



**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**

**ORIGINAL/ORIGINAL**

ថ្ងៃ ខែ ឆ្នាំ (Date): 13-Nov-2013, 08:40

**Uch Arun**

CMS/CFO:.....

**TRANSCRIPT OF TRIAL PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/TC

30 October 2013

Trial Day 223

Before the Judges:

NIL Nonn, President  
Silvia CARTWRIGHT  
YA Sokhan  
Jean-Marc LAVERGNE  
YOU Ottara  
THOU Mony (Reserve)  
Claudia FENZ (Reserve)

Trial Chamber Greffiers/Legal Officers:

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DAV Ansan  
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LIM Suy Hong

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Beini YE

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. KOPPE	English
MR. KOUMJIAN	English
MR. LYSAK	English
MS. MOCH SOVANNARY	Khmer
MS. NGUYEN	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. RAYNOR	English
MR. VERCKEN	French

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

2 (Court opens at 0901H)

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 Mr. President, for today's proceeding – that is, Wednesday the  
9 30th October 2013, all parties to the proceeding are present.

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

13 Thank you.

14 [09.03.18]

15 MR. PRESIDENT:

16 Thank you.

17 The Chamber would like to give the floor now to the Lead  
18 Co-Lawyers for civil parties to make their rebuttal statement in  
19 Case 002/01. You may proceed.

20 MR. PICH ANG:

21 Good morning, Mr. President, Your Honours, parties to the  
22 proceeding, and everyone in the public gallery.

23 The rebuttal statement by the Lead Co-Lawyers for 1 hour and 10  
24 minutes will be done by two counsels: Lyma Nguyen and Moch  
25 Sovannary.

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1 MR. PRESIDENT:

2 Yes, you may do so.

3 [09.04.10]

4 MS. NGUYEN:

5 May it please the Court. My name is Lyma Nguyen. I appear on  
6 behalf of the consolidated group of civil parties. I acknowledge  
7 and pay respect to the civil parties who are with us today, in  
8 this room, and also to the civil parties, victims, and the  
9 general public sitting in the gallery. In this rebuttal, I will  
10 respond to the submissions made by Nuon Chea's defence. My  
11 colleague, Moch Sovannary, will later address Khieu Samphan's  
12 submissions.

13 The topics that I will cover, roughly in this order, are: Nuon  
14 Chea's claims to moral responsibility; the condition of  
15 enslavement; the language regime employed by the Khmer Rouge;  
16 forced transfer 1 and discriminatory intent against the New  
17 People; forced transfer 2 and the approach the Defence have taken  
18 in the presentation of evidence; Tuol Po Chrey and the existence  
19 of a policy to execute former Khmer Rouge – Khmer Republic  
20 officials; and, finally, Nuon Chea's rights to a fair trial.

21 [09.05.24]

22 It's important that Your Honours take into account Nuon Chea's  
23 admission that, one, he was a senior leader; and two, that he  
24 accepts moral responsibility for the events during the Democratic  
25 Kampuchea. However, despite admitting in his closing brief to

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1 bearing responsibility for CPK policy, Nuon Chea continues to  
2 deny that he has any legal responsibility for the crimes  
3 committed pursuant to those very policies. For Cambodia's  
4 population of victims, those policies have very real effect,  
5 lasting adverse generational harm, and consequences. 31 civil  
6 parties gave evidence during this trial, many of them on victim  
7 impact. But there are millions of others; stories just as  
8 heart-wrenching, of which these civil parties comprise but a  
9 representative sample.

10 The civil parties submit that moral responsibility, formalized  
11 through legal frameworks, can transfer as legal responsibility.  
12 Nuon Chea's admission to moral responsibility was an acceptance  
13 that part and parcel of his role as Deputy Secretary of the  
14 Standing Committee claim moral obligations, and we assert that  
15 gross breaches of those obligations require accountability.

16 [09.07.04]

17 Now, unfortunately, the civil parties can only have their moral  
18 and collective reparations if he is found legally responsible.  
19 So, in light of all that's said and done, at the end of the day,  
20 Nuon Chea's admission to moral responsibility does not amount to  
21 very much.

22 Nuon Chea's policies relating to the forced transfers set in  
23 motion three years, eight months, and 20 days of enslavement.  
24 These policies created a situation in which the regime had  
25 absolute control over its population. This absolute control

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1    entailed the absolute depravation of peoples' freedom of  
2    movement, freedom of speech, privacy, right to human dignity, and  
3    every other fundamental right and freedom that is inherent to  
4    being a human being. The regime monitored, supervised, and  
5    determined how every person behaved, spoke, and conducted  
6    themselves at all times. It determined how every minute of their  
7    days were spent from when they woke up, their hours of work, what  
8    they ate, how they ate, how much they ate, who they married, when  
9    they slept. This control was exercised through the creation of an  
10   overarching system of forced collective labour, starvation, fear,  
11   apprehension, distrust, and terror.

12   [09.08.37]

13   And under this regime, the victims belonged to the State. The  
14   regime possessed their bodies and their minds, treating them as  
15   cogs in a machine; as chattels to be moved around. To be worked,  
16   and to be gotten rid of when it suited the regime. Now, that,  
17   Your Honours, is the exercise of all the powers pertaining to the  
18   right of ownership over the Cambodian people, reducing them to  
19   the condition of slavery. And in our submission, this state of  
20   affairs is correctly characterized as a slave state.

21   Now, at this point, I'll address the propaganda, the rhetoric,  
22   and the belligerent language that, back in 1975, permeated  
23   through the Khmer Rouge's actions and activities, and which now,  
24   in 2013, filter through the Defence submissions.

25   [09.09.36]

1 The Khmer Rouge created its own language regime. Perhaps the best  
2 example of the kind of newspeak and black-white coined by George  
3 Orwell in his novel, "1984", where "war is peace", "ignorance is  
4 strength", and "freedom is slavery". Newspeak is euphemistic  
5 language perhaps - often used in political propaganda, standing  
6 for the opposite of what it actually means. Now, the purpose of  
7 newspeak is ultimately to disguise the truth by deliberately  
8 representing it as a lie, and representing lies as truth. When  
9 this is done, it is known as black-white, where black is made to  
10 mean white, and white is made to mean black.

11 I'll give some concrete examples of the sort of newspeak used by  
12 the Khmer Rouge regime. The liberation of Phnom Penh really meant  
13 the enslavement of Phnom Penh's population. The evacuation of  
14 Phnom Penh really meant sending people to the killing fields.  
15 Re-education and study sessions were references to arbitrary  
16 detention and summary executions. Nuon Chea's Defence, in  
17 essence, agree that the Khmer Rouge propagated newspeak. They  
18 state that war-like metaphors were used by the CPK to describe  
19 ideological and political struggle. Now, in truth, this violent  
20 metaphorical language was used to justify Nuon Chea's aggressive,  
21 destructive, and criminal policies, and his incitement to  
22 violence against people he labelled "enemies".

23 [09.11.32]

24 Nuon Chea claims that the enemy of the Party was not the people  
25 themselves, but their state of mind. He argues that getting rid

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1 of the enemies was never referenced to the individual, but to the  
2 feudalist mentality and systems. In this context, he says that  
3 CPK documents instructing cadres to "attack, purge, smash,  
4 cleanse" the enemy can only be interpreted as smashing  
5 capitalism, smashing feudalism, smashing imperialism. Well, the  
6 civil parties certainly suffered the brunt of this newspeak. They  
7 ask: Exactly how do you separate and punish someone's state of  
8 mind? The regimes answer was to smash the person.

9 In this trial, Duch gave crucial evidence about the meaning  
10 assigned to these terms, and how these words connected to the  
11 policies established by the senior leaders. Firstly, Duch gave  
12 evidence that the Party's policies included "to smash all  
13 enemies".

14 [09.12.44]

15 When asked what "to smash" meant, he said "smash means executed".  
16 And he confirms that - I quote: "The ultimate goal is that the  
17 person is dead." Unquote.

18 The civil parties perfectly understood this newspeak. They knew  
19 that, if they stood out, they would be re-educated and ultimately  
20 smashed. Civil Party Srey Phal Pech stated that smashed meant to  
21 kill. It's precisely clear. No doubt.

22 As for the term "Angkar", Duch said: "I used the word 'Angkar' to  
23 refer to the Party Central Committee, or any person representing  
24 Pol Pot or the Party Central Committee."

25 He also said: "I personally regarded Angkar as sometimes Nuon



1 Chea, sometimes Pol Pot."

2 Now, this accords with what the civil parties understood of the  
3 term "Angkar", meaning the Khmer Rouge leadership. Nuon Chea was  
4 indeed the father of newspeak. He claims that he was personally  
5 in charge of propaganda and education. He said in open Court: "I  
6 was tasked with educating revolutionary political line, and to  
7 educate people with regards to the love of the nation."

8 [09.14.05]

9 In Nuon Chea's newspeak, contradictions such as love of the  
10 nation, on one hand, and the killing of its people, on the other,  
11 became synonymous. Phrases such as "life and death contradiction"  
12 were used to indoctrinate the regime's philosophy, its policies,  
13 and its politics.

14 Duch gave evidence that – and I quote: "The contradiction between  
15 us and our enemy is the life and death contradiction, which means  
16 that for one to prosper, the other one must die." Unquote.

17 Nuon Chea's victims understood perfectly what re-education and  
18 education meant. Civil parties Suong Sim and Huo Chantha both  
19 gave evidence that those who went for training and re-education  
20 never returned.

21 [09.14.57]

22 Now, with all due respect, the Defence submissions are filled  
23 with newspeak and black-white. For example, they continue to  
24 argue that what they call the evacuation of Phnom Penh was not  
25 unlawful. Well, first of all, we need to put to a stop to this

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1 black-white. This was not an evacuation. It was a forced movement  
2 of a civilian population, not from a place of danger into a place  
3 of safety, as the term "evacuate" would normally suggest, but  
4 rather from a place of safety - the safety of their own homes -  
5 to a place of danger: to the killing fields.

6 Nuon Chea and Khieu Samphan's continual justifications about the  
7 reasons for the forced transfer make a mockery of the victims.  
8 They continue the line that their purpose was to implement an  
9 economic policy that - I quote: "They genuinely believed was in  
10 the interests of the Cambodian people". Unquote.

11 [09.16.00]

12 Let me say this in response. Only if freedom is slavery and only  
13 if black is white can the death of an estimated 2 million  
14 Cambodians be in the best interests of the Cambodian population.  
15 The civil parties ask that Your Honours put an end to the  
16 newspeak and the black-white - the black-white that's been  
17 perpetuated by the Khmer Rouge and by the Defence - because until  
18 the truth is revealed for what it really was, and labelled what  
19 it actually is, there cannot be real justice.

20 At this point, I'll move to the topic of forced transfer 1. From  
21 the beginning, when Nuon Chea and the senior leaders decided to  
22 transfer the population, they deceived the people. They falsely  
23 represented that the reason was that American bombers were  
24 imminent. That was a lie then, and it's a lie now.

25 Another example of Nuon Chea's deceit was the claim that his

1 intentions were to save the population from famine; and in doing  
2 so the Defence assert that the forced movement was, in itself,  
3 lawful, necessary, and logical.

4 [09.17.17]

5 In paragraph 251 of the Defence brief, the Defence claim that  
6 there was an impending food crisis. They say there was only six  
7 days of rice supplies in Phnom Penh. They claim that, after this,  
8 there would be no food at all. Now, I note that this assertion  
9 comes with no references, no sources, no evidence. Equally  
10 outrageous is paragraph 261, where the Defence state - and I  
11 quote: "Thousands of people would have died in Phnom Penh if the  
12 evacuation had not taken place." Unquote.

13 Again, no sources, no references - just more sweeping statements  
14 to excuse the mass crimes.

15 Civil parties gave evidence that loads of rice were taken away  
16 from the villages. Denise Affonço gave evidence that - I quote:  
17 "After each monsoon, they loaded up the rice stocks from the  
18 village. They left a minimum amount for us to have two bowls of  
19 soup or porridge per day, and they took all the rest away. We  
20 fought over scraps of food with their dogs, and their dogs had  
21 more to eat than we did." Unquote.

22 [09.18.28]

23 If Nuon Chea and Khieu Samphan really had compassionate  
24 intentions, why under their leadership were rice supplies taken  
25 away from the villages, leaving the people to starve, leaving the

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1 people to fight over scraps of food with the dogs?

2 Your Honours, the facts speak for themselves. Nuon Chea continues

3 to blame others. He claims to know nothing about what was going

4 on in a country where he was Brother Number 2. He denied this

5 title, but that is certainly how everybody knew him and referred

6 to him. Nuon Chea persistently blames others for the decisions

7 that he made. He blames Prince Sihanouk. He blames Lon Nol. He

8 blames the United States, Vietnam, Thailand, and when that's not

9 enough, he blames the zone leaders and the local leaders and the

10 authorities who implemented the policies which he admits to

11 having made. And in doing so, he demonstrates a total absence of

12 remorse, and lack of insight into his criminality, then and now.

13 [09.19.40]

14 Nuon Chea does say, perhaps to his credit, at paragraph 210 – 201

15 of his brief, that he would like to accept the mistakes that

16 others had made. I quote: "Because I am the leader. But this

17 mistake is the unintentional result of how we did our jobs, not

18 because of the principle to smash people".

19 This is at odds with Duch's evidence that "in real practice,

20 there was a movement to evacuate the population. And in that

21 evacuation movement, there was a sub-movement to smash people".

22 Duch also gave evidence that – I quote: "The policy was that

23 whenever the Party regarded someone as an enemy, we had to smash

24 him or her. We had no way to contest it." Unquote.

25 Unlike Nuon Chea, Duch had no reason to lie. He's already been

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1     tried and given a life sentence. He had nothing to gain.  
2     Importantly, as the head of S-21, he had contemporaneous  
3     knowledge about the ins and outs of the regime. Duch said that,  
4     after Son Sen, Nuon Chea was his boss. Your Honours, we ask that  
5     you find Duch to be a credible and reliable witness.

6     [09.21.06]

7     As for Nuon Chea's statement that the massive and tragic human  
8     consequence of his policies was an unintentional mistake, the  
9     civil parties argue that this was no mistake. Nuon Chea's  
10    policies were intentional. They were aimed at a total control of  
11    the population by whatever means necessary, including at the cost  
12    of 2 million human lives. As the Prosecution said, "for the  
13    senior leaders, the means justified the ends". Nuon Chea's  
14    excuses and justifications do nothing to exonerate his individual  
15    criminal responsibility before this Court. Every decision has its  
16    consequences. Nuon Chea admits responsibility for the decision  
17    over forced transfer 1. He is therefore, necessarily, also  
18    responsible for the consequences of that decision. He is held to  
19    account for his intentional conduct in formulating the policies  
20    that authorized and directed others to carry out acts which  
21    directly led to the extermination of a large portion of  
22    Cambodia's population.

23    [09.22.19]

24    The civil parties demand an answer to this question: Knowing what  
25    he now knows, would Nuon Chea have made the same decisions that

12

1 he did in 1975? We ask that Nuon Chea personally address this  
2 question when he answers in this final statement.

3 Turning to the issue of discriminatory intent against the New  
4 People, Nuon Chea's defence argue that Nuon Chea had no  
5 discriminatory intent, and therefore cannot be found guilty of  
6 the crime of political persecution. They say this is because the  
7 New People were treated "more like the favoured group, the Base  
8 People". In carrying out this line of defence, the Nuon Chea  
9 defence has adopted the same newspeak employed by the senior  
10 members of the Standing Committee.

11 The Defence argue that the New People suffered additional  
12 hardship because they were inexperienced with farming. As the  
13 theory goes, the New People "experienced for the first time the  
14 difficulty of new life working in the fields as rural Cambodians  
15 had done for millennia".

16 Contrary to this, Your Honours have heard civil parties' evidence  
17 about working from 5 a.m. to 10 p.m. every day, exposed to the  
18 rain and sun, without adequate food, under threat of violence and  
19 murder, and constantly under the surveillance of Big Brother  
20 Angkar.

21 [09.23.54]

22 Now, favourable treatment would normally imply that one has  
23 consented to, and actually enjoys, the treatment received. To  
24 demonstrate the forced coercive nature of the transfer, Civil  
25 Party Sou Sotheavy and Yim Sovann both gave evidence that they

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1 were ordered to leave the city at gunpoint, and threatened to be  
2 shot if they did not leave. There's been ample evidence given  
3 before this Court about the horrific acts against human dignity,  
4 committed both during and after the forced transfers. I'll not  
5 repeat all of that evidence, but in summary, the collective  
6 picture painted by the witnesses and civil parties can be  
7 described as "hell on earth".

8 [09.24.41]

9 The Nuon Chea defence asserts that when they arrived at their  
10 destinations, the New People were treated equally as the Base  
11 People. Well, this is true, insofar as both groups were equally  
12 rendered into the condition of slavery. However, the civil party  
13 submit that the New People in particular were subjected to  
14 discrimination. The first step to discrimination is the  
15 identification process. In this case, the evidence is that the  
16 New People were identified based on their perceived political  
17 affiliation. Civil Party Chau Ny gave evidence about being  
18 identified as a 17 April person. He said: "We were not treated  
19 equally. We were regarded as imperialists, or rather capitalists.  
20 They regarded us as those who reaped the benefits of the  
21 peasants."

22 Civil Parties Yos Phal and Yim Sovann and many others gave  
23 evidence that they were required to submit biographies, and to  
24 identify their previous occupations, their status, and those of  
25 their family members. Civil Party Lay Bony said - I quote: "Their

14

1 intention was to eradicate us, so that newborn people would have  
2 new ideas following Angkar's thinking." Unquote.

3 [09.25.58]

4 This is corroborated by Civil Party Denise Affonço, who gave  
5 evidence that: "Angkar wanted to eliminate the entire social  
6 class of individuals, intellectuals. They were intentionally  
7 letting us die of hunger. It was carefully premeditated and  
8 organized from A to Z." Unquote.

9 Now, the second stage to persecution is severely depriving  
10 members of a group of one or more of their fundamental human  
11 rights. The prejudicial effect of Nuon Chea's policies for the  
12 New People was clear and tangible. Uprooted from their homes, the  
13 city-dwellers were forced to leave all their belongings, their  
14 family homes, their livelihoods. All the social structure that  
15 sustained their way of living was destroyed – money and banking,  
16 schools and universities, shops and markets, temples, and places  
17 of worship. These were all eradicated. The people were then  
18 expected to refashion themselves to adapt to life in the  
19 countryside. Their deprivation of fundamental rights was based on  
20 the perceived political affiliations and values. They were  
21 classified as capitalists, as feudalists, imperialists; terms  
22 that were designated to enemies of the regime. And on this basis,  
23 they were deprived of all their fundamental human rights and  
24 freedoms.

25 [09.27.35]



15

1 The impact on Phnom Penh residents was shattering. Civil Party

2 Toeung Sokha describes:

3 "The evacuation of Phnom Penh could be compared to a bomb,  
4 exploded to shatter all the families in Phnom Penh. We separated  
5 from family members, from friends, and we suddenly lost all that  
6 we earned."

7 Apart from the deliberate smashing of supposed enemies, the civil  
8 parties also provided ample examples and evidence about the  
9 deaths that resulted from starvation, and the conditions of  
10 forced labour in the cooperatives. As for the charges of  
11 extermination, both defence teams have disputed the death toll.

12 The civil parties query: How many deaths do the Defence consider  
13 necessary to meet the threshold for this crime? Whether there was  
14 1 million, 100,000, 1,000, even 100, there is overwhelming  
15 evidence that many people were killed. Even Khieu Samphan's  
16 defence have acknowledged that even one victim is one too many.

17 [09.28.44]

18 The civil parties submit that, in law, to make out the crime of  
19 extermination, there is no need to establish that any specific  
20 number of people died, or that a very large number of people  
21 died, so long as all the substantive elements of the crime are  
22 made out.

23 Jurisprudence from the Court of Appeal in the ICTY case of Milan  
24 Lukic upholds the Trial Chamber's finding that the killing of 60  
25 people amounted to the crime of extermination as a crime against

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1   humanity. The citation for this case is provided in the list of  
2   documents that were distributed to the parties this morning.  
3   So, on the totality of facts, civil parties argue that the impact  
4   of Nuon Chea's forced transfer policy on the New People was in  
5   fact, and was intended to be, discriminatory. My learned friend's  
6   client might call that favourable treatment, but here's what my  
7   client, Mr. Nou Hoan, has to say. I quote:  
8   "The so-called organization at that time was a brutal regime.  
9   They wanted the Cambodian people to live in freedom, in a  
10   sovereign state, with territorial integrity. You wanted people to  
11   have clothes to wear, shoes to wear, and a cap to wear as well.  
12   But the fact was that this policy does not apply to everybody. In  
13   other words, there is no one-size-fits-all in their policy. They  
14   designed the caps - one size of the cap - and then they forced  
15   people to actually wear it. And that does not fit with the  
16   people. Now, we cannot actually cut our feet to fit the shoe. It  
17   should be the other way around." Unquote.  
18   Mr. Nou Hoan was speaking specifically about the prejudicial  
19   treatment of New People by policies made by the senior  
20   leadership, Nuon Chea's policies which forced New People to  
21   conform to one standard, to become what they are not, with the  
22   result of severe harm and mistreatment imposed upon this group,  
23   "cutting their feet to fit the shoe", as Mr. Nou Hoan said. That,  
24   Your Honours, in our submission, is the definition of  
25   discrimination.

1 [09.31.06]

2 We submit that the adverse treatment received by the New People  
3 meets the requisite threshold to establish that there was  
4 discriminatory intent that was required for the persecution of a  
5 civilian population on political grounds, as a crime against  
6 humanity.

7 Your Honours, at this point, I'll turn to the subject of forced  
8 transfer 2, and in particular about the selective use of witness  
9 statements by the Nuon Chea defence.

10 The Defence asks Your Honours to acquit Nuon Chea on the basis of  
11 random extracts of witness statements taken out of context. One  
12 example is the Defence use of the testimony of Civil Party Lay  
13 Bony. The Nuon Chea defence asks Your Honours to find that the  
14 victims were happy to join in the second population movement,  
15 because there was more food in Battambang. Conveniently, the  
16 Defence have omitted the fact that Ms. Lay Bony had been told by  
17 a commune chief that food would be plentiful in Battambang, and  
18 this was a pretext to trick her into partaking in the second  
19 forced transfer without resisting.

20 [09.32.18]

21 The Defence also deleted her testimony that she did not volunteer  
22 to be transferred, but was in fact ordered to go. At the time,  
23 Ms. Lay Bony was the mother of three young children. Her family  
24 had just been forcibly marched from Phnom Penh, on foot, and  
25 without sufficient food. She had a choice: to stay in the first

18

1 cooperative and to face starvation and anticipated punishment for  
2 disobeying the order to move, or to submit to the second forced  
3 transfer, with perhaps the faint hope that the conditions in the  
4 next cooperative might be a little bit better. Faced with this  
5 catch-22, who would not choose the prospect of more food and the  
6 potential possibility of a better life for their children?

7 The Nuon Chea defence ask Your Honours to find that food and  
8 basic necessities were provided to victims of the second forced  
9 transfer. To support this, they again misuse Lay Bony's  
10 testimony, claiming that the physical health of evacuees was  
11 normal. Now, whilst the Defence has persistently complained about  
12 the importance of providing background and context to the  
13 evidence provided before this Court, they have no qualms about  
14 failing to tell the whole story when it suits them.

15 [09.33.46]

16 If the Defence had but read an additional four lines of  
17 transcript, they would have seen Ms. Lay Bony's evidence that – I  
18 quote:

19 "When time passed by, we did not have enough food to eat. We ate  
20 the food that was very little. We ate food that made our body  
21 parts become swollen. We noted that the pigs were given more food  
22 than they gave to the human beings." Unquote.

23 This is but one example of the Defence's irresponsible selective  
24 use of witness statements to mislead this Court when it suits  
25 them. The Nuon Chea defence have similarly misquoted Civil Party

19

1 Yim Sovann and Denise Affonço, and many others. In making factual  
2 findings relating to the forced transfers, the civil parties ask  
3 that Your Honours give due weight to the civil parties oral and  
4 written testimonies, and to abstain from taking the Defence  
5 assertions at face value without close scrutiny.

6 [09.34.43]

7 Your Honours, at this point, I'll turn to the topic of Tuol Po  
8 Chrey, and in particular of the existence of a policy to execute  
9 former Khmer Republic soldiers and officials. The evidence of  
10 civil parties, both live and in statements admitted by this  
11 Chamber, taken in combination, demonstrate that the Khmer  
12 Republic officials were targeted as enemies of the regime, and  
13 they were targeted in an organized, uniform, widespread, and  
14 systematic manner. As such, the policy can be established from  
15 the accumulation of evidence from the direct witnesses on the  
16 ground, evincing the ill-treatment and killing of this  
17 composition in a pattern.

18 The witnesses and civil parties have been removed from the  
19 process of the formulation of these high-level policies, but they  
20 can tell you what they saw from where they stood.

21 Your Honours, I am aware that I'm running out of a little bit of  
22 time, and I won't go through the civil party testimonies in  
23 relation to the ill treatment and targeting of Lon Nol regime  
24 members. But Your Honours are asked to make factual findings on  
25 the accumulation of circumstantial evidence.

1 [09.35.56]

2 If Your Honours are satisfied that the totality of evidence given  
3 about the identification, singling out, torture, ill treatment,  
4 and executions of former Lon Nol officials is credible, and that  
5 this treatment was implemented in a uniform, systematic, and  
6 widespread manner, Your Honours can reasonably and logically  
7 infer from these facts that the implementation was conducted in  
8 accordance with the centrally formulated policy instructions from  
9 the senior leaders.

10 I move now to fair trial rights.

11 It's quite an indulgence for the Nuon Chea team to stand before  
12 the population of victims in Cambodia and state that Nuon Chea  
13 has not been afforded the presumption of innocence. All I can  
14 say, in contrast, is that his victims were never given any  
15 presumption of innocence before they were subjected to torture,  
16 ill-treatment, arbitrary detention, or summary executions.

17 [09.36.59]

18 The victims at S-21 come to mind, particularly as they faced  
19 certain extrajudicial killings, and Nuon Chea knows very well  
20 what went on in S-21. His national defence conceded that he  
21 received 25 out of over 4,000 confessions, of which - six of  
22 which were personally annotated.

23 As for the establishment of the Extraordinary Chambers, Nuon Chea  
24 argues that this hybrid tribunal was established because a  
25 domestic court might not try the case to international standards.

1 But he also claims that he can never have a fair trial, because  
2 most of the judicial officers in this Court are nationals of  
3 France, the United States, and their closest allies. Using Khmer  
4 Rouge logic, the Defence has called this a trial against  
5 ideology, arguing the Judges could never fairly adjudicate this  
6 matter, because they come from the same so-called imperialist  
7 countries from which Nuon Chea purportedly sought to protect  
8 Cambodia.

9 [09.38.09]

10 Apart from demonstrating a high degree of disrespect for this  
11 judicial process, these remarks actually bear a close resemblance  
12 to speech which propagates discrimination on the basis of race,  
13 ethnicity, and nationality, the argument being that, by virtue of  
14 being French or being of Anglo-Saxon origin, Your Honours are  
15 inherently biased and are unable to appropriately or competently  
16 or impartially adjudicate and apply the facts, evidence, and law.  
17 Perhaps what Nuon Chea is actually saying is that no court,  
18 whether domestic or international, has the capacity or  
19 independence or competence to try him. Perhaps what he means is  
20 that he should not be tried at all. But for the masses of  
21 victims, this trial is about the end of impunity.  
22 In respect of the need to call witnesses to establish Nuon Chea's  
23 intent, it is our submission that any evidence that any other  
24 person could possibly provide about Nuon Chea's intentions would  
25 constitute hearsay, opinion evidence, or inadmissible

1 speculation. From the civil parties' perspective, who better to  
2 know the intentions of Nuon Chea than the man himself? But rather  
3 than subjecting himself to be examined and cross-examined in the  
4 ordinary way of giving evidence, Nuon Chea instead waits to have  
5 the last word: the final statements.

6 [09.39.41]

7 Let me make it very clear, so that the Defence do not twist my  
8 words in saying that the victims do not respect the rule of law.  
9 The civil parties certainly respect Nuon Chea's right to remain  
10 silent, and at the same time to challenge the evidence against  
11 him. For sure, giving Nuon Chea all the due process that his  
12 victims never received is, indeed, the right way to try this man.  
13 Ultimately, the Nuon Chea defence claim that this trial is a  
14 manifestation of victor's justice. Well, the civil parties have  
15 waited nearly 40 years for justice, for truth's light to be shed  
16 in forum such as this. But even if there is a conviction on these  
17 limited charges, the victims are certainly not winners. To the  
18 contrary, they have suffered irreparable loss, unspeakable harm,  
19 and in these circumstances, one cannot say that a conviction  
20 would mean that they have won.

21 [09.40.39]

22 In conclusion, this trial is about the initial movements – the  
23 initial moments when the Khmer Rouge took power, from the 17th of  
24 April 1975, and how those first few days changed Cambodian  
25 history forever. The participation of the civil parties has



23

1 enabled this process to meet with, prevent, and to confront the  
2 human faces behind this tragic history: The faces of both the  
3 victims and the perpetrators of criminal policies that were  
4 executed in the name of the faceless Angkar.

5 Justice comes in many forms, and in a court of law, the civil  
6 parties – for them, justice manifests as the right to be heard  
7 and to be believed, the right to have harm acknowledged, and the  
8 right to reparation for harm suffered. The civil parties and the  
9 victims entrust this Court with the task of giving them the  
10 justice they deserve.

11 Your Honours, this concludes my rebuttal to Nuon Chea's closing  
12 statement. And I now hand the floor to my colleague, Ms. Moch  
13 Sovannary, to address the submission of Khieu Samphan.

14 [09.42.00]

15 MS. MOCH SOVANNARY:

16 Good morning, Your Honours. Good morning, members of the public,  
17 and good morning to the civil parties whom I am representing. I  
18 will try to be brief and I will try to be as specific as possible  
19 to the points raised by the defence team of Mr. Khieu Samphan.

20 I would now like to address the personality and role of Mr. Khieu  
21 Samphan during the Democratic Kampuchea. Two, I will touch upon  
22 the reliability of the testimony, as well as evidence presented  
23 before the Chamber. And lastly, I will present about the  
24 statement of the civil parties who were not summoned to testify  
25 before the Chamber, and the reliability of those statements. And,

1 finally, I would like to present about the methodology employed  
2 by the defence team of Mr. Khieu Samphan in relation to the  
3 various evidence brought up by the defence team. And I also look  
4 at the facts of the alleged crimes concerning the two phases of  
5 evacuation, and if time allows I will make an observation on the  
6 evidence concerning the policy against the officials of Lon Nol  
7 regime, and that this policy was implemented by the Khmer Rouge  
8 during the Khmer Rouge period.

9 [09.43.31]

10 Over the last two days' hearings, particularly when the defence  
11 team for Khieu Samphan raised - he has repeatedly made and tried  
12 to have the Chamber believe that Mr. Khieu Samphan was of good  
13 personality. And in addition, he tried to present various good  
14 qualities of Mr. Khieu Samphan, that people talked about during  
15 the Sangkum Reastr Niyum era. He said that Khieu Samphan was a  
16 serious, meticulous person. Now, I would like to present to the  
17 Chamber that what has been raised by the defence team is not at  
18 all correct.

19 They raised about the testimony of Mr. Ponchaud, who said that  
20 Mr. Khieu Samphan was "Mr. Clean". I would like to make a clear  
21 observation that it is easy for Mr. Ponchaud, who did not go  
22 through the Khmer Rouge period, who did not suffer during this  
23 regime - he describes Mr. Khieu Samphan as "Mr. Clean" during the  
24 Sangkum Reastr Niyum era. That was not at all relevant to what  
25 happened during the Democratic Kampuchea period. And I would like

25

1 to say that the civil parties were the survivors of the Khmer  
2 Rouge. They did not believe at all what the defence team for  
3 Khieu Samphan raised in this trial.

4 [09.44.41]

5 Myself, I did not come across this regime. I was a younger  
6 generation of Cambodian who was born after the regime. But I was  
7 - I almost believe what the defence team said, but based on the  
8 various evidence and testimony of witnesses and victims, I cannot  
9 believe what the Defence raised, and I believe that he was not as  
10 clean as what others might have presumed.

11 Now, the defence team have told the Chamber that he was a  
12 meticulous person, so this is clear in itself that he must have  
13 known what had happened during that time, including the people  
14 who relied their fate in the hands of the select few of the  
15 leaders of the Khmer Rouge.

16 The defence team for Khieu Samphan said that Mr. Khieu Samphan  
17 was an intellectual. Based on that Statute of the Communist Party  
18 of Kampuchea, he did not satisfy the criteria to become a person  
19 trustworthy by the CPK. That was not a correct assumption, and I  
20 believe that this is a failure in itself to raise this point as a  
21 defence for this case.

22 [09.46.04]

23 As the Chamber may be well aware that during the Khmer Rouge, the  
24 intellectuals were recalled back to Cambodia, and they were all -  
25 almost all were executed. And most of them were executed at S-21.

1 So we can ask a literal question, why Mr. Khieu Samphan was there  
2 during the entire period, and instead he was appointed a  
3 leadership position of this regime. Why was he not sent for  
4 re-education - or to put it simply, the language used during the  
5 Khmer Rouge period - was sent for smashing? But instead he was  
6 appointed numerous important positions, as the prosecutors have  
7 already brought them up.

8 And following the demise of this regime, he has never admitted  
9 that this regime committed any wrongdoing. He never said that Pol  
10 Pot had committed the crimes of - against humanity. So what does  
11 this say? Of course, he was the ally of Pol Pot. He was the ally  
12 of this regime.

13 [09.47.12]

14 Now, if you look at the situation when people were being  
15 evacuated of their homes and the execution of the people  
16 afterward, it demonstrates that he participated with conviction;  
17 that he wanted to be part of the policy to transform Cambodia to  
18 be a great leap forward country; a glorious regime - when people  
19 were forced to work in the rice fields; when people had to work  
20 in the fields where the corpses of their national compatriots  
21 were buried.

22 Concerning the reliability of the statements of the civil  
23 parties, as well as the testimony in Court by civil parties, I  
24 would like to inform the Chamber that the defence team for Khieu  
25 Samphan tried to manipulate the statements of the civil parties

1 as well as witnesses. In June 2012, the Chamber never guaranteed  
2 to the defence team that those documents were considered – was  
3 assured that the written statement admitted without  
4 cross-examination would be entitled to little or no weight.  
5 Rather, this Chamber has stated that under no uncertain terms –  
6 in no uncertain terms, rather – that where civil party written  
7 statements go to proof of matters other than the acts or conduct  
8 of the Accused, or otherwise meet the criteria of Internal Rule  
9 87.3, the Chamber can find this evidence admissible without  
10 requiring the individual's attendance at trial – or may, under  
11 certain circumstances or under certain conditions, rely on these  
12 materials.

13 [09.49.09]

14 And although in paragraph 29, the Chamber provides that the  
15 application of the civil parties submitted by the intermediary  
16 organization may provide little weight – but ultimately be able  
17 to afford a little weight if any – in line with the international  
18 jurisprudence and practice, it was careful to preserve its right  
19 to assess what, if any, probative value and weight may be  
20 afforded such evidence. The Chamber has also carefully reasoned  
21 and laid out the factors which favour admitting and affording  
22 probative value to these statements.

23 The defence team for Nuon Chea thus far has not raised any  
24 assertion against the specific testimony provided by the civil  
25 parties. Based on the statements submitted to the Chamber, I

28

1 would like to inform the Chamber that they have provided highly  
2 probative value of evidence, including the personal experience to  
3 the Chamber concerning the existence of crimes as the foundation  
4 to support their testimony, in addition to the elements of the  
5 alleged crimes committed, and those evidence demonstrate very  
6 clearly the sufferings that they have sustained.

7 [09.51.07]

8 Now, I would like to make some observations concerning the  
9 defence for Khieu Samphan when he made his closing statement. The  
10 first issue that I would like to inform the Chamber, concerning  
11 the excerpt of the testimony they brought up in their final  
12 brief, as well as in the closing statement. Your Honours, I am  
13 convinced that what the defence teams have brought up was  
14 truncated, and it was meant to manipulate the testimonies of  
15 those witnesses and civil parties. And in the interest of justice  
16 and in search for truth, the civil party lawyers would like to  
17 ask the Chamber to be cautious when analyzing the quotes, as well  
18 as the excerpts brought up by the defence team for Khieu Samphan.

19 [09.52.05]

20 Now, I would like to bring up some examples concerning the  
21 testimony of Mr. Ponchaud. The defence team raised a number of  
22 portions from the testimony of Mr. Ponchaud. They said that  
23 Ponchaud testified before the Chamber that the Khmer Rouge were  
24 kind to the people, and Lon Nol soldiers, on the other hand, were  
25 very cruel and unkind to the people. And then people were left

1 with no choice but to join the Khmer Rouge.

2 And I would like to inform the Chamber that Mr. Ponchaud actually  
3 said that the Khmer Rouge were cruel. Khmer Rouge were good at  
4 lying. Khmer Rouge mistreated people. Wherever they conquered in  
5 the war, they would burn down the villages. They killed the  
6 village head, and they chased the people out and they took the  
7 people with them and relocated them in the forest.

8 [09.53.02]

9 And according to Mr. Ponchaud's testimony on the 10th of April  
10 2010 at 10.11.26, Mr. Ponchaud said: "The Khmer Rouge became  
11 cruel from 1973, following the bombardment of American troops."

12 And then, he continued on that:

13 "Following 1973, we knew clearly what the Khmer Rouge did with  
14 the people in the countryside. They burned down villages. They  
15 killed the village head. And they relocated people in the jungle.  
16 And we thought, at that time, that the Khmer Rouge was cruel,  
17 because it was part of the strategy in the war. And we hoped that  
18 once they conquered the war, they would relax on their treatment  
19 to the people, but actually we were mistaken. We were seriously  
20 mistaken. The Khmer Rouge was really cruel."

21 Concerning the influx of people into Phnom Penh City, the defence  
22 team said that it was due to the looming bombardment - the  
23 imminent bombardment of American troops. I would like to refer to  
24 page 12 of this transcript. They said that, at that time, Khmer -  
25 Phnom Penh had around 3 million people. They were frightened.

1 They were frightened of the Khmer Rouge. They were frightened of  
2 the imminent bombardment of the American troops. They said that  
3 they were coming to Phnom Penh at that time, because they were  
4 afraid of the Khmer Rouge.

5 [09.54.31]

6 In relation to the assertion that the defence team said that the  
7 people welcomed the Khmer Rouge when they marched their way into  
8 Phnom Penh in April 1975 – and Mr. Ponchaud said that, from 1973  
9 to the glorious day of the 17th of April, people were living in  
10 miserable conditions. And he said that the people were miserable  
11 at that time. It was not because of the consequences of the  
12 bombardment, but because of the mistreatment of the Khmer Rouge,  
13 because the Khmer Rouge mistreated the people. And he further  
14 testified that:

15 "When the Khmer Rouge came, we were very frightened. We were  
16 frightened because we knew that the Khmer Rouge was very cruel,  
17 and we did not know what would happen to the people after they  
18 controlled that power."

19 That was the testimony provided by Mr. Ponchaud.

20 [09.55.24]

21 Now I move to the testimony by Mr. Stephen Heder. And the defence  
22 team – Madam Anta Guissé said that the Angkar could not control  
23 the situation on the ground in the countryside. And I would like  
24 to now enlighten the Chamber on this point.

25 Madam Defence Counsel said that, based on the testimony of Mr.



1 Stephen Heder - he said:

2 "The Party Centre could not control the situation on the ground."

3 So I would like to refer to the transcript of Mr. Heder's

4 testimony. I quote:

5 "They said that the intellectuals in Phnom Penh did not know what

6 happened in the countryside. But I would like to make it clear

7 that the intellectuals that he was referring to, in this

8 particular point, was the intellectuals who were not the members

9 of the Party, those intellectuals who remained in Phnom Penh

10 city."

11 And he further added that "there were certain other points that

12 there were other people who told him about that, but there was

13 some contradictory account of this fact as well. And there were

14 certain cases when certain individuals who were among those

15 intellectuals who had been to the countryside as well."

16 I do not have much time, so I would like to now move on to

17 another testimony of Mr. Philip Short.

18 [09.56.50]

19 Of course, Mr. Vercken raised a lot of points concerning the

20 testimony of Mr. Philip Short. He said that Mr. Philip Short was

21 not qualified to be an expert witness. He did not have knowledge

22 about this regime, so on and so forth. But Mr. Khieu Samphan,

23 actually - the national defence team for Mr. Khieu Samphan did

24 raise a few excerpts from the testimony of Mr. Philip Short. I

25 would like to ask, bluntly, as to which Short he was quoting? Was

1 it the short that he finds – the Short testimony that he finds  
2 relevant, or the Short testimony that he finds unreliable.

3 Now, he also raised the point concerning the civil party  
4 testimony who said that Mr. Khieu Samphan was a clean and  
5 corrupt-free person. He did not accept the bribe of a Mercedes,  
6 so on and so forth.

7 And I believe this is a manipulation of the testimony of the  
8 civil party. Of course, the civil party said that Mr. Khieu  
9 Samphan refused the – a gift of a Mercedes, but that civil party  
10 made it very clear that he learned about this through rumour. He  
11 did not actually have the direct information about that.

12 [09.58.08]

13 Concerning the context of the war between 1970 to 1975, the  
14 defence team brought up the testimony of Mr. Ponchaud. They said  
15 where the elephant fight, the ants got killed. And at that time,  
16 of course, Cambodia was in the state of war and I would like to  
17 put the question back to the defence teams: Who were considered  
18 the elephants in this context? Who were the ants?

19 The elephant – the elephant was the American – American troops  
20 who were alleged to be – to bombard the city and who else was the  
21 elephant? The Khmer Rouge – the Khmer Rouge was indeed one of the  
22 elephants. Who were the ants? The ant was the victims, the  
23 Cambodian people – the ordinary Cambodian people who were the  
24 ants, who got killed as a result of this fighting.

25 [09.59.05]

1 Regarding Khieu Samphan's decision in making the decision to  
2 educate - evacuate people from Phnom Penh, the counsel really  
3 criticized Phy Phuon's statement that his statement cannot be  
4 relied upon due to his confusion.

5 Allow me to remind the Chamber regarding the actual testimony  
6 given by this witness when he was asked questions by the counsel.

7 If you look at the transcript of this witness on the 2nd of  
8 August 2012, when Khieu Samphan defence put the questions to the  
9 witness, we could see that the techniques employed by the defence  
10 counsel were reminded and warned 13 times; they were warned not  
11 to ask repetitive questions, assumption questions, leading  
12 questions or difficult questions, and they were redirected  
13 through sites - the actual site or the proper extracts in their  
14 questioning.

15 The counsel also added that Khieu Samphan did not participate in  
16 that meeting to decide on the evacuation as Nuon Chea said. Allow  
17 me to remind the Chamber that Nuon Chea is one of the co-accused.  
18 So please, use your common sense whether this Accused testimony  
19 is credible.

20 [10.00.34]

21 On the reason of evacuation of people, as they were - they raised  
22 the issue of American bombardment, Ponchaud said people were  
23 scared, and the Khmer Rouge soldiers were also affected by the  
24 bombardment. And the Khmer Rouge said they believe there would be  
25 imminent bombardment, but Ponchaud's actual transcript on page 15

1 - that is, on the 10th of  
2 April 2013, he stated that: "I do not believe that American would  
3 drop bomb, but some people may believe because during the last  
4 two years, American dropped some bombs. But myself, I don't  
5 believe it; neither the Khmer Rouge."

6 And that is Ponchaud's testimony, which were left out by the  
7 defence counsel.

8 Ponchaud also added on page 13 of the transcripts that:

9 "In addition to the American bombardments or the cleaning of the  
10 city, the purpose to the Khmer Rouge was that, the Khmer Rouge  
11 cadres told me if the people in the cities go to the countryside  
12 to harvest - to plant the rice, they - then they will learn to  
13 know the value - the real value of everything."

14 [10.01.52]

15 He also added that, on page 19 in the Khmer language:

16 "The Angkar was skilful in lying to the people. They used the  
17 pretext for people to return to Phnom Penh and later they were  
18 executed. They asked their names to be registered on the  
19 blackboard and Angkar would give them their previous position.  
20 That was a lie - a lie to kill."

21 Once again, Your Honour, civil parties would like to urge that  
22 because of those lies, they were forced to leave their peaceful  
23 homes, to wander into miseries as Your Honours have heard.  
24 Regarding the lack of food during the evacuation, the counsel  
25 said it's because of the food shortage that led to the

1 evacuation. However, after the entire regime, food shortage was  
2 still an issue.

3 And another question asked by the victims and ordinary people  
4 that if they had the sufficient reason for food shortage, why  
5 they needed to lie to the people of the American bombardment.  
6 They could tell the people the truth, because of the food  
7 shortage that people were evacuated and that they should be  
8 returned to Phnom Penh to act on their resettlement, but that was  
9 not the case.

10 [10.03.21]

11 Regarding the congratulatory speech by Khieu Samphan for the 17  
12 April victory, the – Counsel Anta Guissé said Khieu Samphan made  
13 a speech to congratulate the victory of the Khmer Rouge and that  
14 was not illegal, but he congratulated because his political  
15 conception became realized.

16 I'd like to invite the Chamber to actually read the arguments  
17 concerning the role and the duty of Khieu Samphan as submitted by  
18 the counsel of Khieu Samphan. Kong Sam Onn said: "He forced  
19 himself to join the Khmer Rouge movement."

20 The question can be asked by Your Honours that, if Khieu Samphan  
21 did not volunteer to join the movement, why he had to  
22 congratulate the victory. Was it not because of his political  
23 idea realized? His idea is one and the same of the ideas by the  
24 Khmer Rouge leaders as he was one of them.

25 [10.04.55]

1 Another point argued by Khieu Samphan's defence is that when  
2 people were evacuated from Phnom Penh that they would only need a  
3 few weeks. And why did they need four months for the second phase  
4 evacuation - that is, from '75 to early '76? And my argument is  
5 that Khieu Samphan's defence forget one thing when they review  
6 the evidence: there will be testimonies by both the witnesses,  
7 the civil parties and the contemporaneous document of the Khmer  
8 Rouge that evacuation was cumulative and there was no set ending  
9 to each phase of the evacuation.

10 Many of the civil party testimonies confirmed that when he was  
11 asked to settle into one location, a few months later, he was  
12 move again. So there is no real point of raising this set  
13 evacuation time by the counsel.

14 They raised that the evacuees were happy as they returned from  
15 Phnom Penh to their native villages. Po Dina testified in -  
16 before your Chamber that the person returned from Battambang to  
17 Phnom Penh and later on, he was evacuated to Battambang, but was  
18 not allowed to go to the same native village. "After one month,  
19 my name was put on the list and amongst - and with other  
20 families, we were asked to put on to a motor boat to another  
21 location."

22 [10.06.43]

23 And to conclude my rebuttal statement to Your Honours, I would  
24 like to remind the accused Khieu Samphan that humanity is one of  
25 main factor that all leaders should consider as a priority; a

1 priority in leading the nation and the people. Here I stand to  
2 speak about humanity, not about your psychology or the ideology.  
3 Humanity and people should be taken care of by the leader and the  
4 government; they are not subject of a war, and you had to  
5 consider the sacrifice that they-- they make during your  
6 leadership.

7 You said that you always loved the country and the people and you  
8 made that statement clear before this Chamber, before the  
9 victims, and that you had to be responsible for what happened  
10 under your leadership; that this country became a killing field  
11 and it left a very dark chapter in the history for the next  
12 generations of the Cambodian people.

13 [10.08.04]

14 And I believe your ideas, your patriotism, might prevent you from  
15 being the popular figurehead of that regime, and of course, it  
16 cannot be - and it can be said for this generation or the next  
17 generation. Yet you gradually bowed your head to acknowledge what  
18 happened. You may be pardoned and forgiven by millions of victims  
19 under your regime of 3 years, 8 months and 20 days. And finally,  
20 the civil parties believe that all the questions that they have  
21 concealed or they have asked themselves or amongst each other is  
22 why - why such acts were committed, and that was raised during  
23 the first day of the closing statement by the Lead Co-Lawyer.  
24 The victims believe that, after this historical trial, all these  
25 questions can be answered and they will get the answers, and that

38

1 is the importance of their participation as a party to this  
2 criminal proceeding in the names of victims to these grievous  
3 crimes; that is the crimes against humanity.

4 I'm grateful, Your Honour.

5 MR PRESIDENT:

6 Thank you.

7 The Chamber would like now to give the floor to the Prosecution,  
8 so that they can make their rebuttal statement. You may proceed.

9 [10.09.58]

10 MR. KOUMJIAN:

11 Good morning Mr. President, Your Honours.

12 This year, on the 29th of May, in this courtroom, Civil Party Huo  
13 Chantha appeared before Your Honours and told the Court about  
14 losing 22 members of her family during the regime of Democratic  
15 Kampuchea and how those events had affected the rest of her life.

16 And she told you - and I quote:

17 "Today I am so excited that I am given the opportunity by this  
18 International Court, who crossed the oceans in order to come here  
19 to find justice for them and for the Cambodian people. This is  
20 the day I have been waiting for more than 30 years."

21 And she added to Your Honours: "I would like to make a request,  
22 which is the International Court to judge fairly and justly, in  
23 proportion to the gravity of the crimes."

24 [10.11.09]

25 Mr. President, Your Honours, that is all we ask on behalf of the



1 Co-Prosecutors: that you judge this case fairly and justly, in  
2 proportion to the gravity. If the evidence did not prove the  
3 Accused's guilt beyond a reasonable doubt, it is your duty to  
4 acquit. But we have shown you that the evidence in this case is  
5 clear and convincing and the evidence of the crimes and the  
6 gravity of the crimes prove the Accused guilt beyond a reasonable  
7 doubt and justify the sentence that the Co-Prosecutor Chea Leang  
8 asked you for last week: a sentence of life in prison.  
9 Your Honours, it's a privilege to appear in this Court in these  
10 historic proceedings.  
11 My name is Nicholas Koumjian. I will address you briefly, mainly  
12 regarding the legal requirements of joint criminal enterprise.  
13 Then my colleague Keith Raynor will address you on issues  
14 regarding the specific crimes that we are dealing with in Case  
15 002/01, my colleague Dale Lysak will address specifically issues  
16 related to the responsibility of Nuon Chea, and Tarik Abdulhak  
17 will address issues related to the liability of Khieu Samphan.  
18 [10.12.47]  
19 Over the four previous days of Court hearings, we heard  
20 submissions from very talented, experienced, well-staffed defence  
21 teams vigorously defending their clients. But what they told you  
22 is that this entire trial is a propaganda exercise on behalf of  
23 the backers of the Court and is - is and never was intended to  
24 prove the truth of the charges - that it's just propaganda. Their  
25 very arguments disprove that allegation.

40

1 Your Honours allowed them for four days to put forth all of these  
2 allegations and all of these arguments before galleries filled  
3 with hundreds of people, broadcast over the Internet to the  
4 world. So this is not a propaganda exercise. The Defence has been  
5 given every opportunity to make its allegations. This is a trial  
6 dealing with the truth. And in our submissions, those truths are  
7 that the Accused in this case are responsible for some of the  
8 gravest crimes committed in history.

9 [10.14.16]

10 All of these arguments were done by the Defence without any  
11 interference from the Court, from any donors of the Court, or  
12 from any other source, and they were free to say what they wished  
13 to say.

14 They've argued that the verdicts - convictions in this case are  
15 pre-determined. We agree that the evidence is so strong that the  
16 only just verdict in this case are convictions - just verdicts  
17 are convictions of the Accused, but that's based on the evidence.

18 If what the Defence alleges were true, where is Ieng Thirith? We  
19 started this trial with four Accused, but Your Honours ruled that  
20 because of her mental incompetence, Ieng Thirith could not get a  
21 fair trial. So what these proceedings have shown is that every  
22 effort is being made to assure the Accused get a fair trial.

23 [10.15.28]

24 The Defence would have you believe that Khieu Samphan and Nuon  
25 Chea are victims of an international conspiracy. This is both

1 illogical and delusional. There is no need by anyone, in the  
2 international community or in Cambodia, to discredit the Khmer  
3 Rouge. They are already discredited. They have no popular  
4 support, no international support today. They are politically and  
5 militarily inconsequential.

6 This case isn't about politics or propaganda. It's about  
7 addressing crimes - historic crimes of the greatest magnitude  
8 that happened a long time ago, but in this international - if  
9 international law is going to mean anything, crimes of this  
10 gravity cannot be ignored.

11 The Defence even attacked the prosecutors and Your Honours, the  
12 Judges, saying that we were incapable of understanding their  
13 clients because, among other reasons, we come from capitalist  
14 countries - some of us - and former colonial powers.

15 [10.16.54]

16 Who actually made these arguments on behalf of the Defence?  
17 Lawyers from the former colonial - Asian colonial powers of  
18 France and Australia. They make the argument that the prosecutors  
19 and the Judges must be following the orders of other states. But  
20 it's clear; I complement them. They did a tremendous job for  
21 their clients. They have very talented teams. They fought  
22 vigorously and they continue to fight vigorously on behalf of  
23 their clients. Clearly, although funded by the Court, clearly,  
24 although they are lawyers from France and from the Netherlands -  
25 and many of their colleagues, from the United States - taking

1 orders from no one, trying to uphold justice on behalf of their  
2 clients, this proves that there is no interference, that we are  
3 capable of doing our duty.

4 There is an arrogance, frankly, in that Defence argument, a  
5 feeling of moral superiority that, somehow, defence counsel are  
6 capable of fulfilling their roles in a system of justice, but  
7 prosecutors and judges are not.

8 [10.18.13]

9 And for those who may not have that experience, this is not the  
10 first time in an international tribunal that desperate defence  
11 teams have made that allegation. Just recently, in the appeal  
12 decision in the trial of the former President of Liberia, Charles  
13 Taylor, the Appeal Court addressed very similar allegations by  
14 the defence for Charles Taylor.

15 In paragraph 1 - excuse me - 717, the concurring opinion of  
16 Justices Winter and Fisher stated: "Furthermore, suggesting that  
17 the Judges of this Court would be open to the argument that we  
18 should change the law or fashion our decision in the interests of  
19 officials of states that provide support for this or any  
20 international criminal court is an affront to international  
21 criminal law and the judges who serve it. The Defence has  
22 interjected a political and highly inappropriate conceit into  
23 these proceedings which has no place in courts of law and which  
24 has found no place in the judgement of this court."

25 And we are confident that the same is true for Your Honours.

1 [10.19.39]

2 The Defence arguments, we also believe, have assisted in  
3 focussing on what are the real issues in this case. Because the  
4 Defence have made it clear, there are many concessions, we  
5 submit, in the Defence arguments.

6 Khieu Samphan was the public face of that regime. He doesn't - it  
7 seems to us, the defence team does not deny that. He was the  
8 representative, internationally and to the Cambodian people.  
9 Nuon Chea's team repeatedly acknowledge he was second in command  
10 of the CPK in the Democratic Republic of Kampuchea, those that  
11 ruled the country during that regime.

12 So, really, I believe, what we have or can agree on with the  
13 Defence is this trial is about the policies of the CPK, of  
14 Democratic Kampuchea, of the Khmer Rouge. Were those policies  
15 criminal or were they legitimate? Were they simply fulfilling  
16 their ideological beliefs or did their actions amount to crimes?  
17 In our view, the answer is absolutely clear. Throughout that  
18 regime, there was a campaign of crimes directed against the  
19 Cambodian people.

20 [10.21.09]

21 Ideology is not the issue in this case. The Accused are not being  
22 prosecuted because of their ideology. They could be - could have  
23 been espousing capitalism. They could have been espousing a  
24 fascist ideology. It doesn't matter if people are advocating a  
25 religion or theocracy or they claim that they are taking actions

1 to fight terrorism. When governments or those in power, in order  
2 to achieve whatever political objectives they have, subject  
3 citizens, civilians to crimes such as persecution, enslavement,  
4 torture, murder, that is a violation of international law. It is  
5 not their ideology that's at stake. It's not their ideology that  
6 we attempt to discredit. They discredited it themselves with the  
7 four years of crimes against the people of Kampuchea that that  
8 regime carried out.

9 [10.22.19]

10 And, Your Honour, we have, in our submissions, discussed various  
11 modes of responsibility that apply legally to the crimes that  
12 took place. I am going to concentrate on one, and that is joint  
13 criminal enterprise, because we believe it is probably the mode  
14 of responsibility that best describes the conduct. That  
15 ultimately will be up to Your Honours. The case law is clear that  
16 when multiple different modes are applicable, it's up to the  
17 Trial Chamber to choose the one that they believe best fits the  
18 facts of this case.

19 I'm not going to go through all of the basics of joint criminal  
20 enterprise because it was described absolutely accurately in your  
21 own Judgement in Case 001, in the case against Duch, in  
22 paragraphs 507 and 508, where you talked about the requirements,  
23 particularly of the first two categories of joint criminal  
24 enterprise, the basic category where all Accused agree on a crime  
25 - a plurality of persons agree on a crime and then the Accused

1 has made a significant contribution to the enterprise - and the  
2 second category, which is a systematic joint criminal enterprise  
3 where - characterized by an organized system of mistreatment.  
4 Your Honours have made clear, in those paragraphs, what also has  
5 been well established in international law.

6 [10.24.01]

7 The second category, systematic joint criminal enterprise, is  
8 simply a variant of the first. It's a variant that is usually  
9 used to describe concentration camps, vast prisons, systems of  
10 mistreatment. And it is extraordinary, we admit, certainly  
11 extraordinary to apply that principle to an entire country. We  
12 submit, though, that the facts of Democratic Kampuchea were  
13 extraordinary. Democratic Kampuchea is not similar to other  
14 historic events and was a system, nationwide, of mistreatment of  
15 the citizens of Cambodia.

16 The only difference that the cases articulate and Your Honours  
17 articulated between JCE 1 and 2 is how you articulate the intent.  
18 The intent in 1 is that each of the Accused has the intent to  
19 commit a crime under the jurisdiction of the Court. We all agree  
20 on that. And in JCE 2, it is that the Accused is aware of a  
21 system of mistreatment involving crimes under the jurisdiction of  
22 the Court and intends to further that system. In my view, those  
23 are actually identical because if you are aware of a system of  
24 mistreatment involving crimes, you intend to further that system  
25 and those crimes, you have the intent for those crimes.

1 [10.25.45]

2 One thing that's important to understand, well-established in  
3 international law, is that the ultimate objective or the stated  
4 objective of the members of the joint criminal enterprise may  
5 itself be non-criminal if the means that they contemplate to use  
6 to achieve that result are themselves criminal. And this is  
7 applicable to this case, where the Closing Order articulates a  
8 joint criminal enterprise as, I believe, seeking a rapid  
9 socialist revolution and to protect themselves from perceived  
10 enemies.

11 That, in itself, as the Closing Order acknowledges, is not  
12 criminal, but the Closing Order makes it clear that the Accused  
13 intended all of the crimes charged as a means to achieve that,  
14 and that's from the Closing Order. The specific paragraphs  
15 showing that the Accused are charged with intending all of the  
16 crimes are paragraphs 1524, 1533, 1537.

17 [10.27.01]

18 This issue came up again in a decision in the Charles Taylor  
19 Case. There was a decision of the Appeal Chamber from the 1st of  
20 May 2009, where the Appeal Chamber reaffirmed "that the common  
21 purpose comprises both the objective of the JCE and the means  
22 contemplated to achieve that objective."

23 In Taylor, the objective was charged as controlling the people  
24 and resources - excuse me, the people and territory of Sierra  
25 Leone and in order to exploit the resources, not itself a



1 violation of international law, but the indictment made clear  
2 that was to be achieved by means of terrorizing the civilian  
3 population in order to control the means and territory. So the  
4 Appeal Chamber found the indictment proper because the means that  
5 were contemplated to achieve the JCE were criminal.  
6 Similarly, in the Martić Case from the ICTY, the indictment had  
7 charged an objective of uniting ethnically similar areas, and the  
8 Appeal Judgement, paragraph 123, stated that the objective of  
9 uniting these areas was not itself a criminal purpose, but "where  
10 the creation of such territories is intended to be implemented  
11 through the commission of crimes within the statute, this may be  
12 sufficient to amount to a common criminal purpose."  
13 [10.28.44]  
14 And one thing important to keep in mind: "intent" is not the same  
15 as "motive". It is not necessary to show a person intended a  
16 crime to show that that was the specific objective that they  
17 sought, so long as it is clear that they were aware that the  
18 consequence of their action would, in all likelihood – this is  
19 articulated in different ways and different systems – in the  
20 natural course of events, would achieve that result. This is how  
21 Your Honours described that intent in Case 001, in your  
22 Judgement, in paragraph 481: "The Accused must have acted with  
23 the intent to commit the crime or with an awareness of the  
24 substantial likelihood that the crime would occur as a  
25 consequence of his or her conduct."

1 The Lubanga Judgement – the International Criminal Court dealing  
2 with a very similar mode of responsibility that they call their  
3 co-perpetration – said in paragraphs 986 and 987 that the  
4 elements were established if "implementation embodies a  
5 sufficient risk that in the ordinary course of events a crime  
6 will be committed."

7 [10.30.10]

8 And the Appeal – the Trial Chamber in Lubanga found that Article  
9 30 of the ICC Statute, which deals with intent, is satisfied if  
10 "co-perpetrators are aware of the risk that the consequence,  
11 perspectively, will occur."

12 And this is extremely relevant to this case and some of the  
13 Defence arguments because, Your Honours, there can be no doubt,  
14 in that force transfer from Phnom Penh in April of 1975, many  
15 people were dying of starvation, of dehydration, of lack of  
16 medical care, people whose, undoubtedly, names Khieu Samphan,  
17 Nuon Chea do not know, people whom they never met. And it's not  
18 necessary for us to show that they intended that specific death.  
19 What's necessary to show is simply that they were aware that the  
20 consequence of their action – in this case, expelling millions of  
21 people with no notice, in April, from Phnom Penh – would result  
22 in these deaths, would result in killings and other crimes that  
23 occurred in the course of these transfers.  
24 Further, Your Honours, intent may be inferred. That is clear from  
25 the case law. It can be inferred in many ways.

1 [10.31.52]

2 In Krajisnik, at paragraph 890, the Trial Chamber in the Trial  
3 Judgement said that "the information the Accused received during  
4 this period is an important element for the determination of his  
5 responsibility because knowledge, combined with continuing  
6 participation, can be conclusive as to a person's intent".

7 And this is exactly what the evidence shows with Nuon Chea and  
8 Khieu Samphan, who continued as second in command and as the  
9 public face, the representative of the Khmer Rouge. Clearly with  
10 information, knowing about the ongoing crimes and terror, they  
11 continued to participate, demonstrating without doubt this was  
12 their intent to further these crimes.

13 In Kvocka Appeal Judgement, paragraph 243, the ICTY Appeal  
14 Chamber said an intent to further the efforts of the joint  
15 criminal enterprise "may also be inferred from knowledge of the  
16 crimes being perpetrated in the camp and continued participation  
17 in the functioning of the camp."

18 [10.33.15]

19 So we see when the crimes are obvious, when the crimes are  
20 ongoing, an accused, particularly one in such high positions of  
21 responsibility, continues to participate in those efforts - in  
22 the system of mistreatment; that itself is proof of their intent,  
23 the necessary intent to convict them for those crimes.

24 Your Honour, this could be a convenient point to break if you -  
25 Mr. President, if you would like, or I could continue.

50

1 MR. PRESIDENT:

2 Thank you, Prosecutor.

3 The time is appropriate for a short break. We will take a break  
4 now and return at 10 to 11.00.

5 (Court recesses from 1034H to 1054H)

6 MR. PRESIDENT:

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

8 And, once again, the floor is given to the Prosecution to  
9 continue their rebuttal statement. You may proceed.

10 MR. KOUMJIAN:

11 Thank you, Mr. President.

12 When I finished, I had mentioned that intent can be proven by  
13 showing knowledge of ongoing crimes or a system of mistreatment  
14 and continued participation by the Accused. But in this case we  
15 have – in addition to that, we have evidence of positive acts in  
16 which these two Accused participated.

17 Two examples come to my mind, which I think were very important  
18 in the history of what happened and in the suffering that  
19 occurred throughout the country for four years.

20 [10.56.11]

21 The first was the very public threat which was – the Accused  
22 participated in – decided on and participated in, to kill the  
23 so-called "seven traitors". And we know that this was very well  
24 publicized and broadcast and we know it was carried out to the  
25 extent that these individuals could be located and Long Boret and

51

1 Prince Sirik Matak were killed after the fall of Phnom Penh and  
2 that other high ranking officials from the Lon Nol regime were  
3 called to the Ministry of Information and disappeared. This  
4 killing of these high officials set an example, a very important  
5 example to the cadres, to the troops, many of them young, many of  
6 them just teenagers around Cambodia, in Phnom Penh and throughout  
7 the country, an example that they soon would follow.

8 And, second, the event of the forcible transfer of Phnom Penh's  
9 population, the forcible expulsion of the entire population of a  
10 city of over 2 million people, an act of such ruthless inhumanity  
11 that really is without precedent. People who had lived their  
12 entire lives in Phnom Penh were forced to leave their homes with  
13 little or no notice, going to unknown destinations, often  
14 spending weeks on the road in April, in the sun, without  
15 provisions. This was an act which could only show to the cadres -  
16 to these young soldiers - the complete indifference, the  
17 antipathy, the hatred of the regime towards the people of the  
18 cities, the people of Phnom Penh - these people that were under  
19 suspicion of being potential enemies of the state.

20 [10.58.27]

21 My colleagues from the civil parties touched on this transfer,  
22 but we know children were forced into this inhumane transfer,  
23 pregnant women who were about to give birth were thrown out of  
24 hospitals, the sick, including hospital patients, were forced to  
25 immediately leave, and the elderly, the oldest individuals -

1   there were no exceptions. Can you imagine elderly persons such as  
2   Mr. Khieu Samphan and Nuon Chea, today, being expelled from a  
3   city, put on a road for weeks to walk and provide for themselves?  
4   That would be an act of such obvious and clear inhumanity.

5   The message to the cadres, to the soldiers of the Khmer Rouge was  
6   absolutely clear that these people, these victims – their rights  
7   didn't matter. Only the regime, Angkar, the power, maintaining  
8   their power and their ideology, that is what mattered; the  
9   individuals would be sacrificed.

10   [10.59.36]

11   That message was heard by these cadres. We saw photographs of  
12   some of the troops that entered into Phnom Penh, and you could  
13   see and many of them were teenagers. They clearly were people,  
14   boys from rural villages, many uneducated, and they followed the  
15   example that was set.

16   I have been told that there is a saying in Khmer, "the back foot  
17   follows the front foot", which I understand to mean, the children  
18   follow their parents, that subordinates follow their superiors.  
19   And this is exactly what happened in the case of the Khmer Rouge.  
20   The front foot was the leadership, the very top leadership,  
21   including Nuon Chea and Khieu Samphan, who set this example, made  
22   it absolutely clear how the people should be treated: no  
23   exceptions, no humanity; throw everyone out of the city  
24   immediately, regardless of their situation, regardless of whether  
25   it was obvious their lives were at risk, regardless of whether

1   you knew they were going to die; throw them out of the city. It's  
2   the law of Angkar; it's the rule - decision of Angkar.

3   [11.01.04]

4   And what does the Nuon Chea defence say about that? "Well, Nuon  
5   Chea wasn't head of the Red Cross, so he doesn't have to worry  
6   about the inhumanity. He doesn't have to worry about humanitarian  
7   concerns." He admits he's responsible for this transfer, but they  
8   argue he doesn't have to worry about it because he wasn't head of  
9   the Red Cross, so all those deaths and suffering were not his  
10  concern.

11  Fortunately, international law does not so hold.

12  Article 49 of the Fourth Geneva Convention provides that even in  
13  situations where evacuations of an area are permitted because the  
14  security of the population is at risk for imperative military  
15  reasons, the people must be transferred back to their homes as  
16  soon as hostilities in the area has ceased. Phnom Penh, 17 April,  
17  basically, hostilities had ceased.

18  [11.02.03]

19  And, further, it provides in the third paragraph that it's the  
20  obligation - that you have to ensure - the leaders have to ensure  
21  to the greatest practical extent that - excuse me - that proper  
22  accommodation is provided to receive the protected persons, that  
23  the removals are effected in satisfactory conditions of hygiene,  
24  health, safety, and nutrition, and that members of the same  
25  family are not separated. None of those - none of those concerns

1 were addressed by Nuon Chea, Khieu Samphan, and the leaders of  
2 the Democratic Kampuchea.

3 This principle was also recognized in a case at the Special  
4 Panels for Serious Crimes, in the Judgement on Joao Sarmiento on  
5 12 August 2003, paragraph 99. The Court held:

6 "If civilians have to be moved for either of these two reasons -  
7 safety or military imperatives - their evacuations are to be  
8 under protected, hygienic, and humane conditions and as  
9 short-lived as possible."

10 [11.03.08]

11 None of that took place in the evacuations of Phnom Penh, the  
12 cities on the 17th of April or in the second forced transfer.  
13 And these policies set an absolutely clear message to the cadres,  
14 those overseeing the populations in the cooperatives, in the  
15 security centres throughout the country: that individuals did not  
16 matter, that they had no rights, that their lives could be put at  
17 risk, and that this is how the leadership intended to treat the  
18 population of Cambodia.

19 One thing that's important to keep in mind in discussing joint  
20 criminal enterprise that distinguishes it from all other of the  
21 modes of participation under international criminal law is that  
22 the contribution of the Accused - which, in joint criminal  
23 enterprise need only be significant; the law says it doesn't have  
24 to be substantial, such as in aiding and abetting and in other  
25 forms of responsibility. But my main point here is, the



1 contribution doesn't even have to be to the specific crime; it  
2 has to be to the enterprise. So, as long as the Accused has the  
3 intent, shares the intent of the joint criminal enterprise that  
4 crimes be committed, any significant contribution to the  
5 enterprise will make them responsible for all of the crimes that  
6 fall within that joint criminal enterprise, even if they didn't  
7 make a specific contribution to that individual crime.

8 [11.05.08]

9 Specifically, that would mean, for example, under joint criminal  
10 enterprise, an accused can make a - where there's an agreement to  
11 forcibly transfer a population and kill people, the Accused can  
12 make a contribution to the forcible transfer, perhaps providing  
13 trucks, without actually making a contribution to the killing,  
14 but still be held responsible for the killing because it was  
15 within the joint criminal enterprise.

16 An example of that principle is found in the Stakic Appeal  
17 Judgement, paragraph 64, where the Court held "this participation  
18 need not involve the commission of a specific crime under one of  
19 the provisions, but may take the form of assistance in or  
20 contribution to the execution of the criminal purpose".

21 But, in fact, we have argued in our submissions, both orally and  
22 in our written submissions, that these Accused did make  
23 contributions to all of the crimes that are the specific subject  
24 of Case 002/01. I'm not going to cover all of those - my  
25 colleagues may touch on some of those - but I just want to

1 briefly mention a few facts.

2 [11.06.30]

3 It's apparent the Defence in this case is that one Accused says  
4 he's too intellectual to have contributed to the crimes, and the  
5 other Accused says: "I'm not intellectual enough to contribute to  
6 the crimes."

7 In fact, the level of intellect does not preclude, one way or the  
8 other, a person contributing to crimes.

9 The Defence arguments that I listened to over the last four days  
10 of Court hearings, I found to be full of admissions and  
11 acknowledgements of the contribution of Khieu Samphan and Nuon  
12 Chea to this criminal enterprise. The Defence's own arguments  
13 show the unique and substantial role that each of these Accused  
14 played in the enterprise.

15 Nuon Chea, in the – on the 22nd of October, around 9.30 in the  
16 morning; his team acknowledged: he concedes he was the Deputy  
17 Secretary of the DPK; he concedes that he agreed with and  
18 participated in the expulsion of the population of Phnom Penh; he  
19 conceded, he agreed with the decision on the execution of the  
20 super traitors and his knowledge of the decision to execute So  
21 Phim.

22 [11.07.55]

23 And they said later in the afternoon, around 1.30, he  
24 disseminated political and strategic lines to cadres throughout  
25 the Party; he also participated over time in the development of

1 CPK policy as a senior leader of the Party. Indeed, on several  
2 occasions, the defence of Nuon Chea conceded he was "second in  
3 command". His contributions to this criminal enterprise are  
4 clear.

5 Khieu Samphan's contributions are at least equally clear and, I  
6 believe, even more unique.

7 His counsel made a very good and detailed argument regarding the  
8 reputation of Khieu Sampan before the time of Democratic  
9 Kampuchea, and, Your Honours, we don't dispute most - or very,  
10 very little of what counsel said. There is - without doubt it  
11 was true. Khieu Samphan was a well-known figure. He had  
12 popularity; he had a clean image; he was believed to be against  
13 cooperation - excuse me, corruption - against corruption. And  
14 that is exactly - and he had worked with the King. He had been a  
15 minister under Sihanouk - King Sihanouk.

16 [11.09.26]

17 So this is exactly the unique contribution that Khieu Samphan  
18 brought to the Khmer Rouge and Democratic Kampuchea, which they  
19 took great advantage of, and the role that he played with great  
20 enthusiasm, as the public face of the Khmer Rouge, the smiling  
21 face, the man with the image, well known before for being clean,  
22 who now stood and smiled and represented this Revolution while  
23 all the time, behind him, the killing, the torture, the  
24 starvation was going on. But he represented to both the Cambodian  
25 people, to the international community, to what the Defence

1 called the friendly countries towards the Democratic Kampuchea  
2 regime – even to the King he represented, "Oh, this is Khieu  
3 Samphan; we all know Khieu Samphan. He's a gentleman with a clean  
4 image."

5 It's true; that was his reputation. But the exact opposite was  
6 what was happening behind him. Behind him was S-21, behind him  
7 were the cooperatives where the people were being enslaved,  
8 behind him were this death and destruction of the society of  
9 Cambodia.

10 [11.10.43]

11 You Honour, I've mentioned that the Closing Order makes clear,  
12 and we also agree, that all of the crimes charged in the Closing  
13 Order, in this case, were intended by the Accused and all were  
14 within the joint criminal enterprise. But we have stressed  
15 "enslavement", and this is a word that the Defence spent some  
16 time – both teams – mocking, defence lawyers who, like me, have  
17 never experienced the kind of regime that existed in Democratic  
18 Kampuchea, never experienced what these people experienced, who  
19 understand what "enslavement" meant.

20 Legally, in international law – excuse me – enslavement has a  
21 precise meaning. The ICC elements of crimes provides that when  
22 the perpetrator exercises the powers attaching to the rights of  
23 ownership over a human being or imposes similar deprivations of  
24 liberty, including exacting force labour or otherwise reducing a  
25 person to servile status, this amounts to enslavement.

1 And my colleague, Ms. Civil Parties, Ms. Nguyen, very eloquently,  
2 better than I could, described the deprivation of the most  
3 fundamental rights of the people of Kampuchea during the time of  
4 the Khmer Rouge regime. They couldn't even eat with their  
5 families at times. Every aspect of where they lived, where they  
6 worked was controlled, down to whether they would live or die.  
7 That was a right that Angkar could take away at any time and  
8 without any legal process or any reason.

9 [11.12.56]

10 Your Honours, the Defence has tried to say that this enslavement  
11 was an invention of experts for the Prosecution, but that's not  
12 true. Describing the condition of slavery is something that the  
13 victims did.

14 In E3/3346, Haing Ngor – it's a book, but it quotes Haing Ngor;  
15 he, of course, is now deceased. It describes how he heard a nurse  
16 ask someone if they had "fed the slave – the war slaves yet". And  
17 Haing Ngor said: "It was a chance remark, but it stuck in my ears  
18 because it explained the Khmer Rouge better than anything else.  
19 The Khmer Rouge had beaten us in the civil war; we were their war  
20 slaves."

21 In E3/4590, it states that one officer's wife had to work for the  
22 wives of some Khmer Rouge and that they called her "slave".

23 [11.14.10]

24 In E3/4202, "Behind the Killing Fields", it talks about Thet  
25 Sambath and it said: "Sambath did not understand who the Khmer

1 Rouge were when the group came to power. He just knew that people  
2 were starving and forced to work like slaves."

3 In the civil party application E3/5736, Chheng Eng Ly said that  
4 she was expelled and forced to go to a destination 60 kilometres  
5 outside Phnom Penh, which the Khmer Rouge had randomly chosen.

6 And then she said she had no energy left because of "things like  
7 the more than 16 hours a day of slave labour imposed by the Khmer  
8 Rouge". She talked about hunger, parasites, and health problems.  
9 And she said finally: "It is therefore easy to see why life under  
10 these conditions was just outright slavery."

11 Civil Party E3/4677 said: "When I think about the Khmer Rouge  
12 era, it reminds me of being forced to work like a slave both day  
13 and night. There were no freedoms at all, and they killed as they  
14 pleased."

15 And in the application of Civil Party E3/5108, he said: "Some of  
16 the Khmer Rouge former soldiers were settled by Angkar, and now  
17 we became their slave workers."

18 [11.16.02]

19 E3/5663 said: "I grew rice and did what they had me do -  
20 generally speaking, like their slave."

21 This treating - this treatment of human beings as simple assets  
22 to be weighed whether they're benefits or debits and then to be  
23 done away with runs through much of the testimony and the  
24 evidence in this case.

25 Duch, in his statement, which I believe it should be quoted -

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1 E/459, 00204349 – he said at one point: "Son Sen, and perhaps  
2 other Khmer Rouge leaders as well, used a phrase, 'No gain in  
3 keeping; no loss in weeding out'."

4 The same phrase appears in E3/2812, a book by Henri Locard about  
5 sayings during the Pol Pot era, and he said about that phrase:  
6 "This slogan is one of the most well-known countrywide during the  
7 days of the Khmer Rouge rule, and it really does summarize the  
8 essence of the enslavement and the policies and the joint  
9 criminal enterprise that existed."

10 [11.17.36]

11 The Khmer Rouge had an ideology; they wanted a great Cambodia and  
12 they wanted to preserve of their Revolution and their own  
13 positions and privilege, but their idea of helping Cambodia did  
14 not include helping Cambodians. Cambodians were merely pawns.  
15 There was a gain in keeping but there's no loss in weeding out.  
16 They were treated as something that was owned. And that is why we  
17 believe that all of the crimes in the Closing Order, in the  
18 indictment – from the persecutions, from the forced marriage,  
19 from the torture, from the killing – all of these are really part  
20 and parcel of an overall attitude that, in our view, is best  
21 described as "enslavement". The people of Cambodia, the Cambodian  
22 people outside of the top leadership maintaining their own  
23 privileges were simply assets who had no rights other than those  
24 that they chose to give, who could live or die according to the  
25 wishes of the leadership of the Khmer Rouge.

1 E3/4838 - and this is the last testimony or civil party  
2 application I will address - said - she said that she was living  
3 in Takeo. She said:  
4 "I worked there like a slave. We never had enough food, the Khmer  
5 Rouge ordered me to start work just two months after I had just  
6 delivered my child. They told me if I did not work and just ate  
7 food produced by working people, I would be removed."

8 [11.19.26]

9 And we all know what the Khmer Rouge meant by "being removed".  
10 Even Khieu Samphan himself acknowledged that people on the  
11 cooperatives were not free. He himself acknowledged the basic  
12 condition of slavery.  
13 Your Honour, I want to end by talking about a couple of other  
14 statements. Generally, a person's intent in most criminal cases  
15 is shown by their actions, by what was going on, their knowledge,  
16 but sometimes, even when they choose their words very carefully,  
17 you can get some insight into their real intent.  
18 Nuon Chea, we know, had these long interviews with Thet Sambath.  
19 In fact, he said at one point - he's told Thet Sambath that he  
20 had to weigh his words very carefully because "my future depends  
21 on what is recorded here".  
22 But at one point he was asked about these killings and he said -  
23 quote: "I have feelings for both the nation and the individual  
24 but I clearly distinguish between them. If we must choose one or  
25 the other, I choose the nation."



1 And Nuon Chea then said: "The individual, I cast aside."

2 [11.20.50]

3 That is - exactly summarizes the policies of the Khmer Rouge. The  
4 individual - the individual is the Cambodian people. The  
5 individual, he cast aside; only the leadership of Angkar  
6 mattered.

7 Khieu Samphan - both of these men, by the way, are obviously  
8 highly intelligent; there's no question about that. I don't know  
9 what the Defence is trying to say that we've painted images of  
10 them or not that are not true. This is part of their legal and  
11 moral responsibility; these are highly intelligent people and  
12 very politically astute.

13 Khieu Samphan gave an interview to journalists who were asking  
14 him about S-21. And at one point they started pushing him about  
15 the killings at S-21 and the fact that even some of the killers  
16 were themselves children.

17 And finally the interviewer asked Khieu Samphan: "But what can  
18 make a 10-year old child kill other children?"

19 [11.21.55]

20 Khieu Samphan's answer: "Without Pol Pot, without the Khmer  
21 Rouge, Cambodia would have been in the hands of the Vietnamese."  
22 And then he added: "So they talk about the little S-21 here to  
23 make people forget."

24 The Defence will have a chance to reply to our arguments, and,  
25 Your Honours, I hope they will explain what, to me - and, I

1 think, to most of the people in the world – is inexplicable: How  
2 does killing Cambodian children save Cambodia from Vietnam? How  
3 do you justify the murder of children by saying that saves a  
4 country from Vietnam? And this kind of logic of the Defence, this  
5 very troubling logic, carried over even into the Defence  
6 arguments, the very articulate arguments of defence counsel–  
7 And defence counsel for Nuon Chea said at least twice – brought  
8 up the point. They said: "All of Pol Pot's paranoia came to pass.  
9 It came to pass exactly the way he feared it might."  
10 So, what is their point? The Khmer Rouge suspected everyone in  
11 Cambodia – intellectuals, city people, eventually even into their  
12 own ranks. Everyone fell under a suspicion of potential enemies.  
13 So what they did is they enslaved, they tortured, and they killed  
14 them. And the Defence answer is, "Well, see, they were  
15 overthrown. They were invaded and overthrown. So, therefore, they  
16 were right."  
17 [11.23.35]  
18 So, what is the logic of that? They should have killed more? If  
19 they had killed everyone, no one could have overthrown them? This  
20 is the kind of twisted logic that must be rejected in this case.  
21 The evidence in this case shows a common criminal enterprise, a  
22 joint criminal enterprise. All of the – of the crimes charged  
23 were included within that, and it's best described, in our view,  
24 as a system of mistreatment where the leadership treated the  
25 people of Cambodia as slaves.

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1 Thank you.

2 MR. PRESIDENT:

3 Thank you, Prosecutor.

4 Yes, you may proceed, the Deputy Co-Prosecutor.

5 [11.24.31]

6 MR. RAYNOR:

7 Mr. President, Your Honours, good morning.

8 I will be addressing you on the crimes and the policies. I may

9 not have time to cover everything I'm anticipating to cover, but

10 can I start, please, with some points of law.

11 I would like to start with this evidential distinction between

12 evidence you have heard in this case and assertions or

13 suggestions made by the Defence.

14 You are masters of the evidence. The evidence in the case is your

15 guide, and only the evidence matters. And why this is important

16 is because you have been bombarded with a raft of suggestion and

17 assertion in closing briefs, particularly by Nuon Chea. Let me

18 make it absolutely plain in our submission: what Nuon Chea's

19 counsel says his belief was is not evidence; what Nuon Chea says

20 was going through – his team say was going through his mind is

21 not evidence. It is assertion, it is suggestion. It is not

22 evidence, and you can disregard it from the outset.

23 [11.26.05]

24 I want to deal with some law on the first forced transfer. I hope

25 that your Senior Legal Officer will have already researched in

1 detail submissions put forward in filings in January this year,  
2 nine months ago, filings about the applicable law on forced  
3 transfer. I anticipate your Senior Legal Officer has already  
4 tasked others to research the submissions put forward, but I want  
5 to make it absolutely plain what our submission is: we submit  
6 that the Prosecution has proved the following seven features:  
7 First, that the forced transfer of Phnom Penh constituted or was  
8 part of a widespread and systematic attack against the civilian  
9 population and both Accused knew this;  
10 Secondly, that the victims were forced to leave places where they  
11 lawfully resided;  
12 Thirdly, that the victims endured great suffering or serious  
13 mental or physical suffering or injury;  
14 [11.27.30]  
15 Fourthly, that the forced transfer of Phnom Penh took place with  
16 threats, force, and coercion;  
17 Fifthly, that these Accused both intended that their victims  
18 would leave their homes - in other words, there was an intention  
19 to displace;  
20 Sixth, that both Accused participated in the forced transfer  
21 meetings before April 1975 and knew that the forced transfer of  
22 Phnom Penh was inevitably going to cause serious physical or  
23 mental suffering.  
24 Now those first six contentions, I hope, will not trouble you,  
25 the Judges, very much. The evidence is clear.

1 But I want to make submissions now about the seventh point: the  
2 Prosecution have proved that the forced transfer took place  
3 without grounds permitted under international law, such as the  
4 safety or security of the population or imperative military  
5 reasons.

6 Now, Mr. President and Your Honours, you have heard hours' worth  
7 of evidence about humanitarian crisis, food, bombing, and other  
8 such matters. Can I make our submission absolutely clear: these  
9 defence teams cannot, as a matter of law, rely on prohibited  
10 grounds.

11 [11.29.03]

12 Now, had you determined this as a matter of law before the  
13 closing speeches, then hours of submissions could not have been  
14 put forward. I make it plain, these Accused cannot rely on  
15 permitted grounds and the reason has already been expressed by my  
16 learned colleague, Mr. Koumjian, but I want to make our  
17 submission absolutely plain.

18 If, as an accused, you do not allow the target population in a  
19 forced transfer to return home, you cannot, as a matter of law,  
20 rely on permitted grounds. It's not available at law. These  
21 forced transfers were not humane and short lived, no attempts  
22 were ever made by the Khmer Rouge to return all the victims, and  
23 the Party Centre even announced that the steps that they had  
24 taken were permanent.

25 Now, all that the Defence have done so far is made some

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1 submissions in a filing in January, and I invite them to respond  
2 when they have their time; respond to this argument.

3 [11.30.26]

4 Now, even, Mr. President and Your Honours, if you were to take  
5 the wholly exceptional step going against decided international  
6 law that these Accused were somehow permitted to rely on  
7 permitted grounds, their defences would still fail, and they  
8 would fail for these reasons.

9 When dealing with forced transfer, you have to ask effectively  
10 three questions, and the first is this.

11 The first question, on an objective analysis of the facts as  
12 disclosed by the evidence: Did the situation in Phnom Penh on the  
13 17th of April, in fact, justify forced transfer on such a massive  
14 scale? The "objective" elements of the test, and my submission is  
15 absolutely plain: on an objective analysis, the Defence fails at  
16 this hurdle.

17 Secondly, you have to ask yourselves: Well, what evidence have we  
18 as the Judges heard to show that these Accused, on the 17th of  
19 April 1975, acted in an honest conviction that what they were  
20 doing by forcibly transferring millions of people was legally  
21 justifiable? Well, where's the evidence of what Nuon Chea  
22 believed?

23 [11.32.05]

24 There is none because he has refused to continue to testify on  
25 this point. He hasn't come before you, Mr. President and Your

1 Honours, to say what his honest beliefs were, and there's no  
2 other evidence on the case file being put forward sensibly to  
3 explain what his honest beliefs are. And what his lawyers say in  
4 a closing brief is not evidence, it is assertion; it's  
5 inadmissible. It's not evidence in the case.  
6 And then, when you look at this area of permitted grounds, you  
7 have to look at the nature and the scale of this forced transfer.  
8 It's of millions of people in the most inhumane conditions, at  
9 gunpoint, at short notice, without exception.  
10 So the Defence fails, firstly, because they're deprived of  
11 arguing permitted grounds. Secondly, it fails that, even if you  
12 thought they were on an objective analysis, the circumstances do  
13 not fit that exception. And, thirdly, you have no evidence  
14 whatsoever as to what their honest convictions were on the 17th  
15 of April 1975.  
16 [11.33.29]  
17 They, Mr. President and Your Honours, are claiming necessity as  
18 an afterthought, on the basis of hindsight, without citing any  
19 evidence. There was nothing humanitarian whatsoever about the  
20 first forced transfer. And their defence fails yet again because,  
21 if an accused person has significantly contributed to the  
22 condition or the conditions are a result of their activity, they  
23 can't rely on permitted grounds.  
24 And the best we get from Nuon Chea is this: "Well, it was my  
25 economic policy." This is the theory shared by the Khmer Rouge

1 apologists that all deaths are down to the monumentally  
2 misguided, incompetent plan of arrogant fools who were just too  
3 inept to get things right. That is not the reality. Some may wish  
4 it was to give them comfort to explain away deaths on such a  
5 monumental scale, but the evidence dictates otherwise. It was  
6 criminal, not humanitarian. The Accused always intended the crime  
7 of forced transfer. The Accused implemented the crime of forced  
8 transfer. The crime of forced transfer was the result. The  
9 intention and the outcome go hand in hand.

10 [11.35.17]

11 Why didn't Nuon Chea, if he's relying on this economic belief,  
12 come into the witness box or sit where he is, and give evidence  
13 about it, and be cross-examined by expert Prosecution lawyers?  
14 And then, "No, we won't testify about it; we'll just run this  
15 assertion in our closing brief, unsupported by any evidence  
16 whatsoever."

17 "But it was my economic policy."

18 They had the temerity to say that the policy program was not  
19 unusual or unreasonable, and certainly not unlawful. It was  
20 unlawful. The forced transfer was criminal. It was always going  
21 to be implemented through the crime of forced labour in inhumane  
22 conditions by people owned by Angkar.

23 [11.36.25]

24 "I'm sorry you've got to die; it's all economic. I'm sorry I'm  
25 executing you; it's all economic. For good measure, I need to



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1 persecute you; it's my economic programme. I'm going to strip you  
2 of all your rights, enslave you, and imprison you, tell you where  
3 to live and separate you from your family; it's all economic. I'm  
4 going to starve you and force you to work 15 hours a day; it's  
5 all economic. It's for the good of the nation."

6 How dare Nuon Chea assert and tell the victims of these deaths  
7 that this was for the good of the nation.

8 And then we come to what – what did these leaders ever advance as  
9 to the reasons for the forced transfer.

10 Pol Pot: "Smashing all sorts of enemy organizations."

11 Nuon Chea: "We smashed the plan, we evacuated the cities, the CIA  
12 and other agents left there for the countryside."

13 Khieu Samphan: "There was incitement by the CIA, more rebels,  
14 remnants of the Lon Nol Army."

15 [11.37.52]

16 And even Ieng Sary, when he's being asked about the reasons,  
17 talks disingenuously about having to transfer food – move people  
18 from the capital to the food. And then even he with other  
19 journalists, no mention of this grand economic policy. 14th of  
20 June 1978, he tells journalists malaria was the reason for the  
21 evacuation of Phnom Penh. And on the 29th of July in the same  
22 year: "It was necessary because otherwise we would have a civil  
23 war."

24 Where is all the talk of the economic policy by these fellow  
25 senior leaders?

1 And then Nuon Chea said, "Well, hang on, what about the dams in  
2 India? Because - I mean, in the 1970s, the World Bank was doing  
3 some work with dam construction in India."  
4 Mr. President, Your Honours, the World Bank did not fund forced  
5 transfer at gun point, the shooting of those who refused to move,  
6 the use of a coordinated military force, the imposition of  
7 inhumane conditions, executions, enslavement, and forced labour  
8 in providing financial assistance to dams in India. There was no  
9 compensation here for the victims of the forced transfer in Phnom  
10 Penh, and there was no attempt, obviously, whatsoever, at  
11 humanitarian resettlement.  
12 [11.39.32]  
13 I want to deal very quickly with humanitarian issues, food,  
14 bombing, and the like.  
15 You know from our closing brief that our legal submission is that  
16 the CPK leadership deliberately caused or significantly  
17 contributed to the humanitarian crisis. That was by placing the  
18 city under siege, forcing people to flee, blocking the delivery  
19 of food, shelling the city indiscriminately. You know the  
20 evidence of indiscriminate shelling for months, the destroying of  
21 delivery ships, the shelling of the airport, the rejection of all  
22 offers of international aid.  
23 On the bombing, Khieu Samphan still wants to rely on this. But  
24 can I pause on the bombing for one moment, because Nuon Chea's  
25 defence have turned turtle as we say on this, first of all having

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1 a case strategy where bombing was relevant and pursued in lines  
2 of questioning. But then the true nature comes out, again in  
3 these closing briefs: "We were going to evacuate anyway. In other  
4 words, we don't care about any other factors, we don't care about  
5 the humanitarian situation, or the food, or the bombing; we were  
6 going to evacuate anyway."

7 This causes real problems for the Khieu Samphan team because they  
8 still want to argue that these are relevant.

9 [11.41.12]

10 Mr. President, Your Honours, the evidence shows that as a matter  
11 of fact there was no such risk of bombing. And in any event,  
12 there is no evidence that an honest conviction was held by Khieu  
13 Samphan or Nuon Chea that such bombing would in fact occur. As  
14 François Ponchaud said, even the Khmer Rouge did not believe  
15 there would be bombing. The bombing had ceased on the 15th of  
16 August 1973.

17 With the food situation, can I simply say this - direct evidence  
18 from witnesses.

19 François Ponchaud talked about there being two months reserves of  
20 rice because he and the agencies were concerned that the Khmer  
21 Rouge would cut off the Mekong. Why not use all the resources in  
22 the city? Why not gather up the existing supplies. Why not allow  
23 supplies to come in down the river? And how is it helping the  
24 country to reject all aid?

25 [11.42.20]

1 You'll have in mind Sidney Schanberg's testimony: that it was  
2 easier to feed a stable population than a moving one. This was  
3 not a humanitarian effort with food. Phnom Penh was still well  
4 served by river, road, and air. The food argument is, again,  
5 hypothesis after the event.

6 Mr. President, I don't propose to deal with military reasons or  
7 medical reasons; I refer you to our filing on the subject.

8 I want to move now to the second forced transfer.

9 You have our arguments that this was centrally devised, that it  
10 was supposed by the visit to the Northwest Zone by the Standing  
11 Committee, and everything has been set out in terms of this being  
12 a centrally devised policy. But I want to examine this from a  
13 slightly different angle.

14 The Defence seek to assert that this was the rogue activity of  
15 some zone commanders. And let's just dwell on this and see  
16 whether there's any sense whatsoever in this assertion, because  
17 what it relies on is that secretly, without the knowledge of the  
18 Party Centre, two or more zone commanders get together and decide  
19 that they are going to forcibly transfer hundreds of thousands of  
20 people up to the North and Northwest Zones without the Party  
21 Centre knowing anything about it, because this is a rogue  
22 organization.

23 [11.44.08]

24 It's a ludicrous assertion. It would have involved taking  
25 thousands of people through Phnom Penh, recruiting CPK cadres at

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1 Phnom Penh railway station to operate the railway trucks without  
2 the Centre's permission, and transfer all these people to the  
3 Northwest Zone without the Party Centre knowing. Your Honours,  
4 these transfers didn't all take place in the middle of the night,  
5 in the dark cloak of secrecy.

6 And then it's not even just the railways. I don't know if you  
7 remember the testimony of a witness, Thouch Phandarasar. She was  
8 the lady who said she'd been taken on a motor boat with hundreds  
9 of families towards Phnom Penh as part of the second forced  
10 transfer. Where did the motor boat stop? It stopped in the middle  
11 of Phnom Penh, outside the Royal Palace. It's not a very clever  
12 place to stop if you're trying to keep things secret from the  
13 Party Centre.

14 And then do you remember her evidence to this extent, that when  
15 this boat got to Phnom Penh, one of men on the boat, one of the  
16 transferees shouted, "Bravo! We're in Phnom Penh", right outside  
17 the Royal Palace, and Khmer Rouge soldiers shot him and threw him  
18 in the river.

19 [11.45.40]

20 So, we're doing this secret unauthorized transfer, and we'll take  
21 a boatload of hundreds of families right outside the Royal  
22 Palace, and we'll bring attention to ourselves by shooting  
23 somebody. It's a ridiculous assertion.

24 And it becomes more ridiculous when you look at the railways. You  
25 will recall that the Khmer Rouge had to train or used certain

1 railwaymen that had been used in Khmer Republic. But the second  
2 forced transfer, Your Honours, involved the extensive and  
3 repeated use of the railway system to transfer thousands of  
4 people to the North. It was a highly organized operation. It  
5 involved trained railway workers working under the control of  
6 responsible sector militia. It involved Khmer Rouge armed guards,  
7 a telecommunications network, and the use of vehicles for onward  
8 transfer.

9 [11.46.49]

10 You may recall the testimony of Sokh Chhin, one of the railway  
11 workers. And he said that in his sector this movement was  
12 coordinated by a sector military chief who reported directly to  
13 the Train Unit in Phnom Penh. And then, again, Sokh Chhin and  
14 other witnesses: that, as part of the second forced transfer,  
15 transferees had to provide their biographies. If this is a rogue  
16 operation why have we got all this central organization, contact  
17 with central people in Phnom Penh, a telecommunications network  
18 with Phnom Penh? It just goes again to underlie how thin this  
19 argument is that the second forced transfer was a rogue  
20 operation.

21 I want to move to Tuol Po Chrey.

22 And I want to say this immediately: the way the Defence have  
23 submitted their case on Tuol Po Chrey, you'd think that nobody in  
24 the history of criminal cases had ever been convicted of murder  
25 where there wasn't a witness to the murder. Mr. President, I've

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1     dealt with dozens of murder cases where there is no witness to  
2     the murder. It's a common feature of murder cases that there is  
3     no witness to the murder. And when there isn't, you have to look  
4     to the other evidence and assess it for its reliability.

5     [11.48.29]

6     Now, Tuol Po Chrey amount, in my submissions, to this: an order  
7     was given by the zone committee to kill Lon Nol soldiers and  
8     police – you've got a direct order; secondly, an order was given  
9     that the location of the killings was Tuol Po Chrey – an order,  
10    the victim, the location; and then you have a meeting, as you  
11    know, taking place in the provincial hall, attended by senior  
12    officers of the Khmer Rouge – you've got the attendees to the  
13    meeting; you then have many Khmer Republic officials, including  
14    officers, being transported by truck to that meeting, and the  
15    very same trucks taking them all the way to Tuol Po Chrey.  
16    And the Defence can try and discredit Lim Sat, but this is what  
17    his evidence amounted too. He saw with his own eyes 30 to 40  
18    military and civilian trucks taking Lon Nol soldiers to the  
19    meeting place at the provincial hall. He saw 15 of those trucks  
20    transporting Khmer Republic soldiers and officials to Tuol Po  
21    Chrey. He was informed via radio that the soldiers and police had  
22    been taken to Tuol Po Chrey and killed. He heard gunshots in the  
23    background, during the radio communication, with the CPK soldiers  
24    at Tuol Po Chrey, and then the trucks come back on the same road,  
25    and they're empty. And after some trucks had left, he is ordered

1 by radio to release more trucks to go to the killing site.

2 [11.50.42]

3 I just want to talk about the radio communication. He said:

4 "People at Tuol Po Chrey Fort communicated through radio  
5 communication to us, asking that more truckloads of soldiers and  
6 police had to be transported there. My commander was talking on  
7 the radio communication, and I heard this."

8 Mr. President, Your Honours, this is nothing unusual in a murder  
9 case. You are looking at the who were the victims, what was the  
10 order, where is the location for the killing, and what absolutely  
11 contemporaneous, reliable, credible, hearsay evidence do we have.  
12 It's over the radio; we've killed them at this site. It's over  
13 the radio, send more truck loads now. This is reliable hearsay,  
14 this is credible hearsay. If hearsay is good quality, you put it  
15 in your judicial backpack and you use it, especially if it's  
16 consistent, especially if it corroborates other evidence.

17 And then the Defence say, "Well, nobodies come forward to say  
18 particularly, by way of testimony, what happened with dead  
19 bodies."

20 [11.52.10]

21 TCW-644 went to the execution site the day after and saw bodies  
22 with gunshot wounds to the head and torso. The victims were tied  
23 together by rope, with their hands tied behind their back.

24 Ung Chhat: he was told by villagers - you'll remember this is the  
25 day - the day of the killings or the day after, perhaps. He is



1 told by villagers that the corpses were bound at the arms and  
2 tied in groups of 15 to 20.

3 And then you'll remember the cadre on the video: when they got  
4 off the trucks they were told their arms would be tied because  
5 they were meeting the Prince. And after being tied up, they were  
6 taken to the bank, to the pond, and killed.

7 The farmer, the old one on the video stating that he went the  
8 morning afterwards and he saw the bodies, describing them as  
9 stiff, with a sound of decomposition coming from them, "bubbling  
10 like molten tarmac."

11 [11.53.25]

12 Well, you're going to have to determine, Your Honours.

13 My submission to you is plain, on the testimony you heard - Lim  
14 Sat, Ung Chhat, Sum Alat - on that testimony, you can convict. In  
15 other words, you don't need to go any further. Convict because  
16 it's reliable evidence in its own right.

17 But we've still got this evidential conundrum to determine: What  
18 is the evidential status of the video? You've admitted the video,  
19 the videos on the case file. It hasn't been subject to  
20 cross-examination. It's still probative evidence. It's still  
21 evidence available to you. And to the extent that the evidence  
22 contained in that video is consistent and corroborates other  
23 evidence, it in itself is reliable evidence.

24 And I make no apology for this. The Defence have done a good job  
25 trying to deconstruct this evidence, but this evidence, Your

1 Honours, is enough to convict.

2 One point about inconsistencies. My learned friend, Mr. Vercken,  
3 thinks it's important that you didn't receive evidence of the  
4 model of the car that was used that turned up at the hall or the  
5 colour of the trucks that were used to take the victims to their  
6 deaths. That is not evidence that will trouble you. You'll look  
7 to the main evidence at Tuol Po Chrey, not evidence about trucks,  
8 or colours of cars, or exactly how many people were at a meeting.  
9 There were truck loads, and truck loads were killed.

10 [11.55.33]

11 I want to move on a little bit to the underlying policy, because  
12 you know our case is that Tuol Po Chrey is but one example of a  
13 whole policy. And I want to start with one piece of evidence, and  
14 it's the photograph taken by Al Rockoff at the Ministry of  
15 Information at 4 o'clock on the 17th of April 1975, the piece of  
16 evidence that neither of these defence teams have said anything  
17 about. Why? Because a picture never lies. That picture, in  
18 itself, is potent and compelling evidence of a policy – in  
19 itself, just that one photograph. The man in black, 35 years old,  
20 clearly a leader, dividing the groups into military, political,  
21 and ordinary civilians, the guns being trained on them.  
22 Schanberg. Not surprising Schanberg said this about the people in  
23 that photograph:  
24 "On the left-hand side of the photograph, in their civilian  
25 clothes and their ties, stood in front of the Khmer Rouge leader.

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1 They were clearly frightened, and I think most of them knew they  
2 were going to be killed."

3 Very strong evidence.

4 [11.57.10]

5 And then Schangberg's testimony proving the link between that man  
6 in black and the leadership. Do you remember Lon Nol's relation  
7 coming forward and saying, "Can I leave the country, please?" And  
8 one of the Khmer Rouge leaders says, "It will depend on the  
9 government; they make the regulations. Some of the top political  
10 and governmental leaders are not far from the city."

11 That, Mr. President, Your Honours, is evidence of policy. That is  
12 evidence of a centralized link between that man in black on the  
13 photograph and the leadership which he represented.

14 You then add to that the massive policy of killings of Khmer  
15 Rouge officials in and outside Phnom Penh. You add to that the  
16 list of the generals executed: Chhim Chuon, seen by Schanberg,  
17 executed, he's on the list; General Thach Sary, the one who went  
18 to the ministry - and we know this from his cousin - executed, on  
19 the list; General Am Rong executed, on the list.

20 And then another piece of evidence the Defence say nothing about:  
21 the link between Pin and Duch. Now, I'm sure you have this, Your  
22 Honours. Pin is the man who made the order, the military order.  
23 They want to call him a soldier; he's not a soldier, he's the  
24 commander of Division 703.

25 [11.58.58]

1 And what does Duch say that Pin told him? Because Duch and Pin  
2 knew each other, and they knew each other well. Pin tells Duch –  
3 and this is Duch's version; I quote: "I know that after the 17th  
4 of April, soldiers were systematically eliminated. This was  
5 confirmed to me by Khem Pin, the Secretary of Division 703."  
6 What did the Defence say about this? Absolutely nothing.  
7 Respond if you want to, when you get your time, tell us what your  
8 approach is to this evidence, because we don't know.  
9 Systematically eliminated.  
10 Another general, Deng Layom, executed, on the list.  
11 Pin's order itself is compelling evidence. And the best the  
12 Defence can come up with is, "Oh, there's one name on that list  
13 who's a teacher who was executed for supporting the Khmer  
14 Republic."  
15 [12.00.12]  
16 And I want to finish, Mr. President, this brief part. I'm going  
17 to continue after lunch very briefly. But I want – and, Judge  
18 Lavergne, I ask you in particular, please, to listen to the next  
19 submissions, because I am going to quote to you what Duch said in  
20 Case 001.  
21 E3/5793. It was talking about Takhmau Prison. Takhmau Prison. It  
22 had been a psychiatric hospital. It was M03 or the police offices  
23 of Division 703. And please, Your Honours, have regard to this  
24 evidence in the context that the Defence assertion that there is  
25 not a centralized policy to kill Khmer Republic officials on the

1 17th of April, 18th, 19th.

2 Duch, Case 001:

3 "Takhmau was liberated on the 17th of April 1975. The prison, it  
4 was created about two to three days after liberation, and there  
5 was a military unit assigned to the prison two to three days  
6 after liberation."

7 And quote about this military unit: "Their only role is to erase  
8 the former officials of Lon Nol for smashing." Close quote.

9 [12.01.56]

10 Let me just say this: you take the photograph and you take that  
11 evidence I've just given you - there's more, but you take those  
12 two pieces of evidence and you've got concrete evidence of a  
13 policy - concrete evidence of a policy.

14 E3/5795, still Duch, Case 001: "The purges of the former regime  
15 soldiers and officers, the public servants, was carried out from  
16 the 17th of April forwards until the full cooperation of S-21 in  
17 October."

18 More evidence of a centralized policy.

19 E3/5795, Duch, Case 001:

20 "First S-21 was the police office of Division 703, Pin's  
21 division. From the beginning, it was the purges periods of the  
22 former regime officials and police and soldiers of the Lon Nol  
23 regime. During that initial stage, people were evacuated, and  
24 then some of the senior soldiers were arrested and secretly  
25 killed."

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1 I'd like to cover two other short, brief extracts, and then I  
2 will suggest, please, Mr. President, that we break.

3 [12.03.36]

4 E3/345, Duch, Case 001, Judge Lavergne:

5 Question: "Well, were the people linked to the toppled regime of  
6 the Khmer Republic, Lon Nol's regime? I mean, were they  
7 re-educated or were they executed?"

8 That was your question, Judge Lavergne, in Case 001.

9 The answer from Duch: "People in Lon Nol's regime were classified  
10 into three categories. First category referred to the people who  
11 were smashed secretly."

12 Policy – centralized policy.

13 And finally, E3/5795, Duch, Case 001: "During the initial stage  
14 of the establishment of S-21, before I became the chairman, the  
15 only target was the former regime officials and soldiers."

16 Now, why this is important, I submit, is it's the plainest  
17 evidence of central policy, and it's the plainest evidence of  
18 central policy not in May, not in August – in April. The  
19 photograph is the 17th of the April, Takhmau is two days  
20 afterwards, and everything Duch says is in the weeks after.

21 [12.05.20]

22 Mr. President, I am going to pause at that point. Please, can I  
23 indicate, I propose to carry on very briefly after the lunch  
24 break. Thank you.

25 MR. PRESIDENT:

1 Thank you, the Prosecutor.

2 The time is now appropriate for lunch adjournment. The Chamber  
3 shall adjourn now and resume at 1.30 this afternoon.

4 Security guards are now instructed to bring Mr. Khieu Samphan to  
5 the holding cell downstairs and have him returned to this  
6 courtroom this afternoon, before 1.30.

7 The Court is now adjourned.

8 (Court recesses from 1206H to 1329H)

9 MR. PRESIDENT:

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

11 And, again, the Chamber will give the floor to the International  
12 Deputy Co-Prosecutor to continue his rebuttal statement. You may  
13 proceed.

14 [13.30.10]

15 MR. RAYNOR:

16 Mr. President, thank you.

17 Before this lunch, I was making this submission: that numerous  
18 soldiers, military, were killed at Tuol Po Chrey, that you can be  
19 satisfied beyond reasonable doubt on that evidence and sure that  
20 those deaths took place and equally sure that this was a part of  
21 a central policy.

22 I'd like next, Mr. President, to make submissions on how you, the  
23 Judges, should treat the mass of pattern evidence or similar-fact  
24 evidence in this case. By that I mean: How do you evidentially  
25 treat the fact that you are not just dealing with Tuol Po Chrey,

1 you are dealing with multiple killings around the country in very  
2 similar circumstances – in strikingly similar circumstances?

3 And in my submission, when you are faced with similar-fact  
4 evidence or pattern evidence, it is probative in the case two or  
5 more pieces of evidence become mutually supportive; they support  
6 each other. And in the face of pattern evidence, you, the Judges,  
7 will have to ask yourselves: Is this evidence of central policy  
8 or is it coincidence?

9 [13.31.34]

10 In my submission, Mr. President, it is not coincidence that these  
11 killings took place within the same time period; it is not  
12 coincidence that the deaths were preceded by loudspeaker  
13 announcements; it is not coincidence that, as a consistent  
14 pattern, Khmer Republic officials and military were misled; it's  
15 no coincidence that they were told on so many occasions that they  
16 were going to meet the prince; it is not coincidence that they  
17 were told they might be promoted; it is not coincidence that they  
18 were tied up groups of 15 or 20 or more; it is not coincidence  
19 that they were killed in secret; it is not coincidence that they  
20 were taken to remote areas to be executed. That is pattern  
21 evidence, and it goes to central policy.

22 And then I want to address Nuon Chea's command and control. Do  
23 you remember him saying, "If I'd known about Tuol Po Chrey, I  
24 would have investigated"? Evidence of command, evidence of  
25 control. Do you seriously believe for one moment that Nuon Chea



1 would have investigated the mass death of his enemies?

2 [13.33.02]

3 What did he say in "Enemies of the People" when he was told that

4 villagers were being killed? "Oh, I can't remember the exact

5 moment. I just went on with my work." Nuon Chea the investigator?

6 Not possible.

7 Now, Mr. President, I've dealt with Duch's testimony in Case 001;

8 I want to deal with his testimony in this case, Case 002/1, and

9 what he had to say about Party policy pre-1975.

10 You'll recall our submissions in our closing brief - and repeated

11 by my learned colleague Mr. Smith - about people being sent to

12 M-13 in 1973 - the enemies, for smashing an interrogation. Quote,

13 Duch, E/50.1:

14 "They were part of the Party's policies."

15 "That was the Party's policy."

16 "I learned that from the Party's documents."

17 "It was the Party's policy."

18 The Party of these two Accused.

19 [13.34.23]

20 He said - and this is relevant to the Hanoi returnees, the Khmer

21 Hanoi - he said in E1/51.1, in the connection with who were the

22 enemies, and who were M-13, and who were arrested, interrogated,

23 and smashed - I quote: "Another group of people were those who

24 were sent to study in Vietnam and later on arrested." Close

25 quote.

1 So, that's Duch, giving testimony that Khmer Hanoi returnees were  
2 being executed. And the Defence still raise the submission that  
3 this event didn't happen and the Khmer Hanoi were not executed.  
4 E1/52.5, Duch, this case: "We were instructed by the Party that  
5 anyone who entered the liberated zone would be considered as an  
6 enemy."

7 And, Your Honours, why this is important is because we're not  
8 talking here about classic espionage or spying. Anyone who set  
9 foot inside inside a liberated zone was earmarked as an enemy.  
10 And this shows the sort of intent that you're dealing with.

11 [13.35.40]

12 Still Duch, still the same document, "How Enemies Were Classified  
13 According to Party's Policy". And he spoke of the "Revolutionary  
14 Flag" of 1973. Now, Mr. President, you don't have a  
15 "Revolutionary Flag" from 1973 on the case file, but here is Duch  
16 talking, in 1973 "Revolutionary Flag", about the classification  
17 of enemies Party's Policy: "First, the police and the soldiers  
18 were of a special class."

19 And then, on the application of the policy, Duch said this -  
20 quote:

21 "The policy was applied the same. The same policy was that  
22 whenever the Party regarded someone as an enemy, we had to smash  
23 him or her, and we had no way to contest it. When the Party  
24 determined a person as an enemy, we had nothing but to smash that  
25 enemy for the Party. After 1975, former soldiers and officers of

1 the Lon Nol regime were the key enemies."

2 [13.37.02]

3 And in the face of that, the Defence wants to say, this isn't  
4 evidence of central policy.

5 "Revolutionary Flag" - "Don't disclose any offences," say the  
6 Nuon Chea defence team. Well, it wasn't an offence to label  
7 people incorrectly as spies and then to smash the spies in  
8 secret. You'll remember the "Revolutionary Flag" of 1973:

9 "Smashing dishonourably".

10 The Khmer Hanoi, I'm going to deal with briefly. Nuon Chea said,  
11 "Oh, we can't be sure of this. It's only Nou Mao and Chhouk Rin  
12 that have given evidence." It's not. I've just quoted Duch saying  
13 "Vietnamese", "Khmer Hanoi", "1973", "executed", "M-13". If this  
14 wasn't a fact that's established on the evidence, why was Ieng  
15 Sary admitting in 1996 that 2,000 Khmer Hanoi returnees had been  
16 massacred? You can be absolutely sure that this took place. Nou  
17 Mao, Chhouk Rin, Ieng Sary, Duch, the witnesses Heder spoke to,  
18 Professor Chandler. How many more sources of evidence do you want  
19 to make you sure that the Khmer Hanoi were executed as enemies in  
20 the mid-1970s?

21 [13.38.32]

22 I want to deal quickly with Chhouk Rin because the Defence want  
23 you to believe that when I was questioning him, I was on some  
24 evil mission to misconstrue things. What did he say?

25 My question - I quote: "Was it during the time that you were in

1 the liberated zone that it was common knowledge that people who  
2 lived in the cities that were not yet under Khmer control - Khmer  
3 Rouge control - were occupied by enemies?"

4 Answer: "Yes, it is correct."

5 My question: "I want to be absolutely clear on this. So, well  
6 before 1975 - in other words, during the period 1971 to 1973 -  
7 you, as a military man, knew that people who occupied the cities  
8 were enemies. Is that right?"

9 Answer: "Yes, it is".

10 [13.39.40]

11 The Defence know this is important because here we have a  
12 military man, a military commander saying people in the city were  
13 regarded as enemies. And they've tried to come up with some -  
14 idiocy, I suggest, as to what was going on with my advocacy.  
15 There's my advocacy. There's the question. There's the answer.  
16 But Chhouk Rin was even more important, because I asked him this  
17 question:

18 Question: "Who told you that the 17th of April People were  
19 considered to be the enemy?"

20 "In general, it's common sense that everyone in Cambodia would  
21 know this, even a young baby or young person, because this is -  
22 was not strange to anyone."

23 So, let's just pause here. In 1973, the notion that the Khmer  
24 Rouge treats city dwellers as enemies is so well-known that even  
25 a baby or a young person would be able to tell you that's how it

1 is.

2 I want to deal with the intention towards Prince Sihanouk -  
3 hasn't featured much in this trial, but we're talking about the  
4 criminal intention of these two Accused.

5 [13.41.08]

6 Bear well in mind, please, all of you who look at these  
7 proceedings, that Nuon Chea and Khieu Samphan were contemplating  
8 killing the Prince - killing the Prince for the good of the  
9 country, killing the Prince for economic policy. It's evidence of  
10 their intention.

11 309 years ago, in 1605, an Englishman wrote a play. His name was  
12 William Shakespeare. The play was a tragedy called "King Lear".  
13 In the play, there is a character called "the Fool". But  
14 Shakespeare's fool was not really a fool. Shakespeare's fool was  
15 intelligent; Shakespeare's fool was wise; Shakespeare's fool knew  
16 how to give a good speech.

17 I'll leave it to you, Your Honours, whether coming before this  
18 Court and insulting everyone in sight is advocacy. It's not  
19 advocacy where I come from. It's not international standards.

20 [13.42.48]

21 And I'll leave it for other to judge, but when you come in the  
22 courtroom and insult you, when you come in the courtroom and  
23 insult your Court, when you come in the courtroom and insult all  
24 my colleagues here, when you come in the courtroom and insult the  
25 general public, when you come in the courtroom and insult the

1 international press – and let's just add something else: let's  
2 insult the diplomats, and let's insult the diplomats' wives –  
3 please do not think this is advocacy. And I'll leave it for  
4 others to judge, whether ranting like a deranged peacock is  
5 advocacy or not. I'll leave it for others to judge whether this  
6 form of so-called advocacy, in fact, leaves only the speaker  
7 looking like the fool.

8 In conclusion, this, Mr. President. Neither me, nor any of my  
9 colleagues have been a backpacker on the riverside. We are not in  
10 an international anti-communist conspiracy to subvert justice.  
11 We're here to do our job. We're here to prosecute. We do it  
12 vigorously. That is our job. The Defence did not like it, and of  
13 course that shows.

14 But, Mr. President – I finish on this point – please do not be  
15 fooled by a first-class amateur that we, at the OCP, are not  
16 professionals.

17 Thank you.

18 [13.45.01]

19 MR. PRESIDENT:

20 Thank you.

21 And before I hand the floor again to another International Deputy  
22 Co-Prosecutor to make his rebuttal statement, the Chamber would  
23 like to inform all the parties to the proceeding that your  
24 rebuttal statements shall be made in respect to the right of the  
25 other parties as well as the right of the Chamber. And make sure

1    you choose your words carefully in making your rebuttal  
2    statement, taking into account the Code of ethic for counsels and  
3    lawyers so that your statement does not intend to insult any  
4    party. The Chamber actually informed all the parties already, but  
5    I'd like to reiterate the same point again. Please preserve your  
6    dignity as a lawyer, and your rebuttal statement should fall  
7    within the framework. Of course, you do have the right to make  
8    your rebuttal, but your rebuttal must be legitimate and in  
9    conformity to the dignity and the Code of ethic by the counsel,  
10   the counsellor, or the lawyer.

11   And, yes, you may proceed with your rebuttal statement. Thank  
12   you.

13   [13.46.36]

14   MR. LYSAK:

15   Thank you, Mr. President. Good afternoon, Your Honours. Good  
16   afternoon to everybody.

17   I will start today briefly addressing a couple of general issues  
18   that were brought up by the Defence in their closing arguments.

19   One of the arguments they put before you was the assertion that  
20   the Prosecution is adopting what they call a convenient and  
21   simplistic narrative about the events of Democratic Kampuchea.

22   They say we are relying solely on secondary sources that  
23   represent the Anglo-French perspective. They claim we are  
24   prosecuting them based on books and newspaper articles.

25   So, let me start, Your Honours, by reminding everyone here of the

1 breadth and diversity of the evidence that has been put before  
2 this Chamber by the Co-Prosecutors in this trial.

3 That evidence includes over 1,000 surviving records from the CPK  
4 from the years 1975 to 1979, documents such as the "Revolutionary  
5 Flag", circulars from the Party leaders, telegrams and reports  
6 sent to the Party leaders, minutes of meetings of the Standing  
7 Committee, records from the district and commune level,  
8 government ministries, and the S-21 security office.

9 [13.48.15]

10 We have introduced records of radio broadcasts and officials'  
11 statements of the DK government between 1975 and 1978. We have  
12 put before you hundreds of statements by the Accused themselves,  
13 interviews and speeches ranging from the 1970s through the time  
14 of their arrest. The Co-Prosecutors have also put before this  
15 Chamber statements from witnesses, both surviving victims and CPK  
16 cadres. This included interviews of refugees conducted during and  
17 immediately after the Khmer Rouge regime, interviews conducted in  
18 the ensuing years by organizations like DC-Cam, and interviews by  
19 the Co-Investigating Judges of this Court.

20 The Defence are not happy about the admission of this evidence.  
21 But in war crimes of the scale of this scale, Your Honours, it is  
22 never possible to bring into the courtroom each and every  
23 individual witness, and it is standard practice in international  
24 tribunals to admit and consider statements of other witnesses  
25 that corroborate the evidence you have heard in this trial.



1 [13.49.43]

2 And, yes, in addition to the thousands of contemporaneous records  
3 and the witness statements, the Prosecution has also put before  
4 the Chamber secondary material: articles and books written by  
5 individuals who researched these events, reports from governments  
6 and organizations like Amnesty International.

7 And I would emphasize here, Your Honours, one very important  
8 point that refutes the Defence assertion that the Prosecution is  
9 trying to limit this trial to a conventional biased account of  
10 Democratic Kampuchea: Your Honours, it was the Prosecution – the  
11 Prosecution – who put on the case file and introduced as evidence  
12 in this trial the writings of the authors favoured by the  
13 Defence, people such as Michael Vickery and William Shawcross. It  
14 is due to our effort that this Chamber has a variety of sources  
15 from all perspectives before you. We have done this, Your Honour,  
16 because every member of this Prosecution team is interested in  
17 ascertaining the truth.

18 [13.51.05]

19 What of the Defence? When it was their turn, before the start of  
20 this trial, to provide you with a list of the documents that they  
21 would propose for admission, the Nuon Chea defence offered you  
22 nothing. Every other party provided a list of trial documents;  
23 they refused. Your Honours, if they were not happy with the  
24 documents on the case file or those that were proposed by the  
25 prosecutors, they had the opportunity to propose additional

1 documentary evidence; they chose not to do so.

2 Another assertion we heard from the Defence, from both defence  
3 teams, is that the Prosecution – the Prosecution – is ignoring  
4 the historical period and events preceding the 17th of April  
5 1975. Nuon Chea says we are only looking at the body of the  
6 crocodile and not its head or its tail. Khieu Samphan says that  
7 we have treated historical context as some kind of side-show. I'm  
8 not sure what trial they are talking about.

9 Our closing trial brief, Your Honours, begins with 40 pages  
10 addressing in detail the events from the time period from the  
11 mid-fifties right up until the evening of 16 April 1975.

12 [13.52.46]

13 And I know Your Honours recall that we spent considerable time  
14 questioning every witness who appeared before this Chamber on  
15 that time period. And I want to explain why we did that: Because  
16 we agree with the Defence that this time period is critical to  
17 this case.

18 The reason is that the Accused are charged with crimes that began  
19 at 9 a.m. on the morning of the 17th of April 1975 and had been  
20 planned well before that. Nuon Chea, Khieu Samphan and Pol Pot  
21 did not wake up at 7 a.m. on the 17th of April and decide to  
22 evacuate Phnom Penh. The events of that day resulted from  
23 meetings of the Party leaders held in mid-'74, early April '75,  
24 it resulted from a strategy of emptying out towns and cities that  
25 began in 1973, and it went as far back to Party lines and

1 policies that were initiated in the 1960s.

2 So, to understand why the population of Phnom Penh was forced to

3 leave the city on the 17th of April and who was responsible for

4 that decision, we must turn to the pre-'75 - pre-April '75

5 evidence. We have done exactly that, Your Honours. We have proven

6 how the CPK policies developed in this period and the role of

7 these two Accused, where they were located, what they were doing,

8 and how they contributed to the decisions and policies of the

9 Party. The head of the crocodile has been exposed.

10 [13.54.42]

11 Your Honours, I will turn very briefly to some comments on the

12 two forced movements. My colleague, Mr. Raynor, has covered this

13 issue thoroughly with you. And I would simply remind you that the

14 Nuon Chea defence has narrowed down for you the issues that you

15 must decide in regard to Nuon Chea's criminal responsibility. You

16 heard from them - and I quote: "Nuon Chea does not deny his

17 participation in the decision to evacuate Phnom Penh. He readily

18 concedes that he knew about it, agreed to it, and approved of

19 it."

20 And you also heard another important admission from their team

21 that same day. They said - and I again quote: "Nuon Chea does not

22 try to hide for one minute that the population of Phnom Penh

23 would have been moved into cooperatives whether or not a food

24 crisis existed." End of quote.

25 Your Honours, as my colleague has explained, these are important

1 admissions. The Nuon Chea defence no longer contends that either  
2 the threat of American bombing or food shortages in the city was  
3 the reason for the permanent displacement of the population of  
4 Phnom Penh.

5 [13.56.18]

6 The issue before you, which my colleague has very well responded  
7 to, is a limited one: Can the Defence justify the forced transfer  
8 of the entire urban population of Cambodia – millions of people –  
9 in order to implement an economic policy? The answer to that,  
10 Your Honours, under international law, is clearly no.

11 One issue that the Defence neglected to address in their  
12 arguments is the primary reason that we contend Nuon Chea is  
13 criminally liable for extermination and murder in relation to the  
14 first forced movement. You'll remember when I questioned Nuon  
15 Chea at the start of this trial; he admitted that the CPK leaders  
16 made a conscious decision that all people – all people – were to  
17 be required to leave the city, including the elderly, the sick,  
18 and the hospital patients. You may remember the rather dismissive  
19 answer he gave when I asked him whether they took into account  
20 the number of people who were in hospitals at the time.

21 [13.57.49]

22 Your Honours, Nuon Chea and Khieu Samphan knew, when they decided  
23 to forcibly evict from the city the entire population, no  
24 exceptions, that the most vulnerable of those people, that  
25 thousands of them would die. And to make matters worse, they sent

1    them out of the city, into the countryside, based on a lie that  
2    they were only temporary leaving - temporarily leaving for three  
3    days, so they should not bring possessions with them. So, many  
4    people, to make matter worse, left food behind and brought money  
5    instead. Your Honours, Nuon Chea and Khieu Samphan are criminally  
6    responsible for the deaths that ensued as a result of these  
7    decisions.

8    I will also be brief today in regards to the second forced  
9    transfer.

10   Nuon Chea, as I just indicated, admits that he participated in  
11   and agreed with the Party's plan to forcibly displace the urban  
12   population of Cambodia out of cities and towns and into  
13   cooperatives. The second forced transfer was a continuation of  
14   that same joint criminal enterprise, something that Nuon Chea  
15   admits that he contributed to, knew about, and agreed with. He  
16   bears criminal responsibility for his participation in the JCE,  
17   whether or not he went on the Standing Committee's August 1975  
18   trip to the Northwest Zone and whether or not he knew of all the  
19   details of the second forced movement.

20   [13.59.58]

21   And let me add a few words about the charge of extermination  
22   relating to the second forced transfer.

23   I would remind Your Honours that the CPK leaders made a knowing  
24   decision to send another 500,000 people into a zone that they  
25   already knew did not have enough food to feed the existing

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1 evacuees. That is shown by the documents that are before you: the  
2 August 1975 minutes, the September 1975 policy document. So, it  
3 is no wonder that the Khieu Samphan defence doesn't want you to  
4 hear any evidence as to what happened to those people after they  
5 arrived at their location.

6 Your Honours, of course you are entitled to look at the  
7 consequences of this forced movement. You've heard from the  
8 witnesses how they arrived in areas that had no food, of the  
9 ensuing deaths of their loved ones, and yet the Accused say there  
10 is no evidence of death on a massive scale.

11 [14.01.17]

12 I would refer Your Honours and the Accused to one very important  
13 document on this issue. It is a contemporaneous report from the  
14 regime, from Sector 5 of the Northwest Zone: E3/1181. There is a  
15 lot of interesting information about the fate of the evacuees of  
16 this document. Let me just direct you to one very important part.  
17 The report describes how a total of 70,000 – 70,000 – New People  
18 had been moved into one district alone in the Northwest. And  
19 these are the words of the CPK cadre who wrote this report. He  
20 said about this district – and I quote: "It was the worst place  
21 of starvation, and 20,000 people died in that district in 1976  
22 alone."

23 70,000 people sent there, 20,000 died in 1976. That, Your  
24 Honours, is death on a massive scale.

25 Your Honours, the Nuon Chea defence have spent considerable time,

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1 in their closing submissions, contesting the existence of a  
2 policy targeting Khmer Republic officials and soldiers and Nuon  
3 Chea's responsibility for the executions at Tuol Po Chrey. My  
4 colleague has addressed some of their arguments. Because of the  
5 time they have spent on this issue, let me add a few more  
6 observations on why what you heard from the Defence does not  
7 withstand scrutiny.

8 [14.03.26]

9 Our friend Mr. Koppe spent all of Monday morning last week  
10 presenting to you an eloquently delivered thesis on why evidence  
11 regarding killings of Lon Nol personnel around the country in  
12 1975 did not prove anything.  
13 And before I turn to his thesis, let me note, Your Honours, that  
14 in his entire submission, Mr. Koppe did not respond at all – not  
15 a single word – to the principle basis on which the  
16 Co-Prosecutors contend that Nuon Chea is criminally – criminally  
17 responsible for these executions. That basis is his participation  
18 in a broad joint criminal enterprise or common criminal plan that  
19 sought to identify and eliminate persons who were class enemies  
20 or politically opposed to the CPK. Instead of responding to the  
21 basis that we contend Mr. Nuon Chea is criminally responsible,  
22 the Defence set out to disprove something that we do not content:  
23 that there was a policy in place immediately on April 1975 to  
24 kill all persons – all persons – who had been officials or  
25 soldiers of the Khmer Republic.

1 [14.05.01]

2 Your Honours, we were challenged by the Defence to do this, so I  
3 want to be very clear as to what the Prosecution submits the  
4 evidence has proven before you:

5 1) That officials, soldiers, and police from the former regime  
6 were identified in "Revolutionary Flag" and Party circulars as  
7 class enemies;

8 2) That in February 1975, the CPK leaders decided and publicly  
9 announced that the top leaders of the Khmer Republic would be  
10 subject to immediate execution;

11 3) Third, that between the 17th and 20th of April 1975, as  
12 admitted by Standing Committee member Ieng Sary, the CPK leaders  
13 decided to expand the scope of executions to other high-ranking  
14 officials and soldiers, which led to the mass killings at Tuol Po  
15 Chrey and other sites around the country; and

16 4) Fourth, Your Honours, fourth, for the remainder of the DK  
17 regime, the Khmer Republic officials and soldiers who were not  
18 killed in 1975 were targeted as enemies, closely monitored,  
19 frequently subject to arrest, detention, and killed if they did  
20 not refashion themselves.

21 [14.06.38]

22 That is the position of the Co-Prosecutors, Your Honours, on what  
23 the evidence has proven.

24 And last week we saw Mr. Koppe put forward a theory to you that  
25 executions of Khmer Republic personnel were mostly concentrated



1 in a few zones, and therefore there was no nation-wide policy  
2 from the Centre on such executions. Let me give you a few reasons  
3 why this argument is incorrect.

4 First, Your Honours, Khmer Republic soldiers and officials were  
5 not equally spread out among the entire country on the 17th of  
6 April 1975. There were many regions of Cambodia that were  
7 entirely controlled by the Khmer Rouge long before April 1975,  
8 for example the Northeast Zone. The fact that there were some  
9 areas of the country where there were fewer or no killings of  
10 Khmer Republic personnel is because the government forces and  
11 officials had already left those areas well before. And,  
12 conversely, there were other parts of the country where Lon Nol  
13 forces were more prevalent. One of those was the Northwest Zone.  
14 [14.08.08]

15 My source for this, Your Honours, is none other than Michael  
16 Vickery, an expert whom the Nuon Chea defence accepts as reliable  
17 and not biased, someone who they told you, in their closing  
18 arguments, has closely examined what they call the standard held  
19 views about the executions of the Khmer Rouge. Vickery describes  
20 the Northwest Zone as "the last pro-Lon Nol bastion outside of  
21 Phnom Penh".

22 Your Honours, the entire thesis of the Defence that you heard on  
23 Monday was based on a flawed premise. The fact that there were  
24 more executions of Khmer Republic officials and soldiers in some  
25 areas than others does not mean there was not a common policy; it

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1 means there was more Khmer Republic officials and soldiers in  
2 certain regions of the country.

3 The second flaw in the argument you heard from the Defence is  
4 that you were asked to simply ignore the killings that took place  
5 in the Northwest and Southwest Zones based on the assumption that  
6 these zones were not carrying out the plans of the Centre. There  
7 is no truth to this assumption, Your Honours.

8 [14.09.48]

9 Ta Mok and Ros Nhim were part of the upper leadership of the  
10 Party. They were doing what had been collectively decided by the  
11 Party leaders.

12 I will discuss Nhim and the Northwest Zone later, but in regards  
13 to the Southwest Zone, you heard Nuon Chea himself testify in  
14 this trial that Tram Kak district, the home of Ta Mok, was one of  
15 the two core Party bases in the entire country. And you heard  
16 from the former secretary of the Tram Kak district, Pech Chim. He  
17 described how the district was awarded the Honorary Red Flag and  
18 recognized by the Central Committee in 1977 as one of three model  
19 districts in Democratic Kampuchea.

20 And let me again cite the words of Michael Vickery, whose word  
21 the Defence is willing to accept. Michael Vickery describes the  
22 Southwest Zone as the "Pol Pot zone par excellence". He also  
23 refers to it as the "'microcosm' of Pol Pot policy as it was  
24 apparently envisioned by its originators".

25 [14.11.21]

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1 It is highly disingenuous, Your Honours, to suggest that Ta Mok  
2 was acting contrary to the wishes of Pol Pot and Nuon Chea. We  
3 have heard a story of zones being - clashing with each other  
4 throughout the Democratic Kampuchea period. You are asked to  
5 believe by the Defence that when other zones were purged - that  
6 it was Ta Mok and the Southwest Zone that decided to do this  
7 themselves. And I would refer you here, simply, to the statement  
8 of Ke Pauk, the Secretary of the North Zone. He provided a  
9 statement that tells us exactly who decided to institute the  
10 purge of his zone in early 1977: Pol Pot and Nuon Chea.  
11 Michael Vickery does not agree with the Defence either. In his  
12 words, "the Southwest was used by Phnom Penh to carry out purges  
13 elsewhere".  
14 So, Your Honours, the evidence of these killings in the Southwest  
15 Zone and the Northwest Zone prove the policy because these zones  
16 were very much in step with the leaders in Phnom Penh.  
17 The third flaw in the argument you heard from Mr. Koppe is that  
18 it is simply incorrect that there were no executions of Khmer  
19 Republic officials and soldiers in zones outside the Northwest  
20 and Southwest.  
21 [14.13.13]  
22 We have introduced to you extensive evidence of these killings,  
23 but the Defence does not like our evidence, so let me one more  
24 time refer them to a source that they accept: the research of  
25 Michael Vickery.

1 In regards to the North Zone - a North Zone which the Defence  
2 submitted to you on Monday there were no executions until, he  
3 says, the Southwest Zone troops arrived in 1977 - Michael Vickery  
4 begs to differ. He wrote - and I quote: "Northern troops were  
5 told that all Lon Nol officers from the rank of lieutenant were  
6 to be killed, along with all important civilian officials."  
7 He also wrote that in the initial years of the regime, 1975 to  
8 1976, "killing was restricted to Republican soldiers and high  
9 officials".  
10 With respect to the East Zone, Mr. Vickery state - quote: "There  
11 was much killing, in 1975, of Lon Nol military and high  
12 officials."  
13 [14.14.28]  
14 And with respect to Kratie, Sector 105, Vickery writes - quote:  
15 "At the very beginning, Lon Nol officers had been executed, but  
16 thereafter there were very few killings."  
17 In the end, Your Honours, Michael Vickery does not support the  
18 arguments that you heard from the Defence. He has questioned the  
19 conclusions of other authors, but merely to show that there was  
20 no policy to kill all - and I repeat, to kill all - Lon Nol  
21 officers and soldiers. And is certainly true that the evidence  
22 you have seen shows that certain Lon Nol officers were dispersed  
23 into the countryside, into the cooperatives. That does not mean -  
24 that does not mean that there was not a policy to kill officers  
25 of a certain rank and above. And that is the position of the

1 Prosecution.

2 I'd like to turn now and spend a little time on the relationship  
3 between the leaders in Phnom Penh and the Northwest Zone, in  
4 particular Zone Secretary Ros Nhim.

5 The Accused have argued that they are not responsible for the  
6 killings of Lon Nol soldiers in the Northwest because zones were  
7 autonomous and the Centre did not have authority over the zone  
8 cadres. And the Defence called the Northwest Zone – Northwest  
9 Zone Secretary Nhim "an extremely harsh and cruel zone leader,  
10 whose conduct seriously deviated from Pol Pot and Nuon Chea's  
11 intentions".

12 [14.16.28]

13 Your Honours, let me take you through what the evidence on this  
14 issue actually proves.

15 First, the evidence shows that the Party Centre issued orders to  
16 the Northwest Zone even in the period prior to 1975. And I refer  
17 here – you here to evidence regarding the 1967 peasant's  
18 rebellion in Samlout that you have heard of. And you may recall  
19 that in the September 1977 issue of "Revolutionary Flag", Pol Pot  
20 indicated – and I quote:

21 "The Party Central Committee had not yet decided to open fire  
22 throughout the country, but Battambang exploded first. The Party  
23 was in the lead, and in 1967 the Party decided that Battambang in  
24 the Northwest Zone had to temporarily suspend the armed struggle  
25 in Battambang so that the whole country could equally complete

1   preparations to attack." End of quote.

2   Your Honours, you have evidence before you as to who conveyed the  
3   instruction of the Party Centre. In one of his video-recorded  
4   interviews discussing the Samlout uprising, Khieu Samphan himself  
5   explains how the Party Centre exercised its authority over the  
6   Northwest Zone. Khieu Samphan stated – and I quote: "It was Mr.  
7   Nuon Chea who conveyed a directive from the Standing Committee to  
8   Mr. Ros Nhim and Mr. Ke to negotiate with the enemy." End of  
9   quote.

10   [14.18.27]

11   Your Honours, even as early as 1967, Nuon Chea and the Party  
12   Centre had authority and control over the Northwest Zone cadres.  
13   You've heard the Defence challenge whether the Khmer Rouge had a  
14   centrally-commanded organization as of April 1975. This Monday,  
15   the Khieu Samphan lawyers sought to portray the Khmer Rouge as a  
16   group of people who emerged barefoot from the jungle on the 17th  
17   of April, incapable of any organization.

18   Your Honours, we have already discussed in detail the evidence  
19   that proves there was a centrally- commanded structure in place  
20   well before April 1975, forward command bases such as B-5, where  
21   Pol Pot, Nuon Chea and Khieu Samphan, and the zone leaders  
22   gathered during the final attack and evacuation on Phnom Penh, a  
23   fact that both of the Accused have admitted, and you will recall  
24   the testimony of cadres who described the telegram and radio  
25   communication system that was in use during that time period,

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1 testimony that is corroborated by photos, records of radio  
2 broadcasts, and instructions in the 1972 "Revolutionary Flag".  
3 [14.20.02]

4 Your Honours, here is the difference between the Prosecution and  
5 the Defence: We ask you to rely on the evidence of the  
6 communication and command structures at the Party headquarters;  
7 they ask you to reach conclusions based on the fact that some  
8 soldiers did not wear shoes.

9 Your Honours, there is simply no question that the zone armies  
10 were part of a centrally-commanded structure as of April 1975,  
11 and I want to take you to a few documents.

12 The best evidence from which you can see that the Northwest Zone  
13 army was part of a centrally-commanded structure is in the FUNK  
14 radio broadcasts from the period that regularly reported on the  
15 status of the various battlefronts. Those reports included  
16 detailed information about the Northwest Zone. Where did that  
17 information come from, Your Honours? You've heard from the  
18 witnesses – people like Norng Sophang and Kim Vun – that each  
19 zone regularly sent telegrams to the Party headquarters reporting  
20 on the battlefront situation and that those reports were then  
21 used in the FUNK radio broadcasts that were broadcast on the  
22 radio.

23 [14.21.33]

24 If I can show you now one of those radio broadcasts that proves  
25 that the Northwest was very much part of a centrally-commanded

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1 army, Your Honours, the slide - the document that we would like  
2 to show you now is a radio broadcast from the 20th of February  
3 1975 from the "Voice of FUNK". It's a report that describes the  
4 capture and destruction of the town of MOUNG, in Battambang, by  
5 resistance forces. It reads:

6 "MOUNG township is completely levelled. Our people throughout the  
7 country congratulate and convey warm wishes to the victorious  
8 CPNLF units on the MOUNG-Battambang battlefield. According to  
9 initial reports from this front, our CPNLF completely levelled  
10 the MOUNG business district. We killed or captured almost all the  
11 enemies, seized a large quantity of weapons and material, and  
12 liberated hundreds of thousands from the traitors' yokes." End of  
13 quote.

14 [14.22.57]

15 Your Honour, there are many FUNK broadcasts that, like this  
16 report, convey information from the Northwest Zone, and this  
17 proves - this proves that Northwest Zone forces, like the other  
18 zone armies, reported to the Party Centre headquarters, and they  
19 were reporting in the period before and during April 1975.

20 This relationship, Your Honours, between the Party Centre and the  
21 leaders - the leader of the Northwest Secretary Zone has been the  
22 subject of witness testimony before you.

23 You heard from PHY PHUON, who described trips of the leaders to  
24 the zones in the pre-'75 period, including a trip NUON CHEA took  
25 to Samlout.



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1 You heard from Nuon Chea's bodyguard that during the DK period,  
2 Nuon Chea went to Battambang every three or four months to meet  
3 with Nhim and that Nhim would come to Phnom Penh for meetings for  
4 periods of 10 to 15 days.

5 [14.24.19]

6 Your Honours, what did Nuon Chea talk about during his regular  
7 meetings with the Northwest Zone Secretary? We know one subject  
8 they discussed, because Nuon Chea admitted to Thet Sambath that  
9 he learned from Zone Secretary Nhim of the arrest and execution  
10 of his uncle, Sieu Heng. You will remember that Sieu Heng was the  
11 former leader of the Cambodian Communist Party who had defected  
12 to the Sihanouk Government and later became a major in the Lon  
13 Nol Army. Zone Secretary Nhim told Nuon Chea that he had arrested  
14 and killed Sieu Heng and that he had arrested and killed Sieu  
15 Heng's son, Nuon Chea's nephew. Are we to believe that Nuon Chea  
16 was told of the executions of his own relatives, yet at the same  
17 time Nhim concealed from Nuon Chea the executions of other Khmer  
18 Republic officials and soldiers?

19 [14.25.37]

20 Mr. Koppe played for you again the film of Thet Sambath's  
21 interview in which Nuon Chea claims that he did not become aware  
22 of the mass executions of Lon Nol soldiers until after 1979.  
23 Another reason, Your Honours, we know - we know - that this is  
24 not true is because the subject of these executions was widely  
25 reported by the international media in 1975 and 1976 - we have

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1 put this evidence before you, reports from "Reuters", "AFP", "New  
2 York Times", statements by the White House – matters the CPK  
3 leaders were well aware of and reported – responded to in the  
4 media. You have heard the evidence of how the leaders monitored  
5 the international news. They were very well aware of the reports  
6 of atrocities in the Northwest Zone.

7 We also know from the telegrams and reports that Zone Secretary  
8 Nhim sent to the Centre that he did not conceal the arrests or  
9 executions of soldiers from the Khmer Republic.

10 And if I may show you a document, let me show you one of those  
11 reports. Your Honours, this is the monthly report for the  
12 Northwest Zone from May 1977, and the part – it states – quote:  
13 "In Region 3, there appears to have been some sort of problems  
14 like laziness to work, escaping the duty to labour, pretended  
15 illnesses, pretended dumb and crazy people, conjugal disputes,  
16 and moral offences among married men and women. Furthermore,  
17 there still exists private ownership."

18 [14.27.31]

19 Continuing on later in the same paragraph:

20 "As we have observed, these acts actually arose from among  
21 veteran soldiers and those with the ranks of second lieutenant,  
22 first lieutenant, captain, and major, who hide themselves in  
23 collectives and whom we have never found. Recently, their acts  
24 have shown up clearly. We have already taken steps and arrested  
25 all of them."

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1 Your Honours, the telegrams and reports from the Northwest Zone  
2 are also at odds with the Defence assertion that the zone acted  
3 autonomously, based on its own discretion and contrary to the  
4 policies of the Centre. Let me show you quickly a series of  
5 documents that prove this.

6 An August 12, 1977 telegram from Zone Secretary Nhim states:  
7 "About building a dam in Stueng Sangkae with the assistance of  
8 Korea, Comrade Van had consulted with me whether to let them do  
9 it. It is up to Angkar to decide on this matter."

10 [14.28.47]

11 Next, a report sent by Nhim to Angkar on the 17th of May 1978  
12 states: "Yuon with Khmer spouses and half-breed Khmer-Yuon. The  
13 meeting would like to ask Angkar 870 what to do with them.  
14 Whatever Angkar decides, please give instruction."

15 A December 21, 1977 telegram; Nhim wrote:

16 "From 22 to 23 December, one large van will be used to transport  
17 oranges to you. I wish the security to question Ham, who is  
18 responsible for zone military logistics, as soon as possible so  
19 that all his connections are identified and arrested."

20 And a few days later, on the 24th of April 1977, Nhim sent a  
21 telegram to the Party Centre leaders, reporting that they had  
22 discovered a location at which 100 soldiers who were part of the  
23 contemptible In Tam's clique were based. This report states:

24 "Our brothers and sisters eavesdropped and find the new  
25 whereabouts of contemptible In Tam's clique about 2 kilometres

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1 from the border. They have an estimated number of a hundred  
2 soldiers. How will Angkar decide if our brothers and sisters  
3 request to attack this location? I haven't given order to fight  
4 yet, but we are in close observation."

5 [14.30.32]

6 Let me emphasize the importance of this telegram. In Tam was one  
7 of the seven "super traitors" from the Khmer Republic. So, in  
8 this telegram, Zone Secretary Nhim, who the Defence contend acted  
9 on his own when he killed hundreds of Lon Nol soldiers at Tuol Po  
10 Chrey – Nhim has discovered another group of soldiers connected  
11 to the former regime. Does he exercise his supposed unfettered  
12 discretion and decide by himself, without asking the Party  
13 Centre, what action to take? No, he writes to the Centre and asks  
14 for their decision.

15 Your Honours, let there be no doubt: Northwest Zone Secretary  
16 Nhim did not decide on his own to kill the Khmer Republic  
17 officials and soldiers at Tuol Po Chrey. He acted with the full  
18 knowledge and approval of the Party Centre leaders.

19 [14.31.40]

20 My last comments on Zone Secretary Nhim, Your Honours, relate to  
21 one of the last reports he sent before his arrest in June 1978.  
22 The first paragraph of this report, which is from the 11th of May  
23 1978, indicates that Nhim recently met with Angkar and received  
24 advice or instructions from the Party Centre leaders – quote:  
25 "Following my meeting with Angkar, I returned and went to work in

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1 Regions 5, 3, 1, and 4. I met and worked with comrades of the  
2 Permanent Organization Committee. During my meeting with them, I  
3 reported about the recommendations of 870."

4 What were those recommendations that Nhim received from the Party  
5 Centre at this meeting? Your Honours, in the very next section of  
6 this report, Nhim describes the enemy situation in the Northwest  
7 Zone and he states the measures he plans to take in order to  
8 implement those recommendations from the Centre - quote:

9 "Measures: Prevent it more carefully; be more highly vigilant;  
10 smash invasive enemies; successfully sweep destructive elements;  
11 and prevent all acts of secret moving and looting."

12 [14.33.10]

13 Your Honours, in these telegrams - and I've taken the time to put  
14 these before you because in these telegrams we see the truth  
15 about the relationship between the zone secretary leader and the  
16 Party Centre. Nhim was told by the Party Centre that he needed to  
17 be more vigilant and more aggressive against enemies. His failure  
18 in the eyes of the Centre was not that he had killed too many,  
19 but that he had not killed enough.

20 Let me look at one other aspect of this telegram, Your Honours,  
21 while we have it before you, and that is regarding the nature of  
22 the enemy activities that Nhim was told to be more vigilant  
23 against, and particularly the reference to secret moving. Nhim's  
24 report states - and I quote: "The enemies led an encouraged  
25 people to flee away. However, when they were trying to escape

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1 away with 40 people, we smashed all of them."

2 [14.34.22]

3 A week later, Your Honours, Nhim reported to the Centre that  
4 another 60 people had tried to escape to Thailand in Sectors 1  
5 and 4, but "we smashed 58 of them, so just two were able to  
6 escape". And he had made similar reports to the Centre the  
7 previous year.

8 This is from the May 1977 report - quote:

9 "In Region 5, nine enemies - six males and three females - fled  
10 into the forest [...]. They were the ones who escaped from the  
11 collective; and we investigate and pursue them every day. We met  
12 them once they were taking a rest, then fired at them..."

13 Continuing on: "We are still in pursuit of them. Besides, there  
14 was a movement of people fleeing to Thailand; but the number of  
15 escapers, if compared to last month's, is much [less] with most  
16 of them smashed by us."

17 This is something we see, Your Honours, in the telegrams and  
18 reports from all zones and sectors: people who fled from  
19 cooperatives were considered enemies. In the country that Nuon  
20 Chea and Khieu Samphan built, if you tried to escape, you were  
21 hunted down and killed.

22 [14.35.47]

23 The Defence may not like it, but we have called this what it is:  
24 a slave State. We have never argued that collectivization itself  
25 is illegal, but when it is forced onto the people by violence,

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1    when the individual becomes solely a tool of the State, and when  
2    those who try to flee or escape the collective are arrested and  
3    killed, is there any doubt that the people are not free, that  
4    they have become slaves of Angkar?

5    This issue is relevant to this trial, Your Honours, because it  
6    proves that the purpose of the forced transfers was unlawful. The  
7    enslavement of evacuees in cooperatives was part and parcel of  
8    the JCE alleged by the Case 002 Closing Order, and that is why at  
9    the very start of this trial the Chamber made clear to all  
10   parties that evidence relating to the policy on cooperatives was  
11   admissible.

12   [14.36.58]

13   Nuon Chea has asked that we not forget the head and tail of the  
14   crocodile – that we take into consideration the reason the  
15   population was moved to cooperatives. That is exactly what we  
16   have done, Your Honours.

17   There can be no – there can be no doubt that the Party Centre had  
18   the authority to stop these killings. They had the authority to  
19   punish or discipline zone cadres who were involved in these  
20   events, if they wanted to, which they did not.

21   You will recall in the "One Day at Po Chrey" video-clip that Mr.  
22   Koppe played, Nuon Chea does not dispute that he had authority to  
23   take action. These were his words in that video – quote: "If I  
24   had known then, we would have taken preventive measures."

25   Nuon Chea was the Deputy Secretary of the Party. He had assigned

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1 responsibility for Party affairs, including the appointment and  
2 discipline of cadres.

3 [14.38.10]

4 And if there is any question, Your Honours, about the authority -  
5 the ultimate authority between the Centre and the zones, the  
6 answer can also be seen in the records of S-21. Thousands of zone  
7 cadres, including five zone secretaries, called to Phnom Penh,  
8 arrested, interrogated, and executed at the security office  
9 controlled by the Centre. Is there evidence of a single Party  
10 Centre leader who was called to a zone, and arrested, and  
11 executed at a zone security office? Of course not.

12 Your Honour, there is no question that the Party Centre leaders  
13 had authority to take measures in the zones, but instead of  
14 punishing Zone Secretary Nhim after the executions at Tuol Po  
15 Chrey, Nhim was rewarded. He was promoted to a position on the  
16 Standing Committee and he remained zone secretary for the next  
17 three years. We would submit this is standard operating procedure  
18 for the CPK leadership: promote those who would kill the enemy,  
19 purge those who would not.

20 [14.39.32]

21 Your Honours, the evidence proves beyond a reasonable doubt that  
22 the executions at Tuol Po Chrey were part of a common criminal  
23 plan to identify and eliminate enemies and that the Accused bear  
24 superior responsibility for the crimes committed by zone cadres.  
25 If this is an appropriate moment for a break, Your Honour, I have



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1 a few more minutes, but then I will pass the floor to my  
2 colleague.

3 MR. PRESIDENT:

4 Thank you.

5 MR. LYSAK:

6 Your Honour, sorry; it may not have been translated well. I have  
7 another five minutes. I can either continue, or we can take the  
8 break now, and I can finish after the break and then turn - turn  
9 the floor to my colleague.

10 MR. PRESIDENT:

11 Thank you.

12 The time is now appropriate for a short break. We will take a  
13 break now and return at 3 p.m.

14 (Court recesses from 1440H to 1500H)

15 MR. PRESIDENT:

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

17 And, again, we give the floor to the Prosecution to continue  
18 their rebuttal statement. You may proceed.

19 MR. LYSAK:

20 Thank you, Mr. President.

21 I will use my last five minutes before I turn the floor over to  
22 my colleague to address just a couple of issues that were raised  
23 by our friend Son Arun in his arguments about Nuon Chea.

24 We heard an argument that there are only - only - 25 confessions  
25 with annotations indicating they were sent to Nuon Chea and that

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1 this represents a small percentage of the total number of S-21  
2 confessions.

3 [15.02.10]

4 Your Honours, I simply will remind you here that when the Defence  
5 referred to a total of over 4,000 confessions, that number  
6 represents unannotated, original confessions that were recovered  
7 at S-21. There is a relatively small number of confessions that  
8 were located outside S-21 that contain annotations. So this  
9 statistical analysis that the Defence have relied on here is a  
10 distortion.

11 The truth is that Nuon Chea received many confessions from S-21.  
12 I will not play the video-clip again; you've heard it a number of  
13 times now. I'll simply remind you of Nuon Chea's own words when  
14 he was asked by Thet Sambath about his receipt and use of  
15 confessions. He said – and Nuon Chea's word; quote: "I didn't  
16 read all the documents because there were so many."

17 Your Honours, you should also keep in mind the reason why this  
18 evidence is relevant to your judgement in this case. The Defence  
19 is correct that for purposes of this judgement, you need not  
20 decide whether Nuon Chea assumed complete responsibility for  
21 S-21. The relevant issue that is before you is simply whether  
22 Nuon Chea participated in or contributed to the CPK plan to smash  
23 enemies of the Party. And in that respect, Your Honours, whether  
24 he received one S-21 confession, 25 confessions, or 200  
25 confessions, that evidence proves his knowledge of S-21; it

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1 proves his involvement in the JCE through which enemies were  
2 identified and killed.

3 [15.04.13]

4 And last, Your Honours, the Defence suggested that there is  
5 nothing in Nuon Chea's interviews with Thet Sambath in which he  
6 acknowledged his responsibility for S-21. I would simply refer  
7 you to Chapter 7 of that book, a chapter titled "Enemies", which  
8 is full of statements attributed to Nuon Chea, proving his  
9 involvement in S-21, his relationship with Duch, and his  
10 knowledge of and agreement with extrajudicial killings of  
11 enemies.

12 Let me give you one example and show you on the screen. Son Arun  
13 challenged us. He said, "If Nuon Chea had admitted this to Thet  
14 Sambath, wouldn't Thet Sambath have said so in his book?"

15 Here's what Thet Sambath said - quote:

16 "Nuon Chea doesn't apologize for S-21, even though his niece and  
17 others close to him were sent there. He often stated that the  
18 enemies responsible for killing people in the countryside had to  
19 be smashed; others were conspiring to overthrow Pol Pot and had  
20 to be stopped. But for every person they killed, they found out  
21 through the traitors' confessions obtained at S-21 that there  
22 were more enemies. The arms and legs of the traitors were  
23 everywhere."

24 [15.05.49]

25 And continuing: "For the first half of the Khmer Rouge rule, Nuon

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1 Chea didn't have direct control over S-21, but as one of the top  
2 leaders of the movement, he was involved in decisions to purge  
3 top cadres. And when Khmer Rouge Defence Minister Son Sen was  
4 dispatched to the border in the fall of 1977, Nuon Chea became  
5 the de facto head of the interrogation centre, according to  
6 Brother Number Two and testimony from Duch."

7 Your Honours, I simply ask you to look at all the evidence  
8 together. We've been through the evidence many times in this  
9 trial – the evidence of Nuon Chea's involvement. It is our  
10 submission that it is clear beyond a reasonable doubt that Nuon  
11 Chea was at the very heart of the CPK criminal plan to smash  
12 persons who were identified as enemies of the Party.

13 I thank you for your time today, and I will pass the floor to my  
14 colleague who will talk to you about Khieu Samphan.

15 [15.07.32]

16 MR. ABDULHAK:

17 Good afternoon, Your Honours. Good afternoon, Counsel, members of  
18 the public, and civil parties.

19 As my colleague just indicated, I will be addressing you on the  
20 evidence pertaining to the criminal responsibility of Khieu  
21 Samphan as well as his role in the CPK and DK.

22 I will note briefly, before I start, a – one procedural issue  
23 that arises for consideration. My friend has just made  
24 submissions in relation to the scope of the trial, which of  
25 course, as Your Honours have indicated on numerous occasions,

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1 includes the roles of the Accused in the entire regime as well as  
2 the policies of the regime.

3 If I can add to my colleague's submissions, there are two further  
4 reasons why evidence relating to the functioning of the regime  
5 and its policies is directly relevant to this case.

6 [15.08.40]

7 My learned friend, Mr. Vercken, took us in some detail through a  
8 list of paragraphs relevant to this trial. One section that he  
9 may have omitted was that dealing with paragraphs in which  
10 allegations of the widespread and systematic attack are set out.  
11 Those paragraphs are paragraphs 1350 to 1372. They speak for  
12 themselves. They set out clearly that of relevance in this trial  
13 – in this trial – is a widespread and systematic attack against  
14 the population of Cambodia, the regime's policies, as well as the  
15 roles of the Accused in the regime.

16 There is nothing unusual about evidence of a widespread and  
17 systematic attack going well beyond issues pertaining to the  
18 responsibility of an accused. This, in fact, is a common feature  
19 of cases involving crimes against humanity.

20 [15.09.36]

21 And I will refer – by name only – to a few cases where this is  
22 clearly set out: a recent judgement – or relatively recent – of  
23 the ICTY in the Case of Lukic, 20th of July 2009, at paragraphs  
24 890 to 894, deals with contextual elements of widespread and  
25 systematic attack and it makes details – detailed findings on

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1 matters going well beyond the specific crimes in which the  
2 Accused is charged; Blagojevic, equally an ICTY Trial Chamber  
3 Judgement, paragraph 551; ICTY, Gacumbitsi, an Appeals Chamber  
4 Judgement in July 2006, at paragraph 102; and one could go on.  
5 Certainly, it is a common feature of these cases that contextual  
6 elements have to be proved and that they go beyond – well beyond  
7 – the specific evidence with which the Accused are charged.  
8 There is a further reason why it is relevant for Your Honours to  
9 consider evidence of the contributions of the Accused to the  
10 regime and to what we have called the slave State that they set  
11 up.  
12 [15.10.47]  
13 By their very definition, forced transfers are continuing crimes.  
14 You heard from our learned friends, counsel for Mr. Khieu  
15 Samphan, that there were a series of justifications or purported  
16 justifications for the forced evacuation of Phnom Penh as well as  
17 the subsequent forced transfers.  
18 Under international law, in order to establish that a transfer is  
19 lawful, the Defence must show that as soon as the reasons for the  
20 transfer cease to exist – that the population is permitted to  
21 return. Therefore, it stands to reason that the actions of the  
22 regime and the actions of the Accused in furthering and managing  
23 that regime and preventing evacuees from returning to their homes  
24 are directly relevant to the crime of forced transfer.  
25 Relevant authorities on that issue are: Stakic, Appeals Chamber

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1 of the ICTY, at paragraph 284; Krstic, Trial Chamber, ICTY, at  
2 paragraph 524; and Krajisnik, Appeals Chamber of the ICTY, at  
3 paragraph 725.

4 I'll move on now from issues of procedure and scope to deal with  
5 Khieu Samphan's criminal responsibility and his role in this vast  
6 joint criminal enterprise.

7 [15.12.31]

8 We've heard quite a few – what I would describe as far-fetched  
9 submissions, over the last few days, from the Defence, and in  
10 particular from my learned friends for Khieu Samphan. But perhaps  
11 the most far-fetched of all was the submission that not only was  
12 Khieu Samphan not a – not a leader, not only was he not involved  
13 in the crimes or the joint criminal enterprise, but he didn't  
14 even qualify to be a person in the leadership of the Party. And  
15 why did he not qualify? Because he was an intellectual.

16 My colleague, Nick Koumjian, has already referred to this point  
17 and illustrated its complete lack of a logical basis.

18 But if I can take that one step further, was Khieu Samphan the  
19 only intellectual in the leadership of the CPK? No. Who were the  
20 other highly educated leaders? Son Sen, Ieng Sary, Nuon Chea, Koy  
21 Thuon – and the list goes on; several leaders of the Standing and  
22 Central Committee, highly educated individuals. Khieu Samphan, in  
23 that sense, is not unique.

24 [15.13.50]

25 What were his contributions to the establishment and furtherance

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1 of the joint criminal enterprise in the pre-'75 period? Well, we  
2 know that he has admitted that he made an indispensable  
3 contribution to the very creation of the FUNK and GRUNK, the  
4 coalition which fought the war against the Khmer Republic, an  
5 extremely important political coalition which enabled the Khmer  
6 Rouge to recruit thousands upon thousands of young Cambodians to  
7 fight for - to fight for the CPK and die in their cause.  
8 Khieu Samphan was the highest ranking Communist in the FUNK and  
9 GRUNK. He admitted in his OCIJ statement E3/27 that he was indeed  
10 the only one - the only one - who could have established that  
11 coalition with the Prince.  
12 In his submission, my learned friend Vercken posed the question,  
13 "When was it that Khieu Samphan accepted the use of violence, if  
14 he did" - as we allege. Well, Khieu Samphan has himself provided  
15 an answer to that question.  
16 [15.15.21]  
17 In the video which we have played a number of times in this  
18 trial, a video entitled "Facing Genocide: Khieu Samphan and Pol  
19 Pot", document E3/4201, at 16min35s and onward, Khieu Samphan  
20 explains that he joined the Khmer Rouge because they - they  
21 shared the same goals. But according to the Khmer Rouge, those  
22 goals could only be obtained through violence.  
23 And then he goes on to pose a question and answer it - quote:  
24 "When did I accept the use the violence to change the society?"  
25 Answer: "It was when U.S.A. used Lon Nol to occupy our country."



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1 He accepted the use of violence, by his own admission, in 1970  
2 and he proceeded to further, to lead, and to encourage an  
3 enterprise which was, we allege, at its core, criminal because it  
4 involved executions of innocent people, it involved enslavement,  
5 it involved forced transfers well before the Khmer Rouge took  
6 control of Phnom Penh.

7 [15.16.50]

8 Evidence of Khieu Samphan's support for that violence: E3/116, a  
9 statement he issued in September 1972, three years almost before  
10 the fall of Phnom Penh. He calls on the population of the city to  
11 eliminate the main traitors - including Lon Nol, Sirik Matak,  
12 etc. - and others and their subordinates. There you have it:  
13 1972, Khieu Samphan calling for elimination of civilians and  
14 their subordinates.

15 January 1973, a statement we've referred to a number of times in  
16 this trial, E3/637. Khieu Samphan celebrates in clear terms the  
17 destruction of 10 strategic villages. Are we to believe that  
18 people that lived in those villages were exclusively Khmer  
19 Republic soldiers with whom the CPK were engaged in an armed  
20 conflict? Of course not.

21 In the same statement, he celebrates the smashing - the smashing  
22 - of 10,245 enemy heads. In his testimony, witness Meas Voeun,  
23 who fought on one of the battlefields which Khieu Samphan  
24 discussed in that statement, confirmed the accuracy of the  
25 information, thereby showing that Khieu Samphan was in receipt of

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1 reports from the battlefield and that he used that information to  
2 issue public calls for violence - to issue public calls and  
3 encouragement, as well as endorsement, for killings.

4 [15.18.50]

5 When the City of Udong fell in March 1974, he said, in E3/167 -  
6 quote:

7 "On 18 March, our People's National Liberation Armed Forces  
8 liberated another city, Udong, by annihilating all the puppet  
9 soldiers there along with their reinforcements; in other words,  
10 over 5,000 enemies were eliminated, 1,500 of whom were captured."  
11 This event happened in 1974. You have evidence before you that in  
12 that period the Khmer Rouge, without exception, executed captured  
13 soldiers, and of course that is what happened at Udong. Khieu  
14 Samphan uses his high office, the highest office held by any  
15 Communist in the FUNK and GRUNK coalition, to endorse these  
16 killings.

17 I will now move on to deal with the participation of Khieu  
18 Samphan in the first forced transfer or the evacuation - or the  
19 forced evacuation of Phnom Penh, and I will respond to some of my  
20 learned friends' submissions. But I will also refer the Court to  
21 our written brief, which deals with the evidence against Khieu  
22 Samphan in detail.

23 [15.20.28]

24 My learned friend Guissé argued that the evidence in relation to  
25 the meeting at B-5 which Khieu Samphan attended with Nuon Chea is

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1 not very credible. We strongly disagree. This evidence comes from  
2 a witness who, in our submission, was consistent, who showed  
3 clear memory, and was found – not only by us, but also by Philip  
4 Short – as highly credible. Of course, I'm discussing Phy Phuon.  
5 What is some of the evidence he gave?  
6 Or, rather, let me address it this way: one of the submissions by  
7 the Defence on the weaknesses in his evidence with respect to the  
8 meeting at B-5. They say, "Well, the meeting didn't discuss any  
9 details. There were no details discussed at the meeting, and  
10 therefore, even if Khieu Samphan was present, even if he was  
11 there, and even if he agreed to the evacuation, well, it wasn't  
12 significant because they didn't discuss any implementation."  
13 Phy Phuon's evidence on the 26th of July 2012 and 31st of July  
14 2012 discusses the details: a blackboard; a definition of  
15 spearheads by Pol Pot in the presence of Nuon Chea and Khieu  
16 Samphan; the issuance of instructions to various divisions as to  
17 which spearhead they were to attack; each zone and division were  
18 given specific instructions – the very definition of the planning  
19 of an unlawful act.  
20 [15.22.13]  
21 The next submission they made was that it is implausible, as Phy  
22 Phuon suggests, that there were so many commanders present,  
23 because why would they have everybody in the same place? Wouldn't  
24 that have exposed them to danger?  
25 Well, unfortunately for my learned friends, their own client has

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1 admitted otherwise. In E3/27, his OCIJ statement, he confirms he  
2 was at Pol Pot's headquarters west of Udong. He confirms he was -  
3 in his word - "briefed by Pol Pot once in a while", and he  
4 confirms that other commanders - or, rather, commanders who  
5 commanded the battle to overthrow Phnom Penh were also there: Ta  
6 Mok, Koy Thuon, Ke Pauk, Son Sen, and So Phim from time to time.  
7 Interestingly, our friends, counsel for Nuon Chea, made the same  
8 concession at paragraph 417 of their brief, confirming that the  
9 meeting at B-5, indeed, discussed the liberation, as they call  
10 it, and subsequent evacuation of Phnom Penh and that it was  
11 attended by these commanders.

12 Is that the only evidence of Khieu Samphan's contribution to the  
13 forced evacuation of Phnom Penh? Of course not.

14 [15.23.45]

15 The Defence were at great pains to attack and impeach the  
16 evidence of witness Nou Mao.

17 What was Nou Mao's evidence? This man, a commune-level cadre,  
18 attended meetings in 1974 at which he learned of certain  
19 disagreements within the Party leadership as to the plan to  
20 evacuate. He described for you in detail how Ta Mok said that  
21 every zone would be evacuated and, indeed, threatened people who  
22 disagreed. He also discussed another session taught by Hou Youn,  
23 who opposed the evacuations. That evidence come from a statement  
24 he gave Ben Kiernan on the 26th of August 1981, not long after  
25 the events, and a confirmation of the authenticity of that

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1 document is given in D269/4, a correspondence from Ben Kiernan.

2 What is Nou Mao's evidence? He confirmed in his testimony on the

3 19th of June of this year that he knew at that time that Khieu

4 Samphan was in favour of evacuating the people and that Hou Youn

5 did not agree. He confirmed that twice when questioned by us.

6 Asked where it was that he learned that information, he gave a

7 specific location consistent with his 1981 statement.

8 [15.25.33]

9 Under cross-examination, our learned friends went to great length

10 to try and confuse Nou Mao, who, as was obvious to everyone, is

11 an elderly man who is quite frail and struggling to keep up with

12 the proceedings. They insisted on using the word "position" -

13 what was the "position" of Khieu Samphan - against his evidence,

14 where he had struggled to - or where he had confirmed that he did

15 not know Khieu Samphan's position.

16 At - on the 20th of June, at 14.10.52, he's asked the question as

17 to whether or not he knew Khieu Samphan's position on the

18 evacuations. His response: "No, I did not know his position."

19 Full stop.

20 A couple of lines below: "As for Mr. Khieu Samphan and Mr. Hu

21 Nim, I did not know them."

22 No mention of the word "evacuation".

23 In our submission, clearly, Mr. Nou Mao was discussing his

24 knowledge or lack thereof of the positions of Khieu Samphan and

25 Hu Nim.

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1 Is that the only evidence of Khieu Samphan's support for the  
2 evacuation? No, there is more.

3 Phy Phuon, on the 26th of July 2012, not in relation to B-5, but  
4 in relation to political indoctrination sessions in the months  
5 following the fall of Udong: Pol Pot, Nuon Chea, and Khieu  
6 Samphan teaching their subordinates as to the good experiences  
7 from Udong and how those experiences will be implemented once  
8 Phnom Penh is taken.

9 [15.27.32]

10 The evidence of Nou Mao and of Phy Phuon is of course consistent  
11 with other accounts.

12 The Defence's favourite witness, François Ponchaud, testified on  
13 the 9th of April 2013 that the practice of evacuating the cities  
14 was so broad that everybody knew that this is what the Khmer  
15 Rouge did. And he said at 13.44.46: "People were evacuated. Heads  
16 of groups were killed. This thing is not new; that happened  
17 already since 1973."

18 In her submissions, Madam Chea Leang referred Your Honours to two  
19 witnesses interviewed by Steve Heder, in E3/1714, both of whom  
20 confirmed a pre-existing policy to evacuate cities and one of  
21 whom specifically said: "If we had captured Phnom Penh in 1974,  
22 we would have also evacuated it then."

23 [15.28.43]

24 To all of this evidence, what does Khieu Samphan say?

25 In his interview with OCIJ in E3/210, he says that he didn't

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1 know. He had no idea that there was a plan to evacuate Phnom Penh  
2 – in our respectful submission, a clearly disingenuous and  
3 dishonest statement; a statement that Khieu Samphan has elected  
4 not to have tested before Your Honours. It is therefore not  
5 entitled to probative value.

6 But he said another thing in that interview. He said: "I clearly  
7 realized that the population might have fallen along the way."

8 In his own words, he realized that people were going to fall. In  
9 other words, people were going to die.

10 When did that happen? In his version of the events, on the 17th  
11 of April, when he overheard a conversation between soldiers.

12 What did he do in response to that information – in response to a  
13 realization that people would fall and die?

14 [15.29.58]

15 We've referred to this statement a number of times, but I will  
16 summarize it again: E3/118, Khieu Samphan's first opportunity to  
17 address the people of Cambodia, to address the millions who had  
18 been evacuated and dispossessed, and these are his words – quote:

19 "This is our nation's and people's greatest victory."

20 And he celebrates how they smashed all enemy manoeuvres, how they  
21 relentlessly attacked, how they drained the enemy of all his  
22 strength, including food and rice, and how finally "the enemy  
23 died in agony."

24 Those are the words of Khieu Samphan on the 22nd of April 1975.

25 He was in Phnom Penh. He saw an empty city. He saw a ghost city

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1 emptied of the millions of its inhabitants. His response: "...our  
2 nation's and people's greatest historic victory."

3 [15.31.09]

4 But there is even more evidence of Khieu Samphan's intent to  
5 participate and actual participation in the decision to evacuate.  
6 My learned friend Guissé referred to an interview given in 1982;  
7 this is E3/687, a "New York Times" interview, 9th of July 1982,  
8 in which Khieu Samphan admits unequivocally and without  
9 reservation that the evacuation of the cities was a collective  
10 decision, a decision in which he - in which he participated.

11 Does he deny giving that interview? No. Does he deny saying those  
12 words? No. What do they say to explain this clear admission?

13 "Well, he was a politician and he was making a political  
14 statement, and it was important to show loyalty."

15 Do not be misled by this statement, Your Honours. This is an  
16 admission, and as such it should be treated.

17 Is that all? No.

18 [15.32.26]

19 E152.1.52: a recent interview - a video interview where he  
20 affirms that had a single voice been raised against the  
21 evacuations, there would have been no evacuations - entirely  
22 consistent with his 1982 admission that this was indeed a  
23 collective, unanimous decision.

24 My colleague Raynor referred also to a justification he gave  
25 recently which is remarkably consistent to justifications given



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1 by Pol Pot and Nuon Chea and very different from that which you  
2 have been hearing from his lawyers in this courtroom.

3 If I can move on to Khieu Samphan's positions and roles in the  
4 Ministry of Commerce; and I will try and move on through this  
5 quickly even though the material is voluminous.

6 Why is it relevant? It is relevant because, by supervising this  
7 ministry and State warehouses, he was contributing to a joint  
8 criminal enterprise to forcibly move people into forced labour  
9 camps, to enslave them, and to subject them to inhumane  
10 conditions of life in order to extract produce which Khieu  
11 Samphan and his colleagues then withdrew and kept in warehouses  
12 in Phnom Penh.

13 [15.33.57]

14 You saw, in my colleague Bill Smith's submissions, evidence of  
15 Khieu Samphan's receipt of vast amounts of produce from various  
16 zones, in E3/3511, including millions of kilograms of rice  
17 withdrawn from the Northwest Zone.

18 Role in Commerce: They say, "Well, he was only a technical  
19 assistant; no real role, no real authority." They could not be  
20 further from the truth. This man was indeed the Party Centre's  
21 man when it came to running the slave State on a day-to-day  
22 basis. Within that collective leadership, he was in charge of  
23 withdrawing produce from the cooperatives, from the slave camps,  
24 and using it as he and his colleagues determined to be  
25 appropriate.

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1 They say, "He wasn't in charge; it was Koy Thuon, because Koy  
2 Thuon was appointed in October and then in March '76 to deal with  
3 matters of Commerce." Your Honours, what happened to Koy Thuon?  
4 He was put under house arrest in April '76, one month after being  
5 appointed to the same committee with Khieu Samphan to deal with  
6 purchases from China.

7 [15.35.26]

8 Where was Koy Thuon kept under house arrest? Your Honours heard  
9 evidence from his former messenger, Pean Khean, on the 2nd of May  
10 and the 3rd of May 2012, explaining that Koy Thuon was indeed  
11 held under house arrest some 300 metres from K-1, a location at  
12 which Khieu Samphan, Pol Pot, Nuon Chea, and the other leaders  
13 worked on a continuous basis.

14 The next set of submissions that I wish to address was the  
15 Defence's attempt to impeach the evidence of witness Sar  
16 Kimlomouth. By way of a very quick summary, Sar Kimlomouth  
17 testified that Khieu Samphan and Vorn Vet were indeed the upper  
18 echelon when it came to the Ministry of Commerce, that they  
19 supervised that ministry, that they had power to direct that  
20 ministry, that the ministry had no power to do anything without  
21 their approval.

22 Of course they found this quite inconvenient, so in their  
23 submissions they say, "Well, he was presented with documents, he  
24 was forced to say this, he was confused, or he was making  
25 speculations." Again, false.

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1 [15.36.50]

2 The documents I showed him when he gave that evidence, E3/1613  
3 and E3/1614, are minutes of meetings that Sar Kimlomouth himself  
4 attended. He was indeed reluctant to go into great detail on his  
5 own role during the Khmer Rouge period, but the evidence shows  
6 that he was indeed very much connected to the Ministry of  
7 Commerce and understood the matters on which he was giving  
8 evidence.

9 Before I address that evidence, how did Sar Kimlomouth respond  
10 when the Defence accused him that he was just speculating? 5th of  
11 June 2012, in response to my learned friend Kong Sam Onn's  
12 questioning, he says:

13 "I was not just making an assumption without any basis. I was  
14 basing that conclusion or assumption on the documents. And  
15 clearly, according to the documents, it is very likely that Hem  
16 was above the Commerce Committee."

17 That was at 10.10.52, on the 5th of June.

18 [15.38.06]

19 Then my learned friend Kong Sam Onn asks the same question again,  
20 coming from a different angle, at 10.14.29. Sar Kimlomouth again  
21 confirms: "I am not just making assumptions."

22 And who was Sar Kimlomouth? Well, he testified before Your  
23 Honours that he was Deputy Director of the Foreign Trade Bank of  
24 Cambodia. What was his proximity to Khieu Samphan and the  
25 Ministry of Commerce? You have on the case file nine sets of

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1 meeting minutes with foreign delegations attended by Sar  
2 Kimlomouth.

3 This man was intimately familiar with the matters he was  
4 discussing. Seven of the meetings he attended were indeed  
5 reported to Khieu Samphan. In a further meeting, he was in fact  
6 the most senior representative from the Cambodian side; and that  
7 is in E3/164.

8 When I asked him about that document on the 4th of June 2012, he  
9 did not deny that he attended the meeting, and he did not  
10 disagree with me that he was the most senior person.

11 [15.39.25]

12 He also received ledgers indicating the expenditure of money to  
13 purchase items from China. And one such document is at E3/336; it  
14 contains annotations referring to both Khieu Samphan and Sar  
15 Kimlomouth.

16 What did Sar Kimlomouth do after 1979? He was a minister in the  
17 Democratic Kampuchea Government presided over by Khieu Samphan –  
18 E3/1435 – a man obviously considered competent enough, senior  
19 enough, knowledgeable enough to be Secretary of State for Supply  
20 and Transportation in the Government of Democratic Kampuchea that  
21 Khieu Samphan led within months of the fall of Khmer Rouge.

22 Is Sar Kimlomouth's evidence out of context? Are the Defence  
23 right when they say, "Well, it wasn't Khieu Samphan; it was Vorn  
24 Vet who was really in charge"?

25 On the case file, there are more than 20 reports from the

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1 Ministry of Commerce to the Upper Echelon. How many of those  
2 reports are addressed to Vorn Vet? Zero. How many of those  
3 reports were just addressed to Khieu Samphan? All of them.  
4 [15.41.01]

5 But they say, "But Khieu Samphan was not Angkar. When they talk  
6 about Angkar in these documents, you should interpret that to  
7 mean somebody else, not Khieu Samphan." Really? In the documents  
8 addressed to Khieu Samphan, in those 20-plus documents, numerous  
9 references to "Angkar" indicating clearly that the Ministry of  
10 Commerce was communicating to Khieu Samphan, as a representative  
11 of Angkar, who would provide further instructions. And you will  
12 find that, Your Honours, in E3/2041, a report addressed to Angkar  
13 which states - quote - I apologize; a report addressed to Khieu  
14 Samphan which states - and I quote: "Request Angkar to form  
15 opinion in order to inform them of this matter."  
16 Similarly, E3/2042, E3/304. And all of these reports, Your  
17 Honours, indicate clearly that the ministry is reporting to their  
18 superior, seeking his instructions and asking for his approval or  
19 guidance.

20 [15.42.16]

21 Two documents of particular interest.  
22 E3/1637, a report of the 12th of November 1978 on negotiations  
23 with Yugoslavia, again addressed to Hem - or, rather, contains an  
24 annotation, "already sent to Brother Hem". It says: "I would like  
25 you, Brother, to be informed of this report and give your

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1 comments as guidance."

2 Well, you might say, "Well, that doesn't prove anything about  
3 Angkar."

4 Let's look at another document. E3/1638 states - it refers back  
5 to the document I just mentioned, saying: "Report was made to  
6 Angkar." It confirms that the report of the 12th of November  
7 which was submitted to Khieu Samphan was, in the words of the  
8 Commerce Committee, "submitted to Angkar".

9 And who was "Angkar"?

10 Judge Cartwright asked that question of Professor Chandler on the  
11 18th of July 2012. He testified that that was the collective, the  
12 leadership, the group mentioned in the Standing Committee minutes  
13 that he was looking at, including Pol Pot, Nuon Chea, Khieu  
14 Samphan, Ieng Sary, and other leaders. He confirmed that same  
15 conclusion when cross-examined by the Defence on the 24th of July  
16 2012, and he did so on several - in several instances.

17 [15.43.55]

18 Well, they might say, "Well, Professor Chandler is merely  
19 speculating. 'Angkar' was clearly a reference to Pol Pot, not a  
20 reference to the collective leadership."

21 E3/740: an instruction - a directive from Committee 870 on the  
22 use of the term "Angkar". It criticizes cadres for using the term  
23 to refer to individuals and says - and I quote: "The term  
24 'Angkar' or 'Party' is used only for the organization. It shall  
25 not be used for any individuals."

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1 So, when the Ministry of Commerce addresses Angkar, they are  
2 addressing the collective leaders and they are addressing them  
3 through their immediate superior, Khieu Samphan. That much is  
4 proven beyond any reasonable doubt on the documents before Your  
5 Honours.

6 I will not go into great detail on the evidence of Khieu  
7 Samphan's participation in the Party Centre; it's discussed in  
8 detail in our written brief.

9 [15.45.02]

10 By way of a summary:

11 He attended 86 per cent of the Standing Committee minutes -  
12 meetings for which minutes survive.

13 He has admitted that he lived and worked with Nuon Chea and other  
14 leaders, including Pol Pot, that they took part in self-criticism  
15 sessions with him, that they did nothing separately; they ate  
16 together, they did self-criticism together.

17 He is the third most frequent attendee at Standing Committee  
18 meetings. Only Pol Pot and Nuon Chea attended more often than  
19 Khieu Samphan. Several full-rights members of the Standing  
20 Committee attended less frequently. The implications of that  
21 evidence? That he was very much in the heart of power; that he  
22 was, with those leaders in Phnom Penh, in charge; that they were  
23 a collective decision-making body; that they devised their  
24 policies and had them implemented together.

25 Other facts of his authority - of his actual executive authority

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1 and his ability to contribute to this regime and its joint  
2 criminal enterprise.

3 [15.46.21]

4 Evidence of Witness Meas Voeun. I will not discuss it in detail.

5 On the 4th of October 2012, you will recall, Your Honours, this  
6 witness describing how he, as the newly appointed Secretary of  
7 Sector 103, was instructed by Khieu Samphan to report to him on  
8 all matters in the sector, including the circumstances of Khieu  
9 Samphan's wife's relatives. What happened following that  
10 telegram? Meas Voeun and his boss, the new Secretary of the North  
11 Zone, investigated the circumstances of Khieu Samphan's  
12 relatives. They found one of them to be imprisoned in the Siem  
13 Reap prison with 700 prisoners. The Secretary of the new North  
14 Zone personally goes to the prison and arranges the release of  
15 Khieu Samphan's relative.

16 Now, the Defence insists that there's some problem with this  
17 evidence because the report back to Khieu Samphan may or may not  
18 have been received. We say that it is completely beside the  
19 point. What the episode demonstrates is that Khieu Samphan,  
20 either personally or through his membership of the Party Centre,  
21 was able to direct a zone secretary to investigate the  
22 whereabouts of his relatives and he was able to have his relative  
23 released from a prison in which 700 prisoners were left.

24 [15.48.03]

25 You also heard evidence of a meeting on the 5th and 6th of



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1 January 1979 where Khieu Samphan presided, in Phnom Penh, a  
2 hundred or more people attending, all of them in leadership  
3 positions. The subject of the meeting: the Vietnamese invasion.  
4 My friend Guissé takes issue – or, rather, says that the fact  
5 that he was discussing enemies, "Well, that's normal, enemies are  
6 invading."

7 We don't take issue with that, but what enemies was he  
8 discussing?

9 Evidence of Witness Ruos Suy, their own witness: on the 25th of  
10 April 2013, he confirms his prior statement that Khieu Samphan  
11 said that the problems with the Vietnamese were caused by  
12 "enemies burrowing from within", a phrase Your Honours and this  
13 Court is well familiar with, a code word for "internal enemies",  
14 a code word for those to be "purged". Another import of that  
15 meaning is that he was presiding over a meeting involving at  
16 least a hundred senior cadres – again, evidence of his authority,  
17 power, and influence.

18 [15.49.23]

19 They take issue next with evidence of Khieu Samphan's role in  
20 political indoctrination. And I'm not surprised; this is very  
21 damning evidence of Khieu Samphan's endorsement of the JCE  
22 policies, his furtherance of the policies, his contribution to  
23 their implementation.

24 They take issue with the evidence of Ek Hen. The only  
25 inconsistency or alleged inconsistency in her evidence was the

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1 year in which Khieu Samphan taught. Khieu Samphan said in that  
2 session, according to Ek Hen, that Pang, a senior cadre in Office  
3 870, had been arrested as a traitor collaborating with the  
4 Vietnamese.

5 What is clear from her evidence is that she was not confused,  
6 though the defence for Khieu Samphan may have been. In her – in  
7 the full transcript of her OCIJ interview, D94/8.1, she makes it  
8 clear that there were two sessions, one in '76 or '77 and one in  
9 '78, and that the second one was taught by Khieu Samphan. That  
10 establishes that the time when Khieu Samphan gave that  
11 presentation was relevant and consistent, indeed, with him  
12 confirming Pang's arrest. We, of course, have evidence confirming  
13 Pang's arrest in early 1978.

14 [15.50.55]

15 She confirms that in her OCIJ – the full transcript of her  
16 interview, she confirmed that in Court when cross-examined by my  
17 learned friend, Mr. Vercken, and she did so twice in the  
18 transcript of the 3rd of July 2013; on two separate occasions she  
19 confirmed that it was Khieu Samphan that gave that lesson, that  
20 it was in 1978, that it was the second and not the first session,  
21 and that the first session had indeed been taught by Nuon Chea.  
22 Other witnesses who confirm Khieu Samphan's participation by way  
23 of encouragement, endorsement of the criminal policies: Em Oeun,  
24 a civil party, whose evidence they also sought to impeach. He  
25 talked about how Khieu Samphan encouraged cadres to look for

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1 those who pretended to be sick, particularly to look for  
2 infiltrated enemies, to watch New People in particular because  
3 they were steeped in feudalism. His evidence was uncertain on  
4 only one point, and that is the date of this event. He was at  
5 pains on the 28th of August and on the 29th of August to explain  
6 – or to affirm for the Court that he was telling the truth, and  
7 he specifically acknowledged: "I may not remember the date, but I  
8 remember the event." And so his evidence stands.

9 [15.52.24]

10 Other witnesses who gave similar evidence of Khieu Samphan's  
11 political indoctrination: Phy Phuon, Pean Khean, and even  
12 witnesses interviewed by Philip Short, one of whom discussed  
13 Khieu Samphan's justification for the evacuation of the cities.  
14 Just as – just as he had contributed to the forced evacuation of  
15 Phnom Penh and the criminal policies that underpinned that event,  
16 as well as the second forced transfer and the killings of Khmer  
17 Republic officials and soldiers, he supported the enemy policy  
18 more broadly.

19 Of course, you have heard now, on numerous occasions,  
20 un-contradicted evidence that he issued the decision to kill the  
21 seven traitors. He sat in a meeting on the 8th of March 1976 –  
22 E3/232 – in which arrests were discussed. He was a member of the  
23 Central Committee at a time when the infamous decision on the  
24 right to smash enemies was issued. He confirmed to Steve Heder in  
25 1980 that all of those who were arrested were guilty – in other

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1 words, they got what they deserved. In his speeches in 1976, '77,  
2 and '78, using the highest offices in the land, he endorsed CPK's  
3 policy to search for and eliminate its enemies. That evidence is  
4 on the case file, and I don't propose to rehearse it.

5 [15.54.01]

6 He also played his part in denying Democratic Kampuchea  
7 atrocities, another contribution to this criminal plan.

8 In his interview, in August 1975, found in E3/119, he discussed  
9 the criticism of the Democratic Kampuchea regime as propaganda  
10 designed "to discredit and slander us". He said this propaganda  
11 was nothing but an irritating and meaningless noise. And he did  
12 this on many occasions, Your Honours; an apologist and a defender  
13 of the CPK and its criminal policies.

14 He did so after the period as well, as you well know from his  
15 1987 book, E3/703, in which, while acknowledging mass arrests, he  
16 said: "We killed less people than died in car accidents in other  
17 countries."

18 All of this evidence, Your Honours, shows a continuing,  
19 unreserved, active, and committed participation by this Accused  
20 in the joint criminal enterprise which led to the crimes with  
21 which he is now charged.

22 [15.55.26]

23 He was a member of the Centre. He was one of the most trusted  
24 people, working closely with Pol Pot and Nuon Chea. You must not  
25 believe his assertions that he did not know, that he did not

1 participate. The evidence exposes them as nothing but bare lies.

2 And if I can say a few words in conclusion, Your Honours, on  
3 behalf of the Office of the Co-Prosecutors, at the end of what  
4 has been a long and complex trial.

5 I wish to go back to the 17th of April 1975. This was a day which  
6 could have been a day of reconciliation. It could have been a day  
7 of hope. It could have marked the end of the suffering of the  
8 Cambodian people. The Khmer Rouge prevailed in the war. Their  
9 adversary surrendered.

10 General Mey Sichan, in his broadcast on the 17th of April,  
11 invited them into the cities and said, "The doors are open to  
12 you," calling them his "blood brothers", seeking to reach out in  
13 a spirit of reconciliation, committing himself and his troops to  
14 maintaining order so that the Khmer Rouge can take power. But in  
15 their hearts, Your Honours, there was no room for reconciliation;  
16 there was no room for compassion.

17 [15.57.18]

18 Any leader who wanted reconciliation on the 17th of April, any  
19 leader who was not intent on committing mass crimes would have  
20 permitted people to live in freedom. They would have allowed  
21 people to live with their families and in their homes; they would  
22 not have dispossessed them, they would not have forced them out  
23 of their homes and into an enslavement that was to last for  
24 almost four years.

25 Instead of accepting the offer of reconciliation, they set out to

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1 destroy an entire way of life and to turn a country into a  
2 suffering nation of slaves. The plan steeped in criminality,  
3 based in the use of violence, brutality, enslavement, murder of  
4 all those who opposed or who resisted. People were out of the  
5 city, but that was not the end. They were to write biographies  
6 because searches were to continue for the enemies.

7 [15.58.23]

8 These Accused appointed themselves the masters of every life in  
9 this country. They took it upon themselves to decide who lived  
10 and who died. They brought this country to its knees. They caused  
11 the death of almost a quarter of its population.

12 Let's not forget, Your Honours, that they institutionalized  
13 extrajudicial killings. From the highest offices in this land, an  
14 order went, delegating authority at every level to smash those  
15 inside and outside the ranks, an order criminal in every sense of  
16 that word.

17 These Accused and the organization they led were masters of  
18 deception, and hence the use of the word "Angkar", hence the use  
19 of the codes, "870", hence the veil of secrecy and the rules  
20 which they imposed and implemented.

21 But we submit, Your Honours, that that veil has been lifted. It  
22 has been lifted by evidence before you. What that evidence shows  
23 is that they ran a slave State through a highly organized,  
24 central - centralized hierarchy, they issued directives and they  
25 received reports, as you have seen time and time again, they kept

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1 themselves informed of the crimes, and they ensured that the  
2 crimes continued to be committed.

3 [16.00.08]

4 Khieu Samphan and Nuon Chea are guilty of the crimes with which  
5 they are charged because they were at the heart of this joint  
6 criminal enterprise, because every crime committed was committed  
7 in furtherance of the policies they adopted.

8 They are guilty beyond a reasonable doubt, and the sentence they  
9 deserve is a sentence of life imprisonment. Nothing less can ever  
10 match or even come close to matching the gravity of the crimes  
11 that they are guilty of.

12 We ask Your Honours to judge them fairly, and we ask you to find  
13 them guilty, and we ask you to sentence them to life  
14 imprisonment.

15 Those are our submissions. And unless we can assist Your Honours  
16 further, the Prosecution will rest.

17 [16.01.16]

18 MR. PRESIDENT:

19 Thank you, the Prosecution.

20 The time is now appropriate for today's adjournment.

21 And before the Chamber adjourns, we would like to inform the  
22 parties to the proceeding and the public that for tomorrow's  
23 proceeding the two Accused and their respective defence teams  
24 will be allowed the floor to make their final statement.

25 And in order to properly manage tomorrow's proceeding, the

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1 Chamber would like to inquire from the defence teams and the two  
2 Accused that - during their closing and final statement tomorrow,  
3 who will speak first, either the Accused or the defence team, and  
4 how much time does each team need - that is, in relation to the  
5 two hour time allocation as set forth by the Chamber.

6 And in the case of Nuon Chea, if he wishes to speak tomorrow,  
7 where will he speak? Will he speak from the holding cell  
8 downstairs or will he come to the courtroom to make his speech?

9 [16.02.55]

10 As for Khieu Samphan's defence and Khieu Samphan himself, during  
11 tomorrow's proceeding, if the rebuttal statement made by Nuon  
12 Chea and Nuon Chea's defence concludes within the time allocation  
13 and if the time is available, the Chamber will give the floor to  
14 Khieu Samphan or his defence team to make their final statement.  
15 So, we would like now to give the floor to Counsel Victor Koppe  
16 to enlighten the Court on the arrangement within your team and  
17 your client.

18 MR. KOPPE:

19 Thank you, Mr. President.

20 It is the intention of our client to speak tomorrow,  
21 approximately one hour and a half - that is at least what he  
22 thinks it will amount to. Obviously, he's not quite sure if he  
23 will stay within the one hour and a half, but that is what he is  
24 now anticipating.

25 [16.04.11]



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1 He would also like to give his statement here in the courtroom,  
2 not in his holding cell. The problem is, however, that we – and  
3 also he – do not feel he will be able to speak for one hour and a  
4 half straight, in a row, so we think that it would be wise to  
5 have a pause in the middle of his 90 minute speech. That is to be  
6 said about our client.

7 What I would like to ask the Chamber is, we know that we have in  
8 total the amount of two hours to speak, but notwithstanding the  
9 exact amount of time that Nuon Chea will speak, we will be able –  
10 or I will be able to reply to the submissions of today for the  
11 period of half hour. So, technically or theoretically, we could  
12 speak a little longer than two hours, but that is then due to the  
13 fact that our client doesn't know exactly how long he will speak.

14 MR. PRESIDENT:

15 Thank you, Victor Koppe.

16 And, yes, the International Counsel for Khieu Samphan, you may  
17 proceed.

18 [16.05.39]

19 MR. VERCKEN:

20 We wouldn't need more than one hour. We may need less, such that  
21 we would propose that our learned colleague of the Nuon Chea team  
22 should use the rest of our time.

23 As for the order in which we will speak, the lawyers will take  
24 the floor first, followed by Mr. Khieu Samphan.

25 MR. PRESIDENT:

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1 Thank you, Counsel, and thank you, everyone.

2 The Chamber will adjourn now and will resume tomorrow morning –  
3 that is, Thursday the 31st of October 2013 – commencing from 9  
4 a.m.

5 And as we just informed the parties to the proceeding and the  
6 public, tomorrow the floor will be given to the co accused and  
7 the defence teams to make their final rebuttal statement. This  
8 information is also applicable to the support staff.

9 [16.06.50]

10 And we invite all the general public to attend the proceeding on  
11 time.

12 Security guards, you are instructed to take the two Accused,  
13 Khieu Samphan and Nuon Chea, to the ECCC detention facility and  
14 have them returned to the courtroom personally tomorrow morning,  
15 prior to 9 a.m.

16 The Court is now adjourned.

17 (Court adjourns at 1607H)

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