



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
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TRANSCRIPT OF TRIAL PROCEEDINGS  
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24 October 2013  
Trial Day 220

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YA Sokhan  
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Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. KOPPE	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. SON ARUN	Khmer
MR. VERCKEN	French

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 Mr. Dav Ansan, could you report the attendance of the parties and  
6 individuals to today's proceeding?

7 THE GREFFIER:

8 Good morning, Mr. President.

9 For today's proceeding, all parties to this case are present.

10 As for Nuon Chea, he is present in the holding cell downstairs,  
11 pursuant to the decision of the Trial Chamber concerning his  
12 health.

13 Thank you.

14 [09.03.48]

15 MR. PRESIDENT:

16 Thank you.

17 The Chamber would like now to give the floor again to Nuon Chea's  
18 defence to continue presenting their closing statements in Case  
19 002/01. You may proceed.

20 MR. KOPPE:

21 Good morning, Mr. President. Good morning, Your Honours. Good  
22 morning, Counsel. Good morning, parties, and good morning,  
23 everyone in the public gallery.

24 Mr. President, this morning, up until lunch time, I will speak  
25 about the alleged execution of Khmer Republic soldiers and

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1 officials at Tuol Po Chrey.

2 I will speak a little slower than last Tuesday because of the  
3 translation.

4 And this morning I will illustrate for the Chamber that our  
5 client was not aware of, had no role in, and is in no way  
6 criminally responsible for any supposed events at Tuol Po Chrey,  
7 and I will do so in large by showing that the Co-Prosecutors'  
8 treatment of the evidence in regards to Tuol Po Chrey has been  
9 selective and seemingly designed to mislead the Chamber.

10 [09.05.42]

11 And, Mr. President, my analysis will proceed in three broad  
12 stages.

13 First, I will discuss the direct evidence of the intent of the  
14 senior leaders of the CPK with regard to the treatment of Lon Nol  
15 soldiers and officials and I will establish that this evidence is  
16 very limited and that the evidence that does exist shows that  
17 the senior leaders did not want Lon Nol soldiers or officials of  
18 any rank to be harmed.

19 Second, I will review the evidence cited by the Co-Prosecutors to  
20 establish that Lon Nol soldiers were systematically executed in a  
21 consistent pattern and I will highlight how that evidence fails  
22 fully and completely to establish any pattern of any kind.

23 And, third, Mr. President, I will review the evidence concerning  
24 the events at Tuol Po Chrey and demonstrate how it reveals that  
25 if executions did take place at Tuol Po Chrey, the alleged

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1 victims were an indiscriminate assortment of ordinary soldiers  
2 and civilians and I will then establish that there is not a shred  
3 of evidence that anyone in the Party Centre intended these people  
4 to be executed.

5 [09.07.28]

6 And each one of - each one of these arguments is sufficient by  
7 itself to establish that Nuon Chea is not guilty of the crimes  
8 charged at Tuol Po Chrey.

9 I will begin first, as I said, with direct evidence of our  
10 client's intent.

11 Now, the only witness to appear before this Chamber and testify  
12 to the intent of the Party Centre in relation to the CPK's  
13 treatment of Lon Nol soldiers and officials was Phy Phuon. Now,  
14 Phy Phuon was a well-placed CPK insider, relatively close to the  
15 CPK Standing Committee, and Phy Phuon was among a small group  
16 present with Pol Pot, Nuon Chea, and others in Kampong Chhnang  
17 just prior to the liberation of Phnom Penh. He was the only  
18 witness Philip Short relied upon to form his opinions about the  
19 CPK's treatment of Lon Nol soldiers. Philip Short called Phy  
20 Phuon "a very valuable source" in that regard.

21 And asked during his OCIJ interview whether there were  
22 instructions to seek out Lon Nol soldiers during the evacuation  
23 of Phnom Penh, Phy Phuon responded - and I quote:

24 "No, because they had raised white flags already. There were  
25 clear instructions not to touch them. During war, on the

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1 battlefield, that was different. Now they had surrendered to us  
2 and we need not touch them, just welcome them and greet them and  
3 respond to the questions which they asked us. He said they were  
4 Cambodians like us. 'Don't touch them at all.' Those were the  
5 words of Pol Pot." End of quote.

6 [09.09.53]

7 Phy Phuon confirmed his testimony - this testimony in his  
8 appearance before this Chamber. And I call your attention Mr.  
9 President, to the fact that Phy Phuon's testimony sounds  
10 remarkably similar to Nuon Chea's statement to Thet Sambath, in  
11 which Nuon Chea himself says that he never intended or wanted to  
12 harm the alleged victims at Tuol Po Chrey because "they were  
13 normal people". We played that footage for you on Tuesday and  
14 we'll reference it again near the end of our analysis of Tuol Po  
15 Chrey.

16 Other statements in evidence from witnesses who did not appear  
17 before the Chamber confirm this account.

18 According to Ben Kiernan, Heng Samrin recalls Nuon Chea's exact  
19 words on the precise occasion and specifically denies that a  
20 policy of Khmer Republic soldiers or officials existed. This  
21 occasion was a meeting which took place in May 1975.

22 [09.11.15]

23 Kiernan explains in his book - that is E3/1593; and I quote:  
24 "Heng Samrin, then studying military affairs under Son Sen, was  
25 also at the meeting. He recalls the use of another term: 'They

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1 did not say 'kill', they said 'scatter the people of the old  
2 government.' 'Scatter' (or 'komchat') them away, don't allow them  
3 to remain in the framework. It does not mean 'smash' ('komtech')...  
4 'Smash' means 'kill', but they use a general word, 'scatter'.  
5 Nuon Chea used this phrase." End of quote.

6 A third witness, Ouk Bunchhoeun, was present at the same meeting  
7 as Heng Samrin, and in a statement given to Steve Heder, Ouk  
8 described Pol Pot's instructions in regard to the Khmer Republic  
9 and he stated that according to Pol Pot, "influences from  
10 previous regime were not yet rooted out in the fields of  
11 politics, military, economics, social affairs and consciousness".  
12 It was therefore necessary to oppose the previous regime "based  
13 on political, consciousness, and organizational works". Now this  
14 account of Ouk Bunchhoeun confirms Heng Samrin's statement that  
15 CPK policy intended the removal of Lon Nol - Lon Nol officials  
16 from the framework, and not their execution.

17 [09.13.19]

18 Now, Mr. President, as I indicated last Tuesday, for nearly six  
19 years we have repeatedly and consistently sought the appearance  
20 of these latter two witnesses before this tribunal. For over two  
21 years, on six separate occasions, we have sought the appearance  
22 of Heng Samrin, and these requests have been alternatively  
23 ignored and denied without reasons. They have never once been  
24 supported by the Co-Prosecutors.

25 The Co-Prosecutors argue now that Heng Samrin's statement was

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1 misunderstood by Ben Kiernan. They argue that Heng Samrin  
2 actually told Ben Kiernan that Nuon Chea ordered that Lon Nol  
3 officials should be eliminated.

4 We vigorously dispute this interpretation. Kiernan quotes Heng  
5 Samrin unambiguously, saying the words – and I quote: "They did  
6 not say kill." End of quote.

7 [09.14.33]

8 But maybe the substance of this agreement – disagreement is  
9 irrelevant. It is exactly because this dispute exists that Heng  
10 Samrin's appearance at trial is critical, so too Ouk  
11 Bunchhoeun's.

12 The key issue in dispute in relations – in relation to the  
13 allegations that concern Tuol Po Chrey is our client's intent.  
14 The only witness who claims to know Nuon Chea's intent is Heng  
15 Samrin. Now, that claim – that claim is eminently reliable. It  
16 follows that his appearance at this trial is a non-negotiable,  
17 minimum requirement of Nuon Chea's right to a fair trial.

18 Mr. President, both the Supreme Court Chamber and the  
19 International Judges of the Pre-Trial Chamber have recognized  
20 that absent Heng Samrin's appearance, Nuon Chea's trial cannot be  
21 fair. The International Judges of the Pre-Trial Chamber recognize  
22 that Heng Samrin's failure to appear improperly "prevented Nuon  
23 Chea from obtaining possible advantage that may emerge from his  
24 testimony". And like I said, also the Supreme Court Chamber  
25 recognized that if Heng Samrin's evidence proves unavailable from

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1 any other source, his failure to appear would render Nuon Chea's  
2 trial unfair.

3 [09.16.28]

4 As I indicated on Tuesday, Heng Samrin is the single most  
5 important fact witness in this trial. There's no conceivable  
6 reason for this Chamber's failure to summons him, other than the  
7 lack of meaningful independence from the government.

8 And our question, therefore, is this: How far are the  
9 International Judges of this Chamber willing to go to secure  
10 convictions against Nuon Chea in violation of the most basic of  
11 right to a fair trial?

12 The International Co-Prosecutor has already given us his answer.  
13 Mr. President, this tribunal was constituted with a supermajority  
14 requirement exactly for this situation. This is where the rubber  
15 hits the road. This is what the group of experts who warned the  
16 United Nations of the dangers of holding a trial within the  
17 Cambodian judicial system was worried about. This – the situation  
18 is this, and the moment is now.

19 Apparently, the National Judges are not able to convict Nuon Chea  
20 for the crimes allegedly committed at Tuol Po Chrey on their own.  
21 If the integrity of these proceedings means anything, the  
22 International Judges of this Chamber must not help them.

23 [09.18.12]

24 Mr. President, I will now turn away from the evidence of Nuon  
25 Chea's intent and the fair trial issue it raises, because even

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1 without Heng Samrin's testimony, the evidence is plainly  
2 inadequate to support a conviction. So I will – we'll continue on  
3 with the second broad stage of our analysis, and this analysis  
4 concerns the evidence of how Lon Nol soldiers and officials were  
5 actually treated.

6 I'm going to go through the evidence in this regard in quite a  
7 bit of detail, and for good reason, because the evidence simply  
8 does not support the existence of a country-wide pattern of  
9 conduct and, therefore, does not establish the existence of a  
10 centrally devised execution policy.

11 I will begin with the Co-Prosecutors' claim that the CPK adopted  
12 a policy of executing Khmer Republic officers, soldiers, and  
13 officials long before April 1975. Now, this claim is  
14 unequivocally false. The evidence to support this is  
15 non-existent.

16 [09.19.28]

17 I will first note that according to the Co-Prosecutors, the CPK  
18 evacuated towns in numerous locations prior to April 1975. These  
19 include Kampong Cham, Udong, Kratie, Banam, and parts of Kampot.  
20 Yet only in Kampong Cham and Udong do the Co-Prosecutors allege  
21 Lon Nol soldiers were executed. So the Prosecution concedes that  
22 Khmer Republic soldiers were not generally executed following the  
23 evacuations which took place prior to April '75. This alone  
24 suffices to disprove their claim.

25 But even in Kampong Cham and Udong, the facts are clear: Khmer

1 Republic soldiers simply were not executed. In fact, Mr.  
2 President, this conclusion is so clear that even the small  
3 selection of evidence cited by the Prosecution proves it.  
4 Let us start with Udong. With regard to Udong, the Prosecution's  
5 main evidence was the testimony of Steve Heder. Mr. Heder was  
6 living in Phnom Penh at the time - at that time and he travelled  
7 to Udong in the immediate aftermath of its capture by CPK forces.  
8 He testified to seeing dead bodies. The Co-Prosecutors then asked  
9 him about Lon Nol soldiers and officials and they had the  
10 following exchange - and I quote:  
11 Question: "Did you see anyone dressed in uniform or a body in  
12 uniform or can you help on what may have happened to the Lon Nol  
13 soldiers?" End of question.  
14 [09.21.35]  
15 And Steve Heder says as follows - and I quote: "I don't recall  
16 anything specific, but I certainly don't recall seeing any bodies  
17 of Lon Nol Khmer Republic military personnel. I may have been  
18 told that there were executions; I don't specifically recall that  
19 I was." End of quote.  
20 Your Honours, this is not our evidence; this is the Prosecution's  
21 evidence. And what it quite clearly shows is that Lon Nol  
22 soldiers were not executed following the evacuation of Udong.  
23 The Co-Prosecutors' only other evidence that Lon Nol soldiers  
24 were executed following the evacuation of Udong is from Philip  
25 Short, the British journalist who, as I said on Tuesday, had

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1 never set foot in Cambodia until 1993.

2 Now, in their submissions, the Co-Prosecutors claim that Philip  
3 Short testified that he was told of executions by eyewitnesses.  
4 That claim is simply incorrect. In reality, Mr. Short testified  
5 that only one person told him that Lon Nol soldiers were killed  
6 following the evacuation of Udong, and that person was Phy Phuon,  
7 the very same Phy Phuon who testified repeatedly before this  
8 tribunal that Lon Nol soldiers were never harmed after they  
9 surrendered.

10 [09.23.26]

11 Mr. Short's second-hand description of the conversation he had  
12 with a witness who appeared before this Chamber and gave  
13 testimony on exactly the same point is therefore irrelevant. Mr.  
14 Short's evidence is of no probative value and it should be  
15 disregarded entirely.

16 Mr. President, I now turn to Kampong Cham.

17 Remarkably, the evidence of executions of Lon Nol soldiers in  
18 Kampong Cham is even weaker. We refer the Chamber to footnote 367  
19 of the Co-Prosecutors' brief. In that footnote, the  
20 Co-Prosecutors assemble no fewer than eight sources describing  
21 the evacuation of Kampong Cham. Of those eight sources, seven say  
22 nothing at all - nothing at all - about the execution of Lon Nol  
23 soldiers.

24 One of these sources is François Ponchaud. Ponchaud testified  
25 before this Chamber that he was physically present in Kampong

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1 Cham and witnessed the evacuation of the city. Yet Ponchaud said  
2 nothing of the - of the execution of even a single Lon Nol  
3 soldier.

4 [09.25.02]

5 Another one of these sources is a book called "Road to the  
6 Killing Fields" by Wilfred Deac. And in the passage cited by the  
7 Co-Prosecutors, Mr. Deac describes in detail the battle for  
8 Kampong Cham, and he provides specific estimates of the number of  
9 Lon Nol soldiers stationed in the city and of the number killed  
10 during the fighting, and he states that according to government  
11 sources, 185 soldiers died in that fighting. Neither he nor his  
12 "government sources" say a word about the execution of soldiers.  
13 The Prosecution makes a claim about the CPK's treatment of Khmer  
14 Republic soldiers that even the Khmer Republic government itself,  
15 apparently, could not substantiate.

16 The only witness who says a single word about Lon Nol soldiers in  
17 connection with the evacuation of Kampong Cham is, again, Steve  
18 Heder. Mr. Heder took interviews following the evacuation of  
19 Kampong Cham. He told this Chamber that he had a "general" and  
20 "vague recollection" of being told that some Lon Nol military  
21 personnel were executed.

22 [09.26.38]

23 Mr. Heder did not witness executions. He did not see dead bodies;  
24 he could not produce the notes of his interviews. He did not say  
25 who his sources were. He did not say whether his sources

1 witnessed executions. He did not say how many soldiers were  
2 executed, by whom, how, or under what circumstances. Indeed, he  
3 could not even remember whether those sources really did tell him  
4 that Lon Nol soldiers had been executed. Now, his "general",  
5 "vague recollection" is inconsistent with all of the other  
6 accounts on record.

7 Mr. President, it is apparent that Lon Nol soldiers were not  
8 executed in Kampong Cham in 1973.

9 The next piece of evidence relied on by the Co-Prosecutors is a  
10 1973 issue of "Revolutionary Flag" concerning classes to be  
11 abolished, they said - the prosecutors said similar testimony  
12 given by Duch and Steve Heder. According to the Co-Prosecutors,  
13 the key point is - and I quote:

14 "Your official CPK class analysis is designated separate or  
15 special class ties that did not fit neatly into his broader class  
16 scheme of feudalists, bourgeoisie, petty-bourgeoisie, peasants,  
17 and workers. In addition to intellectuals, these other class  
18 types included Republican soldiers and police, Buddhist monks,  
19 and all national minorities." End of quote.

20 [09.28.44]

21 Yet, by classifying Lon Nol officials with groups as varied as  
22 Buddhist monks, intellectuals, and national minorities, the  
23 Co-Prosecutors defeat their own point. The Closing Order has an  
24 entire section on the CPK's treatment of Buddhist monks, but it  
25 never - the Closing Order never alleges they were targeted for

1 execution. No allegation exists that national minorities,  
2 including the Cham and the Vietnamese, were executed prior to  
3 1977.

4 Expert David Chandler testified that "the Cham certainly were not  
5 targeted from the beginning, if they were systematically  
6 targeted".

7 Also another shred of evidence suggests that intellectuals were  
8 systematically executed. Former intellectuals appeared before the  
9 Chamber.

10 Ong Thong Hoeung never concealed his background or identity  
11 during Democratic Kampuchea, yet he was alive and well in his  
12 appearance before this Chamber in August of last year.

13 [09.29.58]

14 So, once again, the Co-Prosecutors' own evidence proves our  
15 contention, and not theirs. If Lon Nol soldiers and policemen  
16 were similar, within the CPK philosophy to monks, intellectuals,  
17 and minorities, it follows that they were never subject to a  
18 policy of execution.

19 Next, the Co-Prosecutors assert that Lon Nol soldiers were  
20 executed at M-13 prior to 1975. Once again, this claim is just  
21 not true.

22 Although the Co-Prosecutors did not give us a reference, the only  
23 such testimony that we are aware of concerns Duch's description  
24 of a single incident in which a single group of Lon Nol soldiers  
25 was detained at M-13. Duch explained that just before these

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1 soldiers were detained, "they fired their guns; there were  
2 conflicts". Duch did not say that even the single group of Lon  
3 Nol soldiers who were captured in battle were executed and he  
4 clarified elsewhere in his testimony that many detainees at M-13  
5 were released. So, this testimony is irrelevant to any supposed  
6 policy of executing Lon Nol soldiers.

7 [09.31.38]

8 I will, Mr. President, however add that according to Duch, the  
9 total number of people executed at M-13 over its five years of  
10 operation was between 200 and 300 - not 200 or 300 Lon Nol  
11 soldiers; 200 to 300 people in total during a - during a  
12 seven-year civil war in which Khmer Republic security forces  
13 systematically and ruthlessly hunted down, arrested, and executed  
14 CPK cadres. Now, assuming for a moment that Duch's statement is  
15 correct, this really isn't very many people, considering that we  
16 are speaking about a period of five years or seven years. Are  
17 these CPK senior leaders who allegedly executed 200 spies over a  
18 five-year civil war the same indiscriminately murderous maniacs  
19 whom the prosecutors have described over the last - over the last  
20 week?

21 The only evidence the Co-Prosecutors cite of any actual  
22 executions amounts to a total of two witness statements across  
23 all of Cambodia between 1968 and 1975 - in total. Now, these two  
24 meagre statements are document numbers E3/5636 and E3/5243. These  
25 are witnesses who have not appeared before this Chamber and are

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1 people who the Prosecution did not even put on their – on their  
2 witness list.

3 [09.33.37]

4 E3/5243 purports to describe the execution of a single  
5 sub-district chief. The witness does not claim to have witnessed  
6 that execution and he does not say how it is he knew about that  
7 execution. He does not say why, how, or under what circumstances  
8 that sub-district chief was killed. Like I said, the witness did  
9 not appear for cross-examination to explore these questions. His  
10 statement, therefore, is irrelevant.

11 E3/5636 purports to describe executions of Senior Khmer Republic  
12 military officers. The witness explicitly states that ordinary  
13 soldiers and officers lower than the rank of major were unharmed.  
14 The witness explicitly states that civil servants who did not  
15 oppose the Revolution were left unharmed. Even the witness's  
16 narrow claim about senior officers is not corroborated. The  
17 interview contains no effort to probe the witness's – the  
18 witness's sources of knowledge and was not taken by the  
19 Investigating Judges of this tribunal. The witness did not appear  
20 for a cross-examination, and this statement too proves nothing.

21 [09.35.11]

22 Just as important are the statements that the Co-Prosecutors  
23 chose not to mention.

24 Two refugees interviewed by Steve Heder at the Thai border in  
25 1980 explicitly state that the overwhelming majority of Lon Nol

1 soldiers were released and forgiven prior to 1975. Those  
2 statements are both cited at paragraph 401 of our brief.  
3 The only other supposed facts involved by the Co-Prosecutors  
4 concern the alleged brutality of the CPK prior to 1975.  
5 Mr. President, the Chamber should see this for what it is: an  
6 effort to distract the Chamber from the absence of any actual  
7 evidence with vague and unrelated (inaudible). It is irrelevant  
8 and should be unequivocally rejected.

9 [09.36.19]

10 Nevertheless, I will address one example discussed by the  
11 Co-Prosecutors, not because it is of any relevance to any  
12 supposed policy in relation to Lon Nol soldiers, but because the  
13 Prosecution repeatedly described it as extremely important and,  
14 Mr. President, because the claim itself is fantastical.  
15 The Co-Prosecutors cited two witnesses, Chhouk Rin and Nou Mao,  
16 in an attempt to cobble together evidence to support their claim  
17 that the CPK engaged in the organized and systematic elimination  
18 of the Hanoi returnees. The Hanoi returnees were Khmer Communists  
19 who had returned to Cambodia from Vietnam in the early 1970s.  
20 Now, this allegation is absurd and unfounded. Neither Chhouk Rin  
21 nor Nou Mao described having any first-hand knowledge of this  
22 alleged high-profile purge.  
23 On the contrary, after first denying any knowledge of the topic,  
24 Chhouk Rin could only testify that "there could not have been  
25 many returning from Hanoi who were arrested at that time".

1 Neither could Chhouk Rin explain why these Hanoi returnees would  
2 have been arrested, whether killings of these returnees had  
3 occurred, or whether he had learned this information somewhere  
4 else - through someone else.

5 [09.38.09]

6 Nou Mao's testimony that the Hanoi deportees "mysteriously  
7 disappeared" was equally vague. Like Chhouk Rin, he provided no  
8 source, nor the basis of his knowledge regarding the deportees'  
9 alleged fate.

10 And the idea that the CPK would systematically murder 3,000 Khmer  
11 Communists who returned to Cambodia for the sole purpose of  
12 joining the Cambodian Communists is illogical. As the  
13 Co-Prosecutors have themselves acknowledged, these returnees were  
14 welcomed back into the CPK administration as comrades in arms.  
15 The CPK would have had no incentive to murder thousands of fellow  
16 Communists that had already been re-inserted into its  
17 administration.

18 And neither would the systematic killing of 3,000 hard core  
19 Communists have been a stroll in the park for the CPK. Such an  
20 enormous act would have required extensive planning, logistics,  
21 and manpower and such an act would not have gone undetected, and  
22 such conduct would have caused a total rupture in relations  
23 between the CPK and Hanoi. Yet there is no indication of such a  
24 breach between the two entities at that time.

25 [09.39.58]

1 Mr. President, Your Honours, I will summarize this body of  
2 evidence. The evidence shows that although the CPK evacuated  
3 numerous towns prior to April '75, Lon Nol soldiers were not  
4 executed in any of them. The evidence shows that the person whom  
5 the Co-Prosecutors say was a key figure in the - in the Party's  
6 internal security apparatus, Duch, described no executions of Lon  
7 Nol soldiers in this period. The evidence shows that Party  
8 publications grouped Lon Nol soldiers and officials with other  
9 groups whom no one claims were systematically executed in April  
10 1975, and in most cases, at all. Witness statements entered into  
11 evidence by the Prosecution establish, without exception, that  
12 the overwhelming majority of Lon Nol soldiers were forgiven and  
13 released, and yet the Co-Prosecutors claim on the strength of  
14 this evidence that a policy existed of executing all former  
15 soldiers of any rank in all of the liberated zones across the  
16 country.

17 Mr. President, this concludes our discussion of the period prior  
18 to April 1975.

19 And my only final comment is to observe that the Co-Prosecutors  
20 called this period between 1968 and 1975 "crucial" to  
21 understanding our client's intent in relation to events in April  
22 1975. We agree. The evidence shows unequivocally that no policy  
23 of execution - of executing Lon Nol soldiers and officials  
24 existed prior to April '75. On the Co-Prosecutors own logic, that  
25 fact is "crucial" support for our client's contention that no

1 such policy existed in April 1975.

2 [09.42.40]

3 Mr. President, I will now move on to the period directly -  
4 directly relevant to the charges at issue, the days immediately  
5 following April 1975, and I will begin by briefly summarizing the  
6 submissions we filed with the Chamber last month and I will  
7 summarize those submissions in three key points.

8 First, as I have already explained, the direct evidence of Nuon  
9 Chea's intent in relation to the execution of Lon Nol soldiers  
10 and officials in April '75 is almost non-existent. There are no  
11 probative documents. The only witness to appear before this  
12 Chamber with any direct knowledge of the intention of the Party  
13 Centre is Phy Phuon - Phy Phuon, who has repeatedly testified  
14 that Pol Pot's orders were to leave Lon Nol soldiers unharmed.  
15 The only other statements of any significance were taken by Ben  
16 Kiernan or Stephen Heder before this tribunal existed. Two of  
17 those witness statements indicate that no policy to execute Lon  
18 Nol soldiers or officials existed at any time. None of these  
19 witnesses have appeared before this Chamber despite our requests  
20 to summons them.

21 [09.44.12]

22 Ben Kiernan, who took two of those interviews, describes one  
23 instance in this book - in his book in which hundreds of Khmer  
24 Republic soldiers were released in July 1975, after a period of  
25 detention. Kiernan makes no mention of any inconsistency between

1 this fact and the interviews he has taken, which are on our case  
2 file.

3 Second, Mr. President, the evidence of actual executions of Lon  
4 Nol soldiers in April '75 is exceptionally limited. We do not  
5 believe that a single witness who appeared before the Chamber -  
6 not one over two years - described personally witnessing a single  
7 execution of a single soldier, this despite the fact that Tuol Po  
8 Chrey is one of just three alleged criminal sequences at issue in  
9 this trial, this despite the fact that the Co-Prosecutors have  
10 been trying furiously to prove the existence of this policy since  
11 it was added to the scope of this trial in October 2012.

12 [09.45.32]

13 The only evidence of any kind that executions of Lon Nol soldiers  
14 and officials happened is therefore in the form of out-of-court  
15 witness statements, witnesses who we have not been able to  
16 cross-examine. Yet these witnesses, too, give almost no  
17 first-hand testimony of any killings of any Lon Nol soldiers at  
18 any time under any circumstances. We are aware of only a very  
19 small handful on the case file.

20 And even - even the prosecutors' strongest witnesses typically  
21 state only that they saw Lon Nol soldiers segregated from a  
22 larger group. Yet witnesses as varied as Suong Sikoeun and Steve  
23 Heder conclude that in Democratic Kampuchea, disappearance  
24 frequently led to a fate other than execution or even arrest.  
25 The only so-called policy of any relevance to the allegations at

1 Tuol Po Chrey would be a policy in which any person with any  
2 affiliation to the Khmer Republic was immediately and  
3 indiscriminately murdered. Proof, Mr. President, of mere  
4 segregation is completely inadequate for that purpose.

5 [09.47.08]

6 Other out-of-court statements on the case file are even more  
7 unreliable. They relay only distant hearsay and typically concern  
8 individual events in which a single person was purportedly  
9 killed. None - none - have any connection to any senior  
10 officials.

11 I would like to remind the Chamber that the few witnesses it did  
12 summons to appear before it in relation to the alleged execution  
13 of Lon Nol soldiers and officials repeatedly contradicted the  
14 testimony they gave to the - to the Co-Investigating Judges. Pe  
15 Chuy Chip Se testified, contrary to his OCIJ statement, that he  
16 did not witness either the segregation or the execution of Lon  
17 Nol soldiers. Lev Lam made that same concession.

18 For all of these reasons, Mr. President, these statements are  
19 inordinately unreliable, and the fact that none of these  
20 witnesses appeared for cross-examination is therefore of critical  
21 importance. And this is not a mere technicality.

22 [09.48.31]

23 I remind the Chamber that it adopted an extremely low standard  
24 for the admission of these out-of-court statements into evidence.  
25 In our view, the Chamber admitted a vast body of these statements

1 far larger than any other international criminal trial in  
2 history. But the Chamber – you, Mr. President, Your Honours –  
3 assured us that there was a sharp distinction between  
4 admissibility and probative value. This Chamber assured us that  
5 statements admitted without cross-examination would be entitled  
6 to little or no weight. This must be especially true in regard to  
7 these very statements. These statements are both unreliable and  
8 of critical importance to questions in dispute between us and the  
9 Co-Prosecutors.

10 Our third key point is that even if the Chamber were to accept  
11 all of this evidence at face value – and it certainly cannot – it  
12 would still find that this evidence overwhelmingly concerns only  
13 two zones: the Northwest and the Southwest. We estimate that at  
14 least 75 per cent of the statements on record concern events  
15 within these two zones.

16 [09.50.10]

17 As we have just shown in detail, the evidence in these statements  
18 is equally unreliable. There are almost no eyewitnesses, and  
19 there are no witnesses at all who actively participated in any  
20 killings. Although we explicitly sought the appearance of –  
21 appearance of these witnesses in July of this year, that request  
22 was denied.

23 We continue to dispute the reliability of all of these  
24 out-of-court statements from witnesses who have never appeared to  
25 give evidence before this Chamber.

1 The fact that the Co-Prosecutors' evidence disproportionately  
2 concerns the Southwest and Northwest Zones is convincingly  
3 demonstrated by several statements of witnesses who purport to  
4 describe events in the North and Central Zones. These witnesses  
5 testify that in their locations, Lon Nol soldiers were unharmed  
6 for the first two - two or more years of Democratic Kampuchea.  
7 They explain that only in 1977 or 1978 were Lon Nol soldiers  
8 allegedly executed.

9 [09.51.40]

10 Now, what is - what is it that happened in 1977? As the Chamber  
11 knows, troops from the Southwest Zone began to clash with those  
12 in the North and Central Zone. Southwest Zone cadres then took  
13 over positions of importance in the North and Central Zones, and  
14 only then - '77, '78 - do these witnesses supposedly say that Lon  
15 Nol soldiers were executed.

16 Similar testimony is given about the evacuation of Phnom Penh.  
17 Witness E3/369, an East Zone soldier, stated that his unit  
18 detained Lon Nol soldiers captured in battle. He explained,  
19 however, that Southwest Zone troops later confronted his unit and  
20 took those Lon Nol soldiers away. That statement seems broadly in  
21 conformity with the evidence that the four-zone armies which  
22 occupied Phnom Penh were competing and antagonist factions  
23 between which armed confrontations erupted. We will speak about  
24 this in more detail during our discussion of the evacuation of  
25 Phnom Penh, and for the moment I can refer the Chamber to

1 paragraphs 306 through 309 of our closing brief.

2 [09.53.22]

3 The Co-Prosecutors argue that killings of Lon Nol soldiers and  
4 officials were not limited to the Northwest and Southwest Zone.

5 They claim that these killings happened everywhere across  
6 Cambodia, including the Special Zone, the North Zone, the East  
7 Zone, the Central Zone, and also within Phnom Penh. And the  
8 Co-Prosecutors furthermore profess that the methodology with  
9 which these killings occurred was so consistent that it could  
10 only have been centrally coordinated.

11 Mr. President, we vigorously dispute these allegations because  
12 they are untrue and the evidence which the Co-Prosecutors have  
13 compiled to support them is woefully inadequate.

14 And like the Co-Prosecutors did on Friday of last week, I will  
15 review the evidence in two general stages.

16 First, I will review the supposed evidence of executions outside  
17 of Phnom Penh, and I will focus my attention on the Central,  
18 East, Special, and North Zones, and I will then review the  
19 evidence of witnesses who described events within Phnom Penh or  
20 in the course of the evacuation.

21 [09.55.10]

22 I will begin with the areas outside of Phnom Penh. In all four  
23 zones combined, the Co-Prosecutors identified a total of 10  
24 witnesses and two reports from the British Government. In our  
25 submission, the analysis could, if we so chose, end right here.

25

1 We will once again remind the Chamber that there's almost no  
2 direct evidence that the Party Centre ordered or intended the  
3 execution of Lon Nol soldiers or officials. The evidence that  
4 does exist is inconsistent. In order to trace any alleged  
5 executions back to the Party Centre, the Prosecution would be  
6 required to show that those executions were so widespread that  
7 they must have, beyond any reasonable doubt, been ordered by the  
8 Party Centre.

9 Now, even without looking at the substance of their evidence, the  
10 testimony of 10 witnesses from across the entire country is  
11 manifestly insufficient. Yet, Mr. President, when we did look at  
12 this evidence, we found that it is even weaker than we had  
13 expected.

14 So, we will now examine each piece - each piece of evidence cited  
15 by the Co-Prosecutors in support of their claim that the  
16 nationwide policy of executing Khmer Republic soldiers and  
17 official existed.

18 [09.56.53]

19 First, the East Zone. The totality of the evidence proffered by  
20 the Prosecution that any Khmer Republic soldiers or officials  
21 were executed at any time in the East Zone is a victim complaint  
22 which is document E3/5395 and an OCIJ statement, E3/5260, again,  
23 witness statements not subject to cross-examination.

24 Now, the first statement, E3/5395, is cited at footnote 601 of  
25 the prosecutors' - of the Co-Prosecutors' closing brief. The

1 events described in this statement, which concern former Lon Nol  
2 soldiers, took place long after April '75. And according to this  
3 statement, three periods of time, each of unspecified length,  
4 passed between April '75 and the supposed killing of Lon Nol  
5 soldiers. First, the witness's family was sent to study. Then  
6 they were sent to dig a pond for "a period of time". Then they  
7 were assigned to build a dam "for a while", and only then does  
8 the witness claim that former Lon Nol soldiers were executed.

9 [09.58.44]

10 Therefore, Mr. President, this statement supports our client's  
11 claim that in April '75, in the East Zone, Lon Nol soldiers were  
12 not killed.

13 Furthermore, the allegations in the complaint that Lon Nol  
14 soldiers were later killed are unreliable. The complaint does not  
15 explain the circumstances under which those former soldiers were  
16 killed, does not state whether the witness saw the killings, and  
17 does not explain how it is that the witness discovered that Lon  
18 Nol soldiers had supposedly been killed.

19 This witness, E3/5395, did not appear before the Chamber to  
20 testify, she did not attest to the accuracy of her statement, and  
21 she did not give her statement under oath. Therefore, Mr.  
22 President, her statement is unreliable and entitled to zero  
23 probative value.

24 The second document is an OCIJ statement numbered E3/5260. Now,  
25 this witness claims to know that up to 50 people were "taken

1 away", but she explicitly says that she believes that these  
2 people were taken not to be killed, but "towards the Northwest".  
3 She provides no detail of any kind concerning the circumstances  
4 under which they were taken away. She does not say that she  
5 witnessed any arrests. She does not say how she knows they were  
6 arrested. She does not name any people who were arrested.

7 [10.00.53]

8 Witness E3/5260 did not appear before the Chamber to answer any  
9 of these questions. Also, her statement is entitled to no  
10 probative value.

11 Now, these two lonely statements must also be read in light of  
12 other evidence specifically showing that Lon Nol soldiers would  
13 not - were not killed in the East Zone. Now, that evidence from  
14 Ben Kiernan's book "The Pot Pot Regime" is described in our  
15 brief, at paragraph 390.

16 According to Ben Kiernan, "in April '75, hundreds of former Lon  
17 Nol soldiers in the East Zone were taken for re-education, and  
18 three months later," so he writes, "after receiving genuine  
19 education from trained teachers in an organized school, they were  
20 returned safely to their families."

21 Now, Mr. President, although this is the kind of evidence that we  
22 think must be treated with caution, it is at least as reliable as  
23 to out-of-court statements, lacking in any detail of any kind.  
24 So the only reasonable conclusion is that Lon Nol soldiers were  
25 not executed in the East Zone in April 1975.

1 [10.02.35]

2 Now, the Special Zone. The Co-Prosecutors cite no evidence in  
3 their brief of any executions in the Special Zone. They  
4 identified one statement on Friday morning, from TCW-162. The  
5 events described in TCW-162's statement, in fact, occurred in the  
6 Southwest Zone. So the Co-Prosecutors cite no evidence at all in  
7 the Special Zone. So the only reasonable conclusion is that Lon  
8 Nol soldiers were not executed in the Special Zone in April 1975.  
9 Third, the Central Zone. The Co-Prosecutors identified two  
10 statements describing the executions of a total of four people in  
11 the entire Central Zone. These are victim complaints, document  
12 numbers E3/5355 and E3/5358, cited in footnotes 604 and 605 of  
13 the Co-Prosecutors' brief. Again, the prosecutors apparently  
14 never considered putting these witnesses on their list.  
15 Co-Prosecutors pointed to E3/5358 during – again, during oral  
16 argument, confirming that they were able to locate no other  
17 evidence. Both witnesses relay distant hearsay. Both witnesses  
18 were far away – in some cases, hundreds of kilometres from the  
19 events they purport to describe. Neither witness knows anything  
20 of any connection to any person above the very lowest rank of the  
21 CPK hierarchy.

22 [10.04.45]

23 One of the four alleged killings, of the husband of victim  
24 E3/5355, took place in 1977. The timing of two other alleged  
25 killings, those of the two brothers of E3/5355, is unspecified.

1 Neither witness provides any reason to believe that any of the  
2 alleged victims were killed because they were former Lon Nol  
3 soldiers.

4 Neither witness appeared before this Chamber.

5 According to E3/5355 – and I quote:

6 "I do not know who killed my husband or how. I know nothing about  
7 his execution. I think he was killed by the Khmer Rouge because  
8 of his military background, being a Lon Nol soldier, and his lax  
9 work." Unquote.

10 Now, Mr. President, Your Honours, this evidence, which  
11 constitutes the totality of the Prosecution's claim that Lon Nol  
12 soldiers were executed in the Central Zone during Democratic  
13 Kampuchea is manifestly irrelevant, and the only reasonable  
14 conclusion is that Lon Nol soldiers were not executed in the  
15 Central Zone in April 1975.

16 [10.06.22]

17 Fourth, Mr. President, the North Zone.

18 Sources in this regard are set out at footnotes 599 and 600 of  
19 the Co-Prosecutors' trial brief and they were supplemented in  
20 oral argument last Friday.

21 The Co-Prosecutors first cite two reports from the British  
22 Government. Needless to say, Mr. President, we find the probative  
23 value of these documents very low. We do not know how the  
24 conclusions in these reports were formed. None of them were  
25 authenticated by testimony of any kind before this tribunal. Yet,

1 even if these reports were reliable, they would once again  
2 corroborate our version of events, and not that of the  
3 Co-Prosecutors.

4 Both reports concern events in 1977 and '78. Therefore, they  
5 prove only that the alleged victims, if in fact there were any  
6 victims, were still alive more than two years after the alleged  
7 events at Tuol Po Chrey.

8 [10.07.40]

9 And as already noted – and as our brief, I think, makes clear –  
10 killings in the North Zone after 1977 corroborate our claim that  
11 killings were generally decided upon at the zone level. That was  
12 the precise period in which troops from the Northwest Zone are  
13 alleged to have begun clashing with and replacing North Zone  
14 cadres.

15 The Co-Prosecutors also cite the testimony of five witnesses.

16 One of these – one of those witnesses, TCCP-64, describes no  
17 events in the North Zone, nor did she witness any of the events  
18 she does purport to describe.

19 The second witness, E3/5333, describes a single event concerning  
20 her husband and offers no basis on which to conclude that her –  
21 that her husband was targeted because of his position in the Lon  
22 Nol military.

23 The third witness, E3/5300, describes hearing of a meeting of Lon  
24 Nol officials. He states that he left the area immediately upon  
25 hearing of the meeting and does not know what happened there, nor

1 does he know what happened to the people who attended the  
2 meeting.

3 The fourth witness, E3/5356, explicitly states that the troops  
4 who allegedly gathered Lon Nol officials and then allegedly  
5 killed - killed them were from the Southwest Zone.

6 [10.09.47]

7 The fifth witness, Pe Chuy Chip Se, purported to describe the  
8 execution of Lon Nol soldiers at Pongro Security Centre, in Chi  
9 Kraeng, which is about 60 kilometres from Siem Reap Town. Pe Chuy  
10 conceded on cross-examination that he had not seen the  
11 executions. He conceded he had not even seen the alleged victims  
12 taken away to what he presumed was their death.

13 Mr. President, Your Honours, I have just been through a great  
14 deal of detailed analysis, so I will summarize my conclusions.  
15 In support of their claim that Lon Nol soldiers were executed by  
16 the CPK in the Special, East, Central, and North Zones in April  
17 1975, the Co-Prosecutors identify a total, across all four zones  
18 combined, of 10 witnesses - 10 witness statements and two  
19 government reports, yet only five of these statements actually  
20 concern events outside the Southwest or Northwest Zone in April  
21 '75, and the events described in the other seven documents all  
22 occurred long after April '75 or were otherwise perpetrated by  
23 Southwest Zone troops.

24 [10.11.33]

25 Now, the critical point - the critical point - and I cannot

1 emphasize the significance of this fact enough - is that even  
2 these last five remaining statements say nothing at all that  
3 remotely resembles the kind of pattern that the Co-Prosecutors  
4 say proves the centrally directed nature of the supposed policy.  
5 They do not even remotely come close.

6 Two of the witnesses, E3/5333 and E3/5358, each describe the  
7 killing of one person - one single person - without any detail at  
8 all of the circumstances under which they were allegedly killed.

9 A third person, TCCP-152, describes no killings at all.

10 And the fourth witness, E3/5260, claims to know that up to 50  
11 people were "taken away", but she explicitly says that she  
12 believes these people were not taken - were taken not to be  
13 killed, but, as I said earlier, "toward the Northwest". She  
14 provides no detail of any kind concerning the circumstances under  
15 which they were taken away. There is no mention of meetings, of  
16 promises to meet the King, or of going to study. She also  
17 indicates that the group taken away included not only Lon Nol  
18 officials, but students and teachers, yet another variation from  
19 the Co-Prosecutors' supposed pattern.

20 [10.13.29]

21 And the final witness, Mr. President, Pe Chuy Chip Se, said  
22 nothing of gathering Lon Nol soldiers in a meeting, nothing of  
23 promises to meet Angkar, nothing of arrangements to meet the  
24 King, nor did he witness any of the events described in his  
25 testimony.

1 Also significant are the - is the area of the country that the  
2 Co-Prosecutors chose not to mention at all. The Co-Prosecutor  
3 doesn't even allege that Lon Nol soldiers were executed in the  
4 Northeast Zone.

5 Mr. President, Your Honours, this concludes my discussion of the  
6 CPK's treatment of Lon Nol soldiers and officials outside of  
7 Phnom Penh in April 1975. You have now seen that no pattern of  
8 execution existed.

9 [10.14.40]

10 The Co-Prosecutors have been aware of our position that  
11 executions, if at all happened, were largely confined to the  
12 Southwest and Northwest Zones, for at least three months. They've  
13 known our position for at least three months, and they have tried  
14 to prove the existence of a countrywide pattern in their written  
15 submissions, and they have devoted significant time to proving  
16 that pattern in their oral argument. Yet, of the thousands of  
17 witness statements admitted into evidence, not a single one - not  
18 a single one - was consistent with their supposed pattern. Not  
19 even one witness described facts consistent with the pattern that  
20 the Co-Prosecutors say was so widespread and so universal that  
21 Nuon Chea's responsibility is established beyond a reasonable  
22 doubt. They have failed completely in their attempts to do so.  
23 Mr. President, Your Honours, I will turn now to the  
24 Co-Prosecutors' claim that the policy of executing Lon Nol  
25 soldiers and officials is reflected in events within Phnom Penh

1 itself. Now, that claim too is incorrect.

2 [10.16.20]

3 First, the Co-Prosecutors claim that the policy to kill all  
4 soldiers and all officials at all levels of the Lon Nol regime is  
5 established by the CPK's alleged execution of a small number of  
6 the leading officials of the Khmer Republic immediately after the  
7 liberation of Phnom Penh.

8 To begin with, there is no credible evidence that these  
9 executions occurred. Witnesses who appeared before the Chamber  
10 described the detention of those officials, which is certainly  
11 not surprising, but nothing more.

12 The key source relied on by the Closing Order is a book by Henry  
13 Kamm, who acknowledges that he was never – that he was "never  
14 able to confirm his presumption" that those officials were  
15 killed. In any event, the officials concerned were the senior  
16 most members of the Khmer Republic.

17 [10.17.37]

18 Elizabeth Baker describes them as those at the very top of the  
19 government, and that is confirmed by Al Rockoff's description by  
20 the presence of Long Boret and other top level officials. And the  
21 executions of such persons would not, even if it had occurred, be  
22 probative of anything relevant to Tuol Po Chrey or a general  
23 policy affecting Lon Nol officials or soldiers.

24 The first witness to supposedly describe the execution of  
25 ordinary soldiers was E3/5149. The witness's OCIJ statement

1 indicates that he saw a group of disabled Lon Nol soldiers killed  
2 near the Chrouy Changva Bridge. However, this statement is yet  
3 another in the long line of lessons about the dangers of relying  
4 on OCIJ statements, because what the witness actually said,  
5 according to the audio recording, was – and I quote: "Especially  
6 at the Chrouy Changva Bridge, they tied and put the soldiers into  
7 the car and threw them in the water, but I didn't actually see  
8 this. Rather, I worked as a messenger." Unquote.

9 Now, Mr. President, Your Honours, we did not have time to have  
10 this transcribed and translated, but the Chamber can verify this  
11 based on the audio recording.

12 [10.19.29]

13 The next witness was E3/5540. Now, this witness stated – stated  
14 in an interview with the OCIJ that soldiers who surrendered were  
15 arrested and transported away and that she did not know what  
16 happened to them. E3/5540 was furthermore a soldier in the  
17 Southwest Zone army. So, to make this as explicit as possible for  
18 the Chamber, the closing – the Co-Prosecutors' final closing  
19 argument, they tried to prove that all Lon Nol soldiers were  
20 automatically executed by zones – by zone authorities other than  
21 the Southwest and Northwest. And one of their five witnesses they  
22 handpicked out of the hundreds who gave statements testified that  
23 surrendering soldiers were from the Southwest.

24 The next witness was E3/5598. That witness testimony was – and I  
25 quote: "When they removed their uniforms and rifles, they were

1 allowed to survive" - "they", of course, referring to Lon Nol  
2 soldiers. I will also add that this witness appears to have been  
3 at the western edge of the city, which would suggest it was under  
4 the control of the Southwest Zone.

5 [10.21.07]

6 Then the Co-Prosecutors read a supposed statement from a person  
7 named You Kim Lanh. They described this You Kim Lanh as a  
8 witness, but what they actually read was an excerpt from François  
9 Ponchaud's book. Now, as the Chamber knows, in the evidence  
10 before it is a collection of 94 refugee statements taken by  
11 François Ponchaud and relied upon by him in writing "Cambodia:  
12 Year Zero". We analyzed these statements. We showed in our brief  
13 that nearly all of them were from the Northwest Zone and that the  
14 limited selection of other evidence was highly unreliable.

15 Now, this You Kim Lanh's statement is nowhere to be found in this  
16 compilation, neither is the substance of his story. We do not  
17 know who this person is or under what circumstances his interview  
18 was taken. When Ponchaud appeared before this Chamber, no one  
19 thought it necessary to ask him about You Kim Lanh, and, Mr.  
20 President, we could not find a single reference to this person,  
21 whomever he is, anywhere on the case file, outside of the book  
22 "Cambodia: Year Zero".

23 If the tribunal thought this evidence was important, it should  
24 have found out who he was and have him summonsed for an  
25 interview, so too the Co-Prosecutors. They cannot now, for the

1 very first time after six years, tell us that this anonymous  
2 source who may have given an interview to somebody under unknown  
3 circumstances singlehandedly establishes that hundreds of top Lon  
4 Nol soldiers were executed in Phnom Penh. Mr. President, this is  
5 ridiculous and it should be rejected out of hand.

6 [10.23.25]

7 The only evidence of any significance cited by the Co-Prosecutors  
8 is Sum Chea's second-hand testimony that he was told by another  
9 soldier in a different unit that Lon Nol soldiers were gathered  
10 and executed following the evacuation of Phnom Penh. According to  
11 this other soldier whose name was Koeun, a public announcement  
12 was made by loudspeaker and radio, asking all Lon Nol soldiers to  
13 come forward, at which time they were transported elsewhere and  
14 killed. Yet Sum Chea testified that he did not hear the  
15 supposedly public - supposedly public broadcast. He testified  
16 that he did not witness any part of the surrender, collection,  
17 transport, or execution of the Lon Nol soldiers. In fact, Sum  
18 Chea testified that he, CPK soldier who actively participated in  
19 the evacuation, never once witnessed a single execution of a  
20 single Lon Nol soldier.

21 [10.24.42]

22 Mr. President, Your Honours, no part of this story makes any  
23 sense. If broadcasts were made publicly through loudspeakers and  
24 on the radio for the purpose of reaching as broad a cross-section  
25 of people as possible, why didn't Sum Chea hear the broadcasts

1 himself? Why was Koeun, alone among all of Sum Chea's fellow  
2 soldiers, the only one who was able to describe it? Why didn't  
3 the numerous soldiers who participated in the evacuation of Phnom  
4 Penh and who appeared before this Chamber testify to having heard  
5 them?

6 Other parts of Sum Chea's story are equally incomprehensible. He  
7 testified that Koeun told him that he gathered and transported -  
8 transported 10 trucks full of Lon Nol soldiers, yet he also  
9 testified on cross-examination that by the time the broadcast was  
10 supposedly made, there were no Lon Nol soldiers at all remaining  
11 in the city. And I quote from his testimony: "As I stated this  
12 morning, there was none of them. Phnom Penh was cleared. No  
13 civilians, no soldiers, no single soul." End of quote.

14 [10.26.15]

15 Now, although Sum Chea was questioned repeatedly by multiple  
16 counsel about who, exactly, this Koeun was and why he had such  
17 extraordinary authority and access to information, this witness -  
18 the witness never gave a proper answer. Instead he stated  
19 repeatedly that Koeun was a "daring and fierce soldier".

20 Our question is: Did any of this supposedly public sequence of  
21 events that no other soul witnessed actually occur? Were any of  
22 these phantom Lon Nol soldiers who were no longer in the city  
23 actually gathered on 10 full trucks? Or was Koeun bragging to his  
24 buddies to make them think he was "daring and fierce"? Mr.  
25 President, these questions answer themselves.

1 Other evidence cited by the Co-Prosecutors in their brief  
2 corroborates the role of the Northwest and Southwest Zones.  
3 [10.27.37]

4 In paragraph 195, the Co-Prosecutors cite statement E3/5282, who  
5 they say "witnessed selection meetings in two different areas and  
6 confirmed that the same process was followed in both places". Mr.  
7 President, here we see, in our view, the Co-Prosecutors'  
8 conscious effort to manufacture an impression that a consistent  
9 pattern existed. Yet they do not tell the Chamber that these "two  
10 places" were Battambang and Banteay Meanchey, both in the  
11 Northwest Zone.

12 Two news reports cited in paragraph 199 of the Co-Prosecutors'  
13 brief are based on unknown sources which have never been  
14 authenticated and are obviously unreliable. Yet even those  
15 reports concern events in Battambang - again, as you know, the  
16 Northwest Zone.

17 In paragraph 200, the Co-Prosecutors cite an arbitrary selection  
18 of documents purporting to describe arrests of individual Lon Nol  
19 soldiers beginning in late - in late 1977 and '78, years after  
20 the events at Tuol Po Chrey. Yet even these documents, again -  
21 all of them - concern events in either the Northwest Zone, the  
22 Southwest Zone, or the North Zone following the alleged purge of  
23 North Zone cadres by Southwest Zone troops.

24 [10.29.37]

25 MR. PRESIDENT:

1 Thank you, Counsel.

2 The time is now appropriate for adjournment. The Chamber shall  
3 adjourn for 20 minutes and resume at 10 to 11.00.

4 The Court is now adjourned.

5 (Court recesses from 1029H to 1054H)

6 MR. PRESIDENT:

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

8 And again we would like to hand the floor to Nuon Chea's defence  
9 to continue presenting their closing statements. You may proceed.

10 MR. KOPPE:

11 Thank you, Mr. President.

12 Your Honours, I would like - I would now like to turn to the  
13 documentary evidence supplied by the Co-Prosecutors. And also  
14 this evidence proves nothing of any substance.

15 On 8 July of this year we established, during our response to the  
16 Co-Prosecutors key document presentation, that the documents -  
17 the documentary evidence relied upon by the Co-Prosecutors in  
18 regards to the existence of an alleged policy of executing Lon  
19 Nol soldiers was systematically irrelevant and unreliable.

20 [10.55.54]

21 The Co-Prosecutors have presented no new documentary evidence,  
22 either in their final trial brief or in their oral argument.  
23 Therefore, in general, I would like to refer the Chamber to our  
24 submission from that day in regard to the Prosecution's  
25 documentary evidence. However, I will reiterate our submissions

1 with regard to two of those documents because the Co-Prosecutors  
2 relied on them frequently again this past week.

3 First document is E3/832. It is entitled "Execution Order". It is  
4 dated July 1975. It lists 17 names and purports - purports to  
5 originate from a soldier named Comrade Pin. All this document  
6 shows is that an order was delivered by Comrade Pin to somebody  
7 to execute 17 specific people. It does not show who the order  
8 came from or to whom it was delivered.

9 The fact that the order ostensibly came from "the Party" proves  
10 nothing. This Chamber has heard testimony that cadres at all  
11 levels used the label "Angkar" opportunistically to exercise  
12 their own petty authority. Pin's use of the phrase "the Party"  
13 does not mean anything literal, including that he was  
14 implementing an order from a superior.

15 [10.58.01]

16 The document also clearly shows that whoever did decide to  
17 execute these 17 people, if indeed someone did, it was not  
18 because of their military position. The document specifically  
19 states that the alleged victims were "examined" before a decision  
20 to execute them was made. Now, if a policy to execute all  
21 soldiers or all officers existed, there would be no need to  
22 examine any of them.

23 Next to certain names, there are additional indications that each  
24 person's loyalty was assessed. For instance, next to number 14,  
25 Eum Say, the document states the following - and I quote:

42

1 "He is a former teacher who was a traitor when he was a teacher.  
2 In his biography, he criticizes us very strongly, using  
3 psychological warfare. His responses show absolute support for  
4 the Republic regime and opposition to the Revolution."

5 And there the order also lists two other senior military officers  
6 and a sub-district chief, noting - and I quote: "Please keep for  
7 examination the following named persons."

8 Now, that alone also proves that even senior military officers  
9 were apparently not executed as a matter of policy.

10 [10.59.52]

11 The second document is a 21 May 1976 news report from "Agence  
12 France Presse" suggesting that 54 former generals were executed  
13 shortly after 17 April 1975. In general, Mr. President, the  
14 Prosecution's continued reliance on news sources should again be  
15 an indicator to the Chamber of the overall weakness of their  
16 evidence. But this document is especially unreliable and should  
17 be disregarded completely.

18 Neither the journalist nor the unnamed "resistance spokesman" who  
19 accessed the sole source is known. Even the description of a  
20 source as "resistance spokesman" is confusing; resistance to  
21 whom, the resistance faction against Pol Pot? And if so, isn't  
22 the claim transparent, anti-Khmer Rouge propaganda?

23 [11.01.05]

24 But the article is even more unreliable because, on the  
25 substance, it makes no sense. It claims that the list of generals

1 was "sent to several western governments". Now, why would the CPK  
2 execute 54 people and then announce to the world that they had  
3 done it? And if they did want to announce it to the world, why  
4 would they quietly sent the message to western governments, and  
5 not bluster about it? And if it was disclosed to several  
6 governments, why isn't there any evidence from any other source,  
7 aside from this single news report from a single journalist? And  
8 why did the CPK suddenly decide to reveal these executions, 13  
9 months after they happened? Why did they draw up a list in  
10 December '75, seven months after it happened? None of this, Mr.  
11 President, makes any sense.

12 Other evidence relied upon by the Co-Prosecutors is completely  
13 irrelevant.

14 The Co-Prosecutors say that, according to Steve Heder, New People  
15 were required to register their names during the evacuation of  
16 Phnom Penh. Notably absent is any mention of either executions or  
17 - of Lon Nol soldiers.

18 [11.02.46]

19 The Co-Prosecutors also claim that Khmer Republic prisoners were  
20 executed at S-21. Yet, as we showed in our brief and also in our  
21 prior submissions before this Chamber, there is not a shred of  
22 evidence that even a single person was detained at S-21 because -  
23 because - they had formerly been a Lon Nol soldier. It was  
24 inevitable that some people detained at S-21 would turn out to  
25 have been former soldiers, just as S-21 detainees had done a

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1 variety of things prior to 1975. And again, we would remind the  
2 Chamber, only 2 per cent of the alleged S-21 population is  
3 alleged to have been formerly affiliated with the Khmer Republic,  
4 and most of these people were detained beginning in March 1976.  
5 At most, a few dozen Lon Nol soldiers were detained at S-21 in  
6 1975. But this disproves the prosecutors' contention that Lon Nol  
7 were executed in general.

8 The Co-Prosecutors claim that, according to the minutes of a  
9 military meeting in September 1976, Son Sen instructed troops  
10 that "the soldier elements must be rounded up". Yet it is  
11 apparent, in the document relied upon, that Son Sen is not  
12 referring to former Khmer Republic soldiers, but to a group of  
13 RAK soldiers who sought to defect from the CPK. The document, in  
14 any event, is dated 18 months after the events at Tuol Po Chrey.  
15 [11.04.52]

16 Mr. President, Your Honours, in summary, the Co-Prosecutors are  
17 unable to show that anyone in the Party Centre intended the  
18 execution of any Lon Nol soldiers and officials. They are unable  
19 to show that executions happened in any consistent pattern across  
20 the country. They are accordingly unable to show that the CPK  
21 Party Centre at any time adopted a policy concerning or intended  
22 the systematic execution of Lon Nol soldiers or officials of any  
23 rank.

24 Even more apparent, however, is that if any policy to execute Lon  
25 Nol soldiers and officials ever did exist, it could only have

1 been severely limited in both time and scope. In particular, even  
2 if the Chamber, one, disregards the direct evidence that no  
3 policy to execute Lon Nol soldiers and officials existed, two,  
4 disregards the fact that no systematic pattern can be deduced  
5 from the evidence, and, three, accepts without question the  
6 limited evidence of a policy which does exist, it would still be  
7 required - it would still be required to hold that there were two  
8 significant limitations on the scope of that policy.

9 [11.06.31]

10 First, the evidence manifestly fails to establish that any policy  
11 to execute Lon Nol soldiers and officials could have existed in  
12 April 1975. Instead, the evidence the Co-Prosecutors themselves  
13 rely on demonstrates no policy could have existed prior to May  
14 1975 at the earliest.

15 Second, the very limited evidence of CPK policy that does exist  
16 consistently, and without exception, concerns only high-ranking  
17 military officers and the highest-ranking civil servants. There  
18 is not a shred, not an ounce of evidence that the CPK ever  
19 intended to execute ordinary soldiers or civilian authorities.

20 Mr. President, I will first consider the question of the timing  
21 of the alleged CPK policy. The evidence which the Co-Prosecutors  
22 themselves rely on contains numerous inconsistencies with regard  
23 to the point at which the supposed CPK policy to execute Lon Nol  
24 soldiers and officials came into effect, nor have they provided  
25 any basis on which to resolve those inconsistencies. They have,

1 accordingly, failed to articulate - to articulate any coherent  
2 theory of their case. The evidence as a whole, including that  
3 which the Co-Prosecutors conveniently decide not to consider,  
4 establishes that no policy could have come into effect earlier  
5 than May 1975.

6 [11.08.22]

7 On the one hand, the Co-Prosecutors assert that the policy of  
8 executing Lon Nol soldiers and officials came into effect on or  
9 before 17th April '75. They explicitly and vigorously argued, on  
10 Thursday and Friday of last week, that a policy of systematically  
11 executing Lon Nol officials and soldiers existed long before  
12 April 1975. They similarly argue the Long Boret and other top  
13 officials of the Khmer Republic were detained at the ministry of  
14 information and executed immediately thereafter at the Cercle  
15 Sportif on 17 April 1975. The Co-Prosecutors explicitly describe  
16 this incident as evidence of the policy which subsequently was  
17 implemented at Tuol Po Chrey. However, the Co-Prosecutors also  
18 cite Ieng Sary's statement that the CPK's decision to execute  
19 leaders of the former regime came a few days after April 17th, on  
20 around April 20.

21 Our position is clear: this statement is not reliable. Ieng Sary  
22 explicitly told Steve Heder that - and I quote: "On this I knew  
23 nothing at all." Unquote.

24 [11.09.53]

25 But in relying on this statement, the Co-Prosecutors failed to

1 resolve an obvious inconsistency with their own position: Did a  
2 policy come into effect long before 17 April 1975 or did it  
3 manifest for the first time on 20 April 1975?

4 Next, the Co-Prosecutors cite Steve Heder's testimony that Ke  
5 Pauk told him that "as secretary of the CPK North (later Central)  
6 Zone Committee, he had implemented a CPK policy of killing Khmer  
7 Republic officials". Steve Heder then explained that Pauk was,  
8 "from around May '75, Secretary of the North Zone". Thus, even if  
9 Pauk's testimony were accepted at face value, it would establish  
10 that a policy of executing Khmer Republic officers and officials  
11 began sometime after May 1975.

12 But, Mr. President, we note that Pauk was the chief military  
13 commander in the North Zone from long before May 1975. He would  
14 surely have been involved in the CPK's supposed policy in that  
15 capacity, had one existed.

16 [11.11.25]

17 The Co-Prosecutors do not resolve this inconsistency, either.  
18 Indeed, they do not recognize or acknowledge it. The  
19 Co-Prosecutors own submissions, therefore, suggest the existence  
20 of at least three different theories concerning the moment at  
21 which a policy of executing Lon Nol - Lon Nol soldiers and  
22 officials first came into effect. They do not engage the details  
23 of these statements. They do not tell us with any specificity -  
24 excuse me - when, how, and under what circumstances the senior  
25 leaders came together and agreed to execute all former Lon Nol

1 soldiers and officials. They do not give us any coherent theory  
2 of the case. Instead, they quote snippets of these statements,  
3 stringing them together as generalized support for an abstract  
4 concept which they call "a policy to execute Lon Nol soldiers and  
5 officials".

6 Other evidence on the case file not cited by the Co-Prosecutors,  
7 however, resolve these - resolves these inconsistencies. That  
8 evidence establishes without any serious doubt that no policy of  
9 executing Lon Nol soldiers could have existed prior to May 1985.  
10 That evidence is in the form of the statements taken by Ben  
11 Kiernan with regard to the 20 May 1975 conference in Phnom Penh.  
12 That is that same conference described by Heng Samrin I referred  
13 to at the beginning of my remarks.

14 [11.13.22]

15 The evidence of this meeting is the most concrete indication on  
16 record of any Standing Committee agreement with regard to the  
17 treatment of Khmer Republic officials. It was a meeting of  
18 zone-based officials in Phnom Penh at which Party policy was  
19 disseminated to zone level officials for the first time following  
20 liberation. And although different - differing accounts of that  
21 conference exist, the parties agree that Khmer Republic soldiers  
22 and officials were a subject of discussion.

23 As we have already seen, Heng Samrin has told Ben Kiernan that  
24 Nuon Chea specifically instructed cadres at that meeting that  
25 soldiers and officials of the Khmer Republic were not to be

1 killed.

2 Chea Sim has a different account of the substance of that policy,  
3 yet his statement is consistent with Heng Samrin's in a key  
4 respect: that CPK policy concerning the treatment of Khmer  
5 Republic soldiers and officials was discussed.

6 [11.14.41]

7 In oral submissions on 13 June 2013, the Co-Prosecutors  
8 encouraged the Chamber to refer to Chea Sim's account of that  
9 meeting. The Co-Prosecutors, therefore, apparently believe that  
10 Chea Sim's statement is reliable in this regard and that a policy  
11 concerning Lon Nol soldiers and officials was communicated at  
12 this conference. But that raises a critical question: If an  
13 agreement with zone officials concerning the treatment with Lon  
14 Nol soldiers already existed in April '75, why would it have been  
15 necessary to communicate it in May 1975? The answer is apparent:  
16 it would not have been.

17 It is crucial to recall that Heng Samrin and Chea Sim were both  
18 high-ranking members of the East Zone army. As a deputy division  
19 commander, Heng Samrin was only two ranks below So Phim in the  
20 hierarchy. It's almost certain that if So Phim had agree with  
21 Nuon Chea on - a policy of executing Lon Nol soldiers and  
22 officials existed in the East Zone in 1975, both Heng Samrin and  
23 Chea Sim would have been informed. At the minimum, they would  
24 have learned of it later. Yet, it is apparent from their  
25 statements that both men were informed of the CPK's policy in

1 relation to Lon Nol soldiers and officials for the first time on  
2 20 May 1975.

3 [11.16.30]

4 And neither Heng Samrin nor Chea Sim were reluctant, in their  
5 interviews, to describe intimate and even self-incriminating  
6 information. Both supposedly told Kiernan of the policy  
7 concerning Lon Nol soldiers and officials that was communicated  
8 in May 1975. There is no reason at all why they would have spoken  
9 of the policy in May '75, but then, at the same time, fail to  
10 mention that it already existed on 17 April '75.

11 Moving on from the timing of the alleged CPK policy, it is  
12 equally clear that its scope, if at all, was limited only to  
13 senior military officers and high-ranking civilian officials. No  
14 one in the Party Centre ever intended the execution of  
15 low-ranking soldiers or ordinary civilians. Even the  
16 Co-Prosecutors' own evidence, although unreliable on its face,  
17 consistently concerns only high-ranking officers and the  
18 highest-ranking civil servants. There is not a single testimonial  
19 account to the contrary.

20 [11.17.50]

21 The Co-Prosecutors repeatedly cite Ieng Sary's statement to Steve  
22 Heder in regard to a supposed policy of executing Lon Nol  
23 soldiers. Yet the policy Ieng Sary purports to describe is  
24 limited only to high-ranking members of the former government.  
25 Now, the relevant exchange between him and Steve Heder is as

1 follows - and I quote:

2 Steve Heder, first: "The documentation does make it clear that  
3 those to be executed included military officers, senior  
4 officials, secret agents, and a number of other categories, but  
5 there is nothing about ordinary soldiers and lower-ranking civil  
6 servants, like school teachers." End of quote of Steve Heder.

7 Ieng Sary answers the question: "There is nothing. There is  
8 nothing."

9 Chea Sim's summary of the 20 May '75 meeting concerns even  
10 higher-ranking officials. According to Ben Kiernan's notes of his  
11 interview with Chea Sim, one of the policies established at the  
12 May '75 meeting was to "kill leaders of the LN government".  
13 Heng Samrin's account of the 20 May '75 meeting also concerns  
14 "the Lon Nol leaders".

15 [11.19.24]

16 And even Philip Short, on whom the Co-Prosecutors rely repeatedly  
17 in relation to this supposed policy, agrees that it encompassed  
18 only "Lon Nol soldiers above a certain level and high-ranking  
19 officials".

20 Mr. President, Your Honours, this concludes my discussion of the  
21 alleged and non-existent CPK policy to execute Lon Nol soldiers  
22 and officials.

23 We have established that no policy of targeting Lon Nol soldiers  
24 and officials existed at any point within the CPK Party Centre.

25 However, we have also established that, if such a policy ever did

1 exist, it could only have come into effect in May 1975 and could  
2 only have targeted senior military officers and high-ranking  
3 civilian officials.

4 Your Honours, I will now turn to the crime-based evidence as to  
5 Tuol Po Chrey.

6 Our analysis will have three components.

7 [11.20.42]

8 First, I will establish that, notwithstanding the Co-Prosecutors'  
9 insinuations to the contrary, the evidence which concerns Tuol Po  
10 Chrey is limited and inconsistent. The evidence before this  
11 Chamber, which consists of no physical evidence, no bodies of any  
12 victims, no names of any victims, no eyewitness testimony of any  
13 killings, virtually no eyewitness testimony of any substantial  
14 portion of the alleged transaction which led to the alleged  
15 killings, is manifestly insufficient to support a conviction  
16 beyond a reasonable doubt.

17 Secondly, Your Honours, I will establish that even if the Chamber  
18 were to conclude, beyond a reasonable doubt, that the attendees  
19 at the Pursat provincial town hall meeting were transported to  
20 Tuol Po Chrey and executed, it would be unable to hold Nuon Chea  
21 criminally responsible for those executions. And the reasons  
22 will, by now, be apparent. The CPK never adopted a policy of  
23 executing Lon Nol soldiers and officials. And if it had adopted  
24 such a policy, it would undeniably have been limited, both in  
25 time and in scope, such that it could not have encompassed the

1 crimes allegedly committed at Tuol Po Chrey.

2 [11.22.32]

3 Third and finally, I will establish that lower-level, zone-based  
4 officials had substantial motive and opportunity to commit the  
5 crimes alleged at Tuol Po Chrey. Accordingly, if the Chamber were  
6 to conclude that executions did take place at Tuol Po Chrey, the  
7 only reasonable conclusion would be that those crimes were  
8 committed by lower-level authorities without the knowledge,  
9 intent, or assistance of the Party Centre.

10 I will now turn to the reliability of the evidence on the case  
11 file which concerns Tuol Po Chrey.

12 In assessing this evidence, the crucial question to consider is  
13 whether the evidence is sufficient to establish that the  
14 execution of Lon Nol soldiers and officials at Tuol Po Chrey  
15 actually occurred. To determine this very point, to assess  
16 whether the Tuol Po Chrey executions allegations were true, the  
17 Investigating Judges conducted a site examination at Tuol Po  
18 Chrey. Investigators travelled to Pursat, they went out to the  
19 field of the alleged site of the Tuol Po Chrey executions. And  
20 they – then they carried out a thorough investigation, and from  
21 this investigation, they produced a site identification report  
22 detailing their findings. What were those findings? What did this  
23 investigation, conducted over 30 years after the alleged  
24 executions, produce?

25 [11.24.26]

1 The report says that the investigators found the four following  
2 items:

- 3 1) Fragments and debris of bones which "give the impression of  
4 being" human remains;
- 5 2) Fired shell case and one bullet head;
- 6 3) Several metal artefacts, such as belt buckle, and zippers; and
- 7 4) A noticeable presence of cloth mixed into soil.

8 Now, as the Chamber is aware, I'm not a lawyer - I'm a lawyer,  
9 sorry, not an investigator - excuse me - but I know that if I see  
10 items like a belt buckle or a zipper laying on the ground or  
11 shreds of cloth mixed into the dirt, I don't immediately assume  
12 it is direct evidence of a 30-year-old mass execution. When I  
13 walk through an area presently used for farming that was  
14 previously an army base and I find the casing of a bullet laying  
15 in the grass or a bone fragment, I do not conclude that I have  
16 found definite proof of murder.

17 [11.25.52]

18 What might be reliable evidence to establish proof beyond a  
19 reasonable doubt of a mass execution? A gravesite, a human  
20 corpse, remains that have been tested by experts, and have, at  
21 the bare minimum, Your Honours, established to be human. Was a  
22 single mass gravesite discovered? The answer is no. Were sites  
23 thought to be graves ever unearthed or examined? The answer is  
24 no. Was a single corpse or skeleton located? Again, the answer is  
25 no. Were bone fragments tested? No. Do we even know if those bone

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1 fragments were human? The answer, again, is no.

2 Now, without physical evidence of a single murder at Tuol Po  
3 Chrey, how could there be proof beyond a reasonable doubt of  
4 these executions? The answers is, there could not.

5 And it seems, Mr. President, Your Honours, that the investigators  
6 agree with us. They note in their report the possibility that the  
7 items found, including the bullet and shell casings, could have  
8 come either from the heavy combat that occurred there or the fact  
9 that the area had been the former location of a Lon Nol army  
10 camp. Most importantly, the investigators do not report that the  
11 Tuol Po Chrey site is a crime site. They do not even conclude  
12 that it is a possible crime site. What they report is that there  
13 are "indications that it could be" a possible crime site. Now, in  
14 a criminal trial, an indication of a possibility is obviously -  
15 can obviously never be enough.

16 [11.28.03]

17 The poor quality of the evidence in regards to Tuol Po Chrey  
18 extends to the witness statements on the case file. Witnesses  
19 TCW-699, E3/5500, TCW-644, and E3/5234 all gave statements to the  
20 Investigating Judges in regards to Tuol Po Chrey.

21 These statements were relied on in the Closing Order and have  
22 been admitted against our client as evidence in this trial, yet  
23 the evidence in those statements is neither compelling nor  
24 reliable. Not one of these witnesses was an eyewitness to the  
25 alleged killings. Not one could provide the name or details of

1 even one alleged victim. Not one could provide any details  
2 regarding the alleged crime scene. Both E3/5500 and E3/5234 never  
3 saw corpses.

4 Although the statements of TCW-699 and TCW-644 suggest they later  
5 saw bodies, neither provides any reliable evidence in that  
6 regard, including the details of what they saw or, in the case of  
7 TCW-644, even the date on which they saw it. Instead, TCW-699  
8 makes the questionable claim that he saw bodies 11 years after  
9 the alleged killings, and TCW-644 tells us nothing at all.

10 [11.30.03]

11 The Nuon Chea defence sought many months ago to have these  
12 witnesses summonsed to appear before the Chamber. All of these  
13 questions could have been answered. All of these allegations  
14 could have been subject to scrutiny in an open court. All four  
15 witnesses could have been heard within a week. Despite the fact  
16 that Tuol Po Chrey is one of only three crime sites at issue and  
17 these statements constitute the sum total of the testimonial  
18 evidence, this Chamber declined. And we would argue that minimum  
19 fair trial guarantees require that the statements now be  
20 disregarded and accorded zero probative value.

21 The unreliability of the evidence extends also to the only three  
22 witnesses to appear before the Chamber. As I will highlight in  
23 more detail momentarily, the evidence given by Lim Sat, Ung  
24 Chhat, and Sum Alat proved confused and inconsistent and  
25 repeatedly contradicted the evidence given before the

1 Investigating Judges.

2 [11.31.24]

3 The only other evidence concerning Tuol Po Chrey is in the video  
4 "One Day at Po Chrey", co-produced and directed by Rob Lemkin and  
5 Thet Sambath. The Prosecution asked the Chamber to find the key  
6 individuals who appear in the film and summons them to testify  
7 before the Chamber. These individuals could not be located. We  
8 don't know why; the Court was in possession of their pictures and  
9 was aware of their locations. But, in any event, the failure to  
10 locate them significantly reduces the probative value of the  
11 evidence. The Prosecution presumably recognizes this as such,  
12 which is why they sought the appearance of the witnesses to begin  
13 with.

14 The problems with the evidence are especially apparent in  
15 relation to the number of people allegedly killed at Tuol Po  
16 Chrey. A variety of estimates exist on the case file, each one  
17 based on a witness's off-hand guess, based on a glance in a  
18 general direction of a group of people or alleged corpses.

19 [11.32.52]

20 One witness - one witness sees 200 people in the meeting, another  
21 sees 1,000 people in a ditch, a third sees 5,000 in a pond, and a  
22 fourth sees 50 on a truck. Now, these estimates are inherently  
23 unreliable by virtue of the methodology - or lack thereof -  
24 employed by the witnesses. They are rendered useless by the wide  
25 variations from one estimate to the next, the Investigating

1 Judges' total failure to verify any of them, and the fact that  
2 they are the product of 35-year-old memories.

3 Mr. President, Your Honours, before I continue on Tuol Po Chrey,  
4 I feel the need to make a small detour here to comment on the  
5 quality of evidence on the case file in regard to death tolls in  
6 general.

7 Tuol Po Chrey is just one example. Another one concerns the  
8 estimates as to the number of deaths allegedly caused by the  
9 evacuation of Phnom Penh.

10 Now, the principal estimate comes from Ben Kiernan's highly  
11 questionable approximations. Kiernan – Kiernan asked 36 out of  
12 100 individuals how many members of their family had been lost  
13 during the evacuation. These 36 reported a total loss of two  
14 relatives each. Kiernan applied this percentage to the population  
15 of Phnom Penh as a whole, foolishly deducing that 10,000 people  
16 must have died during the evacuation. Now, Mr. President, Your  
17 Honours, such calculations are grossly simplistic, based on  
18 flawed methodology, and entitled to no weight whatsoever.

19 [11.35.08]

20 Using Kiernan's baseless estimate of 10,000 dead, Philip Short  
21 took a different writer's equally baseless estimate of 35,000  
22 dead, averaged the sums, and concluded that 20,000 people died.  
23 This calculation, Mr. President, would not pass muster in an  
24 introductory research methodology class.

25 Once again, these examples have highlighted the fact that these

1 proceedings have prioritized convenience and expediency at the  
2 expense of accuracy and of credibility. The figures presented as  
3 the death tolls from these events are unsubstantiated and  
4 misleading and they should not be recognized by the Chamber as  
5 anything other than gross exaggerations based on flawed evidence.  
6 Now, Mr. President, returning now to Tuol Po Chrey, the question  
7 remains: Has the OCP – have the prosecutors proven beyond a  
8 reasonable doubt that the execution of Lon Nol soldiers and  
9 officials at Tuol Po Chrey actually took place? The answer is no.  
10 And even if we were to accept that there are indications of  
11 executions, indications are simply not enough. The evidence is  
12 not strong enough to prove that these executions took place,  
13 beyond a reasonable doubt.

14 [11.36.45]

15 Mr. President, Your Honours, I have now shown you that there was  
16 no systematic CPK policy to execute Lon Nol soldiers and  
17 officials and I have shown that the crime-based evidence  
18 concerning Tuol Po Chrey is inconsistent and fails to prove  
19 beyond a reasonable doubt that the attendees at the Pursat  
20 provincial town were – town hall were executed. Each of these  
21 conclusions is, by itself, sufficient to establish that our  
22 client is not guilty of the crimes charged in connection with  
23 Tuol Po Chrey. It is accordingly clear that he may not be  
24 convicted.

25 This, however, is not the end, because even if both of these

1 suppositions are wrong, Nuon Chea still cannot be convicted. Even  
2 if the CPK Party – CPK Party Centre did adopt a policy of  
3 executing Lon Nol soldiers and officials and the alleged  
4 executions at Tuol Po Chrey took place, it would still be  
5 impossible to convict Nuon Chea.

6 We have already stated the reasons: no agreement with zone-level  
7 officials to execute Lon Nol soldiers and officials could have  
8 existed before May '75 and no policy to execute ordinary soldiers  
9 and civilians existed at any time. Yet the events at Tuol Po  
10 Chrey took place in April 1975, and the alleged victims at Tuol  
11 Po Chrey were ordinary soldiers and civilians.

12 [11.38.35]

13 Mr. President, I would like to refer the Chamber to the  
14 Co-Prosecutors' brief, at paragraph 306. In that paragraph, the  
15 Co-Prosecutors argue as follow – and I quote:

16 "Although the Trial Chamber heard evidence of the general  
17 identity of those killed at Tuol Po Chrey, the individual  
18 identity of most of those killed is not known. It is clear,  
19 however, that those killed were members of the former Khmer  
20 Republic, many being military and civilian personnel." End of  
21 quote.

22 The Co-Prosecutors' failure to specify the identity of those  
23 allegedly killed at Tuol Po Chrey beyond the very generic phrase  
24 "members of the former Khmer Republic" is fatal to their  
25 argument. By itself, this paragraph constitutes an admission

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1 requiring dismissal of all charges concerning Tuol Po Chrey.

2 And, in fact, as our brief shows clearly, the evidence proves  
3 unequivocally that the alleged victims at Tuol Po Chrey were  
4 overwhelmingly ordinary civilians and low-ranking soldiers.

5 [11.40.00]

6 The first witness to appear before the Chamber in relation Tuol  
7 Po Chrey was – I just mentioned his name – Ung Chhat. Now, Ung  
8 Chhat was a CPK soldier who stood guard outside the provincial  
9 town hall meeting. He claims to have recognized a single  
10 mid-ranking military officer named Pel at the meeting. Other than  
11 Pel, Mr. Ung – quote: "...did not recognize anyone. I did not know  
12 any other people." Unquote.

13 He also explained that the statement contained in his written  
14 record of interview, which indicated that "generals" were in  
15 attendance, was a suggestion put to him by the investigators. He  
16 personally could only "presume" that people attending the meeting  
17 "would be" those of senior rank.

18 The second witness to appear before the Chamber was Lim Sat. Lim  
19 Sat was a CPK soldier who stood guard on the road between Pursat  
20 and Tuol Po Chrey. Lim Sat testified that he – that he merely  
21 witnessed trucks drive by – drive past from the side of the road.  
22 He was therefore unable to testify as to the identity or  
23 seniority of any of the alleged victims.

24 [11.41.40]

25 The third and final witness to testify to the events at Tuol Po

1 Chrey was Sum Alat. He was a 21-year-old ordinary Lon Nol soldier  
2 who claims to have attended the meeting at the town hall. After  
3 stating initially that he personally knew 10 or 20 senior  
4 officers at the town hall meeting, our repeated efforts on  
5 cross-examination to obtain one single name of a ranking officer  
6 were rebuffed in a series of evasive and non-committal responses.  
7 Now, eventually, this witness produced two names. Prum Li Huon,  
8 the Pursat provincial governor, and a second person whom the  
9 witness called Nu Soeun (phonetic) and described as the governor  
10 of that province. Now, that answer is, of course, internally  
11 inconsistent, as it was Prum Li Huon, and not Nu Soeun  
12 (phonetic), who was the governor of Pursat.  
13 Most important, however, is his claim - Sum Alat's claim - that  
14 he himself participated in that meeting. Either Sum was present  
15 at the meeting, establishing that it was not a gathering of  
16 senior officers, or he was not, and his testimony is not  
17 credible.

18 [11.43.17]

19 The limited evidence, Mr. President, that does exist concerning  
20 the composition of meeting establishes that of - ordinary  
21 soldiers, students, and low-level officials were apparently  
22 present.

23 Sum Alat testified that 60 per cent of the attendees were  
24 civilians, yet no witness identifies the presence of a single  
25 senior civilian authority other than a provincial governor, Prum

1 Li Huon.

2 Sum Alat specifically added that ordinary civilians and students  
3 were in attendance, and Ung Chhat indicates that all of the  
4 attendees were wearing civilian clothes. To the extent that  
5 military personnel were present, the evidence shows that, at the  
6 minimum, the large majority was - consisted of ordinary soldiers.  
7 Both Ung Chhat and Sum Alat testified that soldiers from the Tuol  
8 Po Chrey fort attended the meeting as a group, and estimates of  
9 the number of soldiers stationed at Tuol Po Chrey - at the Tuol  
10 Po Chrey Fort ranged from 30 to 200. And Sum Alat furthermore  
11 stated specifically that ordinary soldiers were present.

12 [11.44.43]

13 Now, Mr. President, as we have already observed, the essential  
14 importance of this distinction between top-level Khmer Republic  
15 authorities and low-level soldiers and officials came last week  
16 from an unexpected source: the Prosecution. Last Friday, the  
17 Co-Prosecutors played for the Chamber a videotaped statement by  
18 our client, Nuon Chea, and in that statement Nuon Chea concedes  
19 having known of the execution of the so-called seven "super  
20 traitors", the senior-most leaders of the Khmer Republic. The  
21 Co-Prosecutors claim that this statement was made without duress.  
22 They say that Nuon Chea - Nuon Chea's statement is highly  
23 reliable. They claim that it constitutes an admission of our  
24 client's intent with regard to the representatives of the Khmer  
25 Republic.

1 Yet, Mr. President, Your Honours, as we showed you on Tuesday, in  
2 the exact same sequence, Nuon Chea denies having had any  
3 knowledge or intention in relation to the execution of  
4 lower-ranking Khmer Republic soldiers and officials. He denied  
5 having any knowledge of the events at Tuol Po Chrey. We agree  
6 that these statements are indeed highly reliable. They exculpate  
7 Nuon Chea.

8 [11.46.30]

9 Mr. President, this very – this very nearly concludes our  
10 discussion of Tuol Po Chrey. Only one significant question  
11 remains: If Nuon Chea is not responsible for these crimes, then  
12 who is?

13 Nuon Chea doesn't know the answer to this question. He had never  
14 heard of Tuol Po Chrey before this trial and does not know what  
15 happened there. He assumes that if crimes were committed, they  
16 must have been orchestrated either by local cadres in Pursat or  
17 by Northwest Zone Secretary Ros Nhim. Either one would have had  
18 the motive and the opportunity to do so.

19 The possibility that Ros Nhim is responsible is heightened  
20 substantially by the extent of the authority generally exercised  
21 by powerful zone leaders within their territory. As we indicated  
22 on Tuesday, Nuon Chea is certain that the Party Centre faced  
23 great opposition from Ros Nhim, who was aligned, possibly from  
24 much earlier than our client originally suspected, with So Phim  
25 against him and Pol Pot.

1 [11.47.55]

2 Ros Nhim was therefore more than a mere – than a mere autonomous  
3 actor, although he was certainly that. He was an autonomous actor  
4 with a direct interest in acting contrary to CPK policy. He was  
5 an autonomous actor with a direct interest in misrepresenting CPK  
6 policy to the inhabitants of this – of his zone, with a direct  
7 interest in provoking opposition to Pol Pot.

8 Even during Democratic Kampuchea, the information to which Nuon  
9 Chea was privy suggested that conditions in the Northwest Zone  
10 may have been worse than those across the rest of Cambodia. The  
11 research of numerous contemporary scholars, showing that  
12 conditions were in fact especially bad and executions  
13 particularly widespread do not surprise him. Indeed, they confirm  
14 Nuon Chea's long-held suspicions about Ros Nhim.

15 In spite of all of this evidence, the Co-Prosecutors persist in  
16 their belief in a simplistic, easy-to-follow story about  
17 Democratic Kampuchea. Despite all of these uncertainties, they  
18 assert at paragraph 196 of their brief that there can be "no  
19 doubt" that every single killing of Lon Nol soldiers and  
20 officials on or around 17 April was "carried out in pursuance of  
21 [an order] from the Party Centre".

22 [11.49.43]

23 Now, that claim is of great significance because it essentially  
24 confirms Nuon Chea's assertion that the alleged victims at Tuol  
25 Po Chrey could only have been ordinary soldiers and civilians.

1 The Co-Prosecutors do not - Co-Prosecutors do not argue that the  
2 alleged victims at Tuol Po Chrey were officers and high-ranking  
3 officials; they very nearly concede that they were not. Instead,  
4 the Co-Prosecutors' position is that it does not matter who the  
5 victims were. The Co-Prosecutors' position is that, if a Lon Nol  
6 soldier was killed on or around 17 April 1975, Nuon Chea must  
7 have been responsible.

8 Now, Mr. President, that claim is deeply inconstant with the  
9 evidence. It is inconsistent with the widespread evidence that  
10 vast numbers of killings in Democratic Kampuchea occurred without  
11 the consent of the Party Centre, that zone leaders exercised  
12 substantial autonomy and discretion, that most killings in  
13 Democratic Kampuchea, even according to David Chandler and Steve  
14 Heder, occurred without the consent of the Party Centre.

15 [11.51.10]

16 The only evidence they cite in support of this extraordinary  
17 conclusion is - surprise, surprise - Philip Short. Mr. President,  
18 Your Honours, we think that a better source than Philip Short is  
19 Ieng Sary. Ieng Sary says - and I quote:

20 "Even Pol Pot and Nuon Chea, when they were in So Phim's zone,  
21 the East Zone, they were afraid of Ta Phim. I went with them  
22 once, and I knew that and saw that. That is, Pol Pot himself did  
23 not dare go down below. He was afraid of Ta Phim. So, in that  
24 zone, if So Phim wanted to kill and wanted to do something, it  
25 was not necessary for him to ask the upper echelon. The

1 Organization was like that. Each zone was independent, almost  
2 what would be called 'kill as you please, do as you please'." End  
3 of quote.

4 Mr. President, Your Honours, this excerpt, I think, speaks for  
5 itself.

6 This concludes, Your Honours, our discussion of Tuol Po Chrey.

7 We submit that, on any standard of proof, it is apparent that our  
8 client, Nuon Chea, is not criminally responsible for the events  
9 at Tuol Po Chrey. The Co-Prosecutors' claim that they have  
10 established Nuon Chea's responsibility beyond a reasonable doubt,  
11 without any direct evidence, is nothing short of absurd.

12 [11.53.10]

13 MR. PRESIDENT:

14 Thank you, Counsel.

15 The time is now appropriate for lunch adjournment. The Chamber  
16 adjourns now and resumes at 1.30 this afternoon. This is the  
17 information for members of the public and also the notice to  
18 parties and support staff.

19 Security guards are instructed to bring Mr. Khieu Samphan to the  
20 holding cell downstairs and have him returned to this courtroom  
21 before 1.30.

22 The Court is now adjourned.

23 (Court recesses from 1153H to 1331H)

24 MR. PRESIDENT:

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

68

1 And the Chamber will hand the floor again to Nuon Chea's defence  
2 to continue presenting their closing statements. You may proceed.

3 MR. SON ARUN:

4 Once again, good afternoon, Mr. President, Your Honours, and  
5 everyone.

6 Today I will present two main topics. One is the first movement  
7 of population, and the second one is the second population  
8 movement.

9 [13.32.44]

10 Now I touch upon the first population movement, and I will turn  
11 to the evacuation of Phnom Penh.

12 As the Chamber knows, Nuon Chea does not deny his participation  
13 in the decision to evacuate Phnom Penh. He readily concedes that  
14 he knew about it, agreed to it, and approved of it. As I will  
15 demonstrate Nuon Chea is nevertheless not guilty of any of the  
16 crimes charged in connection with the evacuation. My analysis of  
17 the evacuation of Phnom Penh will proceed into general parts.

18 First, I will discuss the CPK's decision to evacuate Phnom Penh.

19 I will explain to the Chamber the rationale for that decision.

20 And I will show that the evacuation was lawful and all of the  
21 circumstances. In other words, I will be addressing the  
22 allegation that the evacuation of Phnom Penh was itself a crime  
23 against humanity.

24 Second, I will address the allegation that Nuon Chea is guilty of  
25 a variety of crimes committed during the evacuation. These crimes

1 are alleged to have followed from the use of violence by CPK  
2 troops and the conditions imposed on the evacuees during the  
3 course of the evacuation.

4 [13.35.13]

5 Let me begin with the first general issue – that is, the legality  
6 of the evacuation itself. On last Thursday morning, the  
7 Co-Prosecutors claimed that Nuon Chea has justified the  
8 evacuation on two grounds. According to the Co-Prosecutors, Nuon  
9 Chea's first justification for the evacuation was to implement an  
10 economic policy that he believed was in the best interest of the  
11 Cambodian people. According to the Co-Prosecutors, Nuon Chea's  
12 second justification is that, the evacuation was necessary "in  
13 light of the dire humanitarian conditions in Cambodia in April  
14 1975".

15 The Co-Prosecutors description of the CPK's first reason for the  
16 evacuation was more or less accurate.

17 As my colleague Mr. Koppe observed on Tuesday, the Co-Prosecutors  
18 claimed to be surprised at Nuon Chea's assertion that the  
19 evacuation was primarily an effort to reform economic structures  
20 in Cambodia, the claim not to understand why Nuon Chea has not  
21 previously said this to Chamber.

22 [13.37.09]

23 To begin with, the Co-Prosecutors appear to fundamentally  
24 misunderstand how a criminal trial is supposed to work. Nuon Chea  
25 is not required to explain why he did anything. The

1 Co-Prosecutors are required to carry their burden to prove beyond  
2 a reasonable doubt that Nuon Chea intentionally committed  
3 criminal acts – key to understanding the reasoning behind the  
4 evacuation April 1975 conditions. I am not going to go into these  
5 in detail. We have discussed them and plead them previously  
6 before the Chamber. We have in any event very little new evidence  
7 to present as a consequence of this Chamber's persistent refusal  
8 to call key contacts related witnesses.

9 To briefly summarize key points, however, the CPK took power in  
10 1975, facing a dire economic predicament. The countries rice  
11 paddies, its economic engine, had been subject to widespread  
12 destruction. Its rice production capacity had been devastated  
13 relative to pre-1970 levels. Roads and railways were destroyed  
14 and farmers were idle in the cities instead of tending to their  
15 farms.

16 [13.39.09]

17 Cambodia was and always had been a peasant agricultural society.  
18 A number of the paddy fields had been destroyed by the  
19 bombardment. Agriculture was the source of its economic  
20 production and it was rooted in the countryside. Under these  
21 circumstances, the CPK determined that Cambodia was incapable of  
22 supporting urban centres which produced nothing and, at the same  
23 time, maintained social and economic structures which perpetuated  
24 inequality. That conclusion was of course deeply connected to the  
25 CPK's political ideology and its ideas about preferred modes of

1 production.

2 As we have argued in the past, it is impossible to view the  
3 evacuation as an isolated event. The CPK's plan did not end at  
4 the evacuee's destination. The CPK's plan to evacuate Phnom Penh  
5 was part in parcel of their effort to establish agricultural  
6 cooperatives as the basic unit of the Cambodian economy. There is  
7 no real or serious question about this. Despite their protest,  
8 the Co-Prosecutors do not actually contest this. As we will see  
9 momentarily, what they actually contest is Nuon Chea's motives.  
10 Instead of considering what cooperatives meant to the CPK in  
11 terms of politics or economics, they prefer to dismiss it  
12 simplistically as enslavement.

13 [13.42.14]

14 In 1975, involuntary population movements were regularly  
15 supported by reputable international organizations such as the  
16 World Bank and even the United Nations. The most vivid example  
17 concerns dam constructions, which often displaced tens of  
18 thousands or hundreds of thousands of people in affected areas.  
19 These projects were seen as acceptable because their objectives –  
20 that is, to generate electricity, were more consistent with a  
21 common narrative of progress than those of the CPK.  
22 Not until 1980 did the World Bank even have a policy toward  
23 internal resettlement as a consequence of bank-financed projects,  
24 which meant that prior to 1980 involuntary displacement was not  
25 even a consideration in the bank's decision-making process. Even

1 after 1980, involuntary displacement was a – was a common feature  
2 of World Bank projects.

3 [13.43.46]

4 In Africa, between 1981 and 1994, the World Bank supported  
5 large-scale development projects causing involuntary internal  
6 displacement in 38 countries. Altogether, between 1955 and 1990,  
7 tens of millions of people across India, China and Africa, were  
8 forcibly displaced as a consequence of dam, mine and industrial  
9 construction, urbanization and other causes.

10 Even the United Nations, which founded this tribunal, has  
11 recognized the benefits of land resettlement "to raise national  
12 or individual incomes or to increase agricultural employment or  
13 production".

14 The Co-Prosecutors choose not to engage at all in this  
15 discussion. They choose not to consider whether the evacuation  
16 might have been lawful in light of the overwhelming state  
17 practice approving of involuntary displacement under a wide  
18 variety of circumstances. The Co-Prosecutors instead insist that  
19 the evacuation of Phnom Penh and the establishment of  
20 cooperatives could not have been part of a legitimate economic  
21 program because of "the manner in which the cooperatives actually  
22 operated".

23 [13.45.58]

24 Given the history of this trial, this is a shocking claim to come  
25 from the Co-Prosecutors at this stage of the proceedings. As the

1 Co-Prosecutors well know, when this Chamber determined the scope  
2 of the Case 002/01 Trial in February 2013, the Nuon Chea defence  
3 argues that it was impossible to adjudicate the evacuation of  
4 Phnom Penh without a full assessment of the policy and  
5 implementation of cooperatives. We argued that "in April 1975,  
6 Nuon Chea had good reason to believe that cooperatives were  
7 effective methods of food production and distribution and they  
8 prove as such in many parts of Cambodia. Nuon Chea cannot  
9 articulate a coherent defence to forced transfer without a  
10 detailed assessment of that which was supposed to and did follow  
11 the evacuation."

12 [13.47.34]

13 The Co-Prosecutors successfully opposed our request to add  
14 cooperatives to the scope of this trial. Accordingly, they  
15 prevented any substantive consideration of how cooperatives  
16 actually worked and now, seven months later, they come before  
17 this Chamber and tell Your Honours that you should reject Nuon  
18 Chea's claim that the evacuation was part of a legitimate  
19 economic program because of the way that cooperatives actually  
20 worked.

21 The hypocrisy is apparent. The Chamber should reject this  
22 position outright. Having chosen to exclude these questions from  
23 the scope of this trial, the Chamber must not base any  
24 conclusions about the legality of the evacuation on the  
25 Co-Prosecutors' unsubstantiated opinions of what actually took

1 place in the cooperatives.

2 [13.49.02]

3 The Co-Prosecutors' co-allegation about the evacuation is that it  
4 was an "inherently punitive act" against the population of Phnom  
5 Penh. That the CPK was trying not to reform policy and implement  
6 a revolution, but to conduct itself violently and maliciously for  
7 no apparent purpose like their slave state.

8 This is another of the Co-Prosecutors' attempts to reposition the  
9 CPK as a criminal entity, to strip it of its political  
10 objectives, to infuse the CPK with criminal intent to aid a  
11 simplistic shortcut around the difficult and complicated question  
12 whether Nuon Chea intended to commit the criminal acts with which  
13 he is charged. It is inconsistent with every shred of the  
14 evidence which repeatedly links the evacuation, the formation of  
15 cooperatives and the reconstruction of the Cambodian economy in  
16 one cohesive economic policy.

17 [13.50.46]

18 Critical to the Co-Prosecutors' effort to persuade the Chamber  
19 that the evacuation of Phnom Penh was a "punitive act" is their  
20 position that the inhabitants of the city were seen as enemies,  
21 or potential enemies of the Party. In support of that claim, they  
22 rely on a long line of quotes from secondary sources.

23 We object again to the use of this kind of evidence from foreign  
24 academics who were not present in Cambodia during Democratic  
25 Kampuchea. The use of these sources is especially troubling in

1 light of the purpose to which they have been put, to tell the  
2 Chamber the intent of CPK policy, to tell the Chamber what was in  
3 Nuon Chea's mind. These people cannot possibly know what was in  
4 Nuon Chea's mind.

5 The reality is that during the war Phnom Penh was seen as a  
6 stronghold of the enemy in which everyday people lived - the  
7 everyday people not (inaudible) at any time considered to be the  
8 enemy of the Party.

9 [13.52.37]

10 It appears likely that the Co-Prosecutors are acutely aware of  
11 their failure to find any witness with real knowledge of CPK  
12 policy towards city dwellers to support their position. We say  
13 this because of their remarkable decision last Thursday to rely  
14 on the testimony of Chhouk Rin. Chhouk Rin was a long-time CPK  
15 soldier who appeared before this Chamber. He made this  
16 distinction between wartime opponents and the civilian population  
17 starkly. He clearly explained that the population of Phnom Penh  
18 was never understood to be an enemy of the Party.

19 Chhouk Rin's testimony in that regard came despite the  
20 Co-Prosecutors' repeated efforts-

21 My apology; allow me to repeat this.

22 Chhouk Rin's testimony in that regard came despite the  
23 Co-Prosecutors' repeated efforts to coerce him into testifying  
24 otherwise. In the course of his testimony, Chhouk agreed to  
25 testimony from his OCIJ statement that, prior to 1975, city

1 dwellers were understood to be "with the" enemy.

2 [13.54.45]

3 In a deliberate effort to misconstrue that testimony, the  
4 Co-Prosecutors asked – and I quote: "When was it then that people  
5 were speaking to you about the 17 April People being enemies?"  
6 End quote.

7 Chhouk was not misled and confirmed twice that he "never received  
8 any instructions that the 17 April People being considered  
9 enemies".

10 The next day, Chhouk Rin continued to testify. The Co-Prosecutors  
11 tried again to misrepresent the substance of his prior day's  
12 testimony. They tried to trick the witness. They suggested to him  
13 – and I quote: "You said yesterday that even a baby would have  
14 known in 1973 that city dwellers were the enemy." End quote.  
15 Yet Chhouk stood firm, correcting the Prosecution for a third  
16 time.

17 [13.56.17]

18 He testified as follows – and I quote:

19 "We never treated anyone, including a baby as an enemy, because  
20 we had to liberate the cities and we never waged war with the  
21 civilians. Indeed, we treated other opponents like the soldiers  
22 of the other Party opposing us as our enemies, but we never  
23 treated civilians as our enemies." End quote.

24 Your Honours, let me emphasize this again. This unequivocal  
25 testimony that CPK troops never treated civilians within the

1 cities as their enemies, which Chhouk Rin repeated three times,  
2 despite the Co-Prosecutors' continued and wilful efforts to  
3 mislead him into testifying otherwise, is what the Prosecution  
4 tells us that it establishes CPK attitudes toward city dwellers.  
5 Even more important than the facts that the Prosecution relied on  
6 this evidence is the fact that, the Prosecution relied only on  
7 this evidence. Other than Chhouk Rin, their unequivocally false  
8 claim that city dwellers were seen as the enemy or as inherently  
9 suspect is supported only by references to secondary sources -  
10 primarily, once more and yet again, Philip Short.

11 [13.58.29]

12 In addition to the evidence which the Co-Prosecutors themselves  
13 cite, the notion that city dwellers were the enemy of the Party  
14 is refuted by a veritable stockpile of evidence. The October 1975  
15 issue of "Revolutionary Youth" describes the efforts of the  
16 cooperatives to feed and support more than 2 million people who  
17 had just been liberated from the rule of the contemptible  
18 traitors. Evacuees from Phnom Penh who gave evidence before this  
19 tribunal testified repeatedly that they were provided food and  
20 shelter by Base People upon arrival at their destinations.  
21 They testified that they were treated well and the same as Base  
22 People. That evidence, which is assembled at paragraph 280 of our  
23 brief, includes the live testimony and OCIJ statements of no  
24 fewer than 11 witnesses. That evidence is furthermore mirrored by  
25 the evidence of CPK insiders who say that they were instructed to

1 prepare for the evacuees' arrival and to ensure they were taken  
2 care of.

3 [14.00.43]

4 Non Suon told Steve Heder that he was instructed to prepare food,  
5 water and lodging for arriving evacuees.

6 Ouk Bunchhoeun told Steve Heder that efforts began as early as  
7 February 1975 to prepare housing in cooperatives at the base.

8 This evidence is further corroborated by the numerous CPK  
9 publications which repeatedly instruct cadres to respect classes  
10 of people closely associated with city dwellers. The September  
11 1974 issue of "Revolutionary Youth" states that the  
12 petty-bourgeoisie, intellectuals, and students are allies of the  
13 peasant workers and "love revolution".

14 The September 1977 issue of "Revolutionary Flag" states - I  
15 quote:

16 "The petit bourgeoisie, the pupils, students and intellectuals of  
17 every kind are allies of the workers and peasant and it was the  
18 same in the past and it is still the same today in the status of  
19 their original class." End quote.

20 [14.02.31]

21 The Co-Prosecutors' description of Nuon Chea's second reason for  
22 the evacuation was that it was "necessary in light of the dire  
23 humanitarian conditions in Cambodia in April 1975".

24 The Co-Prosecutors proffer evidence that the CPK launched rockets  
25 and blocked supply lines into Phnom Penh. They seek to persuade

1 the Chamber that because the CPK's conduct in the months prior to  
2 the liberation of Phnom Penh shows that their motives were not  
3 "humanitarian".

4 Nuon Chea's explanation for the evacuation must be dishonest;  
5 yet, the following sentence appears at paragraph 254 of our final  
6 trial brief - I quote: "Never once has Nuon Chea claimed that the  
7 evacuation of Phnom Penh was a humanitarian act." End quote.  
8 Nuon Chea was not the Deputy Secretary of the Red Cross. He was  
9 the Deputy Secretary of the Communist Party of Kampuchea. He was  
10 fighting a revolutionary war. He is not required to prove that he  
11 was a humanitarian in order to justify his policies. The only  
12 relevant question is whether under the totality of the  
13 circumstances, the decision to evacuate Phnom Penh constituted a  
14 crime against humanity.

15 [14.04.36]

16 It is a fact that when the CPK liberated Phnom Penh, there was a  
17 severe and nearly catastrophic shortage of food, fuel and other  
18 necessities. The Prosecution claims that this crisis was caused  
19 by the CPK itself, yet the evidence cited in our brief shows that  
20 it began in 1972 and escalated severely through 1973, as the  
21 American bombing progressed.

22 Sources dated from 1973 described the crisis establishing beyond  
23 any shadow of a doubt that it pre-existed the CPK's advances into  
24 Phnom Penh. Nuon Chea does not try to hide, for one minute, that  
25 the population of Phnom Penh would have been moved into

1 cooperatives whether or not a food crisis existed, but its  
2 decision to do so immediately and completely was driven in part  
3 by that crisis. The decision to evacuate was driven by numerous  
4 factors which included, among others, Cambodia's long-term  
5 economic viability and short-term considerations of food supply  
6 and security, and no one favour was controlling - no one factor,  
7 rather, was controlling.

8 [14.06.36]

9 As we show in our brief, by the time of the evacuation, hundreds  
10 of people were dying of starvation each day in Phnom Penh. Had  
11 the population of Phnom Penh remained in the city, many thousands  
12 would very likely have died.

13 By contrast, Nuon Chea genuinely believed that collectivization  
14 through the formation of cooperatives were essential to the  
15 production and distribution of rice. He genuinely believed that  
16 relocating the population of Phnom Penh to those cooperatives  
17 were in the best interests of the population. Under these  
18 extraordinary circumstances, the evacuation was a legitimate  
19 policy decision and it was not sufficiently severe to constitute  
20 other inhumane act under the law as it existed in April 1975.

21 [14.07.45]

22 Mr. President, I will now turn to the second overarching subject  
23 of my discussion, the alleged crimes other than the transfer  
24 itself which may have been committed in the course of the  
25 evacuation.

1 Your Honours, the first important point to make with regard to  
2 these alleged crimes concern the command structure in place among  
3 the soldiers who implemented the evacuation. And the  
4 Co-Prosecutors told us numerous times last Thursday that the  
5 soldiers were well-organized and followed orders, yet they  
6 continued to primarily rely for these purpose on foreign  
7 journalists - in this case, Jon Swain, Sydney Schanberg, and Al  
8 Rockoff. All three men encountered CPK soldiers for only a few  
9 short hours on the 17th of April 1975. All three men were quickly  
10 sent to the French embassy where they remained confined until  
11 they left Cambodia two weeks later, so their observations about  
12 the discipline of the soldiers they saw in the streets of Phnom  
13 Penh are utterly irrelevant to the command structures of the CPK  
14 army.

15 [14.09.31]

16 There is, however, a separate and critically important point  
17 about the command structures in Phnom Penh in April 1975. The  
18 evidence universally, unambiguously and without contradiction  
19 shows that the soldiers who implemented the evacuation of Phnom  
20 Penh acted under the control of zone leaders and not the Party  
21 Centre.

22 We show you in our brief that the soldiers who appeared before  
23 the Chamber testified repeatedly that during the evacuation of  
24 Phnom Penh was geographically divided into four distinct  
25 quadrants with each quadrant occupied by one of the four zone's

1 armies which had liberated the city: the Southwest, the East,  
2 North and Special Zones.

3 Some of these soldiers testified that the segregation between the  
4 zones was so strict that they were not permitted to leave the  
5 geographical space controlled by their respective units. Heng  
6 Samrin in his statement to Ben Kiernan explains that soldiers of  
7 one zone were arrested and detained by forces of the other zones  
8 when they strayed from their designated location.

9 He describes negotiations between zone leaders for the release of  
10 those arrested soldiers. He even suggests that armed clashes  
11 erupted between the zone forces and that a large explosion in the  
12 north of the city was the consequence of turf wars between the  
13 zone armies.

14 [14.11.45]

15 Heng Samrin was once again the Deputy Commander of one of the  
16 three divisions which comprised the East Zone army. So he was  
17 very well placed to make these observations and this is yet  
18 another reason why his appearance before this Chamber was  
19 critically important and why he would have been able to give this  
20 Chamber crucial exculpatory evidence had he appeared for  
21 testimony.

22 We note that our brief from last month, which the Co-Prosecutors  
23 were presumably responding to last Thursday, focus substantially  
24 on this critical fact. Yet the Co-Prosecutors' chose not to say a  
25 word about it. They tell us only that the soldiers were

1 well-organized and disciplined. Even if the evidence the  
2 prosecutor cites were reliable - and it manifestly is not - the  
3 discipline of the soldiers would be entirely consistent with the  
4 facts that their orders as to implementation came ultimately from  
5 zone commanders, not the Party Centre.

6 So, Your Honours, we submit that the prosecutor last Thursday  
7 conceded this critical point and as they must because no evidence  
8 to the contrary exists.

9 [14.13.42]

10 Now, I turn to the specific allegations against Nuon Chea in  
11 connection with the evacuation and there are essential three such  
12 allegations.

13 The first is that Nuon Chea is guilty of political persecution  
14 against the urban population and as we demonstrate in our brief,  
15 the allegation rests in the assertion that the CPK saw the 17  
16 April as political opponents and there has been allegation of the  
17 threat of fire, but as a matter of fact, there has never been any  
18 substantial evidence.

19 Mr. Sokha said he has never witnessed any mistreatment of the  
20 Khmer Rouge soldiers on the evacuees. Numerous witnesses said  
21 before the Office of Investigating Judges that they witnessed no  
22 mistreatment by the Khmer Rouge soldiers on the witnesses - on  
23 the evacuees.

24 [14.15.11]

25 The prosecutors said Mr. Kung Kim, the former Khmer Rouge

1 soldier, said there was no law on the execution of evacuees in  
2 the course of evacuation. Even though there have been tremendous  
3 efforts of the Co-Prosecutor to elicit answer from Mr. Kung Kim  
4 that they could – that the soldier could kill the people, he said  
5 that once the Khmer Rouge soldier enter Phnom Penh, the soldier  
6 were not expected to kill the people. He said that – I quote:  
7 "As the reality is that when the people were being evacuated, if  
8 there was no exchange fire from the other opponents or soldiers,  
9 then people would not be shot at. But if they are fired on the  
10 civilians, then there would be soldiers inside and we would be  
11 ordered to shot at them. But if they were only pure civilians,  
12 then we were not ordered to shoot them."

13 The Co-Prosecutors' decision to cite the testimony of this one  
14 soldier was one of only two witnesses in support of their claim  
15 that CPK soldiers participating in the evacuation was instructed  
16 to use lethal force as part of the evacuation of Phnom Penh is  
17 indicative. It strongly corroborates Nuon Chea's claim that no  
18 such orders were issued from the Party Centre.

19 [14.17.21]

20 Mr. President and Your Honours, I have already dealt with the  
21 first population movement and I would like to now address the  
22 Chamber concerning the second forced movement. I will now focus  
23 the Chamber's attention on the allegations surrounding phase 2 of  
24 the population movement.

25 As the Chamber is aware, in relation to the second movement, Nuon

1 Chea faces charges of extermination, political and religious  
2 persecution and charges of other inhumane acts through enforced  
3 disappearance, forced transfer and attacks against human dignity.  
4 These charges are unsubstantiated. They are unfounded. For each,  
5 I will highlight the ways that the evidence advanced by the  
6 Co-Prosecutors is limited, weak and misleading. By focussing on  
7 the ways the Co-Prosecutors are unable to establish the requisite  
8 elements for each crime, I will highlight how the Co-Prosecutors  
9 failed in their attempt to prove each crime beyond the requisite  
10 burden of a reasonable doubt. And I will also show how they are  
11 unable to establish a connection between Nuon Chea and any of the  
12 acts alleged to comprise the material elements of the offences  
13 charged.

14 [14.19.31]

15 Before turning to each individual crime, I would first like to  
16 set the record straight regarding the responsibility for the  
17 second population movement's implementation. In their brief, the  
18 Co-Prosecutors claim this decision was taken by Nuon Chea and the  
19 Standing Committee. Such a claim is unjustified. Nuon Chea never  
20 ordered the second movement. In fact, he only learned of it after  
21 the zones had set it into play.

22 Let us pause for a moment and recall that Nuon Chea has  
23 acknowledged his responsibility for the first population  
24 movement, the evacuation of Phnom Penh. Had he been responsible  
25 for the second movement's implementation, he would have

1 acknowledged it as he has done with the first. He has no motive  
2 to lie; yet, he does not admit this. He does not admit this  
3 because he was not the one responsible for the second movement's  
4 implementation.

5 [14.21.27]

6 The one piece of evidence cited repeatedly by the Co-Prosecutors  
7 and the OCIJ in support of Party Centre's supposed involvement is  
8 an alleged document of the Standing Committee that refers to the  
9 need to add 400,000 or 500,000 people to the population of the  
10 Northwest Zone and relocate to - relocate an unspecified number  
11 of people to the then North Zone.

12 But what does this document actually show? It establishes nothing  
13 more than the CPK's weak desire to increase the population in the  
14 Northwest Zone. It does not establish beyond a reasonable doubt  
15 that either Nuon Chea or the Standing Committee agreed, planned,  
16 ordered or instigated the alleged second population movement.

17 Instead, the fact that the decision to implement the second  
18 population movement was taken by zone leaders - not the Party  
19 Centre - is clearly illustrated by one telegram from Chhon to Pol  
20 Pot. This correspondence establishes that the zones had authority  
21 and responsibility over the movement, not the Party Centre. It  
22 states - and I quote: "The zone was to remove 50,000 people and  
23 turn them over to the North." End quote.

24 [14.23.14]

25 This responsibility is again confirmed in a September 1975 Party

1 document that indicates that 500,000 people were to be relocated  
2 to the Northwest, 20,000 to Preah Vihear, and others to Kampong  
3 Thom, in the North Zone, stating - quote: "Each zone must make  
4 appropriate preparations and not let things sway back and forth."  
5 End quote.

6 And I repeat the quote: "Each zone must make appropriate  
7 preparations and not let things sway back and forth." End quote.

8 I will now move on to the charge of extermination lodged against  
9 Nuon Chea.

10 Nuon Chea cannot be found guilty on this charge and I will tell  
11 you why. There is no evidence, let alone evidence beyond a  
12 reasonable doubt, that mass deaths occurred during the second  
13 population movement.

14 [14.24.32]

15 In our brief - in their brief, the Co-Prosecutors are unable to  
16 point to any direct first-hand evidence in the form of witness  
17 testimony or OCIJ witness statements which prove otherwise. Their  
18 reliance on Sokh Chhin's testimony to establish the occurrence of  
19 this during the second movement is misleading. He did not witness  
20 a single death. His testimony that he buried one decomposing body  
21 located along the railroad track does not come close to  
22 establishing the occurrence of mass deaths in connection with the  
23 second evacuation.

24 Likewise, the Co-Prosecutors' reliance on the testimony of Toeng  
25 Sokha that "people who hid to evade the transfer were all

1   executed" is a gross misrepresentation of her actual testimony.  
2   Read in its proper context, her testimony reveals this  
3   information was conveyed to her by a third party in 1979 after  
4   the fall of the Khmer Rouge. It is even unclear whether the  
5   source of this information observed it first hand or whether he  
6   too heard it from others.

7   What is clear is that Toeng Sokha did not witness any death  
8   during the second transfer and that the allegation that  
9   individuals who attempted to evade the transfer were executed is  
10  one based solely on hearsay or conjecture.

11  [14.26.53]

12  The Co-Prosecutor claim in their brief that numerous confirmed  
13  deaths en route during the second movement included infants,  
14  children and the elderly person is equally disingenuous. Both the  
15  Co-Prosecutors and the Co-Investigating Judges cite the same two  
16  sources for the assertion that any deaths occurred before or  
17  during the second population movement.

18  Kong Vach relates the death of two of her infant children from  
19  illness and lack of milk, while Denise Affonço documents the  
20  deaths of a single elderly person en route to the train to  
21  Battambang. Although tragic, neither narrative comes close to  
22  establishing the occurrence of deaths on a massive scale, let  
23  alone establishing it beyond a reasonable doubt.

24  [14.28.10]

25  One of the prosecutors' most despicable mischaracterizations of

1 the facts is found in their assertion that "DK commanders also  
2 killed orphan children during the course of the transfer itself".  
3 Misleading and manipulative, the use of this statement highlights  
4 the Co-Prosecutors' desperate attempt to take one entirely  
5 unrepresentative civil party statement that addresses the brutal  
6 actions of a single unidentified squad chief and use it in an  
7 attempt to describe general condition of the second evacuation  
8 and the Co-Prosecutor know that no other allegations of such  
9 behaviour exists. The bad-faith manner in which they have  
10 attempted to portray this statement is dishonest and it is  
11 entirely unreflective of witness accounts of the second movement.  
12 Contrary to these mischaracterizations, trial testimony reveals  
13 that no physical violence or torture was used against the  
14 evacuees. Numerous witnesses testified that no death occurred in  
15 the course of the second phase population movement.

16 [14.29.55]

17 When questioned as to whether people were executed or tortured,  
18 witness Toeng Sokha replied that she did not see any dead people  
19 at that time and that: "When I was on the truck, I did not see  
20 any people being killed."

21 As evidenced in our brief, CPK cadres took affirmative steps to  
22 care for evacuees when possible and provide food and basic  
23 necessities and that the physical condition of the evacuees was  
24 stable.

25 Lay Bony testified that "from the early days of the second

1 movement to the time period immediately after resettling, the  
2 physical health of the evacuees was normal."

3 Although some witnesses stated that conditions during the  
4 population movement were grim, not a single witness with  
5 first-hand knowledge of events reported that these conditions  
6 resulted in death in significant numbers.

7 Indeed, Philip Short testified that he had no specific knowledge  
8 as to whether the second population movement had been marred by  
9 death, let alone death rising to the level necessary for a  
10 finding of extermination.

11 [14.31.43]

12 This lack of support for the charge of extermination pervades the  
13 evidence before the Chamber. With no direct evidence to establish  
14 mass death in connection with the second population movement, it  
15 is impossible to conclude that such a crime occurred, let alone  
16 find that any policy or intent on behalf of the CPK existed to  
17 exterminate mass numbers of evacuees.

18 Similarly, the Co-Prosecutors can point to no piece of evidence  
19 to suggest that Nuon Chea or any of the cadre who implemented the  
20 movement had a specific intent to subject a large number of  
21 people to conditions of life calculated to bring about their  
22 death or intended to cause death on a massive scale. The very  
23 fact that witnesses reported significant variance in conditions  
24 during the alleged transfer proves this intent was lacking. Had  
25 conditions been calculated to bring about large-scale death, no

1 such variations would have been reported. If conditions had been  
2 calculated to cause death, the cadres who assisted evacuees – as  
3 the evidence shows that they did – would have been acting in  
4 contravention to the orders of their superiors.

5 [14.33.26]

6 Large-scale death was also inconsistent with and would have  
7 defeated the alleged purpose of the population movement to add a  
8 large workforce to areas in the Northwest Zone.

9 There is also no direct evidence that the Standing Committee ever  
10 agreed, planned, ordered, or instigated to initiate the alleged  
11 population movement itself, let alone any evidence in relation to  
12 the Committee's intent in relation to the conditions of the  
13 transfer and still less the large-scale deaths of the alleged  
14 evacuees.

15 With no evidence presented that Nuon Chea or the Standing  
16 Committee participated in a common purpose, designed any plan,  
17 issued any order or instigated any person to inflict conditions  
18 of life calculated to bring about the death of a large number of  
19 people, Nuon Chea must be found not guilty of this charge.

20 Accordingly, the Chamber must acquit Nuon Chea.

21 [14.34.45]

22 Now, I would like to pause for a moment and focus on the attempt  
23 by the Co-Prosecutors to include allegations of death in  
24 cooperatives that occurred after the end of the second population  
25 movement. To their calculus of the second population movement

1    itself, these claims are outside the scope of the second  
2    movement. References to allegations of deaths of transportees  
3    after their resettling in new cooperatives concern events that  
4    happened after the second population movement.

5    The Co-Prosecutors' attempt to back door these claims into their  
6    analysis of the evidence simply shows their desperate need to  
7    bolster the evidence of the second population movement. As this  
8    evidence is outside the scope of the second population movement,  
9    it is therefore irrelevant to the charges at hand and the Chamber  
10   should give it no weight.

11   I would now like to turn to the charge of political persecution.  
12   As I have stated just now and we have stated in our brief, the  
13   second population movement was implemented with the purpose of  
14   shifting the much needed workforce to the countryside. It was  
15   not, nor was it ever, intended to be a persecutory act. No  
16   evidence presented by the Co-Prosecutors or contained in the case  
17   files support an alternate conclusion. Despite this, the  
18   Co-Prosecutors alleged that the movement was one in which New  
19   People and individuals of the former Khmer Republic were  
20   specifically targeted.

21   [14.37.04]

22   Misrepresenting the evidence in their brief, the Co-Prosecutors  
23   referenced less than a dozen witnesses who state that only New  
24   People were transferred. From this wholly under represented  
25   sample size, the Co-Prosecutors again attempt to draw another

1 misleading conclusion that nearly all those transferred during  
2 the second evacuation were New People and that the transfer in  
3 and of itself was a persecutory act towards this population.

4 What the Co-Prosecutors strategically avoid in their analysis are  
5 witness statements that show that the phase 2 population movement  
6 was comprised of both New and Base People. As noted in our brief,  
7 witnesses Meas Voeun and Yim Sovann are but two witnesses who  
8 alleged that the second movement was not comprised only of New  
9 People, but ultimately of New and Base People.

10 Mr. President, shall we take a break now?

11 MR. PRESIDENT:

12 Thank you, Counsel.

13 The time is appropriate for a short break. We will take a  
14 20-minute break and we return at 3 p.m. to continue our  
15 proceeding.

16 (Court recesses from 1438H to 1501H)

17 MR. PRESIDENT:

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

19 I hand over the floor to the defence team for Mr. Nuon Chea to  
20 resume his closing statement. You may proceed, Counsel.

21 MR. SON ARUN:

22 Thank you, Mr. President. I shall now resume my closing  
23 statement.

24 Additionally, without more, the fact – the mere fact that certain  
25 evacuees were originally city dwellers or members of the former

1 Lon Nol regime is not sufficient to establish the elements of  
2 political persecution. The fact remains that the Co-Prosecutors  
3 are unable to point to any witnesses with direct evidence of the  
4 "New People" being singled out or treated in a discriminatory  
5 manner by the Khmer Rouge cadres.

6 [15.03.25]

7 The same can be said of their allegation that former Lon Nol  
8 soldiers and associates were targeted. There is literally no  
9 evidence to prove their allegations.

10 Now, let me pause for a minute on the way that the Co-Prosecutors  
11 have failed in their attempt to show discriminatory intent  
12 towards former Lon Nol soldiers. Citing two lone witnesses in  
13 support of this allegation, the Co-Prosecutors claimed that "the  
14 Khmer Rouge soldiers killed transferees, particularly those  
15 associated with the Lon Nol regime."

16 [15.04.35]

17 Yet, once again, a review of this evidence reveals the marked  
18 unreliability of their claims.

19 Ms. Orn Ma in a statement untested by cross-examination, recounts  
20 witnessing her husband taken by Khmer Rouge cadre following an  
21 accusation that he was a former republic captain. Orn Ma does not  
22 state that she was a witness to her husband's killing. Instead,  
23 Orn Ma speculates on his death because she recognizes a Khmer  
24 Rouge cadre wearing his shirt and scarf in an unspecified time  
25 after his appearance. This is - this one statement does not come

1 close to establishing that Khmer Rouge cadre targeted and killed  
2 former Khmer Republic members or that they had a policy of doing  
3 so.

4 The evidence provided by Pech Srey Phal is even more attenuated.  
5 It is based solely on hearsay and speculation. In her statement,  
6 Pech Srey Phal alleges only that a group of the former Khmer  
7 Republic regime were sent to Phnom Penh for work and that later  
8 she learned that certain members of the group had died.

9 [15.06.31]

10 Neither witness provides direct first-hand knowledge of killings  
11 based on evacuees' status as Khmer - former Khmer Republic  
12 members.

13 An eyewitness comes close to providing evidence necessary to  
14 establish that a pattern to target this group existed. On the  
15 contrary, witnesses indicated that they were not mistreated  
16 during the second movement. Many reported that they were provided  
17 with basic necessities by the Communist Party of Kampuchea.  
18 Others indicated that they were happy to join the second  
19 movement. As Lay Bony testified before the Co-Investigating  
20 Judges that, "We were happy to go because we knew that there was  
21 a lot of rice and fruit in Battambang".

22 Of the witnesses who did report poor conditions and treatment,  
23 nothing suggests that such conduct was based on their  
24 affiliations as 17 April People or their affiliation to the Khmer  
25 Republic.

1 [15.08.12]

2 Similarly, neither the Co-Prosecutors nor the Co-Investigating  
3 Judges before them have advanced a shred of evidence that anyone  
4 in the Party Centre, including Nuon Chea, acted with the specific  
5 intent to cause injury to evacuees because of their former  
6 association with the Khmer Republic or as New People.

7 Neither is there any evidence that Nuon Chea participated in an  
8 agreement, designed any plan, issued any order or instigated any  
9 person to inflict condition amounting to political persecution as  
10 presented by the Co-Prosecutors. A reasonable trial fact must  
11 therefore conclude that the Co-Prosecutors have not proven beyond  
12 reasonable doubt that Nuon Chea is guilty of political  
13 persecution.

14 I will now move on to the charge of religious persecution. The  
15 claim has been made that Nuon Chea is guilty of religious  
16 persecution committed against Cham Muslims in the course of the  
17 alleged phase 2 population movement. I need not spend too much  
18 time addressing this charge as the evidence wholly and completely  
19 fails to support that allegation.

20 [15.10.15]

21 The Co-Prosecutors apparently agree. Their previous requests  
22 highlighted in our brief that the Chamber specifically exclude  
23 from consideration the allegation related to the Cham that are  
24 included in some of the paragraph discussing the second forced  
25 movement because no witness were heard in this trial relating to

1 the forced movement of the Cham population clearly indicates  
2 their belief that no evidence exists to support this charge. The  
3 submission in their closing brief echoes this belief.  
4 For obvious reasons, the Defence agrees. As our brief makes  
5 clear, the evidence before the Chamber reveals no direct,  
6 first-hand evidence of religious persecution in the course of the  
7 alleged second population movement.  
8 Even though evidence cited in the Closing Order establishes that  
9 Cham Muslims were amongst the persons moved during the second  
10 population movement, that allegation is prima facie insufficient  
11 to sustain a charge of persecution. The only conclusion supported  
12 by the evidence is that the experience of the Cham during the  
13 second population movement was not unique. All transferees during  
14 the alleged second population movement experienced similar  
15 treatment regardless of religious affiliation. Literally no  
16 evidence exists to establish that Cham were singled out during  
17 the second evacuation, treated in a discriminatory fashion or  
18 forced to endure worse condition than other evacuees.  
19 [15.12.56]  
20 Likewise, no evidence of any specific intent or policy on behalf  
21 of the CPK to discriminate against the Cham during the second  
22 movement has been produced. As such, the only available option  
23 for the Chamber is a finding of not guilty.  
24 Now, I will turn to the charge of other inhumane acts through  
25 enforced disappearances. As we have articulated in our brief, we

1 maintain that this charge cannot be sustained because it violates  
2 the principle of legality. However, I will now highlight for the  
3 Chamber the additional reason why this count must be dismissed.  
4 This reason is this: The Co-Prosecutors have presented no  
5 evidence that enforced disappearances occurred. In their brief,  
6 the Co-Prosecutors cannot produce as much as a shred of evidence  
7 that establishes beyond a reasonable doubt that during the second  
8 movement enforced disappearances actually occurred.

9 [15.14.16]

10 They can point to no evidence - no witness testimony, nor any  
11 documentary evidence - that even suggests the occurrence of  
12 enforced disappearances. In fact, the word "disappearance" is  
13 completely absent from the relevant portions of their submission  
14 regarding the second movement.

15 Unsurprisingly, the evidence admitted in Case 002/01 does not  
16 even remotely establish the occurrence of enforced  
17 disappearances. As we discuss in our brief, six witness  
18 statements were cited in the Closing Order in support of the  
19 enforced disappearances charge. Of those six witnesses, none  
20 established the facts necessary to support a conclusion that the  
21 crime occurred. Three witness statements failed to establish  
22 beyond reasonable doubt that the disappearances occurred during  
23 the second phase of population movement.

24 [15.15.52]

25 Another document - rather, another document's - separation

1 between a witness and her children, but states that the witness  
2 was aware of the children's location, that the relocation was to  
3 facilitate their care, and that the witness visited them.

4 A fifth statement describe a separation of the witness from his  
5 two family members, but fails to offer any facts indicating that  
6 the separation was caused by an arrest, detention or abduction by  
7 the Communist Party of Kampuchea.

8 According to the Closing Order, the last witness was told at a  
9 meeting that those who would refuse to leave as part of the  
10 second evacuation would be sent for re-education from where  
11 people never returned. This characterization egregiously  
12 misstates the actual language used by the witness who neither  
13 observed nor was told nor warned of individuals being sent for  
14 re-education and disappearing as punishment for not cooperating  
15 in the second evacuation.

16 [15.17.36]

17 Of the testimonial evidence heard at trial regarding the second  
18 population movement, only two witnesses addressed the  
19 disappearance of evacuees, but neither provided any direct or  
20 specific evidence concerning these disappearances including the  
21 circumstances in which they were separated from the alleged  
22 victim, whether or not the alleged disappearance was the result  
23 of an arrest, detention or abduction by the Communist Party of  
24 Kampuchea cadres or whether the cadres refused to provide access  
25 to or convey information regarding the fate or whereabouts of

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1 such persons.

2 There is no credible evidence that any enforced disappearances  
3 took place and there is no direct evidence to establish that Nuon  
4 Chea intended the enforced disappearance of evacuees during the  
5 second phase of the population movement or that he was aware of a  
6 substantial likelihood that such disappearances would occur.

7 [15.19.03]

8 For similar reasons, there is no evidence of the material  
9 elements of Nuon Chea's individual responsibility for enforced  
10 disappearance through any form of commission. No direct evidence  
11 exists of a directive or agreement emanating from the Party  
12 Centre, nor is there any evidence of a pattern of conduct  
13 probative of such a policy.

14 With no evidence to establish that enforced disappearances  
15 occurred, let alone the Party Centre's knowledge or intent in  
16 relation thereto, the only avenue available to the Trial Chamber  
17 is an acquittal.

18 I will now turn my attention to the charge of other inhumane acts  
19 through attacks against human dignity which claimed that Nuon  
20 Chea deprived the civilian population of adequate food, shelter,  
21 medical assistance and minimum sanitary conditions thereby  
22 resulting in serious mental and physical suffering and injury.

23 [15.20.46]

24 As the Chamber is aware, the testimony of witnesses was extremely  
25 varied in relation to the conditions of the second population

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1 movement. It is true that certain witnesses testified that  
2 conditions were difficult, and the Co-Prosecutors highlight these  
3 statements in their brief. What their brief refuses to  
4 acknowledge, however, are the statements of other witnesses who  
5 directly refute these claims.

6 The statements which the Co-Prosecutors have deliberately chosen  
7 to ignore report that conditions were decent and the health of  
8 evacuees were normal and even that food, shelter, medicine and  
9 land were provided by CPK cadres. These same inconsistencies are  
10 reflected in the statements of witnesses who did not appear at  
11 Trial. And again the Co-Prosecutors brief dishonesty disregards  
12 them. Although some witnesses describe difficult conditions,  
13 others state that the physical health of evacuees was cared for;  
14 that food was provided during and immediately after the  
15 evacuation; and that evacuees were provided shelter upon their  
16 resettlement. This significant variance in reported condition  
17 proves that there was reasonable doubt as to how transferees  
18 experience the second movement. Some suffered, but many did not.

19 [15.23.19]

20 Additionally, no one piece of evidence establishes the intent of  
21 Nuon Chea or the Communist Party of Kampuchea to intentionally  
22 inflict upon the evacuees serious physical and mental suffering.  
23 No evidence has been presented which proves beyond a reasonable  
24 doubt that the CPK knew that the condition of the evacuation were  
25 likely to cause serious physical or mental suffering or a serious

1 attack on their human dignity.

2 Finally, there is no evidence to support the material elements of  
3 Nuon Chea's individual responsibility. No direct evidence exists  
4 of a directive or agreement emanating from the Party Centre, nor  
5 is there any evidence of a pattern of conduct probative of such a  
6 policy. With no evidence to support such a nexus between Nuon  
7 Chea and the alleged crimes, the Chamber is left with no choice  
8 but to acquit Nuon Chea on this charge.

9 [15.25.06]

10 Finally, Your Honour, I will now turn to the charge of other  
11 inhumane acts through forced transfer. This charge is not  
12 satisfied for two reasons that we have already articulated in our  
13 brief: One, the movement was not forced; and two, it did not  
14 occur under circumstances that render it criminal.

15 Despite the significant attempt by the Co-Prosecutor have made -  
16 the prosecutor have made in their brief to establish that  
17 transferees of the second population movement was forced, the  
18 fact remains that many volunteered to move to the North West Zone  
19 and were otherwise happy and willing to do so. The Co-Prosecutors  
20 themselves concede this point. The very fact that there are  
21 varying accounts of whether or not the movement was forced  
22 establishes a reasonable doubt and requires dismissal of the  
23 forced transfer charge. Even if it had been forced, the  
24 Co-Prosecutors have also failed to establish that the phase 2  
25 population movement amounts to the crime of other inhumane acts

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1 through forced transfer. The alleged second phase population  
2 movement was not a single cohesive event. The alleged victims,  
3 their places of origin, and the condition under which they were  
4 allegedly transferred vary very considerably.

5 [15.27.49]

6 The Chamber is accordingly unable to make any findings in  
7 relation to whether the so called phase 2 population movement was  
8 unlawful. And, most importantly, if at any time the movement did  
9 become significantly serious to constitute other inhumane acts,  
10 the variability of the evacuees experience establishes that  
11 decisions concerning the condition of the transfer were taken by  
12 implementing cadres. These decisions were done without the input  
13 or knowledge of Nuon Chea or anyone else within the Party Centre.  
14 Accordingly, Nuon Chea cannot be held criminally liable for other  
15 inhumane acts through forced transfer.

16 Mr. President, I would like to conclude my closing statement  
17 here. I thank you very much for the opportunity, but I would also  
18 like to inform the Chamber that Mr. Nuon Chea would like to make  
19 his closing statement on the 31st of October, in accordance with  
20 the schedule indicated by the Chamber.

21 Thank you, Mr. President.

22 (Judges deliberate)

23 [15.29.43]

24 MR. PRESIDENT:

25 We actually have half an hour left before the conclusion of

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1 today's proceeding.

2 The Chamber would like to inquire from Khieu Samphan's defence  
3 whether you would like to commence your closing statements now.

4 MR. VERCKEN:

5 No, Mr. President, we'd prefer to start tomorrow.

6 [15.30.24]

7 MR. PRESIDENT:

8 Thank you, Counsel.

9 As time allocations has been placed for the defence team  
10 separately and Nuon Chea defence has been allocated two days for  
11 the closing statements and now they concluded earlier - half an  
12 hour earlier than the time allocated - and Khieu Samphan's  
13 defence has been allocated two days, commencing from tomorrow,  
14 and they just stand on that time allocation, so they will  
15 commence tomorrow morning.

16 Therefore, today's proceeding has come to an adjournment. We will  
17 adjourn now and resume tomorrow morning - that is, Friday the 25  
18 of October 2013 - commencing from 9 a.m.

19 We also would like to inform the parties and the public that  
20 tomorrow the Chamber will give the floor to Khieu Samphan's  
21 defence to present their closing statements in Case 002/01. This  
22 information is also for the support staff.

23 [15.31.32]

24 Security guards, you are instructed to take the two accused Nuon  
25 Chea and Khieu Samphan to the detention facility and have them

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1 returned to participate in the proceeding tomorrow, before 9 a.m.  
2 Nuon Chea - or Khieu Samphan shall be brought directly to the  
3 courtroom, and Nuon Chea shall be taken to the holding cell  
4 downstairs, which is equipped with audio-visual communication for  
5 him to participate in the proceeding remotely.

6 The Court is now adjourned.

7 (Court adjourns at 1532H)

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