



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

ឯកសារដើម
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

21 June 2017
Trial Day 506

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

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KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KOPPE	English
Mr. KOUMJIAN	English
The President (NIL Nonn)	Khmer

1

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

2 (Court opens at 0903H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear the closing statement in
6 Case 002/02 to continue representations by the defence counsel
7 for Khieu Samphan for the morning sessions, and then the rebuttal
8 would be held in the afternoon by the Lead Co-Lawyers for civil
9 parties.

10 Ms. Chea Sivhoang, please report the attendance of the parties
11 and other individuals to today's proceedings.

12 [09.04.52]

13 THE GREFFIER:

14 Mr. President, for today's proceedings to hear the closing
15 statements, all parties to this case are present except Marie
16 Guiraud, the International Lead Co-Lawyer for civil parties, who
17 informs the Chamber that she will be a bit late this morning.

18 Mr. Nuon Chea is present in the holding cell downstairs. He has
19 waived his right to be present in the courtroom. The waiver has
20 been delivered to the greffier.

21 Thank you, Mr. President.

22 [09.05.28]

23 MR. PRESIDENT:

24 Thank you.

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

1 The Chamber has received a waiver from Nuon Chea, dated 21st June
2 2017, which states that, due to his health -- that is, headache,
3 lower back pain, when he sits for long and he cannot sit or
4 concentrate for long, and in order to effectively participate in
5 future hearings, he requests to waive his right to be present at
6 the 21st June 2017 hearing.

7 Having seen the medical report of Nuon Chea by the duty doctor
8 for the Accused at the ECCC, dated 21st June 2017, which notes
9 that, today, Nuon Chea has a lower back pain and feels that he
10 might vomit when he sits for long and recommends that the Chamber
11 shall grant him his request so that he can follow the proceedings
12 remotely from the holding cell downstairs.

13 Based on the above information and pursuant to Rule 81.5 of the
14 ECCC Internal Rules, the Chamber grants Nuon Chea his request to
15 follow today's proceedings remotely from the holding cell
16 downstairs via an audio-visual means.

17 [09.06.56]

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

21 I now hand the floor to the defence team for Khieu Samphan to
22 continue presenting the closing statements.

23 MS. GUISSÉ:

24 Thank you, Mr. President.

25 Good morning to all of you.

1 Yesterday, I <>stopped at our <submissions> in response to the
2 Prosecution <brief> <regarding> the different sites in Case
3 002/02, and I was speaking about the 1st January Dam.
4 [09.07.46]
5 In their brief at paragraph <1151>, the Prosecution <reluctantly>
6 acknowledges that the presence of Khieu Samphan is not clearly
7 established. However, <the prosecutors> are trying to find a link
8 between this dam and Khieu Samphan by bringing up a 15 April 1977
9 <speech> without <properly> explaining how <it led> to whatever
10 crime. And this is what I've been <pointing out since> yesterday,
11 this lack of <precision and of> demonstration <regarding> the
12 facts that are <supposedly> being tried.
13 <Also> with regard to the crimes, I'd like to refer you to our
14 final brief<,> to <paragraphs> <1046> to <1074> with regard to
15 the 1st January Dam, and here there is a point that we must note
16 <again> with regard to the way that the Prosecution handles <the>
17 law, specifically with regard to the 1st January Dam, at
18 paragraph 1143 of their brief.
19 The prosecutors list the characterizations retained in saying
20 that the charges are murder, extermination, enslavement,
21 political and religious persecution as well as other inhumane
22 acts. Up until then, there's no problem. The list is clear and
23 <complete>. But now, we don't understand <what follows> <because
24 there is a continuation> in <paragraphs> 1162 and 1163<.> <The>
25 prosecutors characterize facts of <arrests> and imprisonment.

1 [09.09.34]

2 These are not, however, part of the charges that <they themselves
3 listed for trial in connection with> this site<.> <So> on <what>
4 legal <basis precisely> are they speaking to us about arrests
5 <and> <imprisonment>? This <is not included in the charges>. They
6 said that themselves. <Why>?

7 And now I'd like to get back to my observation I made yesterday.
8 It's not, therefore, understandable that it's up to the Defence
9 to sort through the facts<,> <as we have done in our brief,> <to
10 recall the charges being prosecuted and in connection with what
11 site.>

12 Another observation, this time regarding the Kampong Chhnang
13 airport worksite <and an> illustration <with short sentences and
14 quotations to make an impression>, but that <in real terms> does
15 not amount to evidence.

16 [09.10.26]

17 <The proof of this assertion is that> <> <at the beginning> < of
18 the argumentation on the airport> <in> <the Prosecution brief a
19 statement by Duch> <is quoted> with regard to Kampong Chhnang
20 <whereas> Duch never went to <the> Kampong Chhnang airport
21 worksite.

22 Another thing is they tell you that <it has> <apparently> been
23 established <that murders were committed> at the Kampong Chhnang
24 airport<.> <The> Nuon Chea defence team <has> apparently <pointed
25 out> the weakness of the evidence <on this subject.> <We have, by

5

1 the way,> also mentioned this in our brief.
2 Another point which <is of particular interest to our team> is
3 the issue of the supposed visits of Khieu Samphan to that airport
4 worksite. And here, I would like to <revisit> this for a few
5 moments because <I consider it> <important> to <show> the
6 difference between a written statement and what <ultimately
7 emerges from a hearing>. <In this regard,> everyone <attended the
8 hearings> and <took note of the> discrepancy.
9 First example, the approximate testimony of Chan Man. <The
10 Co-Prosecutors quote in their brief the Written Record of
11 Interview Chan Man or, in any case, Chan Man's testimony. And I'd
12 like to just remind you that, in his written statement, <his
13 record of interview> -- E3/5278, ERN French 00355865, Chan Man is
14 quite categorical and says, "I saw Khieu Samphan and Ieng Sary
15 come to visit the airport worksite."
16 [09.12.25]
17 Except that when he testified here before the Court, it was a
18 different story. Things were much vaguer. And here I'd like to
19 refer you to his statement before the Court, <transcript>
20 E1/312.1, at around <1.35.31> in the afternoon. And this is what
21 he said when he answered the Prosecution:
22 "As I already said, I was quite far away from there. I couldn't
23 see them clearly. I was told that many senior leaders came to
24 visit the airport worksite in order to see test flights. This is
25 what other people told me. This is how I learned about <it>. Then

6

1 -- at that time, many, many people stepped out of their cars and
2 I did not know who these people were. But the person who was
3 close to me told me that they were senior leaders who were
4 visiting the worksite, and those are the names that were given to
5 me." End of quote.

6 [09.13.41]

7 So here, we have gone from a categorical assertion, "I saw Khieu
8 Samphan and Ieng Sary come visit the <airport> worksite" and then
9 we note here when he's questioned before the Court that, finally,
10 he was a bit far away, <that> he couldn't see things clearly and
11 that, finally, <it was> somebody else <who> gave him the names of
12 these leaders. And when he's questioned further, we note that
13 this is hearsay. No precise <names of persons>, no <precise>
14 dates, no exact sources to substantiate this information.

15 And his answer -- this was at the hearing -- E1/313.1 at around
16 <2.16:43> when he's asked, "What about your sources?" And he
17 answers:

18 "They all disappeared, and I don't remember their names. They
19 were my work colleagues but, as I said, I don't remember their
20 names." End of quote.

21 Another witness in the same line, the Prosecutors referred to
22 Khin Vat. And when we read Khin Vat's Written Record of
23 Interview, E3/5284, French ERN 00375493, this is what he says:
24 "I saw Khieu Samphan come visit this worksite at the end of
25 1977." And then he provides you with a description.

1 [09.15.21]

2 It seems precise, it seems <circumstantiated>, and if we base
3 ourselves <only> on the Written Record of Interview, we have the
4 impression that <he> actually saw him.

5 However, when he testified before the Chamber, as of the first
6 question put to this witness <on the subject>, we <realize> again
7 that this is anonymous hearsay.

8 <Here> I'd like to refer you to E1/325.1 at around 3.19, and this
9 is what he says:

10 "I learned that Khieu Samphan and his colleagues, whom I did not
11 know, with leaders from <C-502> accompanying them, came to the
12 worksite. Unfortunately, I do not remember the date of this
13 visit. All I knew was that he came to inspect the airport
14 worksite."

15 [09.16.21]

16 Another quote: "I did not see him personally. I <only learnt
17 about his visit> and I knew that he came to the worksite. <That>
18 is why I cannot provide you with details <on> how he was dressed,
19 etc., etc."

20 <These> are two examples <of> the <limitations> of the Written
21 Records of Interview when we want to take <them at face value and
22 equate them with > evidence <heard before the Chamber,> <as the
23 Prosecution is doing.> <The witness' initial position is one of
24 absolute certainty> < -- > I saw <him>, and then, <in fact,
25 before the> Chamber, we <realize> that <he is no longer saying:

1 "I saw him" but that> all of this is only hearsay.
2 And to finish off with this issue <concerning the Kampong Chhnang
3 airport>, I'd like to remind the Chamber and this is a point
4 that's important to note, that at the time of Democratic
5 Kampuchea, the <revolutionary alias of> Son Sen <,> who was <the
6 military officer> in charge of the military headquarters, was
7 Khieu. And when we analyze all of the testimonies, everyone
8 agrees that Kampong Chhnang airport was a military airport, so
9 all of this <makes sense.>
10 So 40 years <after the events>, when we're dealing with people
11 who are so unsure of the details <of what they saw>, maybe they
12 mixed up Khieu Samphan with Khieu <and remembered the name
13 Khieu,> thinking <it> was Khieu Samphan <since> they didn't know
14 him.
15 In any case, this is an element that casts doubt on the
16 reliability of their testimonies.
17 [09.17.56]
18 <The> Prosecution also tells you in paragraph 1164 that
19 apparently there were executions. And the only evidence to
20 substantiate this is the statement of one person. And then as I
21 was explaining to you yesterday, <to try to prove that murders
22 were committed on this particular site, they are> asking you to
23 go look <for> evidence linked to other security centres which do
24 not fall within the scope of this trial, that is to say, Baray
25 Choan Dek, Srae Andoung, that is to say, sites that do not fall

1 within the scope of this trial.

2 It is these elements <alone that> demonstrate that the evidence
3 is not sufficient and we have to draw the consequences from this.

4 Another point that I would like to bring up is the issue of the
5 treatment of the former Khmer Republic soldiers. And it's

6 important to refer you here to our brief at paragraph 2258 to
7 <2318>, and this <again> <demonstrates> the confusion with regard
8 to the charges that Khieu Samphan must answer to.

9 [09.19.29]

10 In paragraph 305 of their brief, the Co-Prosecutors, < -- >and
11 this <is an assertion they have been making throughout this trial
12 < -- > submit that in Case 002/02, Khieu Samphan <is> being
13 prosecuted for <a> policy against the former officials and
14 soldiers of the Khmer Republic throughout <Democratic Kampuchea>.

15 However, when we <again> look at the Closing Order, paragraph
16 206, we note that, in reality, the only <instance> in which
17 <mention is truly made of a> <policy> against former officials of
18 <the> Khmer Republic <was with regard to> population movement 1.

19 Otherwise, with regard to the rest of <the discussion of the
20 issue,> that is, possible crimes against former officials of the
21 Khmer Republic, well, they only refer to this site by site, that
22 is to say, S-21, Krang Ta Chan, Tram Kak cooperative and the 1st
23 January Dam.

24 So we're not speaking here about the totality of Cambodia. When
25 we look at the Closing Order, <as regards Case 002/02, that is

10

1 it. The only time reference is made to general policies is with
2 regard to the movement of the population 1.> <Those> were the
3 observations that I had to make with regard to <specific sites
4 linked to the charges> in 002/02.

5 Now I'd like to turn to the question of crimes against Vietnamese
6 and then against the Cham<,> starting with the crimes against the
7 Vietnamese.

8 [09.21.18]

9 I spoke about this a little bit yesterday when I <brought> up the
10 issue of the armed conflicts <,> inter alia>, and I <also> spoke
11 to you about paragraph 206 of the Closing Order. And I would like
12 to insist again by telling you that the Prosecution <cares> very
13 little <about> geographical <jurisdiction> as presented in
14 paragraph 206 of the Closing Order.

15 And this is a problem that we <have> had to deal with <throughout
16 the trial.> <When I say "we," I mean the Chamber and the conduct
17 of hearings.> <Throughout> this trial we wanted so much to speak
18 < -- > <I should stop saying "we"> <The Chamber and the
19 Prosecution wanted so much to talk about general policy, saying:
20 "Yes, these are facts that are not specifically tried."> <Yet>
21 this allows us to speak about the policy in general terms. But
22 the problem with speaking about policy in general terms is that
23 <it> should not <make us> forget that you are seized <of> precise
24 facts. And it is these precise facts that have to be established
25 beyond any reasonable doubt so that you can convict.

11

1 [09.22.36]

2 And the problem with regard to the Vietnamese is that it's very
3 clear<.> <The> geographic zone for which the defendants are being
4 charged with regard to the genocide of the Vietnamese is Prey
5 Veng and Svay Rieng. And that is where the Prosecution must
6 demonstrate that there was genocide and that there was a
7 genocidal intent with regard to those two areas.

8 And I'm telling you this because it was quite symptomatic to see
9 that during the two days of <closing arguments> by the
10 Prosecution we heard again <and again>through video clips and
11 quotes many, many witnesses speaking about the treatment of the
12 Vietnamese except <> in Svay Rieng province and in Prey Veng
13 province.

14 And when I'm speaking about <a> geographical limit, please do not
15 tell me that it's only the Khieu Samphan team that <has construed
16 such an interpretation> because there are submissions on the case
17 file <showing that> that the Prosecution knew perfectly well that
18 this genocide was only limited to Prey Veng and Svay Rieng. And
19 to prove this, I'm going to quote to you in extenso a paragraph
20 of <an application by> the International <Co-Prosecutor> dated 15
21 September 2015, document E381, paragraph 9.

22 [09.24.08]

23 <In that> request he was asking for <additional> witnesses, and
24 this is what they<,> the Co-Prosecutors <are saying> <and not >
25 the Khieu Samphan defence <which has supposedly construed the

1 wrong interpretation. It is the> Co-Prosecutors themselves. This
2 is what is said in this paragraph 9. And I'm going to try to read
3 it out slowly so that everyone can understand clearly:

4 "The Co-Investigating Judges considered that they had been seized
5 of facts regarding the treatment of the Vietnamese in the
6 provinces of Prey Veng and Svay Rieng in the East Zone and during
7 the incursions into Vietnam. When the Chamber severed the charges
8 in Case 002, it excluded from the scope of the second case the
9 crimes that were committed during the incursions into Vietnam."

10 [09.25.08]

11 "For this reason, the charges of genocide, which the Vietnamese
12 were victims of, only concerned the crimes committed in the
13 provinces of Prey Veng and Svay Rieng. The charges of crime
14 against humanity mentioned by the Co-Investigating Judges based
15 on the treatment of Vietnamese are <also> only concentrated
16 mainly on <> these two areas."

17 So I'd like to quote again the part that interests me so that
18 everything is clear for everyone:

19 "For this reason, the charges of genocide which the Vietnamese
20 were victims of only concerned the crimes committed in the
21 provinces of Prey Veng and Svay Rieng."

22 I am not saying this. The Prosecution is saying this. And <as>
23 recently <as> 15 September 2015.

24 So please explain to me why, now, during the final statements,
25 they're talking to us about everything except about Prey Veng and

1 Svay Rieng.

2 I have an explanation<.> <The> evidence is not sufficient
3 regarding Svay Rieng and Prey Veng. We have developed this point
4 in our <closing> brief<.> <The> Nuon Chea defence team brought
5 up a certain number of elements because in the provinces of Prey
6 Veng and Svay Rieng, we only have <what is essentially hearsay>
7 evidence. <They talk of disappearances, and there is no> evidence
8 <of> genocide by murder <,> <and we have developed this point>.

9 [09.26.46]

10 So telling us now we're going to use evidence outside of the
11 scope of the trial to prove to you what we cannot prove <> >
12 <based on the facts we have on the areas in respect of which we
13 are seized,>< -- >that cannot be done.

14 So I'd like to refer you, of course, to the details of our
15 submissions, but it's important to note it because I don't want
16 people to think that we're making <unfounded> observations. We
17 took the care, really, to <do an> in-depth <review of the facts>
18 to <collate> the information <afresh> and to try to present our
19 argumentation clearly so that the Chamber may know on what we are
20 basing ourselves exactly to make our assertions and to<make our
21 submissions> in our <closing brief>.

22 [09.27.41]

23 There are <> the essential elements <on> which the Prosecution
24 <are in agreement.>

25 And I'm <saying> this <also> because the civil parties were much

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1 closer to what procedure should be<.> <They were> much more
2 intellectually honest with regard to procedure than the
3 Prosecution <,> <and> it's really a pity that we haven't seen
4 this with the Prosecution because, in <the final analysis>, if
5 we're <at this level of international justice>, <we are supposed
6 to state> law <correctly and apply what has already been stated
7 before>. So the issue of the locations <in dispute and> for which
8 the crime of genocide has been prosecuted in this trial, <Case
9 002/02>, is very clear.

10 Another <point>, <which we have already stated> <is> the real
11 difficulty <in> this trial, <which is> that while some parties
12 believe that we're being prosecuted <on one set of charges,
13 others believe the charges are different.> <Here again on the
14 question of> the Vietnamese, the Prosecution <cites> a list of
15 charges that does not correspond to <those> we listed, and we
16 <have> <explained> why. In particular, there is <obviously> the
17 issue of deportation which I <referred to> yesterday. It's a real
18 legal issue, and I hope that you're going to focus on this
19 carefully.

20 [09.29.40]

21 Among the crimes listed by the Prosecution on -- with regard to
22 the issue of the Vietnamese, <there is> the issue of persecution
23 on racial grounds at S-21. I'd like to <point out with> regard to
24 S-21 <that> there isn't much -- not many, many crimes that we
25 <refute> in our brief. There's only one crime. It is persecution

15

1 on racial grounds. And why? Here I'd like to refer you to our
2 <closing> brief, paragraph 1214 to 1219, where we explain to you
3 that the crime of persecution on racial grounds at S-21 <is
4 unfounded> because <in the facts - and we elaborated on them ->
5 there is no <de facto> discrimination that we can determine
6 between Khmer prisoners and Vietnamese prisoners. All were
7 considered in the same way.

8 [09.31.03]

9 I would also like to <point out> that in the Co-Prosecutor's
10 brief, they detail the points that, for them, <constitute> a
11 genocidal policy against the Vietnamese. This is summed up in
12 about four points.

13 First, the Vietnamese were a distinct ethnic group. Paragraph 894
14 and 895 of their brief.

15 There was a policy of destruction via deportation and murder that
16 <was implemented> at that point. Paragraph 896 to 903.

17 The destruction of the Vietnamese <on account> of their ethnicity
18 and not because they were military targets is developed in
19 paragraph 904 and 905.

20 And finally, they <refer to evidence of the hatred of the CPK
21 towards the Vietnamese as> an ethnic group in <paragraphs> 906
22 <to 919>. And then they <talk about> the implementation of this
23 policy.

24 On a certain number of points, during my <closing arguments>
25 yesterday, you heard <the different objections we raised on the

16

1 interpretation of speeches, on a policy allegedly targeting the
2 Vietnamese <as an ethnic group, whereas we are clearly dealing
3 with speeches delivered> in the context of armed conflict. <I
4 have just reminded you of the points of law relating to genocide
5 through murder and their precise location> in the Closing Order.
6 [09.32.49]

7 I also <reminded you and referred> you to our closing brief <as
8 regards> the factual details and contradictions and <the>
9 insufficient evidence <relating to> genocide by murder concerning
10 the Vietnamese <,> <including> persecution of the Vietnamese.
11 <Here, I shall digress a little since the> issue of transfer <as>
12 an important element in showing the intent to destroy the group
13 was mentioned by the Co-Prosecutor <,> <Mr. Koumjian> when he
14 <made submissions on the question of> genocide, saying Mr. Khieu
15 Samphan is being prosecuted in this Court only for genocide by
16 murder<.> <So> he <used the issue of> transfer or deportation of
17 the population as an element which could demonstrate intent. And
18 for this, he quoted jurisprudence of the <ICTY in the> Krstic
19 case.
20 [09.34.07]

21 I would like to recall, and it's important, that in <that> case,
22 the <movement> of the population <was presented> as a sign of
23 genocidal intent, but in the facts of <that> case, the murders
24 that constituted genocide by murder occurred concomitantly with
25 <the movements>. <However,> in the context of our case<,> <as

1 regards> the facts of Case 002/02, the times when <it is said>
2 that the Vietnamese went back to their homes<,> when there were
3 great movements of Vietnamese returning to Vietnam was in <1975>.
4 And I would also like to recall that, in the Closing Order, the
5 Investigating Judges set the beginning of the genocidal intent
6 and the beginning of genocide by murder of the Vietnamese in
7 <1977>.

8 So <there are no concurrent> events committed at the same time,
9 and it's important to recall that.

10 I also raised with you the problem of the weakness of the
11 evidence on this issue and the way in which the Prosecution
12 ignored <the recommendations> that the Supreme Court had
13 <recalled> regarding the <approach to> evidence. There's one
14 particularly important point on the approach to evidence that I
15 would like to raise here, and that's how many written statements
16 and how many writings of authors were cited <by the Prosecution>
17 in order to support their <case>. Specifically, Ben Kiernan,
18 their favourite author, <whom> I would like to recall that both
19 the Supreme Court and the Trial Chamber said had little probative
20 value since he did not appear before the Court and that a certain
21 number of sources of testimony in his works had not been verified
22 through examination.

23 [09.36.45]

24 And then they also quote Hinton quite a lot, and I would like to
25 note that <in our closing brief> we had already raised certain

1 elements that call into question the reliability of his
2 testimony. And I would like to <refer> you to our brief,
3 paragraphs <2226 to 2233> where we note that Hinton, on the issue
4 of the Vietnamese, largely quotes from Kiernan. And I have just
5 told you that Kiernan's work has low probative value.

6 So if we <quote> an author and then authors who cite that author
7 <> <thinking that the number of authors quoting the source
8 strengthens the evidence,> we're going a bit in a vicious cycle
9 here.

10 [09.37.41]

11 And <I recall, in particular, that> when Hinton was questioned
12 here in Court, when he talks about genocide, he is speaking in a
13 sociological or anthropological meaning of the term. And at the
14 time when he wrote his work, he was talking about genocide not
15 against the Vietnamese, but against the Khmers, so self-genocide.

16 So<,> <again we have to pay attention to the writings used> to
17 support the Prosecution's <case>.<Obviously, when> we examine the
18 facts and the evidence <from authors quoted to support the
19 Prosecution's case>, we would ask you to very carefully avoid the
20 elements of low probative value. <This applies to other writings>
21 <as well>.

22 There <were> a lot of <discussions on> the population report <by
23 the demographer,> Ewa Tabeau.<.> <At the end of the discussion,
24 everyone appeared to be of the view> that without her appearing
25 <as an author> and <> considering the elements that do appear in

1 her report, the probative value of the report is very low. <We
2 can hardly rely on the figures given which, in any case, are>
3 simply compilations from other authors.
4 And I would like to recall that in our brief, we went into
5 further detail in paragraphs 1916 and those that follow. But <I
6 note in particular that> the Chamber informed us< - and we were
7 not aware of this -- > <that> when <> <it> approached Ewa Tabeau,
8 she said that in order to be able to <appear as an> expert
9 witness in this case, she would <have needed> to carry out
10 additional research that would <have taken> several months.
11 Taking this into account, you can only <view with little
12 interest> the quotes or elements that were <drawn> from her
13 report <and used by the Prosecution>.
14 [09.39.54]
15 <I> also <refer you to> the dissertation of Elizabeth Do, and
16 <again, it appears that I reminded you of all those points at one
17 time or another during the key documents hearings.> But we need
18 to <underscore this> again <since> the Prosecution heavily relies
19 on these <extremely unreliable> sources.
20 I would also like to remind you of what I said on the issue of
21 extermination yesterday, which also <ties in with> this question
22 of <a> site-by-site <assessment.> We <have assessed> the facts
23 <one> site <at a time>. We don't <assess the facts> a bit here
24 and a bit there in order to fill in elements that are missing in
25 one place or another.

1 And so I really need to emphasize this because it's very
2 important because the Prosecution, the Co-Prosecutors<, > proceed
3 in this way <since> they are not able to prove the facts in the
4 geographical area <> the Chamber is seized of it, <so> they move
5 to another area. That's just not possible.
6 [09.41.08]
7 <Let me mention in passing also a testimony> that the Prosecution
8 used extensively, the testimony of Heng Lai Heang, <in>
9 <paragraphs> 899 and 901 of the Prosecution's brief where you're
10 told, here is a civil party who <incidentally> came to testify on
11 marriages, so I want to clarify that, and His Honour, Judge
12 Lavergne, <questioned her at length on the> policy against the
13 Vietnamese<.> <She> answered extensively on that.
14 But what is of interest to retain from her testimony is that she
15 clarifies <her testimony> and <here, I refer you to> her
16 testimony, document E1/476.1 at approximately 14.40.45 where she
17 says that, in fact, at the base where she was, there were no
18 Vietnamese and all of the responses she gave concerning this
19 policy were <statements> that she had heard and, therefore,
20 that's hearsay.
21 The Prosecution <extensively relies> on this testimony of a civil
22 party who is saying, "I'm <only> repeating what other people told
23 me".
24 <In> addition, and this is extremely important to remember, this
25 civil party was based in Kratie, so <neither> in Prey Veng <nor>

1 in Svay Rieng.

2 Many <assertions are> also based <simply> on written
3 statements<,> <and I refer you to paragraphs> 930, 971<,> <978>
4 and <557> of the Co-Prosecutors' brief. <Here again, these are
5 assertions.> And if we look at the sources, we see written
6 <statements>, written <statements> <and written statements
7 again>.

8 [09.43.16]

9 Also on the allegations on the list of the Vietnamese <that are
10 alleged to have been drawn up>, it's also important to note that
11 the Co-Prosecutors are searching so hard for <evidence> that they
12 can't find that they even go so far as to search in the
13 confessions at S-21.

14 And here I would like to refer to paragraph 932 of their closing
15 brief, <with> in footnote < > document E3/861, <confessions> used
16 to establish the existence of <lists>. And <these> <lists> <were>
17 referred to in the content of Sun's statement. And also another
18 document, E3/2434, where the content of the confession is used in
19 order to establish the presence of Vietnamese. So please pay
20 attention here to <a prohibited use of> the evidence by the
21 Prosecution.

22 [09.44.36]

23 And here, I'm not only speaking about written documents that are
24 of low probative value, but they are also outside the scope of
25 the trial. I'll give you some examples.

1 The Prosecution cites several documents on the Khmer Krom,
2 document E3/2438. This is a list of people from Kampuchea Krom,
3 so it's outside the scope <of the trial>. E3/2441. It's also a
4 document speaking about Kampuchea Krom, so that's out of the
5 scope.
6 <Document> E3/2424 where there's no <mention of> the Vietnamese.
7 And there are also statements by Sao Sak <that are used>, for
8 example<.> <These statements> consist solely of speculation <and
9 there are> other statements that are out of the scope.
10 So it's not sufficient to say we have abundant proof because
11 <again> there is a hierarchy of the probative value of the
12 evidence, there is a <manner of using it> and we <hope that> you
13 <will remember that > during your deliberations.
14 Another point that is important because it was considered both by
15 the Co-Investigating Judges and by the prosecutors as something
16 of importance to prove the genocidal intent, is the <issue of>
17 matrilineal <filiation>. And <we refer to this because> we've
18 really gone through details of this <site> by <site>, <focusing
19 of course on the sites that fall within the scope of the trial,
20 that is>, Prey Veng and Svay Rieng<.> <By focusing on one commune
21 and one village at a time,> we have thoroughly analyzed the
22 evidence on the alleged> theory of matrilineal <filiation.>
23 [09.46.40]
24 So <I refer you to paragraphs>1989 to 2000 <of our closing brief
25 in paragraphs 2067 to> 2078 and <in paragraphs> 2140 to 2146.

1 And just to repeat what I said yesterday, in the Co-Prosecutors'
2 brief, they <expound on what they> consider <is the> alleged
3 genocidal intent of Khieu Samphan<.> <They do so> in paragraphs
4 569 to 573 of their final brief <,> as the International
5 Co-Prosecutors <did> in the hearing, <by> referring to speeches
6 completely out of their context <of armed> conflict<.> <However,
7 this is just a reminder since this is related to> the chronology
8 <which we developed in our closing brief in relation to> the
9 armed conflict<.> <Which> of Khieu Samphan's speeches are used,
10 and especially <on which dates --> E3/8304 of 31 December 1977,
11 <> when the Vietnamese troops entered Cambodian territory <?>.

12 [09.48.17]

13 And next, E3/169, from 15 April 1978, just after the Vietnamese
14 troops withdrew. E3/562 of 15 April 1978 also, and especially
15 E3/296 of 2 January 1979. So 2 January 1979 <,> just before the
16 arrival of the Vietnamese troops in Cambodian territory.

17 So that's at the time <when> the armed conflict was at its
18 highest point<.> <So> there <again> it's important to put things
19 back in their context<.> <The dates are of extreme importance and
20 it's even more important in the context of the jurisprudence that
21 I spoke to you about yesterday <with regard to the> speeches in
22 wartime.

23 So if that's the evidence that the Prosecution has to prove
24 genocidal intent of Mr. Khieu Samphan, if that's the evidence as
25 I've just laid it out for you on the treatment of Vietnamese<,>

1 <well, it is> insufficient and you cannot use it to convict.
2 And because I just brought up armed conflict again and I've just
3 talked about the entry of Vietnamese troops into Cambodia in
4 January 1979, I think it's also important before moving on with
5 the rest of my final statement and before getting to the Cham <to
6 recall, however, that regarding specifically the issue of the
7 term "genocide" and the way it was used as of 1979 by Vietnam,
8 there is something to note.> <>

9 [09.50.17]

10 The use of the word "genocide", and we also said this when we
11 talked about armed conflict in our closing brief, use of genocide
12 was a political creation of Vietnam at that time. It's what we
13 would today call in terms of communication <a talking point>. <It
14 was> a need for justification <for> entering into this territory
15 <,> <this invasion> and the occupation that followed. But <at
16 that> point, when the Vietnamese <were> talking about genocide,
17 they <were> not talking about genocide against the Vietnamese.
18 They're not talking about the genocide against the Cham. They're
19 talking about genocide against the Khmer people.

20 [09.51.07]

21 So at that time because the conflict was ongoing, <with the CPK
22 fleeing.> <It> was war propaganda at that point <that is why>
23 this word <was> introduced.

24 And I know we want to use all the arguments possible, but still,
25 this raises a question. This <is to say> Vietnam, <which> arrived

1 and occupied Cambodia for several years, the Vietnam that was the
2 major military force at that time and <which was> managing the
3 new local authorities, as we've heard from various witnesses.
4 <But> they're the ones who <had> access to the most information
5 at the earliest time, so there's a real question of logic
6 <almost> that is raised here, and that is, if genocide against
7 the Vietnamese was so flagrant and so significant, why did the
8 Vietnamese, <who were the first concerned by the problem and>
9 who should have used this <to support> their propaganda at the
10 time, why <were> they <not> talking about the <genocide of> the
11 Vietnamese? Why <did> they <deem it necessary to talk> about
12 genocide <of> the Khmer people?
13 This is a <genuine> question. It's a real question.
14 And that's <kind of what matters > when we're <before> an
15 international <> Court, as we are here, <and talking about
16 genocide> that is <,> the crime of all crimes. It's horror <to
17 add to> horror. And <it's sometimes like, when we are in these
18 international tribunals, that> <> if we can't have a conviction
19 for genocide<,> <it> is <as> if we haven't done our job well.
20 [09.53.04]
21 I don't know if we need to add horror to horror. If we could
22 simply examine the evidence correctly in the most impartial way
23 possible looking at what the proof is and applying the rules of
24 law, that would already be not bad.
25 And now a few words on the issue of the treatment of the Cham.

1 And here again, the Nuon Chea team spoke a lot about the absence
2 of evidence proving the specific intent <required for the
3 characterization of> genocide, and I'll come back to some things
4 that they said. But there are certain points that I would like to
5 really focus on, put some emphasis on because they're important,
6 and specifically concerning <the issue of> a policy towards the
7 Cham.

8 [09.54.06]

9 There are no CPK documents, as the Nuon Chea team recalled for
10 you, on the issue of a specific policy against the Cham.

11 And now I <refer> you to <the testimony of> Ysa Osman, who is the
12 expert that the Co-Prosecutors called. And I would like to recall
13 that he, himself, said no, there <were no documents>. There was
14 hearsay or statements of witnesses that we also reviewed at
15 length, and we noted that they were not very credible, but Ysa
16 Osman, the only document he used in his work, "The Cham
17 Rebellion", document E3/2653, was -- and that's -- I'll remind
18 you of this -- it was a telegram of Democratic Kampuchea.

19 I'm not finding the reference here<,> <but I will find it
20 shortly>.

21 Here it is. E3/511. So according to him, he had found evidence
22 that there was a willingness, a desire to destroy the Cham race,
23 but we'll note that this document didn't speak only about the
24 Cham, so this document, E3/511, did speak about the Cham, but it
25 wasn't an issue of the Cham. It was a group of people, which was

1 carrying out subversive conduct according to <local> authorities,
2 and there were Cham within them. There were also former cadres of
3 the Khmer Republic and other people from Chamkar Leu <district>.
4 [09.56.02]

5 So there again, there's no evidence that this telegram was
6 seeking to destroy the Cham, but even further, it points to the
7 fact that <the real question> was to destroy those who were
8 carrying out activities trying to <harm> the local authority in
9 question.

10 Another point on Ysa Osman, aside from everything that we went
11 into regarding his credibility and his lack of impartiality,
12 etc., etc., which we went into in our brief and we noted that
13 also when we questioned him, but let's also note that he carried
14 out his research in <the districts of Krouch Chhmar and Kang
15 Meas>. So <this means that to talk about a top-down policy in the
16 absence of supporting documents poses a problem.>There is no
17 evidence there -- and I refer you to paragraphs 1850 <of our
18 brief> and the following on the review of the witness
19 <testimonies>.

20 [09.57.23]

21 <I should perhaps also point out in passing that in the Closing
22 Order,> even if <the Co-Investigating Judges were not seized of
23 facts relating to that area, allowing them> to raise the issue of
24 the Cham, in paragraph 320, <that in Tram Kak, there were
25 witnesses who mentioned that> the Cham were treated in the same

1 way as everyone else.

2 And another <equally important> point <that has just been raised>
3 is that we must pay attention to the issue of the <movement> of
4 the population.

5 <It should be recalled that there> was a severance, and the fact
6 that we're talking about the displacement of the Cham population
7 in Case 002/02, it was because there was a severance <with regard
8 to> the <movement> of the population in Case 002/01 except that,
9 at that time, the <movement of the population> was not only of
10 the Cham; it was the entire population for reasons that have
11 already been explained in Case 002/01.

12 So be careful to not have an artificial creation of a <movement>
13 that was targeting Cham while, during the time period concerned,
14 <it was> the entire <Cham or Khmer> population <that was>
15 displaced. And to try to support the existence of a genocidal
16 policy against the Cham because they don't have any documents,
17 they <rely mainly> on the witnesses.

18 So I'm not going to go back into all the <elaborate submissions
19 made on the subject by> the Nuon Chea team, but I'll <also> refer
20 you to our brief.

21 [09.59.02]

22 But nevertheless, taking into account the <Prosecution's
23 submissions>, <I wish to make one remark>. <You have been told
24 of> Prak Yut. We can show that one part of the statement says one
25 thing and then the other end of the statement says something

1 else.

2 <Still,> when <she is> talking about an order that may have been
3 received concerning the Cham, <she is> talking about the sector.

4 And in her statement, she specifies that she <knew nothing of
5 communications> between the sector and the zone, so the highest
6 level that orders might have come from <was> the sector. <Why am
7 I recalling this,> even though I think <the> Nuon Chea team
8 mentioned it at one point<?> <It is because during> the 15th of
9 June hearing, <the International Prosecutor> said, "Oh, and in
10 addition, Prak Yut also often went to Phnom Penh, and You Vann
11 even says so."

12 [10.00.07]

13 So she went <often to> Phnom Penh. Did she tell you that she may
14 have received an order concerning the Cham <in> Phnom Penh?

15 So you're trying to <infer> something there, but it remains just
16 an <inference>. You didn't demonstrate it. You didn't demonstrate
17 anything.

18 She <went to> Phnom Penh, but when she talks about a possible
19 order that she may have received that was in her local area, it
20 was at the sector level and it was not in Phnom Penh.

21 <They> also forget when <they are> <quoting> Prak Yut <to also
22 quote> Ke Pauk who was a member of the Baray district, and never
23 heard <of any order concerning> the Cham. <The Prosecution also
24 quoted Ban Seak, saying: "Yes, he confirmed that there were
25 deaths." Well, yes, he confirmed that there were deaths, but >

30

1 this is what he says. And I'd like to remind you that the
2 Prosecution cited him for the corroboration of a supposed policy.
3 <Here, I quote> paragraph 1703 of our brief <which> contains a
4 quote from Ban Seak <at> the hearing of the 6th of October 2015,
5 document E1/354.1 between 15.16 and 15.19, and this is what he
6 explains <as regards> a <possible> policy:

7 [10.01.47]

8 "When I participated in study sessions at the higher level, I had
9 never received an order to purge the Cham. Not at all. Never. And
10 in spite of the fact that there was a very chaotic situation, Ke
11 Pauk never established a plan to eliminate the Cham. And as far
12 as I know, it is those who had participated in the rebellion who
13 were eliminated, not the Cham." End quote.

14 So we can consider that Ban Seak isn't credible, but okay. But
15 then don't come and use him to say that he can corroborate
16 anything at all because this is what he said.

17 Mr. President, I don't think I'll be able to cover the entire
18 morning, but I'm going to now speak about Khieu Samphan's
19 liability, so maybe you want to take the break now and then we
20 can continue on another topic after.

21 MR. PRESIDENT:

22 Thank you, Counsel. And it's almost time for our morning break
23 anyway.

24 We will have a break from now and resume at 20 past 10.00 to
25 continue our proceedings.

1 The Court is now in recess.

2 (Court recesses from 1003H to 1021H)

3 MR. PRESIDENT:

4 Please be seated.

5 The Court is now back in session. Again, the floor is given to

6 Counsel Anta Guisse to continue with the closing statement.

7 MS. GUISSÉ:

8 Thank you, Mr. President. And before I move onto the issue of

9 Khieu Samphan's responsibility, my team drew my attention to the

10 fact that I had forgotten a topic that I was planning to discuss

11 today, and I would like to get back to it and this is the

12 treatment of the Buddhists.

13 [10.22.33]

14 In my eyes, the treatment of the Buddhists -- or in our eyes in

15 the Khieu Samphan defence team, it is the perfect illustration of

16 the <digressions> that <have been occurred> during these

17 proceedings with regard to the scope of the trial. And I'd like

18 to refer you to paragraph 1487 to <1526> of our final brief.

19 Well, let me provide you with a little chronology.

20 Introductory submission: The Prosecution <requests> the

21 Investigating Judges to investigate facts that occurred in

22 specific locations in connection with the Buddhists, paragraph 72

23 of Document D3.

24 [10.23.22]

25 And second <stage>, the Investigating Judges pretend to have been

1 seized <of> facts that occurred throughout the entire country
2 with regard to the Buddhists so that they may investigate
3 everything but, in reality, they only investigated sites that
4 were unknown in or that were not mentioned in their submissions,
5 that were not mentioned at all in the introductory submission or
6 in the supplementary submission.

7 And third <stage>, the Prosecution during the trial itself, Case
8 002, requested in E301/2, paragraph 14, that the defendants be
9 only tried with regard to facts that occurred in Tram Kak whereas
10 they know because they presented this in their submission, they
11 know that they were never seized, <or rather they never seized>
12 the Investigating Judges of facts regarding the Buddhists in Tram
13 Kak.

14 [10.24.36]

15 So if you <line> both documents up you can see this.

16 And a new <stage.>

17 <In> their brief in paragraph 381, the Co-Prosecutors tell you
18 the contrary of what they said in their initial submission. They
19 are telling you that evidence proves that throughout the entire
20 country crimes were committed against Buddhists. So this is
21 another illustration of what I was developing yesterday and that
22 should be set aside in full fairness with regard to the
23 defendants.

24 No supplementary submission for facts <relating to> Buddhists in
25 Tram Kak. You can go looking for it. You will not find it.

1 And then they are telling you, no, no, no. Finally, we would like
2 you to simply restrict your scope to Tram Kak, a location that
3 they did not seize the Investigating Judges of.

4 And you must set this aside simply and purely.

5 [10.25.40]

6 Now, I would like to turn, Mr. President, Your Honours, to the
7 issue of Khieu Samphan's responsibility. And here I am obliged to
8 react to the submissions made by the International Co-Prosecutor
9 because I heard for the first time a new case, the gang of three.
10 It's almost like the title of a nice action movie. What is this
11 gang of three? It's completely new. Apparently, this was Nuon
12 Chea, Pol Pot and Khieu Samphan.

13 It's kind of new. It's almost like an update of a book by Locard
14 or, let's say, a new opportunistic interpretation of the facts
15 because it's going to sound nice in the press.<> And I ask myself
16 then, if Ieng Sary was still alive, would this have been the gang
17 of four? And if Ieng Thirith was also still alive, would we be
18 speaking about the gang of five? So we have, therefore, a figure
19 that varies according to the lifespan of each one of the
20 defendants. It's almost ridiculous.

21 But it is, unfortunately, the proof that the Prosecution is
22 convinced that no matter what you say your decision will favour
23 them.

24 [10.27.09]

25 So guilty by association, this is an expression that was used by

1 the Prosecution as well. And my colleague Victor Koppe also
2 underscored the superficial nature of this argument saying that
3 Khieu Samphan, Pol Pot and Nuon Chea were the centre of the
4 Centre, the real source of power.
5 And then what do we make of the fact that Khieu Samphan never was
6 a member of the Standing Committee? What do you make of that?
7 So of course they come up with nice graphs and they <say>, "Look
8 here, you see the peak, this little blue line", showing you that
9 Khieu Samphan was present <in> the Standing Committee but they
10 forget to mention to you that these statistics and these graphs
11 are based on records that don't go beyond 1976. So that means
12 that after 1976, that is to say, with regard in particular to the
13 issue of the genocide <of the Vietnamese and the Cham>, we cannot
14 base ourselves <on any possible participation or decision making
15 in the minutes of Standing Committee meetings>. <This they do not
16 tell you.>

17 [10.28.31]

18 And Mr. President, in reality -- Your Honours -- what is really
19 new with regard to Case 002/01 concerning Khieu Samphan's
20 responsibility?

21 There is nothing new but they are presenting to you the same
22 witnesses by, of course, <carefully avoiding to put forth the
23 contradictions that were <raised>.

24 And <> here I am obliged to take the most emblematic example
25 which is Em Oeun, Civil Party Em Oeun. So Em Oeun, it's true you

1 saw him in a video clip that was nice, edited from here to there.
2 But they forgot to speak to you about the rest of his testimony
3 and, in particular, about the cross-examinations by the Defence.
4 And it's a pity because, well, the credibility <of the civil
5 party Em Oeun> was pretty much shaken up by the Defence's
6 cross-examinations.

7 [10.29.25]

8 You remember Oeun was the person who was explaining to you
9 that he was sure that he saw Khieu Samphan in education sessions.
10 He said that he was sure that he saw Khieu Samphan and he was
11 sure that it was Khieu Samphan because he was the president of
12 the State Presidium because his father told him that. So it is Em
13 Oeun again who told you that Khieu Samphan was the president of
14 the Presidium when he saw him, whereas we know that Khieu Samphan
15 was nominated president <of the State Presidium> in 1976.
16 And he says on top of that it's his father who gave this
17 information -- <a> father who apparently died before the DK
18 period.

19 [10.30.14]

20 So it's the same person, the same civil party who is answering
21 <questions put to him by> Kong Sam Onn<.> <When> he's <asked to
22 state the circumstances of his mother's death, he> provides you
23 with three perfectly contradictory versions.
24 <And> <the Prosecution is relying> on this civil party to say
25 that this is the proof that there were education sessions with

1 Khieu Samphan.
2 I admit, Mr. President, Your Honours, I was almost tempted <, so
3 much so that I did not wish to repeat what had been already
4 repeated,> <to ask that the video clip be played again> because
5 <this is a procedure> that <has been> used a lot in the Chamber.
6 [10.31.07]
7 <So that we can replay the segment where we see me pleading
8 about> Em Oeun <That is why I am telling you that> there is
9 nothing new. <I am not going to dwell on many examples, because
10 things have been said over and over again> but it's just that the
11 Prosecution only takes up certain excerpts <and presents> partial
12 information.
13 So I'm looking at <the Defence's closing arguments on> 28 October
14 2013, <transcript> E1/235.1, and I am not going to re-read <to
15 you> the whole thing <as you will reread it> but I will read to
16 you the conclusions that I drew at that moment.
17 It was after <2.02.40> p.m. and here are the conclusions. <I was
18 speaking to you about> the different versions that were given on
19 important points of the testimony of the civil party.
20 And here is what I was saying to you: "So I don't know where the
21 truth is in all of this. I don't know why there are so many
22 versions but what I am certain of is that you cannot use this
23 testimony to believe that this <Civil> Party can remember word
24 for word <what Khieu Samphan said> in a hypothetical study
25 session 40 years ago." <End of quote>.

1 So I'm not going to <inflict you with> this again or make another
2 statement on what was already said but just a couple of examples,
3 nevertheless.

4 [10.32.40]

5 <The Prosecution talks> about Suong Sikoeun to support the theory
6 of the gang of three but this thesis is far from being
7 corroborated. <They played this out to you on> video in this
8 Court. He spoke in the first trial on the 14th of August 2012 <,
9 transcript E1/107.1,> and it begins before <15.34.02.>

10 And this is what he says: "He did not demand or ask for any
11 leadership role in the Party. He submitted himself to the Party
12 and it was up to the Party to judge whether or not he was capable
13 <of handling> any assignments that the Party might designate to
14 him.

15 At that time during that period, Mr. Khieu Samphan believed, as
16 others believed firmly, in the leadership of the Communist Party
17 of Kampuchea.

18 [10.33.50]

19 And before 1975, the Communist Party of Kampuchea had had
20 remarkable results <in the defence of> the national cause. Those
21 achievements convinced us to submit ourselves to the Party. It's
22 all that that convinced us to submit ourselves to the Party."

23 And then <to talk> about the gang of three and the super powers
24 that Khieu Samphan supposedly had, I refer you to this same
25 hearing at 15.35 where <Suong Sikoeun> responds, and he says that

1 he carried out interpretation for the doctors that were examining
2 the health <condition> of the ambassador's wife, and this is what
3 he says: "But counsel, this literally means that the position of
4 Mr. Khieu Samphan was no different than that of <medical staff of
5 the ministry. This example shows it clearly.>

6 There are other examples also but I don't remember all of
7 them.<">.

8 [10.35.06]

9 <It appears that we also made submissions on that> in Case
10 002/01, and you'll find it in our submissions <at>the time, <but>
11 there was a part that was dedicated to Suong Sikoeun, where he
12 spoke about the period after <1979> where he <explained that>
13 during the negotiations he had more authority than Khieu Samphan
14 did because he says there that <they remained close up to the
15 1990s.>

16 <Since the Tribunal's> jurisdiction only goes up to <1979>, we
17 forget that <the> armed conflict <continued> afterwards.

18 [10.35.52]

19 <We> also <forget that Samdech> Sihanouk <who was summoned>
20 several times <to appear in this courtroom rallied behind> the
21 Khmer Rouge <because he considered that the war with Vietnam was
22 too important and he had to join the Khmer Rouge> even though
23 <that was not his heart's desire>.

24 So <what is new as regards Case 002/01? Not much. Oh yes,> there
25 were witnesses and civil parties, three people. My colleague,

1 Kong Sam Onn, brought it up<-Chea Dieb.> Khieu Samphan <is> said
2 to have given a speech on marriage<.> <This conveniently> falls
3 <within> the <scope of> case of 002/02. Kong Sam Onn <reminded>
4 you <of> the chronology <of the first time the witness mentioned>
5 Khieu Samphan <in his statements.> <So, yes, Khieu Samphan is
6 alleged> to have distributed some kramas <or spoken about enemies
7 to one Preap Sokhoeun, and here again,> we heard about this at
8 the last minute. And then Thuch Sithan, a new witness <called> by
9 the Prosecution, explained that <she> found <herself> in an
10 office and <in fact> filled out a form <for Khieu Samphan> to
11 order medications.

12 [10.37.10]

13 So what does this add to the substance? This doesn't change
14 anything in what was <already> said;<> <it does not change
15 anything in the submissions.> <So> I send you back to <our
16 closing arguments and submissions> in the trial <at first
17 instance>.

18 But in reality, the <functions> of Khieu Samphan are <quite
19 secondary, as far as the Prosecution is concerned>. You can just
20 say <the words> <"commerce">, <"870">, <or "Angkar" and that's
21 enough<.> <they are> satisfied.

22 Can we call this demonstration? <Again, can> we <call this
23 demonstration> when there were decisions that were made <to
24 resolve issues> and then we just ignore them?

25 The Prosecution says to you every time we hear 870, that's the

40

1 proof that Khieu Samphan was <aware of what was happening>, but
2 that's not what you decided in <Case> 002/01.
3 And I'll re-read your conclusions in 399 of the judgment <in case
4 002/01>:
5 "Having considered the evidence, the Chamber is not satisfied
6 that Khieu Samphan ever served as the Chairman of Office 870. The
7 Chamber <is> therefore <unable to> say whether Khieu Samphan saw
8 all of the telegrams and documents passing through or copied to
9 Office 870; in particular, all of those which did not concern his
10 specific area of responsibility." End quote.
11 [10.38.45]
12 But the Prosecution <acts> as if you didn't rule on this point<,>
13 <and even more so <in> their arguments regarding <Khieu
14 Samphan's> genocidal intent <with regard to> the Cham<.> <They
15 cite <a> telegram addressed to Office 870, so there again, that's
16 a supposition. That's a theory. It's not a demonstration.
17 And they also say, very theatrically, that the proof that Khieu
18 Samphan knew about everything and, specifically, about the
19 security centres, is that the first prisoner, Samdech Sihanouk,
20 was in the Royal Palace. I didn't understand the relationship
21 between the Royal Palace <and> the security centres, but okay.
22 And another point also <since>, as I said to you, we talked a lot
23 about Samdech Sihanouk. You were even shown a video where he
24 talks about his visit to the cooperatives and he talks about the
25 horrific condition of the people he saw during those visits

1 except what they forgot to <tell you that> there's another video
2 <in which he> says the opposite.

3 [10.40.20]

4 And here, I would like to refer you to <the hearing of the
5 closing arguments on> 25 October 2013, <Transcript> E1/234.1,
6 which is a video of Samdech Sihanouk, who was interviewed at the
7 time by journalists -- French journalists, I believe -- and this
8 is what he said.

9 He says that sometimes he went to the dentist with his wife, and
10 he says, a little bit before 11.01.47:

11 "I used to see people in the streets. They were coming home from
12 their factories. They were going back home. But those people did
13 not look unhappy."

14 The journalist's question: "Did you speak to these people?"

15 Answer of Norodom Sihanouk: "I couldn't talk because all I was
16 doing was going to the dentist, but with Khieu Samphan, we
17 visited some cooperatives. We visited rice farms, we visited
18 worksites where people were carrying out manual labour, but these
19 people did not seem unhappy. They didn't look terrorized. They
20 didn't look <undernourished>." End quote.

21 [10.41.38]

22 So there are two video excerpts that say two completely
23 <contradictory> things, so that's <also> the problem also when we
24 don't have people <appearing in court> that we can <confront>
25 with their <previous> statements.

1 So<,> <the circumstances were such that we could not hear Norodom
2 Sihanouk's testimony, but> please don't bring me one video taken
3 out of <its> context <and that of the subsequent statement,
4 etc.,> where things are said when, in fact, there are quite
5 contradictory <>.

6 And why, in the end, are we talking about things that have
7 already been said? We tried to have witnesses up to the last
8 minute, but <substantively> that's not really the main point.
9 <The essence is somewhere else.>

10 [10.42.32]

11 The true basis for responsibility in <the Prosecution case> is
12 Joint Criminal Enterprise, so it's the supposed involvement of
13 Khieu Samphan in a Joint Criminal Enterprise <--> <partly
14 criminal, according to> the Co-Investigating Judges <,> which
15 <now becomes fully criminal in the Co-Prosecutors' brief,> in
16 <one footnote,> footnote 747, because it's <simpler.> <Well, yes
17 indeed,> that's simpler.

18 And why is it simpler? <Oh,> <because the law came to the rescue,
19 or> a particular interpretation along with <a> sui generis
20 <creation by> the Supreme Court <since it created from scratch a
21 form of> Joint Criminal Enterprise <Form 1,> <which> is a
22 <poorly disguised Joint Criminal Enterprise Form 3.

23 So <it's the same criticism I raised> yesterday <regarding> the
24 interpretation of <a post-war> jurisprudence on crime <and the
25 lowering of the standard for intent, with> dolus eventualis.

1 That's the same thing the Supreme Court did with the Joint
2 Criminal Enterprise.
3 [10.44.02]
4 And <to properly understand why it is a windfall for the
5 Prosecution,> we need to recall what the Prosecution's position
6 was throughout <Case 002/01 and> before the <windfall offered by>
7 the Supreme Court. <This is a brand new position.>
8 I'd like to recall that the Co-Prosecutors, in their brief in
9 paragraph 217, said that Joint Criminal Enterprise 3 was deemed
10 to be not applicable. <You yourselves decided to recall that it
11 is inapplicable.> And now, in paragraph 218, they're telling you
12 that the Accused have been sent to <trial> under Joint Criminal
13 Enterprise 1 <which, according to them, is in perfect adequation
14 with> 002/02 <> <, squarely fits the facts of Case 002/02.>
15 <And in paragraph 259 they say> -- and I also <quote> in English:
16 "In the view of the Co-Prosecutors, JCE 1 best describes the
17 liability of Nuon Chea and Khieu Samphan for all crimes within
18 the scope of Case 002/02."
19 And that's the first time that they say this Mr. President, Your
20 Honours. For 10 years, they've been speaking only in favour of
21 JCE 3 because they thought it was the only way to have a
22 conviction. So since the Closing Order, they've been advocating
23 for the application; not only of JCE 3, but also the other forms
24 of JCE.
25 [10.46.03]

1 <I note> that in 2011, at the beginning of the trial, before the
2 severance, the Prosecution asked <for> JCE 3 <to be>applicable at
3 the ECCC and you made a decision <to the contrary, as the
4 Pre-Trial Chamber had done>. And in spite of that, in <their
5 brief of> 17 September 2013, <document> 295/6/1, in paragraph
6 683, and <> <they> asked <you> to apply JCE 2 <this time>.
7 And in the final brief and <statements>, the prosecutor, William
8 Smith, <tells> you, on the 21st of October 2013<,> <transcript
9 E1/231.1, at about 15.27.16> the following:>
10 "Your Honours, the systematic form of Joint Criminal Enterprise
11 is the <most suitable> legal characterization of the
12 <responsibility of the Accused in the present case. This trial is
13 the very definition of a system known for> violence and malicious
14 acts against the civilian population."
15 [10.47.23]
16 And then in 2014, at the beginning of <Case> 002/02, but before
17 the judgment <in Case> 002/01, the prosecutors <made known their
18 intention to appeal your decision and explained at the initial
19 hearing of>30 July 2014<>, E1/240.1, between 10.12 and 10.14.
20 It's the international Co-Prosecutor Koumjian speaking and this
21 is what he says: "We think that JCE 3 is an important issue which
22 will affect Case 002/02."
23 And then he explains why he will appeal and he says: "We will be
24 asking the Supreme Court to find that Joint Criminal Enterprise
25 of the third <form> was part of international criminal law in

1 1975 which is the jurisprudence from other international
2 tribunals. This means that the crimes that <were> outside of the
3 intent of the members of the Joint Criminal Enterprise, <which
4 were> not the objectives of the Criminal Enterprise, but <which>
5 were natural and foreseeable consequences and <were> foreseen by
6 the Accused <> could <> <hold these persons> responsible <for
7 these crimes>."

8 [10.49.02]

9 And at the same hearing, the International Co-Prosecutor cites an
10 example and he says: "It's very interesting for 002/02. For
11 example, rape was an excellent example. The allegations of rape
12 in 002/02, from our point of view, were a natural and foreseeable
13 consequence of the <other aspects of> Joint Criminal Enterprise
14 <which are> to persecute, to torture, and to force couples to get
15 married." End quote.

16 So here, we're talking about foreseeable and natural
17 consequences. We're no longer talking about the <common plan>.

18 And then the good news coming from the Supreme Court <of the
19 customized creation of Joint Criminal Enterprise Form 1>. That's
20 what's happened in the past <10> years and that's why <today>
21 they're coming to say, "Well, of course, yes, this fits very
22 perfectly in the framework." And yet <the facts of> Case 002
23 <haven't changed.

24 [10.50.10]

25 But there was an ad hoc formula to more easily convict without

1 respecting the principle of legality because, Mr. President, Your
2 Honours, that's <the problem with> this creation of the Supreme
3 Court Chamber<>; it's a hybrid definition which enables the
4 Accused to be convicted more easily. It's a very good <turncoat
5 operation on the part of the Prosecution, and a very practical
6 one> to have a blank <check> to convict.
7 And <then suddenly> the prosecutors, who supported you for 10
8 years, saying that <>JCE3 was<necessary>, that JCE 1 was not
9 enough to convict, said:
10 <"Hold on, hold on>; it's <enough."> <That is indeed convenient,>
11 so we'll do an opportunistic follow up <of that decision, which
12 is an unfair decision by> the Supreme Court. <And let me explain
13 why.">
14 Mr. President, Your Honours, we went through JCE, in our brief,
15 in great detail and at length. It was very important for us to
16 show the mechanism that was used by the Supreme Court Chamber to
17 divert or distort the <following principle of JCE which is that:
18 Normally, in JCE 1 there is no idea of a possible crime. Normally
19 there are no possible and foreseeable consequences, and what the
20 Supreme Court Chamber did was to introduce foreseeable crimes in
21 the common plan.>
22 [10.52.09]
23 So <I hope that you have had in hand our brief, Mr. President,
24 Your Honours, because> we even made a little graph so it was
25 clearer; we <also> can use colour sometimes, too, and to explain

1 <to what extent> this JCE, ostensibly category 1, was, in fact, a
2 JCE 3 which was poorly disguised. The correct definition of JCE
3 1, which does not violate the principle of legality, the one that
4 existed at the time <of> the facts <which> occurred between '75
5 and '79, is the one that we went into, paragraphs < 2459 to 2468>
6 of our brief.

7 We went through the jurisprudence and we explained to you why
8 crimes that were foreseeable in the <common project> were never
9 included before the <definition -- before the> creation, I should
10 say, of the Supreme Court. And in JCE 1, it was always the case
11 and that's why it was important for the Prosecution to have JCE 3
12 in Case 002/02 because in JCE 1, they <have to> show the
13 contribution to the criminal part of the <plan>. <It is
14 imperative to show such contribution, and here, I refer you to
15 paragraph 2465 and the contribution must be significant.>

16 [10.53.33]

17 It means that the simple presence <in one location> with other
18 leaders or other people is not sufficient to consider that one is
19 responsible under JCE 1. And then I refer you <,> <in
20 particular,> to the <2013 ICTR Appeal Judgement in the>
21 <Mugenzi> <case, paragraphs 136 to 141.> So yes, the Supreme
22 Court created something that didn't exist in international
23 customary law at the time <of the events>.
24 <Because, all the same, it should be noted,> still looking at the
25 principle of legality, we can't consider that a practice was a

1 custom or was part of <customary> international law unless it was
2 a uniform, state practice that was widespread and was accepted as
3 being law; uniform, widespread, and accepted as being law.
4 <Insofar> as the Supreme Court Chamber was the first to have
5 indicated this form of JCE 1 in disguise <,> <we> can't say that
6 <it was> <customary> international law. We <therefore> can't say
7 that it was <accessible and foreseeable> and we can note <,> <in
8 particular,> that there is a severe violation of the principle of
9 legality.

10 [10.55.16]

11 And I will <> refer you of paragraphs 381 to 392 of our brief,
12 where we tell you <in detail> exactly how we get to the point of
13 determining <what was exactly a rule of customary> international
14 law. <Even now this would not be part of international customary
15 law since it is a creation of the Supreme Court.> <Because this
16 is somewhat> the principle that <is applied in this> trial to be
17 able to come to a conviction<.> <It is that> we're trying for
18 crimes <,> as well as for all> modes of responsibility, all the
19 time, to lower the degree of intent<.> <So> the Co-Prosecutors
20 <who> up to this point <had> always <argued to the contrary, are
21 now telling you:> "Well, the decision of the Supreme Court, yes,
22 it's <truthful>; <furthermore,> we have jurisprudence to support
23 that." Except <that> the jurisprudence they cite does not, at
24 all, correspond to this thing that was created by the Supreme
25 Court.

1 [10.56.27]

2 <In> fact, in their final brief, the Co-Prosecutors confound
3 Joint Criminal Enterprise and commission. And now, I <refer> you
4 to footnote 641 of their brief where they say to you -- <where>
5 they give you a description, where we understand, very well, that
6 they are confounding JCE and commission.

7 So they <refer> you to paragraph 1054 of the Appeal Judgment <in
8 Case> 002/01 <,> <to three ICTY judgements> and <lastly to an
9 article> of the Rome Statute <of> the International Criminal
10 Court. <Except that Joint Criminal Enterprise is considered as a
11 form of commission, obviously, but it is> an indirect commission
12 of <the> crime, as opposed to commission <which is direct or
13 physical participation in the> crime. And so, Mr. President,
14 <Your Honours,> please read attentively the jurisprudence that
15 <they have cited and you will see that there is no confusion.>

16 [10.57.35]

17 <It> has nothing to do with what the Supreme Court created. In
18 that jurisprudence, <they are> talking <> about commission with
19 direct participation and <a clear distinction is made with> JCE,
20 so you will see that this attempt to find a justification a
21 posteriori <to> this creation of the Supreme Court, does not at
22 all correspond to what is written in the brief of the
23 Co-Prosecutors and it does not at all solve the problem of the
24 principle of legality. <And then> on the issue of the Rome
25 Statute, <in any case, the Rome Statute> does not apply to JCE.

1 And also, this is <quite> important <,> <as regards the>
2 jurisprudence <you'll> recall that the international criminal
3 tribunals have always made a distinction between the three
4 categories of JCE, making a clear distinction between commission
5 and direct participation and that where there was only indirect
6 participation. So there's no confusion; the jurisprudence is very
7 clear.

8 [10.58.47]

9 So this is something new created by the Supreme Court and because
10 it's something newly- created by the Supreme Court, which
11 <further> poses problems <in law>, as we explained, it's also a
12 flagrant violation of the principle of legality<.> <Secondly, the
13 evisceration after> the crime of murder with a dolus eventualis.
14 So <the Prosecution's references are ineffective and, what is
15 more, they> show just to what extent <there are no arguments in
16 support of the unfair position> of the Supreme Court<.> <You>
17 should <rule it out, as we have pointed out in our closing brief.
18 As I told you yesterday, this is the starting point of our brief.
19 When> there <are> such flagrant <errors and> violations <of> the
20 fundamental principles <such> as <the principle of> legality, you
21 must set aside <such a> solution.
22 And if the Chamber wishes <to> respect the principle of legality,
23 as normally it should, it <is under a duty to simply> apply the
24 definition of JCE as the PTC had determined it, as you had
25 determined it yourselves, as <all of the international> criminal

51

1 <tribunals> have determined it, as well, because repeating the
2 mistake is not a solution. Repeating the mistake does not mean
3 that it becomes a truth. And I'm thinking about Gandhi now.
4 Gandhi tells us that an error cannot become truth because <it>
5 propagates <and multiplies>.

6 [11.00.37]

7 So this, Mr. President, Your Honours, is something that you're
8 going to have to deal with and you're going to have to deal with
9 this very important issue of JCE and I'm asking you to respect
10 <the> law and I'm referring you to the elements that are
11 developed in the Prosecution's final brief <with regard to the
12 fact that just as they have done with JCE, the Co-Prosecutors are
13 lowering the standard> of intent and <providing> definitions that
14 are posterior to the definitions that prevailed between '75 and
15 '79.

16 Mr. President, Your Honours, now I'm coming to the <end of> my
17 <submissions that I have been making on behalf of Mr. Khieu
18 Samphan> and I'm thinking about the <end of the closing
19 arguments> of my colleague, Marie Guiraud, who said that <she had
20 seen the projections of the time required for your deliberations,
21 and she said that > one year was too long to issue a verdict. One
22 year is long indeed. It won't change much for Khieu Samphan;
23 however, we in the Khieu Samphan defence, we have provided a
24 method for it to be more expeditious.

25 [11.02.10]

1 If you do, indeed, apply the rules of a fair trial, you will be
2 able to only determine the facts that you are <properly seized
3 of> without shortening your deliberations and if you apply <the>
4 law properly, you will even be able to acquit and here you're no
5 longer under pressure to believe that possible acquittal will
6 lead to Khieu Samphan's release.

7 I'm <concluding my submissions> as I started; Khieu Samphan is
8 going to die in jail, in any case, and you have the possibility
9 now of applying law properly and of making sure that there is a
10 real contribution to the legal legacy of the ECCC.

11 MR. PRESIDENT:

12 Thank you, Counsel.

13 I'd like to ask the defence teams for the Friday arrangement, so
14 that we can schedule it properly.

15 Counsel Koppe, Victor Koppe, what is your team's intention for
16 the final rebuttal and the final statement by the Accused; which
17 one you prefer to proceed first <>?

18 Let me remind you that Friday is scheduled for the defence teams
19 -- that is, to make your final rebuttal as well as the final
20 statement by the Accused and I'd like to check whether you have
21 consulted this matter with your client, whether you prefer your
22 client to speak first or you make your final rebuttal first.

23 [11.04.40]

24 MR. KOPPE:

25 Yes, Mr. President, naturally, we have discussed the issue

1 extensively. How things look now, in light of the closing
2 arguments of the Prosecution and Lead Co-Lawyers for the civil
3 parties, it's highly unlikely that Nuon Chea even would like to
4 come up and speak at all. Whether we will use our right to
5 rebuttal depends, very much, on what the Lead Co-Lawyers for the
6 civil parties are going to be arguing this afternoon and tomorrow
7 morning.

8 If it's a mere repetition of whatever they've been saying in --
9 early this week and last week -- or last week, actually, then we
10 will really not bother standing up again. So it all depends on
11 what the Prosecution is saying. It's still a possibility that
12 Nuon Chea might actually come up and speak, but if it goes like
13 last week, then we won't.

14 [11.05.57]

15 MR. PRESIDENT:

16 Thank you, Counsel.

17 And now Counsel Anta Guisse, you have the floor.

18 MS. GUISSÉ:

19 Thank you, Mr. President. Regarding our planning, we took into
20 consideration the Chamber's <schedule> and we understood that
21 each defence team <had> two hours. And as a French lawyer, I must
22 say that if the defendant doesn't speak last, <that would fall
23 far short of an appeal for a judgement to be quoted>. So Khieu
24 Samphan will speak, indeed, at the end and we will divide our
25 time on that basis.

1 [11.06.48]

2 MR. PRESIDENT:

3 Thank you for the information and we will clarify this matter
4 again tomorrow.

5 Probably, we will have an early recess today and for the
6 afternoon sessions, Lead Co-Lawyers for civil parties will make a
7 rebuttal and I'd like to remind the Lead Co-Lawyers as well as
8 the Co-Prosecutors that you two have one day of making your
9 rebuttals. It doesn't mean that the afternoon sessions are
10 dedicated only to the Lead Co-Lawyers and tomorrow morning to the
11 Co-Prosecutors, but these two -- this allocation of time is for
12 both the Lead Co-Lawyers and the Co-Prosecutors. You may have to
13 share the times together.

14 And the Chamber will now recess for lunch and resumed at 1.30.

15 Security personnel, you are instructed to take Khieu Samphan back
16 to the waiting room downstairs and have him returned to attend
17 the proceedings this afternoon before 1.30.

18 The Court is now in recess.

19 (Court recesses from 1108H to 1330H)

20 MR. PRESIDENT:

21 Please be seated.

22 The Court is now back in session and the Chamber gives the floor
23 to Lead Co-Lawyers for civil parties to make rebuttal statement.

24 MS. GUIRAUD:

25 Thank you, Mr. President, Your Honours.

1 Good afternoon. I <> will be presenting the rebuttal for the
2 civil parties and I will probably need about 45 minutes for that.
3 <Whilst the> aspiration of the Khieu Samphan defence is to recall
4 the law <> that of the Nuon Chea defence team is to rewrite
5 history. That is what our colleague, Koppe, said in his
6 <introduction to his closing arguments>.

7 [13.32.30]

8 Before talking about the three main points of my rebuttal, <so>
9 the issue of the extent of the jurisdiction, to respond to the
10 submissions of my colleague of the Defence yesterday <and today>,
11 the first point <therefore> will be that of the <extent> of
12 jurisdiction. The second point, <the> materiality of crimes, and
13 the third point is the individual criminal responsibility of the
14 Accused.

15 Before talking about these points, I would like to talk about
16 Nuon Chea's aspiration to re-write history because <it seems
17 that> it is on the basis of that aspiration that we should
18 understand his entire defence strategy.

19 [13.33.16]

20 The Nuon Chea defence counsel have presented a total defence
21 which is expressed in their closing arguments and brief which
22 <are> more of an exercise in style <that is to say> stretching
23 the metaphor of the "crocodile" as far as possible and never
24 depriving themselves of a nice turn of phrase <or of a gripping>
25 advocacy for <communism and the policies of> Democratic

1 Kampuchea.

2 <Together with our colleague,> Doreen Chen <who told us that>
3 living conditions <improved> from 1975 to 1979<.> <In> the
4 closing arguments of the Nuon Chea defence <,> <there> is no
5 section on the applicable law such that it is impossible to
6 understand the legal framework or template used by Nuon Chea to
7 support his application for general acquittal.

8 The jurisprudence of the Supreme Court Chamber on other inhumane
9 acts is not analyzed. The decision of the Supreme Court
10 confirming that rape outside of forced marriages is not within
11 the scope of the trial is ignored to such an extent that the
12 Defence appears to think that Nuon Chea is being tried for <this>
13 crime. The elements of <the> crimes and the modes of
14 responsibility are systematically mixed up.

15 [13.34.57]

16 The Nuon Chea defence presents its counter <narrative>, which is
17 just as Manichean as <the> one they condemn and it is almost
18 somewhat disconnected from the trial before you. We have
19 <reckoned> that <more than> about 100 documents cited in the
20 <closing brief> of Nuon Chea are not <on the case file> such that
21 the Chamber cannot use those documents to reach its findings.
22 <To compound this confusion,> Mr. President, you <allowed> the
23 Defence to present during their oral arguments, documents whose
24 admission had been rejected by your Chamber, but in respect of
25 which they <> wish a review.

1 [13.35.48]

2 <To compound the confusion>, you accepted, contrary to Article 15
3 of the Convention Against Torture that the Defence, <that the
4 Defence> quote the contents of confessions obtained at S-21
5 <thereby> allowing the Defence to unfold its counter-account: the
6 true history of Democratic Kampuchea without allowing the public
7 to understand the elements that you <may or may> not take into
8 account in your deliberations.

9 Rewriting history, the Nuon Chea defence tells us <,> and
10 recalling the law according to the Khieu Samphan defence; these
11 are the points I would like to focus on in response to the
12 submissions made by our colleague, Anta Guisse, yesterday and
13 today.

14 For purposes of introduction, I would like to point out that we
15 agree with the Khieu Samphan defence on the legal framework and
16 the principles referred to during the proceedings. You are seized
17 of facts, all the facts and nothing but the facts contained in
18 the Closing Order.

19 [13.37.15]

20 As regards the issues of the extent of the jurisdiction as
21 referred to by our colleague, and notably the issue of the
22 deportation of the Vietnamese <in> Svay Rieng and Prey Veng,
23 <and> the issue of torture at Krang Ta Chan, I would like to
24 recall a number of elements in order to place the requests of the
25 Khieu Samphan defence in their proper context.

1 The Khieu Samphan defence did not appeal the <charges against>
2 his client, particularly <those related> to the <crime> of
3 deportation, which is a crime that supposes the crossing of
4 borders. So when Khieu Samphan was <charged with> deportation,
5 the Khieu Samphan defence at the time had the opportunity to
6 challenge that charge.

7 [13.38.11]

8 Secondly, the Khieu Samphan defence did not appeal the Closing
9 Order in regard to those questions relating to the extent of the
10 jurisdiction. The Defence <appealed> very generally but as
11 regards this specific issue of the extent of the jurisdiction
12 <and the Khieu Samphan Defence may correct if I am wrong - those>
13 points were not referred to.

14 And, lastly, the Khieu Samphan defence did not raise any
15 preliminary objections at the beginning of Case 002/02 on the
16 issue of the extent of the jurisdiction; nothing on torture at
17 Krang Ta Chan, nothing on the treatment of Buddhists, nothing on
18 the deportations to Prey Veng and Svay Rieng.

19 The Khieu Samphan defence endorsed the preliminary objections of
20 Ieng Sary regarding issues relating to deportation following the
21 death of Ieng Sary. On that question, the Chamber responded to
22 the Khieu Samphan defence and it is in decision E306/5, which was
23 quoted by our colleague <in> the Khieu Samphan team.

24 [13.39.28]

25 I refer to those three points in order to place the requests of

1 the Khieu Samphan team in their proper context. However, I would
2 like to point out that the civil parties have no interest -- let
3 me insist -- no interest whatsoever in ensuring that the Accused
4 are convicted for crimes with regards to which they were not
5 properly referred to your Chamber for trial.

6 And based on this conviction, we have tried to be as attentive as
7 possible to that question, the question of the extent of the
8 jurisdiction of this Chamber throughout the trial.

9 I will therefore respond one point at a time <to> the requests
10 and submissions of the Khieu Samphan team beginning with the
11 issue of the Khmer Krom.

12 [13.40.27]

13 Contrary to what was referred to by our colleague during the
14 proceedings, we never considered that the Chamber <was> seized of
15 facts relating to the Khmer Krom as a distinct group. I,
16 furthermore, said <that> publicly during the hearings on the 12th
17 of February 2015 and from that point onwards, we have always
18 stuck to that position in our closing arguments.

19 We have not considered the Khmer Krom as a distinct group.

20 And we have, quite simply, included the testimony of a civil
21 party who refers to the disappearance of families at Tram Kak and
22 those families were Khmer Krom and Vietnamese families, but that
23 testimony was included in the closing arguments to show that
24 there were disappearances at Tram Kak and not to show that
25 Vietnamese and Khmer Krom families disappeared at Tram Kak.

1 [13.41.37]

2 As regards the facts relating to deportation to Vietnam, I would
3 like to react today because <the> Khieu Samphan defence during
4 its oral <submissions> cited paragraphs of a closing brief
5 relating to the deportation of Vietnamese to Vietnam.

6 I would like to remind the Chamber and the parties of our
7 approach on that issue. The facts relating to deportation <in>
8 Svay Rieng and Prey Veng are mentioned in the Closing Order of
9 which you are <seised> <,> in <paragraphs 794 to 796> and 1,348
10 <>.

11 [13.42.29]

12 It is true that Khieu Samphan endorsed a preliminary objection
13 initially <filed> by Ieng Sary <to which> you responded, Mr.
14 President, <Your Honours>, <by a decision - Decision> E306/5
15 <which is the one I mentioned>. And by that decision you were of
16 the view that facts relating to deportation of Vietnamese <in>
17 Prey Veng and Svay Rieng fall within the scope of this trial.
18 Our position was, therefore, as follows:

19 Based on that decision we have considered in our closing
20 arguments that the Chamber was of the view that it was validly
21 seized of facts relating to the deportation. And that is the
22 reason why we have integrated in our closing arguments the
23 testimony of a civil party of Vietnamese origin, Choeung Yaing
24 Chaet, an excerpt of whose testimony was presented to you during
25 the first day of the closing arguments.

61

1 So as far as we are concerned, decision E306/5 which you issued
2 determines the issue and that is why we included those facts in
3 our closing arguments.

4 [13.43.45]

5 Third point, on the extent of your jurisdiction as regards facts
6 that could be characterized as genocide through the commission of
7 murders as regards the Vietnamese. <The> Khieu Samphan defence
8 has told us that those facts are limited to murders committed in
9 Svay Rieng province and Prey Veng province.

10 I would like to remind the Chamber and the Khieu Samphan defence
11 that we have respected that element in our closing arguments,
12 even though there may be some divergence on the exact extent of
13 the jurisdiction.

14 And we <mentioned> three testimonies of civil parties; two
15 testimonies of civil parties who lived in Pou Chentam village in
16 Prey Veng province and who testified on the murders of the only
17 three Vietnamese families that remained in that village in 1977.
18 You heard Lach Kry and you heard the testimony of <Pham Yoeun> --
19 or rather, Din Oeun, I beg your pardon.

20 [13.45.01]

21 So, the first point has to do with murders in Prey Veng and the
22 second point has to do with murders in Svay Rieng.

23 You heard the testimony of a civil party, Sieng Chanthy, who
24 testified on the facts relating to murders of two Vietnamese
25 families. One of those families was that civil party's neighbour

1 and she explained that the mother and the children in that family
2 <had been> killed.

3 Fourth point, a specific response to the remarks made by a
4 colleague as regards to the issue of rape outside of the context
5 of marriage<, as> far as we are concerned, rapes within Tram Kak
6 cooperative and at the S-21 and Krang Ta Chan Security Centres.
7 The Chamber is well aware that we were very active on that issue,
8 but we took note of the decisions of your Chamber and of the
9 Supreme Court Chamber and I would like to refer here to your
10 decision, E306/7/3 and to the decision of the Supreme Court,
11 E306/7/3/1/4.

12 [13.46.25]

13 In light of those decisions, we decided not to include in our
14 closing arguments any evidence that would lead to the conviction
15 of Khieu Samphan and Nuon Chea for inhumane acts that take the
16 form of rape in Tram Kak cooperative and <at> the Krang Ta Chan
17 and S-21 Security Centres and I say so with so much bitterness,
18 in a sense, because we have always considered that the Accused
19 were properly referred to the Chamber for trial on those
20 <charges> and I lost a significant amount of time without the
21 Chamber <ever> stopping me from examining, notably, S-21 staff on
22 that point.

23 [13.47.17]

24 And the third point, I must say, is that we still do not
25 understand the decision of your Chamber and that of the Supreme

1 Court Chamber for three main reasons. On the 14th of December
2 2009 when the Co-Investigating Judges indicted Khieu Samphan and
3 Nuon Chea for facts relating to rape after examining -- and I
4 quote: "Evidence concerning the cooperatives and labour camps as
5 well as security centres and execution sites." But indictment,
6 that is the first point.

7 The second point is that the Defence did not challenge <those
8 charges>.

9 Third point, the Co-Investigating Judges did not rule on the
10 dismissal of those facts.

11 To date, we still don't understand the decisions that you and the
12 Supreme Court Chamber took, but which we took note of. And I
13 would like to say again that we did not include elements or
14 evidence that could lead to the conviction of Khieu Samphan and
15 Nuon Chea for inhumane acts taking the form of rape in the
16 cooperatives and security centres.

17 [13.48.37]

18 The fifth specific point in <regard> to which I would like to
19 respond to the Khieu Samphan defence is the Angk Roka prison. The
20 Angk Roka prison is situated, we understood during the hearings,
21 in the office of the Tram Kak district and that office is in
22 Trapeang Thum Khang Cheung commune, which is one of the eight
23 communes cited in the introductory submission. That information
24 is contained in a supplementary information document of a civil
25 party who testified before this Court, Thann Thim, and it is

1 document E3/5035.

2 Based on this observation that the Angk Roka prison is in a
3 commune in Tram Kak district, of which you are properly seized,
4 Mr. President, Your Honours, you issued an oral decision on the
5 21st of April 2015 and you pointed out that the security office
6 of Angk Roka was part of the Tram Kak district and of the facts
7 relating to that office.

8 [13.49.52]

9 The same position on the other side, we took note of your oral
10 decision and we considered that the prison of Angk Roka fell
11 within the scope of this trial and that is why we included the
12 testimony of Thann Thim, who was imprisoned at Angk Roka prison,
13 in our closing arguments.

14 Sixth specific point: Facts relating to torture at Krang Ta Chan.
15 Facts relating to torture at Krang Ta Chan are mentioned in the
16 Closing Order and that same Closing Order referred Khieu Samphan
17 and Nuon Chea to trial for crimes of torture relating to those
18 facts.

19 When that decision was issued, the Khieu Samphan defence did not
20 appeal against it. On that particular point, no preliminary
21 objection was raised at the beginning of Case 002/02 on this
22 specific point. There were no objections during the hearings when
23 witnesses and civil parties testified on facts that could be
24 characterized as torture.

25 [13.51.30]

1 And the Khieu Samphan defence tells us, today, that since the
2 facts relating to torture are not included in the introductory
3 submission, you are not seized of the facts of torture at Krang
4 Ta Chan. We consider that that position is inaccurate for reasons
5 that I will now provide.

6 First of all, the first reason has to do with the introductory
7 submission, even though it may appear to be strange, in a hearing
8 devoted to closing arguments, to <revisit the introductory
9 submission so often> because <normally> those issues have already
10 been resolved.

11 In the introductory submission, you have <an> introductory
12 submission and annexes and when the Co-Prosecutor seizes the
13 Co-Investigating Judges, he seizes them of the introductory
14 submission and the annexes. And in the annexes to that
15 introductory submission, you have the testimony of a survivor of
16 Krang Ta Chan who stated that she <was a victim of> acts that
17 could be <legally characterized> as torture and <that is> annex
18 19.103 of the introductory submission.

19 [13.52.56]

20 So, the civil parties are of the view that the Co-Investigating
21 Judges, seized of the introductory submission and the annexes,
22 had the possibility of investigating facts relating to torture at
23 Krang Ta Chan and that is precisely what <they> did, openly,
24 since on the 16th of July 2009, you have a request for
25 investigating facts from the Office of Co-Prosecutors on those

1 facts of torture at Krang Ta Chan and it's document D183.

2 The Khieu Samphan defence did not react to that request for
3 <investigative> action.

4 In light of these observations, we are of the view that the
5 Chamber is properly seized of facts that could be characterized
6 as torture at Krang Ta Chan.

7 I would like to respond from a legal standpoint to the
8 submissions of the Khieu Samphan defence. First of all, as
9 regards recharacterization, our colleague tells us that you are
10 not entitled, in your deliberations, to recharacterize facts
11 because the parties and the Defence were not informed of that
12 possibility and I talk about this matter because our colleague
13 has referred to one of our footnotes in our closing arguments and
14 in the section regarding the Tram Kak cooperative.

15 [13.54.47]

16 In that section, <indeed>, we quote the decision of the Supreme
17 Court Chamber in Case 002/01, which <>characterized the facts of
18 extermination into murder and I would like to recall, to all
19 intents and purposes, that the rule <that> should apply to your
20 Chamber is Rule <98.2> which states, and I quote:

21 "The <judgment shall be limited to the facts set out in the
22 Indictment. The Chamber may, however, change the legal
23 characterisation of the crime as set out in the Indictment, as
24 long as no new constitutive elements are introduced.>"

25 In reading that rule of the Internal Rules, we consider that the

1 Chamber can recharacterize the facts, insofar as it doesn't add
2 any new constitutive elements. In our view, there is no
3 jurisprudence that obliges you to inform the parties in advance
4 to the extent that you wouldn't wish to add any new constitutive
5 elements. And our position, to be very clear on this, is that we
6 consider that some of the deaths that occurred at Tram Kak
7 correspond more to the characterization <of> murder than to the
8 characterization <of> extermination and we are of the view that
9 the Chamber has the possibility of recharacterizing those facts
10 in its deliberations.

11 [13.56.40]

12 As regards the crime of enslavement, that <was> also referred to
13 by the Khieu Samphan defence yesterday, we have a divergence of
14 points of view and that is summed up in paragraph 69 of our
15 closing brief. We have adopted the definition as specified by the
16 Supreme Court, which reminded us that the actus reus for
17 enslavement consists, and I quote:

18 "In the exercise on a person of one or all of the attributes of
19 the right of ownership; whereas, the mens rea is found in the
20 intent to exercise one or all of the attributes of the right of
21 ownership."

22 The Supreme Court Chamber considers that forced labour is one of
23 the indicia that <allows> for the characterization of the crime
24 of enslavement.

25 [13.57.49]

1 What the Supreme Court Chamber tells us is that whereas forced
2 labour is characterized, it suffices to equate it with
3 enslavement. If <forced labour> is not recharacterized, you would
4 have to <dip> into a catalogue of indicia specified by the
5 Supreme Court Chamber which <revolve> around the notion of
6 control.
7 <Did the> CPK, <> exercise any control on individuals in the
8 cooperatives or in work sites<?> So we have physical control,
9 control of freedom of movement, control of family life,
10 psychological control; control with a view to discouraging any
11 attempt by people to flee.
12 You have in the decision of the Supreme Court Chamber all the
13 indicia which we have adopted to present to you evidence brought
14 by the civil parties on the crime of enslavement.
15 [13.58.53]
16 And lastly, this is the last specific point on the testimony of
17 Sar Sarin because I think that our position was misunderstood and
18 perhaps ill-explained, consequently, and I would like to clarify
19 it.
20 I believe that everyone <in this courtroom> is aware that Sar
21 Sarin came to testify before this Chamber and he did not complete
22 his testimony. The testimony of Sar Sarin, although incomplete,
23 is part of the case file. We cannot, as our colleague, Victor
24 Koppe said, <delete> a testimony from the transcripts, so we
25 decided to include his testimony when we did a summary of all of

1 the testimonies of the 64 civil parties who appeared before this
2 Chamber to testify. <Indeed>, those who read the conclusions will
3 find that in each segment, you have the summary of the
4 testimonies and in that summary, you have the testimony of Sar
5 Sarin.

6 [14.00.04]

7 And let us point out that his testimony was not completed and the
8 Defence did not have the possibility of cross-examining that
9 civil party; however, we did not use the testimony of Sar Sarin
10 when we established the list of testimonies by civil parties that
11 could assist the Chamber in characterizing the role of the
12 Accused. So we tried to adhere, as much as possible, to what
13 happened. We summed up the testimony because it was part of the
14 case file, but we did not use any element in that testimony to
15 support any demonstration of the role of the Accused.

16 To be as clear as possible, Rule 87.2, which provides that the
17 Chamber in taking its decision will rely only on evidence
18 <presented> during the hearings and that was the subject of
19 adversarial debate without exception. So we are not asking the
20 Chamber to use the testimony of Sar Sarin with regard to the role
21 of the Accused.

22 [14.01.27]

23 I will now move on to the second series of <submissions> on the
24 <materiality> of crimes<.> <Since> in this trial -- and I'm
25 saying <this> more for the public than the Chamber -- we must

1 differentiate the facts of which you are seized <from knowing
2 whether> these facts can constitute <crimes or the materiality of
3 the crimes> and then the criminal responsibility of the Accused.
4 On the issue of the <materiality> of the crimes, the Khieu
5 Samphan defence team has carried out work throughout this trial
6 and in its <closing brief and closing arguments> in order to
7 test the credibility and reliability of certain evidence
8 presented to you, including the <testimonies> of certain civil
9 parties.

10 [14.02.29]

11 In spite of that or I would even say because of that, Khieu
12 Samphan does not contest, in his final statements, a significant
13 portion of the <materiality> of the crimes for which he's been
14 tried. That is to say that he is saying, yes, the Prosecution has
15 <proved> beyond any reasonable doubt that what happened in the
16 labour camps can constitute enslavement; yes, the Prosecution has
17 <proved> beyond any reasonable doubt that the facts occurring in
18 the security centres of S-21 and Krang Ta Chan can constitute
19 crimes of imprisonment or murder; and yes, the facts that can be
20 characterized as torture did occur at S-21.

21 The Khieu Samphan defence and Khieu Samphan, therefore, recognize
22 that sometimes, when faced with the evidence, doubt disappears.
23 Nuon Chea and his lawyers take a radically different approach.
24 According to them, the Prosecution has <proved> none of the
25 crimes for which Nuon Chea is being tried beyond a reasonable

1 doubt. The evidence <of this>: the survival of the Manichean
2 <narrative>, which was created by the Vietnamese in <1980s>;
3 documents of the period, these are copies that are certainly
4 false; survivors, often liars; the civil parties, liars who, in
5 addition to that, have not taken an oath.

6 [14.04.30]

7 At no time when faced with the evidence presented by the
8 Prosecution does the Nuon Chea defence concede that, at the very
9 least, elements of certain crimes have been established.

10 I would like to take several examples drawn from their <closing
11 arguments>. What do the Nuon Chea lawyers tell us? What do they
12 say about torture in the security centres? This is <what they say
13 in> paragraph 663 of the Nuon Chea closing brief, and I quote:

14 "The evidence related to the alleged acts of torture is vague and
15 unspecific. It is insufficient to reach a finding beyond
16 reasonable doubt that torture occurred in any of the security
17 centres beyond any reasonable doubt."

18 The same goes for the testimony of these civil parties, Say Sen,
19 Chum Mey, and Thann <Thin>; they've been swept away. They're not
20 credible, you're telling us, from the side of the Defence.

21 [14.05.51]

22 Another example was the murders at S-21. The Nuon Chea lawyers
23 tell us, and I quote:

24 "The Defence recalls the lack of evidence establishing the
25 existence of murders beyond a reasonable doubt at S-21."

1 The same goes for the archives, the lists of the period
2 containing the dates of extermination, the testimony of S-21
3 personnel before the Court, and of the 32 civil parties<,> <the
4 names of> whose relatives who disappeared at S-21 were found in
5 the lists of the period <> and presented to the <civil parties
6 during the> hearings; they were swept away as being not credible,
7 not reliable, <according to> the Defence.

8 The position of Nuon Chea and his counsel on Krang Ta Chan is
9 quite typical. Torture in Krang Ta Chan, and I quote:
10 "Concerning Krang Ta Chan, there is <simply> no <reliable>
11 evidence of serious injury or mental or physical suffering which
12 would have been inflicted intentionally on the detainees."

13 [14.07.27]

14 On the murders at Krang Ta Chan, the final statements indicate,
15 and I quote:

16 "Only two civil parties, Say Sen and Meas Sokha, who were not
17 under oath, provided evidence related to murders, which, as
18 stated above, is unreliable for lack of credibility."

19 The problem is that Meas Sokha is not a civil party, but rather a
20 witness. The Nuon Chea defence is mistaken in this regard. So
21 <should> we then conclude that the Defence's premise simply falls
22 apart because in the binary world of the Nuon Chea defence, the
23 witnesses are considered credible if they take an oath<?> But one
24 of these did, in fact, take an oath and so he is, therefore,
25 credible and corroborates what Say Sen says.

1 [14.08.36]
2 <Meas Sokha says> -- and I would like to quote some very short
3 passages of his testimony because he is a witness; it's
4 <transcript> E1/249.1 -- he came to testify on the 21st of
5 January 2015:
6 <Examined on interrogations at Krang Ta Chan, at 10.26.55, he
7 stated:> "The <interrogations took place out in the open at a
8 location> I could see from where I was moving about<.> I <could,
9 for example, have been harvesting> vegetables. <He states
10 further:> <>"The prisoners were beaten with bamboo or rattan
11 sticks during the interrogations, and sometimes, they used
12 <instruments, pinchers> to pull out the nails of the prisoners."
13 And <lastly, when asked whether he saw with his own eyes the
14 prisoners who were being executed,> he <said: "their throats were
15 slit. I wish to point out> that in the morning, from <9 to 11>,
16 Say Sen <and>Ta Chhen <were assigned> to dig a grave<.">.
17 Vong Sarun, who's another <witness> who was held at Krang Ta Chan
18 <,> and the defence of Nuon Chea requested that he come to
19 testify <,> corroborated Say <Sen's presence at Krang Ta Chan.
20 These> facts can be characterized as torture and murder. Her own
21 husband was killed at Krang Ta Chan. Vong <Sarun's> name and the
22 name of her husband were found on lists from the period that were
23 presented to Vong Sarun at the hearing.
24 [14.10.35]
25 <What have they made of> this evidence<?> <All of it has been

1 swept aside and you are told by> the other side that <it is> not
2 credible. I would like to take this opportunity to tell the
3 Chamber that <just> one testimony can <convince us>. A witness
4 statement does not need to be corroborated in order to serve as
5 <a basis for a factual> or legal <finding>. I have a whole stack
6 of references from international <courts> to support this.
7 Enslavement: I'm continuing <the instructive reading> from the
8 <closing brief> of Nuon Chea, and I quote:
9 "The work required at cooperatives and worksites <were> not
10 forced labour; <but> rather <were>, lawful <-> and <indeed>
11 critical <-> means to <reconstruct> the country and feed the
12 population."
13 [14.11.40]
14 And the defence of Nuon Chea continues:
15 "Furthermore, the working conditions <fail> to demonstrate the
16 characteristics required for such conditions to <constitute>
17 enslavement."
18 <How about> the 26 civil parties who came to testify in Court on
19 the facts related to the worksites and the Tram Kak cooperative
20 and who all <described> what is decisive for the crime <to be
21 characterized as> enslavement<?> <That> is control:
22 psychological control, control over the freedom of movement,
23 control over speech, control over family life; all swept aside
24 <by the Defence> as being not credible.
25 Mr. President, Your Honours, what is reasonable doubt if not the

1 doubt of a reasonable judge?

2 <In the face of> the evidence presented by the Prosecution on the
3 security centres of S-21 and Krang Ta Chan specifically<,> <is>
4 the doubt of a reasonable judge or even a reasonable lawyer <not
5 overwhelmed>?

6 [14.13.07]

7 Finally, on the regulation of marriage, it is difficult to
8 respond to the Nuon Chea defence because <they were> off topic
9 <since they> did not take into account the decision of the
10 Supreme Court Chamber on other inhumane acts.

11 Two <points in my> response <to> the Khieu Samphan defence <with
12 whom,> I believe<,> <we share the same analytical framework.>
13 <You should bear> in mind <this fundamental notion explained by>
14 the Supreme Court <in its ruling, regarding conduct and fact that
15 issues> related to marriage <are much more far-reaching and much
16 broader than the simple question of forced marriage; yes or no?
17 We explained that we consider that it was the conduct of the
18 regulation of marriage, in all of its diversity, which should be
19 the subject of study <for> your Chamber<.> <The degree of
20 gravity> should <therefore> be assessed taking into account the
21 totality of this conduct.

22 [14.14.25]

23 And then having listened to our colleagues and our colleague,
24 Kong Sam Onn, I believe that the issue that seems to us to be
25 fundamental, <is whether the> men and women married under

1 Democratic Kampuchea <gave> full and free consent to Angkar to
2 marry them? The Defence has not yet addressed this question.
3 The last point, Mr. President, a few comments on the individual
4 <criminal> responsibility of the Accused.
5 Although you know this, it is not necessarily a topic that we
6 have spoken about much in this courtroom. We have always
7 considered that our <approach> to <contributing> to <the
8 manifestation of> the truth <was> to focus on the evidence that
9 can <be useful in> the characterization <of the factual elements>
10 of the crimes and we've <by and large> left it to the Prosecution
11 to prove the <guilt> of the Accused.
12 So, a few observations: In their <closing arguments>, the Khieu
13 Samphan defence in <their last paragraph -- paragraph> 2510 of
14 their <closing> brief <write and I quote:>
15 "Because the policies of the CPK, as presented throughout this
16 trial,> do not correspond, at all, to the ideals in which <he>
17 believed,> Khieu Samphan strongly <denies> having ever had the
18 intention to commit or contribute to the commission of the
19 alleged crimes."
20 [14.16.15]
21 We are not trying the ideals of Khieu Samphan today, just as we
22 are not trying Marxism- Leninism today. <You are seized of> facts
23 flowing from the implementation of a rapid socialist <revolution>
24 < -- > and I really want to <lay emphasis on the adjective
25 "rapid"> because this is an essential element <-> by a group of

1 people and the Chamber must decide on the composition of this
2 group. Contrary to what the defence of Nuon Chea seems to think,
3 the identity of the members of the Joint Criminal Enterprise has
4 not yet been <determined> and the Chamber has full latitude <on
5 this point.>

6 [14.16.58]

7 When you will be examining this issue of <the> individual
8 criminal responsibility of the Accused, you cannot simply
9 consider the ideals of the revolution, but you must compare the
10 texts, the constitution of Democratic Kampuchea with the 12 moral
11 <principles> that <we've> talked significantly about in this
12 trial, the <speeches given by the leaders during that> period,
13 with the real consequences suffered by Kampuchean <women and men>
14 between 1975 and 1979. <That is what> Nuon Chea and Khieu Samphan
15 must be held accountable <for>.

16 The Supreme Court was clear, -- and I would like to come back to
17 what my colleague said this morning and perhaps, even yesterday
18 -- the <common project> to <implement> a rapid socialist
19 revolution, <based on> the five policies of which you are seized,
20 <must> be criminal. That is to say, it should have consisted in
21 committing a crime or <> or involving <the> perpetration of that
22 crime and, therefore, you need to ask the question: Was this
23 crime <envisaged> in the <common project>?

24 [14.18.26]

25 To know whether or not a crime <was envisaged> in a common

1 <project> is <above all,> <according to the ruling of the Supreme
2 Court Chamber,> a question of fact which must be examined taking
3 into account all the relevant circumstances.

4 And the Supreme Court <tells> us that for a <common project> to
5 be criminal, the members of a <criminal enterprise> must accept
6 that a crime will be committed, either as a goal or as an
7 inevitable consequence to achieve a goal or <as a possibility>
8 treated with indifference.

9 So for example, when we <take> the issue of marriage, we do not
10 think, as the Accused <argue> < -- > <if we properly understood
11 their position -- > that the Chamber must <necessarily>
12 characterize a policy of forced marriage at the national level
13 <to find> the Accused <responsible>.

14 [14.19.37]

15 You must decide <whether> the <common project>, <that is to say,
16 the plan to implement a> rapid socialist revolution <based on
17 the> five policies, <including> the regulation of marriage -- and
18 I <mean> regulation of marriage and not <the policy of> forced
19 <marriages>, if this <common project envisaged> the commission of
20 other inhumane acts that were related to the regulation of
21 marriage and if those were one of the means of achieving the goal
22 of population growth. You must, therefore, decide if Khieu
23 Samphan and Nuon Chea accepted < -- and> to assess this
24 acceptance, you must look at all of the circumstances of the
25 relevant facts < -- > that crimes<,> other inhumane acts <,>

1 related to regulation of marriage would be committed<,> including
2 as an eventuality treated with indifference.

3 [14.21.00]

4 In his complete rewriting of the story, the Nuon Chea defence
5 concedes that Pol Pot, Nuon Chea, Son Sen, and Ta Mok formed a
6 distinct group within the CPK. Yet, nothing is said about the
7 alleged crimes, of which you are seized, which were committed in
8 the Southwest Zone. Nothing is said about what happened after the
9 purges when the cadres from the Southwest arrived at Trapeang
10 Thma, when the Long Swords <militia> organized the massacre <of
11 the Cham> at Wat Au Trakuon. What is Nuon Chea's version since,
12 in his <narrative>, all of the traitors had already been
13 legitimately executed? So who was responsible for these crimes if
14 not the group composed of Pol Pot, Nuon Chea, Ta Mok, and Son
15 Sen? Too taken up with rewriting history, the Nuon Chea defence
16 has not provided any explanation on this point.

17 <Last figure of speech -- and > I will be concluding at this
18 point, Mr. President.

19 [14.22.21]

20 Nuon Chea says that he accepts his moral responsibility for the
21 events that occurred during the Democratic Kampuchea <regime> and
22 for the suffering that the Cambodian people had to bear.

23 To be morally responsible is to accept the consequences of one's
24 acts. It is, therefore, to accept that a third party < -- > you,
25 representing justice, <apportion criminal> legal responsibility

1 <for> these acts. Some would even say that to be morally
2 responsible is to ask for punishment or sentence.
3 And saying that he accepts the moral responsibility <while>
4 pleading for a total acquittal and contesting<the materiality of>
5 the crimes, Nuon Chea presents you with a total contradiction
6 and, in fact, he accepts nothing<.> < Rewriting> history at <all
7 costs>.

8 Thank you, Mr. President. I have finished with the civil parties'
9 rebuttal.

10 (Judges deliberate)

11 [14.24.25]

12 MR. PRESIDENT:

13 International Co-Prosecutor, you have the floor.

14 MR. KOUMJIAN:

15 Thank you, Mr. President. Good morning, Your Honours, counsel,
16 and all present.

17 Your Honours, we're going to try to address several points that
18 were made by the defence teams over the last few days and points
19 made in their written submissions.

20 Of course, we're only going to be able to touch on some of them;
21 particularly, when they challenge the evidence --

22 MR. PRESIDENT:

23 There is no Khmer interpretation.

24 (Technical problem)

25 [14.25.28]

1 MR. PRESIDENT:

2 International Co-Prosecutor, please restart.

3 MR. KOUMJIAN:

4 Thank you, Mr. President.

5 We will address several points made by the Defence during their
6 oral submissions and also, some that are in their written
7 submissions.

8 MR. PRESIDENT:

9 I think there is a technical problem with the interpretation
10 system. Let we have a short break now and resume at a quarter to
11 3.00 so that we can resolve this technical glitch.

12 (Court recesses from 1426H to 1445H)

13 MR. PRESIDENT:

14 Please be seated.

15 The Court is now back in session, and the floor is given to the
16 International Co-Prosecutor for rebuttal.

17 MR. KOUMJIAN:

18 Thank you, Mr. President.

19 We will try to address several points raised by the Defence --
20 the most important points we feel -- raised by the Defence during
21 their oral presentations and also some that they didn't mention
22 but that are in their written briefs.

23 [14.46.35]

24 One of the points the Defence made concerned the Prosecution
25 arguments, my arguments, about the definition of genocide and how

1 it applied to the Cham. And the Nuon Chea defence said, well,
2 this would amount to a violation of the principle of "nullum
3 crimen sine lege", the principle of legality that the Prosecution
4 was arguing for the Chamber to convict Nuon Chea of some conduct
5 that wasn't a crime at the time it was committed in 1975. That's
6 what that principle means, that you cannot convict someone of
7 conduct if, at the time they did the act, the conduct was not
8 illegal.

9 Your Honours, genocide was illegal in 1975. The Genocide
10 Convention, which I was quoting from, that talks about the
11 destruction of the group as such, those are the words of the 1949
12 Genocide Convention; they're not new.

13 [14.47.42]

14 I have talked about the fact that the five genocidal acts, the
15 groups of acts that are part of that convention that can amount
16 to genocide, including -- include transferring children. So I
17 pointed out the logic that therefore the destruction of the group
18 cannot be limited simply to biological destruction. That clearly
19 by the terms of the 1949 convention, you can destroy a group as
20 such, such as a religious group, without necessarily killing the
21 members of the group or all of the members of the group. The
22 individuals can live on, but the group can be destroyed.

23 We made the same point in our written submissions in more detail.

24 Neither defence team has taken issue with the logic of our
25 submissions and we submit that is because it simply is logical.

1 There's nothing to dispute about that interpretation, the words
2 are clear.

3 [14.48.48]

4 Also in relation to the genocide of the Cham, the Nuon Chea
5 defence mentioned that they felt that the Chamber excluded Krouch
6 Chhmar Security Centre from the scope of the 002/02 trial to
7 their disadvantage. But Your Honours actually asked all parties
8 to submit on the scope of the 002/02 trial before we began. None
9 of the parties, including the defence of Khieu Samphan and the
10 defence of Nuon Chea, asked to include the Krouch Chhmar Security
11 Centre.

12 We wanted to do this Trial as efficiently as possible and we
13 didn't -- we wanted not to necessarily do every single site; we
14 selected sites. Neither defence team asked to have Krouch Chhmar
15 included because there's nothing about including that that would
16 have been to their advantage. They understand that then.

17 [14.49.44]

18 The defence teams -- both of them I believe -- also made the
19 general claim that Cham were arrested as part of security
20 concerns of the DK government, as if for some reason if you
21 decide to destroy a group that if you do it for reasons of the
22 security of your nation, that's not genocide. That's not the
23 case. In the Stakic Appeal Judgement, paragraph 45, they clearly
24 distinguish intent for genocide from motive. Those are two
25 different concepts. If you intend to destroy a group, it doesn't

1 matter if you do it out of racial animus, you do it because you
2 think the group is a threat, you do it for economic reasons,
3 whatever reasons you do it for, if the intent is to destroy the
4 group, that is genocide.

5 [14.50.45]

6 And, Your Honours, the evidence we have in this case, in this
7 trial, shows that the destruction of both the Vietnamese and Cham
8 certainly was not done solely for security concerns. We have had
9 evidence of children; for example, three and four-year old
10 children -- Seng Kuy testified he transported to Wat Au Trakuon
11 to be killed; we've had evidence about Vietnamese babies being
12 killed at S-21 in Sihanoukville. Clearly, these killings were not
13 done for security concerns. They did not, in any way, further the
14 security of the DK regime.

15 Also, the Defence pointed out, oh, how can there be a genocide of
16 the Cham because there was a Cham in a fairly high, mid-level, or
17 higher level position within the CPK, that being Mat Ly? And all
18 this shows that there wasn't discrimination.

19 [14.51.53]

20 But actually the Prosecution case has always been, as we've
21 explained, that the policy towards the Cham evolved over time,
22 and the evidence has shown that. And many witnesses that came and
23 testified at the Trial, including Ysa Osman the expert, talked
24 about the fact that Cham actually joined the Khmer Rouge movement
25 in high numbers. Many of them were loyal to King Sihanouk and

1 they were opposed to the Lon Nol regime. Many of them joined the
2 regime but, over time, starting in about 1973, the CPK
3 increasingly began a policy of trying to destroy the Cham
4 religious and cultural traditions.

5 And Mat Ly example certainly doesn't help the Defence. In
6 interviews, one of the things he talked about was a 1974 congress
7 that he attended in which Pol Pot was also there. And Mat Ly
8 mentions it would be nice to allow Cham to bury their dead
9 according to their own tradition, which is different from the
10 Khmer tradition. The Cham, the body is buried with the head to
11 the north and the foot to the south.

12 And he told the interviewer that Pol Pot called him aside after
13 the congress, scared him. Pol Pot told Mat Ly since we have
14 joined the revolution how the body was buried was up to the
15 revolution. And that's consistent with what the witnesses said.
16 Beginning in '73, but much more after 1975 and the Khmer Rouge
17 victory. The --

18 [14.53.44]

19 MR. KOPPE:

20 I apologize to interrupt, Mr. President, but I do like the
21 Prosecution when they cite documents in rebuttal, I'm not quite
22 sure they actually cite in their brief -- to at least indicate to
23 us the E3 number. I presume it's Mat Ly's interview to Ben
24 Kiernan but I'm not quite sure.

25 MR. KOUMJIAN:

1 I'll try to do that, Your Honour. We appreciate if the Defence
2 does the same, but I think it may be too late for us now on that.

3 [14.54.15]

4 But the interview I just mentioned, in fact, was with DC-Cam.
5 That's E3/7821. But counsel's absolutely correct and Mat Ly also
6 spoke to Ben Kiernan.

7 Also in E3/390, Mat Ly talked about what happened to his own
8 family under the Pol Pot regime. He said he lost -- he said:
9 "Pol Pot killed my wife, three of my children, three
10 children-in-law, nine grandchildren, three of whom were infants."

11 So Mat Ly does not help the Defence, this example of Mat Ly.

12 Again, in E3/7821, he was asked if there was a policy against the
13 Cham and he said yes. Not only were the Cham targeted but he also
14 mentioned the Vietnamese as being targeted, he said, even more
15 badly by the regime.

16 Now, the Defence spent quite a bit of time -- the Nuon Chea
17 defence -- talking about the theories of communism and socialism
18 and how these are designed, the theory to ensure prosperous
19 egalitarian societies, and that cooperatives are often a part of
20 communist or socialist regimes.

21 [14.55.50]

22 Your Honours, Nuon Chea and Khieu Samphan are not charged here
23 with being communists. They're not here because they were bad
24 economists, although they were. They're here not because they
25 set-up cooperatives, not because of that alone, but because they

1 set-up cooperatives where people were enslaved, where they were
2 denied fundamental freedoms. They were required to work without
3 remuneration in inhumane conditions and with the fear of
4 execution if they did not comply with all of these requirements.
5 The accused persons are not here simply because of the theories
6 that they -- the politics that they espouse. Many countries
7 around the world espouse socialism or communism, but they didn't
8 have the results, the policies, the infliction of suffering upon
9 the people that this regime did.

10 [14.57.12]

11 One document that was admitted at the request of the Nuon Chea
12 defence is a demographic study by Patrick Heuveline, that's
13 E3/10764, and it's the most recent and I submit the most
14 comprehensive attempt to look at demographic data, to estimate
15 the number of lives lost during the DK regime. And Heuveline
16 being a very precise academic points out that, of course, it's
17 not possible to state specifically how many died, but from the
18 data you can -- he was able to conclude that the number of excess
19 deaths had to fall within the range of 1.2 million to 2.8 million
20 with the median value of 1.9 million; about 21 per cent of the
21 population.

22 [14.58.18]

23 So this was not a typical socialist-communist regime. The accused
24 are not here because of politics or economic theory. They're here
25 because of the suffering, the deaths that they inflicted upon the

1 Cambodian people.

2 I want to correct something that I understood, from the
3 translation at least, that the Khieu Samphan defence said this
4 morning. They said that the Prosecution in paragraph 932 of our
5 brief had cited two confessions from S-21 or from Tram Kak. Your
6 Honour, we have never used confessions from these security
7 centres to prove the truth of their contents. We didn't do that
8 in paragraph 932.

9 The two documents that counsel cites, if I understood her
10 correctly, E3/861 is just a report listing that "Yuon" hid in the
11 rubber plantation bases. It is not a confession. The other
12 document cited was E3/2434 -- excuse me, I think she said 2443
13 and that's another document -- that's what's in our brief, 2443
14 in paragraph 932. That's just a Tram Kak district document
15 listing names of Vietnamese in the local communes.

16 [15.00.00]

17 The document that she cited has a very similar number, 2434, was
18 not in that paragraph. We cited it elsewhere in our brief, but
19 only for the fact in talking about how the security centres
20 worked; that the statements were passed on up the chain of
21 command to the more senior leaders.

22 What we said in that, we cited it in our brief in footnotes 32,
23 45 and the following footnote for the propositions that every
24 confession was recorded and summarized in a notebook and,
25 secondly, that these summaries were then signed up and delivered

1 to the district office.

2 [15.00.52]

3 So we certainly agree with the Khieu Samphan defence that it is
4 absolutely improper to use the contents of confessions from these
5 security centres, whereas I will explain these are all the
6 product of torture.

7 Also, the Khieu Samphan defence says that we relied on WRIs -- I
8 understood them -- from the majority of our submissions on the
9 Vietnamese. That also is not true. If you look at our section on
10 the treatment of Vietnamese, there are 534 footnotes; 513 times
11 we cite to trial testimony.

12 Now, the Nuon Chea defence said there's nothing in the documents
13 to indicate a policy against the Vietnamese. They did not address
14 Pol Pot's speech about killing 50 million Vietnamese. The army of
15 Vietnam didn't number 50 million, that was the population of the
16 entire country.

17 Also, they did not address -- if we can have the slide, please --
18 E3/1094. This document, which was a report from the West Zone, we
19 mentioned it in our oral submissions already, but they did not
20 address it. But in that document, the West Zone reported that it
21 had:

22 "Applied the Party's line to routinely remove, screen, and sweep
23 clean enemies by screening for 'Yuong' aliens."

24 It says "aliens", it doesn't say soldiers, doesn't even say spies
25 as they like to call civilians. It simply says "Yuen aliens".

1 [15.02.52]

2 And what were the results? According to that report, it
3 indicated, "Smashed 100 ethnic 'Yvon', including small and big
4 adults and children". So this document makes absolutely clear we
5 have a written report to the Centre saying we are fulfilling the
6 Centre's policy against the "Yvon" and we're killing them,
7 including children.

8 But perhaps no document is more telling about the policy and
9 about the genocide of the Vietnamese than E3/4604. That is the
10 "Revolutionary Flag" magazine for April 1978. In that magazine
11 they wrote:

12 "And now how about the 'Yvon'? There are no 'Yvon' in Kampuchea
13 territory. Formerly, there were nearly 1 million of them. Now
14 there is not one seed of them to be found."

15 I just heard that loud bang and perhaps I'm wondering if the Nuon
16 Chea defence thinks that there's coup because when a grenade goes
17 off they believe there's a coup, but I'll come back to that in
18 just a moment. I just thought I'd take advantage of the sound to
19 preview my argument on that.

20 Your Honours, the Defence also talked about, challenged a policy
21 to destroy Buddhism. And if I understood, if I recall correctly
22 they said that there were no witnesses about monks being
23 defrocked, that we didn't call witnesses who, themselves, were
24 defrocked. There were several witnesses in this case who were
25 defrocked.

1 [15.04.51]

2 There were several witnesses in this case who were defrocked.

3 Chin Saroeun testified on 3 August 2016. He said: "Yes, it was
4 after 17 April 1975 that I was defrocked but I was told to leave
5 the monkhood because the regime said that there would be no more
6 monks in the regime."

7 Khiev Neou testified on 21 June 2012. He said: "When we were
8 ordered to disrobe we just did that so we could survive." He
9 said: "A group of Khmer Rouge came to instruct all the monks in
10 Angk Roka pagoda to leave their monkhood."

11 Em Phoeung, the Defence did mention him, he testified on 16
12 February 2015:

13 "As for leaving the monkhood, all monks did not dare to refuse.
14 We were afraid because there were instructions from Angkar and if
15 we didn't follow it, it would be a matter we had to concern
16 about."

17 Cheal Choeun, a witness requested by the Defence, said he was a
18 monk and he said -- well, he said he was forced to disrobe and
19 that if he could he would return to Buddhism.

20 Mean Loeuy, 2 September 2015, testified in the morning: "The
21 Khmer Rouge soldiers who were the messengers of the district
22 chief came to insist that we should leave the monkhood; that we
23 would not be allowed to be in monkhood any more in the near
24 future."

25 And if we look at a CPK document, E3/99, it's a document about

1 the follow-up of implementation of the political line stated 22
2 September 1975. And the Party wrote in that document:

3 "Most of the monks, from 90 to 95 per cent of them, abandoned
4 their monkhood. Pagodas, which are the core of foundations for
5 the existence of the monkhood, were abandoned. People no longer
6 have gone to the pagoda. They no longer offer alms. We assume
7 that 90 to 95 per cent of the monks and Buddhist practices will
8 no longer exist. So this special layer of the society will no
9 longer cause any worry."

10 [15.07.53]

11 Now, the Defence position is, oh, this was just a voluntary
12 decision by the Cambodian people and by the monks to abandon the
13 religion. What sense does that make? At a time when people needed
14 religion most, why would they give up their religion?

15 We know today Cambodians continue to practice Buddhism. The only
16 reason Buddhism did not exist for the three years and eight
17 months of the DK regime was because it was forcibly prohibited by
18 the regime.

19 In fact, Em Phoeung even testified that while he, himself, was
20 able to avoid this because he was well known, other monks were
21 forced to marry, and one of his friends was forced to get
22 married.

23 Now, there also were some Defence legal arguments about other
24 inhumane acts. Several of the charges in this case concern this
25 residual category of crimes against humanity. I don't want to get

1 too technical. We discussed that in our brief and we've done it
2 in prior briefs and there's a lot of jurisprudence already from
3 this Tribunal and others.

4 [15.09.14]

5 But other inhumane acts were a crime in 1975, that's absolutely
6 clear. It's a residual category because international law has
7 said, we don't leave vacuums for cruel perpetrators to make up
8 conduct that wasn't yet called inhumane and get away with it.

9 When conduct rises to the level of other inhumane acts, that is a
10 crime.

11 So other types of treatment have been considered, besides forced
12 marriage for example, as other inhumane acts; cruel, humiliating,
13 inhumane or degrading treatment. There's cases which we cite in
14 our brief that calls those other inhumane acts. Forced
15 prostitution has been found to be another inhumane act.

16 Inflicting serious mental injury, inflicting deplorable
17 conditions of detention, forcing people to witness criminal acts
18 against family or friends, and forced nudity. All of these have
19 been examples of conduct that was found to rise to the level of
20 other inhumane acts.

21 [15.10.29]

22 Now, the Defence, particularly the defence for Khieu Samphan,
23 spent a long time yesterday arguing, oh, forced marriage doesn't
24 rise to that level, it's not so serious.

25 And the -- Your Honours, we've had the testimony of the victims

1 of forced marriage. This is something that has changed people's
2 lives. It was extremely traumatic at the time it occurred and,
3 for many, it has left scars that last a lifetime; mental scars
4 and in some cases even physical scars.

5 One of the witnesses you will recall was a man who talked about
6 how he ran into his former fiancée and they both talked about all
7 that they had lost by this forced marriage policy where he was
8 forced to marry someone else. And all they could conclude is that
9 perhaps in the next life they would be together.

10 So this conduct which affects families, it affects the children
11 from those families, certainly rises to the level of another
12 inhumane act, is extremely, extremely serious and cruel conduct.

13 I also want to talk about the two experts who testified because
14 the defence teams misrepresented or selectively represented what
15 they testified to in a way that distorts the value of their
16 testimony.

17 [15.12.16]

18 I first want to talk about the witness requested by the Khieu
19 Samphan defence, Peg LeVine. It's true, she said she does not
20 characterize the weddings as forced. She did the study where she
21 said she, "Worked very hard to not even ask" couples whether they
22 felt their marriages were forced or not. So how could she
23 possibly come to a conclusion when she didn't ask the people. She
24 wasn't there, didn't ask the people involved did they consent,
25 did they feel forced in these weddings.

1 And she actually testified that most of the interviews she
2 conducted were done by students. They weren't a random selection
3 of people from the DK regime. She sent out students who talked to
4 friends of their parents. So we had young people talking to more
5 elderly people. And we saw her protocol of the questions to ask
6 and none of them concerned whether the couples consented to the
7 marriage or not. As she said, she avoided asking that question.
8 And yet despite the fact that she didn't ask them, in the
9 interviews some of the responses make it absolutely clear that
10 these couples were forced to marry.

11 [15.13.43]

12 Two men said that they first refused to be married and they were
13 punished for that by hard labour. Other witnesses said that they
14 married the spouse chosen by the authorities because one said
15 they could not protest. Another said that she did not agree but
16 she was afraid of being killed so she agreed. A third said, I had
17 to follow Angkar or I would be killed. A fourth told LeVine or
18 one of her students she did not agree but said Angkar killed
19 people. And a fifth older woman told her that she said she felt
20 she must marry or she would be killed.

21 [15.14.37]

22 And yet somehow LeVine says she does not consider these marriages
23 forced, even though the people told her they married because they
24 were afraid they'd be killed if they refused.

25 She even talked about a woman named Moni. Moni was highly

1 educated, she worked for the Khmer Rouge preparing lists of
2 people to be killed. She was ordered to marry an uneducated Base
3 Person and she didn't want to marry him she said, she told
4 LeVine. She didn't want to marry anyone for that matter. She said
5 she only went through with that wedding because her father told
6 her if you refuse they're going to kill me.

7 So LeVine's evidence makes it absolutely clear that these
8 marriages were forced. People married because in the incredibly
9 hostile, the terror environment of the DK regime, you simply did
10 not refuse an instruction from the authorities, from Angkar. To
11 do that would have consequences if people did not know what they
12 would be but they were afraid, reasonably, could even lead to
13 their death.

14 [15.15.55]

15 The other witness, Ms. Nakagawa, said that she started her
16 research on sexual violence, and she was asked some questions
17 about, well, what was the DK policy? Did she make a conclusion
18 about the policy on forced marriages. And this was her answer on
19 14 September 2016 at 3.10 in the afternoon, that was the defence
20 counsel' question.

21 And she explained the research was not investigating anything
22 about policy. She went on to say in that answer, same answer:

23 "But my follow-up researches confirm the serial pattern of forced
24 marriages were forced during the Khmer Rouge time."

25 So LeVine (sic) didn't concentrate on studying the perpetrators,

1 she was interested in the victims, but what she saw was a pattern
2 of forced marriages around the country in the areas that she
3 looked at.

4 [15.17.01]

5 Which reminds me of one of the examples one of defence counsel,
6 Mr. Liv Sovanna, raised in his remarks. He said how can you hold
7 the Centre leaders responsible for forced marriages? What if in a
8 village in Cambodia today a village chief orders a couple to get
9 married, would you then indict the central government in Phnom
10 Penh, leaders of the CPK whoever, for -- excuse me -- the leaders
11 of the regime for forced marriage.

12 The answer is, look at the difference in context. Of course not
13 because in the DK regime this didn't happen in one village to one
14 couple. The evidence before you from the witnesses, from civil
15 parties, from the experts, is that it happened throughout the
16 country in often mass weddings, weddings of sometimes dozens
17 sometimes many more people, often couples that had never even met
18 before they were instructed to get married.

19 One of the testimonies I think was absolutely clear in showing
20 that this was a central policy and in showing the coercion that
21 everyone felt who was told by Angkar you are to be married was
22 the testimony of Nop Ngim. If you recall her, she was a Southwest
23 Zone cadre, eventually sent to the Northwest Zone, and given a
24 relatively high position, I believe deputy district secretary.

25 [15.18.44]

1 And she said one day Ta Mok came and told her and other women
2 that she was with that 38 of them would marry a group of
3 handicapped soldiers that they didn't even know. Ta Mok and Ta
4 Tith attended the wedding ceremony. And she talked about that
5 ceremony and she said during it some of them were crying. She
6 also said:

7 "I also cried. I was disappointed, very disappointed since I have
8 never seen my would-be husband before the marriage day although
9 we were in the army. But if I had refused, I would have been
10 killed, so I had to bear the situation."

11 So this is a relatively mid-level or higher-level cadre, at least
12 mid-level cadre, trusted by the regime, chosen by Ta Mok for this
13 position, she was afraid of being killed if she refused to marry
14 a person that she had never met before, a handicapped soldier.
15 You can imagine what ordinary people in these villages around the
16 country, the terror they felt that forced them to accept this
17 instruction from Angkar to marry.

18 [15.20.11]

19 A couple of very small points regarding some of the defence
20 arguments in the last few days. In one point, the Nuon Chea
21 defence claims that the Prosecution made a ridiculous claim in
22 the brief -- in our brief -- that DK deceived Vietnam by
23 negotiating to gain time to prepare forces. Your Honour, I
24 suggest that they look at the footnote to the -- on the brief to
25 that point because the footnote is to the minutes of the 11 March

1 1976 Standing Committee Meeting, E3/217. That meeting states
2 exactly what we wrote in our brief, that they were negotiating
3 and that they intended to gain time to prepare forces.

4 The Defence also criticized the Prosecution brief and read a
5 portion of a sentence where we said that DK acted under the
6 delusion in the early part of the regime -- acted under the
7 delusion they faced imminent danger from Vietnam early in the
8 regime.

9 The portion of the sentence they did not read is that this is
10 what Stephen Morris said. Stephen Morris was the expert witness
11 on DK-Vietnamese relations that Nuon Chea proposed. The statement
12 that they criticized is directly out of his book.

13 [15.21.47]

14 Now, Your Honours, both of the Accused have given various excuses
15 in attempts to evade the criminal responsibility. Some of their
16 various positions in this case and over time even contradict each
17 other, but both of them, to varying extents, Nuon Chea much more
18 than Khieu Samphan, but both of them have attempted to justify
19 the crimes of the regime, and I want to talk about that now, I
20 think this is very important.

21 In the Nuon Chea brief, final trial brief, paragraph 540, they
22 claim that there's a legal basis to arrest and detain people
23 because of suspicion of participation in unlawful activities. And
24 they go on in their brief to claim they had a right to kill those
25 they suspected of being disloyal to their regime.

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1 [15.22.53]

2 Khieu Samphan has also done this at times. You haven't heard much
3 of that in their final arguments, but in their final trial brief,
4 for example, in paragraph 1466, they claim that security centres
5 -- and we've heard the testimony of what these security centres
6 were, they were killing machines -- but Khieu Samphan says
7 security centres were, "A firm response to rebellious movements"
8 and that they would, "Isolate individuals deemed dangerous to DK
9 stability".

10 Your Honours, what does the evidence show about how they isolated
11 individuals? They isolated them by burying them in mass graves.
12 Nuon Chea's been much more up-front about this during the trial
13 and even before the trial. He told Thet Sambath in the book --
14 he's quoted in the book "Behind the Killing Fields" and this
15 quote the Defence also included in one of their submissions last
16 year; his lawyers included this -- quote:

17 "Nuon Chea doesn't apologize for S-21. Nuon Chea doesn't
18 apologize for S-21 even though his niece and others close to him
19 were sent there."

20 Now, as we've heard evidence about S-21, we've seen from
21 recovered documents as we show in our brief approximately of the
22 surviving documents approximately 18,000 individuals were
23 detained there according to those documents. And -- and that's --
24 you know, all documents did not survive, that's clear.

25 [15.24.51]

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1 But Nuon Chea doesn't apologize for it, rather he tries to
2 justify it, which is a position he's taken most of the time
3 during the trial but other times, in the trial and before, he's
4 taken different positions in an attempt to evade his
5 responsibility.

6 E3/663 was a media interview with Nuon Chea. In that one, he
7 said: "There was no S-21. If it had existed, I would have been
8 informed about it but I never heard about it."

9 It's one of many, many lies that Nuon Chea has told in an attempt
10 to avoid his responsibility. While he sometimes expresses his
11 moral responsibility and talks about his concern for the victims,
12 Your Honours, those are crocodile tears. Absolutely insincere
13 because, as he has said, he makes no apology for S-21.

14 And at other times he's even tried to blame the killings on other
15 people and deny it was the Khmer Rouge.

16 If we could show the first video, please? Here's what he said in
17 an early interview before this Trial.

18 [15.26.21]

19 (Audio-Visual presentation - (video))

20 (Interpretation from Khmer to English)

21 "I would show my respect for the souls of my people <who had
22 sacrificed their lives> and I'd like to show my regrets <>. I
23 would express my condolences to the people. <I would like to
24 indicate that> it was not <Democratic> Kampuchea <that> killed
25 <its> own people, it was the enemy country <of the DK> who killed

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1 our people and I don't want to name the country. <> I do not want
2 to name any country who caused the destruction."

3 (End of interpretation from Khmer to English)

4 (End of Audio-Visual presentation - (video))

5 [15.27.13]

6 MR. KOUMJIAN:

7 Now, it wasn't the Vietnamese than ran S-21, Krang Ta Chan, the
8 other security centres. The purge of the East Zone was not
9 carried out by the Vietnamese. The cooperatives and worksites
10 where people were enslaved and many died or were executed were
11 not run by the Vietnamese.

12 There's an interesting scene in the movie "Enemies of the People"
13 where Thet Sambath brings a couple of ordinary soldiers to talk
14 to Nuon Chea. Now, earlier in the film, these former Khmer Rouge
15 soldiers, DK soldiers, had admitted to being involved, being the
16 direct perpetrators, in mass killings. They talked about the mass
17 killing of Khmer Krom people in Bakan and also of people from the
18 East Zone.

19 And Thet Sambath brought them to Nuon Chea and one of them asked
20 Nuon Chea about who ordered the killings and why were people like
21 his own commander -- these are cadre from the Northwest Zone --
22 why were people like his own commander killed? And let's see what
23 the response of Nuon Chea was then:

24 [15.28.38]

25 (Audio-Visual presentation - (video))

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1 (Interpretation from Khmer to English)

2 "I would like to know why after we have liberated the country
3 from the US imperialist, why fighters who have struggled like my
4 commanders from regiment, from division, from brigades were
5 killed?

6 Sambath: Why did you do the killing?

7 It may have been from the district level or even the <Sector,
8 the> Zone level, <or> the Central Committee level but the people
9 said no, not from the Centre. Then I heard it reached Grandfather
10 Pol Pot and I was told that it was not Pol Pot, it was people
11 above him. It was just a rumour. That is what I told them. I do
12 not know whether it is right or wrong. <But it does not matter, I
13 have made up my mind.> I want to talk about it at the courts to
14 the people. I want to tell the people and, of course, that the
15 <Americans and the> 'Yuon' killed our own people not my people
16 kill themselves."

17 (End of interpretation from Khmer to English)

18 (End of Audio-Visual presentation - (video))

19 [15.30.26]

20 MR. KOUMJIAN:

21 So here's Nuon Chea again trying to avoid responsibility, saying
22 it wasn't Khmer people killing Khmer people. These two men, these
23 direct killers of -- mass killers were, of course, Khmer. They
24 were ordinary foot soldiers following orders. It wasn't
25 Americans, it wasn't Vietnamese, it was -- they were Khmer and

1 they were killing according to the DK orders.
2 Nuon Chea lying again, trying to divert attention, divert
3 responsibility -- his own responsibility -- for what happened.
4 His commander, other Northwest Zone cadre, we know where they
5 were killed from. They were killed on purges from the Centre.
6 But one of -- perhaps one of the most outrageous lies of Nuon
7 Chea in attempting to avoid his responsibility came in a setting
8 very much like this, but it was the last day of the trial in Case
9 2/1; 31 October of 2013 when he gave his final words in that
10 case.

11 [15.31.41]

12 And in his speech he said the following -- quote:

13 "I never met, never supervised or ordered Duch to mistreat or
14 kill anyone. Everyone should be aware that soldiers or security
15 personnel would never listen to anyone besides their own
16 commanders, therefore there is no reason that Duch should listen
17 to me."

18 Besides the ridiculousness of that statement coming from the
19 number 2 person in the regime, please listen to what he said
20 next. Nuon Chea said:

21 "Frankly speaking, I heard the name of Duch only after 1979."

22 [15.32.26]

23 Your Honour, this contradicts many other things that Nuon Chea
24 has said going back to his extensive interviews with Thet
25 Sambath. He talked there with -- to Thet Sambath that he had had

1 -- Nuon Chea had had -- extensive discussions with Duch during
2 the DK regime. He talked about how he discussed Duch with Ta Mok.
3 He claimed that Ta Mok had warned him about Duch. And in a quite
4 detailed explanation of an event in that book, Nuon Chea talks
5 about the time that Duch came to him with a confession
6 implicating Khieu Samphan and how he had ordered Duch to ignore
7 that. In the book, it says that Nuon Chea told Thet Sambath:
8 "Duch was not happy with me because I always blamed him for
9 making mistakes."
10 There's no question Nuon Chea knew Duch. He didn't hear the name
11 the Duch for the first time after 1979, it's just another
12 outrageous, outrageous lie he tried to tell to avoid his
13 responsibility, particularly his responsibility for S21 where he
14 simply has no excuse.
15 [15.33.59]
16 Now, I'd like to come to the most important part of the Nuon Chea
17 arguments. In this trial they don't deny the killings at S-21.
18 They can't, the evidence is simply overwhelming and at other
19 security centres. But they claim that these are legally
20 justified. They claim that they had a right to kill anyone
21 because of, "A reasonable suspicion". They had a right to kill
22 with no trial or legal process people they consider disloyal.
23 And then they cite as the reason that they have to be believed
24 about that, that this is their national security policy. They
25 say, look what happens, we were overthrown. This regime that had

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1 enslaved people, impoverished people, murdered hundreds of
2 thousands, maybe million people, was overthrown by a foreign
3 invasion. They lost power, so therefore they must have had a real
4 national security -- national security issue and therefore were
5 entitled to kill people in order to preserve the regime.
6 Your Honours, the Nazi regime lost the war. It doesn't justify
7 their crimes. The Ottoman Empire ceased to exist after the First
8 World War. It doesn't justify the crimes that occurred. The
9 Hutu's lost to a Tutsi army that invaded. It doesn't justify
10 their genocide. And the fact that the Khmer Rouge, the DK regime,
11 was overthrown does not justify the horrible crimes that that
12 regime committed.

13 [15.35.56]

14 Now, Your Honours, just looking at the history of Cambodia alone,
15 King Sihanouk and his government were overthrown. Lon Nol was
16 overthrown in a war. Of course, the DK regime was overthrown. Ten
17 years of another regime and civil war and that regime lost the
18 1973 elections and partially lost power.

19 Now do the fact that these regimes lost power mean that any crime
20 that was committed by the regimes is excused because national
21 security, you can kill anyone with no legal process and justify
22 it? Of course not. That's the rule of no law. That's what Nuon
23 Chea advocates, the rule of no law. And they go even further
24 because Nuon Chea says Vietnam is an existential threat and
25 always will be. It remains a constant, they say, in -- for

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1 Cambodia for all time. So according to Nuon Chea, they would
2 condemn the Cambodian people at all time any government that
3 feels they are threatened can kill anyone -- and simply say we
4 believe you are an agent of Vietnam without any judicial process.

5 [15.37.13]

6 Another way that Defence tries to justify their crimes is they
7 try to say, oh, well there were competing factions within the
8 Party, there were rifts between the CPK; and that this somehow
9 justifies the crimes. It doesn't. Now even -- said -- objected
10 very strenuously that the Chamber was biased against them because
11 you asked Nuon Chea what's the relevance of this evidence.

12 Your Honour, all courts at all times have a right and a duty to
13 ask about the relevance of evidence before parties take time to
14 present evidence. Nuon Chea never could show developments of the
15 evidence and that's why they objected so strongly to the question
16 because they had no answer to it.

17 Now sometimes they try to claim, well, the killings were by other
18 factions of the regime that were disloyal to Pol Pot. What
19 killings are you talking about exactly? S-21? Run by Duch who was
20 under Son Sen, under Nuon Chea. Are you talking about Krang Ta
21 Chan, which was Ta Mok's area? Are you talking about the purge --
22 the purge of the East Zone of thousands and thousands of East
23 Zone soldiers that the regime claimed were disloyal?

24 [15.28.54]

25 If we go through all of the crime sites, there's one site I

1 believe that was operated under someone that Nuon Chea claims was
2 from a competing faction. He has to claim it because they
3 executed him in S-21, Ros Nhim, and that was Trapeang Thma. But
4 the evidence we heard from witnesses was that when the Southwest
5 Zone replaced Ros Nhim's Northwest Zone at Trapeang Thma, things
6 got no better. In fact, some witnesses said things got even
7 worse.

8 Your Honour, it's an easy question but it's absolutely an
9 incredibly important one that's facing you because of the Nuon
10 Chea defence. They claim a right to extra-judicial killings.
11 There is no such right in international law. We heard them speak
12 for two days. They filed a 550-page brief. They cited no case
13 that said you can kill a person who's not taking an active part
14 in hostilities without a trial, without any judicial process.
15 That simply is not allowed. And, you know, their chance again to
16 speak Friday, please, if you have a case that says you can kill
17 someone who's in detention, a prisoner, you can execute him
18 without any trial, please show it to the Court. There's no such
19 case. There's no principle in international law that prisoners
20 can be killed. And the evidence in our case about executions is
21 that pretty much everyone who was executed was not taking an
22 active part in hostilities. Once a person is captured, they are
23 not taking an active part in hostilities. Persons who are in
24 S-21, Krang Ta Chan, the other security centres, by definition
25 they're detained, they are not taking an active part in

1 hostilities.

2 [15.41.04]

3 The actual definition of "active part in hostilities" is limited
4 to the time the person or civilian is actually engaged in such an
5 operation. So don't come back with a case that says that during
6 an arrest or during a military operation you can kill a person
7 who's suspected of aiding the enemy. Find a case that says a
8 person in detention can be killed without trial. There is none.
9 You won't find any. And it would be a very, very dangerous world
10 if any court would recognize such a defence.

11 What they were -- what the DK was literally a lawless state.

12 There were no laws. They had a constitution and no laws. They had
13 a parliament which was tasked by the constitution with creating
14 laws and it was headed by Nuon Chea and it passed none. There
15 were no laws.

16 Now, in a very feeble and weak attempt, I'm not blaming the
17 lawyers. Let me make it clear. We appreciate they're lawyers,
18 defence lawyers play a critical role and when I'm attacking the
19 arguments it's because they have to play the hand that they're
20 dealt with. The hand that they're dealt with is a very losing
21 hand on this issue and on this trial.

22 [15.42.26]

23 So what they claimed in attempts to try to find some basis is
24 that in the DK constitution in paragraph 402 they talk about a
25 constitutional provision that said -- and they claim that this

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1 justifies executions in places like S-21 with no trial, no
2 charges, no legal process. The constitutional provision says:
3 "Dangerous activities in opposition to the people's state must be
4 condemned to the highest degree."
5 [15.42.59]
6 So it includes no punishment, says nothing about a penalty. It
7 certainly doesn't say you can kill anybody. "Dangerous
8 activities", it doesn't define. What are dangerous activities and
9 who is to decide? This is not a law. It's not a criminal law.
10 It's no basis for extra-judicial killings.
11 What are dangerous activities according to Nuon Chea? It's very
12 interesting to look at their brief when they say that they are
13 re-writing history and the evidence they say they show of this
14 existential threat to the regime that justifies these thousands
15 and thousands of executions of men, women and children.
16 Well, they give a couple of examples that I found very
17 interesting. On paragraph 250, they say -- this is part of their
18 crocodile history:
19 "100 members of Chakrey's forces were arrested at that location
20 for stirring up discontent by creating the impression of unrest,
21 raising banners with the slogan 'Long Live Buddhism'.
22 So according to Nuon Chea, dangerous activities that justify
23 executions are things like a banner 'Long Live Buddhism'. That's
24 an existential threat to the DK regime. That's interesting for
25 two reasons. One, it shows contrary to the submissions of both

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1 defence teams, the regime absolutely prohibited Buddhism, and the
2 DK regime understood that Buddhism, a gentle religion, was
3 incompatible with its own philosophy. And, secondly, it shows
4 that people were killed simply for expressing their religious
5 belief.

6 [15.44.56]

7 Paragraph 251 has the next evidence of these dangerous activities
8 against the state that justify S-21, and this was graffiti. It
9 was written, "Small fry eats little, big shot eats a lot".
10 According to the Nuon Chea brief, this led the Khmer Rouge to
11 conclude Division 170 was rebellious.

12 A graffiti saying basically against corruption, "Small fry eats
13 little, big shot eats a lot". Graffiti against inequality, which,
14 according to the Nuon Chea team, is the basic tenet of their
15 communist beliefs. But if someone expresses it when they're in
16 power, that's reason to condemn an entire division, to seek them
17 out, put them in prison without judicial process and execute
18 them.

19 [15.46.04]

20 You know, that kind of slogan, that kind of graffiti against
21 inequality, you can find that on the streets of Los Angeles or
22 the streets of Paris or the streets of Phnom Penh, it doesn't
23 justify arresting anyone, let alone executing them, torturing
24 them and executing them.

25 Now, Nuon Chea makes another valiant but futile attempt to

1 justify their lawless state by talking about the ICCPR, Article
2 4. And that article on the International Covenant on Civil and
3 Political Rights talks about certain derogation of certain
4 responsibilities on these issues can be -- can occur when a state
5 invokes Article 4, A National Emergency.

6 [15.47.03]

7 First of all -- I'll talk more about it -- but, first of all, by
8 the terms of that -- I'll talk in a moment why this is completely
9 inapplicable to crimes against humanity in criminal cases like
10 this. But even by the terms of that, the covenant requires that
11 the state officially declare a state of emergency. Nowhere in the
12 550 pages of Nuon Chea's brief do they ever even claim that the
13 DK officially declared a state of emergency.

14 The general comment to that convention says in paragraph "General
15 Comment 29 paragraph 2":

16 "Before a state moves to invoke Article 4, the state must have
17 officially proclaimed a state of emergency. The latter
18 requirement is essential for the maintenance of the principles of
19 legality and rule of law at times when they are needed most."

20 [15.48.09]

21 This is important, very important. National emergency is a time
22 when law is most needed, when you want to control the state from
23 abusing citizens and overstepping its bounds. Some of the cases
24 that the Nuon Chea team cites have nothing to do, of course, with
25 killing people, executing people without any judicial process.

1 The kind of derogation when a state of emergency is officially
2 declared are things like -- they cite the case in the European
3 Court of Human Rights of Aksoy v Turkey. In that case, the court,
4 European Court, accepted the Turkish government's argument that
5 the PKK -- that PKK terrorist activity in southeast Turkey had
6 undoubtedly created in that region a, "Public emergency
7 threatening the life of the nation". They accepted that. And the
8 Court still found in that case the Turkish government wanted to
9 hold suspects for 14 days before they saw a judge, before
10 judicial intervention. The Court ruled that that was not
11 permitted.

12 In the case of Noy Sen (phonetic), the same ruling when it was an
13 11-day detention without seeing a judge, without any judicial
14 intervention.

15 [15.49.42]

16 Your Honour, the laws that we are applying here, crimes against
17 humanity and the laws of armed conflict, they apply in armed
18 conflict. They apply at times when there is a real national
19 emergency. It would defeat the very purpose of the laws of armed
20 conflict to say that law is suspended during an armed conflict.
21 Just the opposite is true.

22 [15.50.10]

23 General Comment 29 goes on to say in paragraph 11:

24 "State parties --" this is why I want to point out to you that
25 this convention can never be applied in a case like this. In a

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1 criminal case, you cannot apply it. It's not meant to be applied.

2 Paragraph 11 says:

3 "State parties may in no circumstances invoke Article 4 of the
4 covenant as justification for acting in violation of humanitarian
5 law or pre-emptory norms of international law, for instance, by
6 imposing collective punishments to arbitrary deprivations of
7 liberty--"

8 An arbitrary deprivation of liberty is arresting someone with no
9 judicial process; exactly what occurred at each of the security
10 centres in this case.

11 And then it goes on to say:

12 "--or by deviating from fundamental principles of fair trial,
13 including the presumption of innocence."

14 Which, of course, we know there was no presumption of innocence
15 and there was no trial during the DK regime. As Duch and many
16 others have said, in DK all arrested were presumed guilty.

17 [15.51.37]

18 Paragraph 12 says:

19 "If action conducted under the authority of a state constitutes a
20 basis for individual criminal responsibility, for a crime against
21 humanity by persons involved in that action, Article 4 of the
22 covenant cannot be used as justification."

23 [15.52.01]

24 So that is saying -- that's exactly what Nuon Chea's attempting
25 to do even though they didn't declare a state of emergency. It's

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1 trying to say that they are invoking Article 4 as a basis to
2 avoid individual criminal responsibility. It's simply not
3 permitted.

4 Your Honours, the Geneva Conventions deal in a particularly
5 common Article 3 of those Geneva Conventions have been described
6 in the international jurisprudence such as the Celebici Appeals
7 Chamber Judgement as the absolute minimum standards under
8 customary international law that apply to all conflicts, internal
9 or international. They called it a minimum yardstick which
10 reflects elementary considerations of humanity.

11 And what does article -- Common Article 3 say; Common Article 3,
12 common to all of the Geneva Conventions. It says:

13 "To this end, the following acts are and shall remain prohibited
14 at any time and in any place whatsoever with respect to persons
15 taking no active part in the hostilities, including members of
16 armed forces who have laid down their arms and those place
17 (unintelligible) combat by sickness, wounds, detention. First, a
18 violence to life in person, in particular murder of all kinds,
19 mutilation, cruel treatment and torture.

20 [15.53.52]

21 And then skipping to paragraph D -- remember this applies to even
22 soldiers in detention:

23 "The passing of sentences and the carrying out of executions
24 without previous judgement pronounced by a regularly constituted
25 court, affording all the judicial guarantees which are recognized

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1 as indispensable by civilized peoples."

2 Again, we know there were no judgements, no courts, no process in
3 any of the detention centres, the execution sites, in the DK
4 regime.

5 Another case cited in the Nuon Chea brief is another European
6 Court of Human Rights case, Ilascu, and in that case the court
7 reiterated that:

8 "Even in the most difficult circumstances such as the fight
9 against terrorism and organized crime under convention--"

10 And there they're talking about the European Convention of Human
11 Rights.

12 "--prohibits in absolute terms torture and inhumane or degrading
13 treatment."

14 It said that: "No derogation from it is permissible, even in the
15 event of a public emergency threatening the life of a nation."

16 [15.55.26]

17 Now, Your Honours, it's not surprising if there was opposition to
18 the DK regime. It was a regime that had impoverished its people.

19 People were starving. People were enslaved, working in horrible
20 conditions. And the regime we acknowledge was wildly unpopular.

21 No-one had chosen that regime, it had come to power through armed
22 force and deception, pretending that it was -- that King Sihanouk
23 was at the front when the CPK intended always to side-line
24 Sihanouk.

25 Your Honour, the fact that unpopular -- that dictatorships may be

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1 unpopular, dictatorships that allow no elections, doesn't mean
2 that they're free to kill their opponents with no legal process
3 just so that they can remain in power.

4 There clearly was some resistance to the DK regime. We absolutely
5 acknowledge it, that's been in the evidence. So we had, for
6 example, the -- for example the Cham in Krouch Chhmar in Koh Phal
7 who took up swords and knives fighting against guns and heavy
8 weapons for their religion. They resisted the regime.

9 [15.57.00]

10 Long Sat was an East Zone cadre. I don't know if you remember
11 him. I think he said he was head of the medical unit. And after
12 all of his commanders were called to a meeting on 25 May,
13 slaughtered by Ke Pauk forces, he took to the forests with a
14 group of people to resist, to stay alive, the main reason to
15 resist what he called the Pol Pot coup.

16 And there are other examples. For example, Michael Vickery in his
17 book was an author the Defence likes to quote a lot. He talks
18 about a revolt in Chi Kraeng district in Sector 106 which
19 revolted in April 1977 after a rumour spread that Sihanouk was
20 about to return and the regime was about to fall. In response to
21 that revolt, according to Vickery, the Khmer Rouge killed
22 8-10,000 people.

23 [15.58.02]

24 And he also talked about a Kouy village, which is an ethnic
25 minority that he said revolted and the entire population of 700

1 was killed. And there certainly were other individuals who
2 resisted the Khmer Rouge regime.
3 But in talking about these people and talking about S-21 in the
4 beginning of their brief, the Nuon Chea brief quotes from
5 Chandler. Chandler, of course, is the person who came up with
6 talking about Manichean narrative that he said was a convenient
7 and sometimes conveniently merged what the Khmer Rouge wanted
8 people to believe with what the Vietnamese wanted them to
9 believe.

10 [15.58.52]

11 But he said this about the S-21. I think it's very interesting.

12 Chandler said:

13 "Using the words 'guilty' or 'innocent' to describe the prisoners
14 at S-21 is misleading. Using these words lends judicial
15 legitimacy to a macabre project whereby all the prisoners,
16 regardless of their actions and before they started talking, were
17 condemned to death."

18 I'm going to finish after I read this quote for the day, Mr.

19 President. Just another minute.

20 Chandler said:

21 "Procedures followed at S-21 indeed sometimes seem to have been
22 inspired by the red queen in "Alice in Wonderland" or by Kafka's
23 "The Trial". At another level, those prisoners genuinely guilty
24 of opposing DK might well deserve to be seen in hindsight as
25 heroes, while those victims who were innocent of opposition and,

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1 thus, sometimes complicit in the regime's guiding ideas and
2 practices should not necessarily be honoured as law-abiding
3 citizens of a humane regime swept up in error by a responsive
4 judicial system. But evidence shows resistance, even dissent, was
5 very limited because of the terror imposed by the regime."

6 [16.00.26]

7 If you'd like, Mr. President, I could break now.

8 MR. PRESIDENT:

9 Thank you.

10 It is now the appropriate time for the adjournment.

11 The Chamber will resume its hearing on Thursday, 22 June 2017,
12 starting from 9 a.m.

13 Tomorrow, the Chamber will continue to hear the closing arguments
14 of Case 002/02 and tomorrow is the time for the Co-Prosecutors to
15 resume the rebuttal in the morning. And the Chamber will not hold
16 its hearing in the afternoon. Please be informed.

17 Security personnel are instructed to bring the two accused, Nuon
18 Chea and Khieu Samphan, back to the ECCC detention facility and
19 have them returned into courtroom tomorrow before 9 a.m.

20 The Court is now adjourned.

21 (Court adjourns at 1601H)

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23

24

25