



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

អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Court Suprême

TRANSCRIPT OF APPEALS HEARING

Case File N° 002/19-09-2007-ECCC/SCC

19 August 2021

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 15-Sep-21, 10:40
CMS/CFO: Sann Rada

Before the Judges: KONG Srim, Presiding
YA Narin
Maureen Harding CLARK
SOM Sereyvuth
Chandra Nihal JAYASINGHE
MONG Monichariya
Florence Ndepele Mwachande
MUMBA

The Accused: KHIEU Samphan

Lawyers for the Accused:
KONG Sam Onn
Anta GUI SSE

Trial Chamber Greffiers/Legal Officers:
SEA Mao
Peace MALLENI

Lawyers for the Civil Parties:
PICH Ang
Megan HIRST
TY Srinna
VEN Pov

For the Office of the Co-Prosecutors:
CHEA Leang
Brenda J HOLLIS
SREA Rattanak
SENG Bunkheang
Nisha PATEL
Helen WORSNOP
Ruth Mary HACKLER
William SMITH
Vincent de Wilde d'ESTMAEL

For Court Management Section:
SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Judge KONG Srim	Khmer
Judge Maureen Harding CLARK	English
Judge Chandra Nihal JAYASINGHE	English
Judge SOM Sereyvuth	Khmer
Judge MONG Monichariya	Khmer
Judge Florence Ndepele Mwachande MUMBA	English
Mr SENG Bunkheang	Khmer
Ms Brenda J HOLLIS	English
Ms Ruth Mary HACKLER	English
Ms Megan HIRST	English
Mr KONG Sam Onn	Khmer
Ms Anta GUISSÉ	French
Mr PICH Ang	Khmer
Mr KHIEU Samphan	Khmer
Greffier	Khmer

1 PROCEEDINGS

2 (Court opens at 0906H)

3 MR. PRESIDENT:

4 Please be seated.

5 This is Day 4 of our appeal hearing, and now we are in session.

6 And greffier, could you report the attendance of the parties?

7 THE GREFFIER:

8 Mr. President, Your Honours, all parties are present except civil parties that they cannot
9 attend today's proceeding due to health reason. Thank you.

10 MR. PRESIDENT:

11 I'd like now to report the Judge Co-Rapporteur to read the portion of the report on the
12 session on the appeal of the Co-Prosecutors.

13 [09.08.20]

14 JUDGE MUMBA:

15 Thank you, Mr. President. Good morning, parties.

16 The Co Prosecutors have one ground of appeal. They object to the way in which the Trial
17 Chamber addressed the effect of forced sexual intercourse within the context of forced
18 marriage on those men, that is, marriage arranged without their knowledge or consent with
19 women who were not known to them. The Trial Chamber found that on those facts men
20 could not be victims of rape.

21 The Co-Prosecutors do not challenge that finding, but dispute the lawfulness of the Trial
22 Chamber's failure to assess whether men in the context of those forced marriages were
23 subjected to sexual
24 violence of such gravity that it could amount to the crime against humanity of Other
25 Inhumane Acts.

1 While the Trial Chamber acknowledged that men were subjected to sexual violence
2 contrary to human dignity, it found that, due to an absence of clear evidence concerning
3 the level of seriousness of this kind of conduct on males, it was unable to reach a finding
4 on the seriousness of the mental and physical suffering endured by these men. They
5 submit that both male and female victims of the same act of forced sexual intercourse
6 should be properly recognized as victims of sexual violence as other inhumane acts of
7 crimes against humanity.

8 The Co Prosecutors appeal this exclusion of the male victims of sexual violence in the
9 context of forced marriage from the conviction for the crime against humanity of Other
10 Inhumane Acts through two primary arguments.

11 [09.10.54]

12 Firstly, they argue that the Trial Chamber erred in law by failing to correctly apply the legal
13 requirements of the crime by not considering whether forcing someone to have sexual
14 intercourse constituted serious attack on human dignity. Secondly, the Co-Prosecutors
15 argue that the Trial Chamber erred in law and fact by failing to find that forcing men to
16 engage in sexual intercourse caused serious physical or mental suffering or injury to the
17 male victims.

18 They dispute the lawfulness of the Trial Chamber's failure to properly consider relevant
19 evidence or to provide a reasoned judgment on its findings that Other Inhumane Acts had
20 not been established. They submit that the Trial Chamber's legal and factual errors were of
21 such gravity that they invalidate the decision, which resulted in a miscarriage of justice.

22 [09.12.18]

23 They submit that the act or omission of Other Inhumane Acts is proven if the conduct either
24 caused serious mental or physical suffering or injury or constituted serious attack on
25 human dignity. In this regard, the Co-Prosecutors argue that the task of determining

1 whether the act constituted a serious attack on the human dignity of the victims is an
2 objective test and, had the Trial Chamber followed the correct approach, it would have
3 found that the conduct amounted to a serious attack on the
4 human dignity of the male victims.

5 The Co-Prosecutors submit that the Trial Chamber failed to consider evidence that was
6 materially relevant in demonstrating the suffering of male victims caused by being both a
7 victim of forced sexual intercourse and by being required to inflict that suffering on their
8 spouse in coercive circumstances. In particular, the Trial Chamber ignored relevant expert
9 testimony and the civil party evidence of male suffering caused by forced consummation.

10 They submit that the Trial Chamber's findings, including that men could not refuse to
11 consummate marriage, were, in and of themselves,
12 sufficient to demonstrate the level of serious conduct and its impact on males.

13 This Chamber invites the Co-Prosecutors to point out what fact evidence as opposed to
14 opinion evidence was ignored when the Trial Chamber concluded that there was an
15 absence of clear evidence concerning the level of seriousness of this kind of conduct and
16 its impact on males.

17 That concludes the report of the Co-Rapporteur on this appeal.

18 Thank you, Mr. President.

19 [09.14.49]

20 MR. PRESIDENT:

21 I'd like now to hand the floor to the Co-Prosecutor to make submissions.

22 Thank you.

23 MR. SENG BUNKHEANG:

24 Thank you, Mr. President.

25 Good morning, Mr. President, Your Honours, and good morning, everyone. My name is

1 Seng Bunkheang. I'd like to inform Mr. President and Your Honours the following.

2 [09.15.32]

3 The Co-Prosecutors carefully examined the Trial Chamber's Judgment in Case 002/02 and
4 found that the Chamber erred in fact and in law when it analyzed the evidence relating to
5 men who were forced to have sex in their forced marriages. This led the Co-Prosecutors to
6 file their single ground of appeal.

7 Today, we welcome the chance to discuss this and have split our discussion into two parts.
8 I will discuss the first part and, in the second part, my colleague, Ruth Mary Hackler, will
9 discuss the Chamber's legal and factual errors in detail, including the question Your
10 Honours' report posed regarding the evidence. However, because we submit that
11 stereotypes and unconscious bias influenced the Chamber's analysis and led it to err, I will
12 discuss – I will address these topics first.

13 Stereotypes exist in all societies. They are generalized beliefs about a particular category
14 of people generated by cultural views and other influences that are ingrained in us from an
15 early age.

16 Ultimately, stereotypes affect how our brains perceive situations and people.

17 [09.17.44]

18 While stereotypes can sometimes be truthful, more often than not they over-generalize,
19 are inaccurate and are resistant to new information. They can also be so subtle and so
20 embedded in the way we look at the world that we often don't realize we have them. This
21 can lead to unconscious bias.

22 When unconscious bias infiltrates judicial decision-making, it threatens Judges' sacred duty
23 to weigh the evidence objectively. What purports to be a neutral decision may, in reality,
24 perpetuate stereotypes and deny a right or a benefit, impose a higher burden or
25 marginalize a group. This is what we submit happened here. We submit that unconsciously

1 held gender stereotypes of male sexuality coloured the lens through which the Trial Judges
2 applied the law and assessed the facts.

3 [09.19.34]

4 This prevented them from recognizing that the men who were forced to have sexual
5 intercourse in forced marriages during the DK regime were subjected to sexual violence
6 that constituted Other Inhumane Acts.

7 Your Honours know the context. Couples were forced to marry often complete strangers
8 and were instructed to love each other. They rightly understood this meant they were
9 expected to have sex. They also knew that in the coercive environment of Democratic
10 Kampuchea, disobeying the instruction could have severe, even fatal, consequences.

11 This belief was reinforced by the fact that militiamen were ordered to monitor the
12 newlyweds to make sure they consummated their marriages, and when officials learned a
13 couple had not had sex, one or both members of the couple were threatened, punished
14 and even killed. This caused many couples to have sex because they believed they had no
15 – they had to in order to survive. Yet while the females who were forced to have sex in this
16 coercive environment were recognized by the Trial Chamber as victims of Other Inhumane
17 Acts through rape, the males forced to have sex in this coercive environment were not
18 recognized as victims at all.

19 [09.22.08]

20 Our appeal identifies three gender stereotypes that we believed unconsciously influenced
21 the Trial Chamber's assessment and led it to erroneously reach this conclusion.

22 The first stereotype is that men view all sexual opportunities with women as positive. The
23 second is that even if such a sexual experience is forced upon a man, he does not
24 experience any emotional harm from it. The third stereotype is that if a man is fearful or if it
25 is against his will to have sex, it will be physically impossible for him to complete the act. In

1 other words, these stereotypes indicate that men were happy to have sex with any woman,
2 that they didn't suffer emotionally even if they did not genuinely consent and that, since
3 they completed the act, they must have wanted or enjoyed it, thereby suffering no harm.

4 [09.24.01]

5 We submit that as a result of these stereotypes, the Chamber erred in law and in fact and
6 failed to give evidence on the record appropriate consideration when it came to how men
7 were impacted. This led the Court to unreasonably find that what happened to the men was
8 merely contrary to human dignity.

9 I'd like now to conclude my portion and my colleague, Ruth Mary Hackler, will detail how
10 the errors unfolded.

11 Thank you.

12 MS. HACKLER:

13 Good morning, Mr. President, Your Honours and parties. Before I start, I just need to
14 mention one item of housekeeping.

15 In the interests of time today, as I go through the evidence I'll skip the detailed citations
16 since they've already been provided in Annex C of the additional authorities list that we
17 filed last week. But, of course, if you'd like me to pinpoint a specific reference, I'd be happy
18 to.

19 [09.25.50]

20 Turning now to the merits, I'd like to begin by discussing the analysis that brings us here
21 today. It's entirely contained in one paragraph of the judgment, paragraph 3701, and it
22 refers to one finding and two testimonies.

23 We respectfully submit that the Trial Chamber's reasoning is confusing, incomplete and
24 demonstrates that the Chamber failed to properly apply the law and assess the facts before
25 it.

1 To put the analysis into context, when the crimes were committed from 1975 to 1979,
2 forcing someone to have sexual intercourse without consent was not covered by any
3 enumerated crime against humanity in customary international law. The Pre-Trial Chamber
4 held that this conduct fell into the residual category of Other Inhumane Acts, so the Trial
5 Chamber needed only to determine if forced sexual intercourse in forced marriages
6 satisfied the definition of Other Inhumane Acts. But before making this assessment, the
7 Chamber first looked at how to characterize the underlying conduct.

8 [09.27.16]

9 It concluded that the 1975 definition of rape required sexual penetration of the victim, and
10 since men weren't sexually penetrated in the context of forced marriage, they were not
11 victims of rape. So the Chamber split the analysis by gender, considering the conduct
12 against women as rape and the conduct against men as sexual violence because sexual
13 violence doesn't have a penetration requirement.

14 For both assessments, the Trial Chamber correctly set out the three-limbed test necessary
15 to prove Other Inhumane Acts. First, there must have been an act of similar seriousness to
16 other acts enumerated as crimes against humanity. Second, the act must have caused
17 serious mental or physical suffering or injury or it must have constituted a serious attack on
18 human dignity. Third, the act must have been performed intentionally.

19 When the Chamber assessed what happened to the men, it failed to apply the law correctly
20 on the second limb of the test. Now, this second part is an either/or test that establishes the
21 actus reus of the crime. The significance of having two alternatives is that they're
22 completely separate evaluations.

23 [09.28.53]

24 So on a plain reading of the provision, a serious attack on human dignity doesn't require
25 evidence of serious suffering or injury. If it did, the two alternatives would collapse into one.

1 When the Trial Chamber was unable to reach a conclusion on the serious suffering the
2 men endured, it should have assessed the serious attack on human dignity alternative like
3 the Čelebići Trial Chamber did when assessing the beating of Mirko Kuljanin.

4 The Kunarac trial judgment also holds at paragraphs 505 through 507 that an objective
5 assessment is required to determine what constitutes an outrage upon personal dignity,
6 which is a comparable crime.

7 [09.29.49]

8 The Trial Chamber's failure to make this assessment was an error of law.

9 Now, the Chamber's passing acknowledgement that what happened to men was contrary
10 to human dignity doesn't constitute a proper assessment. Beyond conflating the two
11 alternatives, we submit that the Chamber dismissively found the sexual violence was
12 contrary to human dignity without discussing its seriousness because it was unconsciously
13 influenced by the stereotype that men always enjoy having sex with women and suffer no
14 harm from it under any circumstances.

15 The Chamber should have considered that decisions relating to bodily integrity and sexual
16 autonomy are of the utmost intimate and personal nature, regardless of gender. Usurping
17 men's control over these choices demeaned them and seriously attacked their dignity.

18 Aggravating what was already a serious attack on human dignity was the context in which
19 the acts occurred. Even though evidence of the context was on the record, the Chamber's
20 unconscious bias caused it to give it unduly little weight. In doing so, it reached a
21 conclusion no reasonable Trial Chamber could have reached based on the evidence
22 before it. This was an error of fact.

23 [09.31.30]

24 Now, the Chamber did recall it found that men could not refuse to consummate, but that
25 was only one aspect of the context it should have considered. As the Aleksovski Trial

1 Chamber holds at paragraph 57, the seriousness of an act and its consequences can
2 increase when combined with other acts even if, on their own, those acts would not amount
3 to a crime.

4 The Trial Chamber's assessment should have taken into account three contextual
5 circumstances that further proved the sexual violence was a serious attack on human
6 dignity.

7 The first circumstance was that couples were forced to have sex mere hours after they had
8 been subjected to the crime of forced marriage. This cumulatively increased the
9 seriousness and impact of both crimes. The Chamber mentioned this factor at paragraph
10 3697 in its analysis for women, but not for men.

11 [09.32.39]

12 Secondly, in the coercive environment of the DK regime, the threat of punishment for any
13 failure to follow orders was inescapable. If a man didn't consummate his marriage, he and
14 his new wife were in jeopardy if the authorities discovered it. This, together with extensive
15 evidence of monitoring, exerted the same pressure to complete the sexual act as holding a
16 loaded gun to the man's head. It also increased the seriousness of the attack on his
17 dignity.

18 In this regard, the Chamber considered Civil Party Sou Sotheavy's testimony of being
19 threatened with being smashed for refusing to consummate, but other evidence not
20 mentioned in the analysis showed the widespread implementation of punishments.

21 For example, Mam Soeurm testified that at Trapeang Thma Dam, if newlyweds refused to
22 consummate the marriage they risked their lives. In Youeng testified that where she lived in
23 the East Zone, they were told that if they refused to consummate their marriage, they
24 would be taken to the commune office to consummate. She also said if they refused to
25 follow the instruction, they would be killed.

1 [09.34.08]

2 The witness in WRI E3/9821 stated that as a commune militiaman in Bakan district, he was
3 ordered to investigate newly-married couples and report those who refused to sleep
4 together. Those who refused were called for re-education and disappeared. In WRI
5 E3/9472, the witness said that because her nephew refused to sleep with his new wife, he
6 was detained and tortured at Kraing Ta Chan until he agreed to do so.

7 The third circumstance the Chamber should have considered is that by coercing men to
8 rapidly increase the population, the CPK was not only violating the men's bodily integrity
9 and sexual autonomy, but it was also forcing them to inflict on their new wives what the
10 Case 1 Trial Chamber called "the worst suffering a human being can inflict upon another".

11 [09.35.18]

12 And as Čelebići Trial Judgment, paragraphs 1069 through 1070 note, when victims are
13 forced to victimize others, it subjects them to serious indignity.

14 Now, I noted earlier that a serious attack on human dignity doesn't require proof of serious
15 suffering. However, proof of serious suffering was before the Chamber. This evidence
16 emphasizes that the attack on human dignity was serious. It also constitutes clear evidence
17 of male suffering that the Chamber said was absent from the record. In short, it helps
18 establish both alternatives of the actus reus test, but none of it was mentioned in the
19 analysis for men.

20 Civil Party Kul Nem testified that he had a fiancée, but in late 1977 he was ordered by the
21 chief of the provincial army to choose someone else to marry. At his wedding ceremony,
22 authorities told the couples that if they didn't produce children for Angkar, they were
23 against the law. Kul Nem told the Chamber that after the wedding, he struggled for three
24 days with the decision to consummate, but because he and his wife knew they were being
25 monitored for consummation and were afraid of being killed or tortured for disobeying, they

1 consummated.

2 Civil Party Em Oeun testified that he and his wife had sex because they were under
3 constant watch and feared being killed. He recalled that, despite such pressure, he
4 agonized over his decision to consummate.

5 [09.37.12]

6 He told the Chamber:

7 "If I recall my past, I sometimes cannot hold my tears. And I was a man. I suffer from it. But
8 I could also imagine the feeling of the lady. She was suffering from it as well. And when at
9 night we discussed to each other and if we refused, then we would be killed eventually. So
10 we had to force ourselves in order to satisfy those who arranged for us, so we had to
11 concede this. It took me approximately two weeks or so to decide to consummate the
12 marriage with my wife. This was the suffering I had to ensure at the time, and to date I
13 cannot forget it. And I could not even find out who ordered this heinous crime. I was one of
14 the victims, and I believe that there were many more." (As read)

15 [09.38.16]

16 Another testimony that was directly relevant to the Chamber's analysis was that of female
17 Civil Party Mom Vun. She testified that soon after her first husband was killed, she was
18 forced to remarry. In the commitment ceremony, she and her new husband were required
19 to agree to make children, but on their wedding night they privately agreed to pretend to
20 get along until they could go their separate ways. Unfortunately, the men who were
21 monitoring their activities outside overheard and barged into the house. She testified:

22 "They pointed their guns at us. We were ordered to take off our clothes so that we could
23 consummate the marriage. Militia people had a torch to shed light on us and they also had
24 guns. We had no choice but to take off our clothes, but then I still refused to consummate
25 the marriage. They threatened us again and they used the torch on us, and they actually

1 got a hold of his penis to insert it into my thing. It was so disgusting, but we had no choice."

2 (As read)

3 Although given from the female perspective and considered in the Chamber's analysis for
4 harms suffered by women, Mom Vun's evidence also shows that her husband was
5 physically molested and subjected to degrading treatment. He was expected to ignore her
6 unwillingness and physically complete the act, at gunpoint, while the militiamen watched.

7 [09.40.04]

8 Khieu Samphan wrongly asserts that instead of questioning Mom Vun about the impact on
9 her husband, the Prosecution is now trying to testify in her place. We are simply drawing
10 Your Honours' attention to evidence on the record that would objectively cause any
11 reasonable person to suffer and feel that their dignity had been seriously attacked. Again,
12 the Chamber's analysis for men didn't mention it.

13 Expert Kasumi Nakagawa's testimony was also directly relevant to both the seriousness of
14 the attack on human dignity and the mental suffering that men experienced. She testified
15 that forced sexual intercourse extremely and disproportionately impacted men, and she
16 noted the immeasurable fear they would have felt to complete the act while the wife was
17 scared or showing that she didn't accept her husband.

18 [09.41.07]

19 She was of the opinion that this would have impacted the couple's married life because the
20 man might feel guilty and also worry that his wife would never love or accept him as a
21 result. She called it a scar that would last for a long period of time.

22 Khieu Samphan again attempts to discredit Kasumi Nakagawa's testimony by ignoring that
23 her extensive research included documenting the stories of both women and men who
24 experienced sexual violence during the DK regime. Her opinion about the mental impact of
25 forced sexual intercourse on men was certainly within the realm of her specialized

1 knowledge. But it wasn't mentioned in the analysis either.

2 The Trial Chamber also erred by failing to look objectively at the nature of the sexual
3 violence and whether it was similarly serious to other enumerated crimes against humanity.
4 This wasn't done even though it constitutes the first limb of the Other Inhumane Acts test,
5 and it's also relevant to whether the conduct was a serious attack on human dignity.

6 [09.42.26]

7 Had it properly carried out the assessment, the Trial Chamber would have noted that this
8 Chamber affirmed in Case 1 that exercising control over someone's sexuality is one of the
9 factors that indicates the crime against humanity of enslavement has occurred. It would
10 have also recognized that in the Case 1 Appeal Judgment's discussion of torture, this
11 Chamber noted that the Kunarac Trial Chamber had established that sexual violence
12 necessarily gives rise to severe pain or suffering, whether physical or mental.

13 The last point I'd like to address is Khieu Samphan's fatally flawed claim that if couples
14 developed feelings for each other or stayed together after the DK regime, it suggests that
15 any suffering they experienced from forced marriage or forced consummation was either
16 minimal or negated.

17 [09.43.29]

18 This argument misapprehends psychological trauma as *Semanza* Trial Judgment
19 paragraph 322 notes, mental harm does not have to be permanent or long-lasting to be
20 serious. To put this in the perspective of a physical injury, it's like saying a man whose legs
21 were broken during torture didn't seriously suffer because now he can walk without a limp.
22 Recovering from injury and healing over time doesn't erase the fact that a trauma occurred
23 or that it caused serious harm.

24 For all these reasons, we submit that had the Trial Chamber applied the legal test correctly
25 and given the proper weight to the evidence before it, it could have only concluded that the

1 men who were forced to have sexual intercourse in forced marriages were subjected to a
2 serious attack on human dignity and/or this caused serious mental suffering or injury.

3 As the other two limbs of the Other Inhumane Acts test are also satisfied, we request that
4 the erroneous finding be set aside and that the conviction for Other Inhumane Acts be
5 corrected to include sexual violence against men.

6 Thank you for your attention, Your Honours. I now yield the floor to the Civil Parties.

7 [09.45.16]

8 MR. PRESIDENT:

9 The floor is now given to the Lead Co-Lawyer for Civil Parties to make submissions.

10 MS. HIRST:

11 Good morning, Mr. President. Good morning, Your Honours, and good morning to the
12 parties.

13 Today I will limit my I will limit my remarks on the OCP appeal insofar as it concerns the
14 evidence of Civil Parties, and specifically, I'll address Part II of that brief, which is headed
15 "lack of evidence".

16 We strongly disagree with the claim that there was no evidence. In fact, there was
17 substantial evidence, mostly from civil parties, which could be used to show the gravity of
18 the conduct and the fact that it caused suffering to men and attacked their human dignity.

19 [09.46.26]

20 So my intention today is to point to some of that civil party evidence and to explain why we
21 say it's relevant. I'm going to do my best to avoid repeating evidence which the OCP has
22 just referred to, but it may be helpful if I briefly refer back to the actus reus elements of the
23 offence, which I addressed on Tuesday, because these are the matters to which we say
24 the evidence is relevant.

25 The first element, which I've been referring to as the gravity element, that's the question of

1 whether the conduct is of a seriousness similar to other crimes against humanity.

2 The second element, which I've been referring to as the suffering element, can be met by
3 showing either serious physical or mental suffering or injury, or an attack on human dignity.
4 And I'm going to continue to use the shorthand "suffering" to speak of this element, but I
5 want to be clear that our position is in agreement with the Office of the Co-Prosecutors that
6 those two requirements are disjunctive.

7 Regarding the civil party evidence I'm going to speak to, we say it can be relevant to either
8 limb of the suffering element and it could also be relevant to the gravity element.

9 [09.47.58]

10 Now, before turning to that civil party evidence, I would like to draw a distinction between
11 two categories of evidence which I'm going to look at.

12 Firstly, we could talk about evidence which concerns the treatment. By this I mean the
13 treatment which the victims were subjected to. In this case, that is evidence that people
14 were forced to have sexual intercourse.

15 Secondly, and separately, we could speak about evidence which concerns the subjective
16 suffering which resulted, the particular types of harm which victims experienced as a
17 consequence of that treatment. How did it make you feel that you were forced to have sex?
18 Did you suffer? In which ways did you suffer? And I'm going to refer to that as evidence of
19 subjective suffering evidence.

20 [09.48.54]

21 Now, the Defence is very focused in its response brief on that latter category, the evidence
22 of subjective suffering, or what they say is a lack thereof. They seem to assume that Other
23 Inhumane Acts cannot be proved without that kind of evidence.

24 Our response to that is twofold. Firstly, we say no, evidence of subjective suffering is not
25 essential because suffering can be inferred from the nature of the treatment which was

1 inflicted on the victims. But in any event, even if evidence of subjective suffering was
2 needed, there was evidence of that kind before the Trial Chamber

3 And I want to take each of those points in turn and take Your Honours through the civil
4 party evidence in each of those categories. And I'll begin with the civil party evidence
5 concerning treatment, but first some elaboration as to why this evidence of treatment can
6 be relevant.

7 In fact, it is appropriately and not unusual for Judges to rely on evidence of treatment in
8 order to infer serious suffering. Indeed, that is precisely what Your Honours did in the Case
9 002/01 Appeals Judgment.

10 [09.50.26]

11 There, findings about the Other Inhumane Acts concerning population movements 1 and 2
12 were made solely by referring to evidence of the treatment which victims experienced and
13 without requiring express evidence of the suffering which resulted. For example, in relation
14 to Movement of Population Phase 1, at paragraphs 655 to 656, Your Honours said that:
15 "...at least two million people were forcibly evicted from Phnom Penh; it happened at the
16 peak of the hot season; there was a general absence of water, food, shelter, hygiene
17 facilities and medical care. Some civilians were killed; others died because of the
18 conditions."

19 Now, from these factual findings alone, findings which concerned the treatment imposed on
20 victims rather than the suffering which resulted, Your Honours were able to infer serious
21 mental and physical suffering or injury and to uphold convictions for Other Inhumane Acts.

22 [09.51.45]

23 And the same approach was taken regarding Movement of Population Phase 2 at
24 paragraphs – sorry, 658 to 659.

25 If we draw a parallel in the present case, the treatment in question here was forced sexual

1 intercourse and, in fact, we had clear findings on this from the Trial Chamber.

2 It found that couples were forced into sexual intercourse through a combination of means;
3 monitoring by cadres, threats, reprisals against those who refused and, of course, the
4 climate of fear in the context of which all of this occurred.

5 And the Trial Chamber's findings referred to the coerced individuals as "newlyweds" or
6 "couples", and those findings clearly concern both men and women.

7 At paragraph 3696, the Trial Chamber put it most explicitly, quote:

8 "Both men and women felt compelled to have sexual intercourse with their new spouse.

9 Couples who were found to have not had sexual intercourse were re-educated or
10 threatened with being killed or receiving punishment."

11 [09.53.15]

12 In other words, both members of the couples were forced to have sex by the fear of the
13 consequences which would follow to both of them if they did not

14 And I want to turn now to the civil party evidence which we say justifies those findings. And
15 I'll highlight in particular evidence from civil parties that where it was discovered that a
16 couple hadn't consummated their forced marriage, the woman and the man would both
17 suffer the same consequences, including re-education, disappearance, or death.

18 Civil Party Pen Sochan spoke about several couples disappearing. She described the first
19 of those disappearances like this:

20 [09.54.09]

21 "A day after we got married, all the 12 couples slept in the same long building and I noticed
22 that one woman named Kom (phonetic) whose husband named Muth (phonetic) were
23 called. When they were called, she wept and hugged me, [she said] that they did not
24 consummate the marriage and that they would be killed."

25 That's E1/482.1 at 15.27.54.

1 Civil Party Preap Sokhoeurn: testified about a couple she knew where the man refused to
2 consummate the marriage, and the couple, both the man and the woman, were sent for re-
3 education. That's transcript E1/488.1 before 9.28.08.

4 Mom Vun was asked whether any couples refused to consummate their forced marriages.

5 She said, and I quote:

6 "Some couples refused while others did not dare to do so because they were afraid that
7 they would be killed. The two couples among the 60 couples were taken away and I had no
8 idea where they were taken to. They refused, and as a result they were taken away."

9 That's E1/475.1 just before 15.05.24.

10 Civil Party Chea Deap testified about a couple she knew who did not "get along". The man
11 was called to be re-educated in that case after the woman reported him. That's E1/466.1
12 after 15.35.46.

13 [09.56.02]

14 Civil Party Say Naroeun and Kouy Muoy both testified of seeing couples taken away and
15 said they believed it was because those couples had not consummated their marriages.

16 That's E1/489.1 after 10.46.03, and E1/394.1 before 15.12.42 and at 15.14.03.

17 Another civil party who didn't give public hearing testimony described in his Written Record
18 of Interview about how his cousin was disappeared for refusing to consummate his forced
19 marriage. That's document E3/9825 at Answer 108.

20 And in addition to all of this evidence about the consequences which befell others and,
21 therefore, the consequences which people feared and understood would also befall them,
22 the Chamber also had before it the direct evidence of Civil Party Sou Sotheavy.

23 [09.57.22]

24 Although she did not and does not identify as a man, the cadres perceived and treated her
25 as a man, and so her evidence is relevant to how men were treated when they failed to

1 consummate their forced marriages. Sou Sotheavy spoke of being forced to attend study
2 sessions, being questioned about whether consummation had occurred, and being told that
3 if the couple did not have sex, they would be smashed. That's E1/462.1 after 15.24.14, and
4 E1/463.1 after 10.04.50.

5 So there was strong evidence that men were subjected to the same measures of coercion
6 to ensure the consummation of their forced marriages as women were. And additionally,
7 there was some evidence about instances in which men went through with sexual
8 intercourse as a result of this coercion.

9 And the Prosecution has already referred to the evidence of civil party Kul Nem.

10 I want to add reference to another civil party who didn't testify publicly, so I'm not going to
11 mention his name, but he explained in both his Written Record of Interview and his Victim
12 Information Form that he was forced to have sex. And in his Victim Information Form, he
13 put it like this:

14 [09.58.57]

15 "We obeyed Angkar's orders in order to survive that regime. I did not want to make love to
16 my wife and I knew that she felt the same but then they we forced us. Therefore I had to
17 force myself to have intercourse with my wife at night."

18 That's document E3/4677.

19 When Khieu Samphan claims in his response brief that there was no evidence, that claim
20 simply disregards all of this evidence about the treatment which men were subjected to,
21 that is, that they were forced to have sexual intercourse. Instead, in his response brief he
22 focuses on the fact that some men who testified did not speak about forced sexual
23 intercourse.

24 And essentially, he identifies some of the men from various parts of the trial and says,
25 effectively, "This person didn't mention being forced to have sex and, therefore, it must not

1 have happened like that."

2 [10.00.07]

3 Now, there are two problems with this argument. Firstly, the Defence mis-states some of
4 the civil party evidence.

5 For example, the Defence says that Civil Party Yos Phal – in respect of Yos Phal, it is said
6 that "feelings developed within this couple".

7 Your Honours, the transcript from Yos Phal's evidence, in fact, says, "we were still together
8 at that time because of the pressure from parents and siblings". And, "Even after I was
9 forced to marry, I did not love my married wife".

10 On the subject of sexual intercourse, he testified that he told his wife they had to pretend
11 that they had sex so that "then we would be spared".

12 Those references are E1/464.1 at 10.53.00, 14.03.50 and 11.07.24.

13 In addition to mis-statements of that kind, there is also a logical flaw in the Defence's
14 argument. Where some civil parties were silent on this subject, that is not evidence that
15 they were not forced to have sex; it is simply not evidence on that question at all. And the
16 reason is that when testifying, these men were not asked about their experience of forced
17 sexual intercourse.

18 [10.01.45]

19 That is the case, for example, for Civil Parties Seng Soeun and Mean Leouy, who are
20 mentioned in the Defence response brief. Each of them said that they had consummated
21 their marriage, but neither was questioned on the circumstances in which that occurred,
22 and we are left unable from the evidence to conclude anything about whether it was forced
23 or voluntary.

24 So to recap, the Trial Chamber found that men were forced to have sex. There was
25 significant civil party evidence to that effect. And the Defence references to some civil

1 parties who were not questioned on their experience of forced sexual intercourse does not
2 and cannot not counter the weight of the evidence from those who did speak of being
3 forced to have sex.

4 [10.02.42]

5 Now, until now I've been speaking about the treatment evidence, evidence that force
6 sexual intercourse occurred. And we say that the Chamber was able to infer from that
7 evidence alone that the suffering element was made out.

8 In any event, Your Honours, there was evidence concerning subjective suffering from male
9 civil parties.

10 The Prosecution has already mentioned Civil Party Em Oeun, and the key evidence on this
11 question came from him. I won't repeat the evidence itself since the Prosecution has
12 already mentioned it, but I'll turn to Khieu Samphan's response to Em Oeun's evidence.

13 And the response essentially is that that evidence can't be relied upon.

14 We heard again yesterday claims about the supposed lack of credibility of Em Oeun's
15 evidence, and we have addressed questions generally in our response brief at paragraphs
16 832 to 841.

17 Your Honours, the difficulty that Em Oeun had and which he openly accepted was a
18 difficulty in remembering dates and the chronology of events. That's very different from
19 what we're speaking about here. And those arguments about the lack of credibility from
20 these questions of inconsistencies relating to the dates on which events occurred are
21 particularly unconvincing when we're speaking about suffering.

22 [10.04.25]

23 Em Oeun was talking about whether he experienced psychological pain, whether he
24 continued to experience psychological pain at the time of his testimony. It's a very different
25 matter from recalling a chronology of events. It is not the sort of detail which is forgotten

1 with the passage of time. Indeed, Em Oeun began crying while he testified about this.

2 The suffering was clear and there was nothing unreliable about it. To the contrary. We say

3 it was powerful and spontaneous evidence that being forced to have sex was

4 psychologically distressing, indeed, even so many years after the fact

5 [10.05.11]

6 Now, we maintain that it was not necessary for the Chamber to have evidence of that kind,

7 subjective suffering evidence, but the fact that we do have it only serves to strengthen the

8 conclusion that the inference that suffering is caused from forced sexual intercourse is a

9 reasonable inference.

10 That position, of course, is also corroborated by the expert evidence which the Prosecution

11 has referred to.

12 And I'll reference one other civil party who I've already referred to. His VIF is E3/4677.

13 And having explained that he spoke about being forced to have sexual intercourse, he

14 went on in his Victim Information Form to explain that he saw this as a violation of his

15 autonomy. In his words, it was, quote, "a crime against individual will regarding sex".

16 And I think it captures eloquently the type of harm to personal dignity which can be caused

17 by this kind of treatment.

18 Your Honours, I do see the time and I have one final point which will only take me around a

19 minute and a half to make, if I may continue.

20 [10.06.39]

21 So Your Honours, there was, in fact, direct evidence from male civil parties which spoke

22 directly to suffering as a result of forced sexual intercourse, and I've mentioned Em Oeun

23 and I've mentioned one other civil party.

24 Now, Your Honours may, I think, legitimately wonder why was there not more such

25 evidence. And the reason for that is that when civil parties spoke about being coerced into

1 having sexual intercourse, questions were not put to them about what kinds of suffering
2 resulted from that. And Your Honours, it's important to note that is not only true of the male
3 civil parties. That is equally true of the female civil parties.

4 [10.07.30]

5 When they spoke about being forced to have sexual intercourse, nobody considered it
6 necessary to ask them, "How did that make you feel?". And the reason for that is clear.
7 Everybody in the courtroom understood sexual intercourse being coerced upon a person
8 causes suffering and it attacks that person's dignity.

9 There was no need to ask about those consequential forms of suffering. It was clear that
10 the inference could be drawn.

11 So for those reasons, Your Honours, we ask you to reject Khieu Samphan's submission
12 that there was no evidence, or a lack of evidence, on these matters and to recognize as
13 relevant the evidence which was given by civil parties.

14 MR. PRESIDENT:

15 Since this is now an appropriate time for a recess, the Chamber will take a recess now and
16 return at 10.35.

17 The Court is now in recess.

18 (Court recesses from 1008H to 1035H)

19 MR. PRESIDENT:

20 Please be seated.

21 (No interpretation)

22 The Co-Counsel for the Defence, you may resume your submission.

23 MR. KONG SAM ONN:

24 Thank you, Mr. President, allow me to continue.

25 Mr. President, Your Honours, it is now time to respond to the Co-Prosecutors' appeal, and

1 it is better to refer back to the paradox in drafting its brief in response to our appeal and
2 responding to us.

3 [10.38.34]

4 In the hearing over the past few days, the Prosecution has acted as the Trial Chamber's
5 staunchest defender. They consistently argued that all our criticism was absolutely
6 unfounded, almost as if our appeal was frivolous and as if we had made it for no legal
7 reason but simply because we were not happy with the outcome.

8 So it is very interesting to hear the Prosecution make criticisms quite similar to ours against
9 the Trial Chamber at this point in time. For example, on the lack of reasoning, and that it is
10 viewed as the bias due to the common sense being (inaudible) or due to the negligence or
11 carelessness.

12 [10.40.06]

13 However, these biases are not the same. For us, we have shown several points related to
14 the bias made by the Trial Chamber which led to this unjust judgment. We are not certainly
15 going to defend the Chamber - the Chamber's reasoning for reaching the conclusions that
16 the men married under the DK were not victims of the crimes against humanity of other
17 inhumane acts which take the form of sexual violence.

18 [10.40.58]

19 This could thoroughly have been more developed. In addition, it is our view that not only
20 the Chamber had no evidence of suffering of severity sufficient to constitute crime against
21 humanity, but also it could not even declare these men suffered acts of violence which
22 affected human dignity.

23 But whatever the case and whatever the Prosecution may say even today, as we have
24 demonstrated to you in our response that the 23rd September 2019, Document 50/1, the
25 Chamber could not in any way make a conviction and so the Prosecution can't either,

1 neither in law or in fact.

2 [10.42.16]

3 About the law, apparently in a way that is beyond the temporal jurisdiction it is more
4 efficacy than legality, the Co-Prosecutors are trying to get the Chamber to make laws,
5 instead of interpreting the laws that existed during the Democratic Kampuchea era.

6 The Co-Prosecutors concluded their appeal stating that 11 countries, and Cambodia was
7 not among them, had begun to recognize since the 2000s, after centuries full of (inaudible)
8 on the gender equality that had passed, that not only women but also men can be victims
9 of sex crimes. And those countries have included provisions in this sense in their criminal
10 code; everything is written.

11 [10.43.38]

12 The Co-Prosecutors themselves informed the Chamber that such acts had only just begun
13 to be classified as a minor national crime, meaning that it was far from the international
14 level 46 years ago. Thus, it is difficult to predict how this type of crime would have
15 constituted an element of crime against humanity during the Democratic Kampuchea
16 regime, albeit, under (inaudible) charges under other forms of inhumane acts.

17 And they should stop here. However, the Co-Prosecutors tried to convince the Chamber
18 that other charges of inhumane acts have been applied and that infringement of human
19 dignity must be assessed from a purely testified basis without evidence of suffering.

20 Again, this assessment is relatively recent, meaning it does not exist at the material time.

21 Even today, it is not possible to have such an exclusive involvement as we have shown in
22 our briefs. Therefore, there must always be evidence of serious suffering; hence, the Co-
23 Prosecutors in charge of finding evidence tries to take advantage of the fact that they did
24 not provide this evidence.

25 It is also important to note that the Co-Prosecutors did not ask any questions about men's

1 suffering during the debate.

2 About the facts; considering the time constraints of this hearing, I cannot go into the details
3 of evidence as we have carefully done in writing. I just remind you that of the 59 men who
4 came to testify at the hearing on marriages under Democratic Kampuchea, none of them
5 testified to the serious suffering caused by consummation within the framework of
6 marriage.

7 [10.46.59]

8 The Co-Prosecutors put forward two pieces of evidence which they identified as valid
9 evidence. Whatever the Co-Prosecutors claim, the first element is invalid evidence, and the
10 second is not evidence; it is a personal opinion of an expert without specific evidence to
11 support it.

12 As for the first element, the testimony of the Civil Party, Em Oeun, in Test 002/01, which
13 did not conclude any accusation relating to the facts of marriages, it is indeed invalid
14 evidence since we were not able to cross-examine this man on these facts.

15 [10.48.00]

16 His testimony on these facts is only valid as a written affirmation instead of an oral
17 testimony, meaning that it is of an extremely low probative value. And it can be even zero
18 since it does not support any direct testimony. Thus, the arguments of the lead Co-Lawyers
19 for Civil Parties defending the credibility and the reliability of Em Oeun ineffective.

20 Even if the Trial Chamber was able to assess his conduct of the hearing in Case 002/01,
21 and its multiple contradictions, it could not do so on the facts relating to marriages, since no
22 defence team was able to question him about these facts.

23 As to the circumstantial evidence put forward by the Co-Prosecutors, they are irrelevant
24 and have only an extremely weak, and even a zero, probative value since, again, they
25 cannot support any direct testimony.

1 In conclusion, I add that if the lead Co-Lawyers for Civil Parties had shared the
2 Prosecutors' concerns and considered that the interest of those Civil Parties had been
3 harmed by the Trial Chamber's finding, they should have appealed the Prosecution's
4 appeal. But they chose not to do so.

5 Mr. President, Your Honours, for all the legal and factual reasons that I have summarized,
6 and despite everything you have heard, and that you will hear again today from the other
7 side of the aisle, you have no choice, Your Honours, but to dismiss the Co-Prosecutors'
8 appeal.

9 [10.50.44]

10 As the Bench puts questions to the parties in relation to the submission of new evidence, if
11 any, but so far, we have not any - seen any new direct evidence before the Supreme Court
12 Chamber.

13 Thank you.

14 THE PRESIDENT:

15 Now it is the question by the Bench. I would like to invite Your Honours to put question if
16 you have. You have the floor now.

17 [10.51.45]

18 JUDGE MONG MONICHARIYA:

19 Good morning, the Bench, all parties.

20 My question is directed to the Appellant.

21 The Co-Prosecutors has mentioned about the genders on three types. That is why in our
22 society, particularly after 1979, people understood well about the rape, but it is not really
23 widely understood.

24 Based on the witness evidence or testimonies that the Co-Prosecutors and the lead Co-
25 Lawyers mentioned, I would like to ask the Co-Prosecutor, could you please elaborate the

1 opinion or the documents (inaudible) after 1979 regarding the rape against men because of
2 the forced marriage? That is the first question.

3 I have - also had another question. Could the Co-Prosecutor explain the Chamber about
4 the gravity or the large scale of these acts? So what can you use as the basis for the
5 assessment that it is -- the act is serious or is a large-scale one?

6 MS. HACKLER:

7 Thank you, Your Honour.

8 If I understood your question correctly, I believe your first question had to do with laws that
9 came after 1979 and how those might have outlawed the rape of men.

10 [10.54.29]

11 In our brief, we listed a lot of legislation that had passed in various countries, just to bring to
12 your attention that these situations had been criminalised after the fact, which is to coincide
13 with what Your Honours stated in paragraph 585 of the Case 2/1 Appeal Judgment where
14 you said, "The subsequent emergence of new, more specific human rights norms, including
15 those of international criminal law, such as, for example, norms against forceable transfer
16 or enforced disappearances..." which is what you were discussing at the time, "...may
17 serve to provide additional confirmation of the international unlawfulness of the prior
18 specific conduct charged, and be used as a tool to assess whether the conduct in question
19 reaches the requisite level of gravity." (As read)

20 [10.55.39]

21 It says, "However, the existence of more specific norms does not, as such, determine the
22 compliance of the charge with the legality principle." (As read)

23 So these were sort of brought forth more to bring your attention to the seriousness of the
24 conduct, but as far as the gravity I brought out two enumerated crimes that were
25 comparable, of similar seriousness at the time, in my remarks earlier, and that had to do

1 with the enslavement, that the control of sexuality was one factor that indicates
2 enslavement. And, also, in the discussion of torture, that it had been established that this
3 kind of conduct causes severe pain and suffering, which is one of the things that we're
4 arguing the Trial Chamber should have found.

5 I also want to draw your attention to my colleague, Ms. Worsnop's, comments on Tuesday,
6 as well as our appeal response grounds 171 and 172. And she brought out a lot of
7 fundamental human rights treaties that talked about the violation of people's sexuality.
8 Our argument is that control over your sexuality, sexual autonomy, is a basic human right.
9 It shouldn't come down to male or female gender; it's a basic human right, and that was
10 violated.

11 [10.57.15]

12 One other thing I'd like to call to your attention; actually, two. The first is subsequent
13 legislation that you asked for. Additional Protocol 2, the Geneva Conventions, that was -
14 those became valid in 1977; Cambodia signed on to them in 1998.

15 These rights apply to all persons; there's no distinction by gender. Article 4(2)e) prohibits a
16 number of acts against the person. It specifies these acts include; outrages upon personal
17 dignity, in particular, humiliating and degrading treatment, rape, enforced prostitution, and
18 any form of indecent assault. It's not limited by gender. Women and men are entitled to
19 protection from this basic human right.

20 [10.58.14]

21 The other piece of law that I'd like to call to your attention is enforced prostitution. And I
22 know that kind of, at first glance, I guess, might indicate - or might give you a feeling like
23 that's not what happened here. But if you look at the elements of the crime at the ICC, and
24 I believe that was one of the items that we added to our additional authorities list, it's now
25 an enumerated crime at the ICC. And it -- the elements that have to be proven basically tell

1 you exploitation of people’s sexuality for a gain violates their dignity and that’s exactly what
2 we’re arguing the DK regime was doing.

3 Now, it wasn’t the traditional monetary gain that we normally associate with prostitution, but
4 they were exploiting the sexuality of the people for a gain, that was to increase the
5 population so they can get it to 20 million people to build and defend the country to its full
6 potential.

7 I hope that answers your question. I’m not sure if that’s what you were looking for.

8 JUDGE MONG MONICHARIYA:

9 Thank you very much, Madam - Ms. Co-Prosecutor.

10 I would like to have a further clarification concerning the issue. Could you please clarify if
11 there are many documents depicting the suffering of men because of their forced
12 marriages? Particularly the suffering of men because of forced marriages outside the
13 Democratic Kampuchea field. Could you please confirm if there are any document
14 mentioning the issue I have just raised?

15 [11.00.57]

16 MS. HACKLER:

17 Yes, Your Honour.

18 I think the strongest piece of evidence that I could point you to again involves Em Oeun,
19 and that was the testimony, the long quote that I read to you, and he talked about how -
20 and that is document - I’ll doublecheck; E1/113.1., and this is around 3:57 in the afternoon
21 and he talked about how he still suffers today. He suffered for two weeks when he was
22 trying to decide to consummate and it still lingers today.

23 [11.01.44]

24 He said, “...to date I cannot forget it, and I couldn’t even find out who ordered this heinous
25 crime.” (As read)

1 But I'd like to remind Your Honours that it's not just about if they're still suffering now.
2 According to the (inaudible) Trial judgment, paragraph 322, the suffering doesn't have to be
3 long lasting or permanent; as long as there was serious harm when it occurred that was
4 real and serious, then that's the standard that has to be met.

5 JUDGE MONG MONICHARIYA:

6 Thank you very much.

7 JUDGE CLARK:

8 I have a question which I suppose it's with some trepidation, and it follows through from
9 Ms. Guisse's submission that was made maybe three days ago. And I think I sought
10 assistance from everyone and it sounded, to me anyway, as if everybody had the answer
11 except me. And this is the difficulty that I have.

12 A Judge may feel enormous sympathy or empathy towards victims, but here we're dealing
13 with crimes against humanity and the law. And Ms. Guisse made the point that it isn't
14 enough, when you're recognizing a previously unenumerated crime against humanity; in
15 other words, the additional ones, that you still are bound by the rules of legality.

16 [11.03.53]

17 So the difficulty that I personally would have, leaving aside any empathy or sympathy,
18 which I must do, is that in 1975 only the most open societies were recognizing the suffering
19 of men in a coercive sexual situation.

20 Are we not very strictly bound by the laws of legality? That's my issue. I know it's a big
21 issue. I don't know who wants to answer it. It's not an easy one, and it's not easy for the
22 Judges.

23 Thank you.

24 [11.04.46]

25 MS. HACKLER:

1 Thank you, Judge Clark.

2 You're right; it's not easy and I'm not sure I can answer it fully and completely, so if I don't,

3 I hope that we can expand on it this afternoon during the question period.

4 But as a general principle, I would just point you to Document F36, Case 002/01 Appeal
5 judgment, paragraph 584, and Your Honours found there that in regard to legality, it's not
6 required that the specific conduct was expressly criminalized under international law
7 because that would render futile and ineffective the very concept of the residual category of
8 other inhumane acts.

9 So what does have to be identified is whether there is an affirmative articulation of rights
10 and prohibitions contained in human rights instruments that were applicable at the time. So
11 I think that's the standard we have to adhere to, rather than looking for articulated laws
12 outlawing the specific conduct because then you can't predict the things that would fall into
13 this category.

14 So I hope that answers your question.

15 JUDGE CLARK:

16 Thank you.

17 [11.06.19]

18 I know you referred us to an additional protocol to the Geneva Conventions and you said
19 that it was to be read as gender neutral, but my issue, and it's a serious issue, was could
20 you actually say that the development of international criminal law and human rights norms
21 in 1975 had reached the stage that lawyers and ordinary people were reading human rights
22 as gender neutral? Isn't that the big issue?

23 MS. HACKLER:

24 Isn't the big issue that they were forcing people to have sexual intercourse without their
25 consent? And I think that in 1975 was outlawed; that was against the law, that would be

1 foreseeable.

2 [11.07.29]

3 Your Honour, I don't know if the translation didn't come through? Okay.

4 JUDGE CLARK:

5 It didn't for a while.

6 MS. HACKLER:

7 Okay. I just questioned; isn't the main issue that the DK regime was forcing people to have
8 sexual intercourse against their will, without their consent? That shouldn't be gender
9 specific; that applies to everyone. And I think that was universally understood at the time of
10 the crime.

11 Like I said before, perhaps we can expand on this, if you'd like us to, this afternoon in more
12 detail.

13 (Short pause)

14 MS. HIRST:

15 I wonder whether I might be permitted to add a few brief words? Not only insofar as this
16 relates to the OCP's appeal but because Your Honour has also raised the question in
17 respect of the Khieu Samphan appeal, and it is a question of some importance generally
18 concerning forced marriage, so it's very much of concern to us in respect of the Khieu
19 Samphan appeal. And I'm not sure that the answer I gave to Your Honour's question on
20 Tuesday was entirely complete.

21 [11.09.21]

22 So it's our position, really, that following Your Honour's own jurisprudence from Case 2/1,
23 the legality question, as I said on Tuesday, is resolved by referring to the gravity element of
24 the crime. And that's because - and I think this is quite important; we do need to look - Your
25 Honour's right; we do need to look at the crimes against humanity which were enumerated

1 at the time. And then the question from that is; looking at those crimes against humanity
2 that were enumerated at the time and taking into account all the circumstances of these
3 crimes, can we say that those things are similar?

4 [11.09.59]

5 And I want to elaborate on a couple of points from what I said on Tuesday. The first is that
6 there were some enumerated crimes in existence already in 1975, crimes against humanity
7 which were similar in their nature and seriousness. The Office of the Co-Prosecutor has
8 pointed to enslavement and to torture, and we agree with that.

9 Enslavement is very much about a loss of autonomy, and that's very similar to what we're
10 talking about in the forced marriage situation. Torture, of course, and sexual violence are
11 very much interrelated.

12 And coming back to the test years, the question is; were these acts we're looking at now
13 similarly serious to those crimes against humanity and the jurisprudence from (inaudible)
14 trial and the decision, the ICTY followed in Prlić, points out that Your Honours can look at
15 all of the circumstances for those crimes in trying to assess whether they are similarly
16 grave to those pre-existing crimes against humanity.

17 And in this instance, of course we've talked a lot about the suffering of the victims; that's
18 our role here. That's one of the factors which can be taken into account in assessing
19 gravity.

20 [11.11.25]

21 There are other factors; the widespread nature of the crimes, the duration, and here I think
22 it has to be emphasised that these are crimes which are - they have a lifelong impact,
23 really, even if the Democratic Kampuchea only lasted for a short period.

24 The context in which those crimes occurred, and I think the Office of the Co-Prosecutor has
25 pointed to the fact that the marriages and the sexual violence can't be taken in isolation,

1 either from each other, but also the wider context in which these events occurred.

2 So I think there is a possibility just using that gravity element to get there.

3 And then of course there is the further test which is where we're bringing in the human
4 rights principles. That's the Kupreškić test from the Kupreškić case at the ICTY where there
5 was an additional test proposed that legality could be concerned by reference to those
6 human rights principles.

7 [11.12.20]

8 Now, we say that's an additional approach, reference might be had to that. But, ultimately,
9 the key question is; let's look at those other crimes against humanity which did exist at the
10 time. And we say that actually the nature of those crimes is sufficiently similar, that
11 somebody who looked at the whole context of this conduct committed in the DK would
12 have had very good reason to expect that their conduct was criminal, considering the
13 similarity to things like enslavement and torture.

14 And one final point on that in respect of the Prosecution appeal. Of course, those crimes
15 are gender neutral; the crimes themselves are gender neutral; the charges in the Closing
16 Order were gender neutral, so that really raises the question of whether there should be
17 any possibility for any differentiated approach, particularly on the question of legality
18 regarding men and women.

19 THE PRESIDENT:

20 If there are no more questions, we can now have the lunch break.

21 I would like to inform all parties that the hearings this afternoon will resume at 30 past 1:00
22 p.m.

23 Security guards are instructed to bring the accused to the detention facility and please
24 bring him back at 15 past 1:00.

25 [11.14.17]

1 The court is now in recess.

2 (The accused Khieu Samphan leaves the dock)

3 (Court recesses from 1114H to 1328H)

4 MR. PRESIDENT:

5 Please be seated.

6 The Chamber is now back in session.

7 Greffier, could you report the attendance of the parties?

8 [13.28.50]

9 THE GREFFIER:

10 Mr. President, Your Honours, all parties are present. Thank you.

11 MR. PRESIDENT:

12 For the next item of the agenda, we have the final question time for Judges of the Bench. If
13 you have any questions, the floor is opened. Thank you.

14 [13.29.46]

15 JUDGE SEREYVUTH:

16 Thank you, Mr. President.

17 I have a question. I would like to know about the jurisprudence of the International Criminal
18 Court in its judgement that each of the convictions of the accused in the case of Mr. Khieu
19 Samphan.

20 He was convicted to life imprisonment in the judgement of 002/01 and it already became
21 final. As in the case of 002/02, we do not know the final outcome yet. However, if there are
22 sufficient grounds for Khieu Samphan to be convicted to life imprisonment, since there is
23 already a final judgement, and in reference to various questions posed by Judges of the
24 Bench, including Jayasinghe regarding the advanced age of the accused, is it very possible
25 to reduce life imprisonment to the number of years? Is there any similar jurisprudence in

1 the International Criminal Court in this regard? Thank you.

2 [13.32.04]

3 MS. HOLLIS:

4 Thank you, Your Honour. If I could be permitted just one moment to confer with my
5 colleague?

6 (Short pause)

7 [13.32.49]

8 Thank you for that question, Your Honour.

9 The position that we take, as was discussed yesterday, is that the gravity of the crimes
10 may warrant a life sentence, regardless of the age of the accused person. And we suggest
11 that the Trial Chamber engaged in the correct assessment of the gravity of the crimes and
12 weighed appropriately the factors to be considered on sentencing, and that they properly
13 concluded that a life sentence was appropriate, given the gravity of the crimes of which this
14 Appellant was convicted in the second trial, crimes that were different than the crimes for
15 which this Appellant was convicted in the first trial. And in the second trial, those crimes
16 included genocide and other serious violations of global standards of conduct.

17 And what we further suggest, Your Honour, is that the ultimate question for Your Honours
18 is whether the Trial Chamber abused its discretion in giving this Appellant a life sentence.

19 And we suggest, based on the gravity of the crimes and proper consideration of the
20 sentencing factors, the Trial Chamber appropriately sentenced this Appellant to a life
21 sentence.

22 And, Your Honour, we would also suggest that when we consider the appropriateness of a
23 sentence, we once again consider the purpose, the sentencing objectives, which include
24 punishment, accountability for gross violations of global norms of conduct.

25 And we also suggest that Your Honours would hopefully keep in mind that trials are

1 conducted with the living, but the crimes of which this Appellant stands convicted as
2 responsible include the deaths of hundreds of thousands, or one million plus individuals
3 who never had the benefit of a long life, of living until they were 90 years old, of enjoying
4 their families until they had advanced into old age.

5 And so punishment is an appropriate objective. It is something to consider. We believe the
6 Trial Chamber rightly considered it.

7 So we would suggest again that the ultimate test for Your Honours on appeal is given the
8 crimes of which he stands convicted, and the Trial Chamber's application of the sentencing
9 factors, did the Trial Chamber abuse its sound discretion in sentencing this accused to life
10 imprisonment?

11 Your Honour, there has not been an instance at the International Criminal Court where the
12 same individual has been sentenced to two life sentences. So we are not aware of any
13 relevant jurisprudence at that Court.

14 Hopefully that assists, Your Honour.

15 [13.37.34]

16 MS. GUISSÉ:

17 Mr. President, if I may. I wanted to respond to the references requested by the Supreme
18 Court and I am now ready to provide references for this exculpatory evidence, which we
19 feel the Chamber neglected to consider, with your permission.

20 [13.38.13]

21 MR. PRESIDENT:

22 How many times do you need for you to refer to those reference documents? Do you need
23 a lot of time for that?

24 [13.3833]

25 MS. GUISSÉ:

1 I won't take up the full question time that Chamber allocated for questions if there are other
2 questions, but I believe I'll need at least around 15 minutes in order to produce the
3 references at a normal speed.

4 [13.39.08]

5 MR. PRESIDENT:

6 You may have 10 minutes for that now. Thank you.

7 [13.39.20]

8 MS. GUISSÉ:

9 Thank you, President.

10 Replying to the Chamber's question concerning references to exculpatory elements that
11 have been ignored or distorted by the Chamber, this is an essential aspect and I would like
12 to recall that the principle of a criminal trial is that the Prosecution has the burden of proof,
13 and the Chamber should have established its conclusions beyond a reasonable doubt.

14 [13.39.55]

15 And what happened is that the conclusions of the Prosecution which were taken up by the
16 Chamber are deductions, suppositions, but not an objective demonstration of acts which
17 Khieu Samphan may have committed.

18 As I stated yesterday, the issue we are really looking at is still that he could not have
19 known. Well, it is not for the Appellant to demonstrate that he did not know or that he did
20 not contribute to a criminal policy. It was for Prosecution to do it and for a Chamber to base
21 its conclusions on the objective evidence in the case file. This brings me to my first series
22 of references.

23 In our Appeal Brief, we dedicated a series of paragraphs to the manner in which the
24 Chamber used the concept of centre of the party to speak in general about the entire Party
25 leadership, including Khieu Samphan, even when one can see in the case file that Khieu

1 Samphan had limited functions at that level and this is found in paragraphs 1604 to 1615 of
2 the Appeal Brief.

3 We also indicated in these paragraphs- and I already noted them- we also mentioned the
4 issue of a lack of any link between Khieu Samphan and the crimes. Given the method
5 which was applied by the Chamber in order to include Khieu Samphan in this concept of
6 centre of the party in paragraphs 1616 to 1651 of the Appeal Brief.

7 [13.41.37]

8 Yet, it is important to recall what elements in the case file show the limited powers of Khieu
9 Samphan and the information he could access.

10 And I would like to go back to the Short testimony as we used it several times in the trial, in
11 both Case 002/1 and Case 002/2. And I would like to refer you to paragraphs 1736 and
12 1748 of the Appeals Brief, particularly one quoting a statement by Philip Short, which is in
13 hearing transcript E1/189.1, where he clearly states that certain questions were discussed
14 exclusively in the inner circle of the CPK, of which Khieu Samphan was not a member.

15 [13.42.39]

16 Also, I would like to refer you to paragraph 1738 and following of the Appeal Brief, where
17 we analyze the content of the minutes of the Standing Committee to show clearly that
18 when the Chamber concluded that Khieu Samphan knew everything that happened in
19 Democratic Kampuchea because he attended some meetings of the Standing Committee,
20 that this was not the case.

21 And in paragraph 1739 of our Appeal Brief and following, we also indicated that the content
22 of these meeting minutes between 1975 and 1976, nothing was there to conclude that
23 Khieu Samphan was aware of any crimes during that period. And I would like to refer you
24 to footnote 3360 of this paragraph, 1739, which showed this clearly.

25 Another reference, perhaps to go back to the question from Judge Clark yesterday on the

1 question of whether if not everything is freely debated in the Standing Committee, then
2 where did this free debate take place? And I have no information to supply on this because
3 the secrecy was brought up by Ieng Sary, and also by Nuon Chea.

4 And I refer you again to our Appeal Brief in paragraphs 1751 and 1752, where we note that
5 the Chamber itself had concluded initially that the decisions of the Standing Committee
6 were not unilaterally made by Pol Pot, but collectively, and at the same time, it had
7 indicated that Pol Pot and Nuon Chea exercised supreme decision-making power.

8 [13.44.44]

9 For us, this is an element that was noted by the Chamber. This is in paragraphs 1751 and
10 1752 of our brief, which shows that the Chamber had concluded that certain things were
11 happening outside of the Standing Committee within a smaller circle. And that is why the
12 concept of stating, as the Prosecution and Chamber said, that physical proximity with the
13 members of the Permanent Committee signified that there was knowledge of everything
14 that happened and all of the decisions taken at any time is also false.

15 Also, concerning the limited role of Khieu Samphan, we have clear evidence in the case file
16 which the Chamber ignored. I mentioned the issue of the secrecy, and that is in the
17 interview of Ieng Sary by Steve Heder in document E3/49, as well as the confirmation in
18 the statements of Nuon Chea, in his statements E1-22.1, when he was interrogated by the
19 Chamber on the meeting on evacuations, where he stated clearly, confirming the
20 statements of Khieu Samphan, that Khieu Samphan had not taken part in the evacuation
21 decision. The Chamber did not take that into account in 002/01, but it should be recalled
22 that this was in the case file.

23 [13.46.16]

24 Going back to the specific evidence that shows the limits of the knowledge of Khieu
25 Samphan, I refer you to our Appeal Brief, paragraph 1625 to 1626 where we analyze the

1 communication between the party centre and the zones. And this issue of communication
2 is essential, because again, yesterday, during the International Co-Prosecutor's requisition,
3 I heard that on numerous occasions, he says that Khieu Samphan knew about it because
4 reports of these activities were funneled back to the centre of the party.

5 But it is clear in the case file, and particularly in footnote 3104, where we have testimonies
6 from people who dealt with telegrams and transmitted telecommunications and reports,
7 and they stated clearly that there were two separate channels, one with coded messages
8 that went to a limited number of members of the Standing Committee, including Pol Pot
9 and Son Sen on military issues and security issues, and that the telegrams and messages
10 which reached Khieu Samphan were not encrypted and were only with regard to issues
11 linked to his activities distributing supplies and materials in the zones. This is something
12 which was ignored by the Chamber, despite the Chamber also mentioning this elsewhere,
13 but it did not reach this conclusion when it came to what the centre of the party knew,
14 including Khieu Samphan

15 [13.47.57]

16 Also, these activities at the security centres and the different types of work could not be
17 found in the minutes of the Standing Committee on which the Chamber based its
18 conclusions. And I would like to recall, as we said yesterday, the only time that the name of
19 a worksite appears, it is the Kampong Chhnang Airport, and as I showed yesterday, at no
20 time is there a mention of the conditions of work on this site. And none of the other sites
21 that are mentioned in Case 002/2 ever appear in the minutes of the Standing Committee.
22 The most important proof, or evidence of that is that had that they been mentioned, the
23 Prosecution would have certainly mentioned it. Yet, they did not.

24 [13.48.48]

25 And I refer you here to the example of S-21, which was never mentioned in the Standing

1 Committee minutes, and also paragraph 1741 and following of our Appeal Brief.

2 And so this unique position that the Prosecution mentioned and which the Chamber relied
3 upon is in fact an outsider position. As we said on several occasions, and again I refer you
4 to the testimony from expert witness Short, as we noted in our Appeal Brief in paragraph
5 1747 with the corresponding footnotes. Again, it is important to remember that among the
6 few witnesses, seven, who we asked to subpoena in the trial for Case 002/2, the Chamber
7 refused to allow us to bring back Short in Case 002/2.

8 And so in this footnote of this paragraph 1747, we also refer you to the analysis in our
9 002/01 Appeal Brief in paragraph 547, where we had referred in our final submission, to
10 E295-6-4, paragraph 265, where you find an analysis of the powers and the situation of
11 Khieu Samphan, alongside the other members of the Standing Committee, but not within
12 this Permanent Committee.

13 [13.550.25]

14 Another exculpatory element which was not taken into account by the Chamber are the
15 minutes of the meeting of 30 March 1976, which was quoted and requoted by the
16 Prosecution, and we note that the Chamber totally ignored what the experts said about
17 these minutes. Why is it used by the Prosecution? It is in order to say that Khieu Samphan
18 was a member of the Central Committee. These minutes from the decision of 30 March '76
19 are minutes from the Central Committee, so therefore, he knew about the arrests, which
20 are mentioned in those minutes. Or, it's not the arrests, but the policy of arrests that was in
21 force at that time.

22 But in reality, and here I ask you to read paragraph 1717 of our Appeal Brief, it is important
23 to note that two of the expert witnesses have indicated that even though this was called a
24 Central Committee, the minutes were actually from the Standing Committee, given the
25 contents. And these two experts are Philip Short, who states this in the hearing transcript

1 E1/149.1 and also, and this is important, because it is something which was said during the
2 testimony of Mr. Craig Etcheson in the Duch Trial, Case 001, and this is noted in the Duch
3 ruling, in paragraph 103, where it is indicated that these minutes were in fact the minutes of
4 the Standing Committee. And this is important because Craig Etcheson is an expert who
5 worked with the Co-Prosecutors team.

6 [13.52.10]

7 Another element which was ignored by the Chamber was the absence of a link between
8 Khieu Samphan and the crimes that took place at S-21. And I refer you to paragraphs 1610
9 and 1611 of our Appeal Brief recalling the fact that Duch, though he did mention one
10 meeting on the eve of the Democratic Kampuchea Government fleeing prior to the invasion
11 by the Vietnamese troops, he stated that before, he had never met Khieu Samphan. So
12 either there was a contradiction in his testimony, but in any case, even if he had seen him
13 on the night before, there was no possibility of concluding based on that that Khieu
14 Samphan knew of the existence of and what was happening at S-21.

15 And in fact, the Chamber did not need that evidence to reach a conclusion, since it had
16 already decided that Khieu Samphan knew of it, which we see in paragraph 2373 of its
17 Reasons for Decision, where it says: “Above and beyond that, he was probably aware of
18 the practice of torture in S-21, given the fact that he regularly attended and took part in
19 meetings of the Standing Committee.” (As read)

20 So not only does it state a probability, but this probability runs contrary to the evidence
21 because never does one find any mention of S-21 in the minutes of the Standing
22 Committee meetings.

23 [13.53.45]

24 Another reference dealing with the cooperatives and Khieu Samphan’s knowledge about
25 what was happening there, or the policy which aimed to mistreat the population. For

1 instance, if you go to paragraph 1507 of our Appeal Brief, where we speak about Steve
2 Heder, another expert we asked to subpoena, which the Chamber refused, and who had,
3 despite this, given testimony in the trial of Case 002/1, where he said that the zones, or the
4 bases sent false reports to Phnom Penh on the quantity of rice produced, in order to
5 perhaps to hide the fact that there were problems. And the decisions of the so-called “party
6 centre” made in Phnom Penh were sometimes based on erroneous information sent to it.
7 And in paragraph 1507 of our Appeal Brief, we also refer to our final submission, paragraph
8 1173 concerning policy regarding the cooperatives. I refer you to paragraph 1503 of our
9 Appeal Brief referring to the final conclusions, paragraphs 1171, 1174, and 1168, which are
10 important paragraphs because they contain an analysis of what was said and which can be
11 found in some documents concerning instructions given concerning how to take care of the
12 population. And notably there is a document E3/750 the Revolutionary Review (inaudible),
13 the ERN in French is 00525849.

14 [13.55.50]

15 We also refer you to the question of rice exports, paragraph 1506 in our Appeal Brief,
16 which again refers to the developments in our final submission for Case 002/2 and
17 Francois Ponchaud’s statement E3/4589, whose appearance we requested by us, which
18 the Chamber refused.

19 Very briefly yesterday, I mentioned the fact that Duch mentioned the sanction against
20 Pang, who, in contradiction with the principles of the PCK, monitored couples after their
21 marriage. And you find that reference in our Appeal Brief, paragraphs 1353 and 1354.
22 The Chamber rejected this part of the Duch testimony out of hand because, strangely, it
23 was exculpatory, whereas everything else, even statements made under torture was in fact
24 used by the Chamber, but it rejected this with the motivation that this went contrary to the
25 evidence that had been presented to the Chamber.

1 [13.5715]

2 And here again, the question is not whether monitoring took place. There may have been
3 monitoring. The question is not whether there was this type of surveillance or not, but
4 whether the instructions came from the centre of the party. And this is an assertion that we
5 challenge.

6 On the issue of marriage, I would like to refer you to paragraphs 1271, 1272 of our Appeal
7 Brief concerning the question of deviations on enforcing regulations and we also refer you
8 to the matter of increasing the population.

9 This was never put forward, as is stated by the Prosecution or the Chamber, through
10 marriage, but through a whole slew of measures, at least the project stated the struggle
11 against child mortality and others that were put forward, which were totally left by the
12 wayside by the Chamber and here I refer you to our Appeal Brief, paragraph 1224 and
13 footnote 2065, which refers to the final conclusions in Case002/2, in paragraph 2034.

14 [13.58.30]

15 It's also important to recall that the Chamber heard the two experts on the question of
16 marriage. One, Mrs. Nakagawa, who was called to testify at the request of the Prosecution,
17 and another one, Mrs. Peg LeVine, and both concluded on the basis of their research that
18 though there may have been forced marriage, they could not, at the end of their fully
19 independent research, conclude that this was the result of a national policy on forced
20 marriage.

21 And here I refer you to our Appeal Brief, paragraph 1209, and the Chamber also excluded
22 their testimonies.

23 I would also like to recall the reference to paragraphs 1239 to 1241 of our Appeal Brief
24 concerning the statements of Ruos Suy, which were used by the Chamber as corroborative
25 of civil party Chea Deap.

1 And you will see that if we take the statement of Ruos, Suy, which are found in the
2 footnotes, that it stated that:

3 “Meetings of young men and women were organized so that they may meet prior to be
4 married, and there was the possibility of refusing.” So, it is important to note, I think I had
5 mentioned it but without giving any references.

6 [14.00.08]

7 Finally, again on the testimony of Ruos Suy, it is important that he, who had attended
8 several trainings where he said that Khieu Samphan had spoken, he never said that Khieu
9 Samphan had mentioned marriage, but rather, on the contrary, that he had indicated, and
10 here I refer you to our final submission in Case 002/1, paragraph 281, which was also cited
11 in Ruos Suy statements, where he said he never saw Khieu Samphan talk about anything
12 other than administrative issues. And this is found also, I believe, in his hearing transcript
13 E3/10/620.

14 And to conclude, I recall that in Case 002/2, the Chamber had organized what was called
15 documentary hearings, where it invited the parties to present documents that they felt were
16 useful to their position, and we have to observe the fact that very few of the documents we
17 had requested were used by the Chamber, or absolutely none of the exculpatory elements
18 which we had mentioned we mentioned, they were completely ignored.

19 [14.01.39]

20 This includes the witnesses we had asked to subpoena in the trial for Case 002/2, which
21 the Chamber refused, and I will focus here on a few examples of these documents, we had
22 mentioned François Ponchaud, in document E243.1 and this is in hearing transcript
23 E1/294.1 at about 13:33. Again regarding François Ponchaud, for document E3/4589,
24 which we mentioned in hearing transcript E1/391.1 about 11:05. Also, there is a book by
25 Steve Heder, document E3/39995, mentioned in hearing transcript E1/391.1 about 11:26.

1 Another document by Steve Heder, E3/4527, mentioned in...

2 [14.03.00]

3 MR. PRESIDENT:

4 (No interpretation)

5 [14.02.34]

6 MS. GUISSÉ:

7 I am being told there was no interpretation. I will go back to, I don't know where, it was a
8 document by Steve Heder, E3/4527, mentioned at the hearing E1/515.1, at 10.31, 10.33,
9 and 10.37.

10 I would like to specify that the reason for which I give the timing of these hearing transcripts
11 is because there are exact excerpts from evidence that which we had wanted to put
12 forward, and which were never taken into consideration or even discussed by the
13 Chamber, even though it was able to use another part of these same documents.

14 And to conclude, and this is my last reference in the two hearings on key documents,
15 E3/4589, an article by Ponchaud, "Cambodge libéré," mentioned in E1/515.1, at 11:00:21,
16 which was not used by the Chamber at all.

17 So this is what I wanted to supply as references of examples of things which were totally
18 ignored by the Chamber. And I hope that this will be useful.

19 [14.05.10]

20 JUDGE JAYASINGHE:

21 Good afternoon. Question for the Co-Prosecutors. Am I audible enough? Can you hear
22 me?

23 [14.05.30]

24 MS. HOLLIS:

25 Yes, Your Honour, I can. Yes, Your Honour, I can hear you.

1 [14.05.53]

2 JUDGE JAYASINGHE:

3 Okay. Thank you. You and your colleague yesterday catalogued a series of crimes
4 allegedly committed by the Khmer Rouge and you invited us to come to a finding that
5 Khieu Samphan was complicit in those crimes. What is the causal nexus between Khieu
6 Samphan and the claims? Because we -- I think one of you told us that he didn't attend all
7 the meetings and he wasn't the member of the Central Committee, but did not see him
8 attending all the meetings, so any decision taken for the extermination for enforcement of
9 any method; right? He may not have been privy, because he was not there.

10 But my main question is, what is the causal nexus that you link to Samphan to the crimes
11 that are alleged?

12 [14.07.09]

13 MS. HOLLIS:

14 Thank you, Your Honour.

15 In relation to aiding and abetting, the law is very clear that if you prove his conduct had a
16 substantial effect on the commission of the crime, that establishes the causal link because
17 it sufficiently links the accused culpably to the crimes for which he is being convicted.

18 In relation to joint criminal enterprise, if I may get my notes, I'll be right back, Your Honour.

19 Thank you, Your Honour.

20 In relation to joint criminal enterprise, the Chamber found a variety of ways in which the
21 Appellant encouraged or supported or assisted the criminal common purpose through his --
22 through its policies. And they had this analysis, Your Honours, a very extensive analysis,
23 from paragraphs 4257 to 4278. And they found that he supported the criminal common
24 purpose as a regular attendee of Standing Committee meetings and a member of the
25 Central Committee.

1 [14.08.48]

2 And yesterday we discussed that he -- the minutes for which attendance was recorded
3 showed that other than Pol Pot and Nuon Chea, the Appellant attended more frequently
4 than anyone else, other than, of course, the regular members of the Standing Committee.
5 And this is important, Your Honour, because he was not a member of the Standing
6 Committee. And it goes to Your Honour's question about knowledge. So at -- and there's
7 no reason to believe that his attendance would be any less frequent for those meetings for
8 which attendance was not recorded, because, as you remember, he told the Court and the
9 Co-Investigating Judges that he attended the Standing Committee meetings because he
10 needed the information in those meetings to carry out his duties as the head of state and
11 as the diplomatic liaison for the DK.

12 So again, there's no reason he would have not attended with the same or even more
13 frequency for those meetings for which attendance was not recorded. So he did get
14 knowledge at the Standing Committee.

15 [14.10.16]

16 And, Your Honour, the other significance of his attendance at the Standing Committee is
17 that not everyone was allowed to attend those meetings. Very few people were allowed to
18 attend those meetings. His frequent attendance shows us that he wasn't someone who
19 was distrusted and an outsider. He was a valued, high-level leader within the CPK
20 structure.

21 So that was one of the ways that he contributed to the joint criminal enterprise crimes,
22 supporting the criminal common purpose as a regular attendee of the Standing Committee
23 meetings and as a member of the Central Committee.

24 And remember, Your Honour, that as a member of the Central Committee, he would have
25 been privy to the decisions of the Standing Committee, by his own admission, because

1 according to him, the Central Committee received the decisions and the policies from the
2 Standing Committee, and then the Central Committee discussed the implementation of
3 those decisions and policies and disseminated that information to lower echelons.

4 So both his attendance at the Standing Committee and his membership in the Central
5 Committee with its responsibilities gave him knowledge of what was being decided.

6 [14.11.54]

7 And also very importantly, Your Honour, in the Central Committee, he had the right from
8 1971 to speak out during discussions about what had been sent to them from the Standing
9 Committee. And from 1976, he had the right to vote on the Central Committee's
10 discussions about those policies and decisions and the dissemination and implementation.
11 So very significant way that he is linked to the crimes.

12 And we have a list of some of the things that were discussed in the meetings we know he
13 attended.

14 For example, Your Honour, in E3224, this is Standing Committee Meeting Minutes for May
15 1976, this is the meeting at which Pol Pot said that there had to be from 30 to 50 to 100
16 percent of rice requisition from the bases to the state so that they would be able to use the
17 surplus for various reasons, including for export.

18 At E3226, another meeting that the Appellant attended, they discussed children being
19 provided by Angkar to work at the cooperatives. And they said the workforce, this is a
20 report to the Central Committee -- excuse me, --

21 [14.13.46]

22 JUDGE JAYASINGHE:

23 Can I --

24 MS. HOLLIS:

25 -- Standing Committee.

1 JUDGE JAYASINGHE:

2 Can I interrupt -- can I interrupt you? Like, can I just interrupt you?

3 MS. HOLLIS:

4 Yes, of course, Your Honour.

5 [14.13.52]

6 JUDGE JAYASINGHE:

7 Now, all of what you've been saying goes to establish the fact that he had knowledge;
8 right? Knowledge isn't adequate to a person's culpability. He might have had knowledge
9 that this -- but what I asked you is what is the nexus between the crimes committed and the
10 participation of Khieu Samphan to commit those crimes? Having merely the knowledge is
11 inadequate.

12 [14.14.30]

13 MS. HOLLIS:

14 Thank you, Your Honour. The knowledge is an aspect of it because the knowledge gives
15 him the ability to either object to it or assent to it. And in addition, when he was at these
16 meetings, he was there as a senior leader of the CPK. He had the ability to object. Instead,
17 he supported, both in the meetings by either silent assent, or active support, decisions
18 relating to criminal policies and their implementation.

19 For example, one of the meetings that he was at the Standing Committee level was E3232.

20 And that was informing the Standing Committee of the illnesses in the countryside, many
21 sick people, a loss of 40 percent of the workforce, outbreaks of serious conditions. And
22 knowing this, he still advocated, and thereby supported, and encouraged, and contributed
23 that way. He advocated for people to meet or exceed production goals, which themselves
24 were set by the Standing Committee and then sent to the Central Committee for
25 implementation and dissemination.

1 [14.16.09]

2 JUDGE JAYASINGHE:

3 Okay.

4 MS. HOLLIS:

5 And this he did knowing --

6 JUDGE JAYASINGHE:

7 I agree, but ---

8 MS. HOLLIS:

9 -- that they were unrealistic.

10 JUDGE JAYASINGHE:

11 (Inaudible) -- can I simplify; right?

12 MS. HOLLIS:

13 Yes.

14 [14.16.22]

15 JUDGE JAYASINGHE:

16 The two elements of a crime is the actus reus and the mens rea. And what is the actus
17 reus?

18 MS. HOLLIS:

19 The ---

20 JUDGE JAYASINGHE:

21 And what is the mens rea? How do you compartmentalize the two elements? The actus
22 reus and the mens rea.

23 [14.16.40]

24 MS. HOLLIS:

25 Thank you. The actus reus was set out by the Trial Chamber in various ways that he

1 contributed to the common purpose. And the various ways that he contributed were as I
2 mentioned, that he contributed by his silent assent or active support at the Standing
3 Committee and Central Committee levels when decisions were made on criminal policies
4 and their implementation. That is one way that he contributed.

5 And remember, Your Honours, this Chamber has said that where, as here, you have a
6 common purpose that is implemented through policies which involve the commission of
7 crimes, and they are intrinsically linked to the common purpose that even activities which
8 on their face do not directly contribute to the commission of crimes, may be taken into
9 account when determining if a person is liable under joint criminal enterprise.

10 [14.18.05]

11 Now, his involvement at the Central Committee level, where he had the right to speak and
12 the right to vote against implementation and dissemination of criminal policies, is one way
13 that he contributed to the criminal common purpose.

14 Now, in addition to that, as I said, he did not just sit as a silent assenter in meetings. He
15 publicly, publicly, advocated for these criminal policies in a variety of ways in his speeches
16 relating to fulfilling or overfulfilling unrealistic production goals, knowing, as he admits, that
17 people were forced into cooperatives at a level where they had no independent ways of
18 getting food, that they were starving, that they were ill, that there were not adequate
19 medications. And yet knowing all of that, he publicly lauded and promoted overfulfilling
20 unrealistic production goals and/or unrealistic construction goals. And so that is one way
21 that he also contributed.

22 In terms of the enemy's policy, he contributed again by being present when purges were
23 discussed and decided upon. No indication he ever spoke out against that.

24 [14.19.40]

25 In fact, Your Honours, he himself says that he could not speak out. He couldn't bring

1 himself to speak out against the violence that was being committed in his name. And that's
2 in his book at E318 at page 118.

3 So not only did he advocate for these criminal policies, he did not speak out against them.

4 In terms of the enemy's policy, he advocated for that policy by saying that:

5 "Enemies of all stripes should be eliminated." (As read)

6 That:

7 "The Khmer Republic Regime should be eliminated." (As read)

8 That:

9 "Intellectuals, feudalists, should be eliminated." (As read)

10 That:

11 "Malingerers were enemies of the party and that enemies of the party or revolution should
12 be eliminated." (As read)

13 [14.20.36]

14 So he did more than just sit back and let others make decisions. He advocated for those
15 decisions, knowing the conditions of the enslaved workforce on which these conditions
16 would be imposed and also advocating for the elimination of enemies.

17 And this decision that the defence talked to you about just a short while ago, the decision
18 made on 30 March 1976, the decision itself, the caption is "Central Committee." So the
19 experts' opinions were just that, their surmise and opinions.

20 But let us assume for a moment it was the Standing Committee that issued that decision. It
21 was then for the Central Committee to disseminate it and to discuss its implementation.

22 The Central Committee, where Appellant had the right to speak out and the right to vote.

23 And remember, Your Honour, that in relation to that document, that document informally

24 named him as the president of a state presidium. So it is reasonable to conclude he was

25 very aware of that document and assented to it.

1 [14.21.57]

2 So these are various ways that he -- actually, that's the link you're talking about to establish
3 his criminality.

4 When we're talking about joint criminal enterprise, not everyone is a direct perpetrator.

5 People are removed in various degrees from direct perpetrators. So what is important is
6 that they had the intent to participate in the common purpose, which was criminal of its
7 nature in this case, and that they had the intent for these various crimes. And they only
8 need the intent required for the crime itself.

9 So his presence at meetings where decisions were made, and then his publicly endorsing
10 and promoting those decisions establishes a culpable link.

11 [14.22.50]

12 And when we talk about aiding and abetting, as I mentioned yesterday, Your Honours, in
13 terms of the cadres, he said, in effect, to them, "Do everything to be sure you fulfill the
14 obligations the party has given you. Put the party goals above any personal goals. Conform
15 your conduct to be sure that you achieve party goals. And by the way, these people are
16 enemies and the other goals you have to be sure are implemented is to make sure that
17 people fulfill or over fulfill these unrealistic production and construction goals."

18 So in effect, he was telling them, "You do what you need to do to make sure that these
19 goals are met."

20 And by talking about giving people less to eat to achieve the goals, giving new people less
21 to eat and make them work harder, eliminating enemies, making the workers work long
22 hours without rest, he was giving them a road map.

23 So in achieving party goals and these criminal -- which were these criminal policies, "You
24 can overwork them, you cannot give them rest, you can give them insufficient food. That's
25 all right. You can treat them harshly. You can eliminate them if they are enemies."

1 [14.24.20]

2 Because, as he said:

3 “If they die, no loss.” (As read)

4 So he was giving them encouragement, moral support, and guidance as to how to carry out
5 their paramount duties, which was to conform their behaviour to achieve the party goals
6 and policies that were given down to them.

7 So that was another way that you showed the link between the crimes and this Appellant.

8 So if we look carefully -- yes, Your Honour?

9 [14.24.53]

10 JUDGE JAYASINGHE:

11 You made your point. You made your point. I don't think you need to drive us back to that
12 area anymore. Thank you for your effort.

13 But if it is of any interest to you, might I just tell you that in the United Kingdom, the JCE
14 has now been repealed and substituted by another act.

15 Anyway, thank you.

16 [14.25.18]

17 MS. HOLLIS:

18 Thank you for that information. It has not been repealed in this Court or other courts. But
19 thank you very much, Your Honour, for that information.

20 [14.25.32]

21 JUDGE CLARK:

22 Mr. President, can I -- may I ask a question? We'll bring the temperature down a little bit.

23 May I ask whoever knows the answer to this question, I'm intrigued.

24 In the very first trial, the Duch Trial, and possibly in the second one, was there ever a map
25 produced of the City of Phnom Penh that showed where the highest level of authority lived

1 and where it was in relation to where the meetings took place?

2 I've read that Khieu Samphan said that they lost -- the Standing Committee meetings took
3 place in the kitchen of wherever they lived. And I read a lot of the documents that have
4 been filed, including the memories of the French woman who was married to a high-level
5 cadre. And but I still can't picture how close everybody was to each other. It would help in
6 our understanding.

7 Do you know if any maps were ever produced?

8 [14.26.42]

9 MS. HOLLIS:

10 Your Honour, it may be that a map was introduced. And we can find that for you.

11 But in addition to that, and we will find the reference in the paragraphs, there is, in the
12 judgement itself, an identification of where K-1, Pol Pot's residence was, where K-3, which
13 became the residence of Appellant and other senior leaders, there is a description of where
14 that was. There is discussion of the railway station where they originally stayed after the
15 city was captured.

16 So I think there are verbal descriptions of where these various locations were. And I think
17 my team is looking for that now and we will supply you with those.

18 [14.27.36]

19 JUDGE CLARK:

20 That's my problem.

21 MS. HOLLIS:

22 And we will try to find if there was --

23 JUDGE CLARK:

24 Sorry.

25 MS. HOLLIS:

1 -- a map, Your Honour, and supply you with that reference if there was one.

2 [14.27.46]

3 JUDGE CLARK:

4 Thank you. That's my problem. As I walk around the area trying to see how close
5 everybody was to each other, I know that they were housed in what was called the Old
6 Department of Finance. I have no idea where it is. I know who the Silver Pagoda is. I know
7 where the railway station is. But where they ultimately spent the rest of four years was in
8 an area that was the Old Department of Finance. I wanted to see how close it was to, say,
9 leng Sary's office, the Department of Commerce, (inaudible), because then we'd have
10 some kind of an idea of what people knew or didn't know in the kind of enclosed society
11 that was operated. Thank you.

12 [14.28.35]

13 MS. HOLLIS:

14 Thank you, Your Honour. And I think those paragraphs will be very helpful to you in that
15 regard, even if there is no map.

16 Your Honours, while I am on my feet, do I have your permission to very quickly point out
17 some of our assertions relating to defence counsel's arguments about exculpatory
18 evidence that they allege was not considered? Do I have your permission to do that, Your
19 Honours?

20 [14.29.28]

21 MR. PRESIDENT:

22 Your request is granted. But please make sure that you will finish soon, because it is
23 almost break time.

24 [14.29.39]

25 MS. HOLLIS:

1 It is, as Defence counsel stated, very closely tied to this idea of secrecy.

2 In relation to the specific point that was made about Appellant having no information about
3 S-21, we suggest that there are two sources that give him information about S-21. One is
4 that according to Duch, it was the Appellant who told Duch toward the end of the DK
5 Regime to continue to operate S-21. If Appellant didn't know about S-21 or its existence or
6 operation, he would have had no reason to give that instruction.

7 Secondly, Your Honours, as you remember, Appellant was a member of Office 870. And
8 according to him, there were only two in that office, at least at the senior level, and that was
9 Appellant and Doeun.

10 [14.30.50]

11 Now, according to Duch, he sent routine reports to office 870 about what was happening at
12 S-21.

13 Now, in candor and fairness, Appellant says, "I wasn't aware of those reports. That was
14 Nuon. That wasn't me."

15 We suggest because of Appellant's high standing in the party, because of his very close
16 association with Pol Pot, remember he said that he was his shadow, that Pol Pot, Nuon
17 Chea, and he did nothing separately after the CPK victory in Phnom Penh, that he was
18 living with Pol Pot and other senior leaders in Phnom Penh after that victory, we suggest
19 that that unique standing that he had and that very close association with Pol Pot and Nuon
20 Chea, whom Defence counsel have called the ultimate or supreme power within the party,
21 within the CPK, we suggest that gave him access to that information. We suggest that
22 same close association defeats the idea of the principle of secrecy being applied to him.
23 And we suggest there are other factors that also show that this principle of secrecy was not
24 applied to him. The frequency of his attendance at the Standing Committee meetings, very
25 select group made policy decisions, talked about producing production and construction

1 targets, enemies, forced marriage. He was allowed to attend those meetings.

2 If there had been a secrecy principle applied to him, he wouldn't have been at any of those
3 meetings. And his close association with Pol Pot, we suggest, makes it reasonable to
4 conclude that he was allowed to be at those meetings in their entirety.

5 [14.33.10]

6 When we look at the documents that show attendance at the meetings, there's nothing to
7 indicate he was there only for a portion of a meeting.

8 Also, he would have attended those meetings and been privy to this guarded information
9 because, as he said, he needed such information in his capacity as the president of the DK
10 and as its diplomatic liaison. To be aware of potential perception issues that might arise, or
11 other issues that might arise from the discussions and decisions made there.

12 And remember again, as a member of the Central Committee, the decisions of the
13 Standing Committee were given to the Central Committee for them to discuss their
14 implementation and to disseminate.

15 So for all these reasons, and because the secrecy principle did not apply as the evidence
16 establishes, did not apply to senior leaders at his level.

17 [14.34.26]

18 So, Your Honours, we suggest that in looking at this argument about the exclusion of
19 exculpatory evidence, that we have to consider it in the evidentiary framework. And that is,
20 it is presumed that the Trial Chamber looked at all the evidence before it, and we must look
21 at why they either did not consider, or did not give great weight to the evidence that
22 Appellant says is exculpatory. And we must also look at the evidence to determine if it's
23 truly exculpatory.

24 For example, they say that in some way, it's exculpatory because they were denied the
25 presence of two experts, Mr. Heder and Mr. Ponchaud. But if you look at the decision

1 about those experts, Your Honours, the Trial Chamber lists, in paragraph 6 of that decision,
2 the things that these experts talked about, and there were multiple areas relevant to case
3 002/002 that had already been covered in the earlier testimony of these witnesses.

4 So we must look at the totality of the circumstances and we must also look at the nature of
5 the evidence itself, which Appellant says is exculpatory.

6 We suggest some of this evidence is not exculpatory and we suggest that the Chamber did
7 look at exculpatory evidence. And yesterday we gave you some examples of where it did.

8 So thank you very much, Your Honour.

9 [14.36.41]

10 MR. PRESIDENT:

11 It is now appropriate time for a break. We will take a 30 minute break and we will return at
12 1430H(sic). Thank you.

13 (Court recesses from 1437H to 1503H)

14 THE GREFFIER:

15 All rise.

16 THE PRESIDENT:

17 Please be seated.

18 Co-Prosecutors, do you have any issue?

19 MS. HOLLIS:

20 Your Honour, the citations that I had mentioned for Judge Clark in relation to the location of
21 K1, K3, and other locations in Phnom Penh. If I may, Your Honour?

22 [15.04.32]

23 I have the document numbers. The maps are E33634, 3635, 3636, and there is a Site
24 Identification Report, that is E32821.

25 Secondly, Your Honours, very briefly, to be sure that Your Honours have all of the

1 information you need. In relation to sentencing, the Trial Chamber considered the impact of
2 further convictions at paragraphs 4357 to 4360, and did determine sentencing Appellant to
3 another life sentence was appropriate to reflect the totality of his criminality, but in
4 paragraph 4360, said that the two life sentences would be aggregated to be served as a
5 unique sentence of life imprisonment, so a concurrent sentence of life imprisonment.

6 Finally, Your Honours, for Judge Clark, she asked us a question on day one relating to
7 when experts, Ponchaud and Heder testified, was it before or after the severance?
8 Judge Clark, they testified before the final severance order was issued.

9 Thank you, Your Honour.

10 [15.06.37]

11 THE PRESIDENT:

12 Next, the Chamber would like to invite the co-defence for Mr. Khieu Samphân to make the
13 brief rebuttal presentation.

14 MS. GUISSÉ:

15 Mr. President, Your Honours, a few words before we conclude this hearing and before the
16 final statement by Mr. Khieu Samphan.

17 [15.07.

18 With an Appeal Brief of 750 pages and thousands of references, ours was a mission
19 impossible in terms of covering all the key points of our brief while at the same time offering
20 rebuttal to the Prosecution and Civil Parties, which had already had the opportunity to
21 respond to us. We were not able to say everything. For our rebuttal, we have provided a
22 number of new sources that are important to take into consideration. We have signalled the
23 various violations of the principle of a fair trial, including the recurring violation of the
24 principle of legality that have caused the Chamber to apply a law that was not yet
25 applicable at the time of the facts. Such violations have also caused the Chamber to ignore

1 evidence or to extrapolate when there was none, or ignoring the contradictions of certain
2 witness testimonies that it used. All of this to was done to convict Khieu Samphan.

3 The witnesses can lie, civil parties can lie, too, that is human but even without lying, the
4 witnesses and civil parties, over 40 years after the facts, can make mistakes. And there are
5 also the statements that are made by people depending on when they are questioned.

6 [15.09.04]

7 So I would like us to be able to show, Mr. President, with your permission, a video that was
8 already shown during the trial in Case 002/1 on 25 October 2013, a video which I thought
9 would be interesting to show again. It is an interview of Norodom Sihanouk in 1978. With
10 your permission, Mr. President, I would like to ask the technicians to show this video.

11 THE PRESIDENT:

12 The technician, please project the video.

13 [15.09.49]

14 (VIDEO PRESENTATION BEGINS)

15 INTERVIEWER:

16 Let's take a few steps back. You were saying how things were taking place, very
17 specifically, between 1975 and 1978, late 1978, how was your life with the Khmer Rouge in
18 Cambodia?

19 NORODOM SIHANOUK:

20 So, I went to the dentist a few times with my wife, and I would see people in the streets,
21 who were coming out of their factories, they were going home, but they did not seem
22 unhappy.

23 INTERVIEWER:

24 Did you speak to these people?

25 NORODOM SIHANOUK:

1 No, I couldn't talk to them, I was just going to the dentist, but with Khieu Samphan, we
2 visited a few cooperatives, rice paddies, construction sites and manual labour sites, but
3 these people did not look unhappy, they did not seem terrorized. They were not
4 malnourished.

5 (VIDEO PRESENTATION ENDS)

6 [15.10.45]

7 MS. GUISSÉ:

8 So that was what Norodom Sihanouk was saying in 1978, during an interview on French
9 TV. That video was known to the Chamber, yet it was not even taken into consideration
10 with the writings and words of Norodom Sihanouk used on the same facts as those that are
11 mentioned in this interview, which he also cited in his autobiography. So all of this is to say
12 that there are contradictions and they carry weight. There are elements of evidence that
13 carry weight. There is the way in which the Chamber has used evidence, always in one
14 certain direction, and this is the reason for our appeal.

15 He could not not know. This is the light motif of the Chamber, which was once again
16 repeated today by the Prosecution. This recurrent motif was used by the Chamber to
17 produce a collective notion of responsibility. It used a reduction of *mens rea* of the
18 intention, both in terms of crime and of modes of responsibility.

19 He could not not know, yet under Democratic Kampuchea, proximity did not necessarily
20 mean that you had all the information. Furthermore, this is a point that was often mentioned
21 by witnesses in the Case 002/1, in particular, by Suong Sikoeun, whose wife was
22 mentioned today during the hearing.

23 [15.12.52]

24 By distorting the applicable law in the JCE context and aiding and abetting it's clear that the
25 Chamber has tried to mitigate the lack of evidence directly concerning the actions and

1 behaviour of Khieu Samphan himself. For this reason, we are asking today that you
2 withdraw the conviction of Khieu Samphan.

3 And by way of conclusion, I would like to state, this last time that I am taking the floor on
4 behalf of Mr. Khieu Samphan in the ECCC. I would like in closing to repeat the very wise
5 words of Judge Antonetti talking about the JCE, its mode of responsibility, and we quoted
6 this in our final submission for Case 002/2 in paragraph 516. And this I quote:

7 [15.14.01]

8 "This form of criminal liability, applied in a very wide fashion, has caused confusion, diverse
9 interpretations and sometimes mistaken interpretations, to the point of extending criminal
10 responsibility to lower ranking participants, who were more or less isolated from one
11 another and the alleged shared criminal plan. It also extends a presumption of guilt to
12 higher ranking individuals, even when the original plan may not have been criminal, and
13 may have become criminal along the way due to lower-ranking individuals behaving
14 without any control or due to motivations other than those put forth initially by their
15 superiors. It could even have been due to adjustments of a leader outside the will of other
16 members of the group by making personal decisions without consultation with other
17 members of the group in order to reach a position.

18 It appears definitive that this concept might be supportive to a failing prosecution. I don't
19 think it is the role of a judge who must strictly maintain the form of the specific modes of
20 responsibility according to the statute, and it is not their business to build up theories
21 hypotheses to make up for a void in the investigation."

22 [15.15.37]

23 And with those words I will conclude, Mr. President, Your Honours, I would like to ask you
24 to fulfill your mission as judges, bearing in mind these wise words of Judge Antonetti.

25 Mr. President, Mr. Khieu Samphan would now like to make his last statement, but in view

1 of the state of his health he would like to ask your permission to remain seated because he
2 cannot stand without support.

3 (Short pause)

4 [15.18.28]

5 THE PRESIDENT:

6 The Supreme Court Chamber gives the last opportunity for Mr. Khieu Samphan to speak.

7 You have the floor, Mr. Khieu Samphan.

8 (Short pause)

9 [15.19.21]

10 MR. KHIEU SAMPHÂN:

11 Mr. President, Your Honours, ladies and gentlemen who are taking part in these hearings,
12 venerable monks, and all pagodas throughout the country, all compatriots:

13 Today, it is the last opportunity that I am speaking before Your Honours. The Trial
14 Chamber has convicted and sentenced me twice to life imprisonment. The first time, at the
15 end of your appeal judgment, you did not accept my guilt for having allegedly participated
16 in the massacre of former soldiers and officials of Khmer Republic in Tuol Po Chrey, a
17 place that I do not know its whereabouts, and even now I do not know where it is.

18 You did, however, confirm my conviction for crimes against humanity in relation to the
19 evacuation of the population out of the cities and provinces by stating that I had committed
20 crimes against humanity through a joint criminal enterprise. The Trial Chamber has
21 additionally convicted me again of crimes that I dispute.

22 [15.23.11]

23 I would like to inform Your Honours that the crimes which were allegedly committed by me,
24 I in fact do not know where they were committed. I was accused and convicted of the
25 crimes of genocide against the Vietnamese, crimes against humanity, and I was convicted

1 that I was responsible for the forced marriages through the joint criminal enterprise.

2 What I can inform Your Honours is that I have never committed any joint criminal
3 enterprise. I categorically refuse the accusation and the conviction that I had the intention
4 to commit the crimes, no matter or when it was any crimes, the crimes against humanity in
5 any forms. No matter what, it was the genocide against the Vietnamese, the murders, I
6 have never committed them; forced marriages.

7 [15.26.26]

8 The Trial Chamber has demonstrated its inability to adjudicate me impartially. It is clear
9 that through me the Chamber was rather targeting the CPK. That what has been described
10 by the Chamber and the Co-Prosecutors as the Communist Party of Kampuchea's policy
11 do not -- do not correspond to the political line of the CPK, and it is not consistent with my
12 own position as well.

13 I never wanted and wished for anything else for my country rather than the independence
14 and sovereignty where my compatriots could leave and jointly build a future together after
15 having put back the economy, which was destroyed during the many years of war.

16 I have always wanted Cambodia to be a -- an independent country, to be an -- a sovereign
17 country, which territorial integrity is respected by its neighbours, especially Vietnam.

18 [15.29.42]

19 The Co-Prosecutors and the Trial Chamber presented my speeches during the war when
20 Cambodia was invaded by Vietnam or presented the speeches which includes the
21 targeting of the Vietnamese people living in Cambodia. Is this not a distortion? During the
22 time it was wartime. I wanted my country to be protected against the invading army. It was
23 the independence and border territorial integrity is always my focus. My focus is not to
24 encourage the attacking against the civilians.

25 And in the press, I see that the issues of independence, integrity and border problems

1 persist until today. This makes me cry out loudly that I cannot accept it, and it makes me
2 fear for the future of my country.

3 [15.33.02]

4 I am not a lawyer, but my lawyers have talked about the law and the errors of the Trial
5 Chamber in my conviction. I declare that I cannot accept the accusation that I was involved
6 in a plot to commit crimes against my compatriots, including the Cham or the Vietnamese.

7 Many years after sitting as a defendant, at the end of this long case, it is important for me
8 to inform you, and especially inform the Cambodian people, that I have never wanted to
9 commit a crime against my compatriots or against anyone else.

10 No matter what you decide, I will die in prison. I will die always remembering the suffering
11 of my Cambodian people. I will die seeing that I am alone in front of you. I am judged
12 symbolically rather than by my actual dates as an individual.

13 That's the end. Thank you, Mr. President.

14 (Short pause)

15 [15.37.04]

16 THE PRESIDENT:

17 After having heard the last address by the Accused before the Chamber, we have now
18 come to a conclusion after the four full day hearings with the full participation from the
19 Co-Prosecutors, the lead -- the co-counsel for the Accused, as well as the lead co-lawyers
20 for civil parties, and the Accused himself, which make our hearing proceed smoothly. Also,
21 there is a contribution to the successful proceedings by the interpreters, the IT Unit, and for
22 that reason, on behalf of the Chamber and as the President of the Supreme Court
23 Chamber, I would like to extend my sincere thanks to all of them at this point in time.

24 As for the hearings in relation to the debate, it has now come to a conclusion. As for the
25 announcement of the appeal judgment, the Chamber will notify the date of the

1 announcement of the judgment in due course.

2 [15.38.10]

3 And the hearing regarding the debate is now concluded, and the Supreme Court Chamber
4 announces the conclusion of the hearing, and that the announcement of the appeal
5 judgment will be made at a later date.

6 And the security officers, please take the Accused back to the detention centre and the
7 Chamber is now withdrawn for the deliberation. Thank you.

8 THE GREFFIER:

9 All rise.

10 (Adjourns at 1540H)

11

12

13

14

15

16

17

18

19

20

21

22

23

24