



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

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

05 January 2017  
Trial Day 496

<b>ឯកសារដើម</b>
<b>ORIGINAL/ORIGINAL</b>
ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Apr-2017, 12:10
CMS/CFO: Sann Rada

Before the Judges: NIL Nonn, Presiding  
Claudia FENZ  
Jean-Marc LAVERGNE  
THOU Mony  
YOU Ottara

The Accused: NUON Chea  
KHIEU Samphan

Trial Chamber Greffiers/Legal Officers:  
CHEA Sivhoang  
Roger PHILLIPS

Lawyers for the Accused:  
LIV Sovanna  
Anta GUISSSE  
KONG Sam Onn

For the Office of the Co-Prosecutors:  
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Lawyers for the Civil Parties:  
Marie GUIRAUD  
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VEN Pov

For Court Management Section:  
SOUR Sotheavy

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUISSSE	French
Mr. KONG Sam Onn	Khmer
Mr. KOUMJIAN	English
Judge LAVERGNE	French
The President (NIL Nonn)	Khmer

1

1 PROCEEDINGS

2 (Court opens at 1333H)

3 MR. PRESIDENT:

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

5 Today, the Chamber is hearing the response from the

6 Co-Prosecutors in relation to the key documents presented by

7 Khieu Samphan on the role of the Accused.

8 Chea Sivhoang, the greffier, please report the attendance of the

9 parties and other individuals to today's proceeding.

10 THE GREFFIER:

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

12 are present except Mr. Victor Koppe, the Defence <Counsel> for

13 Nuon Chea, advised that he is absent this afternoon for health

14 reasons.

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

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

17 been delivered to the greffier.

18 Thank you, Mr. President.

19 [13.34.45]

20 MR. PRESIDENT:

21 Thank you, Chea Sivhoang. The Chamber now decides on the request

22 by Nuon Chea.

23 The Chamber has received a waiver from Nuon Chea, dated 5th of

24 January 2017, which states that, due to his health, headache,

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

2

1 effectively participate in future hearings, he requests to waive  
2 his right participate in and be present at the 5th of January  
3 2017 hearing.

4 Having seen the medical report of Nuon Chea by the duty doctor  
5 for the Accused at ECCC, dated 5th of January 2017, which notes  
6 that Nuon Chea has a constant lower back pain when he sits and  
7 feel dizzy when he sits for long, and recommends that the Chamber  
8 shall grant him his request so that he can follow the proceedings  
9 remotely from the holding cell downstairs. Based on the above  
10 information and pursuant to Rule 81.5 of the ECCC Internal Rules,  
11 the Chamber grants Nuon Chea his request to follow today's  
12 proceedings remotely from the holding cell downstairs via an  
13 audio-visual means.

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

17 Now the Chamber hands over the floor to the Co-Prosecutors to  
18 respond to the key documents presented by the defence team for  
19 Khieu Samphan yesterday. You may now proceed.

20 [13.36.38]

21 MR. KOUMJIAN:

22 Thank you, Mr. President. Good morning, Your Honours, counsel.  
23 Yesterday, Counsel for Khieu Samphan spent much of her time  
24 talking about the policies of the leadership of the CPK and  
25 defending those policies. We think it makes a lot of sense for

1 Khieu Samphan's counsel to do that, because it was Khieu Samphan  
2 who facilitated those policies and who promoted those policies in  
3 his speeches, in his training of cadre.

4 One seeming misunderstanding, Defence Counsel seems to have, is  
5 they argue that the regime didn't intend that all of those who  
6 starved, that the regime wanted to build the economy and hoped to  
7 increase rice production. It has never been the Prosecution case  
8 that all of those who starved, that that was the conscious  
9 objective of the leadership of the Khmer Rouge.

10 [13.37.41]

11 Our case, our position is that they were simply indifferent to  
12 the suffering of individuals and of the people, that they treated  
13 people like they would farm animals. They exercised the powers of  
14 ownership. A farmer doesn't want his oxen to die, but doesn't  
15 care about his oxen's death the same as his children. That is the  
16 same as the policies of the CPK, which put the survival of the  
17 regime leadership and their reputation, their belief that they  
18 were at the forefront of revolutionary movements in the world,  
19 far ahead of the interests of the people of Cambodia and led to  
20 the suffering, the starvation and the enslavement of the  
21 population.

22 Counsel reiterated the point the Defence has often tried to make,  
23 saying, "Well, the Centre didn't have control because the zone  
24 secretaries were like warlords", quoting Philip Short. But if you  
25 read Philip Short in his entirety, his book, and particularly his

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1 testimony in Case 002/01, he doesn't say that the Centre did not  
2 control the policies. He says, in fact, at page -- the ERN in  
3 English is 00396491, in French 00639820, and there's no Khmer,  
4 that, "The zone secretaries, latter-day Mandarins, in the role of  
5 the provincial warlords, loyal to the CPK Centre."

6 [13.39.25]

7 So while he talked about them having considerable latitude in  
8 their own work, as many regional or commands -- governors of  
9 different provinces do, he indicated clearly and consistently in  
10 his book and in his testimony that these zone leaders followed  
11 the leadership of the Centre.

12 And in fact, the Constitution or the Statute of the CPK makes it  
13 absolutely clear what the chain of command is. In Article 27, it  
14 talks about the role of the army. And I'll actually ask my  
15 colleague to read it because I think there's a typo and the  
16 English is not grammatically -- does not make sense, so I think  
17 it's best to read the original of Article 27 in Khmer.

18 [13.40.25]

19 MR. PRESIDENT:

20 Please hold on.

21 You may now proceed, Anta Guisse.

22 MS. GUISSÉ:

23 Yes. I'm sorry to interrupt you, Mr. Co-Prosecutor. I would like  
24 to know the reference of the document that the Co-Prosecutor is  
25 referring to<, exactly>.

5

1 Is it in Philip Short's <book? Is it> in the ERN that he gave  
2 us, or is it in another document? Because I believe that in the  
3 <> responses, there was not any <information about any new>  
4 documents and, in any case, the responses are not supposed to be  
5 presenting new documents, <since> the Co-Prosecution <waived  
6 their> right to present documents <on> this <matter>.

7 So I would like <clarification on> the <passage, and to know  
8 which document the Co-Prosecutor will be quoting.>

9 MR. KOUMJIAN:

10 Thank you. My colleague was going to give that. That's E3/214.

11 I would comment that this position Counsel's just stated is  
12 entirely new, that we cannot present new documents that rebut  
13 Defence arguments.

14 Throughout the document hearings where Counsel for Khieu Samphan  
15 chose not to present documents, they presented new documents in  
16 their rebuttal, and we plan to do the same.

17 [13.41.48]

18 MS. GUISSSE:

19 I would like the Co-Prosecutor <to tell> us which new documents  
20 we have <used. In all of our responses, each time> we  
21 specifically <used> the documents <used by> the Prosecution. <So,  
22 not only is that not true as regards past practice, as well as in  
23 the way we responded to the Prosecution's documents, but on top  
24 of that, the Co-Prosecutors certainly> did not inform us <which  
25 documents they planned on using> for today's hearing <>.

1 [13.42.22]

2 MR. KOUMJIAN:

3 Your Honour, I don't have those off the top of my head, and we  
4 were asked to -- unlike the Defence, which was given a day in  
5 between, we were asked to present these documents the next day,  
6 so we've spent the morning and then evening preparing the  
7 documents.

8 I don't know why Counsel needs the documents, but we will state  
9 them as we go along.

10 MS. GUISSÉ:

11 Mr. President, the reason for which the Co-Prosecutor doesn't  
12 have at his fingertips the references of <any> responses that we  
13 may have <provided based on other documents > is because there  
14 are none. <Every time we responded to the Prosecution, we> used  
15 the documents <that they had presented, period. As concerns> the  
16 <one-day time> difference <> for preparation <of> our responses  
17 at the time, <at one time, a response <was provided in> the  
18 afternoon following the day that the Prosecution presented their  
19 key documents.

20 <In> any case, today the Co-Prosecutor is trying to <adjust his  
21 position, which was> that he didn't want to present <> documents  
22 <for this segment>. He <is doing so> in a way that is not  
23 correct. <And I object to new documents being presented. The>  
24 principle <was> that we respond to the documents that were put  
25 forward in the key documents presentation of other parties.

7

1 That's what we've always done.

2 I don't know why the Co-Prosecutor would have a privilege today  
3 that we <did not enjoy earlier.>

4 [13.44.03]

5 JUDGE FENZ:

6 Counsel, would you agree that, in your presentation, you have  
7 gone beyond what is a normal document presentation to the role of  
8 the Accused? You've basically started pleading, and we have  
9 listened to it and haven't interrupted you.

10 You have gone into policies, you have -- role of the Accused  
11 would have been something much narrower, and I think you,  
12 yourself, actually acknowledged that when, in the beginning, you  
13 warned us and said, "I would go far beyond what a more narrow  
14 reading of the role of the Accused implies".

15 [13.44.42]

16 MS. GUISSÉ:

17 I do not agree with you, Your Honour, Judge Fenz, that I went  
18 beyond what was in the segment. I simply recalled at the  
19 beginning of the hearing that, during other segments when we  
20 wanted to present documents related to policy, it was the Chamber  
21 <that> said that <those documents should have been presented>  
22 during the segment on the role of the Accused <>. I simply  
23 followed the Chamber's instructions <in this matter>.

24 And <notably, I recall -- I do not have a specific date off the  
25 top of my head, but> specifically on the <issue of the> work

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1 sites <>, when my colleague<, Vercken,> wanted to present <a  
2 number of documents> regarding policy, the Chamber <at the time>  
3 encouraged <the> Khieu Samphan's team <as well as> all the  
4 parties<, pointing out that it was better> to focus only on <the>  
5 segments <and that> general policies <> should <be reserved> for  
6 the segment on the role of the Accused<, in general>.  
7 So I didn't plead specifically. <We could take -- we could count>  
8 the number of minutes that I <spent talking and the number of  
9 minutes I spent citing documents. Citing documents was a very  
10 long exercise -- and> I know that it <is> extremely <fastidious>  
11 for <everyone. That was essentially the basis> of my  
12 presentation<. Again> I don't see why this would authorize the  
13 Co-Prosecutor to <circumvent> the practice of this Chamber<, and  
14 even go as far as presenting> documents that have <never> been  
15 mentioned <to> other parties <before. So I stand by> my  
16 objection.

17 MR. KOUMJIAN:

18 I would just clarify that none of these are new documents.  
19 They're all documents on the case file that have been referred to  
20 previously, but they are rebuttal.

21 (Judges deliberate)

22 [13.51.04]

23 MR. PRESIDENT:

24 The Chamber hands over the floor to Judge Lavergne to address the  
25 issues raised by Khieu Samphan defence team.

1 You may now proceed, Judge Lavergne.

2 JUDGE LAVERGNE:

3 Yes. Thank you, Mr. President.

4 The Khieu Samphan team is objecting to <Co-Prosecutors'> use of  
5 <> documents other than those which were in <> their key  
6 documents presentation. However, if the Khieu Samphan team <is  
7 referring> to a practice, I do not believe that the Chamber has  
8 <made a ruling on the issue and> specifically excluded the  
9 possibility of using <> documents <other> than those which were  
10 presented in the <> key documents hearing in their response. So  
11 in that sense, the objection <does not appear to be> well  
12 founded.

13 <It is true that in> practice, <> it is preferable for a party  
14 <that> intends to use documents to inform other parties in  
15 advance, but <in all fairness, obviously> the time limit <for  
16 responding to> key documents <presented by the Khieu Samphan  
17 team> was quite short. It was <this morning and this afternoon>.  
18 So it would have been quite difficult for the Co-Prosecutor to  
19 provide this <list> in advance.

20 [13.52.51]

21 <As such, since new documents will be used -- well,> documents  
22 <that are different from> those which were presented by the Khieu  
23 Samphan team<, the> Khieu Samphan team, if it <so>, may present  
24 its own comments regarding the additional documents used by the  
25 Co-Prosecutors in their response. If possible, and everything

10

1 depends on <when> the Co-Prosecutors will <conclude> <their>  
2 response, we would <like> to hear those comments this afternoon.

3 MR. PRESIDENT:

4 You may now resume your response, International Co-Prosecutor.

5 [15.53.37]

6 MS. SONG CHORVOIN:

7 Mr. President, I am now quoting document E3/214 at Khmer ERN  
8 <00053044>, English ERN 00184046 and French 00292933. This  
9 document is the statute of the CPK, and I am quoting <> Chapter  
10 6, <about Revolutionary Army,> Article 27 <, I quote:>

11 "All three categories of the Revolutionary Army of Kampuchea, the  
12 regular army, sector army and the militias, must be in every part  
13 under absolute leadership monopoly of the Communist Party of  
14 Kampuchea." <End of quote.>

15 MR. KONG SAM ONN:

16 Mr. President, I have a short proposal or request in relation to  
17 <presenting the new> document as stated by Judge Lavergne.  
18 <In> presenting of a new document <>, at least parties could be  
19 given 24 hours to review those document first. <If the time is  
20 short for the Co-Prosecutors,> the Co-Prosecutors should have  
21 informed parties of certain documents that they wish to present  
22 today, so that we can have <time to prepare ourselves and respond  
23 to> those documents. <So, we can access these documents.>  
24 Otherwise, it is difficult for us to respond to those documents  
25 presented <by the Co-Prosecutors>. Some documents are very

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1 lengthy and <running several> pages<, it is difficult to review>.

2 So my request is that the <presenting> documents should be <>

3 notified <the specified names and the exact page quoted> by the

4 Co-Prosecutor <>.

5 [13.55.53]

6 MR. PRESIDENT:

7 That is correct. This is the practice, identity number of the

8 document <> and <> the page numbers<, including ERN for the three

9 languages or at least two languages officially in use within this

10 court,> should be informed to the parties<.> This is the regular

11 practice. <This is the first point.>

12 <The second point is this,> the Chamber <has already ruled that,>

13 documents used in this Chamber should not consist of new

14 documents, and usually we allowed only the use of document with

15 the identification of E3 number.

16 The defence team for Mr. Khieu Samphan will have sufficient time

17 to respond to the key documents presented by the Co-Prosecutors

18 in an appropriate time, maybe this afternoon. At the end of the

19 session today, you will have time to make your observation on

20 those documents.

21 We, the Chamber, will allot proper time for you to respond to the

22 key documents <presented by Defence Counsel of Khieu Samphan

23 yesterday>.

24 You may now resume your response, <the Co-Prosecutors>.

25 [13.57.23]

1 MR. KOUMJIAN:

2 Thank you. Mr. President, Ben Kiernan was cited by the Defence in  
3 his book, E3/1593. He also talks about a fact that we've heard  
4 many times in this trial, and that is that, in 1975, the Centre  
5 created its own army, taking troops from the zones, which was not  
6 resisted by the zones. They gave up troops which shows, again --  
7 demonstrates the power of the Centre over the zones and, in  
8 particular, the quote from Kiernan is at page 94. In English,  
9 it's 01150044, in French 00638829 and in Khmer 00637499.

10 Further showing the influence of the Centre over policy, is the  
11 fact that the same policies we see carried out across Cambodia,  
12 across the DK, and that is the establishment of cooperatives,  
13 forcing people into cooperatives; forcing people to eat  
14 collectively; the abolishment of currency throughout the country;  
15 the abolishment of markets throughout the country; defrocking  
16 monks in all zones, in all areas of Cambodia; the prohibition of  
17 religious practices throughout the country; the arrangement of  
18 marriages, forced marriages, around the country; the division of  
19 the population into New People versus Base People, later modified  
20 into depositees, candidates, full rights. The use of biographies  
21 of the people, even sayings that we hear from one area of the  
22 country to the other such as "no gain in keeping, no loss in  
23 getting rid of them", "pulling the grass and the roots".  
24 We see around the country the same practices that people  
25 disappeared when they were called to study sessions. And often,

13

1 we even see practices like playing music to muffle the sound of  
2 killings in areas widely separated around the country.

3 [14.00.00]

4 To show the -- while it's true that the zone and regional  
5 leaders, the district level had much authority, that authority  
6 was delegated to them by the central leadership. So in fact, the  
7 most serious power that a state could hold or any individual  
8 could hold, the power to kill another person, we know from the  
9 famous document E3/12, the 30 March 1976 decision of the Central  
10 Committee. Where the Central Committee established that the right  
11 to smash inside and outside the ranks was delegated to the zone  
12 and, for the Central office, to the Central Office Committee,  
13 independent sectors to the Standing Committee and, for the army,  
14 to the general staff.

15 Another theme of the Defence argument was that the accused, Khieu  
16 Samphan, couldn't know about what was happening in the zones and  
17 the suffering of the people and the starvation of those in the  
18 countryside. But Norodom Sihanouk talks about his own travels  
19 with Khieu Samphan. And in one document -- actually, it was  
20 played in the closing arguments, but it's -- of Case 002/01.

21 In E3/3113R, beginning at 29.32, Sihanouk says:

22 [14.01.50]

23 "At the beginning, from April '75 until -- excuse me, from  
24 September '75 until April '76, I, as head of state, travelled  
25 through my country, through Cambodia, together with Khieu

1 Samphan. I saw that the communes were concentration camps. I saw  
2 how work went on day and night. When the moon shone, people could  
3 not sleep. Sleep was not allowed. People had to work.  
4 I saw what people ate, for there was no rice. The rice was mixed  
5 with maize and other things, beans, even leaves, the chopped-up  
6 stalks of banana plants. The diet was very, very bad."  
7 Philip Short talks about interviewing the King Father, and this  
8 is at page, in English, 00396541; in French, 00639894; about  
9 those trips. And what Sihanouk told Short is that, "My people had  
10 been transformed into cattle."  
11 [14.03.09]  
12 Nayan Chanda also talks about Sihanouk talking about that trip,  
13 and this is at English 00 -- this is E3/2376, "Brother Enemy"; at  
14 English, 00192413; French, 00237089; and Khmer, 00191564. He  
15 talked about how Sihanouk tried to get out of the car and he said  
16 that Samphan next to the chauffeur bolted out and told the Prince  
17 to go back to the car.  
18 The Defence for Khieu Samphan argued yesterday that the  
19 mistreatment of the New People was not a Centre policy; this was  
20 something that was done by rural people on their own initiative.  
21 But first of all, why were these New People sent into the  
22 countryside to share the meagre rations that existed there with  
23 those that had lived there before? They didn't go there of their  
24 own choice. This was, again, a Centre policy.  
25 As Khieu Samphan told the New York Times -- this is E3/687, a New

1 York Times article published 9 July 1982. In English, the ERN is  
2 00122280; in French, it's 00622450; and Khmer, it's 00651187. He  
3 said that millions of Cambodians had been sent out of Phnom Penh  
4 and into the countryside as a result of a collective decision.  
5 That's what the article that -- the article says Khieu Samphan  
6 acknowledged that.

7 And then it says:

8 "Had he joined the decision? Mr. Khieu Samphan chuckled dryly and  
9 replied in French, 'Yes, evidently'."

10 [14.05.27]

11 In the "Revolutionary Flag" issue, E3/742 -- it's the issue for  
12 April 1977. In English, the ERN is 00478505; in French, 00499763;  
13 and in Khmer, 00062997. Point 3, it indicates:

14 "It is imperative to clearly distinguish the elements in the  
15 cooperative and to not allow any further confusion."

16 And then it lists the three elements, full rights members,  
17 candidate members, depositors.

18 Khieu Samphan attempted to explain this policy in his book on  
19 considerations. That's E3/16, "Considerations of Cambodia's  
20 Recent History".

21 On the page that -- in Khmer, it's 00380469; in English,  
22 00498286; and in French, 00643892; Khieu Samphan writes:

23 [14.06.50]

24 "This was the principle of vigilance to prevent enemy agents of  
25 some countries from being able to bore holes from within the

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1 Kampuchean revolutionary state authority. So then it was  
2 imperative to grasp the history of each person. To make it easy  
3 for cadres and peasants to grasp the story of each person. The  
4 easiest thing was to differentiate them into Old and New People."  
5 Why? Why, Mr. Khieu Samphan, was it necessary -- if people were  
6 to be treated equally, why did the Centre mandate that there be  
7 distinctions between the people, between Base People and New  
8 People? Why did the "Revolutionary Flag", the top leadership,  
9 instruct later that the cooperatives be divided into full rights,  
10 candidate members and depositee members of the cooperatives?  
11 They created second-class citizenship for all of the New People.  
12 In their presentation yesterday, Counsel relied upon an article  
13 by Roel Burgler, I believe his name is, a book called "Eyes of  
14 the Pineapple". The Defence has often, both Khieu Samphan and  
15 especially Nuon Chea, relied upon this.

16 [14.08.16]

17 I would just like to point out that the book doesn't indicate any  
18 particular qualifications of the author, any original research.  
19 Apparently this was a dissertation, and if you look at his  
20 biography at the end of the book, it indicates he'd been a  
21 photojournalist for many years.

22 But Burgler does say many things that contradict Khieu Samphan  
23 and clearly show the responsibility of the Centre. He says on  
24 page -- it's in English only -- 001 -- this is E3/7333 --  
25 <01002224>. Burgler writes:

17

1 "The Centre, or at least the Pol Pot group, insisted that its  
2 policies were correct although it gradually realized something  
3 was wrong. It did not want to recognize the problem to be its  
4 insistence to implement a practically impossible policy. Instead,  
5 it blamed the failures on the people who were supposed to execute  
6 it. These cadre criticizing the Centre's line suggesting  
7 improvements or changes were traitors."

8 So the Centre insured that the policies, the failed policies,  
9 would continue partly by refusing to allow any dissent or any  
10 questioning of why these policies were failing.

11 [14.09.47]

12 Counsel also spent a lot of time yesterday talking about rice  
13 exports and pointing out that all countries want to export goods.  
14 It's good for an economy, it's normal, we certainly don't  
15 question that.

16 What we do question is, when people -- when your own people are  
17 starving, why do you export rice? What is more important than  
18 food to allow people to live?

19 The Central leadership certainly knew about the exports and they  
20 even bragged about it. In the "Revolutionary Flag" of November  
21 '76, E3/139; it said at Khmer, 00064966; in English, 00455284;  
22 and in French, 00491920:

23 "We must export hundreds of thousands of rice," -- excuse me --  
24 "hundreds of thousands of tonnes of rice during 1976. Our being  
25 able to export rice like this after a war casts a tremendous

1 influence in the international world."

2 Khieu Samphan himself, in a speech he gave 15 April 1977. This is  
3 document -- I believe it was referred to yesterday -- E3/201. In  
4 English, it's at 00419513; in French, 00612166; and in Khmer,  
5 00292805; Khieu Samphan said:

6 [14.11.45]

7 "This is a great lesson, a great experience. In 1976, we managed  
8 to solve our problems and fulfil the production plan. As a  
9 result, we have a good crop for 1977. Now we can feed our people  
10 a sufficient ration allocated by the state. We even have a  
11 surplus of grain for export."

12 Nuon Chea also bragged about the exports, 16 January 1977, in a  
13 speech he gave to the army. This is E3/191. The ERNs in English  
14 are S00004076; in Khmer, 00649947; and in French, <00623113>. The  
15 Number Two of the party said:

16 "Our people have enough to eat. We have reserved two bushels of  
17 paddy for each person in 1977. At the same time, we have a  
18 surplus of more than 150,000 tonnes of rice for export. This  
19 means we have fulfilled our 1976 plan."

20 [14.13.07]

21 Kiernan, in his book, at French, ERN 00639 -- this is E3/1593 --  
22 French, 00639160; English, 01150196; and Khmer, <00637932>; he  
23 talked about:

24 "Many refugees and survivors in Cambodia report that rice was  
25 being shipped to China despite the widespread starvation."

1 He said:

2 "In 1978, DK officials claim to have exported 100,000 tonnes of  
3 rice the previous year to rice-deficit countries such as  
4 Yugoslavia, Madagascar and Hong Kong."

5 Another document that is a favourite of the Nuon Chea Defence is  
6 Rob Lemkin's interview purportedly with Toat Thoeun. This is  
7 E3/10665. But what Toat Thoeun, who was the adopted son of Ros  
8 Nhim, he talked -- said that at ERN -- it's not in French, but  
9 the ERN, in Khmer is 01168475; and in English, 01156820. He said  
10 that Ros Nhim groaned and he said:

11 "This amount given to Angkar as the plan, the people ate  
12 porridge. There was not even rice husks to eat because they took  
13 the rice husk. There was nothing to mill."

14 And Toat Thoeun went on to say:

15 "This was the plan of the Centre Office. If we could not have  
16 enough rice for them they said we betrayed."

17 [14.15.09]

18 And Kiernan in the same book I've been quoting before, at page  
19 01150217; in French, 00639207; and in Khmer, <00637991>; he  
20 quotes a Base Person named Savy who said that:

21 "The Southwest Zone cadres had accused the Northwesterners of  
22 feeding us gruel when rice was plentiful, but they soon were  
23 giving us less than before."

24 And contrary to the position that Khieu Samphan's team argued  
25 yesterday, the Centre was not uninformed about what was happening

1 in the zones and the zones didn't always hide what was happening.

2 [14.16.04]

3 We have documents on the Case File such as E3/179, which is a  
4 telegram to the Centre by Office 560. We know that's the  
5 Northwest Zone. It's dated 29 May 1977.

6 In Part II, The People Situation, so it's right under that in all  
7 languages, it said:

8 "People's living standard is a shortage in many regions. Now  
9 people in Regions 1, 2, 4, 6 and 7 are the most needy. Most  
10 people at support bases eat thin rice soup, gruel, while those at  
11 front battles have, in some regions, two cans of rice per day."

12 Another telegram sent by Ros Nhim on 11 May 1978, just a month  
13 before he was arrested and sent to S-21, and this is E3/950,  
14 Point Number 2. He says:

15 "In the zone, shortage occurred in Regions 1, 4 and 5 of which  
16 the most shortage hit was Region 5, then Region 1 and Region 4.  
17 It was said that the entire four districts of Region 5 faced  
18 shortage."

19 And going down a bit:

20 "We found out that the rice given by Angkar would be running out  
21 by May 10, 1978."

22 [14.17.30]

23 So, we have Ros Rhim, even up to May 1978, informing the Centre  
24 of shortages in the Northwest Zone and the lack of food, but we  
25 know that the Centre continued to export rice to other countries.

1 Two other reports, briefly, from other parts of the country,  
2 E3/1060, is a report from Division 801. It's dated 29 March 1977,  
3 and at ERN English, 00574313; in French, <00529407>; and in  
4 Khmer, <00231374>; the report identifies three villages where,  
5 "People had been starving since February 1977, in Cooperative  
6 36." And it also talks about shortages in Cooperative 35.  
7 E3/918, is a telegram from Sae to Committee 870, dated 10 January  
8 1978. The second-to-last paragraph he reports that: "In Preah  
9 Vihear sector, the majority of places there is starvation."  
10 [14.18.59]  
11 So here we see that the Centre was not uninformed. We know that  
12 leadership travelled to the zones, including Khieu Samphan and  
13 Nuon Chea. They would have seen even more than what the King  
14 Father Prince Sihanouk saw about the condition and starvation of  
15 the people. They controlled how rice was distributed.  
16 One of the documents counsel used yesterday was E3/230, and in  
17 Point Number 7 we see the Standing Committee in a meeting where  
18 Khieu Samphan attended, shows Hem attended, decided on the  
19 distribution of rice to specific places. Ta Muth -- Meas Muth,  
20 Koh Kong and Sector 25 demonstrating the Centre's power over rice  
21 distribution.  
22 Another document I'd like to briefly comment on that the Defence  
23 used yesterday was E3/222, another Standing Committee meeting.  
24 This one, a 15 May 1976. The only item on that agenda was  
25 national defence matters, and I think it's very interesting that

1 we see Hem, Khieu Samphan, attending that meeting, showing that  
2 he was involved even in matters of national defence.

3 Now, towards the end of the presentation yesterday, the Defence  
4 argued that Khieu Samphan didn't know anything about S-21 during  
5 the DK regime and cites as evidence, they cited the statement of  
6 Ieng Thirith, where she also tried to claim she had no knowledge  
7 of arrests and of S-21. Claimed it was all an invention of the  
8 Vietnamese.

9 [14.20.57]

10 She says though that she and Khieu Samphan together watched  
11 reports about S-21 while they were in Havana in 1980, soon after  
12 the fall of the DK regime.

13 But Khieu Samphan in his book, E3/18, "Cambodia's Recent  
14 History", he tells a different story about when he learned about  
15 it. He claims it wasn't until he saw Rithy Panh's movie, "S-21  
16 The Killing Machine". That movie wasn't out in the 1980s, that  
17 was long, long after the trip to Havana.

18 So we appreciate that Defence has shown through Ieng Thirith that  
19 Khieu Samphan's lying again, we know, about not knowing about  
20 S-21 until he saw the Rithy Panh movie, because Ieng Thirith  
21 talks about watching reports about S-21 in Havana with Khieu  
22 Samphan.

23 [14.21.58]

24 But, of course, the idea that a person in the position of Khieu  
25 Samphan, the very inner circle of Pol Pot, the trusted, trusted

1 advisor of Pol Pot, the Head of State, a member of the cabinet,  
2 the commerce, a frequent attendee at Standing Committee Meetings,  
3 would be the only one in Cambodia who didn't know about arrests,  
4 is simply incredible.

5 One of the documents that the Defence cited was an interview with  
6 Kho Vanny, who apparently was a cadre in the social affairs  
7 department working with Ieng Thirith. Even in her statement,  
8 which is largely protective of Ieng Thirith, she talks about how  
9 she knew about arrests.

10 In English, at 00442654; in French, at 00614084; in Khmer, at  
11 00602364; she goes into some detail about the arrests of Koy  
12 Thuon and Thiounn, the vice-chairman of the commerce office, what  
13 people said about why they were arrested.

14 She talks on a few pages -- on the same page about the arrest of  
15 Hu Nim and says:

16 "Hu Nim and large-scale arrests of intellectuals from internal  
17 base and abroad."

18 She talked about those.

19 How does Kho Vanny know about the arrest of Hu Nim, one of the  
20 original three ghosts, former member of the parliament, a  
21 long-time associate of Khieu Samphan, and Khieu Samphan doesn't  
22 know about the arrest of Hu Nim? She also talked about Pang being  
23 purged after Vorn Vet was purged.

24 [14.23.57]

25 Again, these are people that, of course, Khieu Samphan knew. How

1 could Kho Vanny know about these arrests and Khieu Samphan has no  
2 idea about these arrests? It simply indicates he's been dishonest  
3 with you and with the Cambodian people throughout in claiming he  
4 was completely ignorant during the period of Democratic Kampuchea  
5 about the arrests and disappearances.

6 Even in a -- even the regional arrests were often reported to the  
7 Centre. In E3/232, it's Standing Committee Minutes, from 8 March  
8 1976, and at English, 00182628; Khmer, 00017116; and in French,  
9 00323932; it records that at this meeting leaders from the North  
10 Zone, Comrade Sreng; Sector 103, Comrade Hang; and Sector 106,  
11 Comrade Soth; came to report to the Party leaders in Phnom Penh,  
12 including Nuon Chea and Khieu Samphan, and reported on matters  
13 such as arrests and the large number of people ill at work sites.  
14 [14.25.24]

15 Another interview of Khieu Samphan, appears at E3/608. In Khmer,  
16 the ERN is <00635929>; in French, 00632566; in English, 00419841.  
17 The interviewer indicates that by some accounts 800,000  
18 Cambodians perished after the civil war. The allegation is that  
19 -- comprised individuals suppressed by the Khmer Rouge for  
20 political reasons and Khieu Samphan answered:

21 "Those traitors who remained in Cambodia have been executed."  
22 That was an interview with an Italian journalist.

23 In E3/628, another interview given a long time ago. I don't have  
24 the date in front of me, but it was the 1980s. In English, at  
25 00524517; in Khmer, 00709544; and in French, 00740914; Khieu

1 Samphan was asked:

2 "How many people were eliminated when you made your revolution?"

3 There he said:

4 "All I can say is the number is not more than 10,000."

5 [14.26.50]

6 So contrary to his more recent protestations that he knew nothing  
7 about arrests and killings, back then he tells a journalist while  
8 he's representing the remnants of the Khmer Rouge that only about  
9 10,000 were killed by the regime.

10 In his interview with Steve Heder, that Khieu Samphan gave in the  
11 1980s, E3/203; in English the ERN is 00424013; in French,

12 00434232; and in Khmer, <00385409>; Khieu Samphan indicates that:

13 "The Viet Minh had established agents to serve their Indochina  
14 strategies. Since then, year-by-year, those agents had gained  
15 more and more important positions. Some of them were in charge of  
16 major zones and they distorted our line. It was an attempt to  
17 attack us from the inside out. Nevertheless, we fought constantly  
18 against these attempts and defended them. Until 1977, 1978, we  
19 managed to deal with these people completely and brought order  
20 back to the country."

21 [14.28.14]

22 Who does that sound like? Sounds exactly like Nuon Chea and Pol  
23 Pot and their explanations for the killing of so many high-level  
24 cadre. This is Khieu Samphan giving that line, showing that he  
25 was well-informed of the Pol Pot line and the reasons for killing

1 higher-ups, high-level cadre in the country.

2 In fact, on the very next page of that interview, he's asked by

3 Heder:

4 "In 1975, what percentage of them were in the senior ranks of the  
5 Party and the Central Committee or the Standing Committee?"

6 Heder's saying what percentage of these were Vietnamese agents as  
7 Khieu Samphan was claiming they were.

8 He answered:

9 "There were many. Less than half in the Central Committee but  
10 nearly half in the Standing Committee."

11 [14.29.07]

12 So Khieu Samphan appears to know very, very well about the  
13 investigations by the security, by the Santebal, by S-21 and the  
14 claims that supposedly justified all of these killings; that all  
15 of these people killed were CIA or "Yuon" agents.

16 In E3/3169, Steve Heder article on the role of Khieu Samphan. I  
17 believe it was cited yesterday I believe by the Defence, but  
18 perhaps not, but in Footnote 50 of that article, Heder notes  
19 that:

20 "Of the 16 GRUNK and FUNK figures for whom Khieu Samphan had  
21 responsibility, nine were eventually executed."

22 Nine of the 16 people that Khieu Samphan had responsibility for  
23 in the FUNK and GRUNK governments were executed, yet he still  
24 claims to have no knowledge of executions or disappearances.

25 [14.30.23]

1 Philip Short, in the book cited by counsel, E3/9, in English, at  
2 00396574; in Khmer, at 01152652 (sic); and in French, at  
3 00639935; writes that:

4 "Confessions of treasons were needed for men like Ieng Sary and  
5 Khieu Samphan to read out at closed Party meetings proving that  
6 Angkar had as many eyes as a pineapple, that nothing could escape  
7 its vigilance."

8 So Short has Khieu Samphan reading out these S-21 confessions.  
9 These killings, in the Centre and in the zone, Khieu Samphan  
10 played a critical role in those killings because he promoted and  
11 defended the policies.

12 In his speech of 15 April 1977, the anniversary speech, E3/201,  
13 at English, 00419517; in Khmer, 00292813, and in French, at  
14 00612172; Khieu Samphan said:

15 "We must uphold our spirit of revolutionary vigilance at all  
16 times against the enemies from all quarters, both at home and  
17 abroad."

18 [14.31.59]

19 And in next year's speech, E3/562; the ERNs are in English,  
20 S00010563; in Khmer, 00249989; and in French, 00280379; Khieu  
21 Samphan told the many cadres, each of which themselves had  
22 individual power back in their zones and their districts, in  
23 their communes:

24 "All of us would like to solemnly pledge the following.

25 Number 5. To exterminate resolutely all agents of the

1 expansionists, annexationists, Vietnamese aggressors from our  
2 units and from Cambodian territory forever.

3 Number 6. To exterminate resolutely all CIA agents.

4 Number 9. To exterminate the enemies of all stripes."

5 So, Your Honours, we believe that the documents and the evidence  
6 in the case shows not only Khieu Samphan's knowledge of the  
7 killing campaign but his active participation, facilitation and  
8 instigation of that campaign.

9 Thank you for your patience.

10 [14.33.38]

11 MS. GUISSÉ:

12 Mr. President, just a specific comment about what happened today  
13 in this Chamber.

14 I think that no one, <at least> not the Khieu Samphan team, is  
15 <a> fool here <as regards the fact that under the guise of  
16 responding to our documents, the Co-Prosecution has just held a  
17 session to catch up on documents that they would have wanted to  
18 present on the role of Khieu Samphan. And> the most flagrant  
19 <evidence> of this <is that several times, the Co-Prosecutor  
20 indicated a certain number of documents --> I have at least three  
21 documents in mind -- <> saying <> that we presented these  
22 documents yesterday, <whereas> that's not true<; those documents  
23 were not among the documents we presented >.

24 But having said that, we must say that we are <clearly> not able  
25 to respond to the <remarks> of the Prosecution today, as <the

1 Chamber has invited us to do so right now,> and I will say very  
2 briefly why.

3 The <importance of ensuring that -- before a party makes  
4 submissions on documents <-- it should have the list of>  
5 documents and ERNs in advance <of> the presentation of <those>  
6 documents, is <to give the party an> opportunity to familiarize  
7 <himself or herself> with them and <and their context, and> to  
8 see what was written before and after. <It goes without saying  
9 that over these last> few minutes that have <elapsed, we have not  
10 been afforded> the opportunity to <carry out that task under  
11 these conditions>.

12 [14.35.08]

13 So <obviously,> to respond to the <invitation extended to us a  
14 while ago by> Judge Lavergne <>, it is impossible for us to  
15 <respond today, or make any remarks, however brief, on the  
16 documents that were presented by the Prosecution, which, once  
17 again, are far from being only responses to the documents that we  
18 presented. They were quite clearly a catch-up presentation on the  
19 role of Mr. Khieu Samphan>.

20 So, if the Chamber maintains its position to allow the Khieu  
21 Samphan team to <respond, since> this would be a <response in>  
22 rebuttal to the presentation <made by> the Prosecution <>, I  
23 would like to inform you that we are not able to do that today,  
24 and I would like to state that very clearly.

25 [14.35.57]

1 MR. KOUMJIAN:

2 Excuse me, if I could respond.

3 I was asked earlier if -- to cite any time the Defence had used  
4 documents that were not part of the Prosecution response --  
5 Prosecution's presentation, in their response. I did find one  
6 instance and this is at 11.20.18 on 30 April 2015.

7 Mr. Lysak notes that two of the documents that the Defence are  
8 using were not on the Prosecution list. The Prosecution didn't  
9 present them, but he said he had no objection to the Defence  
10 using those documents.

11 I would also point out that I understand it's very hard to  
12 respond instantly. You know, originally we were set to do our  
13 response at nine o'clock in the morning, we got the Defence list  
14 only sometime after five o'clock. I believe it was five-thirty  
15 yesterday before they sent us a large list of the documents they  
16 wished to present.

17 So we would not have had any opportunity, we certainly didn't  
18 have 24 hours, we would not have had any opportunity other than  
19 reading those after five-thirty and before nine o'clock to have  
20 it do us any good.

21 [14.37.24]

22 Further, if it would be of any assistance to the defence, I'd  
23 happily provide them with my outline which has all the documents  
24 and quotes that I used. It may help them whenever they wish to  
25 respond.

1 MR. KONG SAM ONN:

2 Thank you, Mr. President. I would like to make a brief  
3 observation that we cannot respond properly now. First, there are  
4 21 documents <raised> by the Co-Prosecutors and they are not in  
5 our list. <There> five documents <at most> are in our list that  
6 we presented yesterday.

7 It is therefore necessary for us to review almost all the  
8 documents presented by the Co-Prosecutors.

9 [14.38.26]

10 <For example, the> Co-Prosecutor made mention that Khieu Samphan  
11 travelled with the King <Norodom Sihanouk>, the late King,  
12 across the country, and I want to know how many documents pointed  
13 out about the trips of Khieu Samphan with the King to all parts  
14 of the country. Then how many trips that Khieu Samphan were made?  
15 <It could be just two or three trips during the DK period. It did  
16 not specify the numbers of trips and the exact place they went.  
17 So we need to examine what the activities were.>.

18 JUDGE FENZ:

19 I believe the Chamber has all the arguments to make a decision on  
20 when we will expect you to rebut.

21 MR. PRESIDENT:

22 The Chamber wishes to hear from you when is the appropriate time  
23 that you are able to make observation or respond to the documents  
24 presented by the Co-Prosecutors. <How much time do you need?> The  
25 <defence team for Mr. Khieu Samphan has> already responded <that

1 they could not make responses to their key documents presented>  
2 yesterday <>.

3 And as for the observations or the <last> responses of Khieu  
4 Samphan defence team on the documents presented by OCP today will  
5 be <heard> on Tuesday next week after the hearing of testimony of  
6 Voeun Vuthy.

7 By that time, <> you will be allowed to respond.

8 This is clear for you? You will be allotted <> time on <the 10  
9 th>. So is that appropriate for you to respond, on 10th?

10 [14.40.45]

11 MS. GUISSÉ:

12 Mr. President, that is what we had understood and we will use  
13 this time slot since you have accorded it to us.

14 Just a question, perhaps in parallel. Do we have any <further>  
15 clarification on the <schedule> for next week? <I am asking this  
16 question because> we know that we do have a witness on Monday,  
17 Voeun Vuthy <-- on> Tuesday morning<, actually>, but there was  
18 another witness <on standby who may> appear <as well>. Do we have  
19 any more information on that so that we can organize ourselves  
20 <for> the remainder of the week?

21 [14.41.28]

22 MR. PRESIDENT:

23 I thank you very much. The Chamber is not able to respond to your  
24 question now <because we have problems at the end of this key  
25 document presentation>. We are now awaiting the hearing of <the

33

1 last> testimony of some witnesses as requested by parties. There  
2 is a complicated procedure applied <from country to country and  
3 from state to state.>, so we are now working to deal with the  
4 procedures <and inform the parties by email as soon as possible.  
5 Likewise, if we cannot solve this procedural issue, we also  
6 inform the parties and issue the last ruling.>

7 It is now time for the adjournment.

8 The Chamber will resume its hearing on Monday 9 January 2017 at 9  
9 a.m.

10 On Monday, 9 January 2017, the Chamber is hearing <the testimony  
11 of the witness> 2-TCW-1042, in relation to the <the methods in  
12 preparing> the list of prisoners at S-21. Please be informed and  
13 please attend the hearing.

14 Security personnel are instructed to bring Khieu Samphan and Nuon  
15 Chea back to the ECCC detention facility and have them returned  
16 into the courtroom on Monday, 9 January 2017, before 9 a.m.

17 The Court is now adjourned.

18 (Court adjourns at 1443H)

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