefore pretended to be
23 Vietnamese and therefore left as of 6 June for Vietnam, and on
24 the way they met many, many Vietcong cadres who had settled in
25 Cambodia for several years who were going home to Vietnam with

47

1 their families and all of their possessions. These cadres were
2 repatriated by truck whereas he had to travel by foot."

3 And I would like to stop for a little while.

4 JUDGE FENZ:

5 (Microphone not activated)

6 [11.08.16]

7 MS. GUISSSE:

8 Indeed, I'm sorry, I'll try to go a bit slower, to control
9 myself.

10 Now, in this excerpt the question that was dealt with several
11 times during this Hearing during -- about the negotiations of the
12 repatriation of certain cadres who were present in Cambodia still
13 is discussed, and Ponchaud continues on the same page.

14 "At the same period, a doctor from Battambang was authorized to
15 go to Saigon. Around July, a Vietnamese delegation came to seek
16 out Vietnamese nationals in Takhmau region and found 500 to 1,000
17 of them on each trip. And there were even more in the region of
18 Banan, one witness added. Around the end of October, 600
19 Vietnamese from the Battambang region were repatriated to Vietnam
20 aboard three boats that set off Mongkol Borei and sailed via
21 Phnom Penh but were not able to make a stopover in Phnom Penh.

22 "On November 8," -- this is a witness speaking -- "when the paddy
23 was almost ready for harvest, the authorities forced us, the
24 Vietnamese in Krouch Chhmar, to leave Cambodia and go to Vietnam.
25 Only six or seven families were given permission to delay their

1 departure." End of quote.

2 [11.09.57]

3 So, here again, these refugee accounts, such as related by
4 Ponchaud, seem to indicate that there were indeed agreements
5 between the Vietnamese government and the Cambodian government to
6 repatriate Vietnamese nationals. And the mention of one
7 Vietnamese delegation that came to look for Vietnamese nationals
8 is something that's interesting note here.

9 And let's continue with -- well, chronologically, and here I'm
10 going to speak about an excerpt from the book by Philip Short,
11 E3/9, and this time at French ERN, 00639952; English, 00396587 to
12 the following page.

13 And here we have seen that chronologically speaking there was a
14 moment when both states were still negotiating with nationals
15 travelling back to Vietnam with a desire, indeed, to discuss. And
16 here we're coming close to 1977, 1978, and then in this excerpt
17 Philip Short is speaking about the presence of training camps for
18 Khmer refugees in Vietnam.

19 [11.11.46]

20 And it starts at French ERN 00639951, the two last sentences of
21 the document.

22 "At the beginning of the summer of 1978, the two main players in
23 the drama that was unfolding, Vietnam and China, had overcome all
24 of their hesitations and were getting ready for good for the
25 dénouement. And the Vietnamese built training camps for Khmer

1 refugees in former U.S. military bases in the south of Vietnam.

2 Le Duan and Le Duc Tho met for the first time people who were
3 liable to lead the future Khmer resistance.

4 Son Ngok Minh, who had lead the Cambodian party at the beginning
5 of the 1950's, succumbed to apoplexia in 1972, but some of his
6 collaborators had remained in North Vietnam where they had been
7 joined by Khmer Rouge cadres who had fled after 1975.

8 [11.12.54]

9 All of them were subordinate figures. Pen Sovan had worked for
10 the FUNK radio station at the beginning of the 1970s before
11 holding a position as a commander in the Vietnamese army. Bou
12 Thang was a former Issarak fighter for the northeast. Hun Sen, a
13 young Khmer Rouge commander, had defected in the summer of 1977,
14 but they were the only available elements to create the core of a
15 future post-Khmer Rouge regime.

16 A program -- an intensive indoctrination program was started, and
17 in April they were able to constitute the first battalion of the
18 future rebel army." End of quote.

19 So this is, of course, is a contextual limit that's important and
20 I know the Chamber made a distinction between the treatment of
21 specific groups and armed conflict, but in the context of the
22 Defence's understanding, it's very, very difficult for us to make
23 this distinction, especially based on what we heard from certain
24 witnesses regarding acts of arrests or accusations of desertion
25 or rebellion. So it's very, very difficult for us to place things

1 back in their context and to understand what happened on the
2 Vietnamese side as well as on the Vietnamese border which,
3 indeed, had an impact on what was happening within Cambodia.
4 [11.14.22]

5 Another document that allows me to discuss as well these
6 uprisings and these rebellions and these defections from the
7 Khmer Rouge regime, it's an article from "The Washington Post" of
8 10 August 1978, document E3/7265, which only exists in English
9 and in Khmer, English ERN, therefore, 00166105; Khmer ERN,
10 01081608 to 1610.

11 I'm not going to read the totality of the article but simply an
12 excerpt, in particular, the introduction. In English therefore.
13 "Vietnam, which is engaged in a bitter border war with Cambodia
14 is reporting that a rash of insurrection has erupted across that
15 country over the past several weeks. Many of the alleged revolts
16 are said to have been carried out by regular army units. Analysts
17 in Washington say they have no way of confirming the reports put
18 out by Vietnamese media and are suspicious that Hanoi is
19 orchestrating a Cambodian revolutionary movement to bring
20 pressure on Phnom Penh to settle the violent disputes."

21 [11.16.11]

22 Let me skip a few paragraphs and I'm going to move onto the
23 second column in the English.

24 "The reports of the insurrection, always attributed to Cambodian
25 defectors or prisoners of war, have been coming out two or three

1 times a week since mid-June. At that time, a statement reputedly
2 made by a former Cambodian battalion commander said that
3 revolutionary forces have established a base to fight against
4 Phnom Penh. The base was said to be in Cambodia's military zone
5 203, which intelligence sources believe is near Memot, a
6 Cambodian town about six miles from the Vietnamese border. Since
7 then, uprisings are said to have taken place at scores of towns
8 and villages in Cambodia. Most of them are in the eastern part of
9 the country, places such as Snuol, Neak Loeang and Svay Rieng.
10 They have also included other parts of Cambodia, such as
11 Battambang Province in the far west and Kampong Thom in the
12 north.

13 [11.17.40]

14 One former Cambodian soldier told of civilians, including civil
15 servants, plantation workers and peasants turning on cruel cadres
16 and exterminating them with bombs and clubs."

17 And this was regarding the contextual elements. And to conclude,
18 this was what the article states at the last paragraph.

19 "The analysts believe that Hanoi is prepared to turn the pressure
20 of the rebel movement up or down depending on Phnom Penh's
21 willingness to negotiate their quarrel." End of quote.

22 So, here again, an important contextual element regarding the
23 search or the intensification of what happens within Cambodia in
24 the East Zone and the intensification of the discussions or of
25 the end of the discussions between the Vietnamese and the

1 Cambodians and which culminates at the end of 1978 which we see
2 when the Vietnamese arrived in January 1979.

3 [11.19.07]

4 I'd like to refer you to a document E3/7310, which is a series of
5 articles, dated 5 December 1978, where here the creation of the
6 United Front for the National Salvation of Cambodia is discussed.
7 And this is a party that was created by Cambodian refugees with
8 the objective of overthrowing the Phnom Penh regime, and here you
9 can see that official presentation of this party with a report;
10 like to refer you to document at ERN in English, S00013294, the
11 first page of the document; Khmer ERN, S01137152; and this is how
12 the movement is presented in the first paragraph which I will
13 quote in English because there is no French translation.

14 "An event of great historic importance took place recently in
15 Cambodia. In an area of the liberated zone of Cambodia, a
16 congress of representative for the foundation of the Cambodian
17 National Front for National Salvation was solemnly held and was
18 crowned with success.

19 Participating in the congress were more than 200 representatives
20 of all strata of the Cambodian patriotic population. Workers,
21 peasants, petite bourgeois, intellectuals, Buddhist monks and
22 nuns, young people, women, Cambodian ethnic minorities and
23 patriotic insurgents who had abandoned the Pol Pot-Ieng Sary
24 administration and army." End of quote.

25 [11.21.16]

1 And I'd like to refer you as well to another article which is
2 part of this compilation of different articles regarding that
3 period. I'd like to refer you therefore to an article from the
4 Phnom Penh Home Service. It's at ERN in English, S0013305; and
5 Khmer ERN -- I'll have to check that again because I don't think
6 I have the right reference here. In any case, the article is
7 entitled in English "Cambodia Alleges Vietnam Planting Spies
8 Among Refugees".

9 And here, once again, we have a contextual element that
10 demonstrates that in '78, and especially at the end of 1978,
11 there was discussion of defection, of rebellion and revolution,
12 revolt, and also there's discussion of groups who are opposing
13 themselves to the Phnom Penh regime.

14 [11.22.34]

15 Now I'd like to refer you to document E3/7315, which is also a
16 series of articles and broadcasts from FWB, Far Eastern
17 Relations. So 25 October 1978 is the date, and here on the first
18 page of the document in particular S01137156 in Khmer, and in
19 English S00013209 to the following pages where the different --
20 or where different articles speak about the presence of armed
21 divisions, Vietnamese armed divisions in particular, and here the
22 first page of the document gives an example. An example in an
23 article of 24 October 1978, from "The Bangkok Post" in which --
24 and I will quote in English.

25 "Six Vietnamese divisions, fully manned, at 60,000 and fully

1 equipped, have occupied Cambodian territory along the one
2 length of the eastern border according to intelligence reports
3 reaching Thai military authorities. Cambodian resistance forces
4 backed by the Vietnamese, have occupied Kampong Cham, Ratanakiri,
5 Snuol, and other strategic places east of the Mekong River, the
6 report said."

7 Two paragraphs further and the text continues:

8 "The attempt to overthrow the Pol Pot government 'from inside' is
9 building up towards the dry season which starts in two months. It
10 is believed that the Cambodian resistance forces supplied with
11 arms and ammunition by train from southern Vietnam could make the
12 coup effective and quick." End of quote.

13 [11.24.50]

14 This is an example, as many others in this document, of articles
15 discussing the advances of internal rebellious movements in
16 Democratic Kampuchea that was supported by Vietnam.

17 Another point that I would like to discuss regarding the
18 Vietnamese is an excerpt from document E3/3995, which is an
19 article from Steve Heder; ERN -- and the excerpt that I'm
20 interested in, in particular, is Steve Heder's analysis of the
21 expression, "a Khmer body with a Vietnamese head", which was
22 discussed many times during the proceedings here, and this is
23 document E3/3995, at ERN in French, 00802832; Khmer ERN, 00844612
24 and to the following page; and English ERN, 00773767.

25 [11.26.20]

1 And I'd like to specify that this article is entitled, "Racism,
2 Marxism, Cataloguing and Genocide in the Pol Pot Regime from Ben
3 Kiernan", and this article is a critique of Ben Kiernan's book
4 and this is what is stated at the reference that I provided to
5 you by Steve Heder.

6 "In his attempt to argue otherwise, Kiernan highlights the fact
7 that many of the East Zone victims were stigmatized with the
8 epithet "Kloun Khmer Kbal Yuon", which he translates as "Khmer
9 bodies with Vietnamese minds", and which he suggests racialized
10 those killed. This phrase, which might also be translated by
11 "Khmer bodies with Vietnamese heads", has also been used
12 historically to conjure up images of Khmer political structures
13 under Vietnamese leadership.

14 "And Kiernan's argument that the phrase was used to suppress 'the
15 Khmer majority on the racial grounds that they were not really
16 Khmer' is at best incomplete. Instead, the phrase suggests
17 political leadership and political orientation were considered
18 more important than any biologically determined physical
19 characteristics. Being physically or racially Khmer was no
20 protection: treason to the class and national cause was political
21 and could not be committed by anyone, regardless of skin, who was
22 suspected of refusal to accept and be loyal to the correct
23 political line of the 'proletarian vanguard' leadership." End of
24 quote.

25 [11.28.17]

1 So this critique is important because when we speak about
2 genocide -- and this was often pointed out by the Prosecution
3 that we're speaking about race, Steve Heder provides a different
4 context and reminds us that the issue was not race, but the issue
5 was politics and a political position.
6 And this is an element, a critique, that we find also in Henri --
7 with Henri Locard's book because in the document E3/7280, a
8 document that, unfortunately, only exists in French, ERN
9 00995818; it's an article that is entitled "A Nearsighted Vision
10 of Cambodia," which was published in "Le Monde" daily on 28 April
11 1978.
12 And as Steve Heder, Henri Locard criticizes Ben Kiernan's
13 arguments and he says the following and I'm going to try to, of
14 -- 28th of April 1998, not 1978, so ERN 00995818, the last
15 paragraph in the French version.
16 "It is obviously impossible to verify the multiple evidence that
17 Kiernan proposes to support his arguments. I have, among many
18 others, noted three manipulation of the facts that are clear;
19 that were destined to include the Khmer Rouge universe within the
20 narrow context of the axioms set by the author. 1) Despite his
21 findings, Kiernan does not manage to prove that the ethnic
22 minorities were particularly targeted by the repression. If the
23 strong Vietnamese minority was expelled and therefore spared, the
24 anti-Vietnamese feelings within the Khmer population existed way
25 before the Khmer Rouge and, unfortunately, are still widespread

1 today. Never, contrary to the assertions by Hanoi that Kiernan
2 puts in his book, there was on the part of the leaders of
3 Democratic Kampuchea, any attempt to reconquer former
4 Cochinchina. The Cham, essentially religious -- Muslim, a
5 non-racial minority, a Khmer can become Cham by marriage, died in
6 higher numbers than the rest of the population because certain
7 villages along the Mekong rebelled massively and refused to drop
8 their religion; however, there were fewer deaths among them; 33.7
9 percent against 25 percent, if you look at the population in its
10 globality, than among the Catholics, 48.6 percent; and these are
11 figures that should be compared to the number of people who
12 disappeared from Phnom Penh; 41.9 percent." End of quote.

13 [11.31.45]

14 So beyond the issue of figures, which I cannot discuss in depth
15 because it's very, very difficult to bring up elements without
16 having the author of the article being present here and -- and
17 explain where his sources come from, what's interesting to see
18 here is that in the scholarly discussions among historians, we
19 see that Henri Locard is pointing to the fact that what was
20 stressed by Stephen Heder earlier, which is that we cannot speak
21 in -- about desire or will to commit racial genocide or to
22 exterminate on the basis of race in Democratic Kampuchea because
23 the elements such as he resituates them in Democratic Kampuchea
24 correspond more to political repression.
25 Another contextual element is what -- Mr. President, I see it is

58

1 11.30. I only have a few documents to present and I may need 15
2 to 20 minutes. I do not know whether you would like us to take
3 the break now and then I will slow down and complete my
4 presentation after lunch.

5 [11.33.09]

6 MR. PRESIDENT:

7 It is now time for our lunch break. We take a break now and
8 resumed at 1.30 this afternoon.

9 Security personnel, you are instructed to take Khieu Samphan to
10 the waiting room downstairs and have him returned to attend the
11 proceedings this afternoon before 1.30.

12 The Court is now in recess.

13 (Court recesses from 1133H to 1332H)

14 MR. PRESIDENT:

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

16 I'd like to hand the floor once again to the defence team for
17 Khieu Samphan to continue with their key document presentation.
18 You may proceed.

19 [13.32.46]

20 MS. GUISSSE:

21 Thank you, Mr. President.

22 When we broke off for lunch, I was trying to present two
23 documents, documents that refer to the negotiations with the
24 Vietnamese in 1967. First document, E3/221, which is the record
25 of a meeting titled "A Study of the Reaction of the Vietnamese

1 during the Fifth Meeting in the Morning of the 14th of May 1976."
2 This document is an overview of ongoing negotiations with
3 Vietnamese regarding border problems. Reference is made to the
4 Brevier maritime line, as well as problems relating to land
5 boundaries. What is important to note in this document is the
6 fact that a priori the members who attended the meeting agreed
7 that it was important to pursue the negotiations and I will refer
8 to a passage and the ERN is as follows and it is in French,
9 00386180 and another passage on the next page; and in Khmer, it
10 is 00000815 and it continues on the next page; and the ERN in
11 English, is 00182697 and it continues on the following page.

12 [13.34.54]

13 The extract that I'm reading on the first page is a message by
14 Comrade Nuon, who's talking about these negotiations, and he
15 explains how those negotiations were conducted and the
16 composition of the delegation and this is what he says.

17 "Regardless of the results, we'll maintain the Party's position;
18 we'll maintain the same atmosphere, the same solidarity, and the
19 same friendship, but if the situation of negotiations doesn't
20 change, the atmosphere could become tense. We can find the means
21 to pacify the situation by concluding the negotiations on a
22 status quo. Ta Mein (sic) is not an intelligent politician; he is
23 a negotiator who is availing himself of the law, but the law of
24 capitalists. He is negotiating with us as if he were negotiating
25 with Americans. He perhaps does not understand friendship and

1 solidarity. He wants to pressure us in the negotiations."

2 [13.36.18]

3 And he concludes by saying that the members of his delegation are
4 certainly divided. "We should ally with those who can cause
5 disorder in their ranks. To conclude, the negotiations today were
6 not all that tense, just an expression of one another's stances."

7 And on the next page, it is also important to note the message of
8 Comrade Khieu -- that is Son Sen, who also refers to these
9 negotiations, but he also talks of the military situation and he
10 says -- and it is the third paragraph of his speech.

11 "Therefore, as I see it, our positions two, three, and four
12 cannot be achieved. We can maintain the same atmosphere, but each
13 side knows its own stance. If the negotiations are prolonged,
14 that will lead to tension. I agree with Comrade Nuon that we
15 should find a way to proceed with the negotiations. The point of
16 Vietnam firing at boats is not a strong point. On the
17 international stage, Vietnam still needs us, so they are not
18 strong. We should find some way to end the negotiations and
19 maintain the atmosphere as it is."

20 [13.37.53]

21 And he continues, in the next paragraph, referring to
22 international issues and noting -- I quote: "Vietnam and Thailand
23 have taken control of all our waters. The maritime opening up
24 looks like a shell." And he says that Vietnam and Thailand have
25 taken control of our ocean -- the ocean.

61

1 "Vietnam does not gain anything if they have a dispute with
2 China. Again, it becomes even more complicated. In the present
3 situation, if they attack and take our islands, it will be
4 difficult. They threaten us, but there is still no agreement.
5 We'll relax, do not curse, do not accuse them; we want to
6 maintain the same atmosphere." I find this important. That was
7 the end of quote.

8 I consider that this is a record of a meeting in which reference
9 is made to those negotiations. There appears to be a consensus
10 among the persons attending that meeting that negotiations with
11 Vietnam should continue. And Son Sen says that even though the
12 Vietnamese opened fire on Cambodian boats, the negotiations
13 should be continued.

14 [13.39.28]

15 I am relating these documents with what the witnesses appeared
16 before this Chamber and testified to regarding their work in
17 maritime zones and the instructions they received from Son Sen
18 and the hierarchy.

19 Another point I would like to make, and I refer to ERN 00386187
20 in French, this is still with regard to the issue on negotiations
21 and the manner in which those negotiations were conducted and
22 I'll end by referring to the last page in the documents with the
23 message of Comrade Secretary Pol Pot who states, and I quote: "So
24 we're keeping -- keep -- keeping or rather, we act gentle. We go
25 watch their movie. They do not have any reason to break off from

62

1 us because we'll keep smiling freshly and have never cursed them.
2 If they break it off, they gain nothing; they only lose." End of
3 quote.

4 [13.40.50]

5 And here again is the comrade secretary who ends by saying what
6 the way forward is and we are still talking about negotiations.
7 The date is important because we are dealing with the position of
8 the government and the Council of Ministers or rather the
9 committee on that day and it refers to the need to continue
10 discussing and negotiating. And we cannot say that there is a
11 policy to attack the Vietnamese, in general terms, whether we are
12 talking of combatants or civilians that would transpire from
13 these documents.

14 Another point I'd like to make is that it is important to note
15 that on the first page of this document, the presence of Comrade
16 Hem, alias Khieu Samphan is referred to, but he does not speak at
17 any time during that meeting.

18 [13.41.56]

19 Another point which echoes what is said in this document is a
20 meeting of the Council of Ministers of the 31st of May 1976,
21 document E3/794, in which -- and the ERN in French is 00611618;
22 and the ERN in Khmer is 00000786; and in English, it's 00182676.
23 And here, it's comrade secretary presenting a report in which he
24 explains the position and says the following regarding border
25 problems, last paragraph in French.

1 "As regards the border problems, there is no solution according
2 to experiences we've had in the world in certain places. You need
3 hundreds of years to find solutions. In our case, we will
4 continue resolving the problems. During negotiations, the Party
5 underscored three wishes: First of all, if we didn't succeed to
6 find solutions, we'll have to maintain the status quo. Secondly,
7 the situation is better than it was in the past, to a certain
8 extent, and thirdly, we must try to achieve minimum results now
9 our first and second wishes have been achieved." End of quote.
10 And this is 31st of May 1976 and it confirms the resolve to
11 continue negotiating.

12 [13.43.55]

13 As regards what is said regarding Vietnam, at -- we have no
14 policy of this CPK that likens the enemy to anything other than
15 the state enemy if there are difficulties. And it is a February
16 1978 "Revolutionary Flag," document E3/744; ERN in French,
17 00538944, ERN in Khmer, 0006440 (sic), ERN in English, 00464063.
18 And the position is that, in this document, it is obvious that
19 they are still referring to Vietnam as a state and that if there
20 are any disputes, they are defined as being with the Vietnamese
21 state and not with Vietnamese, per se, and it is stated in the
22 ERN document I've referred to and it is an analysis done in the
23 "Revolutionary Flag."
24 In the second -- in the paragraph, it said that secondly, the
25 defeat of the Vietnamese from a political point -- and I skip the

64

1 first paragraph and I talk about what is considered as the dead
2 end in which Vietnam would have found itself during that period.
3 And in the final analysis, "They find themselves in a total dead
4 end."

5 "Another aspect of Vietnamese policies is the fact that the
6 Vietnamese people clearly see that their aggressive policies have
7 led their country and the 'Yuon' people into painful
8 destruction."

9 [13.46.07]

10 And the second point is that:

11 "As for another goal of the 'Yuon' policy to set up a 'Yuon'
12 organization or a party or a movement to be brought from 'Yuon'
13 territory into Kampuchea to be put in position or announced when
14 they have seized some locations inside Kampuchean territory, that
15 has totally failed." End of quote.

16 This is important because we find that in this "Revolutionary
17 Flag" ,reference is made to the Vietnamese policy in general and
18 the Vietnamese people who are referred to in this document and
19 they say that -- they have said clearly that the policy to invade
20 Cambodia is not reasonable. That is important.

21 And in the last paragraph of this document, in French, further
22 clarification is provided to this -- to the effect that problems
23 is with Vietnam as a country and not with Vietnamese. Last
24 paragraph:

25 "We have been able to persevere and hoist high the flag of

1 independence and autonomy and the need to be masters of our own
2 destiny to raise high the flag of independence, sovereignty, and
3 territorial integrity and to hoist high the flag of Cambodia's
4 popular honour."

5 [13.47.42]

6 And what follows is important. The metaphor of the flag is not
7 neutral because they are referring to the flag of the country and
8 proceeds to say that: "We have to hit hard and have broken the
9 flag of aggression and expansion and territory swallowing. We
10 have to hit hard and have broken the flag of the Indochina
11 Federation of the 'Yuon'; we have to hit hard and have broken the
12 flag of hearing large countries and the ideology of surrender;
13 and we have to hit hard and have broken the flag of the ideology
14 of being a large country of the 'Yuon'. The 'Yuon' flag of one
15 party, one country, and one people has also been hit hard and
16 broken in the most humiliating manner." End of quote.

17 [13.48.31]

18 And here again, this echoes what I said earlier. We have here a
19 policy which is a leitmotif in what is said and it is that the
20 problem of a Vietnamese state that wants to annex territory, the
21 problem is that of a Vietnamese state which wants to attack the
22 territorial integrity of the country. So, there's no talk of
23 Vietnamese as individuals and as civilians. So I think this is an
24 important point, bearing in mind that this "Revolutionary Flag"
25 dates back to February 1978.

1 To conclude my presentation of the series of documents we'd like
2 to bring to light, a while ago, I referred to a number of
3 problems on the border between Vietnam and Cambodia and the
4 various movements that were referred to in the press; liberation
5 movements, rebellious movement, whether we are talking of the
6 situation within the country or abroad.

7 [13.49.44]

8 We have two other articles of newspapers relating to that subject
9 and they are related to the former soldiers of the Khmer
10 Republic, because these articles refer to movements of rebellions
11 or rebels or attempts made by certain persons to return to
12 Cambodia in order to bring down the government of Democratic
13 Kampuchea and such movements are spearheaded by soldiers of the
14 Khmer Republic.

15 I refer to document E3/7314 and it is an article of the newspaper
16 "Libération" of June 1976, and in this regard, the date, again,
17 is important and this time, we're not talking of movements on the
18 Vietnamese border, but on the border between Cambodia and
19 Thailand. And reference is made inter alia to that ERN or to that
20 French document. I believe that the document's only in French and
21 the ERN is S00005779 in which reference is made to MOLINAK and it
22 is on the second column of that article in French.

23 The journalist referred to several groups explaining that there
24 may have been people in the jungle who presented themselves as
25 members of resistance movements of the Khmer Rouge who were,

1 rather, mercenaries looking for money and the journalist states
2 the following:

3 [13.51.44]

4 "Apart from those groups for whom resistance appears particularly
5 to be an additional means to make a bit of money, there is a
6 whole series of groups, depending on one politician or the other
7 or one general or the other of the former regime, who find in the
8 resistance a common means to make some money and to regain their
9 lost prestige. These groups are very weak, numerically, and
10 inactive. They are also divided and have personal ambitions and
11 suffer from the corrupt regime of which they are derivatives.

12 "It was announced in Paris in April, the creation of some of
13 these groups under the banner of MOLINAK, the Movement for the
14 National Liberation of the Khmer, and they come under two
15 strongmen of the regime, In Tam and Son Ngoc Thanh who are now
16 living in exile in France. On the Thai border town
17 (unintelligible) former minister of Lon Nol and (unintelligible)
18 San Sambo and they set up their headquarters on that -- in that
19 border town.

20 [13.53.07]

21 "As for resistance -- pockets of resistance on the Cardamom
22 Mountains, these are to be crosschecked even though it is
23 unlikely that such groups would be able to form a stronghold on
24 the border. There is only group that is active and it is a
25 liberation front in the north of Cambodia and the two -- the 200

1 members are armed and fighting on the -- the Thai border province
2 of Buriram. This group composed of former soldiers and officers
3 of Lon Nol are directly organized and equipped by special
4 services of the Thai army for whom they provide various
5 intelligence services."

6 So when we're talking of enemies or spies, we have this article
7 of 1976 which refers to this MOLINAK movement on the border
8 between Thailand and Cambodia with intelligence elements who here
9 from that Thai state.

10 This information is echoed again in the "Bangkok Post" and that
11 is document E3/7316. And the title of the article is in English
12 because I believe it only exists in English and the article is
13 titled "Anti-communist resistance mounts in Northwest Cambodia."
14 This is what is stated at the beginning of the article.

15 "Anti-communist resistance is spreading in northwestern Cambodia
16 and there have been pitched battles between Khmer Rouge units and
17 anti-communist guerillas, a resistance leader told 'Agence
18 France-Presse'.

19 "The leader, a former officer in the Khmer Republican Army when
20 Marshall Lon Nol ruled Cambodia, said his organization the
21 Liberation Front for Northern Cambodia, had small groups of 20 to
22 30 men scattered between the Thai frontier and the Tonle Sap
23 Great Lake.

24 According to the leader, the Liberation Front for Northern
25 Cambodia has 200 well-armed and well-trained men in guerrilla

1 units which have communications equipment. They are constantly on
2 the move, he said, in the northwest forest Zone.

3 "The front is at present conducting negotiations with other
4 resistance groups operating in Western Cambodia known as MOLINAK,
5 the leader said. MOLINAK has network in Paris and contacts in
6 several western countries, he said.

7 "A small 'liberated zone' has already been established to the
8 south of the border town of Poipet, across from Thailand,
9 according to the resistance leader. It consists of about 100
10 square kilometres in the heart of the jungle, he said." End of
11 quote.

12 [13.57.14]

13 And the rest of the article deals with what is said and what
14 happens in that zone, so this is an -- another important element.

15 In April 1976, there are allegations of incursions staged by
16 people presenting themselves as members of rebellions or
17 rebellious movements in -- at attacking the regime in power and
18 these are in the Northwest Zone and they are making incursions in
19 such Northwest Zones.

20 So this is a very important point as regards incidents that may
21 have occurred and the manner in which people viewed attacks in
22 Phnom Penh.

23 [13.57.57]

24 And lastly -- the last point, which echoes what happens in that
25 border zone in -- with Thailand, document E3/7290, and it is the

70

1 first page. It is an article by a researcher at the University of
2 Yale, so it's a scholarly work. But what is important to note is
3 that -- the ERN in French, 01172718; and the ERN in Khmer is, 00
4 -- sorry, 01152710; and the ERN in English is, 00993809; this
5 scholar refers to the problem of the border disputes with
6 Thailand and it is a last paragraph of the page in French.
7 "This border dispute was partly due to competing claims by
8 Thailand and Cambodia concerning that border zone. It is believed
9 that it is also the work of the operation of the forces of the
10 right wing in Cambodia which benefits from the secret support of
11 Thai forces and is using Thai territory for that purpose. This
12 force referred to as Khmer Serei was composed of former Lon Nol
13 common groups; one of them belonged to the former Cambodian Prime
14 Minister, In Tam whose base was on the border of Prachinburi and
15 Battambang provinces." End of quote.

16 [13.59.50]

17 This was a last point as regards these conflicts and incursions
18 from the Thai border. This ends my presentation on this segment
19 and, of course, we will revisit them as part of our responses to
20 any questions asked.

21 MR. PRESIDENT:

22 Thank you. The hearing today has come to an end and the Chamber
23 will resume its hearings tomorrow on Friday, 26 February 2016 at 9
24 a.m.

25 The Chamber will continue to conduct the key document

71

1 presentation hearings in relation to the treatment of the
2 targeted groups, Cham, Vietnamese, and former officials of the
3 Khmer Republic.

4 In particular, the Chamber will hear the responses and also any
5 other observation of parties by 26 February 2016.

6 And tomorrow, the Chamber will not conduct its hearing to allow
7 parties to get ready for responses and observation on the
8 documents presented by parties. Please be informed and be on
9 time.

10 Security personnel are instructed to bring the Accused, Khieu
11 Samphan and Nuon Chea, back to the detention of the ECCC and have
12 them returned into the courtroom on Friday, 26 February 2016,
13 before 9 a.m.

14 The Court is now adjourned.

15 (Court adjourns at 1401H)

16

17

18

19

20

21

22

23

24

25