



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
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TRANSCRIPT OF TRIAL PROCEEDINGS  
PUBLIC  
Case File N° 002/19-09-2007-ECCC/TC

22 June 2017  
Trial Day 507

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

The Accused: NUON Chea  
KHIEU Samphan

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**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
Ms. CHEA Leang	Khmer
The GREFFIER	Khmer
Mr. KOPPE	English
Mr. KOUMJIAN	English
Mr. LYSAK	English
The President (NIL Nonn)	Khmer

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

2 (Court opens at 0859H)

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 and for the morning's proceeding, the floor will be  
7 given to the Co-Prosecutor to continue with their rebuttal  
8 statement.

9 Ms. Se Kolvuthy, please report the attendance of the parties and  
10 other individuals to today's proceedings.

11 THE GREFFIER:

12 Mr. President, for today's proceedings to hear the closing  
13 statements, all parties to this case are present.

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

17 Thank you.

18 [09.01.33]

19 MR. PRESIDENT:

20 Thank you. The Chamber now decides on the request by Nuon Chea.  
21 The Chamber has received a waiver from Nuon Chea dated 22nd June  
22 2017, which states that due to his health; that is, headache,  
23 back pain, he cannot sit or concentrate for long and in order to  
24 effectively participate in future hearings, he requests to waive  
25 his right to be present at the 22nd June 2017 hearing.

1 Having seen the medical report of Nuon Chea by the duty doctor  
2 for the Accused at the ECCC, dated 22 June 2017, which notes  
3 that, today, Nuon Chea is generally stable, but he has a severe  
4 lower back pain when he sits for long and recommends that the  
5 Chamber shall grant him his request so that he can follow the  
6 proceedings remotely from the holding cell downstairs. Based on  
7 the above information and pursuant to Rule 81(5) of the ECCC  
8 Internal Rules, the Chamber grants Nuon Chea his request to  
9 follow today's proceedings remotely from the holding cell  
10 downstairs via an audio-visual means.

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

14 And I now hand the floor to the Co-Prosecutors to continue with  
15 the rebuttal.

16 [09.03.16]

17 MR. KOUMJIAN:

18 Good morning, Your Honours, counsel to the civil parties, and to  
19 all present.

20 Your Honours, yesterday, we -- I spoke in some detail about  
21 international law and why it's absolutely impossible under  
22 international law for the Defence to justify a single detention  
23 without legal process, a single torture of the victims of the  
24 Khmer Rouge, or a single extra-judicial execution that took place  
25 throughout the country, including in the security centres,

1 cooperatives, and work sites charged in this case.

2 But the Nuon Chea defence, in particular, has claimed that they  
3 have rewritten history by explaining, in their version, of how  
4 their own Party, the CPK, was ridden with factions intent upon  
5 overthrowing Pol Pot, Nuon Chea, Khieu Samphan, this Centre's  
6 centre. That these were opponents actively engaged in attempts to  
7 overthrow their rule.

8 [09.04.36]

9 In addition, Your Honours, to being irrelevant, legally, to the  
10 charges, Nuon Chea's version of history is simply untrue. It's  
11 the same fake history that the Khmer Rouge tried to sell to the  
12 world at the time of their crimes; that they tried to sell to  
13 their own people -- explain to their own people their bloody rule  
14 to justify it. It simply isn't true.

15 And if we take a little time, which I'd like to do this morning,  
16 to go through some of what they cite as, supposedly, evidence of  
17 these attempts, we'll see that it is without basis. It's based on  
18 illogical speculation and in many cases; it's based on torture,  
19 on confessions obtained by torturing people.

20 As I said yesterday, there's absolutely no reason, legally, for  
21 the Prosecution to deny resistance because it would have no  
22 effect and if there had been resistance, there'd be no reason for  
23 anyone or more attempts within the Party to overthrow the regime.  
24 There'd be no reason for anyone to deny it.

25 [09.06.02]

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1 If you look at other instances where people have lived through  
2 horrible, oppressive regimes such as the Nazi occupation of  
3 Europe, you don't find, years later, that people who resisted are  
4 afraid to speak of it, just the opposite; what you find is, in  
5 some cases, people who actually were collaborating with the  
6 regime suddenly claim that they were resisting it.

7 But let's look at the kind of evidence that Nuon Chea cites in  
8 his arguments, but particularly, in this brief. And if you look  
9 at his brief, he places great emphasis on a person who didn't  
10 testify, evidence that was not admitted.

11 And I simply, Your Honour, don't have time to go through the  
12 reasoning behind the Chamber for not admitting evidence; it's a  
13 very good reasoning, but the public can find that in those  
14 written decisions.

15 [09.07.02]

16 But they talk a lot about Witness Number 1 who they said was  
17 interviewed by Thet Sambath, didn't testify in this case. I want  
18 to talk about why they claim that this is a witness that's so  
19 important to showing these attempts to overthrow the regime.

20 Witness Number 1, we don't know the name. The persons who  
21 interviewed them refuse to give us the name of Witness Number 1.  
22 We don't know who it was. But Nuon -- but let's look at a few  
23 things this person says and I think anyone who judges it  
24 objectively will say that Witness Number 1's version is wholly  
25 incredible.

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1 First of all, this is a person who claims he was imprisoned in  
2 Tuol Sleng without explaining how he survived that experience.  
3 Although he claims he was part of a plot against Pol Pot and was  
4 in prison in Tuol Sleng, somehow, he survived. Part of his  
5 explanation of his experience in Tuol Sleng shows, absolutely,  
6 he's lying about that. One of the things he says is that in Tuol  
7 Sleng, the regime planted agents among prisoners.  
8 We've talked to -- we've had evidence from Duch, from  
9 interrogators, from others who worked at Tuol Sleng. There's no  
10 evidence that any -- the regime ever planted agents among  
11 prisoners. Given the absolute horrendous, life-threatening  
12 conditions of anyone imprisoned at Tuol Sleng, shackled 24 hours  
13 a day, no one -- no agents would be among the prisoners.

14 [09.08.48]

15 But the main piece of evidence that Nuon Chea cites in his brief  
16 and in his oral arguments, is he says that Witness 1, in May 1975  
17 just a month after the victory of the Khmer Rouge, the capture of  
18 Phnom Penh, attended a meeting in Phnom Penh; a secret meeting,  
19 he says -- calls it -- of 300 cadre; 300 cadre, he said, from  
20 every zone except the Southwest. That would include zones that  
21 always remained extremely loyal to the regime. And he says from  
22 all of the ministries and that this meeting was plotting against  
23 Pol Pot. A secret meeting of 300 people in the middle of Phnom  
24 Penh, supposedly, plotting against Pol Pot; it's simply  
25 incredible.

1 [09.09.45]

2 And who does he say list among the attendees of this meeting: He  
3 lists Thiounn Thioeunn, who was the, you know, one of the famous  
4 three brothers; long-time, loyal supporters of the Khmer Rouge.  
5 They remained so even after they lost power. He was the head --  
6 the minister of health, the head of the health section. He was  
7 Pol Pot's personal doctor. According to Witness 1, he was at this  
8 meeting openly plotting a rebellion against Pol Pot.

9 Who else does he say attended the meeting? Ieng Thirith -- Ieng  
10 Thirith, the minister of social affairs, the wife of Ieng Sary,  
11 Pol Pot's sister-in-law. I mean, this is absolutely absurd  
12 evidence.

13 What else does Witness 1 say, which of course the Defence ignores  
14 in their brief and in their oral argument? At one point when he's  
15 asked if Nuon Chea attended meetings, he said, "Nuon Chea worked  
16 with Lon Nol". So does the Defence want us to believe that; that  
17 Nuon Chea was actually working with the Lon Nol regime? So the  
18 witness they're relying upon actually paints Nuon Chea as one of  
19 the traitors.

20 [09.11.12]

21 The next witness, again that didn't testify, is someone that's  
22 named in the book by Thet Sambath and Gina Chon and in that book,  
23 he's called Chan Savuth. Now, the Chamber attempted to call this  
24 person as a witness, could not be located, but there was someone  
25 with a similar name who, apparently, had been interviewed by a



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1 foreigner. Nuon Chea says that this is probably the same person  
2 and we certainly agree that there's reason to believe that that's  
3 likely, named Chan Samuth.

4 But the witness unit spoke to this person twice and first, they  
5 read to the person the version of what he supposedly had told  
6 Thet Sambath that's printed in "Behind the Killing Fields" and he  
7 said that wasn't true.

8 [09.12.02]

9 Then they went back, as Your Honours instructed them to do, and  
10 read from these transcripts that Lemkin had provided where it  
11 talked about Chan Savuth or this Witness 3 attending meetings who  
12 were supposedly plotting against Pol Pot and naming various  
13 people and Chan Samuth said he didn't even know these people and  
14 he had never been to those meetings. So this kind of evidence  
15 doesn't help Nuon Chea at all.

16 And actually, if you look at what this person said in these  
17 interview transcripts provided by Lemkin, they absolutely  
18 contradict Nuon Chea's case. Nuon Chea has tried to claim all the  
19 crimes at Trapeang Thma were by Ros Nhim, who had a plan to make  
20 the regime fail, to starve the people, to make the regime look  
21 bad. That, itself, doesn't make much sense; how if you're doing a  
22 revolt, you would try to get the people to be against you.

23 But if you look at the transcript provided by Lemkin, what it  
24 actually says, according to Witness 3, is that Ros Nhim planned  
25 first, "the psychology war."

1 "With people, we had to be cold without smashing. Punishment, no  
2 matter they were wrong, we would not smash or punish them." He  
3 said, "We had to be cold to make them love us."

4 So Witness Number 3, this supposedly Chan Savuth, was  
5 contradicting, completely, Nuon Chea's case saying that Ros  
6 Nhim's plan was to treat the people very well, unlike the  
7 centre's policy; not to smash and to make the people love us.

8 [09.14.02]

9 Now, of the witnesses that were named by Thet Sambath or in the  
10 Lemkin transcripts, the Chamber was able to find one of them  
11 called Cheal Choeun and he testified. He, absolutely,  
12 contradicted everything that was written about his supposed  
13 involvement in coups against the regime. His evidence was so  
14 damaging to Nuon Chea that Nuon Chea took the position that this  
15 is the wrong person. This is not the person Thet Sambath  
16 interviewed.

17 But we actually had videotape of Cheal Choeun sitting next to  
18 Thet Sambath, part of the additional material from "Enemies of  
19 the People" in a videoconference with victims in the United  
20 States in Long Beach.

21 [09.14.54]

22 Cheal Choeun was the person that talked to Thet Sambath and in  
23 the book, "Behind the Killing Fields," the book says Cheal Choeun  
24 said in an interview, "I was very sorry our plan was not  
25 successful".

1 What does Nuon Chea say to try to explain that? He says, "Thet  
2 Sambath does not speak English." Well, this is rather strange  
3 since they put great emphasis on what Robert Lemkin could  
4 supposedly say, who doesn't speak Khmer, and said all he learned  
5 from these interviews; the interviews were translated to him by  
6 Thet Sambath. So they're saying that Lemkin relied upon a person  
7 who didn't speak English at all.

8 And then we go through what Nuon Chea claims were various coups  
9 attempts and please, let's look, a little bit, at the evidence  
10 behind what they claim they have proven in their history, the  
11 fake history, of these coups attempts.

12 Besides the May '75 meeting I talked about, I think the second  
13 coup attempt they talk about is an explosion in 1976, at an ammo  
14 dump in Siem Reap. Your Honours know from the evidence that DK  
15 Radio, at the time, blamed the United States; said that this was  
16 a bombing by American planes. And various other experts or  
17 analysts have speculated that it was a bombing by, possibly, Thai  
18 airplanes or Vietnamese airplanes.

19 [09.16.40]

20 What doesn't make any sense at all is Nuon Chea's new claim --  
21 well, I mean they started this claim during the regime as part of  
22 the justification for their killing. What doesn't make sense is  
23 why would -- they say this was a plot by Koy Thuon to overthrow  
24 the regime because the ammo dump was in an area of his influence.  
25 Well, Your Honours, why would Koy Thuon, if he's planning to

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1 overthrow the central government in Phnom Penh, blow up his own  
2 ammo dump? It makes no sense at all. If you're -- if you're  
3 planning to attack the regime, you blow up the regime's  
4 ammunition and you attack Phnom Penh.  
5 But Nuon Chea claims, now, that Koy Thuon was a Vietnamese agent;  
6 that this was part of a Vietnamese plot. It's interesting, then,  
7 to look at what Nuon Chea said to Thet Sambath and there's --  
8 there's a section in that book where Nuon Chea's talking about  
9 the various people that he and the regime killed and among those  
10 is a section called, "The Friends," those he killed among his  
11 friends and Koy Thuon is in that section.  
12 [09.17.58]  
13 And what does Nuon Chea say about Koy Thuon? It says, quote:  
14 "According to Nuon Chea" -- this is on page 108 in 'Behind the  
15 Killing Fields' -- "According to Nuon Chea" -- he's talking about  
16 during the civil war -- "Koy Thuon's men were arresting  
17 Vietnamese soldiers who brought goods to Cambodia, which created  
18 tension in an already strained situation."  
19 Nuon Chea told Thet Sambath, Koy Thuon, quote, "he was trying to  
20 make us and Vietnam become enemies."  
21 So we see that Nuon Chea now, again, contradictory versions of  
22 his history, his fake history. He told Thet Sambath, Nuon Chea --  
23 excuse me, Koy Thuon was trying to make the DK, the Khmer Rouge  
24 and Vietnamese enemies. Now he's saying Koy Thuon was a  
25 Vietnamese agent.

11

1 What's the third incident that Nuon Chea's fake history says was  
2 a coup attempt? This is a good one. This is what we -- when we  
3 heard the thunder yesterday, I was reminded of this. Nuon Chea  
4 talks about the fact that at about 4.30 in the morning on the 2nd  
5 of April 1976, apparently a grenade exploded behind the royal  
6 palace; a single grenade tossed against an outside wall or  
7 exploded next to an outside wall in the dead of night near no  
8 one, with no one injured, no apparent target for that grenade.  
9 What sense does that make that that was a coup attempt?

10 [09.19.53]

11 Now, some poor soldier named Yim Sambath was arrested for that,  
12 taken to S-21, and according to Nuon Chea's defence, not  
13 mistreated. They claim not mistreated. We know how people were  
14 treated in S-21. And he just on his own, without any  
15 mistreatment, confessed to being involved for years and years in  
16 a conspiracy against the regime naming others. That simply makes  
17 no sense at all.

18 This whole incident of the grenade against the palace wall, in  
19 the middle of the night with no target, being a coup attempt,  
20 just shows the regime's attempts to distort history to spread  
21 paranoia to justify killings.

22 [09.20.43]

23 Now, another interesting witness relied upon very heavily in the  
24 Nuon Chea's arguments is the testimony of Sem Hoern, who was  
25 from Division 310. Evidence that's simply not credible and it'll

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1 take me a little bit of time -- I just want to remind you about  
2 the history of his evidence.

3 Sem Hoern originally was interviewed by DC-Cam. In that  
4 interview, first of all, he said he was a battalion commander.  
5 Now, when he came to court, it turned out he said -- he claimed  
6 only to be a platoon commander. So apparently, he greatly  
7 exaggerated in his DC-Cam interview his rank and his importance  
8 in the Khmer Rouge movement.

9 Also, it's interesting, in his DC-Cam interview, he gives details  
10 about fighting in Vietnam, quite chilling details, about his own  
11 involvement in fighting in Vietnam. And he's asked by DC-Cam if  
12 his troops purposely burned down Vietnamese houses and he  
13 answered, and I quote:

14 "Yes, we burned them down. We never let them stay safe. These  
15 Vietnamese houses were built next to each other. It was so easy  
16 for us. We just set a house on fire and it spread to all the  
17 rest."

18 [09.22.12]

19 He added even more details about his battles in Vietnam. He  
20 claimed that they captured three Vietnamese civilians and when  
21 asked about that, he gave DC-Cam these details. He said, quote:  
22 "They were normal people like villagers. We just had to say that  
23 we had arrested 'Yvon' soldiers or enemy 'Yvon' and so, in fact,  
24 they were civilians such as farmers with small houses like our  
25 people here. However, they were accused of being 'Yvon' soldiers

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1 and forced to confess that they were 'Yuon' soldiers during  
2 interrogation."

3 What did -- excuse me, what did Sem Hoern say about Vietnam when  
4 he came to court and testified under oath here? He said he never  
5 was in Vietnam. He said he never even fought on the Vietnamese  
6 battlefield. So apparently, he was telling war stories that  
7 simply weren't true to DC-Cam.

8 [09.23.27]

9 Now, what about his involvement in -- let me -- one more  
10 incident, interesting, from his statement in DC-Cam, in his  
11 testimony, where Sem Hoern exaggerated his own importance. He  
12 told DC-Cam that when he was in Division 310, which at that time  
13 was a Centre -- excuse me, a Northern division that became part  
14 of the Centre army. He said, quote: "I was then always with our  
15 Samdech Prime Minister." And he confirmed to DC-Cam he meant  
16 Prime Minister Hun Sen.

17 He told DC-Cam, "Hun Sen was the deputy commander of Division  
18 310." Again, a Centre division that had previously belonged to  
19 the Northern Zone.

20 But Your Honours, we know from the evidence; Defence knows and  
21 they even brought this up during Sem Hoern's testimony. The  
22 deputy commander of Division 310 was Voeung, V-O-E-U-N-G.

23 We know, also, that he was eventually arrested and executed at S  
24 -- at S-21; he's number 13594 on the OCIJ list. And as the  
25 Defence has repeatedly acknowledged throughout the trial, the

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1 evidence is that Hun Sen wasn't in the Northern Zone; he served  
2 in the early years of the DK regime and during the civil war in  
3 the Eastern Zone.

4 [09.25.04]

5 So what we can see from Sem Hourn's testimony and statement to  
6 DC-Cam is that he greatly exaggerated his rank; he greatly  
7 exaggerated his battlefield experience and he exaggerated or lied  
8 about his association with the prime minister or simply was very,  
9 very confused.

10 But what did he say to the DC-Cam about resistance to the regime?

11 First, when he was asked about the regime, he told DC-Cam this:

12 "I knew this regime clearly; however, I could not escape or  
13 resist."

14 He went on to say, "I never forgot about Pol Pot regime and from  
15 day to day, I tell my children and grandchildren that they have  
16 to be firmly against such a regime and to prevent it from  
17 happening again in Cambodia."

18 [09.26.03]

19 Now, it was only near the end of his interview, after he made  
20 this statement about the need to resist such regimes, that he  
21 then claimed the following. He said Oeun, his Division 310  
22 commander, was right to resist such a regime. And then he went on  
23 to claim that oh, he, himself, had been ordered by Oeun to  
24 transport weapons from where they were around Phnom Penh, where  
25 he was based around Phnom Penh, to Kampong Cham; he said, to be



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1 used to attack Phnom Penh, the radio station and the airport.  
2 Your Honours, what sense does that make? If a division based in  
3 Phnom Penh is planning a coup to be implemented by an attack on  
4 Phnom Penh, why would they then send their weapons to Kampong  
5 Cham, especially since Kampong Cham, at that time, was the base  
6 of Ke Pauk, loyal DK, bloody commander. It makes no sense at all.  
7 Now, when he came and testified, in his direct examination, he  
8 was asked about -- by the Prosecution about Oeun and he said he  
9 knew nothing about Oeun collaborating with any enemies of the DK  
10 regime and he said, quote, "On his political tendency or  
11 whatever, we didn't have the knowledge of that". He testified  
12 under oath, quote, "I never received any direct order from him",  
13 meaning Oeun. That was at 10.06 on the day he testified.  
14 [09.27.52]  
15 Sem Hoern did tell us something that we know from many other  
16 witnesses. After Oeun was arrested and taken to S-21, his  
17 confession was broadcast to all of his troops. It was common  
18 knowledge.  
19 Now, Your Honour, there are many second-hand reports, by soldiers  
20 and even by refugees, where they said they heard about resistance  
21 or plots in the DK regime, but that we should hardly be surprised  
22 about that when the regime was constantly claiming and telling  
23 people that there were plots against it, that traitors had been  
24 arrested, that attempts to kill Pol Pot had been evaded. So  
25 there's nothing surprising about the regime's propaganda having

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1 some effect and people simply repeating it.

2 [09.28.46]

3 Civil party's lawyer asked Sem Hoern, again, about his role in  
4 the regime and he answered the following just before 2 p.m. He  
5 said, quote, "I was committed to serve the army and as for Oeun,  
6 I did not know whether he had any plan to betray Angkar."

7 So then why is the Defence placing such heavy reliance on him?

8 Because after repeatedly claim -- testifying under oath he had  
9 absolutely no knowledge of any plots by Oeun, had never received  
10 a direct order from Oeun, Defence Counsel then read back to him  
11 this statement he gave at the end of his interview to DC-Cam  
12 about getting an order from Oeun and transporting weapons, about  
13 his heroic resistance against Pol Pot and he suddenly adopted  
14 that and said yes, that's what he did. So Sem Hoern is a -- if  
15 that's the best witness the Defence can come up with, it  
16 indicates how weak these claims are. His story's simply not  
17 credible.

18 You know, at one point during the testimony of Duch, Defence  
19 Counsel put to him various statements of Sem Hoern and others  
20 from Division 310 about the supposedly 310 plot and Duch said the  
21 following:

22 [09.30.20]

23 "Allow me to be frank with you" -- this is on the 23rd of June  
24 2016 -- "these statements are just surreal and they do not seem  
25 to be a concrete plan for a coup d'état at all. I do not believe

1 these statements, not at all."

2 And finally, what's the last coup attempt that the Defence fake  
3 history claims that they have proven? Nuon Chea says that in May  
4 1978, he talks about a So Phim attempt at a coup, but we heard  
5 extensive evidence in this court about exactly what happened in  
6 May 1978, and it proves the opposite.

7 [09.31.07]

8 What the evidence shows that in the 20 -- that for a long time  
9 before May 1978, the regime had begun a purge of East Zone  
10 soldiers. So Phim had cooperated in that purge, cooperated in  
11 having some of his own soldiers arrested and taken to S-21.  
12 On the 25th of May, there was a major operation by Ke Pauk's  
13 forces where many of the commanders in So Phim's forces were  
14 arrested and executed and at that point, So Phim became aware  
15 that something was happening.

16 Meas Soeurn testified on the 29th of June 2016 about getting --  
17 about a letter from So Phim and he said -- and it shows how  
18 confused So Phim was at that time.

19 He said, "So Phim's letter stated it was a coup d'état to  
20 overthrow the comrade secretary and the comrade deputy secretary  
21 by armed forces led by Son Sen."

22 So So Phim, being naive at the time, unaware that he, one of the  
23 most senior leaders, long-time leaders of the DK and of the Khmer  
24 Rouge, was himself a target of the Centre. He thought that Son  
25 Sen was leading a coup against the secretary, Pol Pot, and the

1 deputy secretary, which would be Nuon Chea.

2 [09.32.47]

3 And that's why some of the witnesses, those from the East Zone,  
4 talked about it being a coup by Pol Pot. Long Sat, a witness who  
5 was a medical soldier, the head of the medical unit in one of the  
6 divisions said, "It was Son Sen who initiated the coup d'état".  
7 He said that was So Phim's analysis. He talked to So Phim. Excuse  
8 me; Long Sat said he talked to So Phim in late 1977 -- this is  
9 when the purges were beginning of the East Zone -- and he asked  
10 So Phim about what was going on; did -- did So Phim think that  
11 Pol Pot was betraying him. And So Phim told him, "No, it was Son  
12 Sen, not Pol Pot."

13 [09.33.37]

14 So naive was So Phim that he actually -- as we've shown without  
15 doubt in the evidence in this case through mainly defence  
16 witnesses, that he, himself, went to Phnom Penh. After his  
17 commanders were being arrested and killed on the 25th of May, he  
18 told his troops he was going to go sort it out. He got in the car  
19 with a few bodyguards, two cars, and drove to Phnom Penh.

20 As the Defence witness, Nong Nim testified to, on the 12th of  
21 December last year, he said, quote:

22 "During that time, if he, So Phim, had chosen to flee, he could  
23 have done that, but he was an honest person; he was loyal to Pol  
24 Pot. He said he just wanted to see Pol Pot and find out what was  
25 wrong."

19

1 Long Sat pointed out that the people that were being killed were  
2 the very soldiers that had been fighting against Vietnam. The  
3 Defence claim is this is part of a Vietnamese plot, but Long Sat  
4 -- is Your Honour getting the interpretation or should I stop?

5 MR. PRESIDENT:

6 There is problem with the interpretation system.

7 (Technical problem)

8 [09.37.17]

9 MR. KOUMJIAN:

10 Thank you, Mr. President.

11 Long Sat had long fought against the Vietnamese. He and the  
12 forces of So Phim were their primary forces that had battled the  
13 Vietnamese in 1977 and '78. And he said the following when he --  
14 about his knowledge of events before the 25th of May '78. He  
15 said, "People were killed. I mean, chiefs of division were killed  
16 and I concluded that those who killed these people were traitors,  
17 no one else. We defended the border. Why were we killed?"

18 And Your Honours, there's other evidence of the real history that  
19 simply is incompatible with the Defence version that large  
20 sections of the DK army and forces were intent always on  
21 overthrowing and killing Pol Pot, Nuon Chea, and the Centre. One  
22 of the pieces of evidence is the fact that Nuon Chea and Pol Pot  
23 travelled to the very zones where they claim the forces were  
24 concentrated; intent upon killing them and overthrowing them.

25 [09.38.35]

1 We know from E3/1339, a radio broadcast, that in December 1977,  
2 in the middle of Vietnam's incursion into Cambodia, Pol Pot  
3 travelled to the Northwest -- excuse me -- to the Northwest Zone,  
4 Ros Nhim's area, with a very important Chinese guest, along with  
5 Vorn Vet, who was also later purged, and there he was warmly  
6 greeted by Ros Nhim. So why wouldn't Ros Nhim, who was in charge  
7 of that zone and had all these forces, not kill Pol Pot then? Why  
8 was Pol Pot so confident, if there was an open war, to travel to  
9 the very heart of Ros Nhim's territory?

10 The same thing the Defence shared many times, a visit by Pol Pot  
11 to the Eastern Zone to see So Phim; it's in a video they showed  
12 several times in court, E3/3015R. And we know that Nuon Chea  
13 travelled often to the Northwest Zone and, also, to the East  
14 Zone.

15 You recall the testimony from one of So Phim's personal  
16 bodyguards and actually a relative of So Phim, Sin Oeng. He said:  
17 "Not only would Nuon Chea come often and visit at the  
18 headquarters of So Phim, he actually slept in the headquarters of  
19 So Phim's bodyguard." So if there was such an intent of these  
20 East Zone and Northwest Zone to overthrow and kill Pol Pot, they  
21 had every opportunity to do so and they never did. They travelled  
22 there with -- lightly guarded and they were never touched.

23 [09.40.32]

24 Another piece of evidence that shows how illogical the Defence  
25 theory is about zones -- autonomous zones vying for power and

1 influence is the construction of the Centre army. During the  
2 civil war, all of the various forces were part of zonal -- zonal  
3 armies or sector armies, but there was a reorganization after the  
4 1975 victory. And in that reorganization, divisions were taken  
5 from all of the zones. All of the zones gave up some of their own  
6 forces, including the Northwest Zone and the Eastern Zone, to  
7 form the Centre army. You don't do that if you're intent on  
8 overthrowing the Centre; give them your own troops.

9 [09.41.25]

10 Stepping back and just looking at these Khmer Rouge -- the DK's  
11 paranoid theories of all these internal enemies, it becomes  
12 obvious how illogical they are. Six of the seven zone leaders  
13 were purged -- were labelled as traitors and purged. How could  
14 they have won the war; how could they have maintained power if  
15 six of the seven zone leaders were traitors?

16 They also claim that three secretaries of the autonomous sectors,  
17 that they were all traitors; they all were purged in Siem Reap,  
18 Soth; in Preah Vihear, Hang, and in Kratie, Yi.

19 The DK also claims commanders of five of the nine army divisions  
20 -- Revolutionary Army of Kampuchea divisions were traitors:

21 Division 170, Chakrey; Division 290, Tal; Oeun in 310; Suong in  
22 450; Chhean in 920, along with claiming one of the Standing  
23 Committee members, Vorn Vet; the head of the Office 870, Doeun.

24 How could they have maintained power? How could they have won the  
25 civil war? How could they have maintained power if the majority

1 of those commanding troops were traitors? It makes no logical  
2 sense.

3 Khieu Samphan knew this. He -- he was asked -- I believe it was  
4 by OCIJ; excuse me; I believe it was Steve Heder -- about what  
5 percentage of enemy agents were in the senior ranks and he said,  
6 "Less than half in the Central Committee, but nearly half in the  
7 Standing Committee".

8 But it's interesting to contrast that with how Khieu Samphan  
9 described meetings of the -- of the Standing Committee. Khieu  
10 Samphan said the following.

11 [09.43.31]

12 He said, quote: "Judging from what I saw during the expanded  
13 sessions of the permanent bureau" -- the Standing Committee,  
14 "nothing approaching fear was apparent during these meetings.  
15 Indeed, the meetings were informal. They were more like a family  
16 reunion. Members would often take time out to tell jokes."

17 The Defence -- the witness on the Khmer-Viet -- Kampuchea-Vietnam  
18 relations that the Defence asked to call, Stephen Morris, in his  
19 book, said the following, page 106:

20 "There is no evidence that the people whom Pol Pot emissaries  
21 attempted to kill were agents of Vietnam. On the contrary, the  
22 people Pol Pot was now attempting to kill had loyally carried out  
23 orders from the Khmer Rouge leadership for the previous three  
24 years."

25 And then he said, "So Phim had been one of the most staunch



1 advocates of attacking the Vietnamese."

2 [09.44.53]

3 Even the DK Government acknowledges that except for after the  
4 25th of May, when there was some organized resistance in the  
5 Eastern Zone, they said in E3/703, a 1987 DK document, after the  
6 regime, "There was no pitched battles. We arrested one or two at  
7 a time."

8 And Your Honours, Toit Thoeurn was a witness, who the Defence has  
9 relied on at times, and he talked about Ros Nhim, his --  
10 apparently, his stepfather or adopted father, and he said in his  
11 transcript, with -- that was provided by Lemkin, the following  
12 about Ros Nhim.

13 He said, "I am furious with him. If he had stood up and did  
14 resistance, there wouldn't be millions of people killed. If he  
15 did the resistance, he would not arrest his fellow soldiers. He  
16 still arrested them for Angkar."

17 Because what we saw is that that Ros Nhim and So Phim, who were  
18 -- the Prosecution absolutely acknowledges -- part of the JCE  
19 until they, themselves were caught up in the purge when the  
20 revolution began to eat its own children. They, themselves,  
21 cooperated in arresting their own soldiers; again, contradicting  
22 the claim that they were plotting against the Centre.

23 [09.46.37]

24 And some of this can be shown by arrests at the East Zone. If we  
25 could show slide 1; this is an annex 6.4 to our final trial

1 brief. If you look and you see, while the arrests in the East  
2 Zone certainly went up over time even before May 1978, if you  
3 look at the pink colour all of these arrests occurred before the  
4 supposed coup, which actually was when Pol Pot began massively  
5 executing East Zone commanders. All of that area in pink, all of  
6 those arrests occurred before that time.

7 And if we can show the next slide 6.5, these are the arrests from  
8 the Northwest Zone. Recall, Ros Nhim was not arrested until June  
9 1978. Again, the pink are all of these persons from the Northwest  
10 Zone detained in S-21 before Ros Nhim was arrested, showing that  
11 these purges began long before and that Nhim and So Phim  
12 cooperated with them for a long time.

13 [09.47.52]

14 As I said, when So Phim became aware finally that, you know,  
15 something was going on but still being naive and thinking it must  
16 be Son Sen acting against him or acting against trying to  
17 overthrow Pol Pot and Nuon Chea, he got in a car and he went to  
18 Phnom Penh. This is even confirmed from a contemporaneous or from  
19 a DK document.

20 It's actually a 1987 document that the then DK movement issued.

21 It's E3/703. And they said this. They said, "So Phim fled by car.  
22 He even tried to be in touch with the deputy secretary" -- that  
23 would be, of course, Nuon Chea, "who categorically refused to see  
24 him.

25 How else do we know, Your Honours, absolutely and that Vietnam

1 had not, as the Defence claim, penetrated the upper ranks of the  
2 CPK?

3 Well, part of it is from these documents we covered from the  
4 Soviet archives. E3/9644, of course, is this book by Mosyakov  
5 about his findings in the Soviet archives.

6 [09.49.12]

7 And recall what he found in one of these documents, a report  
8 saying quote, "Le Duan" -- I believe this is a report of the  
9 Soviet ambassador at the time:

10 "Le Duan, leader of the Vietnamese Communists, in a conversation  
11 with the Soviet ambassador called a politician of pro-Vietnam  
12 orientation, as the occupant of the second-most important post of  
13 the party." Speaking of Nuon Chea, Le Duan literally emphasized  
14 -- and in the document it says in quotes, "He is our man indeed  
15 and my personal friend".

16 So, Your Honours, we don't say -- we don't believe Nuon Chea  
17 during the DK regime was an agent for Vietnam. What this shows is  
18 how completely in the dark the Vietnamese were about what was  
19 going on in the CPK. They actually thought that their good friend  
20 in the CPK was Nuon Chea.

21 And it's understandable why they would think that given the  
22 history of Nuon Chea because there is a long connection between  
23 Nuon Chea and Vietnam. Again, we are not saying during DK he was  
24 an agent.

25 [09.50.39]

1 But, remember, he himself told at the beginning of this trial  
2 that he joined the ICP, the Vietnamese-led Indo-Chinese Communist  
3 Party after being recruited by a Vietnamese cadre. He joined that  
4 Party and he was loyal to it. He even said he was chosen to go to  
5 Vietnam for two years of training.

6 And Nuon Chea became a leader of this movement which he  
7 acknowledges was led by Vietnamese aimed at overthrowing the  
8 government and the monarchy of Cambodia back in the 1950s and  
9 1960s. He was cooperating with the Vietnamese to overthrow the  
10 government of Cambodia, the elected government and the monarchy.  
11 He told Thet Sambath, quote, "I like to read Vietnamese books  
12 about arrests of Communist Party members and torture." So perhaps  
13 that's where he gained some of his ideas for how he operated S-21  
14 by reading Vietnamese books about arrests of Party members and  
15 torture.

16 He even bragged to Thet Sambath about how when the Khmer Rouge  
17 were attacking, making a major offensive on Phnom Penh, they  
18 needed ammunition, how he went and negotiated with the  
19 Vietnamese. He said he went and arranged a meeting with Nguyen  
20 Van Linh. This is on page 74 of "Behind the Killing Fields".

21 [09.52.26]

22 And they met in So Phim's office. Nuon Chea told Thet Sambath  
23 that though there was an interpreter, he spoke in Vietnamese to  
24 make the ammunition request. He told the Vietnamese that the CPK  
25 needed to borrow one million bullets." -- and he got them.

1 Your Honours, shortly after the Lon Nol coup, according to the  
2 Soviet archives, a Vietnamese diplomat explained to a Soviet the  
3 presence of a large number of Vietnamese troops in Cambodia. And  
4 what he told the Soviet diplomat is, "Nuon Chea has asked for  
5 help and we have liberated five provinces of Cambodia in 10  
6 days", E3/9644."

7 [09.53.26]

8 So back in 1970, Nuon Chea was happy to cooperate to bring  
9 Vietnamese troops into Cambodia.

10 Your Honours, I have gone through this fake history simply for  
11 the sake of establishing what is true and what isn't. But, again,  
12 I reiterate, even if there was resistance, even if the fake  
13 history was true, it wouldn't justify a single detention without  
14 legal process, not the torture of one person at S-21, not a  
15 single execution.

16 But perhaps the most telling example of the weakness of Nuon  
17 Chea's history is the fact that his brief and his oral argument  
18 rely upon confessions from S-21. In his brief he even relies upon  
19 confessions he acknowledges were obtained by torture. In his oral  
20 argument he talks about a couple of confessions that he claims  
21 people were not mistreated at all.

22 Your Honour, our position has been clear from the beginning.

23 Every individual in S-21 was subjected to torture. The evidence  
24 that Nuon Chea attempts to use from these confessions is evidence  
25 that's written with the agony of the victims of that torture.

1 The Torture Convention defines torture as any act which involves  
2 severe pain or suffering whether physical or mental,  
3 intentionally inflicted on a person for purposes of obtaining  
4 information or for punishment and other reasons.

5 [09.55.32]

6 The Declaration on the Protection of All Persons from Torture  
7 provides in Article 3:

8 "No State may permit or tolerate torture or other cruel, inhuman  
9 or degrading treatment or punishment. Exceptional circumstances  
10 such as a state of war or a threat of war, internal political  
11 instability or any other public emergency may not be invoked as a  
12 justification of torture or other cruel, inhuman or degrading  
13 treatment or punishment."

14 Your Honour, when people walked through the gates of S-21 they  
15 were subjected to torture. Can you imagine the terror? They were  
16 blindfolded. They were stripped to their underwear. My colleague  
17 has talked about this in more detail.

18 [09.56.29]

19 They were shackled -- shackled next to other living human corpses  
20 unable to bathe, forced to defecate in a box, not allowed to  
21 speak, fed only spoonful's of food per day, consumed with hunger,  
22 and all of them undoubtedly in extreme fear, expecting, fearing  
23 execution; expecting and fearing torture.

24 Does any defence possibly think that shackling a person 24 hours  
25 a day is not mistreatment? Would any counsel not object to their

1 own client being shackled 24 hours a day?

2 Your Honour, it's not -- you can torture someone without laying a  
3 hand on them. If the police interview someone with a gun pointed  
4 to their head or a knife at their throat that's clearly torture.  
5 Threats to physically harm the victim or the victim's family have  
6 been found by cases to be torture.

7 In the interests of time, I'm not going to cite those cases  
8 because it would take too long.

9 But just one example of a case that is cited in the Nuon Chea  
10 brief, again the Ila?cu case, Ila?cu v. Moldova. Threats to kill  
11 the victim's family was considered to be torture. Also in Aksoy  
12 v. Turkey, the same thing, threats of ill treatment against the  
13 victim's children was considered torture.

14 We have already heard that the S-21 interrogators' notebook said  
15 torture cannot be avoided. It differs only whether it is a little  
16 or a lot. But that book went on to describe how interrogators  
17 should psychologically deal with those in their interview.

18 [09.58.33]

19 And it said, quote, "Attract their feelings to revolve around  
20 family matters, the lives of their wives and children. It is  
21 imperative to always remind them. Do not resist and make matters  
22 more serious. Do not make us torture yet or do anything else  
23 serious that will impact on their health."

24 Prak Khan said the technique was also to allow the prisoner to  
25 think of his wife and children so that they could give the

1 confession.

2 And Nuon Chea claims Koy Thuon was not tortured. There is one --  
3 as I said, everyone in S-21 was subjected to torture. We have all  
4 seen the photograph of Koy Thuon shackled but there's also a  
5 notation in his interrogation, E3/1604, that says the following:

6 [09.59.33]

7 "After the guards handcuffed A Thuch, still tried to write his  
8 story further. He asked us to take off the handcuffs saying that  
9 three days in handcuffs is enough. I decided not to let him write  
10 anymore and handcuffed him for 10 to 15 days because in the past  
11 he had fabricated stories to attack the Party forces."

12 Can you imagine being shackled and handcuffed? You couldn't even  
13 scratch your nose 24 hours a day?

14 Your Honour, no one believes confessions for good reasons. Even  
15 the Khmer Rouge did not believe confessions. Nuon Chea said to  
16 Thet Sambath that when he read confessions he found many of the  
17 crimes benign. Some people were not guilty. He said, quote, "They  
18 normally confessed when they were beaten painfully and seriously  
19 tortured."

20 And he talked about a confession of Thiounn Prasith the DK  
21 ambassador to the U.N, and he said, he didn't believe it, quote,  
22 "I thought they just faked these accusations."

23 And I have already talked about the confession implicating Khieu  
24 Samphan and how Nuon Chea ordered Duch to bury that.

25 [10.00.52]



1 Even Pol Pot, in "Behind the Killing Fields" book, Thet Sambath  
2 talks about an interview with Mon Nim, a division commander about  
3 talking with Pol Pot and Pol Pot told them, this group of  
4 soldiers, that, "Some people accused of being part of the CIA or  
5 KGB were actually innocent and only confessed because they were  
6 tortured. Some confessed to being part of the CIA before they  
7 were born. No one believes."

8 The Defence also asked you to reconsider a document, which was a  
9 1990 speech by Stephen Heder. It's part of the documents they  
10 want admitted, and we have never had an objection to it.

11 They say it shows that confessions can be relied upon.

12 [10.01.44]

13 But, actually, this is what Steve Heder says. He said:

14 "Most of the supposed evidence of the alleged treason of those  
15 detained in S-21 disproves such allegations. In other words, the  
16 evidence adduced by the interrogators to substantiate the  
17 allegation that those detained were agents of the CIA or the  
18 Vietnamese, in fact, demonstrates the opposite."

19 He goes on to say, "That the idea that there was a pro-Vietnamese  
20 faction within the DK is a fiction that was being circulated by  
21 both the Khmer Rouge and the Vietnamese as it served both of  
22 their interests."

23 Your Honours, why did the Khmer Rouge torture?

24 It wasn't to get a confession to take to court because there was  
25 no court. They were going to kill everybody anyway. Why did they

1 torture and make such an effort to obtain these confessions? For  
2 political reasons, to try to justify their murderous regime, for  
3 exactly the same reason Nuon Chea is presenting it now.

4 The Torture Convention prevents the use of torture in a court of  
5 law for two reasons. One, it is inherently unreliable and, two,  
6 allowing torturers to use that evidence encourages torture.  
7 Nuon Chea should not be allowed to again try to profit from the  
8 blood of those that were tortured at S-21 and other security  
9 centres.

10 [10.03.25]

11 The Nuon Chief brief even relies upon the confession of Ya, who  
12 goes into some detail, the Northeast commander, although he  
13 acknowledges physical torture during -- physical beatings during  
14 the interrogation.

15 In the document E3/8374 report on his interrogation, it says that  
16 Ya was lashed with rattan switches morning and evening, in  
17 accordance with the instructions from Angkar. Remember, S-21 was  
18 supervised by Nuon Chea.

19 And not only that, it goes on to describe during that  
20 interrogation about Ya, his wife had just delivered a baby and he  
21 was told that kind of statement to make him think about the  
22 welfare of his spouse.

23 [10.04.25]

24 So who were these killings designed to protect? There was no CIA,  
25 KGB, Vietnamese infiltration into the top level of the CPK, plans

1 to kill Pol Pot. But who -- why did they kill?

2 Well, it was a very unpopular regime. It was a regime that was  
3 failing.

4 And if we can see the next slide, this is what Nuon Chea told a  
5 group of Danish Communists.

6 He said the leadership apparatus must be defended at any cost.

7 There can be no comparison between losing two or three leading  
8 cadres and two or three hundred members.

9 Your Honours, who do you think Nuon Chea was talking about when  
10 he talked about three leading cadres; the gang of three, Pol Pot,  
11 himself and Khieu Samphan.

12 I am going to skip ahead. I really want to finish and allow my  
13 colleague to go.

14 Your Honours, we talked a lot about how both of the accused,  
15 Khieu Samphan and Nuon Chea, were aware of the crimes. And why is  
16 this important?

17 [10.05.48]

18 Because international law says -- for example, the Karadzic trial  
19 judgment, paragraph 890:

20 "The information that accused receive during the period in time  
21 is important -- is an important element for the determination of  
22 responsibility because knowledge combined with continuing  
23 participation can be conclusive to a person's intent."

24 As Popovi? -- I'll slow down. It's my desire to complete it. The  
25 Popovi? appeal judgment said:

1 "It has been established that for a conviction under JCE you can  
2 infer a person's knowledge combined with participation --  
3 continuing participation in the crimes."

4 And what happened when Nuon Chea knew of all these crimes? If we  
5 can play the next video, please, how did he react?

6 [10.06.57]

7 (Audio-visual presentation)

8 THE TRANSLATOR KHMER-ENGLISH:

9 "We would investigate someone gradually until we knew his full  
10 background. It was often like looking for a needle in the sea. We  
11 did not arrest people randomly but I knew nothing about the  
12 ordinary people <so did Pol Pot and many others>. But there were  
13 so many of them being brought in."

14 Question: "When did you realize that the villagers were being  
15 killed?"

16 Answer: "I can't really remember the exact moment. I just went on  
17 with my work and I didn't jot it down."

18 (End of Audio-visual presentation)

19 [10.08.05]

20 MR. KOUMJIAN:

21 Now, those listening to the translation may not have heard Nuon  
22 Chea's laughter after he said he did not jot it down. That was  
23 his reaction to what happened to tens of thousands.

24 Your Honours, there's an interesting video that's in evidence,  
25 E3/7464. It was played during the testimony of Prak Khan in Case

1 001. It's part of the evidence in this case. It's E3/3929.  
2 And we have talked a lot about senior level CPK members, how they  
3 were arrested, tortured and killed. That wasn't the average  
4 victim of the Khmer Rouge. The average victim was people like  
5 Vann Nath and young people, people that had no power and very  
6 little or no involvement in the Party or the army, people like  
7 the young girl that we are discussing in this video.

8 [10.08.54]

9 This is a video of Vann Nath, one of the survivors of S-21,  
10 talking to one of the torturers, Prak Khan, if we can show that,  
11 please.

12 (Audio-visual presentation)

13 THE INTERPRETER KHMER-ENGLISH:

14 "Han assigned me to shit on the rice bins next to the toilets in  
15 buildings and houses in order to ruin the reputation of the  
16 command post hospital because it was a model hospital. <Chen  
17 (phonetic)> assigned me to shit in the operating room.

18 I don't understand it. Did you believe that such sabotage  
19 happened? At the time it was believable. When I saw <the>  
20 sabotage <activities> I believed it.

21 When I interrogated her I gave her three targets; one, CIA, two,  
22 KGB, three, the Vietnamese enemy. Of the three she chose the CIA  
23 so I interrogated her along those lines looking for her network,  
24 her chief, her accomplices the sabotage activities at the  
25 hospital. That's why I could believe her.

1 I didn't <believe that> the CIA committed such sabotage and that  
2 woman was only 19 years according to her biography."

3 Question: "Is this her handwriting?"

4 Answer: "That's my handwriting. She hadn't gone to school. I  
5 couldn't read her writing. She made mistakes. So I wrote for her,  
6 corrected her and embellished it.

7 Question: "I don't understand your feelings, your upbringing no  
8 more than those of Duch's and Chan's (phonetic) . How could you  
9 think this was true?"

10 Answer: "At the time the aim was to indoctrinate us. We had to  
11 believe in sabotage activities or we couldn't arrest the enemy.  
12 When Duch received the document he made no comment."

13 Question: "He agreed?"

14 Answer: "Yes."

15 (End of Audio-visual presentation)

16 [10.11.15]

17 MR. KOUMJIAN:

18 Your Honour, people like this 19-year old woman, Ney Nim  
19 (phonetic), were innocent victims of the Khmer Rouge. She wasn't  
20 the only one. They didn't kill to protect Cambodia. They wouldn't  
21 kill children.

22 You can show the next screen.

23 They wouldn't starve and weaken their people.

24 They shrank the population. Many of the people they killed were  
25 the very soldiers that had been fighting against Vietnam. They

37

1 only weakened Cambodia and it's still recovering today.

2 [10.11.47]

3 Your Honours, the accused are not heroes or patriots. They are  
4 criminals and they should be held responsible for their crimes.

5 Thank you. And after the break my colleague will have additional  
6 comments.

7 MR. PRESIDENT:

8 Thank you.

9 It is now a convenient time for a short break. We will take a  
10 break now and resume at 10.30 to continue our proceedings.

11 The Court is now in recess.

12 (Court recesses from 1012H to 1029H)

13 MR. PRESIDENT:

14 Please be seated.

15 The Court is now back in session and the Chamber gives the floor  
16 to the Co-Prosecutors to make the final rebuttal.

17 MR. LYSAK:

18 Thank you, Mr. President. Good morning, Your Honours, Counsel,  
19 Parties.

20 I am going to this morning make a few points regarding the  
21 arguments we have heard from the Defence on Democratic Kampuchea  
22 security offices and the CPK policy on enemies. But let me start  
23 with just a few general observations on what we have -- what,  
24 Your Honours, have heard the past seven days.

25 [10.30.56]

1 Trials like this ultimately are a truth-seeking process. And you  
2 have heard two vastly different accounts of the evidence before  
3 you over the last seven days. The contrast couldn't be more stark  
4 in our view.

5 In our presentation, the Lead Co-Lawyers, we were very careful to  
6 present to you the most powerful evidence from witnesses who  
7 testified in this courtroom that we believe prove the crimes and  
8 prove the accused' responsibility. From us you heard testimony  
9 from witnesses, civil parties and experts; contemporaneous  
10 documents from the regime, statements of the two accused.

11 We said we would focus on the evidence and that's what we did.

12 Then came Friday and, ignoring the reality of what had taken  
13 place for the previous three days, the Nuon Chea defence pulled  
14 out a script of talking points and told you as if you hadn't been  
15 here for the past three days, that the Prosecution's case was  
16 based on out-of-court evidence.

17 And they repeated that untruth over and over and over for two  
18 days.

19 I am sure you are familiar with the old saying about propaganda  
20 that if you repeat a lie often enough people may start believing  
21 it. And I can only speak for myself, Your Honours, but for me it  
22 felt like it was raining lies in this courtroom for two days.

23 [10.33.04]

24 And after having accused us of relying on out-of-court evidence,  
25 we then heard almost half a day on the Nuon Chea version of



1 history, the "crocodile" which the International Co-Prosecutors  
2 discussed in detail.

3 And when they did bother to identify sources what were they?

4 Anonymous defectors who spoke to journalists, anonymous witnesses  
5 interviewed by Thet Sambath, unknown sources from China and East  
6 Germany, people who are not even here in this country, Khmer  
7 Rouge propaganda and, most telling, confessions of S-21  
8 prisoners.

9 You heard a story based almost entirely on the most unreliable  
10 out-of-court evidence imaginable. The irony was striking.

11 [10.34.10]

12 I believe your job has been made easier by what you heard. It's  
13 your responsibility to judge the quality and the quantity of the  
14 evidence you've heard and I think you've been given a very clear  
15 choice.

16 Now, let me turn to some of the specific issues that we heard  
17 from the Defence.

18 On the CPK's, what they called security policy, they argued to  
19 you that the policy -- the CPK only considered as enemies those  
20 who engaged in dangerous activity that was a threat to the  
21 regime.

22 Your Honours, their only support for that is Article 10 of the DK  
23 constitution, a phony document that the accused helped draft to  
24 create a façade, a façade of fake elections, a legislative body  
25 that never passed a single law, courts that didn't exist, judges

1 who were never appointed. It was not reality. It was DK  
2 propaganda.  
3 You saw the truth in the minutes from the 8 March 1976 Standing  
4 Committee meeting where we saw what the CPK leaders really  
5 thought about the fake government institutions they had created.  
6 Remember those words from those minutes? This is Document E3/232.  
7 I quote:  
8 "Do not let it be seen that we want to suppress. Do not speak  
9 playfully about the assembly in front of the people to let them  
10 see that we are deceptive and our assembly is worthless."  
11 [10.36.16]  
12 You heard in this Court from two of the representatives who were  
13 publicly announced as members of Nuon Chea's worthless  
14 representative assembly, Prak Yut and Ung Ren that the assembly  
15 never convened to enact any law.  
16 On torture the Defence told you that the Party had clear rules on  
17 interrogations and then, most amazingly, they tried to argue to  
18 you that torture, the word torture doesn't really mean torture.  
19 Who was peddling narratives in this courtroom? This was an  
20 'Orwellian' narrative: black is white, two plus two is five,  
21 torture is not really torture.  
22 Tell that to Chum Mey whose toenails were ripped from his feet  
23 and his finger broken as he tried to defend himself from repeated  
24 strikes with sticks.  
25 Tell it to Bou Meng who was electrified near his genitals.

1 [10.37.38]

2 We don't have to guess, Your Honours, about what the word torture  
3 meant in Democratic Kampuchea because we heard testimony from the  
4 chairman of S-21 and the interrogators admitting the methods of  
5 torture that were used. And those specific methods of torture are  
6 recorded in the S-21 documents; beatings with sticks, electric  
7 shocks, suffocation by plastic bags; water torture.

8 Let me turn to Krang Ta Chan.

9 I am not going to be able, obviously, in the time, and we do want  
10 to finish, Your Honours, it has been a long trial and a long nine  
11 days -- eight days -- but I would like to focus in some  
12 specificity about Krang Ta Chan to respond to the arguments. And  
13 then I will also make some observations on the other sites.

14 In the submissions you heard on Krang Ta Chan, Your Honour, the  
15 Defence got almost nothing right from the very outset when they  
16 told you that Meas Sokha was a civil party who provided unsworn  
17 evidence. As you heard from Marie Guiraud yesterday, that is  
18 simply wrong, and they told you that Krang Ta Chan survivor, Vong  
19 Sarun was released after a week and never mistreated.

20 And Your Honours, I would like to play you a video clip so you  
21 can see the Defence's example of a prisoner in Democratic  
22 Kampuchea who was treated well, if we can play video clip one,  
23 please.

24 [10.39.45]

25 (Audio-visual presentation)

1 THE INTERPRETER KHMER-ENGLISH:

2 "I was given a ladle of gruel and so was my child. I didn't <get>  
3 to eat the gruel <for three days>, I gave it to my child <because  
4 he was crying>. <When> they <heard him crying> and they came in  
5 to beat <him right before me. As a mother, my heart was breaking.  
6 So> I had to starve myself <to give> the food <> to my child.

7 (End of Audio-Visual presentation)

8 [10.40.17]

9 Your Honours, Vong Sarun's husband was killed at Krang Ta Chan,  
10 her baby beaten in front of her. She was not released after a  
11 week as the Defence told you. She was in prison at Krang Ta Chan  
12 until the very last day over a year and a half performing hard  
13 labour carrying earth that resulted in injuries she still suffers  
14 from today.

15 When her interrogation finished, she was told that she would work  
16 hard until her death. She testified her life was only spared,  
17 quote, "Because they needed to enslave us in order to provide  
18 them with the service within the compound".

19 And why did Vong Sarun have to endure this? Had she or her  
20 one-year old baby engaged in dangerous activity that was a threat  
21 to the regime? Of course not. She was arrested because of who she  
22 was married to and because some co-worker had named her when he  
23 was tortured and provided a confession.

24 And I should remind you that Vong Sarun was a witness called at  
25 the request of the Defence.

1 [10.41.48]

2 You also heard the Nuon Chea defence argue that you should ignore  
3 the surviving records from Tram Kak and Krang Ta Chan because  
4 they are photocopies, an argument you have rightfully rejected  
5 before as contrary to the law of any modern court.

6 And they told you that the records were not authentic, and that  
7 -- and I quote counsel here:

8 "The Co-Prosecutors did not even bother to try to establish the  
9 authenticity of any of the Tram Kak district records they use."

10 End of quote.

11 And I wonder what trial they were watching. Your Honours may  
12 remember that these are some of the notebooks of interrogators  
13 that survived. They are very distinct. They were students'  
14 notebooks.

15 And you heard in this courtroom from Srei Than, "little Duch",  
16 who authenticated these documents and told you he saw the  
17 interrogators using these books while he was in the room with  
18 them. He was responsible for typing up reports.

19 [10.43.08]

20 This, Your Honours, is the monthly prison report for November  
21 1977. Srei Than testified it was written by big Duch, the member  
22 of the Krang Ta Chan prison committee.

23 The next document, next slide, Srei Than and Pech Chim also  
24 authenticated the documents that were written and signed by the  
25 prison chief An, including interrogation reports like the one you

1 see now, which contain execution orders on the document. They  
2 identified An's signature and there are documents also that are  
3 entirely in his handwriting.

4 And the next slide is another important document, also  
5 authenticated by the person whose name appears in it.  
6 This is the report from Cheang Tong commune chief Khoem Boeun.  
7 She testified here on the 4th of May 2015, this report was  
8 written for her by one of the staff in her commune office. She  
9 confirmed that she received from the district the instruction  
10 that you see in the document. She testified that she received  
11 this instruction to purge Lon Nol officers, as recorded in this  
12 letter.

13 [10.44.57]

14 And of course, Your Honours, will recall of course, former  
15 district secretary Ta San who wrote this letter ordering the  
16 killing of young children. Ta San admitted this was his writing  
17 and his signature in this extremely important document.

18 These are just a few examples, Your Honours, the names of  
19 officials that you see in the Tram Kak records have been  
20 confirmed by the testimony of witnesses. These are real people.  
21 The names you see in these records match the testimony about who  
22 was in charge during this regime.

23 And that is just a small sampling. We used documents -- we tried  
24 to use documents with every single witness who appeared in this  
25 segment. There is no doubt about the authenticity of these

1 records, Your Honours.

2 [10.46.06]

3 On torture at Krang Ta Chan, the Defence asked you, I would  
4 submit, to ignore the evidence, ignore the prisoners and cadres  
5 who worked near the interrogation hut, saw the instruments of  
6 torture in that hut, and heard the screams of the prisoners while  
7 they were being interrogated. They want you to ignore the  
8 documentary evidence confirming the use of hot methods of  
9 interrogation.

10 And they told you yet another falsehood, that our case here is  
11 based on out-of-court witnesses and the guards who testified  
12 contradicted Say Sen and I quote the Defence again. They told you  
13 that those guards:

14 "Undermined some so-called accepted truths of the Manichean  
15 narrative such as the use of plastic bags to suffocate  
16 detainees."

17 This method of torture, Your Honours, suffocation with plastic  
18 bags, let me remind you this was a method that was taught by Vorn  
19 Vet, a zone leader then and who would become a member of the CPK  
20 Standing Committee. He instructed Duch, that if the vein in a  
21 prisoner's neck was vibrating strong while they were being  
22 suffocated, they should be considered spies.

23 [10.47.53]

24 This was a method of torture used at S-21, admitted by the prison  
25 chief and expressly referenced in the surviving documents. It is

1 not a narrative.

2 With respect to Krang Ta Chan, the same method of torture was  
3 witnessed by Meas Sokha confirmed by Say Sen, and admitted by two  
4 of the prison guards.

5 Meas Sokha, Your Honours, was credible. He did not overstate what  
6 he saw or knew. He described one occasion on which he was working  
7 near the interrogation hut and saw a prisoner being suffocated  
8 with a plastic bag; a prisoner who died the very next day.

9 Say Sen cleaned inside the interrogation hut and he saw the  
10 plastic sheets there. And guard, Saut Saing described at three  
11 separate points of his examination over two days in this court,  
12 how when he was at the guard's kitchen he personally witnessed a  
13 prisoner beaten with a club and suffocated with a plastic bag.

14 [10.49.21]

15 This is an important part. How far is it from the guard's kitchen  
16 to the interrogation hut? Let me show you. This is the OCIJ map  
17 or diagram of Krang Ta Chan and if we click you can see the  
18 interrogation house and guards' dining hall are down in the  
19 bottom-right corner. If we could click on that? There we go.

20 Your Honours, if you look at the distance indications on this map  
21 of the guards' kitchen where Sot Seng witnessed this and the  
22 interrogation hut, less than 10 metres apart.

23 Contrary to what you heard from the Defence, the Defence -- Vong  
24 Sarun did not just hear the sounds of a prisoner being beaten and  
25 screaming during his interrogation while she was working in that



1 area, she also saw the results of the torture when two of her  
2 fellow prisoners returned to their cells with wounds after their  
3 interrogation.

4 And on executions at Krang Ta Chan, the Defence tried to argue  
5 reasonable doubt as to whether there were any executions at Krang  
6 Ta Chan by attacking the credibility of Mea Sokha and Say Sen. A  
7 witness and civil party whose testimonies were credible -- and I  
8 would remind you they were corroborated over and over by the  
9 guards and other witnesses you heard from.

10 [10.51.16]

11 That is not to say there are not some issues on which there are  
12 different recollections, that is always the case, but when you  
13 look at evidence as we have put it together for you in our brief,  
14 the accounts from the people of Krang Ta Chan, guards and  
15 prisoners, is virtually the same on every issue.

16 In making this argument to you, Your Honours, the Defence simply  
17 ignore the admissions of the guards that virtually every prisoner  
18 sent to Krang Ta Chan was executed and only a handful survived.  
19 They ignore the testimony of their witness, Vong Sarun, who  
20 witnessed the guards taking prisoners out and returning covered  
21 in blood.

22 [10.52.08]

23 And they especially ignore the authenticated execution orders  
24 that came down from the sector secretary and the authenticated  
25 monthly report that I just showed you a few minutes ago,

1 recording that 92 prisoners were killed in the month of November  
2 1977. There's a similar report for July 1977 recording that 39  
3 prisoners were killed that month.

4 And if you look at both of those monthly reports, you'll see that  
5 the number of prisoners entering each of those months was even  
6 less than the number killed. In other words, these documents show  
7 there was a constant flow of prisoners in and constant executions  
8 on a monthly basis of a large number of people.

9 You cannot create reasonable doubt, Your Honours, simply by  
10 burying your head in the sand and ignoring the evidence that has  
11 been presented against you.

12 Au Kanseng. And, of course, the key issue at Au Kanseng we all  
13 agree on was the execution of the large group of Jarai prisoners,  
14 and we would submit the arguments you heard from Defence Counsel,  
15 again, do not accord with the evidence.

16 First, they told you it was mere speculation these Jarai were  
17 killed because no one witnessed the killings. Your Honours, most  
18 murders are proved without any eye witness of the actual killing,  
19 and what they ignored entirely in their argument was the  
20 admissions of the Au Kanseng prison chief and deputy, made both  
21 in this courtroom and in their OCIJ interviews, that they  
22 received orders to execute this large group of Jarai from the  
23 Division 801 secretary, and admissions that the order was carried  
24 out.

25 [10.54.47]

1 It should go without saying, that admissions of serious mass  
2 killings like this, they're not given lightly or often by  
3 perpetrators who were involved in such atrocities.

4 You also heard from some of the detainees who saw -- not only saw  
5 this large group of Jarai brought into the prison but a few days  
6 later taken out, and they described for you how they found mass  
7 graves in the B52 craters next to the prison with the distinct  
8 Jarai clothing scattered around.

9 The defence also told you that the witnesses only spoke vaguely  
10 about the people who were killed.

11 [10.55.42]

12 Again, not true. The most knowledgeable witnesses, the prison  
13 chief and deputy, they both said that the number of Jarai was,  
14 "More than -- more than 100". Phon Thol, one of the surviving  
15 detainees you heard, could not provide an exact figure, but  
16 testified there were truckloads, and that there were so many some  
17 had to sit outside the cells and be watched by the guards all  
18 night.

19 One of the survivors interviewed by OCIJ, who passed away before  
20 he could appear here, put the number of Jarai as high as 250.

21 And, Your Honours, I think we have all seen in this courtroom  
22 that when it comes to estimating large groups of people who start  
23 to get over 100, estimates are going to vary. People are not  
24 sitting there with counters to make exact accounts of the  
25 numbers. What is absolutely clear from all the testimony is this

1 was a very large group of people it was killing on a massive  
2 scale; make no mistake.

3 And one of the key issues raised by the Defence was whether the  
4 large group of Jarai, who were killed at Au Kanseng, who we heard  
5 about from the witnesses there, was the same group of Jarai who  
6 were reported to the Centre in the 15 June 1977 telegram that  
7 you've seen many times -- putting it on the screen just to remind  
8 you. This is document E3/240.

9 [10.57.43]

10 And we would submit, Your Honours, that it is rather unlikely --  
11 rather unlikely there were two separate occasions on which  
12 Division 801 captured a large group of Jarai that included men  
13 and women travelling from Vietnam.

14 But even if the Defence were right, even if this telegram  
15 involved a separate occasion, all that would mean is that there  
16 were more than one -- more than one time that Division 801  
17 captured and took into detention large groups of Jarai. That  
18 there was not just one massacre of hundreds of Jarai, but perhaps  
19 two. This argument doesn't help the Defence at all.

20 We believe though it is clear that the group of Jarai who were  
21 described in this telegram, who were taken to Au Kanseng and  
22 killed, are the same Jarai -- the Jarai taken to Au Kanseng are  
23 the same as described in the telegram.

24 [10.58.55]

25 And this telegram you will note was written when the Jarai were

51

1 first captured. It talks about initial questioning but proposes  
2 measures regarding further interrogation, and it seeks  
3 instructions from the leaders in Phnom Penh as to what to do with  
4 the Jarai. So this telegram is early on after -- immediately  
5 after the capture.

6 And one of the issues raised by the Defence is, how could it be  
7 the same group if the executions described didn't take place  
8 until later on? Well, first of all, when they tell you that the  
9 witnesses are in complete agreement as they did that the  
10 executions at Au Kanseng were not until 1978, that, again, is  
11 wrong. The prison deputy or member, Chin Kimthong testified it  
12 was in the latter part of 1977 that this took place.

13 Phon Thol you might recall initially testified in this courtroom  
14 that he was arrested in mid-June 1977, and the event relating to  
15 the Jarai was about one month later. And I would submit to Your  
16 Honours that that testimony is more reliable than what we heard  
17 when the Defence tried to question him about whether it was  
18 jackfruit season or not.

19 [11.00.42]

20 A witness is never going to forget coming upon a mass grave of  
21 hundreds of killed people who had just been in the prison. I  
22 cannot imagine how a witness would remember 30 years later  
23 whether or not it was jackfruit season.

24 So we believe the evidence you've heard is consistent with this  
25 telegram having been sent to the leaders in Phnom Penh in June

1 1977. There needed to be further interrogation of these people  
2 that could have easily taken a long time given how many. The  
3 evidence is inconsistent -- is entirely consistent that this was  
4 the same group of people.

5 [11.01.40]

6 Let me turn to Phnom Kraol, just a few remarks, because I want to  
7 acknowledge the Defence seem to think we're incapable of making  
8 concessions, and we're not. They pointed out that the evidence  
9 regarding killings at Phnom Kraol was -- they argued it was not  
10 as strong. And we do not dispute that. There is no question that  
11 the evidence you heard from Phnom Kraol is not of the same  
12 quality as what you heard for the other three security centres,  
13 where we had multiple corroborating witnesses, admissions of  
14 cadres about the killings and documents. There's no question the  
15 evidence from Phnom Kraol is not that strong -- as strong as that  
16 one. We did not argue in our brief that there was sufficient  
17 evidence of extermination at this particular site.

18 But I would remind you of one of the reasons for this. The  
19 Defence like to complain about procedures, not being able to go  
20 out and investigate. One of the problems we face with the site  
21 was that between 2009, when the investigation finished and we  
22 looked through and saw the witnesses who had been interviewed,  
23 between then and the time we go to trial we found out that most  
24 of -- not most, all of the surviving detainees other than the two  
25 from the K-17 site had passed away.

1 And so we looked through the list of who was there. We looked  
2 through the list of civil parties and there was one remaining  
3 possibility who could be called. And you heard from both defence  
4 teams complaints about our reliance on the testimony you heard  
5 from Sun Vuth, the Division 920 soldier.

6 [11.03.55]

7 And we asked you to call him, Your Honours, because he was a  
8 civil party who had admitted by the Co-Investigating Judges  
9 specifically in relation to Phnom Kraol. He was admitted as a  
10 civil party specifically in relation to Phnom Kraol, and you'll  
11 see that in the closing order, paragraph 643, footnote 2797.

12 And he said in his civil party application he was detained at a  
13 prison near a mountain in Kaoh Nheak district, which is the  
14 district that Phnom Kraol was in. We hoped that he had been  
15 imprisoned in the large prison that is -- that used the name  
16 Phnom Kraol. You remember the site consists of a number of  
17 different offices and building; it's rather a confusing crime  
18 site. But we were hoping that this was someone who had been  
19 detained in this large prison in which hundreds of Division 920  
20 soldiers were kept.

21 [11.05.09]

22 And I certainly can see that is not where he was detained. He was  
23 detained in a smaller office in the same area, but in a smaller  
24 office that was not the very big prison.

25 It is for you to decide whether the location he was detained is

1 within the scope, and I would submit to you that in this area,  
2 you heard this evidence, the operations -- the security  
3 operations and prisons of Division -- Sector 105 and Division 920  
4 were used interchangeably. Division 920 soldiers were imprisoned  
5 at the sector Phnom Kraol offices, so it would be entirely  
6 reasonable to conclude that this was part of this network of  
7 security offices in this region.

8 But irrespective -- irrespective of your conclusion on that, the  
9 Defence argument that you must simply ignore the testimony of Sun  
10 Vuth is wrong. And I comment here on the Khieu Samphan team, they  
11 ignore a basic distinction throughout their entire arguments,  
12 often throughout this trial, on whether facts are part of the  
13 crime for which the accused is charged and whether evidence is  
14 admissible for other purposes.

15 [11.06.50]

16 Sun Vuth's testimony, whether he was in a prison that was part of  
17 Phnom Kraol or not, is still admissible. It shows the systematic  
18 use of torture by this regime, by the CPK at its security offices  
19 and that is an issue in this case. And they time and time again  
20 pretend that this is not the case.

21 I've no doubt, Your Honours, can make the distinction between  
22 whether an event or fact is a crime for which the accused can be  
23 convicted and whether -- and evidence that may be not part of the  
24 specific crime base but proves the policy.

25 Let me briefly take an aside here to address an issue that was



1 raised by the Khieu Samphan team regarding Trapeang Thma. They  
2 are absolutely right, Your Honours, that Im Chaem's statement  
3 that Khieu Samphan visited that site cannot be used because it is  
4 act and conduct evidence. They're absolutely right.

5 [11.08.18]

6 The use of that interview, however, is completely unnecessary to  
7 prove this point because Khieu Samphan, himself, has admitted  
8 twice that he visited Trapeang Thma Dam. And I would note here  
9 that in their day-and-a-half of arguments, the Khieu Samphan team  
10 entirely ignored this. They didn't say a word about their  
11 client's admitted visit to Trapeang Thma.

12 And let me also make clear that while Im Chaem's interview can't  
13 be used to prove Khieu Samphan's visit, it can be used and it is  
14 powerful evidence of what Khieu Samphan or anyone else would have  
15 seen when they went to the site. Her description of the  
16 conditions at Trapeang Thma is admissible, it is not acts and  
17 conduct evidence. And it tells us what Khieu Samphan would have  
18 seen when, as he admits, he went to the site.

19 Now, let me turn back to security offices, and this was the point  
20 of my remarks where I had expected to respond to the arguments of  
21 the Defence regarding S-21, but there is a hole here because  
22 despite having two long days to present their defence, the Nuon  
23 Chea team said hardly a word about what we believe is the most  
24 important crime site in this case and what is certainly the crime  
25 site most closely connected to their client, Nuon Chea. A prison

1 at which 18,000, we now know, were killed, many under the direct  
2 orders of the accused.

3 [11.10.37]

4 Is there anyone out there who believes that the Nuon Chea team  
5 did not address S-21 because they ran out of time? They had three  
6 opportunities here to talk about S-21 and each time they took a  
7 pass. Friday afternoon they passed on talking about S-21 so they  
8 could leave 20 minutes early. Monday morning, when we were  
9 expecting it to be addressed, they skipped it. And Monday  
10 afternoon, they again chose to say nothing and instead threw some  
11 more insults our way.

12 What were the pressing important matters they had to talk about  
13 instead of S-21, the security office overseen by Nuon Chea? We  
14 got two sessions on the crocodile plan A, plan B, phases 1, 2 3.  
15 We received a lecture on the meaning of communism and another  
16 lecture on Western insensitivity to Cambodian culture by an  
17 Australian, and we got 47 -- 47 references to the Manichean  
18 narrative. Nothing about S-21, but 47 times they talked about the  
19 Manichean narrative. Nothing about the child prisoners at S-21 or  
20 Krang Ta Chan. Their silence on S-21 and the child prisoners,  
21 Your Honours, spoke volumes.

22 [11.12.34]

23 Perhaps tomorrow they will try to talk about S-21 so that no one  
24 has an opportunity to respond. Perhaps and, if so, shame on them,  
25 but so be it. Nothing -- nothing they can say changes the

1 evidence that proves their client's guilt and proves the crimes  
2 at the security office.

3 So we didn't hear about S-21, but we did hear about the Manichean  
4 narrative over and over and over, and each of the 47 times they  
5 talked about this it became more and more clear they don't even  
6 understand what the term actually means. It's not difficult to  
7 explain.

8 What Manichean actually means is having a dualist view in which  
9 you divide the world into good and evil, good and bad. Who does  
10 that sound like?

11 [11.13.59]

12 The greatest irony of these closing arguments, Your Honours, is  
13 that no-one -- no-one is more guilty of a Manichean mind-set than  
14 the Khmer Rouge themselves; the people who divided Cambodia into  
15 good elements and bad elements and killed those they viewed as  
16 bad. That is Manichean.

17 You heard the lawyers describe the security policy as one that  
18 aimed to keep the good people and purge the bad. Did they even  
19 realize when they were describing the policy of the CPK this way  
20 they were throwing their own client under the Manichean bus?

21 Your Honours, I'm going to leave some time, 10 minutes, for the  
22 National Co-Prosecutor. I have two more brief issues I would like  
23 to make before I pass the microphone to her.

24 [11.15.09]

25 One, a few points in response to the issues that were raised

1 regarding the accused' criminal responsibility. Why -- why are  
2 Nuon Chea and Khieu Samphan responsible for the imprisonment and  
3 killings at security offices? It's not because they had breakfast  
4 together, that is not our argument. They lived and worked  
5 together constantly; by their own admission, the three of them  
6 before, during and after the DK regime. Most importantly, they  
7 were the most regular participants at the leadership meetings of  
8 the Party, Standing Committee and Central Committee meetings, at  
9 which decisions were made, instructions given on arrests of  
10 purported enemies, including their fellow leaders.

11 Khieu Samphan and Nuon Chea were two of a very, very small group  
12 of leaders who sat around the table at K-1 and made these  
13 decisions. They sat around that table and they decided the fate  
14 of Norodom Sihanouk and his children as you saw in those Standing  
15 Committee minutes. They decided the fate of fellow leaders like  
16 Chakrey and Chou -- and Chou Chet. You'll remember Duch who  
17 testified that Pol Pot invited Khieu Samphan in lieu of Vorn Vet  
18 to the meeting that was to decide the arrest of West Zone  
19 Secretary, Chou Chet.

20 [11.17.01]

21 So it is their participation as a part of the very small group of  
22 Centre leaders who made these decisions; that is one of the  
23 bases. And the second, and we address this in detail in our  
24 brief, the political education meetings and speeches they  
25 regularly gave to the Party cadres in which they identified which

1 groups were considered enemies and they instructed the cadres to  
2 be vigilant, to constantly watch out and search for the enemies  
3 burrowing from the inside.

4 Your Honours, the Defence Counsel told you the Cambodian folk  
5 story of the farmer who blames the goat for food eaten by a  
6 monkey because the monkey framed the goat by wiping the food on  
7 the goat's mouth.

8 [11.18.03]

9 And I'd like to end today by telling you the Democratic Kampuchea  
10 version of that story because it is truly fortunate for that goat  
11 that the farmer who found him with food on his face was not Nuon  
12 Chea, Khieu Samphan or Pol Pot. They would not have just blamed  
13 the goat for eating the food, the leaders of the CPK would have  
14 smashed the goat for stealing the food, smashed the monkey for  
15 being part of the goat's network, and killed all of their  
16 offspring so the eggs of these enemies would not spread.

17 And that is the sad reality of how things worked in Democratic  
18 Kampuchea. That was the callous disregard for life repeatedly  
19 shown by the leaders of this Party and it's a story I hope is  
20 never repeated in this country again.

21 I thank you, Your Honours, for the time and I'll now -- you'll  
22 hear some concluding remarks from the National Co-Prosecutor.

23 MR. PRESIDENT:

24 Yes, you may proceed.

25 [11.19.30]

1 MS. CHEA LEANG:

2 Thank you and good morning, Mr. President, Your Honours, parties  
3 and everyone in and around the courtroom.

4 This is the last hour and last time for our presentation in the  
5 Case of 002/02 and we have some remarks to make during the  
6 <seven> days, and over the previous three-and-a-half days of  
7 court hearings where resource teams of Defence Counsel have  
8 argued rigorously that this is a mere show trial, a propaganda  
9 exercise for the backers of the Court and never intended to get  
10 to the truth of the charges.

11 In two weeks of public sessions with hundreds in the galleries  
12 and broadcast globally on the internet, the Defence Counsels were  
13 allowed to make the arguments about the fairness of the trial,  
14 the fairness of your own decisions, the strength of the evidence  
15 in this case without any interference and censorship from the  
16 Court or anyone else.

17 [11.21.24]

18 Throughout the trial, Your Honours, have shown patience and  
19 fairness by allowing the accused, through their counsel, make any  
20 and all arguments even when they attacked your own integrity. You  
21 allowed them the opportunity to make these arguments and to make  
22 them publicly. Your professionalism, patience and fairness to the  
23 Defence in light of these personal attacks should be  
24 acknowledged.

25 During these closing arguments the Defence have expressed their

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1 surprise and satisfaction with the appeal or judgment in Case  
2 002/01, which entered partial acquittals on that part of the  
3 case.

4 Your Honours, we did not agree with all of that decision. On some  
5 legal and particularly factual findings, we were disappointed  
6 indeed, but it is not possible nor is it the job of judges to  
7 please all the parties to a case. Their job is to apply the law  
8 to the facts as they find them fairly and in accordance with  
9 their conscience. We recognize this and, of course, appreciate  
10 the difficult job that all of the judges at the ECCC faced and  
11 your dedication to those duties.

12 No one who reads the appeal judgement, which made several  
13 findings highly favourable to the accused, can possibly think  
14 this court was set-up with a pre-determined outcome. The  
15 judgements of the ECCC are based on law and evidence as they  
16 should be.

17 [11.24.23]

18 And while the appeal judgement in Case 002/01 made several  
19 findings favourable to the accused, it also upheld the majority  
20 of the convictions, recognized that Nuon Chea and Khieu Samphan's  
21 responsibility for those crimes had been proven beyond a  
22 reasonable doubt, and acknowledged that the trial was  
23 fundamentally fair and in accordance with international  
24 fair-trial standards and upheld the sentence.

25 [11.25.07]

1 On 29 May 2013, civil party Huo Chantha told, Your Honours, about  
2 losing 22 members of her family during Khmer Rouge regime and how  
3 those events had affected the rest of her life.  
4 "Today I am so excited that I am given the opportunity by this  
5 international court, who cross the oceans in order to come here  
6 to find justice for them and for the Cambodian people." she said.  
7 "This is the day that I have been waiting for more than 30 years.  
8 I would like to make a request to you or Your Honours, which is  
9 the international court, to judge fairly and justly in proportion  
10 to the gravity of the crimes."  
11 Her simple words express the enormous but straightforward task  
12 ahead of you. You should judge fairly and justly, taking into  
13 account the enormous scale and gravity of the crimes.  
14 If the evidence does not prove guilt beyond a reasonable doubt on  
15 any single charge or on all charges, it is your duty to acquit on  
16 that charge. We, the Prosecution, would in such case expect you  
17 to acquit, but we are confident that when you carefully examine  
18 the evidence in this case, you will see that it has established  
19 beyond any reasonable doubt that both Nuon Chea and Khieu Samphan  
20 are criminally responsible for the enslavement of millions of  
21 Cambodians in cooperatives and work sites, where many were  
22 executed or died under the harsh conditions. They forcibly  
23 imposed on the population for inhumane acts connected to the  
24 forced marriage policy and the rapes that were part of this  
25 policy; for the persecution of Buddhists when they sought to



1 eliminate that religion; for persecution and genocide of the  
2 Vietnamese and Cham groups in Cambodia; and for the unlawful  
3 detentions, torture, murders and exterminations of tens of  
4 thousands of adults and children just at the four security  
5 centres charged in this case.

6 [11.28.42]

7 All the documents that the Co-Prosecutors referred to are from  
8 well-known sources. The Defence allegations that the documents  
9 presented by the Co-Prosecutors and that witnesses lied are  
10 unfounded. What would be the reasons for the Co-Prosecutors,  
11 witnesses, civil parties and experts to make a false presentation  
12 or testimony?

13 Your Honours, we ask you to weigh the evidence carefully, judge  
14 fairly, and find the truth. It is the truth that will give  
15 justice to the victims in this case and it is the truth that will  
16 help young people and future generations in Cambodia and in every  
17 other part of the globe. Let us do all we can to deter such  
18 atrocities from happening again.

19 [11.29.57]

20 Your Honours, this has been a long and complex case. You have  
21 heard the testimony of 278 people in this courtroom: 172  
22 witnesses, 11 experts and 95 civil parties in the two trials of  
23 Nuon Chea and Khieu Samphan. This has occurred over 499 days of  
24 trial where, in addition to the oral testimony, 16,591 documents  
25 have been admitted amounting to hundreds of thousands of pages of

1 evidence. These documents have included contemporaneous DK  
2 materials, analytical works, audio and visual recordings and  
3 interviews by the Co-Investigating Judges and DC-Cam.  
4 Preceding the trial at least 1,000 witnesses and civil parties  
5 were interviewed in the investigation. We, the Office of  
6 Co-Prosecutors, wish to express our deep gratitude to each and  
7 every witness and civil party who provided their account, the  
8 hundreds who submitted to interviews during the investigation,  
9 and to those who testified at trial.

10 We know that the majority of you suffered greatly during the DK  
11 regime and we understand the difficulty of recalling and  
12 recounting such painful memories, the humiliation of enslavement,  
13 the pain of forced marriages or rapes, and the death of loved  
14 ones.

15 [11.32.24]

16 To all the witnesses and civil parties, thank you for your  
17 courage. You are the real heroes of this case and your  
18 contribution serves the cause of justice for all victims,  
19 including the many who cannot testify because they lost their  
20 lives during that regime.

21 Thank you.

22 MR. PRESIDENT:

23 Thank you.

24 And before we adjourn for lunch and we adjourn for today, I'd  
25 like to ask Counsel Koppe about the proceedings tomorrow.

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1 Have you consulted with your client? And whether your client,  
2 Nuon Chea, would make his final statement? And, if so, when will  
3 he make it and whether he would be present in the courtroom <like  
4 what he did in Case 002/01> while he's doing it or whether he  
5 would do it from the room downstairs?

6 [11.33.43]

7 MR. KOPPE:

8 Mr. President, I understand your question but I'm not very  
9 inclined to discuss too much my conversations with Nuon Chea.  
10 However, at this stage, he doesn't feel inclined at all to  
11 respond, however, we will have one last session and if anything  
12 changes I will let know or I will let the senior legal officer  
13 know through email if he's going to speak tomorrow or if he wants  
14 to appear at all tomorrow or whether we are going to speak at  
15 all.

16 MR. PRESIDENT:

17 Thank you. If we know in advance, then we can manage the  
18 proceedings more effectively as we have to coordinate it with the  
19 AV Unit as well.

20 The hearing of the rebuttal statement by the Co-Prosecutors is  
21 now concluded per schedule, and we will not have a hearing this  
22 afternoon and we will resume it tomorrow, Friday 23 June 2017,  
23 commencing from nine o'clock in the morning.

24 For tomorrow's proceedings, we will hear the closing statements  
25 in Case 002/02, that is the final rebuttal and the final

1 statement by the accused and the accused counsel. So please be  
2 informed, Parties.

3 Security personnel, you are instructed to take Nuon Chea and  
4 Khieu Samphan back to the detention facility and have them  
5 returned to attend the proceedings tomorrow before 9 o'clock.

6 The Court is now adjourned.

7 (Court adjourns at 1135H)

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