



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

16 June 2017
Trial Day 503

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 19-Jul-2017, 11:02
CMS/CFO: Sann Rada

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

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Ms. CHEN	English
The GREFFIER	Khmer
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LIV Sovanna	Khmer
The President (NIL Nonn)	Khmer
Mr. SON Arun	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear the closing statement by

6 Parties in Case 002/02, and today the defence team for Nuon Chea

7 will present their closing statement.

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

9 and other individuals to today's proceedings.

10 THE GREFFIER:

11 Mr. President, for today's proceedings to hear the closing

12 statements, all Parties are present.

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

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

15 been delivered to the greffier.

16 Thank you.

17 [09.02.18]

18 MR. PRESIDENT:

19 Thank you, Ms. Chea Sivhoang.

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

21 The Chamber has received a waiver from Nuon Chea, dated 16 June

22 2017, which states that, due to his health, that is, headache,

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

24 order to effectively participate in future hearings, he requests

25 to waive his right to be present at the 16 June 2017 hearing.

2

1 Having seen the medical report of Nuon Chea by the duty doctor
2 for the Accused at the ECCC, dated 16 June 2017, which notes
3 that, today, Nuon Chea has a constant lower back pain and
4 headaches and feels dizzy when he sits for long and recommends
5 that the Chamber shall grant him his request so that he can
6 follow the proceedings remotely from the holding cell downstairs.
7 Based on the above information and pursuant to Rule 81(5) of the
8 ECCC Internal Rules, the Chamber grants Nuon Chea his request to
9 follow today's proceedings remotely from the holding cell
10 downstairs via an audio-visual means.

11 The Chamber instructs the AV Unit personnel to link the
12 proceedings to the room downstairs so that Nuon Chea can follow.
13 That applies for the whole day.

14 The Chamber now hands the floor to the defence team for Nuon Chea
15 to present their closing statement.

16 [09.04.18]

17 MR. SON ARUN:

18 Respected Mr. President, Mr. and Mrs. Judge and the public in the
19 courtroom, I am Son Arun, the National Co-Lawyer for Nuon Chea.

20 This week you heard from the Co-Prosecutors and Civil Party
21 Lawyers. Today and next Monday my team will respond to their
22 presentations and summarize and explain Nuon Chea's case.

23 This is a crucial occasion for Nuon Chea and Cambodia. As Nuon
24 Chea has long said he accepts moral responsibility for what
25 happened during DK. He's still participating in these

1 proceedings, as he believes that he has a responsibility to have
2 the Cambodian people understand what really happened.

3 [09.05.52]

4 It has been a long road to get here. The proceedings against Nuon
5 Chea have taken 10 years, and he is now already over 91 years
6 old. Many key witnesses have died or become unable to testify
7 since the Tribunal began. In short, our days to search for the
8 truth are numbered.

9 Indeed, since this is Nuon Chea's last trial, these hearings may
10 be our last chance to publicly discuss Nuon Chea's case for the
11 benefit of the Cambodian people and for the truth.

12 On 2nd May 2017, my team filed a 550-page brief outlining Nuon
13 Chea's case. Two hearing days are not enough time to properly
14 explain our brief. Therefore, we will focus only on a few points
15 that are particularly significant for us Cambodians or have been
16 strongly contested in the trial.

17 This morning my national colleague, Liv Sovanna, will set the
18 scene for our oral arguments by presenting the historical and
19 procedural context of our case.

20 My international colleague, Victor Koppe, will take the floor
21 next to present the core of Nuon Chea's case, which we call "the
22 crocodile".

23 [09.08.28]

24 What is "the crocodile", Mr. President? Well, Nuon Chea has often
25 said that this Tribunal only discusses the body of the crocodile,

1 not also its head and tail. The body of the crocodile are the
2 events of the DK. However, the crocodile's head and the pre-1975
3 root causes of those events and the crocodile's tail are the
4 consequences after the DK.

5 The key root causes are the existential threat that Vietnam posed
6 to DK's survival and the devastating U.S. bombings and civil war
7 with the Lon Nol regime that left Cambodia in ruins. These root
8 causes defined what happened during the DK.

9 As Victor Koppe will detail, the evidence shows that they led to
10 Vietnam recruiting internal collaborators from the top of the CPK
11 who attempted three failed coups. These coups would have
12 overthrown the CPK and the legitimate DK government, and although
13 they failed, they created chaos nationwide.

14 Mr. Koppe will also discuss how, during the DK, Vietnam also
15 carried out constant acts of aggression leading to its illegal
16 invasion of DK in December 1978.

17 [09.11.09]

18 (Short pause)

19 [09.11.35]

20 Vietnam then effectively occupied and controlled Cambodia, coming
21 closer to its dream of establishing an Indochinese Federation
22 where Cambodia and Laos became the umbrella states.

23 We will then discuss the CPK's national defence and security
24 policy, which is one of the four CPK policies charged. As my
25 national colleague, Liv Sovanna, will explain, the state of

1 emergency in DK meant that the policy was not only rational <>
2 and reasonable, but fully lawful.

3 Finally, we will explain that the implementation of the national
4 defence and security policy at the four security centres in this
5 case was also lawful. My international colleague, Doreen Chen,
6 will discuss Krang Ta Chan, Au Kanseng and Phnom Kraol security
7 centres. Victor Koppe will then conclude the first day of our
8 presentation by discussing the most infamous security centre of
9 all, S-21.

10 And that is my introduction, Mr. President. Thank you.

11 [09.13.44]

12 MR. PRESIDENT:

13 Please turn on your microphone.

14 MR. LIV SOVANNA:

15 Good morning, Mr. President, Your Honours, Parties, and everyone
16 in the courtroom.

17 I am Liv Sovanna. I am the national lawyer for Nuon Chea, and I
18 will present some background to our case so that you can all
19 consider our case in proper context.

20 The Co-Prosecutors say that our case is morally abhorrent.

21 However, we have never tried to deny the suffering of Cambodians
22 during the DK. Nuon Chea acknowledges that many Cambodians
23 suffered during the DK period, and I am sure all Cambodians in
24 this courtroom who have personal experience of DK like I do would
25 agree.

1 [09.14.56]

2 What Nuon Chea's team has done is our proper job as defence
3 lawyers. That job requires us, firstly, to ensure that this
4 Tribunal treats Nuon Chea fairly and in accordance with the law.
5 Secondly, we are here to hold the Co-Prosecutors accountable. The
6 Co-Prosecutors bear the burden of proof in this case. It is they
7 who must prove every allegation against Nuon Chea beyond
8 reasonable doubt.

9 As ministers of justice, the Co-Prosecutors also have to serve
10 the public interest and act objectively and fairly.

11 Unfortunately, as I will discuss later, they have not managed to
12 do so in this trial.

13 The other thing that we have always tried to do is ensure that
14 this Tribunal serves its purpose of finding the truth. We do this
15 because Nuon Chea believes that it is through a proper
16 understanding of the truth that justice will best be served. The
17 truth is what Nuon Chea hoped these proceedings would find. That
18 is why he has always been so disappointed by the Tribunal's
19 apparent disinterest in what the truth actually is.

20 [09.16.34]

21 This Tribunal has had a unique opportunity to clarify if what we
22 think we know of the DK was really true. Through its
23 investigations and trials, the Tribunal can take our
24 understanding from all the different stories and transform them
25 through detailed evidence into a greater truth. However, rather

1 than reaching more advanced understandings about the DK, this
2 Tribunal has, instead, simply repeated the dominant narrative.
3 This is a story we all already heard about what happened in the
4 DK. It was promoted in the early days by Vietnam, further
5 discussed by our government and repeated in most books, articles,
6 exhibitions and programs since then. This dominant narrative has
7 had a massive influence on this Tribunal. It seems to have been
8 the road map for the investigation of this case. As you heard
9 earlier this week, it is clearly also the case that the
10 Co-Prosecutors have presented.

11 [09.18.02]

12 Finally, when we look back at Case 002/01 and Case 001, we can
13 see that this Chamber was also clearly convinced by the dominant
14 narrative. This dominant narrative is precisely what Nuon Chea's
15 case responds to. For this reason, I will now spend a few minutes
16 describing what that narrative is.

17 According to the dominant narrative about the DK, the CPK was a
18 monstrous, cruel and paranoid regime, which had the ultimate aim
19 of harming the Cambodian people. My international colleagues call
20 this narrative the "Manichean narrative".

21 Since this phrase does not have an exact translation in Khmer, I
22 will explain it using one of our traditional Cambodian stories.
23 As our story goes, there was once a farmer who had a monkey and a
24 goat. One day, when a farmer was away, the monkey ate all the
25 food. The monkey knew that if the farmer found out, the monkey

1 would be in trouble, so it wiped all the leftover food on the
2 mouth of the goat to make it look like the goat ate all the food,
3 not the monkey. When the farmer returned, he saw the mouth of the
4 goat and, indeed, the farmer blamed the goat for eating all the
5 food.

6 So the Manichean narrative that we talked about is like the
7 farmer in the story. He was quick to accept a simple story
8 without investigating more deeply to see whether this was really
9 what happened.

10 [09.20.08]

11 The story that the Manichean narrative tells is too simple.
12 Sometimes it is inaccurate and sometimes it can be totally false.
13 At the end of the day, it presents everything in only two ways.
14 The goat was just evil and, according to it, everything that the
15 CPK did was pure evil.

16 I will leave it to our international counsel, Victor Koppe, to
17 explain later what the truth really is. What I will do is explain
18 how this Manichean narrative was created and became the dominant
19 story of the DK.

20 The Manichean narrative has four fundamental pillars. First,
21 there is propaganda, which Vietnam began even before the DK was
22 over. Vietnam presented the CPK as monsters who cut off
23 children's limbs and threw people to crocodiles. After Vietnam
24 invaded Cambodia in 1978, the propaganda grew louder. It aimed to
25 make Vietnam's invasion seem humanitarian, not aggressive, and to

1 make people think that the CPK had only a few leaders and forget
2 that the post-DK Cambodian government had been former CPK leaders
3 as well.

4 [09.21.57]

5 The propaganda continued for decades after the DK. It came not
6 only from Vietnam and Cambodian governments back then, but from
7 Vietnam's allies like the Soviet Union and East Germany. Its
8 influence continues even today, casting a shadow, for example, on
9 how the Tuol Sleng Genocide Museum has long presented the story
10 of S-21 and the DK.

11 The second pillar in the Manichean narrative are refugees. The
12 earliest stories about DK came from Cambodian refugees who were
13 upper and middle class Cambodians. Their stories about the DK
14 have remained the best known and have heavily influenced the way
15 we have understood what happened during the DK.

16 The third pillar in the Manichean narrative is the media. Since
17 the DK, the media has often been the one spreading the Manichean
18 narrative, and doing so without thinking critically and
19 cautiously. And by being told in the media, Manichean stories
20 suddenly seem more true.

21 [09.23.39]

22 Even when proof might come out later that a story told by the
23 media was not, in fact, true, once something is reported,
24 sometimes it takes on its own life and continues to grow into
25 what we think of as the truth anyway.

10

1 Finally, there is collective memory. Academics like Nancy Combs
2 say that memories about events are often changed by information
3 that people learn after the events.

4 Research also shows that this happens even more when there has
5 been a long time since the events and a trial like there is here
6 and when events are discussed a lot like they are here. This is
7 not to say that all witnesses are lying, although this does
8 sometimes happen. Sadly, there is more of a risk of such a
9 problem here at this Tribunal since civil parties do not have to
10 testify under oath.

11 [09.23.54]

12 And even if they are not lying, it is fundamentally hard for
13 people's memories to be certain after such a long time.

14 One of the biggest problems with collective memory here is that
15 it creates accepted truth about what happened in the DK. These
16 include, for example, that everyone with glasses was killed and
17 that children were killed by being thrown against trees.

18 However, like the rest of the Manichean narrative, this trial has
19 shown that things change quickly in the courtroom. For example,
20 these kinds of accepted truth have been revealed as false
21 memories, or claims without any objective proof. And this is the
22 problem at this Tribunal.

23 It is not enough that it is a myth we have always heard. The job
24 of the Tribunal, and our job as Parties, is to check if there is
25 really objective proof. If we are just repeating the same myth we

11

1 have always heard, then there is no point spending all this money
2 on a tribunal, as we will not get closer to really knowing the
3 truth.

4 [09.26.33]

5 At this point, it is important for me to mention that, although
6 this Chamber seemed convinced by the Manichean narrative in your
7 past judgments and although the Co-Prosecutors have the same
8 Manichean case as ever, the situation in this trial is now
9 strikingly different to what it has ever been before.

10 First, a few independent reports have criticized the way the
11 Chamber approached its judgment in Case 002/01. Second, this
12 Chamber has now decided that this will be Nuon Chea's last trial
13 ever. And third and most importantly, nearly seven months ago the
14 Supreme Court Chamber issued its appeal judgment in Case 002/01.
15 Mr. President, as you know, those seven Supreme Court Chamber
16 Judges, included four of the most senior members of your peers in
17 the Cambodian judiciary, and their judgment, frankly speaking,
18 surprised us, Mr. President.

19 [09.27.49]

20 As you will recall, Mr. President, the judgment, in fact,
21 acquitted Nuon Chea for a few significant charges. These included
22 the charges of extermination during the first phase of the
23 population movement and extermination and political persecution
24 during the second movement. More significantly, they included all
25 three charges against Nuon Chea in relation to the death of

1 former Khmer Republic soldiers and officials at Tuol Po Chrey,
2 namely, extermination, murder and political persecution.
3 To put things in the context of the Manichean narrative, Mr.
4 President, the appeal judgment was the first time that we have
5 seen any significant resistance to the power of the Manichean
6 narrative at all, and any signs that Nuon Chea's fate at this
7 Tribunal is not already decided. And while there were certainly
8 aspects of the judgment that did not make sense and seemed to
9 take into account other considerations beyond legal
10 considerations, the judgment on the whole was on a refreshingly
11 different level. In particular, the judgment made it clear that
12 the proper evidence standards are at this Tribunal, and how
13 different they are from what was used in Case 002/01.
14 [09.29.34]
15 As we discuss in our brief, there are two striking examples of
16 this difference in approach that are of special relevance to this
17 current trial.
18 First, the Supreme Court Chamber Judges found that the witness
19 Sam Sithy was not credible. Sam Sithy was a witness we had
20 requested to testify on appeal. It is helpful for me to give a
21 little bit of background in order to understand the Sam Sithy
22 example properly.
23 Sam Sithy is a police inspector these days, but during the DK he
24 was a child and claimed to have seen his family killed as a
25 result of being former Khmer Republic soldiers and officials.

13

1 More importantly, Mr. President, he was the only alleged
2 eyewitness your Trial Chamber had cited in your trial judgment in
3 Case 002/01 to the killing of former Khmer Republic soldiers and
4 officials.

5 [09.31.03]

6 However, he had not testified in the Case 002/01 trial, which was
7 why we asked for him to testify on appeal. As someone who was in
8 the courtroom when Sam Sithy appeared in court, I can tell you
9 that what was most striking about Sam Sithy was how much he seems
10 to love being in the spotlight and how general and weak his
11 answers were. He could hardly remember any key details at all
12 about a massacre, which supposedly killed many of his family
13 members and which he survived.

14 The details he did give just didn't feel true or consistent.

15 Ultimately, it was immediately clear to our team that his
16 testimony could not be relied upon at all.

17 Because of how things went with Sam Sithy in Court, we asked the
18 Supreme Court Chamber to investigate Sam Sithy's claims further.

19 This really upset the Co-Prosecutors. They said in their furious
20 response to our request that Sam Sithy was, "extremely

21 consistent, powerful and very credible" and that our position on
22 him was "desperate and ludicrous". However, Mr. President and

23 Your Honours, the key point for you to bear in mind is that in
24 their judgment, the seven Supreme Court Chamber Judges agreed

25 with us. They said that Sam Sithy's demeanour and story were

1 neither credible nor reliable.

2 [09.33.27]

3 Just like we did, they found him to be evasive on details and
4 general and vague. They also pointed out that the fact that Sam
5 Sithy had an article published about his experiences in Koh
6 Santepheap could suggest that he had a reason to repeat that same
7 story even if it might not be true.

8 Mr. President, the Sam Sithy example is important because it
9 shows judges doing exactly what they should be doing at this
10 trial. This is an emotional and very personal topic for many of
11 us. Sam Sithy was talking about the possible brutal murder of
12 many of his family members. It is tempting to be emotional about
13 it and unthinkingly believe his story and believe that it is
14 disrespectful or monstrous to question in it -- it in any way.

15 [09.34.42]

16 This is exactly what the Co-Prosecutor says about us whenever we
17 try to ask the difficult questions. Nevertheless, the Supreme
18 Court Chamber Judges did ask those difficult questions, just as
19 they should do in searching for truth. They looked at his
20 testimony point by point dispassionately, rationally and
21 carefully. And as emotional as Sam Sithy was in Court, the Judges
22 were not convinced and they were not afraid to say so in their
23 judgment.

24 Mr. President, I am sure that you, like our team, remember that
25 many versions of Sam Sithy have also testified in Case 002/02

15

1 describing stories that just don't feel quite right. As I recall,
2 you have warned, Mr. President, several of them throughout the
3 proceedings about telling the truth and answering questions
4 directly and properly.

5 What we can learn from our learned colleges on the Supreme Court
6 Chamber is that the right way to approach these -- to approach
7 these 'Sam Sithy's' and all evidence from witnesses and civil
8 parties in this trial is to be critical. We need to set aside our
9 passion and emotion and be careful. And in each case, we need to
10 ask if the person is credible or -- and reliable or not. This is
11 not easy, but this is how justice should be done.

12 [09.36.40]

13 The second example of the difference in the Supreme Court
14 Chamber's approach in its appeal judgment was its decision on
15 what it takes for this Tribunal to convict someone of murder.
16 What the Supreme Court Chamber said was that each and every fact
17 needed to be proven beyond reasonable doubt and each element of
18 each crime charged. If there was a break in the chain of
19 evidence, even a small one, a conviction was not possible.

20 It is important to recall that the Supreme Court Chamber felt the
21 need to clarify how murder convictions are reached because they
22 said that this was not the approach that this Trial Chamber had
23 taken. They said your Chamber had been mistaken, made general
24 findings without focusing on individual acts of killing, and this
25 forced the Supreme Court Chamber to review all the evidence and

16

1 have to make those murder decisions again.

2 [09.38.17]

3 Mr. President, since this is the last trial for Nuon Chea, unlike
4 in the past, we cannot count on there being another trial to do
5 things better. As we can see from these two examples I have given
6 from the appeal judgment, things have to change, and they have to
7 change now. Otherwise, it will be too late for Nuon Chea for
8 witnesses and civil parties and for the reputation and legacy of
9 this Tribunal.

10 I just mentioned a moment ago two examples of ways in which the
11 Supreme Court Chamber has clarified the rules of the game here at
12 the Tribunal when it comes to the quality and nature of evidence
13 required for proper convictions.

14 In our brief, we outline these new rules of the game at length.
15 Nevertheless, it is useful for me to summarize them here because
16 they are -- they're a radically different approach than what has
17 been adopted in this Chamber before. They are also the way that
18 we have structured our entire case.

19 Finally, and as I will explain, the Co-Prosecutors' case has
20 unfortunately failed to respect the new rules of the game at all.
21 Of course, Nuon Chea can only be convicted if the evidence proves
22 his guilt beyond reasonable doubt. If there is even any doubt,
23 Nuon Chea must be acquitted.

24 Importantly, proof beyond reasonable doubt is not about how many
25 pieces of evidence you have. The point is that Nuon Chea's guilt

1 must be the only reasonable conclusion you can reach.

2 [09.40.36]

3 Although it is a little bit technical, it is very important for
4 me to emphasize that, according to the Supreme Court Chamber, not
5 all types of evidence are equal. There are, instead, some
6 important rules to follow. Live evidence heard in the -- in Court
7 is always more relevant. Evidence of witnesses is stronger than
8 evidence of civil parties since witnesses take an oath and civil
9 parties do not. The Chamber always has to consider if a witness
10 or civil party is credible and reliable.

11 Written documents like interview records, civil party
12 applications and documents collected outside the Tribunal have
13 lower probative value. They are also not enough on their own to
14 establish a fact beyond a -- beyond reasonable doubt.

15 [09.41.51]

16 If a witness, civil party or expert does not testify in court,
17 then their interview record, civil party application or research
18 has lower value since it is untested. Similarly, documents
19 collected outside Court also have low probative value since they
20 are -- they were not collected as part of a judicial process.

21 If evidence is hearsay evidence rather than being something that
22 the witness actually saw themselves, then it also has low
23 probative value. We must also take care with the evidence of
24 people who may have been involved in the alleged crimes since
25 they may have an interest to blame Nuon Chea in order to shift

1 the blame away from themselves.

2 Finally, even if people appeared in court as experts, the value
3 of their evidence depends on their credibility, impartiality and
4 quality of the sources they used in their research.

5 It is these rules that the Chamber will have to respect in
6 issuing a proper judgment in this case. And with that in mind, it
7 is these rules that we have followed closely in our closing brief
8 in Case 002/02.

9 However, I cannot say the same thing for the Co-Prosecutors. It
10 is this point I will move to now in concluding my remarks.

11 [09.43.50]

12 Mr. President, we have been greatly disappointed by the
13 Co-Prosecutors' brief and closing oral arguments. They have shown
14 complete commitment to the Manichean narrative, telling a simple
15 story that is not subtle and simply seeks to paint the CPK as
16 black as possible in every single way.

17 More than this, however, we have been disappointed to see how
18 much the Co-Prosecutor ignored the new rules of the game and
19 failed in their role as ministers of justice.

20 The Co-Prosecutors' arguments show consistent disregard for the
21 proper standards of evidence that apply at this Tribunal. They
22 constantly misrepresent evidence by quoting evidence selectively
23 and featuring only the evidence in their favour without
24 considering the evidence on the whole. More troubling, they break
25 every one of the new rules of the game. For example, they seem to

1 think that it is the quantity of evidence that matters and that
2 if the majority of evidence proves the point, then the minority
3 of evidence that shows reasonable doubt is not relevant.

4 [09.45.23]

5 They do not show any understanding that different types of
6 evidence have different weights. For the Co-Prosecutors, for
7 example, it does not seem that there is any difference whether
8 evidence was heard live in Court or not. They constantly rely on
9 documents collected outside the Court, including documents that
10 are not and cannot be authenticated. They constantly cite
11 interview records even when people did not come to testify and
12 even when they are dead.

13 They constantly cite hearsay evidence as if it is on the same
14 level as eyewitness evidence when this is not the case.

15 They also rely heavily on the books of so-called experts, even of
16 people like Ben Kiernan who refused to come and testify at this
17 Tribunal.

18 Mr. President and Your Honours, although the time of closing oral
19 arguments is limited, we will present as many examples as we can
20 of the flaws in the Co-Prosecutors' case. What these examples
21 will show you is that, although the Co-Prosecutors use a lot of
22 passionate words, when you take them away, these words cover up
23 the fact that they have failed in their duty to prove their case
24 beyond reasonable doubt according to the proper evidence
25 standards that apply at this Tribunal.

20

1 [09.47.20]

2 We therefore urge you to be particularly cautious in relying
3 blindly on the Co-Prosecutors' case in your judgment. A judgment
4 like this is unlikely to survive on appeal before the Supreme
5 Court Chamber, Mr. President.

6 Finally, and as my colleague, Victor Koppe, will now begin to
7 explain, we will show you that a proper application of the law
8 proves that the evidence is insufficient to find Nuon Chea guilty
9 of any of the charges against him in Case 002/02.

10 I thank you very much, Mr. President, and I may now cede the
11 floor for my colleague, Victor Koppe.

12 [09.48.18]

13 MR. PRESIDENT:

14 Mr. Koppe, you may now proceed.

15 MR. KOPPE:

16 Thank you, Mr. President. Good morning. Good morning, Your
17 Honours, good morning, counsel.

18 I would like to begin today by building on my colleague, Liv
19 Sovanna's, discussion of the Manichean narrative.

20 Throughout this trial, the Co-Prosecutors have simply parroted
21 the Manichean narrative, and it is easy to see why. After so many
22 decades, the Manichean narrative has become the accepted truth by
23 the public, the media and a handful of Anglo-Saxon scholars and
24 journalists that wrote about DK. Indeed, as just mentioned, it
25 even is accepted by many of the Tribunal's Judges, despite a duty

1 to be independent and impartial. So by pursuing a case like this,
2 the Co-Prosecutors hope to avoid their responsibility to prove
3 their case and to shift it to the Defence. And so far, they have
4 gotten away with it, Mr. President, of course, notwithstanding
5 the many acquittals in appeal.

6 [09.49.50]

7 At this Tribunal, instead of it being the Co-Prosecutors' duty to
8 prove their case beyond reasonable doubt, it has always seemed
9 that there is an assumption that their case is true regardless of
10 the evidence, and it has always seemed that it has been for us,
11 the Defence, to disprove the Co-Prosecutors' case beyond
12 reasonable doubt.

13 However, although things may have worked this way in the past
14 trials, there are now, as my colleague mentioned and as we have
15 explained in our brief, new rules of the game. And accordingly,
16 the pressure is now greater than ever for this Chamber to finally
17 function like a proper court because in a proper court, the role
18 of the Defence is not to disprove the prosecutors' case. It is
19 the Defence role to make sure the prosecutors fulfil their duty
20 to present evidence that proves every allegation beyond
21 reasonable doubt.

22 [09.51.09]

23 If we the Defence can show that there is at least one reasonable
24 alternative way to interpret the evidence than that Nuon Chea is
25 guilty, then the Prosecution case fails. However, in a proper

1 court of law, the Defence would also have the right to carry out
2 its own investigations to build up evidence for its case. And as
3 we all know, in this Tribunal, we don't.

4 We have always been, quite incredibly, forbidden from conducting
5 our own investigations and we have had very limited opportunity
6 to give input into the Tribunal's investigation.

7 Mr. President, even more unfairly, there were no neutral
8 investigators. The Case 002 investigators were, indeed, devoted
9 fans of the simplistic, historically inaccurate, Manichean
10 narrative. Thus, despite their duty to neutrally search for the
11 truth, they were instructed instead to focus on finding
12 inculpatory evidence only and, as a result, for the past decade,
13 we have been faced with blatantly Manichean and extremely
14 unreliable evidence.

15 I have to say, Mr. President, day to day this is like fighting a
16 boxing match with both hands tied behind your back and it is,
17 indeed, beyond frustrating, but also beyond unfair. But even so,
18 where there's a will, there is a way. And in this trial, we
19 searched more extensively than ever in the public domain, in
20 foreign archives, as creatively as we could for witnesses and
21 documents that related to Nuon Chea's core case, the head and
22 tail of the crocodile.

23 [09.53.23]

24 We also questioned witnesses who the Co-Prosecutors had requested
25 to prove aspects of their case. And unfortunately for the

1 Co-Prosecutors, those witnesses often offered powerful evidence
2 supporting Nuon Chea's case.
3 Mr. President, in addition to this, the appeal in Case 002/01,
4 further opened the evidentiary door because the Supreme Court
5 Chamber at first actually seemed very interested in our case, and
6 also investigated further evidence on our request. And through
7 this investigation, British film maker Robert Lemkin gave the
8 Chamber interview transcripts that he had collected, together
9 with Cambodian journalist Thet Sambath, while the two had been
10 filming their documentary "Enemies of the People", that very same
11 film, Mr. President, that the Prosecution has so often showed
12 clips of yesterday and the day before yesterday.

13 [09.54.41]

14 And as I will discuss later, those interviewees, the people that
15 were interviewed by Thet Sambath and Robert Lemkin, offer -- they
16 offer explosive evidence, eyewitness accounts of treason and
17 collaboration with the enemy in the highest rank of the CPK. And
18 yet, despite their critical impact on this case, this Chamber,
19 quite incredibly, refused to admit most of these transcripts into
20 evidence.

21 In any case, Mr. President, we believe -- we strongly believe
22 that all of the evidence that we have found has allowed us to
23 corroborate Nuon Chea's case, core case, in more detail than
24 ever. And for this reason, we have devoted one-fifth of the
25 550-page closing brief to presenting it. One-fifth.

1 And this evidence that we explain in detail in our brief not only
2 creates substantial doubt over the Co-Prosecutor's case, but it
3 goes much further. It actually proves Nuon Chea's case and his
4 account about what happened before, during and after the period
5 of Democratic Kampuchea.

6 [09.56.22]

7 And in this process, it actually completely demolishes the
8 Manichean narrative and, indeed, rewrites history.

9 Mr. President, today I will present a very brief overview of our
10 client's core case, the crocodile, and respond to the
11 Co-Prosecutors' arguments against it. Mind you, Mr. President,
12 they have not talked about it one single moment during their
13 closing statement yesterday. Not one time did they actually try
14 to dispute that case.

15 But before I go there, Mr. President, before I explain that case,
16 there's one additional issue I would like to discuss with the
17 Chamber first, and that's the following.

18 [09.57.26]

19 It has come to our attention recently that in the last trial, our
20 closing brief, which we filed in English, was not translated into
21 Khmer until one and half years after the Trial Chamber had
22 already issued its judgment, even though we requested the
23 translation the very day we filed it. It was also not put on to
24 the case file until only just a few weeks ago.

25 In other words, Mr. President, the majority of the Judges in this

1 Chamber, the national Judges, including, of course, you, Mr.
2 President -- the majority did not have access to the details of
3 Nuon Chea's case when rendering the judgment.
4 Mr. President, a question to you. Are you not somehow offended by
5 this? And for lack of a better word, I find it a quite shameless
6 display of neo-Colonialism and it really should not stand. This
7 is your Court. It is a Cambodian Court, and Cambodian Judges are
8 the majority here. And I strongly feel that you should not be
9 relegated to the sidelines while the foreigners decide on justice
10 for your fellow Cambodians.
11 Remember that this institution is called the ECCC, which we --
12 which means, as we all know, the Extraordinary Chambers in the
13 Courts of Cambodia.
14 [09.59.26]
15 Actually, things worked quite differently in the Supreme Court
16 Chamber. All appeal briefs were translated into Khmer and
17 available to the Judges already by early June 2015, a full year
18 and a half before that Chamber issued its appeal judgment. And we
19 believe -- we strongly believe that this made a substantial
20 difference to the quality of their judgment. That judgment -- by
21 the way, the prosecutors never, ever mention that particular
22 judgment, Mr. President.
23 One example, my colleague, Liv Sovanna, mentioned that Chambers
24 decision on the witness Sam Sithy. We believe that the strength
25 of that analysis into the witness' credibility could only come

1 from a joint effort between Cambodian and international Judges.
2 And we have seen you, Mr. President, and your fellow Judges, your
3 fellow national Judges, react to witnesses throughout this trial.
4 It seems you have a much better sense for when a witness is
5 credible or not, and rightfully so. They are your fellow
6 countrymen and they share your language and culture.

7 [10.01.00]

8 As my colleague, Liv Sovanna, also said, the new rules of the
9 game require judgments to be rendered totally different here --
10 totally differently here, and it is now incumbent upon this
11 Chamber to make what we would like to call 'Sam Sithy style'
12 decisions for every person who appeared in this Chamber.

13 More generally, while we can present a general summary of Nuon
14 Chea's case in these oral arguments, this is just the tip of the
15 iceberg. Nuon Chea's case is incredibly complex and analyzes the
16 evidence in this case in a meticulous way, and we feel strongly
17 that it can only be properly understood and a proper judgment on
18 Nuon Chea rendered, by reading our brief in full.

19 That means, Mr. President and the national Judges, that you have
20 to read it and not leave it to the legal officers, however
21 qualified they might be. You actually have to sit down and read
22 all the arguments in our brief.

23 Therefore, Mr. President, while we already requested a Khmer
24 translation of our closing brief, we request or we, rather, urge
25 that the Chamber ensure that that translation is completed at

27

1 least a year before you deliver your judgment.

2 [10.02.54]

3 We also request that, if necessary, additional sources be
4 diverted to translation so that our brief can be translated in
5 good time. And if this is not done, then we feel this amounts to
6 a blatant violation of Nuon Chea's right to a fair trial and in
7 particular, of course, his right to present a defence. And if
8 this is not done, Mr. President, rest assured it will -- it will
9 be one of our very first appeal grounds.

10 Mr. President, we go a bit quicker than we anticipated. It is now
11 that I want to start talking about what we call the existential
12 threat of Vietnam. I'm very happy to proceed right now, but on
13 the other hand, this would also be a natural moment, maybe, to
14 break. But I leave it up to your wisdom.

15 MR. PRESIDENT:

16 Thank you, Counsel.

17 It is also a convenient time for a short break. We'll take a
18 break now and resume at half past 10.00.

19 The Court is now in recess.

20 (Court recesses from 1004H to 1027H)

21 MR. PRESIDENT:

22 Please be seated.

23 The Court is now back in session and the Chamber gives the floor
24 to Victor Koppe to resume the presentation.

25 You may now proceed.

1 MR. KOPPE:

2 Thank you, Mr. President.

3 As said before the break, I will begin with the most fundamental
4 issue in understanding Democratic Kampuchea, an issue that Nuon
5 Chea has particularly emphasized above all, and that is the
6 existential threat posed by Vietnam to Democratic Kampuchea.

7 [10.28.41]

8 In their brief, the Co-Prosecutors try to portray Nuon Chea as
9 some racist, referring to his so-called, "hatred and contempt for
10 Vietnam". They spin DK resistance to Vietnam's continuous illegal
11 attacks as DK encroachments on Vietnamese territory. They
12 ridiculously suggest in their brief that Democratic Kampuchea
13 deceived Vietnam by negotiating simply in order to, "gain time to
14 prepare forces for further aggression later".

15 Ultimately, the Co-Prosecutors paint the CPK as the paranoid and
16 irrational instigator of armed conflict with Vietnam. And as they
17 put it in their brief, and I quote:

18 "Pol Pot and his circle acted under the delusion that they faced
19 an imminent danger of domination from Vietnam."

20 [10.30.12]

21 And in contrast, the Co-Prosecutors portray Vietnam in their
22 brief as the peaceful, patient respondent. And according to them,
23 Vietnam was, quote, "extremely careful not to provoke the DK
24 regime" and "pursued a cautious and conciliatory policy to lower
25 the tensions in the conflict by moving from the battlefields to

1 negotiations." End of quote.

2 Mr. President, this is such a dumb and predictable argument. As

3 Liv Sovanna already -- Liv Sovanna already described, the very

4 first way in which the Manichean narrative was formed was through

5 Vietnamese propaganda, which tried to legitimize Vietnam's

6 blatantly illegal invasion of DK.

7 Clearly, that propaganda was successful, so much so that the

8 Trial Chamber also takes a similar view.

9 In the Case 002/01 judgment, for example, the Chamber seems

10 sceptical that Vietnam had shown aggression towards Democratic

11 Kampuchea at all. The Chamber also called Vietnam a country that

12 the CPK, quote, "considered a rival and threat insofar as it

13 purportedly sought to extend its own Communist interests in

14 Cambodia".

15 [10.32.07]

16 Mr. President, as we have set out in our brief and will summarize

17 here, nothing, nothing could be farther -- further from the

18 truth. Vietnam was an imperialist aggressor, plain and simple,

19 nothing but a proxy of the Soviet Union, according to a man who

20 died three weeks ago today, Zbigniew Brzezinski, the former U.S.

21 National Security Advisor. He called Vietnam "nothing but a proxy

22 of the Soviet Union", Soviet Union which would invade Afghanistan

23 only one year later and which invaded Czechoslovakia only 10

24 years earlier, Mr. President.

25 The proof that Vietnam was an imperialist aggressor is not only

1 in the fact that they brutally invaded and occupied Cambodia for
2 more than a decade, but in all the other actions they took along
3 the way, as I will discuss. And yet, their colonial designs for
4 Cambodia have been ignorantly whitewashed by this Tribunal in
5 just the way Vietnam would have hoped.

6 [10.33.50]

7 Now, of course, the Co-Prosecutors dismiss the threat of Vietnam
8 as a CPK delusion, but unfortunately for them, the CPK were by no
9 means the only people to identify that threat, that existential
10 threat.

11 The late King Father Norodom Sihanouk was always very vocal about
12 it. In 1963 already, he said that no Vietnamese leader would,
13 quote, "sleep peacefully until he has succeeded in pushing
14 Cambodia towards annihilation, having made it first go through
15 the stages of slavery."

16 The late King Father Sihanouk echoed this message in countless
17 meetings and documents throughout his lifetime. I refer you to
18 our brief.

19 For example, in letters he sent to the Vietnamese Prime Minister
20 Pham Van Dong, he said that Vietnam's invasion of DK was,
21 "colonization undertaken not out of altruistic motives, but in
22 the spirit of domination and conquest".

23 And the Co-Prosecutors also ignore that, as all Cambodians in
24 this courtroom and presumably also outside of this courtroom will
25 surely agree to, and that is that Vietnam has had ambitions for

1 Cambodia for at least 1,000 years which have been fulfilled over
2 centuries.

3 [10.35.52]

4 For example, Vietnam has annexed Cambodian territory, including
5 Champa and Kampuchea Krom. And it continues to covet territory
6 throughout Southeast Asia, for instance, in the South China Sea.
7 Now, Mr. President, the modern version of Vietnam's imperialist
8 ambitions under Vietnam's foremost leaders, including Ho Chi
9 Minh, Vo Nguyen Giap and Le Duan, was to establish an Indochinese
10 Federation. And this Indochinese Federation would merge Vietnam,
11 Cambodia and Laos into an economically and politically integrated
12 state within which Cambodia and Laos would have served as slave
13 states. I'm paraphrasing the late King Father here.

14 There's clear evidence that throughout DK, Vietnam concretely
15 sought to establish that Indochinese Federation. For example, in
16 1976 Vietnam's leader, Le Duan, said that, quote:

17 "Sooner or later, Kampuchea will be with Vietnam. The Khmers do
18 not have another way out." End of quote.

19 [10.37.34]

20 Defectors from Vietnamese leadership reported that Vietnam
21 trained its Party leaders and cadres that the Indochinese
22 Federation would be established by the end of the 20th century.
23 And throughout 1975 and 1976, Vietnam carried out numerous acts
24 of aggression against Cambodia. And despite what the
25 Co-Prosecutors would have you believe, the reality is that it was

1 Cambodia that sought to calm the situation and to negotiate.
2 Vietnam was the one disinterested in peace, and they used
3 propaganda to try to twist international opinion into believing
4 that it was DK that had started the aggression. And although
5 history on this subject has been rewritten today in our brief, as
6 I sincerely believe, at the time, even the New York Times did not
7 buy Vietnam's story, reporting that Vietnam, quote, "may be
8 planning to make an empire of the region". And of course, they
9 were right.

10 On paper, Mr. President, the CPK and North Vietnam and, of
11 course, later, the whole of Vietnam were officially allies, but
12 in reality, however, the CPK was constantly betrayed by its
13 so-called friend.

14 [10.39.28]

15 As Nuon Chea has said during the time of Democratic Kampuchea and
16 maintains today, the worst betrayal of all was when North Vietnam
17 sided with the United States at the 1973 Paris Peace Agreements
18 to force the CPK and late King Father Sihanouk to negotiate with
19 the Khmer Republic.

20 Of course, the CPK refused to do so. Late King Father Sihanouk
21 refused to do so, which then led United States carpet bombing
22 Cambodia for 200 days and nights as punishment, causing at least
23 20, maybe 30, maybe even 40 times more deaths than doing the
24 evacuation of cities in 1975.

25 For the interpreters, I'm leaving my presentation here a bit and

1 reacting to what was said by Mr. Lysak the day before yesterday.

2 [10.40.50]

3 If we take the new numbers of alleged deaths at S-21, new numbers
4 which we dispute, presented by the Prosecution, the United States
5 caused at least 10 times more deaths than the CPK allegedly did
6 in S-21.

7 Mr. President, no one was ever held responsible for this and, as
8 a matter of fact, one of the architects of these war crimes,
9 these atrocities, Henry Kissinger, is still alive today. Now,
10 that, Mr. Lysak, Co-Prosecutors, is what Nuon Chea rightfully
11 calls victor's justice.

12 Back, Mr. President, to imperialist Vietnam.

13 Witnesses have also testified about clashes between Vietnam, with
14 the Vietcong and CPK forces in the early 1970s over the border
15 demarcation and of the Vietcong or the Vietnamese stealing
16 military supplies meant for Cambodia.

17 Indeed, it is clear that Vietnam paved the way for the
18 Indochinese Federation from the very beginning. The Indochinese
19 Communist Party it established in Vietnam, Cambodia and Laos was
20 always Vietnam dominated and a political blueprint for what the
21 Indochinese Federation hoped to be.

22 And in addition, from 1954, many Cambodian Communists were given
23 safe haven in Hanoi.

24 [10.42.48]

25 The Co-Prosecutors claim in their brief that when these so-called

1 Khmer Vietminh returned to Cambodia, they were wrongly regarded
2 as internal enemies, but the truth is -- the truth is that they
3 were groomed to eventually become Vietnam's internal
4 collaborators. For instance, after their return from Hanoi, many
5 became liaison officers between the CPK and Vietnam who reported
6 to Vietnam rather than to their fellow Cambodians.
7 Maybe I should step away for a moment from my brief as well, Mr.
8 President, because it just strikes -- struck me that right now in
9 Washington, D.C. there's a big upheaval over mere contacts
10 between members of the Trump administration and Russians. It
11 seems that they don't talk about anything else.
12 [10.44.00]
13 Of course, the same situation would apply here. If you're talking
14 directly to your enemy, that is something of very grave concern.
15 Back to my brief, Mr. President.
16 Ultimately, and as Nuon Chea has said correctly, from 1960 to
17 1979, Vietnam employed every trick available to destroy the
18 revolution of the Kampuchean people and the development in
19 Cambodia. And key tricks they used were deceptive negotiation
20 tactics and manipulation of public opinion.
21 For instance, in 1967, Vietnam announced that it would respect
22 the Brevier Line border with Cambodia, which already favoured
23 Vietnam. And in May '76, however, it reneged on that promise.
24 Why? As its chief negotiator later revealed, because Vietnam had
25 learned that there might be petroleum deposits in that part of

1 the sea, and Vietnam, of course, wanted them.

2 Let me give you another example.

3 In February 1978, Vietnam proposed terms to end the war with
4 Cambodia. However, they did so knowing that DK could never accept
5 the unreasonable terms and that this would be a way to shift
6 blame for the conflict of the DK -- to the DK. Sorry.

7 And yet another example of Vietnam's deceptions was that Vietnam
8 would frequently make completely unfounded complaints of alleged
9 DK incursions into <Vietnam> territory just before it planned to
10 invade DK.

11 [10.46.09]

12 This apparently has convinced the Co-Prosecutors, who tried to
13 present the armed conflict as entirely DK provoked.

14 Now, Mr. President, it is natural, logical, that when a country's
15 survival is at risk, its policies will be defined by the threat
16 to its security. Is this the case in the world today anywhere?

17 This was, of course, the case during Democratic Kampuchea. And
18 documents on the case file show that the existential threat of
19 Vietnam was understandably at the top of the CPK's policy-making
20 considerations. And of course, it goes without saying that this
21 threat was the driving force behind the CPK's defence and
22 security policy; however, the same is true of the CPK's
23 establishment of cooperatives and work sites, which also focused
24 on the need to develop national capacity to ensure DK's survival.

25 [10.47.35]

1 Ultimately, the CPK stressed the need for Democratic Kampuchea to
2 maintain its independence and to strengthen its ability to resist
3 enemies. There's nothing strange about this, although the
4 Manichean narrative always tries to suggest that there is.
5 Independence and autonomy are simply cornerstones of what it
6 means for a country to be sovereign.
7 But in any case, DK was far from isolationist. Its foreign
8 policy, specifically, sought to develop international relations,
9 which it had with at least a hundred countries, in order to
10 minimize the threat Vietnam posed to it.

11 [10.48.28]

12 And Mr. President, speaking of other countries, it is important
13 to point out that the Co-Prosecutor's argument that the CPK was
14 delusional is undermined -- is further undermined by the fact
15 that many other countries spoke of the threat of Vietnam to
16 Cambodia and the region as well. For instance, numerous Chinese
17 leaders including, for instance, its one-time premier Zhou Enlai
18 had discussed the threat long before DK was even established. And
19 in 1978, its chairman Deng Xiaoping even publicly referred to
20 Vietnam as, "the hooligans of the East".

21 "The hooligans of the East", Mr. President, that's what we are
22 talking about.

23 And many other countries echoed these very serious concerns. For
24 instance, at the time, U.S. President Gerald Ford and Secretary
25 of State Henry Kissinger, who I just mentioned, discussed these

1 concerns, at length, with, for instance, Indonesian President
2 Suharto. Australian diplomats expressed similar fears, as did
3 diplomats of many of Vietnam's Southeast Asian neighbours from
4 Malaysia to Singapore to Burma to Thailand. And even Vietnam's
5 own allies had noticed Vietnam's growing imperialist ambitions
6 over Cambodia including the Soviet Union and East Germany.

7 [10.50.28]

8 And moreover, in July 1977, Vietnam succeeded in securing Laos as
9 one of its subjugated states. The two countries signed a
10 so-called friendship treaty linking their national construction
11 and defence which, in reality, gave Vietnam what China called
12 "overall control" over Laos.

13 And in 1977, having secured half of the Indochinese Federation
14 puzzle with Laos, Vietnam turned its full attention to Democratic
15 Kampuchea. And contrary to the Co-Prosecutor's claims, it was not
16 DK-led attacks that escalated the armed conflict with Vietnam
17 that year. It was really the opposite, carefully orchestrated
18 provocations by Vietnam.

19 It's important to -- to understand that -- that DK military
20 reports, contemporaneous reports, they never avoid mentioning
21 military actions from the Revolutionary Army of Kampuchea against
22 Vietnamese forces when they happened. They always write about
23 clashes and early reports, in 1977, contain no such mention
24 because they just didn't happen.

25 [10.52.07]

1 Several ranking military witnesses, who testified here in this
2 courtroom, agreed that aggression came squarely from Vietnam and
3 from Vietnam only. For instance, they detailed how Vietnam
4 attacked DK from all directions in March, April, and May 1977 and
5 they describe how Vietnam would pre-emptively evacuate their
6 people from an area they planned to attacked showing just how
7 premeditated their -- their attacks on DK were. And they also
8 make it clear that DK's policy was one of self-defence and
9 containment.

10 Mr. President, you might recall battalion commander Ieng Phan who
11 is now a general in the Cambodian Army right now as we speak.
12 Battalion commander Ieng Phan said that their forces could only
13 push Vietnam's forces back to the border and not cross it. And
14 Battalion commander Mak Chhoeun agreed, saying the strategy was
15 to defend the country, if necessary, through counterattacks.

16 [10.53.34]

17 By the way, Mr. President, these are two witnesses that you have
18 relied upon extensively in your Trial Judgment in Case 002/01.
19 What these witnesses say -- what these very credible and reliable
20 witnesses say, Mr. President, is of course, confirmed in what Son
21 Sen, himself, told Division 920 and I quote:

22 "We won't be the ones who make trouble, but we must defend our
23 territory absolutely." End of quote.

24 What is paranoid about that, Mr. President? I fail to see it.

25 Ultimately, there is simply no truth to the Co-Prosecutor's

1 argument and the Manichean narrative that the CPK imagined the
2 threat of Vietnam and that Vietnam was Cambodia's eventual
3 saviour. Vietnam worked carefully, persistently, and deceptively
4 before and during DK to rob Cambodia of its autonomy and
5 territory. And as I will discuss later, this came to a head in
6 late 1978, when Vietnam brutally and illegally invaded Cambodia
7 for a second time.

8 [10.55.22]

9 Mr. President, so far, I have focused more on Vietnam's external
10 efforts to secure control over Cambodia. However, what is
11 critical to Nuon Chea's case is that, in reality, Vietnam used a
12 double-edged sword, which used external efforts as only a
13 secondary strategy. The main strategy Vietnam adopted was an
14 internal one, recruiting people on the very top of the CPK to
15 serve as its collaborators who would overthrow the CPK and the
16 legitimate DK Government from within. And this, of course, makes
17 perfect sense when you consider how deceptive Vietnam was when it
18 came to Cambodia and how much it sought to manipulate
19 international opinion about what was happening. Internal
20 collaborators provided political cover and they could give
21 Vietnam what some would today call a plausible deniability. They
22 would disguise -- they could disguise what was, in reality, naked
23 aggression by Vietnam with the -- with the appearance of noble,
24 internal "freedom fighting".

25 [10.57.02]

1 In presenting -- Mr. President, in presenting the story, in our
2 brief, of the crocodile, as we call it, we try to make this
3 double strategy conceptually easier to understand by calling
4 Vietnam's internal collaborators' plan, the primary plan, Plan A,
5 and we refer to Vietnam's external efforts to what we call Plan
6 B.

7 Having already described Plan B, in part, the next part of my
8 presentation now, Mr. President, will focus on presenting Plan A,
9 which, of course, is the lesser known of Vietnam's two
10 strategies.

11 The Co-Prosecutors claim, in their brief, that although CPK
12 leaders like So Phim, Ros Nhim, Koy Thuon, Ya, Vorn Vet, Chou
13 Chet, Soth, Chan Chakrey, and Oeun, quote, "were accused of
14 conspiring with Vietnam and plotting against Pol Pot and Nuon
15 Chea". End of quote. There was no -- no evidence -- no actual
16 evidence of their treason. Instead, the Co-Prosecutors would have
17 you believe that these leaders such as So Phim and Ros Nhim, were
18 arrested and executed, quote, "because they were seen as a threat
19 to the absolute dictatorship of Pol Pot and his acolytes". End of
20 quote.

21 [10.58.57]

22 Yet again, the Co-Prosecutors reveal their unthinking acceptance
23 of the Manichean narrative and what is either astonishing naiveté
24 or deep disingenuousness because the reality is that there is
25 extensive evidence of their role as Vietnam's collaborators.

41

1 Yesterday, but also in -- in their brief, Mr. President, citing
2 frequently unspecific evidence, the Co-Prosecutors constantly
3 describe the CPK hierarchy and they clearly suggest that in the
4 CPK, information flowed smoothly from the bottom and orders
5 flowed smoothly from the top.

6 In truth, however, the CPK was always internally divided. On the
7 one hand, there were Pol Pot, Nuon Chea, Ta Mok, Son Sen, and
8 others; on the other hand, were many top leaders who worked to
9 overthrow the CPK and legitimate DK Government.

10 I will leave my brief, Mr. President.

11 [11.00.30]

12 You've noticed I haven't mentioned Khieu Samphan. What was said
13 yesterday, about Khieu Samphan being a member of the gang of
14 three, is completely ridiculous. Please do not pay any attention
15 to it and I'm sure my colleague will expand on this.

16 But having set aside this issue, let me -- let me move on by
17 saying that the cracks formed in the CPK, the cracks were formed
18 long before the CPK assumed power.

19 In his S-21 statement, Mr. President, I'm referring to it. Just
20 so that you know, this is E3/1604; it's a statement of Koy Thuon.

21 In his S-21 statement, North Zone secretary and DK commercial --
22 Commerce Minister and Central Committee -- Central Committee
23 member, Koy Thuon said that in 1973, he had already discussed the
24 creation of a breakaway political party within the CPK with
25 Central Committee member and Northeast Zone secretary Ya and CPK

1 stalwart, Keo Meas.

2 And Heng Samrin, if he had come to this courtroom to testify,
3 could also have spoken about internal conflict within the CPK. As
4 he told Ben Kiernan, in 1973, his East Zone forces battled Ta
5 Mok's Southwest Zone forces competing for control over Region 25.

6 This was 1973.

7 Cracks in the CPK were also widely perceived. Multiple cadres
8 describe the CPK's division into at least three factions based on
9 differences relating to ideology, foreign allies, or geographic
10 zones.

11 [11.02.48]

12 What these divisions have in common, Mr. President, is that Pol
13 Pot and Nuon Chea were only one group within the CPK. And, of
14 course, other countries noticed the split within the CPK as well.
15 Thailand noted it. China noted it and noted Vietnam's influence
16 within certain corners of the CPK. Vietnam spoke of a serious
17 fight within the CPK, while East Germany reported on an internal
18 faction, which it said was supported by Vietnam to "wrest power
19 from Pol Pot".

20 Finally, also the handful of DK historians and scholars agree
21 that factions existed from
22 even before the DK period.

23 [11.03.47]

24 In short, Mr. President, whatever the precise nature of the
25 divisions, it is clear that the CPK, that liberated Phnom Penh,

1 was not united then and would not ever be.

2 From liberation on the 17th of April '75, those cracks within the
3 CPK expanded. Witnesses describe how CPK forces even divided
4 control of Phnom Penh, itself, with the Central Market being the
5 epicentre of the different territories and, apparently, no one
6 dared move into other forces' zone for fear of being shot.

7 And even more dramatic evidence is provided by a high-ranking
8 Northwest Zone cadre interviewed by filmmakers Robert Lemkin and
9 Thet Sambath. Now, Mr. President, this is evidence that is not
10 admitted by the Chamber; however, it is evidence that we have
11 requested to be admitted and in accordance with your ruling, I'm
12 informing you beforehand that I'm citing this evidence to -- to
13 make our point, so that everyone in this courtroom knows to which
14 evidence I am referring.

15 For the greffier, it's F2/4/3/3/6.2, the Lemkin-Sambath
16 transcripts, ERN 01151713, listed in annex 1 of our brief.

17 [11.06.03]

18 And this is a bit technical, but let me now turn to the content
19 of this -- this evidence.

20 This former cadre told the Cambodian journalist Thet Sambath the
21 following. He describes how right after the CPK's first congress,
22 he attended a meeting in Phnom Penh in May 1975, with 300 leaders
23 from zones and ministries to set Vietnam's internal Plan A in
24 motion.

25 Attendees at the meeting included the Standing Committee member

1 and East Zone secretary So Phim and the Central or Standing
2 Committee member and Northwest Zone secretary Ros Nhim. So Phim
3 and Ros Nhim were joined by many others including then Division
4 170 commander Chan Chakrey and Deputy Minister for Propaganda Tiv
5 Ol.

6 [11.07.13]

7 At this crucial meeting right after the liberation, So Phim and
8 Ros Nhim spoke of a plan to jointly fight back against Pol Pot
9 and according to this witness, Chan Chakrey, who this witness
10 called the top commander, explained that the plan would unfold
11 secretly or failing that openly -- failing that openly and could
12 involve help from Vietnam.

13 Now, Mr. President, this evidence is clearly explosive and very
14 crucial to our defence, but it is also corroborated by an East
15 Zone messenger, Loek Sao, who told tribunal investigators about
16 the same meeting and described how Chan Chakrey said he would,
17 quote, "seize power back from Pol Pot on 17 April 1976." That is
18 E3/517.

19 Allow me to say, Mr. President, that it, therefore, defies all
20 reason that this Chamber would refuse to admit these film
21 transcripts from Rob Lemkin and Thet Sambath into evidence and we
22 can only see it as a -- as a baseless effort to protect the
23 Manichean narrative and, of course, as a profound violation of
24 Nuon Chea's right to present his defence.

25 Accordingly, and as I said a bit earlier, in our closing brief,

45

1 we have requested the Chamber to reconsider that decision and
2 with that in mind, I will, with your permission, therefore,
3 continue to refer to that evidence during my arguments, Mr.
4 President.

5 [10.09.26]

6 Now, due to time constraints, I cannot possibly detail every one
7 of Vietnam's top internal collaborators. We lay out the extensive
8 evidence for this in our brief and the key point we make is the
9 vast extent of the internal rot within the CPK.

10 Many Standing and Central Committee members were involved; many
11 top DK ministers, many leaders of the Centre divisions, all zones
12 apart from the Southwest. And following the first wave of
13 arrests, the internal collaborators were succeeded by people who
14 maintain top positions in the government and military today in
15 Cambodia including Prime Minister Hun Sen, National Assembly
16 Chairman Heng Samrin, Chief of the Military Pol Saroeun, and many
17 others.

18 [11.10.36]

19 There's also significant evidence in our brief linking the
20 internal collaborators to each other, even when their roles in
21 the CPK would not give them reason to work with one another. Most
22 emblematically of all was the close relationship between the Plan
23 A masterminds, So Phim and Ros Nhim, who even went so far as to
24 have their children marry, signifying the strength of their
25 alliance, but also, of course, more importantly, giving them the

1 perfect cover story to regularly visit and write to each other.
2 And according to Ros Nhim's biological foster son, the late
3 witness Toit Thoeurn, who testified before the Supreme Court
4 Chamber and who, unfortunately, died before he would appear
5 before you, this Toit Thoeurn said that "Ros Nhim had held
6 meetings with So Phim and they contacted each other already and
7 split form the Party", with plans to organize forces to resist.
8 This is evidence that Toit Thoeurn gave to Thet Sambath and
9 Robert Lemkin, but it is evidence that you have admitted because
10 he came to testify before the Supreme Court Chamber. That
11 evidence is E3/10665.
12 Ultimately, Mr. President, the evidence suggests that Vietnam's
13 internal collaborators established a party, known as the
14 Kampuchean Workers' Party. And although the CPK eventually
15 uncovered and foiled their plot by 1978, the fact that Vietnam
16 was able to establish a new party in Cambodia immediately in
17 January 1979, suggests that they built on what remained of that
18 breakaway party as a pre-existing structure.
19 [11.12.55]
20 Let me now turn to the activities of Vietnam's internal
21 collaborators during the DK period. The evidence shows, clearly,
22 that from the moment the DK was established, Vietnam's internal
23 collaborators wasted no time implementing Plan A by trying to
24 bring down the CPK.
25 Witness testimony details four equally daring attempts to

1 assassinate Pol Pot between 1975 and 1976, attempts that trace
2 back not only to So Phim, but also to Chan Chakrey.
3 Ieng Sary also described a failed East Zone attempt to seize
4 Phnom Penh radio station. And media reports at the time also
5 detailed various border skirmishes between the CPK's forces and
6 defectors in multiple zones along the Thai and Vietnamese border.
7 Now, let me start by discussing Phase 1, as we call it, an
8 overview of the 1976 coup d'état attempt. When these early
9 attempts failed, the internal collaborators ramped up their
10 efforts. They implemented, what we would call, the first major
11 phase of Plan A which had two features -- I'll slow down, a
12 little bit, Mr. President; I understand I'm going too fast -- two
13 features of the 1976 coup d'état. First, on the 25th February
14 1976, an explosion in Siem Reap, in autonomous Sector 106,
15 destroyed a munitions depot. A defector from the autonomous
16 sector told journalist Anthony Paul that the day before the
17 explosion; the autonomous sector secretary, Soth, had held a
18 meeting with 30 leaders from the region. They spoke of creating a
19 rebellion, quote, "that would allow people to go back and work.
20 The thought was to start a revolt." End of quote.
21 This explosion has never been claimed by any group and its source
22 still remains unknown, even to Nuon Chea. Given the timing
23 between the meeting and the explosion, it appears likely that it
24 was, indeed, an effort by Soth to start that rebellion. Indeed,
25 defectors from his region had spoken of frequent meetings to plan

1 and prepare for rebellion.
2 Giving the mystery that has persisted for decades and the
3 interesting leads offered by various defectors, we requested this
4 Chamber to investigate further; however, not surprisingly that
5 request was rejected. Therefore, we have also, in our brief,
6 requested to reconsider that decision and to open that
7 investigation.

8 [11.16.31]

9 And the second aspect of the 1976 coup d'état took place six
10 weeks later. On 2 April 1976, the day that the late King Father
11 Norodom Sihanouk was going to announce his resignation as DK Head
12 of State, grenades were thrown outside the royal palace. A
13 Division 170 deputy platoon chief Yim Sambath was arrested and
14 admitted to the incident.

15 For your information, Mr. President, I'm referring to the S-21
16 statement of Yim Sambath, E3/7397, and, of course, I refer to
17 E457/6/3 where we argue that there is clear and consistent
18 evidence that Yim Sambath was not maltreated at S-21 and that,
19 therefore, we should be allowed to use that evidence.

20 So Yim Sambath admitted to that incident and he explained that
21 his network included members of key ---

22 [11.17.55]

23 MR. PRESIDENT:

24 Counsel, we have instructed the Parties not to use
25 torture-tainted evidence and we also provided the Parties the

1 reasons why those -- why this kind of evidence shall be -- shall
2 not be used.

3 I give the floor now to Judge Lavergne.

4 JUDGE LAVERGNE:

5 Yes, just a clarification. I think that what the Chamber is
6 asking of the Parties is if they intend to make reference to
7 statements made at S-21 that they indicate that the Chamber has
8 already taken a decision and said that there existed a <serious>
9 risk that <> this evidence was obtained under torture. That's
10 what is <stated> in our memo E457/7 and we did not hear that
11 <from> Mr. Koppe <since> I understand that he intends to use the
12 confessions of Yim Sambath.

13 [11.19.10]

14 MR. KOPPE:

15 Yes, Judge Lavergne, how I understood the decision of the Chamber
16 is that we are allowed to use the content of S-21 statements
17 under certain strict conditions. You might recall that in both
18 instances the statements of Koy Thuon and Yim Sambath, we made
19 elaborate arguments that the evidence is very clear that they
20 were not maltreated in any manner and that, therefore, these
21 statements could be referred to in the closing arguments.

22 I understand that we were not allowed, at the time, to confront
23 witnesses with these statements, but now there's a different
24 criterion to be applied and that if we properly announce it, we
25 are in the position to refer to S-21 statements.

50

1 Just for your information, there's only two that we will be
2 referring to, as I said, Yim Sambath and Koy Thuon.
3 So that's the background, Mr. President. I think that's how we
4 should understand the decision.

5 [11.20.39]

6 (Judges deliberate)

7 [11.22.08]

8 MR. PRESIDENT:

9 The Chamber has instructed the Parties, on several occasions,
10 regarding the use of evidence derived from torture and in our
11 guidelines, it is also clearly stated that the -- such document
12 that you, Counsel, are attempting to use is evidence derived from
13 torture. All the confessions made at all security centres
14 including S-21 are considered evidence derived from torture.

15 MR. KOPPE:

16 I'm not sure if that is actually the situation.

17 JUDGE LAVERGNE:

18 Perhaps, there's an issue with <the> interpretation. <In any
19 case,> <based on> what I heard in French>. I believe that
20 <what> the Chamber <wants to say is> that there is a serious risk
21 that the confessions <were> obtained under torture.

22 [11.23.31]

23 MR. KOPPE:

24 Yes, that is, indeed, your ruling; however, you say -- let me
25 read what the Chamber has said. "The Chamber recalls" -- that's

1 E457/7 under point 6.

2 "The Chamber recalls its finding that a real risk exists that
3 torture--"

4 MR. PRESIDENT:

5 Please, refer to the document number slowly so that the
6 interpreter can follow you as well as this is for the interest of
7 the general public who are following the trial.

8 [11.24.06]

9 MR. KOPPE:

10 Of course, Mr. President, it's a document dated 7 June 2017,
11 E457/7 and in paragraph 6, it says the following -- and I'll wait
12 for the translators to catch up and find the Khmer text. It says:
13 "The Chamber recalls its finding that a real risk exists that
14 torture was used at S-21 and other security centres to obtain
15 confessions. Any Party seeking to rely upon such evidence may
16 rebut this preliminary determination, in particular, upon a
17 showing of specific circumstances negating this risk. For this
18 reason, during evidentiary hearings, the Chamber did not permit
19 the use of confessions which were obtained at security centres
20 including S-21, absent a showing that the statement was not
21 torture tainted."

22 Then you go further, Mr. President.

23 "As the Accused in this case are charged with the crime of
24 torture, the Chamber must ultimately apply a different and higher
25 standard of proof in its verdict in order to determine whether

1 torture occurred. The preliminary determination by the Chamber
2 that there is a real risk that evidence was obtained by torture
3 may differ (of course, may differ) from its final conclusion
4 based on the standard for conviction on the allegations of
5 torture considering the totality of evidence available in -- at
6 the judgment phase."

7 [11.26.08]

8 And then -- that's the point that I was making -- in number 8,
9 you say:

10 "As the evidentiary proceedings have concluded, there is no
11 longer a danger that inter alia witnesses and civil parties could
12 be improperly influenced by torture-tainted evidence; therefore,
13 the Chamber will allow a Party, where it considers it necessary,
14 to reference such information during these closing statements to
15 do so."

16 JUDGE LAVERGNE:

17 And the next sentence, please.

18 MR. KOPPE:

19 "The Party shall, however, indicate prior to discussing any such
20 document that the Chamber has attached a presumption that the
21 evidence to be discussed was obtained by torture. This shall
22 serve to provide fair notice of the nature of the evidence
23 discussed, absent which the Parties and public could be misled."

24 [11.27.01]

25 Therefore, Mr. President, I referred you to our arguments in

1 E457/6/3, in which we extensively argued the reasons why it is
2 completely clear that both Koy Thuon and Yim Sambath, whom I just
3 referred to, were not maltreated in any way.

4 Of course, I can repeat all those arguments, but I presume them
5 to be well known by the Chamber, so hence, my reference to the
6 S-21 statements of both Koy Thuon and Yim Sambath in order to
7 make our argument.

8 [11.27.59]

9 (Judges deliberate)

10 [11.28.29]

11 JUDGE LAVERGNE:

12 Counsel Koppe, I think that the necessary clarifications have
13 been <made> and, therefore, we invite you to continue.

14 MR. KOPPE:

15 Thank you, Judge Lavergne.

16 As I said, Mr. President, after Division 170 deputy platoon chief
17 Yim Sambath was arrested, he admitted to his involvement in the
18 incident and Yim Sambath explained in E3/7397 that his network
19 included members of key Vietnam collaborator Chan Chakrey's
20 Division 170, among others. And he also spoke of how the grenade
21 incident was the latest in a series of activities dating back to
22 1968 which intended to "fight the revolution".

23 For the record, we also requested an investigation into evidence
24 from defectors that could have shed light on Chan Chakrey's
25 treasonous activities; however, also this request was refused by

1 the Chamber and again, we request the Chamber to reconsider that
2 decision.

3 [11.29.50]

4 Mr. President, as we detail in our brief, the evidence shows that
5 autonomous Sector 106 secretary, Soth, worked together with key
6 Vietnam collaborator and Central Committee member, Koy Thuon, to
7 orchestrate the Siem Reap bomb explosion.

8 Among other things, Koy Thuon, in his S-21 statement, explained
9 that he had educated Soth, who he called, "a very active agent of
10 the CIA". In other words, that is CPK language for traitor.

11 And the evidence also clearly establish -- establishes that Chan
12 Chakrey was behind the Phnom Penh bombing.

13 Of course, in their brief, the Co-Prosecutors claim that the two
14 incidents were unrelated, that, quote, "the paranoia was further
15 deepening", and ultimately, it led to a senseless wave of purges
16 with, quote, "purge targets expanding exponentially".

17 However, there is compelling evidence of a link between the two
18 events, apart from their timing, and that, of course, is Chan
19 Chakrey's connection to Koy Thuon.

20 [11.31.21]

21 Chan Chakrey had originally been a member of Koy Thuon's North
22 Zone and Koy Thuon was, in fact, the one who introduced him to
23 the CPK. And Koy Thuon identified him as a core member of his
24 fellow collaborators with Vietnam. Moreover, portraying these
25 events as a mere product of "paranoia" is incredibly

1 disingenuous, Mr. President.

2 Let's be clear, the situation that the CPK was facing was one in
3 which several of its top leaders had been implicated in
4 dramatically destabilizing internal events just a year after the
5 CK had -- CPK had liberated Phnom Penh. But even so, the CPK
6 acted in a restrained way, a way which reflects what my
7 colleague, Liv Sovanna, will describe later today as the CPK's
8 legitimate defence and security policy.

9 [11.32.35]

10 Koy Thuon was put under house arrest in April under relaxed
11 conditions. He was only formally arrested in February 1977, one
12 year after the Siem Reap explosion. And in a testament to his
13 power -- to Koy Thuon's power and threat to the CPK, his arrest
14 required two days and one night and a great number of special
15 forces to achieve.

16 And the CPK also, likewise, showed constraint in the case of Chan
17 Chakrey. They had long suspected his loyalties, even debating
18 them, at length, in an October 1975 Standing Committee meeting,
19 E3/182. However, the members of the Standing Committee decided
20 then to simply continue to wait and see, only arresting Chan
21 Chakrey after evidence came to light of his involvement in the
22 Phnom Penh bombing.

23 Arrests that followed were not senseless, but followed the same
24 spirit of caution of arresting and detaining people suspected of
25 treason.

1 And that, of course, is logical, Mr. President, because after
2 all, they had been brothers-in-arms for many years.
3 And it is from this perspective, -- and let me finish, Mr.
4 President -- the failure of the internal collaborators' dramatic
5 first coup d'état attempt, from this perspective that you should
6 consider the critical events that occurred after this which I
7 will detail after the lunch break.

8 Thank you, Mr. President.

9 [11.34.34]

10 MR. PRESIDENT:

11 Thank you.

12 Now, it is appropriate time for lunch break. The Chamber will
13 take break from now until 1.30. Please be informed.

14 Security personnel are instructed to bring Mr. Khieu Samphan to
15 the waiting room downstairs and please have him returned into the
16 courtroom in the afternoon before 1.30 p.m.

17 The Court is now in recess.

18 (Court recesses from 1135H to 1327H)

19 MR. PRESIDENT:

20 Please be seated. The Court is now in session and the Chamber
21 gives the floor to Koppe to resume his arguments. And, Mr. Koppe,
22 please slow down a little bit. Thank you.

23 MR. KOPPE:

24 Yes, Mr. President, I certainly will. Good afternoon, Your
25 Honours and counsel.

57

1 Could we maybe -- no, I think -- there's a disturbance on the --
2 no, no, I think that everyone has it here. I will continue
3 nevertheless, Mr. President -- hello, yes.

4 Mr. President, before the lunch break this morning we were
5 speaking about the imperialist ambitions of Vietnam and the
6 failed coup d'état in 1976. I will now continue with our
7 presentation.

8 Vietnam's collaborators, Mr. President, collaborators within the
9 CPK, were not deterred by the failure of the 1976 coup d'état
10 attempt. Instead, it prompted them to intensify their efforts,
11 and from late 1976, they planned and concretely prepared for a
12 second coup to overthrow the CPK and the legitimate government of
13 Democratic Kampuchea. And this is what we call in our brief the
14 second phase of Plan A, namely, the 1977 coup.

15 [13.30.03]

16 And a significant part of our brief focuses on the 1977 coup
17 d'état attempt and this is because it is by far the least known
18 and most misunderstood aspect of the existential threat that
19 Vietnam posed to the DK. And, indeed, in their brief the
20 Co-Prosecutors write-off the 1977 coup as "false defence
21 narratives". As they put it in a textbook Manichean way, they
22 say:

23 "There is no credible evidence to support the regime's paranoid
24 justifications for its extra-judicial execution campaign."
25 And the Co-Prosecutors also dismiss overwhelming, consistent

1 themes in witness evidence supporting Nuon Chea's case, and they
2 now suggest that every former soldier in the revolutionary army
3 of Kampuchea would make up -- would now make up the same story
4 that:

5 "They, in fact, were part of a resistance force."

6 [13.31.41]

7 However, anyone who's even seen a TV show about criminal law
8 could tell you that an obvious alternative inference than the
9 Co-Prosecutor's ridiculous argument is that witness evidence
10 consistently supports Nuon Chea's case for another reason;
11 because it's true, plain and simple.

12 So, Mr. President, what is this evidence that I refer to? Well,
13 it is multiple testimony accounts of people who testified here in
14 this courtroom, gave accounts to DC-Cam or to journalists or who
15 were interviewed by the Enemies of the People filmmakers, Rob
16 Lemkin and Thet Sambath. These witnesses offer eyewitness,
17 first-hand accounts of their direct involvement in a rebellion
18 and coup d'état attempt as I will now summarize for you.

19 In our brief, Mr. President, we have identified nine witnesses
20 who described how half of the 1977 coup plan was to strike at the
21 CPKs heart by capturing the DK capital and operational epicentre,
22 Phnom Penh. All nine witnesses say that the military ringleader
23 of the plans to seize Phnom Penh was the commander of Division
24 310, Oeun, and Division 310 was a North Zone affiliated Centre
25 Division and was perfectly located to carry out this attack.

1 [13.33.48]

2 The units of Division 310 had been based in and around Phnom Penh
3 since the city's liberation, and four witnesses say that Koy
4 Thuon held a leading role, while one witness suggests that Koy
5 Thuon was supported by his fellow ringleader in the Siem Reap
6 explosion, Soth, of Autonomous Sector 106.

7 Four witnesses implicate the East Zone of involvement, while two
8 witnesses specifically name Sao Phim and prime minister, Hun Sen.
9 In June 2015, in this courtroom, a very credible Division 310
10 commander, Sem Hoeurn testified and described the overall plan.

11 And let me cite him to you, Mr. President. I quote:

12 "There was Ta Sao Phim in the East Zone and Ta Koy Thuon in the
13 North Zone. They all prepared their forces for a plan to attack
14 Phnom Penh. Oeun had a plan to rise up to overthrow and topple
15 the Democratic Kampuchea."

16 [13.35.33]

17 The Co-Prosecutors absurd suggestion that this coup was just a
18 fantasy of ashamed former soldiers, is further undermined by the
19 fact that Sem Hoeurn and the eight other witnesses provide
20 compelling, consistent further specifics of what the plan would
21 entail.

22 As we have detailed in our brief, they describe the plan as
23 having three specific objectives. First, in keeping with classic
24 military strategy, Vietnam's collaborators would cut off Phnom
25 Penh's access. They would seize control over Pochentong Airport

1 cutting off routes in and out of the city and they would take
2 Phnom Penh radio station, shutting down the main channel for
3 communications.

4 And, second, according to these witnesses, the plan involved
5 crippling Phnom Penh's defensive capabilities. For instance, one
6 witness describes how the collaborators would target the defence
7 ministry and had already targeted supply warehouses and military
8 material. Third -- third the Phnom Penh--

9 (Technical problem)

10 [13.37.27]

11 MR KOPPE:

12 Hello. Yes. Thirdly, Mr. President, the Phnom Penh attack
13 contemplated targeting and killing Pol Pot himself.

14 This is not all, however. An additional 10 witnesses offered
15 eyewitness accounts of the second half of the plan. They say that
16 while attacking Phnom Penh, the internal collaborators would
17 simultaneously break the CPKs spine by seizing control of the
18 country. All these 10 witnesses trace this plot back to the
19 Northwest Zone and 9 out of 10 say that Northwest Zone secretary,
20 Ros Nhim, was the ringleader.

21 As I have already mentioned before, there's extensive evidence
22 linking Ros Nhim to his in-law, East Zone secretary So Phim, and
23 six of the witnesses also connect So Phim's East Zone forces to
24 the plot while others name Chan Chakrey and Vorn Vet as being
25 involved.

61

1 [13.38.52]

2 Finally, there's also evidence that the Northwest Zone's
3 neighbour, Autonomous Sector 106, was linked to this part of the
4 coup plot as well. Now, the Northwest Zone, just like Division
5 310, was ideally situated to carry out this aspect of the attack.
6 The Northwest Zone was the backbone of the CPK rice production
7 and was expected to produce up to one-third of DKs rice during
8 every year of the CPKs four-year plan. And together with
9 autonomous Sector 106 and the East Zone, these three areas,
10 occupied great lengths of Cambodia's border with Thailand, Laos
11 and Vietnam and could surround the CPK and block many further
12 routes of entry and exit.

13 The witness testimony confirms that the nationwide attack had two
14 military objectives. First, the internal collaborators would
15 deplete the CPKs nationwide capabilities and, second, they would
16 seize vital territory stretching from the northernmost parts of
17 the country, sweeping downward in an arc headed towards Phnom
18 Penh.

19 And upon arriving in Phnom Penh, their efforts would join those
20 of the Division 310 and the East Zone, carrying out the Phnom
21 Penh attack and, thus united, the traitors would crush the CPK
22 leadership and legitimate DK government.

23 [13.41.05]

24 The available evidence does not merely show that there were
25 extensive plans for a 1977 coup. The 19 witnesses in total, and

1 other evidence of course, show that widespread steps were taken
2 to actually prepare to give effect to the plot. These efforts
3 included sabotage and subversion, extensive stockpiling and
4 meetings and recruitment drives. And despite the dire conditions
5 facing Cambodia when the CPK took power, Vietnam's collaborators
6 sought to worsen those conditions through sabotage.
7 And this is, for instance, why the CPK minister for social
8 affairs, the late Ieng Thirith, observed that there was
9 "something wrong" in the zone, an observation that led Pol Pot to
10 formally investigate conditions there. Several witnesses
11 testified at Trial about this investigation, and one confirmed
12 that he received instructions from Nuon Chea about it. Two
13 witnesses detailed that the zone had stockpiled rice for so long
14 it had spoiled and that food was withheld and, contrary to the
15 Co-Prosecutors' suggestions in their briefs, the witnesses did
16 not confirm that much of the rice from the zone was sent to Phnom
17 Penh.

18 [13.42.53]

19 There's also evidence that stockpiles were deliberately
20 destroyed. The Northwest Zone hospital director, Chan Savuth, who
21 was interviewed by Thet Sambath and Rob Lemkin, describes
22 personally destroying medicine supplies. He and another
23 interviewee also confirmed that the Northwest Zone burned rice
24 supplies rather than let the Southwest Zone have it.

25 [13.43.28]

1 And further evidence describes how, for instance, an ammunition
2 depot was destroyed in the Central Zone. And this Chan Savuth
3 also spoke about how Ros Nhim waged "psychological war" in the
4 Northwest Zone, complaining about conditions and the absence of
5 money and markets to stir-up discontent. And another witness
6 confirmed to this Chamber that Ros Nhim eventually printed and
7 began using currency in the Northwest, including to pay salaries.
8 And, in addition, Chan Savuth described how under orders from Ros
9 Nhim soldiers in Autonomous Sector 106 staged fake clashes at the
10 Thai border to make it look like troops were battling defectors
11 and, thus, too occupied to be redeployed. A defector told the Far
12 Eastern Economic Review that troops in the autonomous sector also
13 stopped planting mines to secure the border.

14 Mr. President, and finally had Heng Samrin or Prime Minister Hun
15 Sen testified, I believe they could have verified evidence
16 suggesting that they had begun disobeying orders while remaining
17 part of the CPK. For instance, a biography on Hun Sen, written by
18 Vietnamese intelligence after he had gone to Vietnam, suggests
19 that in June 1977, Hun Sen refused orders to engage in combat
20 with Vietnam.

21 [13.45.23]

22 But beyond these two men there's also widespread evidence of
23 deviations from official CPK policies, as we will discuss
24 throughout our two-day presentation.

25 And the evidence also shows that already from 1975 onwards,

1 Vietnam's collaborators had prepared to effectuate the 1977 coup
2 through widespread stockpiling of a range of supplies. Two
3 witnesses who appeared in this Court confirmed that they had
4 personally transported weapons as part of Division 310's
5 preparation -- preparations for a coup.
6 A company commander in the division said that troops had been
7 ordered to, quote, "prepare artillery and small arms to attack".
8 And a combatant said that they had prepared to take over tank,
9 marine and aircraft capacity and had already drawn their weapons,
10 which another combatant confirmed seeing.
11 The situation was the same in the Northwest. Toit Thoeurn
12 testified that he had built a cache of 20,000 weapons seized from
13 Khmer Republic forces.
14 Chan Savuth described seeing convoys transporting guns and
15 stockpiling of tanks, personnel carriers, trucks, artillery,
16 small arms and petrol.
17 [13.47.18]
18 And two former Northwest Zone cadres testified in Court about new
19 uniforms being distributed in the zone. One of them, you might
20 recall, Chhorn Vorn, said that he escorted Ros Nhim to collect
21 those uniforms from Vietnam at the border. And witnesses also
22 described, as detailed in our brief, stockpiling of extensive
23 additional supplies including clothes, caps, hammocks, rice,
24 sugar and fish. Both were forces in Phnom Penh and into the
25 Northwest Zone.

1 Finally, Mr. President, there were efforts to hold clandestine
2 meetings and recruitment drives in preparation for the 1977
3 coups.

4 And in addition to the May 1975 meeting in Phnom Penh, which I
5 have already discussed and at which Plan A was set in motion,
6 witnesses described how Division 310 Chief Oeun and other
7 commanders held various meetings around Phnom Penh to brief them
8 on rebellion plans. Including one attended by 500 people and
9 another one attended by an entire battalion. It was always
10 emphasized at these meetings that the plans had to be carried out
11 in the utmost secrecy.

12 [13.49.15]

13 There is also evidence of meetings in the Northwest Zone from
14 late 1976. In particular, Chan Savuth described attending a
15 secret meeting in the forest in Battambang, attended not only by
16 Ros Nhim but also by Vorn Vet and about 100 ranking military
17 officials from the zone. At this meeting he said, Ros Nhim
18 describes the "secret plan" and Vorn Vet added that they could
19 appeal to outside help if needed.

20 And another witness testified in this courtroom that he attended
21 a meeting at which Ta Val had, at Trapeang Thma Dam, announced to
22 members of the mobile units that they were now all captains,
23 presumably within the traitorous forces.

24 Finally, Mr. President, recruitment efforts were strenuously
25 underway. Chan Savuth mentioned for instance that up to 30,000

1 people were recruited from local -- from local and mobile work
2 brigades in the zone.

3 Now, let me wrap up the failed 1977 coup.

4 [13.50.54]

5 Of course it's clear, ultimately, the 1977 coup also failed, but
6 it's worth noting however that even in the face of this most
7 existential of threats, the evidence shows that the standing
8 committee still exercised considerable caution and restraint.

9 The 1977 coup was ultimately thwarted following monitoring and
10 investigations from the CPK. For instance, as I will mention
11 later in the context of S-21, Division 310 commander Oeun was
12 tracked for two to three months before being eventually arrested.
13 Indeed, several witnesses testified that after the plot was
14 discovered they were simply transferred to perform other regular
15 military duties such as farming or constructing the Kampong
16 Chhnang airfield, while some reported not having anything happen
17 at all.

18 [13.52.04]

19 Ultimately, the evidence clearly establishes that Vietnam's
20 internal collaborators were planning and preparing for a coup in
21 1977.

22 This evidence also makes it crystal clear that leaders and forces
23 in zones and autonomous sectors could and did act wholly
24 independently of Nuon Chea and at purposes opposite to legitimate
25 and lawful policies of the CPK. And the CPK's response to such

1 treason was likewise in itself perfectly lawful.

2 Let me now, Mr. President, turn to the 1978 coup attempt.

3 Following the failure of the '77 coup, the Vietnam -- Vietnam's
4 collaborators in the East Zone decided to up the ante, attempting
5 to stage another coup, probably on or around 25 May 1978. As we
6 know, this event ended dramatically in the suicide of one of the
7 top leaders of the traitorous network, So Phim.

8 [13.53.27]

9 And the account of the 1978 coup has been completely distorted by
10 the Manichean narrative to justify Vietnam's unlawful and
11 illegitimate actions. Then in this particularly segment I will
12 quickly revisit the events of this infamous coup and correct the
13 historical record in three key aspects.

14 First, the 1978 coup was not the final stand of a band of freedom
15 fighters against a monstrous regime. It was a calculated plan by
16 traitors sponsored by Vietnam to achieve Vietnam's imperialist
17 ambitions.

18 Sources from Vietnam's ally, East Germany, "the Hanoi sources",
19 disclosed to Nayan Chanda at a 1986 monograph cited by academic
20 and former diplomat based in Vietnam, William Duiker, are
21 evidence among many others that the leadership in Vietnam
22 formally approved the support of the coup led by So Phim.

23 [13.54.52]

24 It is of course no coincidence that Prime Minister Hun Sen, one
25 of the defectors, returned to DK inside a Vietnamese tank and was

1 accompanied by Vietnamese troops already in December 1977 (sic).
2 The second point, Mr. President, is that So Phim was not at all
3 some hapless or indecisive leader as the Manichean narrative
4 presents. As admitted in the Co-Prosecutor's closing brief, So
5 Phim, along with the other leaders had control of, "superior
6 forces" and the vast majority of the Khmer Rouge armed forces.
7 So Phim, especially, had formidable power in the East Zone which
8 he wielded in an attempt to overthrow the DK government.
9 Therefore, rather than a, quote, "paranoid reaction of the Pol
10 Pot faction", as the Prosecution put it, the rightful and
11 legitimate government of DK had every right to oppose the So
12 Phim-orchestrated and Vietnamese-sponsored 1978 coup.
13 Finally, a third point, the 1978 coup was not a spontaneous
14 uprising. Rather, it was a product of careful planning and
15 preparation, all with the support of Vietnam. Because by November
16 1977, the East Zone's preparation for the coup were in full swing
17 with cadres building secret food reserves, hiding weapons,
18 stockpiling food and medicine as well as recruiting forces.
19 Heng Samrin, had he been summoned to testify, could have
20 described how he was appointed by So Phim to be the leader of the
21 military forces organized for the coup. And during these
22 preparations assistance and support were given by Vietnam as it
23 was recognized by Vietnam's collaborators that they would not
24 succeed without external help.
25 [13.57.40]

1 Mr. President, after the thwarted coup attempts by the CPK
2 collaborators, Vietnam took matters in their own hands by
3 invading Cambodia directly. These acts of external aggression ran
4 parallel to supporting the efforts of internal destabilization,
5 which Vietnam gradually escalated, culminating in an outright
6 flagrantly unlawful invasion in December of 1978.
7 And in addition to these acts of aggression, Vietnam cultivated
8 political sympathies for their flagrant violation of
9 international law by their very crafty manipulation of public
10 perception.
11 Vietnam pulled off this feat through several strategies,
12 contributing to the creation of the Manichean narrative that
13 still grips the historical account of the DK period and the
14 ECCC's proceedings today.
15 [13.59.03]
16 Firstly, Vietnam played off the Cold War rivalry between the two
17 major Communist powers, drawing the military and economic
18 assistance from the Soviet Union to counterweight against China,
19 Democratic Kampuchea's ally.
20 This explains Vietnam's eventual, "Czechoslovakia-style invasion"
21 of DK in 1979, being directly inspired by the Soviet Union's
22 tendency for invading sovereign states.
23 And, as I mentioned earlier, Mr. President, the aftershocks of
24 the Soviet Union's brutal invasion of Afghanistan in 1979 are
25 still felt today.

1 And, secondly, Vietnam recruited a band of Cambodians who fled
2 Vietnam to be their agents. Cambodians who fled to Vietnam were
3 recruited to build up a military, "liberation front". This
4 offered Vietnam's eventual invasion a propagandistic cloak of
5 legitimacy.

6 And after the invasion Vietnam installed these recruited
7 Cambodians in a puppet government in Phnom Penh, loyal to serving
8 Vietnamese interests. And as late King Father Sihanouk in a
9 meeting before his security council called them, Vietnam's
10 pitiful puppets, of course referring to Heng Samrin.

11 [14.01.03]

12 Finally, Vietnam carefully laid the foundation to control the
13 post-invasion narrative to pre-empt universal condemnation.
14 Vietnam broadcasted the Cambodian misdeeds while placing the
15 blame squarely on the, "Pol Pot/Ieng Sary clique". And these
16 propaganda efforts painted Vietnam as humanitarian, reasonable
17 and a saviour while, at the same time, Democratic Kampuchea was
18 an irrational isolationist aggressor in comparison. And the seeds
19 were sown for the beginnings of the Manichean narrative.

20 But, Mr. President, despite Vietnam's meticulous efforts to
21 pre-emptively legitimize their invasion, of course they were
22 internationally condemned for the flagrant violation of
23 international law.

24 [14.02.10]

25 On 11 January 1979, U.N. Security Council convened an emergency

71

1 session to discuss Vietnam's invasion. To Vietnam's humiliation
2 the majority of the states across the board condemned Vietnam's
3 invasion of DK sovereignty. While, of course, the security
4 council failed to pass a resolution due to the Soviet Union's
5 inevitable veto, the majority of members voted for a draft
6 resolution, emphatically denouncing Vietnam's invasion and their
7 subsequent occupation.

8 And the United Nations General Assembly remained seized of
9 Vietnam's illegal occupation of Cambodia for a decade. Each
10 resolution, each U.N. resolution called for the withdrawal of all
11 foreign troops and affirmed the Kampuchean people's right to
12 self-determination and right to no interference.

13 And the United Nations General Assembly also rightfully verified
14 the DK government as the proper representatives to the U.N.,
15 delegitimizing the Vietnamese-installed PRK's self-proclaimed
16 status as the new government of Cambodia.

17 And on top of all this, countries and international organizations
18 imposed severe sanctions on Vietnam as punishment. For instance,
19 Australia, the United Kingdom and Japan all suspended aid to
20 Vietnam until its army withdrew from occupying Cambodia.

21 [14.04.09]

22 And also the European economic community, the World Bank and the
23 International Monetary Fund also cut aid and relief programs.

24 And in the end, Vietnam and their "pitiful puppets" were
25 justifiably seen as the pariahs of the international community.

1 And this, Mr. President, is the crucial historical background
2 that should not be forgotten by this Tribunal. This Chamber must
3 look beyond the Manichean narrative.

4 [14.04.57]

5 The head and tail of the "crocodile", as Nuon Chea calls it, is
6 not simply a historical recounting for the sake of posterity. It
7 has important legal significance that this Court must consider
8 carefully because it absolves Nuon Chea of individual criminal
9 responsibility for the crimes charged because it demonstrates
10 that the key constitutive elements of the modes of liability,
11 namely Joint Criminal Enterprise, one. Ordering and superior
12 responsibility have not been proven beyond reasonable doubt.

13 And without proof of these modes of liability, Nuon Chea cannot
14 be held responsible for any of the crimes charged.

15 For the translators, let me move away for a moment from the
16 prepared text, Mr. President, and let me react to something which
17 was said yesterday.

18 The International Co-Prosecutor argues, basically, that there is
19 a Joint Criminal Enterprise in our case because Pol Pot, Nuon
20 Chea and Khieu Samphan ate their breakfast together regularly.

21 Now, although the Co-Prosecutors argue that is unlawful to detain
22 a person in someone else's network because that is, as they call,
23 guilt by association, they're now saying that being breakfast
24 buddies is enough to show that there was a common criminal
25 purpose and, action in concert to establish a Joint Criminal

1 Enterprise. Of course, the argument is totally contradictory and
2 undermined by the evidence.

3 [14.07.21]

4 Let me move back to the legal significance of the "crocodile".
5 Specifically, the "crocodile's" account of treasonous factions
6 demonstrates that there was no common purpose. In fact, a
7 subsection of the alleged JCE members was actively attempting to
8 undermine the legitimate DK government. So even when a common
9 purpose can be found implementing a rapid socialist revolution
10 and defending against internal and external enemies, are of
11 course policies not inherently criminal in nature.

12 The CPK policies as a means to achieve the alleged common purpose
13 are also not inherently criminal, and it must be reiterated that
14 this is a court of law and the Chamber must determine the
15 existence of crimes in accordance with the law. And it is not the
16 place of this Tribunal to pass judgment on merits of political
17 ideology.

18 [14.08.48]

19 Moreover, Mr. President, the coups d'état attempts show that
20 there was no group of people acting in concert. In fact, key
21 alleged JCE members pursued the diametrically opposed goal of
22 undermining the CPK and overthrowing the legitimate DK
23 government.

24 And, finally, where charged crimes were committed in areas under
25 control of Vietnam's collaborators. They were done without the

1 direction, knowledge or approval of Pol Pot, Nuon Chea and the
2 leaders of the Democratic Kampuchea government. A reasonable
3 inference from such crimes is that an entirely different JCE was
4 responsible for such crimes and that they were committed to
5 incite dissatisfaction against the DK.

6 And finally, Mr. President, the "crocodile" demonstrates Nuon
7 Chea's lack of effective control and relationship of authority
8 over the perpetrators who were actively undermining the DK regime
9 and, therefore, he cannot be held responsible for ordering them
10 or as a superior.

11 Later we will discuss, of course, that the arrest and
12 imprisonment of most prisoners in the various detention centres
13 was lawful but that's -- for now, let me now, with your leave,
14 Mr. President, allow me to give the floor to my colleague, Liv
15 Sovanna.

16 [14.10.43]

17 THE PRESIDENT:

18 Yes, Liv Sovanna, you have the floor.

19 MR. LIV SOVANNA:

20 Thank you, Mr. President.

21 Good afternoon, Mr. President, Judges, Parties and everyone in
22 and around the courtroom.

23 I will present the CPK's national defence and security policy.

24 I will address what the Co-Prosecutors discussed earlier this
25 week and what the Manichean narrative has always called the

1 so-called enemies policy. The reality, Mr. President, is that
2 there was no such thing. What the CPK instead introduced was a
3 national defence and security policy that was similar to policies
4 that countries worldwide have adopted even today. Most
5 importantly and, as I will explain, it was both legitimate and
6 lawful.

7 [14.11.41]

8 Mr. President, like they do with their case in general, the
9 Co-Prosecutors faithfully follow the Manichean narrative when it
10 comes to security in the DK. That is, the Co-Prosecutors
11 described the CPK as a bloody, cruel and paranoid clique, which
12 aimed to kill every Cambodian citizen.

13 However, although this is the legend always been told about the
14 CPK, the evidence doesn't support it. Therefore, the
15 Co-Prosecutors are forced to distort the evidence to make it fit
16 their narrative.

17 One way the Co-Prosecutors do this is to widen the meaning of the
18 term enemy used by the CPK to include basically any person living
19 in DK. In fact, this was not so.

20 The Co-Prosecutors also argue that all enemies had to be killed.
21 However, key evidence about what laws the CPK actually
22 established shows this was simply not meant to be the case.

23 [14.12.57]

24 As for Nuon Chea's role in implementing this alleged policy, the
25 Co-Prosecutors say that Nuon Chea controlled the search for

1 internal enemies and was the one who taught cadres to kill. Once
2 again, however, the Co-Prosecutors are making claims without
3 evidence.

4 The evidence they used only shows that Nuon Chea warned cadres
5 about enemies within the ranks. There is nothing about teaching
6 methods of killing or about Nuon Chea controlling the search for
7 internal enemies.

8 Mr. President, the reality is that Nuon Chea's role in the CPK
9 focused on propaganda and education. He led political education
10 sessions to instruct Party cadres on the history and objectives
11 of the socialist revolution. These sessions primarily concerned
12 economics and agriculture.

13 [14.14.01]

14 In addition, in the CPK documents discussed in general terms the
15 threat posed by both internal and external enemies, Nuon Chea's
16 political instructions sometimes encouraged cadres to be vigilant
17 in the face of these kinds of threats. However, that is far from
18 the Co-Prosecutors' suggestion that Nuon Chea instructed or
19 encouraged Party cadres to execute or mistreat anyone. There is
20 no relevant evidence suggesting that he did so.

21 Moreover, it is crucial to remember that at the time DK was in a
22 state of emergency and facing armed conflict with Vietnam. In
23 other words, it was a country whose very survival was at threat.
24 It is completely normal for countries in such a situation to
25 emphasize the importance of vigilance when it comes to security

1 matters.

2 The Co-Prosecutors' case on the so-called enemies policy depends
3 heavily on Duch's testimony. However, as my international
4 colleague, Mr. Koppe, will discuss later, Duch's testimony is
5 unreliable.

6 The Co-Prosecutors' case is also built on written statements of
7 people who did not testify in this Chamber and whose evidence
8 could not be tested. They also used out-of-court documents like
9 secondary sources and unauthenticated documents. However, as the
10 Supreme Court Chamber found in Case 002/01, and as the
11 Co-Prosecutors should therefore know, this evidence is simply not
12 good enough. According to the law, these kinds of out-of-court
13 statements have very little probative value in this Court,
14 especially when they are not supported by other evidence or have
15 not been tested in Court.

16 [14.16.29]

17 Ultimately, the Co-Prosecutors' case is pure speculation. It is
18 not supported by any reliable evidence and fails to meet their
19 burden of establishing their case beyond reasonable doubt.

20 Mr. President and Your Honours, I ask you to listen with an open
21 mind. You will see that the CPK's policy was no different from
22 policies implemented by other countries to protect themselves
23 from foreign threats and insecurity.

24 And you will see that witness testimony and other reliable
25 documents on the case file clearly show that the CPK's national

1 defence and security policy was legitimate and lawful.

2 [14.17.28]

3 To properly understand the CPK's policies requires taking into
4 account the situation of armed conflict and the state of
5 emergency which affected the country. CPK took control over in
6 April 1975 - <it was the period when the country was badly
7 damaged> and had to be completely rebuilt.

8 At that time, as described in detail in our brief, Cambodia had
9 just come out of a seven-year bloody civil war with the Khmer
10 Republic.

11 U.S. bombing campaigns over Cambodia left much of Cambodian
12 territory destroyed and its people terrorized and displaced. The
13 Khmer Republic had also shut down all state institutions
14 including judicial ones.

15 Therefore, the Co-Prosecutors' claim that the CPK destroyed the
16 existing legal and judicial structures is totally incorrect. That
17 is clearly why the Co-Prosecutors couldn't cite a single source
18 when making this claim in their brief. The reality was that the
19 Khmer Republic left no such structures to destroy.

20 [14.18.48]

21 In addition, the CPK had to resist Vietnam's longstanding
22 imperialist ambitions since the moment the CPK assumed power it
23 was under constant threat from Vietnam. These threats were
24 internal, carried out through coup d'états led by Vietnam's
25 collaborators. They were also external through blatant external

1 acts of aggression that escalated to a full-blown armed conflict.
2 Ultimately, it was all of these factors that put the DK in a
3 constant state of emergency. To survive during this critical
4 time, the CPK naturally had to take a strong stand on the defence
5 and security.
6 Accordingly, the policy that the CPK introduced aimed to
7 strengthen Cambodia's ability to resist an existential threat
8 from inside and out. As we explained in our brief, in moments
9 like this, strong defence and security policies are a standard
10 reaction of most countries worldwide. Indeed, this is the exact
11 reaction of many states to terrorist threat everyday -- today.
12 And it is important to recognize that if it were another country
13 and another context, the CPK's defence and security policy would
14 likely be seen as reasonable and necessary.

15 [14.20.29]

16 So what is the difference here?

17 The difference is that because of the Manichean narrative
18 everything that the CPK did has to been seen as pure evil, which
19 is exactly the case that the Co-Prosecutors had put forward. The
20 problem is, however, that this is not how things should work in a
21 proper court.

22 To support their claim that the CPK saw enemies everywhere all of
23 whom had to be killed, the Co-Prosecutors argue that CPK official
24 publications, reports and telegrams often instructed cadres to
25 smash the enemies. The CPK did widely use loaded language to

1 describe their policies. They used metaphors echoing war-like
2 enemies, purge, smash, fight; sweep clean, battlefield or victory
3 to describe perfectly ordinary tasks like harvesting rice and
4 construction projects.

5 However, it is clear that such language was just a form of policy
6 expression. It cannot be taken literally and it does not prove
7 any criminal intent whatsoever.

8 [14.21.59]

9 It is also important to point out again that the use of charged
10 policy language like this is common in political discourse around
11 the world. For example, after the attempted coup d'états on 15
12 July 2016, the Turkish President Erdogan compared attackers to a
13 virus and a cancer that enveloped the state. Likewise, both the
14 former French President Hollande and the former American
15 President Bush have often used warlike language to discuss
16 terrorist attacks.

17 In any event and, more importantly, the Trial Chamber at the
18 International Criminal Tribunal for the former Yugoslavia, has
19 held that you cannot find discriminatory intent just from the use
20 of derogatory terms, that is, the use of the term enemy cannot be
21 the only basis to prove any criminal intent of the CPK towards a
22 specific group.

23 [14.23.21]

24 In June 1978, the CPK issued a circular calling for the
25 re-education of people who undertook activities contrary to state

1 interests -- document E3/763, which is known as the guidance on
2 misled persons. This is the clear opposite of an intent to kill
3 all enemies.

4 As to the definition of enemies, the Co-Prosecutors identified it
5 as incredible -- an incredible 31 categories of alleged enemies.
6 These 31 categories in fact cover the entire population of DK.
7 Following the Co-Prosecutors' reasoning, every Cambodian citizen
8 was an enemy and must have been killed. However, there is no
9 evidence to support such a claim.

10 Mr. President, the term enemy was not a description for everyone
11 who ever existed. On the contrary it was narrowly defined in
12 Article 10 of the DK Constitution, which said that the enemy
13 referred only to people who "conducted dangerous activities in
14 opposition to the people's State." That is, enemies were people
15 who broke DK law by participating in unlawful activities that
16 threatened national sovereignty and state security. This
17 reasoning is the same in any country of the world.

18 The Co-Prosecutors further claimed that any person deemed enemy
19 faced smashing which, according to them, means killing.

20 [14.25.20]

21 However, when you look properly at DK documents and consider our
22 Khmer language, you will see that the true meaning of this term
23 is different. The Khmer term "komtech" which translates to smash
24 in English can have different meanings. It must therefore be
25 considered in its specific context.

1 Pech Chim, Tram Kak district secretary, testified that, "To smash
2 doesn't mean to execute but to eliminate. In other words to
3 eliminate the scene of class -- the sense of class exploitation
4 of other people, we have to get rid of all these bad mindsets."
5 This is a quote of Pech Chim's in-Court testimony, document
6 <E3/290.1>, page 47, lines 19 to 24 in English, <and page 36,
7 lines 2 to 6 in Khmer.>

8 In short, it is clear that references to -- in CPK's publications
9 to smash were obviously not systematic calls to kill. And again,
10 if it were under -- if we were another country and another
11 context, we would not be so quick to jump to this conclusion.

12 [14.26.53]

13 For example, no one would think that when the French Communist
14 Party's presidential candidate talked about class struggle
15 against employers, she was telling factory workers to kill their
16 bosses. The language that the CPK used should be given the same
17 mutual benefit of the doubt.

18 Mr. President, this brings me to the content of the CPK's
19 national defence and security policy. As I will show, and have
20 already mentioned, it was in fact comparable to policies still
21 implemented by other countries, including so-called Western
22 liberal democracies. Whether in times of peace or war or during a
23 state of emergency, it is normal and legal for a state to seek to
24 properly defend its borders, ensure peace and contain internal
25 instability.

1 Indeed, these legitimate and necessary measures are core to the
2 very idea of state sovereignty.

3 Firstly, the CPK policy set a specific legal message for arrest,
4 Article 10 of the DK Constitution. As I mentioned earlier, the
5 constitution provided that "dangerous activities in opposition to
6 the people's State must be condemned to the highest degree". It
7 is also stated that "other cases are subject to constructive
8 re-education."

9 [14.28.51]

10 This reference is from document E3/259. ERN in English is at
11 00184836; Khmer, 00089847.

12 Mr. President, this confirms that the real enemy was not the
13 individual but anti-revolutionary activities. It is clear from
14 the DK constitution that the primary response to offences was to
15 be education. Only dangerous activities against the people's
16 state were to be condemned to the highest degree. Therefore,
17 unlike the Co-Prosecutors' claim, this is the opposite of a call
18 to kill all enemies.

19 [14.29.43]

20 Similarly, the 1956 Cambodian Penal Code identified treason and
21 espionage as some of the most serious crimes for which the death
22 penalty applied. This is exactly the same legal framework that
23 many countries have in place today.

24 Indeed, treason was and still is one of the most severely
25 repressed crimes worldwide and, in 1975, punishment of treason by

1 the death penalty was common.

2 As detailed in Annex 4 of our closing brief, 70 states today
3 still have the death penalty for crimes against the state. In
4 1975 to 1979, it was an incredible 124 states or 81 per cent of
5 states around the world. Therefore, the CPK's imposition of the
6 death penalty for treason was not a criminal policy. It was the
7 norm at the time.

8 In short, the only reason for arrest under CPK law was a person's
9 suspected breaking of the law and involvement in unlawful
10 activities that endangered the state's integrity. This is a
11 lawful basis for arrest and, if it were a different context, we
12 would have no problem believing this.

13 [14.31.14]

14 Turning to the process of arrest, the Co-Prosecutors claim that
15 biographies were taken to identify certain groups of enemies.

16 However, this is untrue. People were not arrested because of what
17 was in their biographies but because of suspected activities.

18 Biographies were just a standard administrative process, which
19 were meant to allow authorities to assess how many people were in
20 each commune so they could arrange sufficient food and supplies
21 accordingly.

22 In addition, the CPK implemented a thorough investigative process
23 to ensure that all arrests had a clear, factual basis. As in
24 other law enforcement systems, monitoring and interrogation were
25 the main mechanisms of investigation used in the DK to verify

1 alleged involvement in unlawful activities. Like how someone
2 suspected of a criminal action in any state would be interrogated
3 by the police, individuals suspected of criminal activities
4 during DK were interrogated.

5 [14.32.30]

6 And unlike what the Co-Prosecutors claim, interrogations did not
7 aim to just blindly produce confessions to feed the CPK's
8 paranoid plan to destroy all opposition. Interrogations aimed to
9 investigate allegations, uncover the truth and determine further
10 actions.

11 Mr. President, at this point I would like to briefly correct a
12 specific aspect of the Manichean narrative. We have all heard
13 over and over about the documents referred to as confessions.
14 However, as you know, the Khmer term "chamlaeuy" (phonetic)
15 literally means "statement of". It has been mistakenly translated
16 as confessions in books by scholars and historians, in the media,
17 in propaganda and in these proceedings. The word "confession"
18 suggests the possibly forced admission of guilt by the person
19 being interrogated.

20 On the other hand, the proper term "statement" simply refers to a
21 neutral account offered by that person.

22 Using the proper definition of "chamlaeuy" as a "statement of" we
23 cannot conclude that documents identified as confessions in the
24 case file systematically contain a confession of guilt and were
25 collected only with that purpose in mind. Most of them are mere

1 suspects' statements recorded during interrogations as part of a
2 normal investigative process.

3 I will now further discuss the CPK interrogation process and
4 especially the Co-Prosecutors' claim that the CPK had an alleged
5 policy to torture suspects during interrogations.

6 Mr. President, this claim is an attempt to mislead your Chamber.
7 It is based on speculation and not objective and reliable
8 evidence.

9 [14.34.59]

10 Like in any law enforcement system, interrogation was key to the
11 investigative process <during the DK>. The CPK set out clear
12 rules on interrogation. In particular, interrogators were told
13 not to feed the suspect with information. The CPK was cautious
14 regarding the possible unreliability of suspects' statements. For
15 instance, various annotations from Son Sen and Duch on S-21
16 suspects' statements show that they were highly critical of the
17 information recorded in them.

18 Therefore, the consistency and credibility of suspect's
19 statements had to be carefully assessed. Further investigations
20 could also be requested to corroborate the suspect's account and
21 to limit the risk of false statements leading to unjustified
22 arrests.

23 [14.36.02]

24 As for torture, the Co-Prosecutors' allegations are based on an
25 incorrect understanding of the Khmer language. Indeed, the Khmer

1 term "tearunakamm" (phonetic) has generally been mistranslated
2 during the proceedings as "torture". This mistaken translation
3 has led to a constant fundamental misrepresentation of the actual
4 evidence, which must now be corrected.

5 The Khmer word "tearunakamm" has several meanings. Mr. President,
6 during the testimony of former S-21 interrogator Prak Khan, he
7 rightly said that "tearunakamm" could even refer to the
8 discipline of children by parents of which I quote to you: "This
9 word is generally used and general, in public, use this term
10 widely. And when the parents beat the children the word
11 'tearunakamm' was -- is also used". Document E1/423.1, page <52
12 in> Khmer, <lines 3 to 5>.

13 Duch and Prak Khan -- Prak Khan also said the same, parental
14 discipline or light correction clearly cannot legally be
15 considered torture.

16 Indeed, in this trial the term torture refers to a crime which
17 has a specific legal definition. The elements of torture must be
18 established beyond reasonable doubt before this Chamber can make
19 a finding -- before this Chamber can make a finding.

20 [14.37.55]

21 Therefore, the fact that a witness said torture in their
22 testimony is not enough to permit the Chamber to establish beyond
23 reasonable doubt of the crime of torture. Instead, for each
24 allegation of torture, the Chamber has to consider the specific
25 evidence and context to confirm whether the elements of the legal

1 crime of torture are established.

2 This is impossible because there was no official CPK policy
3 promoting, encouraging or ordering the use of torture. On the
4 contrary, statements obtained under torture were considered
5 unreliable.

6 For instance, Duch confirmed that he received specific
7 instructions not to torture Koy Thuon during his interrogation.
8 Furthermore, there is no concrete evidence of beyond reasonable
9 doubt of torture or mistreatment during interrogation at three of
10 the four charged security centres; namely, Krang Ta Chan, Au
11 Kanseng and Phnom Kraol.

12 [14.39.17]

13 At S-21, the evidence shows that when acts, which could amount to
14 torture or inhumane treatment, occurred, they were committed by
15 individuals acting independently and in clear violation of the
16 policy on interrogations.

17 After monitoring an interrogation, suspects' fates depended on
18 the results of investigations. The evidence gathered was assessed
19 in order to apply an appropriate sanction.

20 Mr. President, may I seek five more minutes to conclude my
21 arguments?

22 The CPK identified three categories of offenders depending on the
23 severity of the offences they were found to have committed.

24 As for sanctions the CPK placed the priority on the re-education
25 with two out of the three categories of the offenders to face

1 re-education for their offences. Moreover, at one point
2 re-education was preferred even for those suspected of
3 involvement in treason or espionage and collaborating with
4 Vietnam or the U.S. and their allies, if they had stopped those
5 activities by July 1978. Finally, and logically, when
6 insufficient evidence was found, the suspects were released.

7 [14.41.05]

8 Mr. President, I am now turning to my last point for the day. Of
9 course, like in any other country in the world, the official
10 legitimate CPK policy was, at times, violated by local
11 authorities. Although the CPK had strictly and lawfully set out
12 its policy, sparse and isolated evidence provided in relation to
13 some areas, show that its implementation in practice may have
14 varied. Indeed, it appears that some local authorities failed to
15 enforce the CPK's policy whether on purpose or out of ignorance.
16 However, evidence also shows that when the CPK was made aware of
17 such instances, it took measures to restore the right policy.
18 Again, this is no different to what another country in the world
19 would do.

20 [14.42.17]

21 In conclusion, contrary to the Co-Prosecutors' Manichean
22 allegations, the CPK's national defence and security policy did
23 not involve any criminal action. It was simply the sort of policy
24 that any country in the world would adopt when faced with threats
25 to its very survival and in a constant state of emergency.

1 Mr. President and Your Honours, more importantly, when you look
2 at this policy, if it were another country and another context,
3 it would be clear that it was legitimate and lawful. Now, I would
4 like to cede the floor for my <international> colleague Doreen
5 Chen. She will continue from me after the break and she will
6 discuss specific examples of implementation of this policy and of
7 DK's through -- thorough process to investigate, re-educate and,
8 when necessary, reprimand. My colleague will address the four
9 security centres charged in this trial; namely Krang Ta Chan, Au
10 Kanseng, Phnom Kraol and S-21.

11 I thank you very much, Mr. President.

12 MR. PRESIDENT:

13 Thank you. It is now an appropriate time for a break.

14 The Chamber will take the break now until 3 p.m.

15 The Court is now in recess.

16 (Court recesses from 1443H to 1458H)

17 MR. PRESIDENT:

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

19 The Chamber hands floor to the defence team for Nuon Chea to
20 continue with the Closing Statement presentation.

21 MS. CHEN:

22 Thank you, Mr. President. Good afternoon, Mr. President, Your
23 Honours, Parties and members of the public.

24 This afternoon, I'll be presenting Nuon Chea's case for three of
25 the four security centres that are charged in our trial, Krang Ta

1 Chan, Au Kanseng and Phnom Kraol. My colleague, Victor Koppe,
2 will then conclude our presentation for today by discussing the
3 fourth and final security centre, namely, S21.

4 [15.00.09]

5 So let me begin by first laying out the Co-Prosecutors' case to
6 which we're responding in these Closing Arguments, and in full
7 loyalty to the Manichean narrative, the Co-Prosecutors argue that
8 security centres were designed by the CPK as a means to secretly
9 carry out sadistic torture and, ultimately, to conduct massive,
10 unlawful killings.

11 Once again, however, the available evidence fails to support the
12 Co-Prosecutors' case. As you heard this week and as you see in
13 their Closing Brief, the Co-Prosecutors' mostly rely on
14 out-of-court documents that have low probative value.

15 Mr. President, this is not good enough. The stronger, live
16 evidence that we heard in this courtroom throughout the trial,
17 instead shows the security centres were lawful prisons. They were
18 meant to detain and re-educate people suspected and, ultimately
19 found, to have committed the highest offences against the state,
20 including treason. In a nutshell, this was lawful.

21 [15.01.36]

22 Today, I'll be presenting our response site-by-site, although I
23 note at the outset that given the limited time that we have to
24 discuss these three large crime sites, I'll be being very brief
25 and selective in the issues that we discuss. However, as you

1 know, full arguments on each site appear in our brief.

2 Let me start and focus today on the largest of the three sites,
3 which Krang Ta Chan Security Centre. Your Honours, as you know,
4 Krang Ta Chan was located in Tram Kak district in the Southwest
5 Zone.

6 Now, I'll specifically be beginning with two preliminary issues.
7 The first of these is the lack of credibility of the two star
8 civil parties of the Krang Ta Chan trial segment, Say Sen and
9 Meas Sokha, who we've discussed at length throughout these
10 closing presentations during this week.

11 [15.02.45]

12 As you may recall, these two civil parties were adolescents when
13 they were at Krang Ta Chan, yet at the same time both of them
14 claimed to have seen everything and known everything. In truth,
15 however, their claims are simply not believable at all.

16 Now, earlier on today my colleague, Liv Sovanna, had discussed
17 the Supreme Court Chamber's findings on the lack of credibility
18 of the appeal witness, Sam Sithy. That Chamber said that Sam
19 Sithy's account was -- and I will quote here:

20 "Inherently implausible and highly improbable."

21 Well, Mr. President, to put Say Sen and Meas Sokha in perspective
22 with Sam Sithy, the accounts of Say Sen and Meas Sokha go way
23 beyond the Sam Sithy level. Mr. President, you, yourself, might
24 recall that you twice warned Meas Sokha that:

25 "If you are trying to overstate, there will be consequences."

1 As we detail in our brief but don't have the time to go into
2 here, Say Sen and Meas Sokha's accounts were not given under
3 oath. Therefore, with exaggerations they remain impossibly vague,
4 and it seems that there may have been other motivations
5 influencing their testimony.

6 [15.04.15]

7 In short, both civil parties lack any credibility or reliability.
8 And what this means, Your Honours, is that you cannot safely base
9 any of your findings solely on their accounts. And even if their
10 accounts were corroborated by other evidence, the bottom line is
11 that their accounts themselves are unreliable.

12 Moving now to the second preliminary issue I'd like to discuss.

13 This issue is the lack of reliability of the documentary evidence
14 that's used so heavily by the Co-Prosecutors in relation to not
15 only Krang Ta Chan Security Centre but also the Tram Kak
16 cooperatives, which is another crime site that I'll discuss in
17 more detail next week.

18 Now, most of the documents that the Co-Prosecutors use are part
19 of the so-called Tram Kak district records. And, again, we detail
20 at length in our brief the evidentiary limitations of these
21 documents, and these are arguments that I can only summarize
22 here.

23 [15.05.35]

24 Your Honours, of the many, many Tram Kak district records the
25 Co-Prosecutors use on Krang Ta Chan and Tram Kak, only one, only

1 one, was an original and this original did not substantiate key
2 Prosecution arguments, nor did we, the defence, have access to
3 it. The rest of the Tram Kak district records are copies or even
4 copies of copies. They're unauthenticated and as this Chamber has
5 itself admitted, they can never really be authenticated. As such,
6 they are entirely unreliable.

7 It's equally disturbing that the Co-Prosecutors did not even
8 bother to try to establish the authenticity of any of the Tram
9 Kak district records they use. It's their duty to do so as we
10 explain in our brief. And the way that they ignore this is a key
11 example of what my colleague, Victor Koppe, discussed earlier
12 today, and that is that there is an assumption that the
13 Co-Prosecutors' case is true and does not need to be meaningfully
14 proven.

15 [15.07.05]

16 To put it bluntly, Your Honours, if I may, this cannot fly in a
17 proper court of law. As it stands, none of the Tram Kak district
18 records used by the Co-Prosecutors but one can even be proven to
19 be authentic. In any event, all of them, all of them are
20 out-of-court evidence. This means that they can only ever have
21 limited probative value, especially when they're not corroborated
22 by any credible, in-court, live witness evidence.

23 And one of the reasons I've spent some time on these two
24 preliminary issues is that these issues -- and I'm talking about
25 civil party and witness credibility problems and also the

1 problems of using out-of-court evidence -- these issues are
2 examples of problems with the evidence that the Co-Prosecutors
3 have put forward all throughout this case.

4 [15.08.15]

5 So let me know review some of the core issues concerning the
6 facts at Krang Ta Chan. Now, first in terms of structure, the
7 testimonies that were offered during the trial showed that the
8 highest CPK hierarchical level that was closely involved in
9 operational decision-making at Krang Ta Chan was Sector 13. It
10 cannot be shown beyond reasonable doubt that Southwest Zone
11 Secretary and Standing Committee member Ta Mok had deep
12 operational involvement.

13 It's even less possible -- indeed it's actually impossible -- to
14 establish the knowledge or the involvement of Nuon Chea at Krang
15 Ta Chan. The main evidence in this regard, as you'll recall, Your
16 Honours, is his alleged visits to Krang Ta Chan. However, when
17 you look at the evidence you'll see that it is far too vague and
18 insufficient to even show that he visited there, let alone that
19 he gained relevant knowledge about its operations whatsoever.

20 Now, I'm moving to the next issue, Your Honours, and this is the
21 legality of arrests and detention at Krang Ta Chan. In accordance
22 with the national defence and security policy that my colleague
23 Liv Sovanna has just discussed, prisoners at Krang Ta Chan were
24 lawfully arrested and detained following thorough, genuine,
25 investigative measures.

1 [15.09.54]

2 If you recall, the live evidence from Krang Ta Chan confirms that
3 there were legal and factual bases for arrest. It shows that
4 monitoring activities were often conducted prior to arrest and
5 that detainees were usually interrogated about their suspected
6 activities. The witness, Vong Sarun, was the only person who
7 appeared in court and testified about being interrogated
8 directly. She explained that she was questioned only once and it
9 concerned unlawful activities and participating in spy networks.
10 She was released after a week and she states that she was never
11 mistreated during her interrogation or subsequent detention.
12 Now, as for the question of torture -- and this is very
13 important, Your Honours -- I have to highlight the fact that
14 there is no reliable, live evidence that torture was used at
15 Krang Ta Chan.

16 [15.11.07]

17 First, what the Co-Prosecutors rely on, as they always do, is a
18 series of the unreliable Tram Kak district records that I've just
19 discussed. Second, what they do is then rely on the supposedly
20 corroborating evidence largely featuring the testimony of the
21 unreliable civil party Say Sen who I've also just discussed.
22 Thirdly, the Co-Prosecutors rely on the written statements of
23 three people who did not testify. One of them is even dead. And,
24 finally, the only remaining evidence is from Vong Sarun who said
25 that she heard people being tortured and who testified that she,

1 herself, was not mistreated. However, Vong Sarun's testimony
2 about what she claims she heard is not corroborated.
3 While the Co-Prosecutors alleged yesterday that her testimony
4 confirms torture, the reality is that her evidence is not
5 specific enough to show that the sounds and the conversations she
6 heard were, indeed, provoked by acts of what would legally be
7 considered torture; a legal definition that my colleague, Liv
8 Sovanna, has just discussed with your earlier today.
9 Mr. President, this is it. We do not have any reliable testimony
10 about torture at Krang Ta Chan. No former interrogator testified
11 at trial. Two former guards who did testify before you ultimately
12 undermined some so-called accepted truths of the Manichean
13 narrative such as detainees' livers being eaten or the use of
14 plastic bags to suffocate detainees.
15 [15.13.12]
16 Furthermore, as I'm sure you'll recall, Mr. President, the
17 evidence shows that there was a thick plantation between the
18 detention buildings and the interrogation room. This means that
19 at the time it was impossible -- impossible -- for detainees to
20 see what was happening during interrogations.
21 Ultimately, what this all means is that you cannot find beyond
22 reasonable doubt, based on the available evidence, that torture
23 occurred at Krang Ta Chan.
24 Turning now then to the factual reason for a person's arrest at
25 Krang Ta Chan, the reality is that only serious offenders were

1 detained there. We discussed this in our document presentation
2 over two years ago and we discussed it again, at length, in our
3 Closing Brief.

4 [15.14.09]

5 For example, people were arrested for allegedly participating in
6 a "secret struggle within the DK" or for allegedly committing
7 rape. Now, the Co-Prosecutors, unsurprisingly, try to minimize
8 the nature of the offences that led people to be detained at
9 Krang Ta Chan. As you heard this week and as you read in their
10 Closing Brief, they underscored arrests for light offences like
11 stealing food or breaking spoons or hoes. However, this is
12 misleading and it fails to take into account in particular two
13 key facts.

14 First, people who were arrested for such offences were repeat
15 offenders. Their arrest typically followed several attempts at
16 re-education and this is something we, indeed, detailed at length
17 in our document presentation two years ago.

18 Second, we need once again to keep the context in mind, and this
19 a context that all of my colleagues have already discussed today.
20 Democratic Kampuchea was in a state of emergency. It suffered
21 food and supply shortages. For that reason, DK was legitimately
22 and logically trying to introduce a collectivized way of living
23 through cooperatives, which is something that I'll discuss in
24 more detail next week.

25 [15.15.52]

1 But for now it's important to note that in light of this dramatic
2 situation, even stealing or hiding food or breaking spoons or
3 hoes repeatedly may legitimately and often rightfully have been
4 seen as a threat to internal stability since it worsened the
5 shortage crisis. And, in any event, as we detail in our brief,
6 there is substantial evidence that most people were detained at
7 Krang Ta Chan due to suspected participation in treason or other
8 serious offences and not just because of mere food stealing.
9 Next, Your Honours, the Co-Prosecutors argued that some people
10 were detained at Krang Ta Chan simply because they belonged to a
11 specific category that was allegedly targeted by the CPK. These
12 categories include, for example, Vietnamese, so-called New
13 People, spouses of other detainees, and former Khmer Republic
14 soldiers and officials. However, once again, the evidence shows
15 this claim to be completely false. Only civil party Say Sen said
16 that there was a detainee from Krang Ta Chan, "from Hanoi".
17 However, this does not even allow us to confirm that the detainee
18 was actually Vietnamese or, even less so, why he was arrested.
19 [15.17.36]
20 This is, therefore, completely insufficient to support the fact
21 that Vietnamese were detained Krang Ta Chan because of their
22 ethnicity or nationality. Again, it was only the civil party, Say
23 Sen, who said something about the arrest of New People at Krang
24 Ta Chan. However, as I've already explained before, his whole
25 evidence has no probative value whatsoever.

1 We also heard the testimony of the witness Vong Sarun who was
2 arrested following her husband's arrest. However, as I've already
3 discussed, she said that she was interrogated about her own
4 possible involvement in unlawful activities. As you can clearly
5 see, this shows that the primary motive for her arrest was those
6 unlawful activities and not the fact that she was the wife of
7 another detainee.

8 As for the fourth category, former Khmer Republic soldiers and
9 officials, who the Co-Prosecutors have highlighted at length in
10 both their brief and in their oral presentations, we will be
11 having a detailed presentation on this group next week.

12 For now, what is clear from the evidence is that people were
13 arrested at Krang Ta Chan because of the activities they
14 conducted and not because of their special identities.

15 [15.19.11]

16 Moving on now to the living and working conditions at Krang Ta
17 Chan. As we've explained earlier today and I mentioned a moment
18 ago, Democratic Kampuchea was in a constant state of emergency.
19 Unfortunately, as a result, the living conditions in security
20 centres were tough just like they were in the rest of the
21 country.

22 However, Your Honours, such hardship was never inflicted by the
23 CPK upon detainees deliberately. On the contrary, evidence shows
24 that the CPK tried to improve living conditions. At Krang Ta
25 Chan, for example, DDT was sprayed to combat malaria and to

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1 reduce the number of sick detainees and this fact alone is enough
2 to undermine the idea that Krang Ta Chan was a blunt instrument
3 of death where conditions of detention were deliberately imposed
4 with the intention of causing severe harms. This is just not
5 true.

6 [15.20.28]

7 As for working conditions, only Vong Sarun testified about
8 alleged hardship. She stated that she became ill from carrying
9 earth, however, her testimony is insufficiently detailed to prove
10 that such hardship reaches the legal required for the Crime
11 Against Humanity of Torture or the Crime Against Humanity of
12 Enslavement.

13 Finally, regarding the alleged rapes put forward by the
14 Co-Prosecutors, Your Honours, the evidence precludes a finding
15 beyond reasonable doubt that they occurred. As you may remember,
16 the live evidence on this was mixed. Two former guards denied
17 that this ever happened. Only civil party Say Sen insisted that
18 it did. Even then, however, he did not witness these acts
19 himself. And as I've discussed multiple times now, Say Sen's
20 overall evidence is not reliable.

21 For that reason, Mr. President, you cannot base any findings
22 solely on Say Sen's testimony, and since his account is the only
23 one alleging that rape occurred you accordingly cannot find,
24 again beyond reasonable doubt, that rape indeed occurred at Krang
25 Ta Chan.

1 [15.22.02]

2 Let me now move to discuss the alleged killing, extermination and
3 enforced disappearances at Krang Ta Chan.

4 The Closing Order and the Co-Prosecutors' claim that 15,000
5 people died at Krang Ta Chan, however, there is no credible
6 evidence of executions at Krang Ta Chan. Only two people
7 confirmed that they saw executions or bodies at Krang Ta Chan.
8 Once again, they are the wholly unreliable civil parties, Say Sen
9 and Meas Sokha. Apart from them, there is not one single
10 individual who witnessed an execution at Krang Ta Chan.

11 [15.22.50]

12 Furthermore, you'll have heard the Co-Prosecutors mention this
13 and seen in their brief, they refer to the so-called forensic
14 study conducted by expert Voeun Vuthy on bones allegedly exhumed
15 from Krang Ta Chan. However, that forensic study was not a proper
16 forensic investigation. As we've explained in our brief and as my
17 colleague Victor Koppe will discuss next, Voeun Vuthy did not
18 date the bones he analyzed so we cannot know that they were from
19 the DK. Thus, his study already has low probative value.

20 In any event however, it's of no help in counting the number of
21 alleged deaths at Krang Ta Chan. As you may recall, prior to the
22 DK, Krang Ta Chan used to be a gravesite. It was also located
23 closely within the vicinity of the nearest hospital. Because of
24 this, it's obvious that the bones recovered by Voeun Vuthy could
25 have been people who died of natural causes before or after the

1 DK.

2 Your Honours, as a consequence, there is far more than reasonable
3 doubt that any bones exhumed were really from Krang Ta Chan.

4 Finally on Krang Ta Chan, let me return to the purpose of the
5 security centre. As we explained in our brief, Krang Ta Chan was
6 primarily a re-education centre. Many detainees were released
7 later on once their re-education was complete, and this is
8 clearly what Tram Kak district secretary Pech Chim meant when he
9 testified that Krang Ta Chan's purpose was -- and I quote:

10 "To compromise and mediate the conflict and rebuild our
11 solidarity."

12 [15.24.56]

13 Indeed, as we've detailed in our brief, the live evidence, in
14 fact, only shows that many people were released from Krang Ta
15 Chan. Obviously, however, the Co-Prosecutors ignored this
16 evidence in their brief.

17 This is sufficient to confirm that Krang Ta Chan was not a place
18 where people were inevitably killed. It was instead a
19 re-education centre from which people could and would be
20 released.

21 Your Honours, I will now move on to the second security centre,
22 Au Kanseng, which was located in the Northeast Zone.

23 As you know, limited evidence is available on this security
24 centre and conscious of our limited time we will be focusing
25 primarily on one specific incident that the Co-Prosecutors

1 emphasize in their case. Therefore, what I'm going to do is begin
2 by very rapidly going through a number of general issues in
3 connection with Au Kanseng before turning to that specific
4 incident.

5 [15.26.13]

6 Firstly, as we explain in our brief, what little evidence there
7 is shows that, like everywhere else, arrest and detention at Au
8 Kanseng were factually and legally grounded. In particular, we
9 have some reports which mention the specific reason which led to
10 arrests at Au Kanseng. We have evidence that people were
11 interrogated regarding their suspected activities. Former
12 detainees also testified that they were not mistreated in any way
13 during their detention.

14 Moreover, we know for a fact that there was a review system in
15 place at Au Kanseng. Evidence shows that Division 801 commander
16 Sou Saroeun made decisions to release or re-categorize detainees
17 according to the gravity of their conduct.

18 And, finally, in terms of the general issues I would like to
19 discuss, the evidence detailed in our brief shows that the
20 detention conditions were not abnormal considering the context at
21 the time. The type of work detainees did, did not exceed what is
22 normally required of a person under lawful detention.

23 [15.27.35]

24 Mr. President and Your Honours, I will now focus the rest of my
25 discussion on Au Kanseng on only one incident, especially in

1 light how heavily the Co-Prosecutors are relying upon it. And
2 this incident, as you might recall, is the alleged arrest and
3 execution of apparently hundreds of Jarai Vietnamese at Au
4 Kanseng.

5 Three witnesses seem to testify about this event and according to
6 the Co-Prosecutors one telegram allegedly proves Nuon Chea had
7 knowledge of the incident. However, a close examination proves
8 all this to be untrue.

9 Let's start with the telegram. The telegram, which is document
10 E3/240, was sent on the 15th of June 1977, and it indicates that
11 it was copied to Nuon Chea as the Co-Prosecutors have stressed.
12 That telegram reported the arrest in Autonomous Sector 107 of --
13 and I quote, "209 Vietnamese soldiers" most of whom were of Jarai
14 ethnicity.

15 [15.28.58]

16 These people were carrying guns, pistols, grenades, bayonets,
17 US-made backpacks, and also a Vietnamese map. Now, according to
18 the telegram, they claimed that they were "ordinary people and no
19 longer soldiers" but that following examination it was assessed
20 that those people were lying.

21 As for the three witnesses who testified, they say that they saw
22 the group of Jarai which arrived in Aug Kanseng and was later
23 taken away. They consistently claim that this event occurred in
24 1978 -- 1978 -- and two of them agree that it occurred
25 specifically in February or March 1978. Therefore, just on the

1 face of it, this event took place at least several months after
2 the telegram was sent in June 1977.

3 It's also not established at all that the dead witness Chhaom Se,
4 who the Co-Prosecutors emphasized in their oral arguments, was
5 talking about the group of Jarai mentioned in the telegram
6 either. In short, there is nothing linking witness accounts of
7 Jarai at Au Kanseng and this telegram about the supposed such
8 incident.

9 [15.30.28]

10 Furthermore, the telegram specifically mentions 209 people. The
11 witnesses, however, spoke only very vaguely about "some" people.
12 It clearly cannot be concluded beyond reasonable doubt that the
13 telegram and the three witnesses were describing the same group
14 of Jarai people.

15 In any event, while the witnesses speculated that those Jarai
16 were killed as they never saw them again, none of the actually
17 witnessed any killings. Likewise, the telegram simply mentions
18 the arrest of people and, specifically, the telegram shows that
19 the reason for the alleged arrest of the 209 people was their
20 suspected involvement in espionage.

21 Again, let me emphasize it. Those people were coming from
22 Vietnam. They were allegedly soldiers. They had weapons. They had
23 US-made backpacks, they had a Vietnamese map. Their arrest was
24 therefore legitimate and based on objective criteria; it had
25 nothing to do with their purported Vietnamese nationality as

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1 such. And as I just said, in any case, the telegram did not
2 indicate that they were actually killed.

3 [15.32.01]

4 Turning to another point, what's more, Your Honours, this
5 allegation, in fact, does not make any sense. It shows instead
6 the lack of cultural knowledge of the Co-Prosecutors because even
7 if these Jarai held Vietnamese nationality, which has not been
8 proven, Jarai people are neither of Vietnamese race nor
9 ethnicity.

10 As you know, Mr. President, Your Honours, the physical features
11 of Jarai differ significantly from that of Vietnamese and they
12 are an ethnic minority with a distinctive language and culture.
13 This event therefore has nothing to do with the alleged racial
14 persecution of the Vietnamese or the genocide against the
15 Vietnamese. While we're at it, nor does it have anything to with
16 the grave breaches of the Geneva Conventions charged, since those
17 people were objectively seen as Vietnamese soldiers conducting
18 espionage activities on Cambodian territory.

19 [15.33.22]

20 And, finally, the telegram is also insufficient to prove that
21 Nuon Chea was aware of the alleged killing of those people.
22 Indeed, as I've stated, the telegram only mentions that local
23 authorities arrested suspect spies and could not have alerted
24 Nuon Chea -- I'm sorry -- the telegram only mentions that local
25 authorities arrested suspected spies and then confiscated their

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1 weapons in what -- and I must emphasize this -- was a time of war
2 with Vietnam. In such a time, such measures were fully legitimate
3 and could not have alerted Nuon Chea of any crimes committed
4 against the Jarai people.

5 Your Honours, this concludes the section on Aug Kanseng Security
6 Centre, and now I will finally move to Phnom Kraol Security
7 Centre. And considering the dramatically limited evidence offered
8 in relation to this site, I will be very, very brief.

9 [15.34.30]

10 Your Honours, Phnom Kraol Security Centre was defined in the
11 Closing Order as a complex located in Autonomous Sector 105 and
12 comprising three separate facilities, Phnom Kraol Prison, Office
13 K-11 and Office K-17. Now, six witnesses were called to testify
14 on this site. Disturbingly, however, Mr. President, only two of
15 them actually provided evidence directly related to Phnom Kraol
16 Security Centre. All the other witnesses testified about events
17 that occurred in Autonomous Sector 105 but that are not related
18 to the security centre as such, therefore it is clear that those
19 witness's evidence is outside the scope of our case.

20 Now, the only two witnesses who did testify that they were
21 detained at Phnom Kraol Security Centre say that they were
22 detained for a month at K-17 which, as you may recall, is one of
23 three facilities alleged to be at Phnom Kraol. Therefore, the
24 Co-Prosecutors only have evidence at all on one out of the three
25 facilities of the security centre. They do not have evidence on

1 Phnom Kraol Prison or on Office K-11.

2 [15.36.01]

3 Now, in order to try to save the relevance of the witness's
4 evidence, the Co-Prosecutors desperately try to extend the scope
5 of Phnom Kraol Security Centre to different locations. Notably,
6 the Co-Prosecutors showed a keen interest, which they emphasized
7 in court this week, on the unsworn account of civil party Sun
8 Vuth. Unfortunately, Sun Vuth himself told the Chamber, as you
9 may recall Your Honours, that he was allegedly detained at a
10 location -- and I quote:

11 "Not near Phnom Kraol."

12 Thus, his evidence is clearly unrelated to Phnom Kraol. For that
13 reason, the Co-Prosecutors shamefully pretend in their brief that
14 Phnom Kraol Security Centre comprises -- and I quote -- "Other
15 buildings in the surrounding area" in addition to the three
16 facilities specifically identified by the Closing Order.

17 [15.37.05]

18 Mr. President, Your Honours, they should clearly know better than
19 this. The Closing Order is what defines the scope of this trial.
20 The Co-Prosecutors cannot extend it as they wish when the
21 evidence doesn't say what they want it to. And the scope of our
22 trial as defined by the Closing Order when it comes to Phnom
23 Kraol is strictly limited to the events which took place at the
24 three defined facilities. I say again, Phnom Kraol Prison, Office
25 K-11 and Office K-17.

1 This means that you must reject all evidence that is unrelated to
2 any of these three facilities.
3 Even more unfortunately for the Co-Prosecutors, the only two
4 witnesses who provided evidence within the scope completely
5 undermined the Co-Prosecutors' case on Phnom Kraol. Firstly,
6 these two witnesses described the reasons of their arrest. They
7 explained that they were related to Kham Phoun, the Secretary of
8 Commerce Office K-16, who was suspected of treason and who had
9 been found dead in Phnom Penh. Moreover, 17 people related to
10 this same Kham Phoun flew to Vietnam under unclear circumstances.
11 Mr. President, these two events together with the escalation of
12 the armed conflict with Vietnam led to chaos in Autonomous Sector
13 105. To stabilize the situation, local authorities had to take
14 exceptional measures including the close scrutiny of people part
15 of Kham Phoun's network. Thus those two witnesses were
16 legitimately and lawfully detained at Phnom Kraol Security Centre
17 on a temporary preventive basis to give the authorities time to
18 sort things out.

19 [15.39.16]

20 Second, these two witnesses confirmed that they were released
21 after a month. This confirms that they were kept under
22 surveillance just for the time it took to calm the situation in
23 the area, nothing more.

24 Third, importantly, the witnesses stated that they were never
25 mistreated while in detention. They further describe detention

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1 conditions that were consistent with conditions in prisons in the
2 DK at the time. And what they described clearly fails to reach
3 the level of gravity required for a Crime Against Humanity.

4 [15.39.58]

5 And finally, Mr. President and Your Honours, none of the
6 witnesses heard, ever saw even one single killing at Phnom Kraol.
7 Some witnesses provided speculative evidence regarding people
8 being sent out of the security centre, however, we have
9 absolutely no evidence as to what happened to those people. They
10 may just as likely have been released or sent to a different
11 location.

12 At the end of the day, there is simply no evidentiary basis to
13 find beyond reasonable doubt that killing, extermination or
14 enforced disappearances occurred at Phnom Kraol.

15 Thank you, Mr. President, Your Honours, this concludes my
16 presentation and I'll now hand the floor to my colleague, Victor
17 Koppe, to discuss the last security centre in our trial which is
18 obviously S-21. Thank you.

19 MR. KOPPE:

20 Good afternoon again, Mr. President.

21 I am mindful of the time and I do not think I will finish my
22 presentation on S-21 Security Centre, however, if it's not a
23 problem I will continue on Monday morning.

24 [15.41.44]

25 MR. PRESIDENT:

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1 If that is the case, then it is appropriate because today is
2 Friday, and I think it is an appropriate time if you think that
3 you want to continue on Monday.

4 MR. KOPPE:

5 It's been a long day, it's been a long week. I would not have a
6 problem in finishing now and starting fresh on Monday morning,
7 but may I then ask, Mr. President, that we get a bit more time
8 Monday morning after eleven-thirty so that I think we will not
9 get in trouble with the schedule as we have envisaged?

10 MR. PRESIDENT:

11 Now you can continue your presentation and on Monday we will give
12 <some> more time for you to conclude your arguments and
13 presentation since you want to present in detail before the
14 Chamber.

15 [15.42.06]

16 MR. KOPPE:

17 Let me be wise and decide that we will continue on Monday with
18 S-21. I think if we have 15 minutes after eleven-thirty on Monday
19 we should be fine. So if that is fine with you, everybody can go
20 home and enjoy their weekend.

21 MR. PRESIDENT:

22 Your request is permitted. I thank you very much.

23 It is now appropriate time for the adjournment for the day, and
24 the Chamber will resume its hearing on Monday 19 June 2017,
25 starting from 9 a.m.

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1 And next Monday the Chamber will continue to hear the Closing
2 Arguments in Case 002/02 by the defence team for Mr. Nuon Chea.
3 Please be informed and please be on time.
4 Security personnel are instructed to bring the two accused, Nuon
5 Chea and Khieu Samphan, back to the ECCC detention facility and
6 have them returned into the courtroom next Monday before 9 a.m.
7 The Court is now adjourned.
8 (Court adjourns at 1544H)

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