



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

ឯកសារដើម
ORIGINAL/ORIGINAL
 ថ្ងៃ ខែ ឆ្នាំ (Date): 03-Mar-2016, 11:04
 CMS/CFO: Sann Rada

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
 Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

26 February 2016

Trial Day 373

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

The Accused: NUON Chea
 KHIEU Samphan

Lawyers for the Accused:
 SON Arun
 Anta GUISSSE

Trial Chamber Greffiers/Legal Officers:
 CHEA Sivhoang
 Niccolo PONS

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

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

For Court Management Section:
 UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
The GREFFIER	Khmer
Ms. GUISSÉ	French
Mr. LYSAK	English
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer
Mr. SMITH	English

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to continue with the key document
6 presentation, and there will be the responses and observations to
7 those key documents presented by the Co-Prosecutors, the Lead
8 Co-Lawyers and the Khieu Samphan defence. And we will have their
9 observations and responses in this order, and this is in regard
10 to the treatment of the target groups, including the Cham,
11 Vietnamese and the former officials of the Khmer Republic.

12 And before we proceed, the Chamber wishes to inform the parties
13 that Judge You Ottara, who is the National Judge, is absent for
14 personal reasons. And after the bench deliberated the matter, we
15 decided to appoint the Reserve Judge, Thou Mony, in his place for
16 today's proceedings. And this is pursuant to Rule 79.4 of the
17 ECCC Internal Rules.

18 Ms. Chea Sivhoang, please report the attendance of the parties
19 and other individuals to today's proceedings.

20 [09.05.03]

21 THE GREFFIER:

22 Mr. President, for today's proceedings, all parties to this case
23 are present except the Khieu Samphan's national counsel, Kong Sam
24 Onn, and Madam Marie Guiraud, the International Lead Co-Lawyer,
25 who are absent for personal reasons.

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1 Nuon Chea's international counsel, Victor Koppe, is absent
2 without giving any reason.

3 And Mr. Nuon Chea is present in the holding cell downstairs. He
4 has waived his rights to be present in the courtroom. The waiver
5 has been delivered to the greffier.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the
9 request by Nuon Chea.

10 The Chamber has received a waiver from Nuon Chea, dated 26
11 February 2016, which states that, due to his health, headache,
12 back pain, he cannot sit or concentrate for long. And in order to
13 effectively participate in future hearings, he requests to waive
14 his right to participate in and be present at the 26 February
15 2016 hearing.

16 [09.06.25]

17 Having seen the medical report of Nuon Chea by the duty doctor
18 for the accused at ECCC dated 26 February 2016, which notes that
19 Nuon Chea has severe back pain and dizziness when he sits for
20 long and recommends that the Chamber grant him his request so
21 that he can follow the proceedings remotely from the holding cell
22 downstairs, based on the above information and pursuant to Rule
23 81.5 of ECCC Internal Rules, the Chamber grants Nuon Chea his
24 request to follow today's proceedings remotely from the holding
25 cell downstairs via audio-visual means.

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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 The Chamber wishes now to hand the floor to the Co-Prosecutors so
5 that you may respond or make observations regarding the key
6 document presentations of other parties. The combined time for
7 the Co-Prosecutors and the Lead Co-Lawyers are two sessions.

8 You may proceed.

9 [09.08.02]

10 MR. SMITH:

11 Good morning, Mr. President. Good morning, Your Honours. Good
12 morning, counsel.

13 Your Honours, I will respond briefly in relation to the documents
14 that were selected by the Khieu Samphan defence to highlight
15 allegations in relation to the treatment of the Vietnamese in the
16 indictment, and my colleague, Mr. Dale Lysak, will make
17 submissions to you on the Cham and also on the former Khmer
18 Republic soldiers and officers.

19 So perhaps if I begin.

20 Your Honours, the Defence presented -- highlighted 13 documents
21 from the case file, a huge case file of about six and a half
22 thousand documents, but they presented 13 within the time that
23 they had.

24 And when we look at the documents that they presented or
25 highlighted, we submit they fall into two categories, one being

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1 opinions of some very distinguished researchers on the Democratic
2 Kampuchea period, and the other group being documents that put
3 these allegations of the treatment of the Vietnamese into
4 context.

5 [09.09.34]

6 And Counsel for Khieu Samphan, I think, mentioned that a couple
7 of times -- a few times when she presented on Wednesday that very
8 much the documents they were putting forward were to make sure
9 that we didn't forget the context in which these allegations are
10 occurring.

11 And so just briefly in relation to the contextual documents, our
12 submission is that, although, of course, they are important, they
13 are necessary to be able to understand and interpret the core
14 allegations in the indictment and particularly, of course,
15 talking in relation to the treatment of the Vietnamese.

16 [09.10.22]

17 The documents they put forward did not directly challenge the
18 core allegations in relation to the treatment of the Vietnamese,
19 and that's our first main point. But before I get to discussing
20 those documents in a little more detail, I would like to talk
21 about the documents that they highlighted that had -- contained
22 these very distinguished researches' opinions on whether or not
23 genocide occurred against the Vietnamese civilians in Cambodia.
24 And Your Honour, this, of course, the document that the
25 Prosecution put forward in relation to Ben Kiernan, his book,

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1 he's another distinguished researcher that has a particular
2 opinion on whether or not genocide occurred during -- against the
3 Vietnamese during the Democratic Kampuchea period.

4 And what's clear is, like lawyers, academics agree or disagree on
5 particular issues, and that's very much the issue with the
6 genocide of the Cham.

7 On the one hand, the Defence put forward three documents that
8 contained the opinions of Stephen Heder, Henri Locard and Philip
9 Short as to whether or not genocide occurred against the
10 Vietnamese in Cambodia. In those three documents, it was the
11 perspective of each of those researchers that it did not occur,
12 and they were particularly discussing the issue of genocidal
13 intent, whether or not the CPK leadership had the genocidal
14 intent. That was the issue that was on discussion, not so much
15 whether or not crimes were committed against Vietnamese as a
16 group.

17 [09.12.38]

18 So, I think there's two points I would like to make in relation
19 to these opinions.

20 And the first one is; the opinions were made without the benefit
21 of the investigation, without the benefit of the judicial
22 investigation that has occurred from 2006 onwards. Stephen
23 Heder's opinion was from a -- obtained from a document from 1998.
24 Philip Short's opinion was largely based on his book, his
25 research from 2005. And Henri Locard's opinion on this issue was

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1 put forward from a document dated 1998. In fact, I'll correct
2 myself, Stephen Heder's article was from 1996.
3 Nonetheless, all of the -- all of these distinguished researchers
4 did not have access to the case file. They did not have access to
5 the 1,400 or so written records from witnesses during this period
6 that, Your Honours, have.

7 [09.14.04]

8 They did not have access to the over 4,000 civil party
9 applications on issues like this and other issues in relation to
10 the crimes alleged in the indictment. They did not have access to
11 some material, some contemporaneous documents which, Your
12 Honours, have had access to.

13 And so to conclude the first point, we would submit, until such
14 time that these experts, these researchers have had an
15 opportunity to review that material, that voluminous material
16 that, Your Honours, have had, then their opinions on the issue
17 have to have a more limited weight, again, because they were made
18 outside of the major investigation that was actually undertaken,
19 certainly on a basis of a lot of the work that they had done and
20 carried forward.

21 And the second point I would like to make is that the
22 determination of the issue of whether or not genocide occurred
23 against the Vietnamese, that's the ultimate legal issue that
24 needs to be decided upon. And that really is a reserve for the
25 Judges, for Your Honours, who have had the ability to review all

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1 of the material.

2 [09.15.49]

3 So, Your Honours, to conclude in relation to the experts' views
4 -- and that, in fact, would include Ben Kiernan, who was of the
5 view that genocide did occur. In relation to all of the opinions
6 from the different academics, it's really matters that you can
7 think about and take into account, but they don't have the
8 probative value that they would otherwise have if they were able
9 to read those 1,400 written records, those civil party
10 applications, and the many, many other documents that would go to
11 proof of these issues, or go to support these issues, we would
12 submit.

13 Your Honors, now I'd like to turn to the next group, this perhaps
14 second group of documents the Khieu Samphan defence have sought
15 to highlight. And admittedly, it is a difficult task to bring out
16 every document you would like in a short period of time.

17 [09.16.54]

18 But if we look at the types of documents that they brought to
19 Your Honours' attention, they largely fell into two groups. And
20 that was a group of documents that provided evidence of facts
21 that occurred in and around 1976, and another group of documents
22 that, by and large, referred to facts and events that occurred
23 between about August 1978 to December 1978.

24 So if we just look at the selection of those documents and the
25 time period in which those two sets relate, when we look at the

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1 core allegations in the indictment, namely, that -- in relation
2 to the treatment of the Vietnamese, namely, that, from 1975
3 onwards, 150 to 200 thousand Vietnamese were expelled from
4 Cambodia and then we look at the next, perhaps, core allegation,
5 that from April 1977 there -- an intent was formed, is what the
6 indictment says, that the CPK leadership had decided to destroy
7 all or part of the Vietnamese population living in Cambodia.
8 And that's -- that's from -- that's paragraph 214, but it says
9 from April 1977, when the indictment says that that intent had
10 crystallized in the leadership, the CPK leadership, to target the
11 destruction of the Vietnamese civilian population.
12 Prior to that, the argument or the allegations in the indictment
13 that it -- the CPK leadership did not have that intent prior to
14 April 1977. I'm sorry if I said '76 before.
15 [09.19.31]
16 So when we look at the documents -- and say if we look at the
17 four documents that they selected in relation to what was -- the
18 facts that were occurring in 1976 -- and I'm referring to E3/221,
19 that's the Standing Committee meeting minutes of the 14th of May
20 1976; and E3/794, and that's the Council of Ministers meeting
21 minutes with a speech by Pol Pot, dated the 31st of May 1976.
22 If we look at those two of the four documents, what the Defence
23 is saying the probative value of those documents are is that
24 because the leadership appeared to be, from their minutes,
25 negotiating a peaceful solution with Vietnam to end the border

1 conflict, that is evidence of intent that the CPK leadership did
2 not possess the intent to target the civilian -- the Vietnamese
3 civilian population in Cambodia.

4 [09.20.59]

5 But the issue is, Your Honours, that intent, the indictment says,
6 did not culminate until April 1977. That's more than one year
7 after the evidence that they put forward that they suggest shows
8 that intent did not exist one year later.

9 Your Honours, the position of the Prosecution and the allegations
10 in the indictment are that the intent to target the Vietnamese
11 and to destroy them as a group, or part of a group, escalated or
12 came into form as the armed conflict with Vietnam began to
13 escalate. And so what we would say the probative value of what's
14 said in meeting minutes one year before the allegation in the
15 indictment says that that intent had been formed is really quite
16 limited.

17 And secondly, when -- when counsel talk about this idea of what
18 was the CPK leadership's view of the Vietnamese government in
19 1976, even when we look behind the meeting minutes and look at
20 some of the words in the meeting minutes, you can see that, even
21 as of then, even though they were attempting to negotiate a
22 peaceful solution, in E3/793, we can see at that meeting they're
23 still referred to as "the contemptible ones".

24 [09.22.53]

25 And in Democratic Kampuchea, Your Honours, are well aware of how

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1 -- what happened to many people that were viewed to be
2 "contemptible". I mean, they were, in fact, killed.
3 But the main point being, Your Honours, is that these documents
4 really are not that helpful in determining whether or not the
5 intent was with the CPK leadership in April 1977 when the
6 indictment says that that had formed in order to target the
7 Vietnamese civilian population.

8 And perhaps if we look at two other documents from 1976, that
9 they used to show this perhaps conciliatory approach to the
10 Vietnamese government, they referred to E3/4589. And that's
11 Francois Ponchaud's report on the 10th of January 1976.

12 [09.23.58]

13 And by and large, that report supports the allegation in the
14 indictment that large numbers of Vietnamese were expelled from
15 Cambodia to Vietnam in 1975, so it's certainly probative in that
16 regard. He talks about cooperation with the Vietnamese to have
17 them repatriated and -- in his report -- and he also talks about
18 Vietnamese being forced out of the country. So by and large,
19 that's quite supportive of the -- of the allegations in the
20 indictment.

21 Where there was cooperation in places that appears in this
22 report, again, that cooperation appears 18 months to two years
23 prior to, it is argued in the Closing Order, that that genocidal
24 intent in fact came into being in April '77.

25 Now, Your Honours, if I can just move to the four documents the

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1 Defence put forward as probative in relation to the treatment of
2 the Vietnamese in 1978.

3 There's three documents that are newspaper reports, and there's
4 one document that is a Revolutionary Flag, and that's dated
5 February 19, 1978. And that was E3/744.

6 The three newspaper reports at E3/7265, that's from the
7 "Washington Post" on the 10th of August 1978. The E3/7315, that's
8 from the "Bangkok Post", 24th of October 1978. And E3/7310, and
9 that's a newspaper report from the 3rd of December 1978.

10 [09.26.03]

11 Just briefly, the combined effect of these newspaper reports,
12 they essentially discuss that, on the 10th of August 1978, there
13 was pressure by Vietnam to negotiate as a negotiating tactic with
14 Cambodia to resolve the border dispute.

15 The next document, dated the 24th of October 1978, talks about
16 the buildup of large numbers of Vietnamese forces on the eastern
17 border of Cambodia and some resistant forces occupying some parts
18 of the eastern side of Cambodia as well as some insurrections in
19 the country.

20 And the last report, newspaper report, was the 3rd of December
21 1978, where it talks about the creation of a United Front with
22 the Vietnamese which would include the defectors from Cambodia.

23 [09.26.59]

24 Your Honours, it's accepted by the Prosecution, accepted in the
25 indictment that, as the armed conflict escalated, as we move

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1 towards January 1979, when the Vietnamese ultimately took over
2 Phnom Penh and most of Cambodia. And if we look at allegation --
3 the allegation in the indictment in relation to the armed
4 conflict section, at paragraph 154, it states:

5 "The scope and intensity of the international armed conflict
6 increased steadily and resulted in two large scale incursions of
7 the Democratic Kampuchea by Vietnamese forces in December 1977
8 and December 1978."

9 And then it goes on to say, "This later invasion led to the
10 toppling of Phnom Penh and the controlling of the country."
11 Your Honour, those -- so, in a sense, the buildup of military
12 support, the fact that there was a combined force building in
13 order to take over Phnom Penh, it doesn't really essentially
14 challenge or directly address the issue of what happened to
15 Vietnamese civilians in Cambodia. It relates to the war effort,
16 but it doesn't address the allegations in the indictment. And
17 those allegations are that the deportation in terms of the
18 Vietnamese in 1975; the killings and mistreatment of Vietnamese
19 civilians living in Svay Reang and Prey Veng; the cruel treatment
20 and torture and killings of Vietnamese or civilians or combatants
21 taken to security centres at Krang Ta Chan, Au Kanseng, S-21 and
22 Tram Kak cooperatives.

23 [09.29.11]

24 Those documents don't address that issue at all, the central
25 issue as to the crimes that we say that are alleged in the

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1 indictment, so they're contextual, a buildup of military forces.
2 And so the probative value, we submit, is quite limited.
3 Needless to say, understanding the armed conflict and how that
4 impacted on behaviour, etc., that's relevant. And we think those
5 documents are relevant in that respect, but they're not very
6 probative in terms of determining whether the core allegations
7 have been proved.

8 Your Honours, there's one last document I would like to mention.
9 It was raised by the Khieu Samphan defence, and this is E3/744.
10 And it's the Revolutionary Flag in February 1978.

11 [09.30.14]

12 Now, the Defence argue that this edition of the CPK policy
13 magazine provides evidence that the CPK specifically were
14 excluding the Vietnamese population in Cambodia as enemies of
15 their -- of their regime. They argue that this magazine makes a
16 clear distinction between enemies such as the Vietnamese armed
17 forces, the state, the military forces, resistance groups in
18 Cambodia and Vietnamese generally, and make a clear distinction
19 that Vietnamese people generally are not the target of their
20 policies.

21 However, Your Honours, even though they do refer to Vietnamese
22 civilians and military, when you look at that Revolutionary Flag,
23 and this is at English, 00464063; Khmer, 0000786; and French,
24 00538944; and I quote:

25 "Another 'Yuon' political defeat is that the Vietnamese people

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1 clearly see that their aggressive policies have led their country
2 and the Yuon people into painful destruction."

3 Your Honours, we submit that when the CPK, in their magazine, are
4 referring to the Vietnamese as something other than the military
5 forces, they're referring to the Vietnamese in Vietnam. They're
6 not referring to the Vietnamese in Cambodia.

7 [09.32.10]

8 In that same edition, they refer -- they state that the CPK
9 encourages forces to resist and eradicate the pacifist and
10 espionage networks.

11 So the probative value of that magazine to indicate that the
12 intent of the CPK was not to target the Vietnamese civilian
13 population in Cambodia, that's incorrect. They were referring to
14 the Vietnamese population, we submit, in Vietnam.

15 So, Your Honours, in relation to all of the documents that were
16 put forward, we submit that, Your Honours are in the best
17 position to determine whether genocide occurred because of the
18 information that you have before you as opposed to,
19 unfortunately, what wasn't before those other experts. And
20 secondly, the documents that have been put forward to show the
21 context in which these core allegations occurred, they have a
22 certain relevance, but the weight of them, being newspaper
23 reports and dealing with military battles as opposed to what was
24 happening in areas controlled by the CPK and what was happening
25 to those people that are the subject of the allegations in Svay

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1 Reang and Prey Veng and sent to S-21. They have very, very
2 limited value in challenging that evidence or those allegations.

3 [09.33.47]

4 So, Your Honours, if I may, I'm going to hand the floor to Mr.
5 Lysak, and he will submit to you on the Cham and the former Khmer
6 Republic officials.

7 Thank you.

8 MR. LYSAK:

9 Good morning, Your Honours. There are a limited number of
10 documents presented by the Khieu Samphan defence on this issue,
11 so I also will be fairly brief this morning.

12 The Defence presentation relied upon the opinions of two authors,
13 Philip Short and Henri Locard. However, these were authors, I
14 wish to emphasize, who had not conducted extensive, detailed,
15 thorough research on the experiences of the Cham people under the
16 Khmer Rouge.

17 [09.34.55]

18 Neither of those people are lawyers, Judges who understand the
19 legal definition of "genocide". As we have said before, and as
20 Mr. Smith reiterated, it is this Chamber -- it is for this
21 Chamber to decide whether the evidence you've heard meets the
22 legal requirements of genocide.

23 Let me say that the true -- the most important significance of
24 the research and work of Ysa Osman and Ben Kiernan is not so much
25 their opinions on these issues. It is the substantial evidence

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1 that they have collected as a result of their research that shows
2 in detail the facts of what took place with the Cham people
3 during the Democratic Kampuchea regime.

4 So yes, as reflected by some of the material that was quoted by
5 the Defence, there has been this academic debate in the past on
6 the genocide issue with some people, Kiernan, Ysa Osman on one
7 side, others on the other -- on the other side, Short, Chandler,
8 but only two of these authors conducted detailed research
9 specific to the Cham. The others did not. And none of those
10 people heard the evidence, Your Honours, have heard in this
11 courtroom over the past year.

12 [09.36.36]

13 One of the documents presented by the Khieu Samphan defence on
14 this issue, E3/7283, which they described as an article written
15 by Henri Locard, was actually a letter he wrote to the Cambodia
16 Daily criticizing the crime sites that had been selected for the
17 Case 002/02 trial in the Court's severance decision. It was not a
18 research piece into what had happened to the Cham people.

19 This is not to criticize the work or opinions of Henri Locard.
20 He's done some very detailed research. We are hoping he will
21 appear before this Chamber. But the document cited is not a
22 research piece into the Cham, and we would submit the research he
23 has done is minimal on this issue compared to Ben Kiernan and Ysa
24 Osman.

25 The book written by Philip Short cited by the Defence, E3/9,

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1 contains no detailed research or interviews about the Cham. In
2 this 500-page book, there are only a few cursory references to
3 the Cham. You will find it on pages 230, 254, 326 and 354. And
4 these are solely a very general discussion about the suppression
5 of their culture, the rebellions and the movement of the Cham
6 population. That is it.

7 [09.38.24]

8 There is no discussion at all of the organized mass killings of
9 Cham communities, entire Cham communities, that occurred in Kang
10 Meas, Kampong Siem and Krouch Chhmar districts in 1977 to '78. It
11 is clear from this book that this is an issue that simply -- that
12 Philip Short simply was unaware of and had not researched.

13 To follow up further on another point made by my colleague, when
14 Philip Short made the statement that was quoted by counsel, when
15 Henri Locard wrote his article or his letter to the Cambodia
16 Daily, they were not aware not only of the evidence uncovered by
17 the judicial investigation, but, of course, also, the evidence,
18 Your Honours, have heard in this courtroom during the trial
19 segments on the Cham and Vietnamese.

20 [09.39.30]

21 Short and Locard did not hear the witnesses who came to this
22 courtroom and described how entire -- the entire Cham population
23 of villages and communes in Kampong Cham province, the heartland
24 of the Cham population in Cambodia, were rounded up and taken to
25 be killed in 1977 and '78.

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1 They were not here when Seng Kuy described how he was ordered to
2 help transport the Cham from his commune, all the Cham in his
3 commune, to Wat Au Trakuon, nor when he told this Court the words
4 of the commune security chief who oversaw these arrests, "We will
5 kill all the Cham people. We will not spare anyone."

6 They were not aware of the evidence before this Court of orders
7 from the upper echelon to identify, arrest and kill Cham people,
8 and those authors were not here on the 3rd of February this year
9 when Meas Voeun, a former CPK sector secretary and deputy
10 commander of the West Zone military, testified, and I quote:

11 "We were instructed that Vietnamese had to be smashed because
12 they did not return to their country."

13 [09.41.08]

14 The Defence cited the argument or opinion of some of these
15 authors that the killings of the Cham and Vietnamese were
16 politically motivated, not racially motivated.

17 For example, in the letter he wrote to the Cambodia Daily,
18 E3/7283, Henri Locard stated that the Khmer Rouge were not
19 specifically racists, and that Cham were victimized because they
20 rebelled en masse in Krouch Chhmar district and refused to
21 abstain from performing their daily prayers.

22 This was the view he expressed in this letter, and this is a
23 perfect example, Your Honours, of why opinions of authors on this
24 issue, this issue of whether or not genocide occurred, are
25 neither admissible nor of particular value or help to your

1 decision. And that is because these opinions often rest on an
2 incorrect understanding of the law.

3 [09.42.15]

4 Contrary to what Locard, Short and others appear to believe,
5 genocide does not require that the perpetrators be racists or
6 racially motivated. If you have the intent to eliminate an
7 ethnic, religious or racial group, that is genocide. Whether you
8 were acting for political reasons, military strategy, racism or
9 because you don't like the colour of their clothes, it is the
10 intent to eliminate an entire group that is genocide.

11 So the quotes we heard from the Defence that Cham were not killed
12 for racial reasons, but because they had rebelled, do not
13 disprove genocide. To the contrary, if you decide to eliminate
14 the Cham people because you were worried about them rebelling
15 again some day and you kill entire Cham communities, men, women
16 and children, that is genocide, period.

17 If you decide to kill all the Vietnamese ethnics and nationals
18 who stayed in the country because you are engaged in a political
19 and military conflict with the Vietnamese government and don't
20 trust the Vietnamese people, that is genocide.

21 The fact you have border problems and a history of antagonism
22 with the Vietnamese government does not justify rounding up and
23 killing the Vietnamese people who are living in your country.

24 [09.43.58]

25 Another document presented by the Defence, Your Honours, was a 14

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1 October 1975, Democratic Kampuchea government radio broadcast.
2 This was in E3/27 -- I'm sorry, E3/272.
3 I'm not entirely sure the reason the Defence cited this document.
4 Counsel recognized herself that this radio broadcast was
5 propaganda on the part of the DK government. This was a radio
6 broadcast telling -- indicating that -- or stating that Cambodian
7 Muslims were guaranteed their full democratic liberties.
8 And I would observe, Your Honours, that the timing of this
9 propaganda, mid-October 1975, shortly after the Kaoh Phal
10 rebellion in Krouch Chhmar, is surely not a coincidence.
11 [09.45.08]
12 This radio broadcast, indeed, appears to be propaganda,
13 propaganda aimed at pacifying the Cham people similar to how the
14 Khmer Rouge gave false assurances to Lon Nol soldiers and
15 officials before rounding up and killing them.
16 Finally, with respect to the targeting of Lon Nol officials and
17 soldiers, the Khieu Samphan defence presented a few news articles
18 essentially that indicated that there were -- there was some
19 resistance, some pockets of resistance in the country in 1976
20 that may have been led by some former Lon Nol military, possibly
21 operating out of Thailand.
22 And, Your Honours, this is simply not justification to round up
23 and kill ranking Lon Nol soldiers and officials who remained in
24 the country and their family members. Let me remind, Your
25 Honours, one of the documents we presented, E3/1539, the S-21

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1 record showing over 160 Lon Nol-related people who were killed at
2 S-21 in one week in March 1976.

3 The list includes at least 12 relatives of Long Boret, people who
4 were not soldiers or officials themselves, and the very last
5 entry on this S-21 list is four children. Children -- four
6 children of a former Ministry of Education official, Thach Chea,
7 who you've heard about during the last few years.

8 [09.47.20]

9 We would submit that to try to use the resistance of a few to
10 justify the killing of thousands, including women and children,
11 is shameful. It's not a legal defence. It is not a legal defence
12 to the extra-judicial killing of so many Cambodians.

13 So we would submit these documents have little probative value to
14 the issues, Your Honours, have to decide.

15 Thank you for the time this morning.

16 MR. PRESIDENT:

17 Thank you.

18 Now the floor is given to the Lead Co-Lawyers for civil parties.

19 You may now proceed.

20 [09.48.17]

21 MR. PICH ANG:

22 Good morning, Mr. President, Your Honours, everyone in and around
23 the courtroom.

24 The Co-Prosecutors have already responded to the document
25 presented by the Defence Counsel for Mr. Khieu Samphan, and all

22

1 the arguments in the responses are very robust, so we have no
2 further responses.

3 Thank you, Mr. President.

4 MR. PRESIDENT:

5 Lastly, the floor is now given to the defence team for Mr. Khieu
6 Samphan to register responses or any observations on the
7 documents presented by Co-Prosecutors and Lead Co-Lawyer for
8 civil parties.

9 You have the floor now.

10 [09.49.12]

11 MS. GUISSÉ:

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

13 I will make a few submissions on the various documents that have
14 been presented over the past few days by the Co-Prosecutors and
15 the civil parties, but before starting, I would like to make a
16 few general remarks, particularly to clarify a point in light of
17 what I have heard the Co-Prosecutors say, precisely, that the
18 purpose of the Defence's presentations of documents would be to
19 justify crimes.

20 I think that this is an important point, and it is part of our
21 philosophy in the defence of our client in criminal proceedings
22 because our purpose is not to justify crimes.

23 When we present contextual documents, we are trying to present
24 arguments to the Chamber so that it may determine what happened
25 at the political level, at the local and national levels. And we

23

1 have already said and we recalled recently again during the
2 appeals hearings that there are points that are not disputed. The
3 fact that people were killed at various locations in Cambodia,
4 we, the defence teams, have a view that it should be determined
5 whether that policy was agreed to at national level and whether
6 Mr. Khieu Samphan endorsed such a policy and whether there are
7 points that correspond to a criminal plan.

8 [09.51.04]

9 That is what we, the Defence, are presenting. When we present
10 contextual elements and very diverse and varied opinions, we do
11 so so that the Chamber can make a determination. We do not do so
12 to justify any killings at all. This is a very important point to
13 put forward from the very outset.

14 As regards general remarks on all the documents presented by the
15 Co-Prosecutors and the civil parties, let me point out that we
16 have our positions in principle as regards written statements
17 that are presented in lieu of oral testimonies.

18 I would like to point out that there are no cross-examinations
19 and we, the Defence, have not had the opportunity to challenge
20 the credibility of those testimonies, so would like the Chamber
21 to take into account such considerations when they deal with key
22 documents.

23 [09.52.11]

24 And with regard to the remark made by the civil party Lead
25 Co-Lawyers at the end of the presentation of their key documents

24

1 stating clearly that, as regards the statements of civil parties,
2 they had thoroughly cross-checked the documents in advance of the
3 testimonies of the civil parties, and I am not challenging the
4 good faith of the civil party Lead Co-Lawyer, but let me point
5 out that sometimes information provided by the civil party
6 lawyers as additional information has turned out to be inaccurate
7 when we confronted the civil parties during the proceedings.
8 Consequently, whatever may have been the cross -- the
9 cross-checking of the documents by the civil parties, we have not
10 confronted the civil parties and the testimonies haven't tallied
11 with what is written in the written records. That is something I
12 wanted to clarify from the outset.

13 [09.53.25]

14 As regards the general remarks on documents from other
15 jurisdictions, let me recall the position of Mr. Khieu Samphan
16 that Mr. Khieu Samphan was not part of the investigations, and so
17 we cannot respond to certain issues if the persons are not called
18 to testify before the Chamber. And so it is a violation of his
19 right to a fair trial, the right to be able to confront the
20 persons testifying or making the statements in view of -- in view
21 of the charges against him.

22 As regards the treatment of Vietnamese, quite obviously, given
23 the time allotted to me, it will not be possible for me to give
24 comments on all the documents that have been presented, but I
25 would like to make some remarks on the information that has been

25

1 provided during the presentation of these documents.

2 It is also important, and I say so all the more so as the same
3 thing occurred again this morning, when the International
4 Co-Prosecutors gave their interpretation of documents. It is
5 obvious that you, the bench, will make a determination in light
6 of the evidence that has been adduced and the documents
7 presented. You will not make a determination based on
8 interpretations.

9 [09.54.57]

10 We should reckon that there have been lots of documents, and I
11 have heard in the leitmotif of the Co-Prosecutors, and he keeps
12 saying that there's a commitment to attack combatants and
13 non-combatants, but when you look at the documents, nothing --
14 nothing of the sort transpires from them.

15 It is not because the Co-Prosecutors interpret a document in a
16 certain way that you should rely on such interpretations, but you
17 have to look at the documents and the authorities in support of
18 those documents.

19 In this regard, an example would be, for instance, document
20 E3/7842. And this allows me to say something with regard to what
21 happened in 1975, because the International Co-Prosecutor has
22 just told us that you should remember that we are -- the Defence
23 presented contextual materials relating to the period prior to
24 1975, yet we are talking of 1975. That is the period in which we
25 are talking of the genocidal intent.

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1 [09.56.10]

2 Insofar as some of these documents refer to what happened between
3 1975 and 1976, I would say by way of a response that the -- we
4 are looking at evidence that we, the Defence, are interested in
5 because it falls within the framework of that period.

6 Be that as it may, may I ask you to place document E3/7842 in
7 relation to the documents I also presented and quoted from that
8 relate to that same period as quoted passage regarding the famous
9 meeting with Vietnam in which Son Sen said we should keep a low
10 profile and that, even though there may be negotiations with the
11 Vietnamese, we should keep a low profile and continue with the
12 negotiations.

13 Another document quoted is document E3/7759. It is a
14 contemporaneous document. Again, the issue here is
15 interpretation, they are talking of the expulsion of the
16 Vietnamese in general.

17 Let me recall that this is not only the Vietnamese who left
18 Cambodia in 1975 -- between 1975 and 1976. The -- let me point
19 out that they are talking -- it is not true that they are talking
20 specifically of Vietnamese during that period. There's a number
21 of documents presented by the International Co-Prosecutor as
22 regards, once more, their interpretation of what some documents
23 meant.

24 [09.57.58]

25 And again, I must talk about the context here because when we

1 talk of "the enemy", when we talk of enemies to be combatted, we
2 are talking of non-combatants and combatants at the same time,
3 and the Vietnamese population in general without making any
4 distinctions. This doesn't transpire from the documents that have
5 been quoted.

6 And I refer you to document E3/805 of the 16th of December 1975.
7 And in this document, we are talking of the situation of the
8 enemy. And the ERN is 00185237, in English; In Khmer, 0052333;
9 and in French, 00315067. The document was E3/805. And here, we
10 are speaking very clearly of all the documents and we are
11 referring to the situation on the border.

12 [09.59.12]

13 And I would also like to quote an important passage referred to
14 when they say apparently regarding internal enemy, they were
15 crushed generally, they were smashed generally, but on the
16 border, the enemy continues attacks.

17 If we do not understand the context of what happened on the
18 border and link it with what may have happened within the
19 country, we will not understand the document in its entirety.
20 Same thing for document, E3/712, it's a "Revolutionary Flag"
21 issue. Here, again, mention is made of the conflict and of what's
22 happening with Vietnam as a country. Document E3/2435. Here,
23 mention is not made of killing Vietnamese people. It simply said
24 that the district Angkar should be made aware of what should be
25 done for Vietnamese people wishing to return to their country.

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1 And then document E3/240, this is the proof that there is a
2 desire to kill the population in general. That's what appears,
3 but there is a segment that the Co-Prosecutor did not quote here,
4 and this is French ERN, 00282550; English ERN, 00897667 to 68;
5 Khmer ERN, 002825550 (sic); where the Co-Prosecutor did not
6 mention an important element of this report in telegram, that is
7 to say, that they heard a certain number of Vietnamese soldiers
8 were captured, but they were armed and three U.S. grenades and
9 two pistols were seized.

10 [10.01.16]

11 So here, we are at a far cry from speaking about the Vietnamese
12 civilian population. We're speaking here about armed combatants.
13 Then again, E3/248, and you will see that in this document, which
14 is a report describing the interrogation of Vietnamese spies, and
15 you will see that, in this document, mention is also made of
16 fighting at Dak Dam. And this is in January 1978.

17 So here again, it's important to understand the context, that is
18 to say, when we're speaking about the Vietnamese, about
19 Vietnamese spies or about Vietnamese fighters at the border,
20 we're speaking, indeed, about people who are fighting, and not
21 about civilians.

22 [10.02.08]

23 And another element that was noted by the Prosecution is document
24 E3/200, which is a speech by Khieu Samphan. And here, once again,
25 I have to remind you of the context because it's said that the

1 fact they're speaking about enemies in general means combatants
2 and non-combatants. That's how it's understood, whereas, clearly,
3 in this document, and we can see -- and I'd like to refer you to
4 an excerpt -- or to the excerpt that's at French ERN, 00612166;
5 at the English ERN, 0004165 (sic); and Khmer 00292804 and to 05.
6 And the excerpt that was used by the Co-Prosecutor is right after
7 the sentence I'm going to quote, which states that, "Our
8 situation in terms of national defence is improving every year."
9 So here, we are dealing with a speech that was given on the 17th
10 of April when the general prospects of the country are being
11 described. And here, the idea is to boost the morale of the
12 troops. And they're speaking here about improving the military
13 situation in the country.

14 I'd like to also remind you that April 1977 -- and we've seen
15 this in the documents that were already covered, and I'd like to
16 refer a report regarding the activities in the East Zone,
17 document E3/852, where this improvement of the situation of
18 national defence is discussed at the same time with the fighting
19 at the border.

20 [10.04.15]

21 The document E3/852 allows us to put things in perspective
22 because, here, we have reports from the East Zone from the two --
23 2nd to the 26th of April where we see that there are various
24 incursions. So in this context, when Khieu Samphan is speaking
25 about enemies or about national defence, he is speaking clearly,

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1 therefore, about fighters and not about civilians. So if this is
2 ignored, this means not understanding the context and it means
3 distorting what was said.

4 Another element that was used to support the Co-Prosecutors
5 theory, it's an excerpt from the book of Khieu Samphan, E3/18, in
6 which Khieu Samphan speaks about incursions from the Cambodian
7 army this time into Vietnam. And he tells us that this is the
8 proof that the CPK intended -- the Co-Prosecutors believe that
9 this is the proof that the CPK intended to attack Vietnam, but
10 however, an element that was ignored when this document was read
11 out, that is to say, first of all, Khieu Samphan here was not
12 speaking about what he knew back then. He's speaking about
13 elements that he learned way afterwards.

14 [10.05.41]

15 And here, I'd like to refer you to the French ERN, 00595447;
16 Khmer ERN, 00103850; English ERN, 00103760. And the excerpt that
17 follows -- the excerpt read out by the Co-Prosecutor goes as
18 follows:

19 "Contrary to my previous understanding, is it rather the Khmer
20 Rouge who, without understanding their own abilities, decided to
21 launch aggressive -- an aggressive policy against Vietnam which
22 was more powerful? Of course, back then, I could not follow the
23 development of the fighting, militarily speaking. I could not
24 follow this through reports from cadres from the army and from --
25 at meetings of the Standing Committee of the CPK and three

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1 conversations with them. But the conviction that I formed back
2 then was that the incursions that were discussed here were
3 responses to the incursions from the Vietnamese. As far as I
4 understood -- as far as I know, if the leaders of the CPK were
5 determined to assert their sovereign rights over the national --
6 our national territory, they were too much aware of their
7 material weakness to engage themselves into hostile policies
8 towards Vietnam, which was much more powerful." End of quote.

9 [10.07.10]

10 So this is an important contextual element. The excerpt of Khieu
11 Samphan's book here is not speaking about what he knew back then.
12 It's just -- he's just raising questions, and this is what he's
13 saying.

14 He says here that the information that I had and what I
15 understood was that they were, indeed, incursions, Khmer
16 incursions responding to the incursions from the Vietnamese army.
17 So here, I don't see how we can say this is an element that would
18 prove that there was a desire, a clear desire to attack the
19 Vietnamese population even outside of Cambodia, whereas I have
20 just reminded you of the context in which this statement by Khieu
21 Samphan was made and also reminded you of the fact that he only
22 understood this as military issues and as responses to Vietnamese
23 attacks.

24 [10.08.00]

25 Now, in order to corroborate this theory once again presented by

1 the Co-Prosecutor, that is to say, the desire to attack the
2 Vietnamese civilian population, the Co-Prosecutor spoke about a
3 document E3/7738 in which the Co-Prosecutor -- or in which
4 mention is made of the incursions of the Vietnamese army in
5 certain Vietnamese villages.

6 And I'd like to draw your attention to another excerpt of this
7 book by Stephen Morris, which is at the ERN which only exists in
8 English, so I will quote it in English, ERN 01001764. And this
9 provides us with a contextual element that's worth looking at.

10 [10.09.01]

11 And this is the paragraph that starts as follows:

12 "As our previous discussions suggest, the Cambodian communists
13 had good reason to fear Vietnamese ambitions toward Cambodia in
14 the long term."

15 And the author then questions whether this fear was justified or
16 not, if the imminent nature of the danger was justified or not.

17 And he continues as follows:

18 "As we have discussed earlier, the Vietnamese had devised a
19 strategy for controlling the communist movements in Laos and
20 Cambodia. A key element of this strategy involved infiltrating
21 the communist parties of its neighbours with people it had
22 trained and indoctrinated. In the case of Cambodia, Hanoi trained
23 and supported the so-called Khmer Vietminh, whom it assumed would
24 act as its agents." End of quote.

25 [10.10.18]

1 So here, this is an excerpt that I found was interesting to --
2 and I wanted to stress it to prove to you that when we're
3 speaking about -- well, of course, this is the opinion of an
4 author and, of course, you will develop your own opinion, but
5 however, it's important to note that this author states that
6 there were -- that there was infiltration occurring from
7 Vietnamese communists into Cambodia and into the state
8 apparatuses of the neighbouring countries.
9 Then there is a series of documents which really -- which really
10 reflects the interpretation of the Co-Prosecutors, and I would
11 like to ask you to examine this document carefully.
12 These documents do not describe the cases of Vietnamese who are
13 identified because -- and persecuted because they are Vietnamese.
14 Here, each -- through -- but here, what we see is that we're
15 dealing with complaints linked to criticisms of the regime and
16 reports that the Prosecution says are essential reports to show
17 that the Vietnamese were targeted show, however, when we look at
18 them carefully or show on the contrary when we look at them in
19 detail, that the issue of the -- of the Vietnamese origin of
20 these people, or not, is only secondary, and that the real issue
21 here was the attitude of insubordination.
22 [10.12.04]
23 That's what's mentioned in the report, and I'd like to refer you
24 to document E3/4112 where it is said that, yes, indeed, there is
25 a person who is mentioned as being Vietnamese, and that is the

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1 proof, according to the Prosecutors, that the Vietnamese civilian
2 population was targeted. But however, in this document, what is
3 targeted is that this person did not want to work and that this
4 person did not comply with the working instructions and that this
5 person did not follow the plan which had been issued by the
6 cooperative.

7 And I can refer you to this document so you'll see that the
8 problem is not whether the person was Vietnamese or not. It's,
9 rather, the problem of people refusing to obey orders.

10 [10.12.54]

11 And the same thing for document, E3/2447. And you will see that
12 -- the mention of the national -- Vietnamese nationality of the
13 person only arrives as a post scriptum, and that the real issue
14 here is the criticism and the complaints of these people towards
15 the people who were managing the cooperative.

16 Document E3/2050 also, again, here it's interesting to look at
17 this because we're speaking about the arrest of three women. And
18 among these three women, only one was of Vietnamese origin. And
19 the problem here, once again, is a problem related to work, a
20 problem related to refusing to obey orders.

21 We cannot use these elements to say that this explains and that
22 this supports that there was a genocidal intent coming from the
23 CPK in generic terms. And here we see that, locally speaking,
24 we're dealing here with difficulties, with issues that were
25 connected only to the behaviour of these people who refused to

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1 follow orders.

2 And I would also like to refer to document E3/2435 and document
3 E3/4127.

4 And I think maybe you might want to take now, right?

5 MR. PRESIDENT:

6 Thank you, Counsel. It is now appropriate for our short break.

7 We'll take a break now and resume at 10.30.

8 The Court is now in recess.

9 (Court recesses from 1014H to 1033H)

10 MR. PRESIDENT:

11 Please be seated.

12 The Court is back in session and the Chamber gives the floor
13 again to the defence team for Mr. Khieu Samphan to resume her
14 responses and comments on the key documents presented by the
15 Co-Prosecutors and Lead Co-Lawyers for civil parties. You have
16 the floor now.

17 [10.34.06]

18 MS. GUISSÉ:

19 Thank you, Mr. President.

20 I would now like to refer you to another document presented by
21 the Prosecution and here again we find the Co-Prosecutors making
22 an interpretation that the attacks against combatants and
23 non-combatants, that interpretation is not part of the documents.
24 It is document E3/741 and it is an instruction by Office 870,
25 dated 3rd of January 1978.

1 This interpretation by the Co-Prosecutors is very personal. When
2 we read the document we find that several points are mentioned
3 therein and the three points are as follows:

4 Point number one in all languages, strike the enemy militarily;
5 point number two, strike the enemy politically using all the
6 elements of psychological war; and point number three, cut the
7 supplies of the enemy.

8 [10.35.09]

9 And here we consider they are talking of the Vietnamese and the
10 military enemy. And in the three paragraphs, as one
11 (unintelligible), and the subparagraph in paragraph three is as
12 follows: "In order to effectively cut the supplies of the enemies
13 and do so permanently, there is only one solution to engage in
14 guerilla warfare everywhere and at all locations within and
15 beyond the perimeters of the enemy as mentioned in the point
16 relating to the guerillas above. So we find that here we are
17 talking of the guerilla warfare and matters of fighting the
18 Vietnamese army. If we wish guerilla warfare effectively
19 everywhere, the enemy will not be able to loot our paddies and
20 that would place them in difficulty. That would weaken them
21 increasingly." End of quote.

22 Here again, we find that it is evident that they are talking of
23 the military enemy. And point number four goes on to say that
24 they should cut the transport links of the enemy, the transport
25 means of the enemy. So the Prosecution cannot explain to us that,

1 in that case, they were not talking of anything other than
2 military enemies.

3 [10.36.36]

4 Another document is one in which -- and it is document E3/1249
5 and we also have S-21 list, E3/432. To the extent that we've
6 looked at this document in-depth with regard to security centres,
7 let me point out that the Khieu Samphan defence is of the view
8 that in spite of your position on the statements obtained by
9 torture, we maintain that there has been, on your part, an
10 inaccurate analysis of the conventions, the Convention Against
11 Torture, and we are awaiting Judge Fenz's dissenting opinion on
12 this subject. As such a decision is not subject to appeal during
13 the trial, let me point out that that convention was incorrectly
14 interpreted by the Chamber.

15 [10.37.47]

16 Other documents that I would like to quote quickly and which once
17 more correspond to the vocabulary of warfare and cannot be
18 interpreted as the International Co-Prosecutor has done, in
19 saying that these are indications that the Khmer Rouge wanted to
20 attack civilians and combatants. You would find in these
21 documents that if you analyze it clearly -- and at E3/9357, this
22 is military telegram, E3/726, which is a "Revolutionary Flag"
23 article in which reference is made to the situation of the enemy.
24 And they are talking of the invaders in regard to border
25 conflicts, document E3/833. Once more, it is an S-21 notebook and

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1 in it we are talking of a military conflict because even in the
2 excerpt that has been quoted by the Co-Prosecutors, the ERN is as
3 follows: 00184607 in English, and 00077894 in Khmer. We clearly
4 see that mention is being made of victories against the "Yuon"
5 who attacked Cambodian territory and they are referring to
6 regiments and divisions which is proof that the discussion is
7 about military matters.

8 [10.39.28]

9 Another document that was partly used by the Prosecution is
10 document E3/28, which refers to Commander Meas Muth, and I will
11 quote the beginning of this secret phone conversation of the 1st
12 July 1978, which was proof that the Vietnamese were arrested and
13 killed but there is a sentence that follows what was quoted by
14 the Co-Prosecutors. And the ERN in French is 00611668; and the
15 ERN -- I don't know whether it is Khmer or English -- is
16 000183357 -- that's Khmer; and 00017026; that is after 1978. It
17 is an important date because mention was made of the escalation
18 of the conflict with Vietnam from late 1977 to late 1978. And
19 this is what is stated in the documents: "Five boats of 10
20 horsepower were seized, as well as other materials." And here
21 again they are not talking of civilians but of boats with
22 military equipment as part of an armed conflict.

23 [10.41.03]

24 Another absolute distortion of Pol Pot's speech is E3/5604 and
25 here they are talking of the civilian population and the

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1 population other than combatants. The interpretation made by the
2 Prosecution is very subjective because this is a war speech and,
3 like the documents I quoted earlier regarding the directives of
4 870 Office, they are talking of guerilla warfare, war techniques
5 in order to wage war. And here again, I refer you to the
6 testimony of Prum Sarat, who recalled that speech and was at the
7 hearing of the 26th of January 2016, document E1/382.1. And it is
8 shortly after 15.38.46 and he says that, "No, that speech was
9 aimed at inspiring Cambodian soldiers to prepare their lines of
10 attack and to win victory." End of quote.

11 This is how Prum Sarat, who was a soldier, understood this
12 objectively. If we want to read this speech without any bias we
13 will find that his speech was directed at armed forces preparing
14 for military combat.

15 [10.42.37]

16 Another interesting document is E3/863, which is a report of Nhim
17 describing the situation on the Thai border. And we should link
18 this up with the documents I quoted on Wednesday regarding
19 activities on the Thai border. And the date of the document is
20 interesting. It is 17th of May 1978, and here again we are
21 talking of the escalation and the difficulties. And we should
22 remember that in this document, Nhim -- and this transpires from
23 the passage read by the Prosecution -- Nhim is asking for what
24 should be done with Khmers married to Vietnamese, which means
25 that in 1978, in any case in May 1978, he was asking what was to

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1 be done. Pointing out, furthermore -- and the ERN in French is
2 00623409, and the ERN in English is 00321962. It is very useful
3 as it is specifying in May as follows: "However, they haven't
4 carried out any activities of the opposition against us. They are
5 talking of mixed couples."

6 [10.44.24]

7 And he is pointing out that there hasn't been any opposition
8 activities against us, which means that all he was trying to do
9 was to ask what had to be done, which means that as regards the
10 Vietnamese, it means that if there was a policy to exterminate
11 all Vietnamese in Cambodian territories since 1997, we wouldn't
12 understand how in May 1978 that question was still being asked.
13 So it is necessary to point out that there were no opposing
14 activities. This ties in with the Defence position which is that
15 they were not targeting the Vietnamese because they were
16 Vietnamese. They were talking in general terms about the
17 situation when there were arrests with regard to persons who were
18 opposed to directives. And to say that it was not legitimate to
19 repress people when they were in opposition, this is something
20 that we do not agree with. And we are talking of May 1978. This
21 is very important.

22 [10.45.19]

23 The same is true of other documents that once more reflect the
24 biased analysis of the Prosecution, and I will refer you to a
25 document which was quoted, document E3/8404, and I find it

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1 important to quote the ERN in French, S00017543; and the ERN in
2 English is 00419728; and the ERN in Khmer is 00716183. This is a
3 passage that wasn't quoted by the Prosecution, but it clearly
4 states that it is appropriate to wage a war in general terms, and
5 I quote: "In the world against Vietnam and the Soviet
6 expansionists, international movement and the members of the
7 Warsaw Pact who are criminal allies."

8 It is important to say that here we are dealing with Cold War and
9 the international context is important. And when we talk of
10 Vietnam, we have to place this situation in the same context as
11 the Soviet international expansionist movement. And here again we
12 are talking about policies and soldiers in a war situation which
13 is what the Democratic Kampuchea government at the time was
14 facing.

15 [10.47.06]

16 An important point which we need to raise -- and it ties in with
17 what the expert said -- that their studies were not in-depth and
18 that they were not confirmed authors. I must say that I am very
19 surprised at the criticisms that are made against Henri Locard
20 saying that he did not carry out any research in the region and
21 on the Cham in particular.

22 Furthermore, I find that this is not at all accurate because in
23 document E3/2649, which is a report by Henri Locard in which he
24 refers to investigations in Kampong Cham between 1993 and 2005,
25 so it is not really foreign to the region and it is indeed

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1 through that he carried out research on that region.
2 In any case, document E3/4524, we have a report by Elizabeth Do,
3 and we should say that in the French version we faced some
4 difficulties because this document has been translated as if it
5 were a thesis. It is a Master's thesis prepared by a student, a
6 Masters 2 thesis who in conclusions -- which were not quoted by
7 the Prosecution -- and the ERN in French is 00751022, and the ERN
8 in Khmer is 00768967, the ERN in English is 00548861. There is an
9 error in the French and I would like to draw the Chamber's
10 attention to it. And it is in the second paragraph in which that
11 person explains what her methodology had been. And she says that
12 she - question -- in a particular location, 48 persons. And she
13 gives the percentage and the results of her studies, saying that
14 the data tends to show that there were no manifest differences
15 between the general daily treatment meted to the Vietnamese and
16 the Khmer -- by the Khmer Rouge. The data nevertheless shows some
17 cases of differentiation in treatment as regards the evacuations
18 -- discriminations.
19 [10.49.48]
20 Let us recall that it's a student doing a Masters 2 course so she
21 doesn't really have a mastery of the situation. This is not a
22 legal report but it's a report being done by a sociologist, part
23 of a sociological study.
24 As mentioned earlier, 67 per cent -- and in French we have 37 per
25 cent, so it varies, a discrepancy here -- 37 per cent of the

1 informants don't think the Vietnamese and the Khmer were treated
2 differently in their villages. So here we are. This is what this
3 report by a student quoted by the Prosecution says. And she goes
4 on to say in the next paragraph, "Although the majority of the
5 informants denied any difference in the treatment of Khmer and
6 Vietnamese, the studies and interviews with informants show signs
7 of differences in treatment."

8 [10.50.51]

9 Here again we find that this is only an interpretation by a
10 sociologist, a student, and it is not proper that this very
11 limited study is being used. Because when we look at this sample,
12 it is only 48 persons and the geographical setting of the study
13 is not also broad enough to justify this study, to use this
14 document to conclude that there was a national policy in Cambodia
15 nationwide against -- which showed discrimination against the
16 Vietnamese is going too far.

17 Another point which I would like to mention, and it ties in with
18 the issue of experts, particularly extracts that -- extracts of
19 Ewa Tabeau that were used and these reports have offered figures.
20 And it is very complicated to talk about this document, to look
21 at the figures provided without looking at her methodology, her
22 working method. And we can see that in such a situation we cannot
23 really make use of this document in an exhaustive manner. So in
24 my presentation, I said that we are awaiting the decision of the
25 Chamber as regards to their appearance to testify before this

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1 Chamber. And that would enable us to discuss their work and
2 articles or parts of their work.

3 [10.52.29]

4 Let me conclude by saying that it is one thing to have a thesis
5 and to try to corroborate it. Reading the documents in question
6 and looking at them with neutrality and a critical eye is
7 something else. So we will therefore expect the Chamber to look
8 at these documents with a critical approach.

9 Now, let me talk about the issue of the treatment of the Cham and
10 the treatment of the former Khmer Rouge troops. I see that my
11 time is short and I am doing everything to conclude by the lunch
12 break.

13 I would like to remind the Chamber that as regards the Cham, the
14 Co-Prosecutors quoted not less than -- Ben Kiernan spoke on more
15 than 15 occasions explaining that they worked at length on the
16 subject, and that was important and so on and so forth.

17 [10.53.39]

18 Let us also remember that the difficulties that were raised by
19 the Prosecution as regards the basis for their work, we can ask
20 for -- ask the question what were their authorities and who were
21 the persons interviewed? How were the persons chosen?

22 We have not been able to ask those questions. And we are obliged
23 to refer you to your memorandum, E566 (sic) or E1296 (sic), which
24 you rendered on the -- as part of Case 002/01 in which we are
25 referring specifically to Ben Kiernan and the fact that you were

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1 not able to call him to testify before this Chamber.

2 [10.54.30]

3 The last paragraph of that memorandum reads as follows: "In
4 accordance with the norms required to meet the requirements of a
5 fair trial and international rules are not the difficulties faced
6 by the Chamber to call Ben Kiernan to testify. The doubts on his
7 work are such that his work is of probative -- of low probative
8 value in Case 002/02 since the author cannot be called for
9 cross-examination." End of quote.

10 So, I would ask you to refer to what you pointed out in your
11 decision and in your memorandum of 2012 saying that that author
12 was quoted abundantly without any possibility being offered to
13 the parties to cross-examine him on his sources. So this poses
14 difficulties. There are persons who are perhaps more informed
15 than others.

16 [10.55.37]

17 When we -- but when we raise a number of criticisms regarding
18 Stephen Heder and Henri Locard, I do recall that -- that both
19 Locard and Heder worked, at a point in time, for this tribunal
20 and Heder criticizes the position and the manner in which the
21 evidence is analyzed or element -- that -- it wasn't yet
22 evidence, at the time, including testimonies and so on and so
23 forth.

24 When those criticisms were raised, we had a situation in which
25 Heder was full cognizance of the -- the materials. He worked for

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1 the prosecutor and at one time, with the Office of
2 Co-Investigating Judges, unless I am wrong, and we cannot say
3 that the documents authored by Heder are of low probative value
4 and all the more so as Steve Heder contributed significantly to
5 the translation of a number of documents and Ben Kiernan relies,
6 on several occasions, on the publications and the work of Steve
7 Heder.

8 [10.56.57]

9 To say that these are academic discussions doesn't mean that we
10 should say that these academic discussions are of low probative
11 value. These persons carried out in-depth fair research and
12 although we may want to talk of the -- the time lapse since the
13 time when those articles were written and the time when we came
14 to trial before this Chamber. Let me point out that a lot has
15 happened.

16 There's a huge body of evidence corresponding to contemporaneous
17 materials and documents of the Communist Party of Kampuchea.

18 These documents were available to the authors.

19 And as regards the Communist Party's policies, there is no
20 element -- there is no evidence on which we rely to say that
21 there was an intention to massacre the Cham.

22 Let me remind you of document E3 -- by Ben Kiernan -- /1593. Here
23 we have various materials relating to what Ben Kiernan said and
24 he says that the events at Krouch Chhmar should rather be likened
25 to a local repression.

1 [10.58.31]

2 And as regards discussions on Locard-Heder's work, in terms of
3 their academic value, we don't have any documents that would
4 corroborate the argument that prior to 1975 and up to 1979, there
5 had been a commitment on the part of the CPK to exterminate the
6 Cham, no desire at the summit, as well, to exterminate the Cham.
7 Another issue that arises is that the difficulties we faced in
8 this case is that when we examining -- examine the situation at
9 certain locations and the responsibilities of local officials,
10 we've heard a number of witnesses testified before this Chamber
11 and to link that with what happened at national level and say
12 that that was a directive of the CPK, it is clearly
13 unjustifiable.

14 [10.59.36]

15 Of course, you, the Chamber, will examine all the evidence and I
16 cannot engage in any discussions -- any legal discussions; it is
17 not timely at this documents presentation here. Let me recall
18 that we are legal -- we are legal experts -- we are lawyers,
19 there are issues regarding the definition of genocide. So these
20 are issues that we will discuss at one point or the other, but it
21 is not the right time during these documents presentations to
22 discuss that since we are still dealing with the evidence.
23 Another point that's worth focusing on and that comes up again
24 and that reminds us of what happens when an author decides to
25 write, not with a legal perspective, but with the perspective of

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1 a sociologist or a historian; we could say theses, and often we
2 say that there's no history, but there are historians, for
3 example, and an interesting example is to see that in the book by
4 Ben Kiernan, there is mention of Mat Ly. Let me find the
5 reference.

6 [11.01.07]

7 So mention is made of Mat Ly saying that in -- let me -- I will
8 find the reference.

9 Well, it is said that the order to kill the Cham, apparently,
10 came from Pol Pot; however, on the case file, we have his DC-Cam
11 statement and this is what is said at document E3/7821. This is a
12 segment that was not quoted by the Prosecution, at English, ERN
13 00441579; Khmer, ERN 00229131; and this is what is said.

14 The question put is: "Back then, did Pol Pot hate the Cham?"

15 Answer: "No, he did not hate the Cham; however, he said that we
16 were in the Revolution and that the burial depends on the
17 Revolution." That's a poor French translation, but it's an answer
18 to the discussion brought up by Mat Ly about how the Cham people
19 were buried. And Pol Pot said that the Cham had to be buried like
20 everybody else.

21 [11.02.46]

22 And when we come to how this is mentioned or interpreted in the
23 book by Ben Kiernan, and this is at -- I can't find the ERN. I
24 can't find the reference, but I'll get back to it.

25 But well -- another point -- another difference that's

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1 interesting to note is when we discuss -- when Kiernan discusses,
2 rather, Heng Samrin regarding the Krouch Chhmar rebellion -- and
3 this is in his book, E3/15393; French, ERN 00639036; English,
4 001150140; and Khmer, 00637773; and this is what Ben Kiernan
5 writes. He said, "Heng Samrin doubtlessly or has no doubts about
6 who was really responsible for the events. He heard Pol Pot ask
7 for the abolition of religion in 1975."

8 [11.04.20]

9 And when we see the footnote that he refers to in this excerpt,
10 this is what we can see in the footnote. So this was a discussion
11 with Heng Samrin in 1991 which states: "I did not receive any
12 direct orders from Pol Pot regarding this since the liberation
13 and those who would get orders from Pol Pot would say, "Angkar
14 Kang Leu (phonetic), the Supreme Organization, said so."

15 So here, we're -- we go from the supreme organization said so to
16 the people would take their orders from Pol Pot and I conclude --
17 and then we move on to Heng Samrin has no doubts about. So these
18 maybe are subtleties in the formulation, but this proves that
19 when we read the work of a historian and when we read assertions
20 and we want to use them, we have to know on what these assertions
21 are based and how they are being interpreted.

22 [11.05.21]

23 And, of course -- and this is maybe why there's so much academic
24 discussion about this, same facts and same statements may be
25 interpreted in very different ways in the same way as what

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1 happens before this Chamber with regard to the same documents
2 that are interpreted in different ways by the Prosecution and
3 then -- and by the Defence. So what's important is to go back to
4 the source and to see exactly what was said by each one.
5 And another observation that I would like to make in regard to
6 the events that were presented concerning the Cham -- and this is
7 the memoir of Ms. Farina So, document E3/4519, where here, it's
8 the same -- I have the same observation to make as earlier
9 regarding the thesis or well, this -- this is a memoir. This is
10 another thesis, a Master's memoir, and when we're speaking --
11 when we compare these two experienced authors, it's, of course,
12 problematic.
13 [11.06.38]
14 Here we're dealing with a student, only, who compiled opinions
15 and documents linked to the Cham and, in particular, she explains
16 in her segment on the methodology that she relied a lot on DC-Cam
17 interviews. So she relied on Ysa Osman's work and also compiled
18 excerpts from other authors, so it's very, very hard for us to
19 rely on the work of the student to prove that this is work done
20 by experienced researchers allowing us to convict on the basis of
21 this kind of work.
22 And the last point that I would like to discuss is that there are
23 a certain number of documents in here -- once again, we're not --
24 of course, we'll -- you will have to examine this in detail
25 during your deliberation and that we will examine more in detail

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1 when we make our final submissions. But in any case, the
2 Defence's case is the same. That is to say that we have no desire
3 to eliminate the Cham -- or that there was no desire to eliminate
4 the Cham because they were Cham as part of a national policy. Of
5 course there was repression. Of course people who were opposing
6 the regime or considered to oppose the regime were repressed, but
7 it was not because they were Cham. And regarding genocide, it's
8 an important issue.

9 [11.08.22]

10 Now, I'd like to move on to my observations regarding the former
11 Khmer Republic soldiers and here I'm going to try to go -- to be
12 quick, in particular, by making a generic observation saying
13 that, of course, I understood that when the Co-Prosecutor
14 presented his documents that he said that he was presenting his
15 documents essentially to object to Sao Van's testimony and to say
16 that instructions he received from Ta Mok regarding the fact of
17 not attacking all the former Khmer Republic soldiers were faulty
18 -- were not true. And so the Co-Prosecutor, to contradict this,
19 based himself on elements that we had already reviewed.

20 [11.09.14]

21 When we discussed the evacuation of Phnom Penh, regarding facts
22 that are disputed in Case 002/01 and that are now the subject of
23 a -- an appeal, so I'm not going to get back on that. So we'll
24 see what the Supreme Court will conclude regarding this, but in
25 any case, I'm not going to redo Case 002/01 again in front of you

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1 here now.

2 But there are a certain number of documents that are relative to
3 lists from S-21 -- and here again, we will review this in detail
4 when we get to that segment, so I'm not going to dwell on this
5 right now -- and I think, in particular, document E3/1539 or
6 E3/3937 -- 73.

7 [11.10.03]

8 I'd like to, however, stress that there are a certain number of
9 documents that were used to support the Prosecution's case that
10 correspond to documents and facts that are outside of the scope
11 of the trial and I have in mind the different decisions to reject
12 our different objections regarding the policy towards the former
13 Khmer Republic soldiers and officials, but I think it's important
14 to understand, in this presentation of key documents, that we, in
15 the Defence, believe that relying on documents outside of the
16 scope of the trial is without any sense and I'm referring to
17 document E3/19.3.125 and I'm referring to document E319.13.20,
18 and in document E3/9598, in document E3/2120. I'm referring also
19 to document E3/5637 and to document E3/832.

20 [11.11.19]

21 And, of course, I must also stress what I said at the beginning
22 of my submission this morning is that we still have an issue with
23 using WRIs coming from investigations that are not a part of this
24 case.

25 And another -- well, a few short observations regarding certain

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1 documents, in particular, there's an article or press articles
2 E3/604 of December 1975 on Ieng Sary's interview stating that --
3 and this is connected to the evacuation. Well, simply to remind
4 you that in this interview and in ERN - French, ERN 00599741 and
5 -- and in the following ERN in French, 00599742 and,
6 unfortunately, I do not have the ERNs in the other languages. Of
7 course I can get back to you about this, but -- in which Ieng
8 Sary only speaks about two high senior leaders who, apparently,
9 were executed; that is say, Lon Nol and Long Boret and does not
10 speak about any others.

11 [11.12.43]

12 So extracting from the statement the conclusion that there was,
13 generically speaking, a national policy aimed at eliminating the
14 former officials of the Khmer Republic is really extrapolating a
15 lot from Ieng Sary's statement.

16 Another point that's important here is because during this
17 interview, Ieng Sary, apparently, was questioned about the
18 existence of mass executions and this is what he answered. When
19 he was asked to comment the reports regarding mass executions of
20 refugees who had returned to Cambodia after the Khmer Rouge
21 victory, Mr. Sary said: "Most of those who left Cambodia had
22 committed illegal acts; therefore, their statements and their
23 information is not reliable." So this is how Ieng Sary spoke back
24 then, so it's important to place things back in their context.

25 [11.13.40]

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1 And another interview that was used -- and this is an interview
2 before the OCIJ, document E319.23.3.42. Aside from my issues that
3 I brought up earlier, I would like to refer the Chamber to answer
4 30 and 32 of this person who was questioned which proves that
5 this person did not know exactly how things happened, nor who was
6 who because at answer 32 and she says and I quote in English --
7 and this is an important element because if we're speaking about
8 what national policy meant and about what -- and about the power
9 invested in the zones and what was the real power that people had
10 based on their location, but when this person answers, she said
11 that Angkar was nothing else than Ta Mok -- and this is an
12 important element to consider when we examine the statement --
13 and this refers us -- or this brings us back to the necessity of
14 having people appear before the Court because when we read this,
15 we want to know more and we want to know where this person got
16 the information from and which are the elements that allow this
17 person to make such statements.

18 [11.15.12]

19 And another point, again, since we used the statement to say that
20 -- and, in particular, at question 30, and you can see that, to
21 say that there was a national policy targeting the former Khmer
22 Republic soldiers and officials and that people would have been
23 executed, but the last sentence that was not quoted by the
24 Prosecution at answer 30 which is: "Yes, indeed, these people
25 were sent to the West." As that person said here, "I do not know

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1 where they were sent."

2 So, here again, limited information and in -- limited information
3 that only appears in the written statements, so it's very, very
4 hard to go further to know exactly what -- where this person got
5 that information from and what happened to these Khmer Republic
6 soldiers who apparently were sent to the West.

7 [11.16.18]

8 We'd like to remind you that we heard people before this Chamber
9 who explained that some former people from the Khmer Republic
10 were sent to be re-educated.

11 And there are other press articles, in particular, E3/3393,
12 E3/3394 in which communication from the American Secret Services
13 is described, in particular, the cables that were intercepted by
14 US -- by the US Secret Service. I'd like to remind you a
15 contextual element that were -- this is the Cold War that the USA
16 lost the war because they were supporting Lon Nol and, of course,
17 back then, we can imagine that there was also propaganda and
18 communication work that was done that -- that was a major part of
19 what was done on each side.

20 [11.17.24]

21 Another point that was mentioned by the Prosecution -- it's
22 another document -- it's a document -- it's an interview by Ieng
23 Sary by Steve Heder, document E3/89, and this is a document that
24 was intended to support the fact that somewhere after 17 April
25 and before the 20th of April, there was a decision that was made

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1 concerning the former Khmer Republic officials. But I'd like to
2 draw your attention or the Chamber's attention to another excerpt
3 of this interview which -- unfortunately, I only have the French
4 ERN here; I apologize; I will find the rest later, but which is
5 at French ERN 00332690 and I'm going to quote slowly since I
6 don't have the translation -- which explains what Pol Pot and
7 Nuon Chea's relations were with So Phim. And this is what he
8 says:

9 [11.18.45]

10 "It was even -- Pol Pot and Nuon Chea, once they arrived at -- in
11 So Phim's zone, they were also afraid of him. I went there once
12 with them; this is why I knew. Even Pol Pot, himself, never dared
13 to go there because he was afraid of Ta Phim; therefore, in this
14 zone, So Phim could do what he wished, even kill, without asking
15 from the hierarchy's approval. So that was how things were
16 organized. This means -- or that means that each one was almost
17 independent which we could say was killing as one wished and
18 doing as one wished." End of quote.

19 And this excerpt is important because, with regard to the
20 Defence's case, is -- which is -- was there always -- was there a
21 consolidated movement or were there differences between zones or
22 were there differences between the different locations and -- and
23 was -- and this criminal enterprise is not so easy to prove
24 simply because there was tensions between the zones and there
25 wasn't necessarily absolute control from the Centre as is always

1 presented here.

2 [11.20.30]

3 Another point that I want to bring up is document E3/4627, which
4 is an interview of Eap Duch, and which was brought up by the
5 Prosecution. And in this document, it's important to remind that
6 the witness at -- and in -- that the witness indicates in the
7 segments indicated by the Co-Prosecutors that the witness said
8 that he attended no district meeting.

9 So this witness is deceased, however, but still like when people
10 make statements in writing, it's interesting to read the totality
11 of the statement and to see what were the sources of information
12 and, in this case, this witness confirmed that he attended no
13 district meetings and that he could not say what was said and who
14 ordered what and at what moment.

15 [11.21.31]

16 This is something that we can keep in mind, as well, when we look
17 at document E3/111 --319/19.3.125. Aside from the criticism that
18 was leveled against this document, I'd like to draw the Chamber's
19 attention to answer 18 of this witness. And the question that was
20 put to him was the following: "Who ordered these soldiers to show
21 up to present themselves; was it Chan or someone else?" And the
22 answer was the following: "I do not know where these orders came
23 from, but I know that it was Chan who announced this."

24 So here, once again, regarding the issue of -- of possible
25 corroboration of the national policy elaborated by the CPK

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1 against the Khmer Republic officials and soldiers, the witness
2 can only confirm that the local -- can only speak about an order
3 that was given at the local level, but he is not able to tell us
4 if this corresponded to higher instructions.

5 [11.22.42]

6 And another -- now, this is the reference I was missing regarding
7 document E38 -- E3/89 relative to Steve Heder's interview with
8 Ieng Sary and the excerpt that I quoted is at ERN in English,
9 00417608; and in Khmer, 00062464.

10 And now, we come to the end of my presentation and, as I said,
11 there are a certain number of documents and of things that we
12 will get back to. And, in particular, I'd like to refer to
13 Document E3/832 or Document -- or to reports or to statistics
14 from the security centres; these are elements that will be
15 discussed more in detail and more completely in the segments
16 regarding the security centres. But in any case, I wanted to make
17 these observations on the documents such as they were presented
18 by the Prosecution already.

19 And now I am done with my presentation for today, Mr. President.

20 Thank you.

21 [11.24.05]

22 MR. PRESIDENT:

23 Thank you, Counsel.

24 The Chamber will adjourn today's proceeding now and resume on
25 Monday, 29th February 2016, starting from 9 o'clock in the

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1 morning.

2 For the proceedings on next Monday, the Chamber will hear the
3 statements of harms and the sufferings by some of the civil
4 parties who claims to be suffered during the Democratic Kampuchea
5 regime in relations to the facts concerning the targeted groups,
6 namely, the Cham, the Vietnamese, and the former Khmer officials
7 of the Khmer Republic.

8 [11.24.58]

9 And soon the Chamber will proceed with the swearing in of two
10 investigators who have been accredited as investigators for the
11 Office of the Co-Investigating Judges by the letter of
12 accreditation on the 17 February 2016 by the Ministry of Justice.
13 For that information, all relevant parties and interpreters,
14 please remain in your booth to assist the Chamber for the
15 swearing in of the testimony.

16 And Court officer, please liaise with the investigators to be
17 sworn in soon.

18 Security personnel, you are instructed to take the two accused,
19 Nuon Chea and Khieu Samphan, back to the detention facilities of
20 the ECCC and have them returned to attend the proceedings on
21 Monday, 29 February 2016 before 9 o'clock in the morning.

22 The Court is now adjourned.

23 (Court adjourns at 1126H)

24

25