



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 08-Nov-2013, 15:30  
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

28 October 2013

Trial Day 222

Before the Judges:

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

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KHIEU Samphan

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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MS. GUISSÉ	French
MR. KONG SAM ONN	Khmer
MR. KOUMJIAN	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. SIMONNEAU-FORT	French
MR. VERCKEN	French

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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 session.

5 I hand over the floor to the defence team for Mr. Khieu Samphan.

6 But before that, Mr. Duch Phary, could you please report the

7 attendance of all the parties invited to attend the hearing

8 today?

9 THE GREFFIER:

10 With respect, Mr. President, for today's hearing, all parties to

11 the proceeding are present.

12 Mr. Nuon Chea, however, is present in the holding cell downstairs

13 according to the decision of the Trial Chamber due to health

14 reasons.

15 Thank you, Mr. President.

16 [09.01.30]

17 MR. PRESIDENT:

18 Thank you, Mr. Phary.

19 Now I hand over the floor to the defence team for Mr. Khieu

20 Samphan to resume his closing statement. You may proceed.

21 MR. KONG SAM ONN:

22 Thank you, Mr. President; and good morning, Your Honours. Good

23 morning to all parties and members of the public.

24 Today, once again, I would like to resume my closing statement on

25 Case 002/01. Before -- on Friday, I left off with the character

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1 of Mr. Khieu Samphan prior -- in 1970 and 1975.

2 [09.02.28]

3 In the Khmer Rouge movement, Mr. Khieu Samphan was considered a  
4 national patriot and he was, however, considered as always as the  
5 intellectual who was not among the hard core members of the  
6 select few individuals even though he had done everything for the  
7 Revolution or not.

8 Mr. Khieu Samphan testified before the Chamber on the 13 of  
9 December 2011 concerning the stringent condition to participate  
10 in the Communist Party of Kampuchea -- and I quote:

11 "To the Communist Party of Kampuchea, my prior experience with  
12 the French Communist Party meant nothing because the condition of  
13 the Communist Party of Kampuchea's member was much more stringent  
14 than those of the French Communist Party. First, I had to have  
15 combative experience; I had to go through tampering and probation  
16 in the Revolution back and forth. Two, I have to have good  
17 pedigree, good pedigree was the ones who were from the peasant  
18 and mainly from poor peasant and my pedigree was not good because  
19 I was fellow intellectual educated in France. And in addition, I  
20 had never been tampered in the Revolution for this reason; I do  
21 not have the necessary qualification and experience to satisfy  
22 the criteria for the hard core members of the Party." End quote.

23 [09.04.14]

24 And that clearly demonstrates that Mr. Khieu Samphan failed to  
25 meet the necessary criteria of the Communist Party of Kampuchea.

1 For this reason, Mr. Khieu Samphan does not have any effective  
2 power in the Party.

3 As for his position in the FUNK and the GRUNK, he held senior  
4 position but he did not have any power. As Mr. Khieu Samphan  
5 noted very clearly before this Chamber -- and I quote:

6 "Why from outside people saw that I held a senior position, but  
7 in effect I did not have any effective power in decision making?

8 Well, it was because Pol Pot and the Communist Party of Kampuchea  
9 consider me as the depositee intellectual in the Communist Party;  
10 I was not a hard core member of the Party prior to 1975, and that  
11 remained true thereafter."

12 [09.05.13]

13 Mr. Philip Short, a witness expert, also testified before the  
14 Chamber on the 6th of May 2013, confirming the role of Mr. Khieu  
15 Samphan. He confirms that Mr. Khieu Samphan did not hold any  
16 position that allowed him to make any decision in his capacity as  
17 the full fledged member of the Standing Committee. And Mr. Khieu  
18 Samphan was an intellectual who had never been or had never held  
19 any position at the Zone.

20 This clearly show that Mr. Khieu Samphan received the position  
21 because of his popularity and the Communist Party of Kampuchea  
22 could make use of that popularity in order to attract attention  
23 from others. It was not because of Mr. Khieu Samphan's combative  
24 experience with the Revolution.

25 [09.06.08]

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1 Mr. Philip Short further testified to the Chamber on the 8 of May  
2 2013, that the reason was that Khieu Samphan was placed in a  
3 position that was in the centre of the power and he also held an  
4 extraordinary position that Pol Pot wanted nobody but him to hold  
5 that position. And it can be said that Mr. Pol Pot see that Khieu  
6 Samphan was someone who could hold a number of important  
7 leadership position.

8 And Meas Voeun also testified before the Chamber on the 9 of  
9 October 2012, he also said -- and I quote: "Khieu Samphan did not  
10 do anything. He merely sought refuge in order to avoid  
11 persecution in Phnom Penh."

12 Given these facts, Mr. Khieu Samphan could not become an  
13 effective leader. His role was confined to merely that of  
14 protocol or even less important than this role.

15 On the 21st of May 2013, Mr. Jullian-Gaufres testified before the  
16 Chamber -- and I quote:

17 "Mr. Khieu Samphan at that time was single and he did everything  
18 possible to -- in order to develop his country by participating  
19 in various activities. And the sole purpose was to improve the  
20 living condition of the people and the economic situation of the  
21 country." End quote.

22 [09.07.48]

23 Based on the above testimony of witnesses, expert and civil  
24 parties, it is abundantly clear that Mr. Khieu Samphan is a  
25 person of gentle personality, he loved peace, he loved

1 development. He wants to bring a better welfare and development  
2 to his country.

3 In the first few years of 1970 and 1975 when he was on the run,  
4 he lived separately in the countryside. He did not hold any  
5 position or activity in the Revolutionary Movement. Various  
6 section in the Closing Order describing the activity of the  
7 Communist Party of Kampuchea, started to discuss the  
8 participation of Mr. Khieu Samphan in the structure of the Party  
9 following the coup d'état of the 18 of March 1970. On the day of  
10 the coup d'état, both Pol Pot and Sihanouk were in Beijing. The  
11 alliance between the two leaders started over there and Pol Pot  
12 immediately saw the advantages of expanding a revolutionary  
13 movement by making use of the Prince's popularity; and in so  
14 doing, Pol Pot knew that Khieu Samphan would be the right person  
15 to be a focal point of contact for Samdech Sihanouk.

16 [09.09.26]

17 Khieu Samphan received the information of his appointment in the  
18 forest, marquis forest. Mr. Khieu Samphan testified before the  
19 Chamber on the 13 of December 2011 that -- and I quote:

20 "I received the position as Deputy Prime Minister of nothing,  
21 Minister of National Defence of nothing and Commander-in-Chief of  
22 nothing. As a matter of fact, I had no effective power and  
23 influence, even the slightest, on the army. I did not have any a  
24 single office subordinate to me. On the contrary, I sacrificed  
25 everything, including my personal esteem and personal reputation

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1 in order to fulfil my obligation and duty for my motherland,  
2 which is on the verge of collapse."

3 And he further testified that what he wants was to unite the  
4 forces, national forces following the devastating war in Cambodia  
5 as a consequence of the fighting between the superpower. He  
6 testified before the Chamber on the 27 of May 2013 that -- and I  
7 quote:

8 "Following the coup d'état, I simply wanted to unite the national  
9 forces in order to struggle to liberate our country. Following  
10 the coup d'état, the war in Vietnam broke out and it spilled over  
11 into our territory. The superpower country were fighting in South  
12 Vietnam and then it spilled over into our territory."

13 [09.11.16]

14 Your Honours, the war in Cambodia between 1970 to 1975 has the  
15 nature of regional war; it was not a civil war per se. The first  
16 bombardment on the Cambodian soil in 1967 only grew bigger  
17 following the Vietnam War in 1968, and it then became the war in  
18 Indo-China. And this war had the international nature -- it was  
19 very clear following the 18 of March 1970, as the result of the  
20 Cold War ideology.

21 On the 23rd of July 2012, Professor David Chandler testified that  
22 -- quote: "It was the element of a war in -- with Vietnam.  
23 Vietnam did not consider it a war against Vietnams, but it was  
24 viewed as the regional war." End quote.

25 [09.12.32]

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1 Therefore, the war by foreign forces who were fighting on the  
2 territory of Cambodia, pushed Cambodia into the -- or plunged  
3 Cambodia into the devastating war. The bombardment of the  
4 American forces on the Ho Chi Minh Trail and the bombardment of  
5 Viet Cong was intensifying in Cambodian land.

6 Mr. David Chandler said -- and I quote: "Concerning the war in  
7 Vietnam, concerning Vietnam and the United State in 1933, in 1973  
8 rather, it was the year that the bombardment intensified and that  
9 was the war that was spilled over from the Vietnam War."

10 And these bombardments and conflict cause a lot of problems to  
11 Cambodia, and the government of the United States supported Lon  
12 Nol government, which was its ally, in order to dismantle the  
13 Khmer Rouge forces and this turn into the original war in this  
14 region.

15 [09.14.04]

16 Mr. Al Rockoff testified before the Chamber on the 29 of January  
17 2013 that, the American bombardment helped the government of  
18 Cambodia then and Cambodian government back then relied heavily  
19 on America. The Cambodian air forces were very weak, so the  
20 government could not rely on its air force capability.

21 On the 9 of April 2013, before the Chamber, Mr. Ponchaud also  
22 confirmed the invasion in Cambodia from the Communist Party --  
23 communist military of Vietnam -- and he said:

24 "At that time, Vietnamese military, Communist Vietnam and North  
25 Vietnam invaded Cambodia and they arrested youth and they created

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1 the Cambodian Liberation Forces." That was the reason why Mr.  
2 Khieu Samphan received the position in the FUNK and GRUNK  
3 government and Mr. Khieu Samphan's sole purpose was to defend his  
4 national independence and territorial integrity.

5 [09.15.44]

6 And Mr. Khieu Samphan was willing, in this respect, to be the  
7 representative and the bridge for the relation between Samdech  
8 Sihanouk, who was in Beijing at the time with the Communist Party  
9 of Kampuchea who has the ability to resist in the country. He  
10 wanted to unite the forces in order to defend Cambodia, that was  
11 independent, sovereign and in order to save, salvage Cambodia. He  
12 envisioned that the alliance between Samdech Sihanouk and  
13 Communist Party Kampuchea would form a new movement that could be  
14 successful in reunifying the country.

15 Mr. Khieu Samphan viewed that he was a person who could be the  
16 bridge between the Communist Party of Kampuchea and Samdech  
17 Sihanouk and he could unite the two leaders. For this reason, Mr.  
18 Khieu Samphan stepped forward to hold some position in the  
19 resistant forces in the country even though he was discontented  
20 with this position of nothing. Given the pressing circumstances  
21 before him, Mr. Khieu Samphan had no choice but he had to choose  
22 to unite the country first and he had to sacrifice himself even  
23 though it was shameful for him to receive the position of  
24 nothing.

25 [09.17.14]

1 Now, Mr. - now, Your Honours, I would like to invite you to  
2 examine the reason why Mr. Khieu Samphan was brought to the  
3 discussion among the leaders to hold this gigantic position in  
4 the new movement of GRUNK and FUNK.

5 That was because people -- Cambodian people were loyal to Samdech  
6 Sihanouk and Mr. Khieu Samphan was considered as a corrupt less  
7 person, so these were the positive converging point for the Khmer  
8 Rouge forces.

9 Mr. Philip Short testified before the Chamber on the 6th of May  
10 2013 by confirming that Samdech Sihanouk was the chairman of the  
11 Revolutionary Forces and Mr. Khieu Samphan was recognized widely  
12 as a person who was loyal, honest and Samdech Sihanouk received  
13 support from the Khmer Rouge, and he was leading the resistant  
14 forces against the Lon Nol regime.

15 So, Mr. Khieu Samphan was best placed in the position to  
16 reconcile Cambodian leaders at that time. Mr. Khieu Samphan's  
17 reputation was a positive point for the two leaders.

18 Mr. Philip Short also testified that the popularity of Samdech  
19 Sihanouk among the Cambodian people reinforced the movement of  
20 the Khmer Rouge and as a result, the Khmer Rouge could recruit  
21 soldiers very quickly following the appeal by Samdech Sihanouk  
22 following the coup d'état.

23 [09.18.50]

24 The carpet bombardment by the American Forces and the problems  
25 that occurred during the Lon Nol administration, also expedited

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1 the participation of Cambodian people in the Revolutionary  
2 Forces. From the inception of FUNK and appointment of Mr. Khieu  
3 Samphan as a public representative of the Revolutionary Movement,  
4 he held this position ever since and following that, he went to  
5 meet Pol Pot in the headquarter in Ratanakiri. Over there, he was  
6 willing to sacrifice himself for the Front and he saw a lot of  
7 advantages beyond the Communist ideology and he responded to one  
8 of the civil party on the 30th of May 2013, who asked him, he  
9 said -- and I quote: "He wanted to mobilize national forces in  
10 order to fight in the war at that time."

11 [09.19.54]

12 In this context, Mr. Khieu Samphan was appointed the position of  
13 the Deputy Chairman of FUNK, the Commander-in-Chief of FUNK, as  
14 well as Deputy Prime Minister and Defence Minister for GRUNK. In  
15 the list of those nominal positions and on the occasion of the  
16 Third Congress of the Communist Party of Kampuchea, which was  
17 held in the jungle in 1971, Mr. Khieu Samphan then became the  
18 candidate member of the Central Committee of the Communist Party  
19 of Kampuchea.

20 It was for this same political reason that Mr. Khieu Samphan  
21 continued to assume the position that Samdech Sihanouk resigned  
22 and he was promoted to the position of the President of the State  
23 Presidium and then he became the full right member of the Central  
24 Committee in March 1976. As a matter of fact, this appointment  
25 had nothing to do with Mr. Khieu Samphan's performance or loyalty

1 in the Party but it was the -- it was the strategic, purely  
2 strategic appointment. Actually, Mr. Khieu Samphan did not have  
3 any political or military responsibility. GRUNK was a powerless  
4 government; the effective power was in the hand of the Standing  
5 Committee and this power remained with the Standing Committee  
6 until the demise of the Khmer Rouge regime.

7 [09.21.38]

8 The principle of utmost secrecy in the Khmer Rouge Movement was  
9 confirmed by all the witnesses testifying before this Chamber.  
10 They said it was very important to maintain utmost secrecy during  
11 the entire period of the Democratic Kampuchea period. For these  
12 reasons, there were code numbers assigned to offices and people  
13 were given code names and revolutionary names in order to avoid  
14 being recognized. And they -- including -- they included some of  
15 the fake actors in order to confuse those who tried to trace  
16 their activity.

17 And behind the scene, Khieu Samphan -- behind the scene, Pol Pot  
18 was the only person who had the entire discretion to lead the  
19 movement of the Revolution as he wished.

20 Mr. Philip Short also confirmed this fact on the 6th of May 2013;

21 Mr. Philip Short testified before the Chamber that the security  
22 issue and protocol issue between 1970 and 1975 was within the  
23 portfolio of Mr. Khieu Samphan and he testified that when he was  
24 living in the forest, he could not move around freely. And he  
25 further testified that Mr. Khieu Samphan, at that time, was

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1 merely a nominal leader for the Communist Party of Kampuchea with  
2 the position of the Commander-in-Chief. But at that time, between  
3 1973 and 1974, he became a candidate member of the Party.

4 However, he did not stay close to the Central Committee; neither  
5 did he have any position that enabled him to make any decisions.

6 [09.23.48]

7 At that time, he was a person whom Pol Pot trusted because he was  
8 receptive and he accepted the order when he was told to do. But,  
9 at that time, he was in the situation of pressing security  
10 concern, and on the 9 of May -- May 2013, Mr. Philip Short also  
11 recognized the content in his book entitled: "Pol Pot: Anatomy of  
12 a Nightmare", ERN in French, 00639455256; and ERN in English,  
13 00369197298. He talked -- he discussed the popularity of Mr.  
14 Khieu Samphan; that Cambodian people and foreigners alike  
15 supported him and they believed that this revolution led by Khieu  
16 Samphan would be successful. And he further confirmed that Mr.  
17 Khieu Samphan -- I quote: "Issue a statement describing the  
18 detail information and progress of -- and progress of the war."  
19 And he also described the alliance with Samdech Sihanouk, and  
20 Khieu Samphan received Samdech Sihanouk in the liberation zone.

21 [09.25.21]

22 But this was only for a short period of time and this position of  
23 -- the effective power was actually in the hands of other  
24 individuals. He did not have any control over whatever he did  
25 because the effective power was in the leadership of the

1 Communist Party of Kampuchea. Mr. Khieu Samphan, in reality, had  
2 never held any military position before and after 1975. As a pure  
3 intellectual, he did not have any ability, capacity or prior  
4 training in relation to military strategy or military commands.  
5 All witnesses and expert who knew about the military hierarchy,  
6 confirmed that Son Sen and Pol Pot were the only leaders who were  
7 responsible for military; not Mr. Khieu Samphan.

8 On the 10 of January 2013, Mr. Ung Ren testified before the  
9 Chamber on the military structure -- and I quote:

10 "Son Sen was the superior and Pol Pot was also the superior in  
11 military. They reported on political and military issues. They  
12 were the only two main actors of the Party."

13 [09.26.51]

14 On the 11 of January 2012, Nuon Chea also confirmed before the  
15 Chamber about the military structure. He asserted that -- and I  
16 quote:

17 "This issue has nothing to do with Mr. Khieu Samphan because Mr.  
18 Khieu Samphan was not in the military and I, myself, was only the  
19 chairman of the People's Assembly. But Son Sen was the chief of  
20 staff."

21 So, on the 28 of March 2012, Duch also confirmed before the  
22 Chamber that the role of Khieu Samphan as the Commander-in-Chief  
23 was only nominal and I would like to assert that it was only a  
24 nominal position. As a matter of fact, he did not have any  
25 effective command over the military; military was under the

1 direct command of Pol Pot.  
2 [09.27.51]  
3 Before and after 1975, no military personnel ever testified  
4 against Mr. Khieu Samphan and nobody had ever testified that  
5 Khieu Samphan was in the position of command in the military. Mr.  
6 Stephen Heder, who received information from intelligent agencies  
7 who were present in Cambodia, also confirmed that before the  
8 attack on Phnom Penh, Saloth Sar was the Commander-in-Chief in  
9 the military hierarchy of the Khmer Rouge movement. Mr. Khieu  
10 Samphan, Hu Youn, Hu Nim, were considered the nominal leaders.  
11 Mr. Steve Heder further asserts that the role was merely nominal  
12 for Mr. Khieu Samphan and Steve Heder testified before the  
13 Chamber on the 17 of July 2013, confirming that Mr. Khieu Samphan  
14 did not have any effective power.  
15 Steve Heder also confirmed that prior to 1975, Khieu Samphan was  
16 the Deputy Prime Minister, the Commander-in-Chief, which were  
17 only symbolic, because Pol Pot was the effective commander and he  
18 went -- ever he travel overseas, Ieng Sary was the one who was  
19 vested with power and Mr. Khieu Samphan was the head of  
20 delegation, but effectively, whenever Mr. Ieng Sary was there, he  
21 was the one who had the effective power.  
22 [09.29.33]  
23 In his book -- Mr. David Chandler, in his book entitled "Brother  
24 Number One" on page 87, Mr. David Chandler wrote -- and I quote:  
25 "The decision to form a National Front with Sihanouk as Chief of

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1 State had two effects on Saloth Sar's career: one was that, after  
2 7 years on the run, he became, at 45, the military commander of  
3 the Cambodian Communist component of a popular alliance."  
4 And following the coup d'état, Lon Nol and -- by Lon Nol, Khieu  
5 Samphan followed the Khmer Rouge leaders from one location to  
6 another. But even in Ratanakiri and other base the -- other  
7 testimony confirmed that Mr. Khieu Samphan was an ordinary  
8 person; he merely read and wrote anything by himself and  
9 separately from others.

10 [09.31.00]

11 I would like to recall on this point that on the 22nd of April  
12 2013, Mr. Chhouk Rin testified before the Chamber that his direct  
13 superior, Ta Mok, convened a meeting with his subordinate telling  
14 that Mr. Khieu Samphan had no effective power in the Communist  
15 Party of Kampuchea. They said that -- quote: "Intellectual was  
16 not the hard core member of the Communist Party of Kampuchea."  
17 End quote. And he further said that he was a nominal leader with  
18 no effective power.

19 Mr. Chhouk Rin also testified further that -- and I quote: "Mr.  
20 Khieu Samphan was an intellectual who was outside the party  
21 rank." End quote.

22 On the 23rd of April 2013, Chhouk Rin testified further on his  
23 role that Khieu Samphan -- between 1973 to 1975 -- he listened to  
24 Ta Mok, who told him the following -- and I quote: "Khieu Samphan  
25 was an intellectual. He did not participate in the core forces of

16

1 the Communist Party of Kampuchea." End quote.

2 [09.32.18]

3 And I would like to now, Your Honours, raise a few points in  
4 relation to the training session conducted by Mr. Khieu Samphan  
5 in the forest.

6 As a matter of fact, there was only one single witness who  
7 testified on this point. That was Mr. Phy Phuon, who described  
8 the presentation by Mr. Khieu Samphan concerning the necessity to  
9 garner forces, as much as possible, and concerns the importance  
10 of the National Front. Mr. Phy Phuon described before the Chamber  
11 on the 25th of July 2013, the content of the speech delivered by  
12 Mr. Khieu Samphan and disseminate in the name of the National  
13 United Front of Kampuchea and his training session for the Front.  
14 He testified that -- and I quote: "The National Front Forces, to  
15 my recollection, had the following mandate: One, to mobilize  
16 intellectual forces and then gradually mobilize the national  
17 forces to transform it into one united national force." End  
18 quote.

19 [09.33.37]

20 Therefore, Your Honours, even though Mr. Khieu Samphan either  
21 conducted or not -- either conducted this training or not, the  
22 content of his training was merely to unite national forces  
23 across the country in order to strengthen the National United  
24 Front of Kampuchea.

25 You Honours, as has been presented on this point, there is no

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1 single document, neither was there any testimony that confirmed  
2 to the contrary the role -- the effective role of Mr. Khieu  
3 Samphan at that time. Of course, Mr. Khieu Samphan has been  
4 painted the picture to be the devil, but actually Mr. Khieu  
5 Samphan was a clean, honest person and I hope, I only hope for  
6 this Chamber to find the fact behind this and I hope that you  
7 will bring justice for Mr. Khieu Samphan. And the justice for Mr.  
8 Khieu Samphan is that he is released and acquitted.

9 [09.34.50]

10 MR. VERCKEN:

11 Good morning to this Chamber and to all of the parties and  
12 persons present in the courtroom and in the public gallery. I'm  
13 going to take up from where my learned colleague Kong Som Onn  
14 left off to talk to you about some of the preconceived ideas that  
15 we have heard from the Prosecution bench in the last few days.  
16 And without wishing to repeat what has already been said by the  
17 Nuon Chea team, we will make some remarks about Tuol Po Chrey and  
18 the policy that is supposed to have lain behind it.  
19 I'd like to talk first about what I would call the theory of the  
20 "Iron Curtain" and the Prosecution describes the 17th of April  
21 1975 as being the date when an "iron curtain" fell across  
22 Cambodia. They are rather fond of this kind of metaphor. It's  
23 rather as if after having lived in the jungle for more than 10  
24 years, hiding in the trees and living in makeshift camps built  
25 out of bamboo and banana leaves, Pol Pot suddenly came out of his

1    lair, along with his old classmates and his shoeless freedom  
2    fighters and in a few hours, transformed an entire nation into a  
3    hyper-centralized territory; hyper-organized with a unified army,  
4    obeying its orders, fully operational officials, highly developed  
5    communication technologies that were effective and worked well.

6    [09.37.01]

7    We would plead that this whole vision is extremely simplistic and  
8    no sensible person can really believe in it. As the proverb says,  
9    Rome wasn't built in a day and it's clear that the zones that  
10   already had been liberated in Cambodia, functioned without Pol  
11   Pot for quite a long time and they were led by people who had no  
12   doubt whatsoever about their own leadership qualities.

13   So, this whole theory of the "Iron Curtain" that fell across  
14   Cambodia on the 17th of April 1975 is also mistaken from a  
15   diplomatic standpoint. Of course, it is true that when they got  
16   into Phnom Penh, the Khmer Rouge sent home the few remaining  
17   foreigners who had stayed there despite many warnings.

18   [09.38.08]

19   But what might we have heard if they had been sent into the paddy  
20   fields? Does this necessarily mean that the Khmer Rouge cut off  
21   diplomatic relations with the entire world; no, it doesn't. They  
22   maintained relations with friendly Communist countries and with  
23   the Non-Aligned countries and the case file contains a good  
24   amount of information on this; in particular, regarding visits by  
25   foreign delegations. Just to quote a few of these: in 1975, there

1 were visits to Cambodia by delegations from Vietnam, North Korea,  
2 Yugoslavia, Laos, Albania and several friendly countries for the  
3 end of year festivities. In 1976, there was China, Palestine,  
4 Zambia, Sweden, Tunisia, Afghanistan, Senegal, Mauritania,  
5 Yugoslavia, Vietnam, Korea, Mali and Tanzania; all of whom paid  
6 visits to Cambodia. In 1977, you have China, Cuba, Yugoslavia,  
7 Korea, Vietnam, Laos, Burma; in 1978, Finland, Denmark, Sweden,  
8 China, Yugoslavia, Romania and Algeria.

9 And in fact, right up to March 1976, Prince Sihanouk continued to  
10 receive diplomatic delegations in his capacity as president of  
11 the Presidium. The record of the Standing Committee of the 8th of  
12 March 1976 refers to this. In October 1975, for example, Sihanouk  
13 was in New York and we saw that last week on the video that was  
14 projected in the courtroom; similarly the minutes of the Standing  
15 Committee, assuming they are authentic, contain quite a lot of  
16 information about this diplomatic activity.

17 [09.40.21]

18 It's not the kind of diplomacy of a major developed country, but  
19 it's certainly not non-existent either. It's important to stress  
20 this because of his duties at the head of GRUNK and FUNK and in  
21 the Presidium; Khieu Samphan did participate in this development  
22 of Cambodian democracy. It was a kind of reality for him. And  
23 when we look at the thesis that has been developed in this room  
24 by the Prosecution, the impression one gets is that after the  
25 17th of April 1975, the Khmer Rouge simply went into the wrong

1 side, the wrong side in the Cold War, the red side and the  
2 Prosecution can't accept this.

3 As far as they're concerned, as soon as a country refuses to  
4 align itself, as soon as it shuns aid from the United States,  
5 that proves that it has diabolical intent, but China and the  
6 U.S.S.R., did they accept this kind of loaded aid when they set  
7 themselves up politically? I strongly doubt it.

8 [09.41.34]

9 What is more, can we say that the Democratic Kampuchea Regime  
10 refused all assistance to enclose itself in a kind of criminal  
11 self-sufficiency? No, it's not true. Let me refer you to the nine  
12 first minutes of the Standing Committee that we have available to  
13 us to - and you will see that the first five, more than half,  
14 talk about the question of aid from abroad. For example, E3/781  
15 which looks at the mastery and implementation of the political  
16 line and the reconstruction of the economy in 1975; here this  
17 refers to foreign aid. It says that Korea is going to be offering  
18 a motor manufacturing factory and assistance with hydroelectric  
19 technologists.

20 China is going to help restart big cement factories, refineries  
21 and rubber factories and the Chinese are also going to be helping  
22 with getting the railroad system starting again. In E3/182 of the  
23 9th of October 1975, there's reference to Chinese assistance  
24 laying telephone lines. In E3/229 of the 22nd of February 1976,  
25 there is reference to Chinese aid.

1 [09.42.59]

2 In E3/230 of the 22nd of February 1976, there is a reference to a  
3 \$3 million dollar grant from Yugoslavia which is going to be used  
4 to buy antiviral drugs and serums. It also refers to assistance  
5 from China for rice and that rice is going to be distributed to  
6 the neediest regions. And lastly, this is my last example, in  
7 E3/238 of the 28th of February 1976, there's a reference to \$5  
8 million dollar grant from the Swedish government and \$4 million  
9 dollars from the Yugoslav government; the two grants will be used  
10 to purchase materials and medicines for the population.

11 So if you take these examples, what you can see, is that what is  
12 actually happening here is that the country's whose aid is  
13 accepted by Cambodia are not the countries the Prosecution would  
14 like them to be; and that is why we would like to dwell on the  
15 enormous importance of the whole context of the Cold War which  
16 went on right up to 1989. In other words more than 10 years after  
17 the collapse of the Democratic Kampuchea regime, because if you  
18 forget the basic circumstance of this silent global conflict, you  
19 don't understand the entire case file and that is why we believe  
20 that we are not entirely wrong when we say that the theory of the  
21 file, as developed by the Investigating Judges and today by the  
22 Prosecution, amount to asking you to judge these accused for  
23 having wanted to set up a communist regime in Cambodia.

24 [09.45.09]

25 That was already pretty clear in the initial Closing Order before

1 the Severance and it became even more obvious with the more  
2 recent theory of the Prosecution on the slave camp. The  
3 Investigating Judges at least had the intellectual honesty to  
4 concede that the Democratic Kampuchea policies were not "entirely  
5 criminal". The new theory of the Prosecution about the nationwide  
6 slave camp in severed case file, nevertheless, does show to what  
7 extent the way this file is being handled is often more political  
8 than legal. Coming back to this supposed iron curtain that Khieu  
9 Samphan would have helped to bring down over Cambodia, on the  
10 other side of this room, you are told that through his  
11 participation in preparing a constitution for Democratic  
12 Kampuchea and organizing elections in March 1976 for a National  
13 Assembly that wasn't very national and wasn't much of an  
14 assembly, Khieu Samphan contributed to the facts before us.

15 [09.46.38]

16 But this is quite a feeble line of reasoning. Do you know many  
17 Communist countries which endowed themselves with a constitution  
18 and a national assembly in the way the ancient Greeks would have  
19 defined it? No. And even in between 1975 and 1979, nobody is  
20 fooled by this. But what does this prove about Khieu Samphan's  
21 contribution to Phases 1 and 2 of the forced movements of the  
22 population and the day of Tuol Po Chrey? Not very much; in fact,  
23 nothing at all.

24 [09.47.24]

25 Can I take your attention now to the importance of chronology in

1 this file; it's very important this because the facts before you  
2 took place before the start of the regime. The evacuation of  
3 Phnom Penh took place over a few days after the 17th of April  
4 1975, Tuol Po Chrey was only one day in April 1975, and as to  
5 Phase 2 of the population movement decided in August 1975, well,  
6 that was implemented after September 1975, and so far, it has  
7 been agreed to consider that this covered a series of population  
8 movements which continued up to the end of 1976. The question of  
9 the young age of the regime that I spoke about earlier, is  
10 therefore, very important. For example, in the Northeast where  
11 people were moved to in the second phase was a region that was  
12 run by the forces of the Khmer Republic up to the 17th of April  
13 1975, which could have had quite a few consequences from the  
14 organizational standpoint.

15 And so the questions of the chronological timelines are very  
16 important to understand the way events unfolded. There can be no  
17 doubt that the internal and organizational situation in Cambodia  
18 was not the same between April and June 1975 and the end of 1976.  
19 The situation was still less identical in 1977 or 1978,  
20 especially after a war began to be waged with Vietnam.

21 [09.49.20]

22 And when we look at the thesis put forward by the Prosecution,  
23 the problem we meet is that they are asking you to imagine that  
24 the dossier had never been severed and to believe that the  
25 description of Democratic Kampuchea at the end of the regime is

1 equally applicable to April 1975 and that is obviously wrong and  
2 it is an affront to human and historical logic of the most  
3 elementary kind and that is why you should not validate it and be  
4 very careful to date the descriptions that have been made to you  
5 by the Prosecution.

6 The question of dates is also vital in appreciating the intention  
7 and contribution of Mr. Khieu Samphan. These elements must be  
8 appreciated on the basis of facts and not using hypothetical  
9 reasoning rooted in subsequent events that are not necessarily  
10 even established as fact. Let me give you one example; the first  
11 minutes of the Standing Committee that your tribunal has --  
12 assuming it's authentic -- is the minutes of the visit of the  
13 Standing Committee to the Northwest Zone from the 20th to the  
14 24th of April 1975.

15 [09.50.44]

16 And this document talks about the need of increasing the  
17 workforce in the fertile region of the Northwest. This document  
18 marks the beginning of the second population movement phase. Now,  
19 when this August 1975 visit took place, Khieu Samphan was not  
20 only on a diplomatic trip abroad, but more than four months had  
21 gone by since Tuol Po Chrey and the evacuation of Phnom Penh  
22 which had been over since a long while.

23 So, taking the chronology, by August 1975, two of the three facts  
24 that are before us have already been decided and implemented. As  
25 for the third fact, it was decided on a visit that everybody is

1 actually certain Khieu Samphan didn't participate in, since he  
2 was abroad and nobody contests that; so we could almost complete  
3 our study on the role of Khieu Samphan at the stage where my  
4 learned colleague, Kong Sam Onn, has closed his statement. In  
5 August 1975, the themes of the Standing Committee, the  
6 negotiation of a constitution, organization of elections,  
7 accession to the Central Committee as a fully-fledged member  
8 which, as we see, it has to be juxtaposed with a question of  
9 accession to the state Presidium, the question of the succession  
10 of Doeun to Office 870, are all subjects that are peripheral  
11 because all come after the events that we are dealing with.

12 [09.52.28]

13 And that's why we denounce the Prosecution's strategy, which is  
14 to drown us in a massive heap of documents with 2,900 footnotes  
15 that themselves refer to between 10 and 15,000 documents, which  
16 we have to go and consult; in other words, simply drowning us  
17 under a massive avalanche of documents.

18 And, in addition to expanding the scope of this trial, the  
19 Prosecution is also very adept at turning events to their  
20 advantage. The example of the Standing Committee is extremely  
21 edifying; this Committee, met one to two times per week during an  
22 entire duration of the regime; in other words, about 50 to 100  
23 times a year, and therefore, between 119, 380 times during the 3  
24 years and 8 months of the Democratic Kampuchea regime. And  
25 everybody confirms that Khieu Samphan wasn't a member of the

1 Standing Committee, which is at the very centre of power around  
2 the person of Pol Pot.

3 [09.53.46]

4 But, on the grounds that during their preliminary investigations,  
5 the prosecutors and the Investigating Judges only found about 20  
6 copies of the minutes concerning these meetings and out of that  
7 20 copies of minutes, discovered we don't really know where,  
8 Khieu Samphan appears to have attended about 15 meetings. Without  
9 any kind of embarrassment, we are told that the archives proves  
10 that Khieu Samphan attended many meetings of the Standing  
11 Committee and not even trying to make a joke, the other day the  
12 Prosecution told us that Khieu Samphan had attended 86 per cent  
13 of the meetings of the Standing Committee of which we had some  
14 kind of record. Well, the truth behind this manipulation, ladies  
15 and gentlemen, and the most elementary logic dictates that Khieu  
16 Samphan appeared in about four per cent of the probable number of  
17 the meetings - or, rather, the minutes of the meetings of the  
18 Standing Committee during the entire duration of the regime, if  
19 we want to be honest; that is the truth behind this issue.

20 [09.55.15]

21 Moreover, as we pointed out in paragraphs 272 and 273 of our  
22 final submission, each time Khieu Samphan attended a meeting of  
23 the Standing Committee, the subject and the discussion was always  
24 connected with one of the roles which he held in the regime,  
25 whether it was as a representative of the Front and the Royal

1 government; whether it was as the person in charge of price lists  
2 and commerce, as President of the State Presidium or as a member  
3 responsible for examining the merchandise that had to be  
4 purchased or looking at banking problems.

5 So the truth about the Standing Committee is that, if Khieu  
6 Samphan had -- as we are told from the other side of the room --  
7 the full trust of Pol Pot, he would have become a member of the  
8 Standing Committee. Well, that never happened. From these  
9 different facts, one is inclined not to look at the Prosecution  
10 arguments in the same way; you have to remember that if our ideas  
11 may seem a little disconnected as we plead, it is because we are  
12 trying to respond to an accusation, a Prosecution thesis that is  
13 equally disjointed.

14 [09.56.50]

15 There is very little direct proof in this dossier, but that is  
16 not the fault of the Defence. Khieu Samphan has been waiting  
17 behind bars to be judged for the last five years and at the age  
18 of 82, he has the right to expect a conclusion.

19 As regards the intention and contribution by Khieu Samphan, the  
20 events that we are asked to judge are not proved in fact; they  
21 are not proved in essence. They are blurred by a fog of  
22 suppositions such as -- I quote:

23 "Given the roles that Khieu Samphan had even several years after  
24 the fact, he could not know what had happened previously and  
25 since he stayed with Pol Pot for the entire duration, that shows

1 that he was entirely in agreement with everything that happened."

2 End of quote.

3 [09.57.50]

4 This is the kind of structure of most of the reasoning put before  
5 us by the Prosecution. Well, you would have understood me, I'm  
6 afraid we are well short of reasonable doubt and pertinent proof.  
7 This is complete doubt and absence of evidence. And that's why we  
8 are opposed to the idea that this tribunal has some kind of  
9 historic mission; this notion pollutes the debate and tempts  
10 everybody to look for explanations for facts outside the scope of  
11 the trial.

12 It is because the Prosecution is perfectly well aware of the  
13 weakness of its arguments, that it is obliged to claim that ever  
14 since the 1950's, Khieu Samphan was a kind of Kampuchea Communist  
15 Party puppet. He was a Communist thirsting for totalitarian power  
16 only dreaming of enslaving his people in order to transform  
17 Cambodia that he loved so much and to which he has devoted his  
18 life to a nationwide slave camp.

19 Well, you can say what you like, but this description is not only  
20 in total contradiction with the contradictions, the commitment,  
21 the political career and the personality of Khieu Samphan, but  
22 also it doesn't correspond to the evidence that we've been  
23 looking at over the last two years of trial, and which my learned  
24 colleague, Kong Sam Onn, has just talked about.

25 [09.59.35]

1 It would, however, have been interesting to hear the Prosecution  
2 explaining to us when and for what reasons Khieu Samphan,  
3 gradually or suddenly, became this object being that is described  
4 to us; what particular event triggered the transformation of this  
5 man, the Prosecution doesn't tell us this.

6 You are supposed to be happy with a mere caricature here. The  
7 reasoning is more tenuous when you look at the supposed role as a  
8 leader that Khieu Samphan had within the Party. Not only was  
9 Khieu Samphan not a member of the Standing Committee, but I also  
10 remind you that he only became a fully-fledged member of the  
11 Central Committee in 1976, a committee that only met once a year  
12 and that his accession to that membership must be connected to  
13 the fact that he was succeeding Sihanouk to the Presidium in a  
14 pure, representative post without executive power. Then there's  
15 also the notorious Office 870 and my learned colleague, Anta  
16 Guissé will say a word about that.

17 [10.01.02]

18 At a first stage, the Prosecution was telling us that Khieu  
19 Samphan succeeded Doeun in February 1977 here, since having  
20 realized that in February 1977, none of the facts concerned this  
21 Trial. They then switched and said: "Oh, but this was well  
22 before." Look at the evidence, gentlemen on the Prosecution  
23 bench; read the minutes of the Standing Committee of the 9th of  
24 October 1975 and you will see yourselves. Who was appointed head  
25 of the political Office of 870; it was Doeun who became leader of

1 Office 870. It was Yem and not only 90 per cent of the arguments  
2 of the Prosecution on the contributions and the intention of  
3 Khieu Samphan are outside the scope of the trial, but also when  
4 you look at the definition of the roles that Khieu Samphan is  
5 supposed to have played through the documents of that time, and  
6 through testimony; you can see that the Prosecution is constantly  
7 distorting the meaning of the evidence we're hearing.

8 [10.02.20]

9 They did not hesitate, for instance, to invent a new organ of the  
10 CPK. I will talk about the organ which we recently discovered  
11 referred to as the Party Centre. This organ, quite simply, does  
12 not exist. The term may have appeared in some articles of the  
13 "Revolutionary Flag" but it does not exist anywhere in the  
14 statutes of the CPK. As Mr. Heder had said regarding Office 870,  
15 it is as if you are talking of Washington to describe the centre  
16 of power in the United States. The problem is that, not only does  
17 the prosecutor invent this organ, they even name members and  
18 among these members, Mr. Khieu Samphan is considered as being at  
19 the top of the list.

20 It would take time and a lot of work to show how they are trying  
21 to stifle the reality and that is why we've asked for time, and  
22 that is why we've asked for translation of the Prosecution's  
23 closing brief. For the past 18 days, we've not yet seen the  
24 translation and we are not satisfied with that situation of  
25 course.

1 [10.03.54]

2 In the same vein, as we've seen with the invention of this organ  
3 referred to as the Party Centre, we've also find ourselves faced  
4 with the same creativity on the part of the Prosecution as they  
5 claim that Khieu Samphan was responsible for what was happening  
6 in that new organ -- that is, the Party Centre, that is in  
7 application of the principle of Democratic Centralism. According  
8 to the Prosecution, who are indulgent with the Communist that  
9 were power hungry, in this Party Centre, the Khmer Rouge took  
10 their decisions collegially.

11 Two experts, Short and Chandler, testified during this trial on  
12 this subject. Now their conclusions are different. Chandler  
13 stated that according to him, decision-making in the Standing  
14 Committee was collegial. Of course, he was referring to the  
15 Standing Committee and Mr. Khieu Samphan was not a member of that  
16 Committee.

17 Now the Prosecution talks of a new organ: Party Centre, and  
18 Chandler, for his part, said that decisions were taken in the  
19 Standing Committee in a collegial manner; contrary to the  
20 situation in the past.

21 [10.05.27]

22 And Short, on the contrary, said that decisions were taken by a  
23 very small internal circle -- inner circle, and Khieu Samphan was  
24 not a member of that inner circle. So we can discuss the analysis  
25 of what these experts said; the Prosecution doesn't do that and

1 he says that Chandler was more credible than Short on this score.  
2 And we think that such a reflection is not haphazard. Chandler  
3 had said that he no longer did research -- he had no longer done  
4 research on Democratic Kampuchea since 1990, and that Short's  
5 biography was better than his.  
6 Chandler said that as time went on, many more things were  
7 discovered on Democratic Kampuchea. He even pointed out that he  
8 had just read in his hotel room, which he referred to profusely,  
9 the Closing Order and that he would have liked to see those  
10 elements in the course of his research. However, in the 18 and 19  
11 of July 2012 hearing, Chandler asked whether the transcript of  
12 the meeting of the 30th of March 1976 was a decision of Pol Pot  
13 or a decision of the whole group taken collegially. I -- he wrote  
14 - "I read a few documents and it appears to me that the  
15 leadership was more collective than I had thought." And later on  
16 he says -- and I quote: "I would say that after all the evidence  
17 I have read since then, the leadership was more collective than I  
18 had observed in the documents I had read relating to that era."  
19 [10.07.23]  
20 On the 8th of May 2013, almost a year later, the Prosecution puts  
21 this new opinion to Short and his is what he says -- and I quote:  
22 "I know what new elements Chandler may have unveiled. Had I known  
23 about them, my opinion would have been different perhaps. After  
24 the interviews I conducted and the documents I read, I had the  
25 impression that there was a semblance of collective decision

1 making, which Pol Pot might manipulate. He manipulated them in  
2 order that his decisions would be accepted by everyone, but the  
3 decisions taken were fundamentally those of Pol Pot." End of  
4 quote.

5 We, therefore, see clearly, as we study the two experts'  
6 positions, that the Prosecution's theory is based on Chandler's  
7 statements, who stopped doing research since 1990, and who upon  
8 his arrival in Phnom Penh while he -- and he said this to the  
9 Chamber; he read the Closing Order in his hotel room; and then we  
10 have Mr. Short, who continued his research up to a later date,  
11 who says that he didn't understand the sources of the new theory  
12 by Chandler.

13 [10.08.53]

14 These are examples of the kind of evidence that the Prosecution  
15 clings to and they always try to fish evidence here and there and  
16 they do not take into consideration, contradictions and they try  
17 to say this expert should be more credible than the other. Now,  
18 this lack of debate harms the search for the truth; this is  
19 unquestionable.

20 I would like to say a word regarding the facts, regarding Tuol Po  
21 Chrey, which, according to the Prosecution, were carried out as  
22 part of a policy to eradicate former members of the Khmer  
23 Republic; a policy that gave rise to a widespread and systematic  
24 attack with Tuol Po Chrey being one of the execution sites. Tuol  
25 Po Chrey is in Pursat about 190 kilometres from Phnom Penh. I

1 said at the beginning that I will try to avoid repeating what my  
2 learned friend -- my learned colleague of the Nuon Chea defence  
3 team said. But I will go to the root of the matter. Tuol Po Chrey  
4 is viewed as the root of the matter.

5 [10.10.21]

6 You did not hear any witnesses before this Chamber who witnessed  
7 a single murder committed in Tuol Po Chrey. The two former Khmer  
8 Rouge soldiers who appeared before this Chamber were 10 to 15  
9 kilometres from Tuol Po Chrey at the time of the alleged events.  
10 The first soldier was a guard who mounted guard outside of the  
11 meeting point in Pursat. As for the second soldier, he said he  
12 was about 10 kilometres -- 8 to 10 kilometres from Tuol Po Chrey;  
13 that was his position, and he explained that one of his military  
14 colleagues who listened to military radio told him that he had  
15 heard a report of gunshots on the radio.

16 We heard a third witness who was also a former soldier, but he  
17 was on the other side -- on the side of the Khmer Republic. He  
18 said he attended two previous meetings in Pursat, some kilometres  
19 from Tuol Po Chrey. At the end of the meeting, he didn't go on  
20 board the truck going to Tuol Po Chrey, and he waited for 2 hours  
21 with some 30 other persons to wait for some other comrades who  
22 were going to join them and finally they didn't come, and he went  
23 back home.

24 [10.11.45]

25 We have also pleaded the superficial nature of the reports of the

1 Co-Investigating Judges. They claim that they went to the former  
2 site of Tuol Po Chrey. Even though they may have seen some shells  
3 on the ground, since 1974, there had been violent fighting in  
4 Tuol Po Chrey, so those shells could have dated back to that  
5 period.

6 On the 19th of April 2013, one of the three witnesses, Ung Chhat,  
7 testified before this Chamber and told the Chamber that,  
8 according to him, Pursat province was captured only on the 19th  
9 of April 1975.

10 Sum Alat, a former Khmer Republic soldier, also said that after  
11 the Khmer Republic was defeated in Pursat, the Khmer Republic  
12 Army continued to function. He also said that even after the fall  
13 of the Lon Nol regime, soldiers of the Khmer Republic continued  
14 to move about in uniform in that region.

15 He also refers to some kind of resumption in the hostilities  
16 after the capture of Phnom Penh and that people were called upon  
17 on the radio to lay down their weapons.

18 [10.13.33]

19 I am only providing some leads for reflection. I could also  
20 underscore some aspects of Lim Sat's statements; one of the three  
21 witnesses who was a commander of the Khmer Rouge platoon in the  
22 region, and he said that Khmer Rouge soldiers committed killings  
23 in Tuol Po Chrey and that those soldiers were subsequently sent  
24 to S-21 for having betrayed Angkar.

25 This point was not delved into; be it during investigations or

1 before the Chamber, but it casts doubt on the charge made by the  
2 Prosecution that the massacre was ordered by the Khmer Rouge.  
3 I would also like to lay emphasis on the fact that none of the  
4 three witnesses who testified before this Chamber provided any  
5 consistent evidence before this Chamber; whether we are talking  
6 of the day of the meeting in Pursat, the number of meetings that  
7 were held in Pursat to prepare for the murderous transfer to Tuol  
8 Po Chrey, whether we are talking of the dates of the meetings,  
9 the duration of those meetings and the number of participants at  
10 those meetings, the civilian or military functions of the  
11 participants at those meetings, the fact whether or not they were  
12 all wearing the uniforms or whether they were in civilian attire  
13 or whether it was a mixture of civilians and soldiers, whether  
14 all the participants at those meetings could have entered the  
15 provincial office hall or others stayed outside, whether they all  
16 arrived at the meeting in this mode of transportation or not and  
17 how they left, what was the model of the car or the colour of the  
18 trucks that supposedly took participants at those meetings to  
19 Tuol Po Chrey.

20 [10.15.48]

21 On all these issues -- by the way, given the fact that these  
22 witnesses were 10 to 15 kilometres from the meeting venue, all  
23 these statements contradict one another. These statements are  
24 also not plausible because of internal contradictions and we will  
25 not be able to point out all of them because we do not have

1 enough time.

2 We have to also bear in mind that there is a lack of probative  
3 evidence; no expert opinions expressed, no reports provided, so  
4 we cannot rely on the statements given by individuals who did not  
5 even attend those meetings.

6 It is clear that the Prosecution has not shown proof of the  
7 essence of the massacres in Tuol Po Chrey. We have to look at  
8 what the two experts who studied the Khmer Rouge regime and the  
9 chain of command in the Khmer Rouge. We observe that it is not  
10 easy to pin down the chain of command.

11 [10.17.12]

12 The Khmer Rouge soldiers were aged 23 at the time and they said  
13 that they did not receive any instructions from their superiors  
14 regarding that meeting. They did not know whether any plan had  
15 been drawn up in advance. They even said that the only plans they  
16 were aware of regarding the former Lon Nol troops were merely  
17 instructions regarding solidarity with a view to reconstructing  
18 the country.

19 Lim Sat, the head of the Khmer Rouge platoon, stated that he  
20 received orders from the Khmer Rouge to bring former Lon Nol  
21 troops to meet in Pursat. And in spite of the attempt to  
22 influence his testimony by the Prosecution, he said that he did  
23 not know at the time whether that meeting was supposed to be a  
24 preparatory stage to prepare for the massacres. The prosecutor,  
25 by the way, asked whether the leaders said from what level of the

1 hierarchy they received their orders. Lim Sat's answer was: "No,  
2 they never said it."

3 [10.18.26]

4 Later on at 10 a.m., Lim Sat confirms that he was not at all  
5 aware of any policies to kill former Khmer Rouge officials and  
6 soldiers and he stated -- and I quote:

7 "At the time they assembled those people, the police officers and  
8 soldiers, but I did not know that they were assembling them to  
9 kill them. I was mounting guard on the road and I saw trucks."

10 End of quote.

11 Now, under these circumstances, how did the Prosecution plead  
12 that Khieu Samphan was responsible for the massacres at Tuol Po  
13 Chrey? How did they get by such a conclusion? Quite obviously,  
14 they said, that in spite of the incoherencies that I've just  
15 described, the massacres at Tuol Po Chrey are proven. This is a  
16 first stage that I recall of a first leap towards a legal error.  
17 The next stage is -- was -- is that the Prosecution, instead of  
18 passing through the door; they jump out through the window.  
19 Furthermore, they did not prove the implementation of the  
20 policies and they said there was a general policy to kill all  
21 former Khmer Republic soldiers and officials.

22 [10.19.48]

23 So they tried to prove from the top what they were unable to  
24 prove at the root and they tried to invent, in the style of  
25 Jacques Prévert, -- and this is a famous French poet whose poems

1 are in the form of enumerations -- the Prosecution gives a list  
2 of a whole mesh of arguments -- a labyrinth of arguments which we  
3 are lost.

4 1) In April 1975, Khieu Samphan made numerous statements on the  
5 part of the FUNK and the GRUNK designating the seventh most  
6 senior officials of the Khmer Republic as traitors who had to be  
7 executed for their treason and who fomented a coup d'état against  
8 Samdech Sihanouk and the seven allies of the Americans -- of the  
9 United States and he caused the importation of the Vietnamese --  
10 the Vietnam War into Cambodia and the intensified bombings in  
11 Cambodia.

12 2) On the day -- in -- on that day in Tuol Po Chrey, Khieu  
13 Samphan -- the Pol Pot officials were in Tuol Po Chrey and he  
14 supervised the massacre of soldiers at Tuol Po Chrey.

15 3) Executions were committed in the commune in which Khieu  
16 Samphan was.

17 4) That two minutes of the Standing Committee meeting of the 13  
18 and 14th of March in which this policy was discussed.

19 5) Reports and telegrams were sent to Office 870 describing  
20 executions of former officials of the army.

21 [10.21.34]

22 6) There were some telegrams of secretaries from the North Zone  
23 regarding these issues.

24 7) After the victory, Khieu Samphan lived in -- in Phnom Penh  
25 next to Pol Pot and other officials and he was aware of

1 everything and validated everything after the fact.

2 8) Khieu Samphan participated regularly in meetings of the  
3 Standing Committee at which zone leaders came to present reports  
4 on the security situation in their regions.

5 9) Kang Chap's telegram of September 1977 sent to Nuon Chea with  
6 Office 870 copied.

7 10) Two speeches by Khieu Samphan from 1977 to 1978.

8 11) Testimony of Meas Voeun which the Prosecution assessed that  
9 were reported to Khieu Samphan; that is false. The Prosecution  
10 claims that in 1978 -- let me remind the Chamber that we are  
11 talking of facts that were committed in April 1975 -- Khieu  
12 Samphan was powerful enough to cause the release of members of  
13 his in-laws' family that Meas Voeun had arrested among other  
14 --many other people.

15 [10.22.58]

16 12) There may have existed a decision dating back to June 1978  
17 redefining the policy regarding the enemy members of the CIA.

18 13) There are interviews of Khieu Samphan that were granted in  
19 the 1980s, 1990s, 2000, and so on and so forth in which he  
20 validates the policies of Democratic Kampuchea.

21 I will stop here -- I will stop here because I am already  
22 wondering how many hours and how many pages I would need to  
23 respond to this cross-fire of arguments that are completely  
24 unfounded.

25 Now, the problem in this issue is that this strategy to stifle

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1 reflection obtains at all levels. It is exactly the same strategy  
2 that we -- we have observed with the issues regarding population  
3 movements, Phases 1 and 2. We are dealing with facts that have  
4 absolutely nothing to do with the trial. I will, nevertheless,  
5 try to sort out what is important in this jumble.

6 [10.24.28]

7 There is no telegram regarding the murders of your enemies and  
8 members of the Khmer Republic. These were never sent to Khieu  
9 Samphan throughout the period of Democratic Kampuchea. Counsel  
10 for the Prosecution, you will have many hours to respond to what  
11 I am saying tomorrow. I would like you to come back to this  
12 hearing with a single telegram of the period regarding Tuol Po  
13 Chrey or the period after informing Khieu Samphan of the murders  
14 or seeking his opinion or seeking to consult him. You have not a  
15 single telegram to that effect.

16 Regarding the facts at Tuol Po Chrey, we -- you explained that  
17 your -- those massacres were committed immediately after the 17th  
18 of April evacuation.

19 Regarding events in 1976, 1977, 1978, several years after the  
20 facts, the Chamber is seized of these facts several years later.  
21 You cannot content yourself with simply making inferences without  
22 providing evidence.

23 [10.25.49]

24 And lastly, the only argument -- and that is the argument that  
25 has been hammered the most on this issue -- it is the issue

1 regarding the radio communiqué signed by Khieu Samphan adopted  
2 after a vote of the National GRUNK Congress, which is supposed to  
3 have met on the 24th and 25th of February 1975. That is while the  
4 war against the Lon Nol regime was raging. That communiqué signed  
5 by Mr. Khieu Samphan, according to you, was the stamp of the  
6 agreement regarding the massacres committed at Tuol Po Chrey,  
7 according to you, which you haven't established.

8 Let us read an excerpt of this communiqué dating back to February  
9 1975 and which was read by the radio announcer of the GRUNK  
10 radio. It's document E3/117 -- and I quote:

11 "In these extremely favourable circumstances, the great National  
12 Congress deliberated seriously and thoroughly for two days and  
13 issued pronouncements on various important matters, including the  
14 following: Concerning the seven traitors in Phnom Penh, the  
15 National Congress has decided as follows: Traitors Lon Nol, Sirik  
16 Matak, Son Ngoc Thanh, Cheng Heng, In Tam, Long Boret and  
17 Sosthene Fernandez are the chieftains of the traitors and ring  
18 leaders of the treacherous anti-national coup d'état which  
19 overthrew the independence, peace and neutrality of Cambodia.  
20 They are the ones who induced the U.S. imperialists to invade and  
21 set Cambodia aflame, bringing unprecedented, untold destruction  
22 and suffering to Cambodia and the death of many monks and people,  
23 including men, women and children."

24 [10.27.59]

25 "On behalf of the NUFC, RGNUC, the CNLAF, the National Congress

1 declares it's absolutely necessary to kill these seven traitors  
2 for their treason against the nation and their fascist, corrupt,  
3 criminal sect, unprecedented in Cambodian history.

4 "As for other low or high-ranking government officials of various  
5 services, army officers, police officers, policemen of all  
6 categories, members of self-defence units, other armed units,  
7 politicians, high personalities and all sorts of members in every  
8 organization of the traitorous regime; on behalf of the Cambodian  
9 nation and people, the NUFC, the FUNK and GRUNK and the CPNLAF,  
10 the National Congress proclaims that these people have the full  
11 right to join the NUFC."

12 I will slow down, Mr. President. I am speeding up because I  
13 provided the document, but I will slow down.

14 [10.29.06]

15 "The Cambodia nation and the people, provided they immediately  
16 ceased their service to the seven traitors and stop co-operating  
17 with them, the Nation and the Cambodian people, the FUNK and the  
18 GRUNK, will welcome and duly reward those army officers, troops,  
19 militiamen, policemen, functionaries, politicians and high  
20 dignitaries in the areas under temporary army control who dared  
21 to oppose the traitors, fight them and turn their weapons on  
22 them.

23 "For this reason, on behalf of the Cambodian nation and people,  
24 the NUFC, RGNUC and CPNLAF; the National Congress appeals to the  
25 army officers, troops, police officers, policemen, militiamen,

1   functionaries, politicians and all other persons in the areas  
2   under the temporary enemy control to quickly abandon the seven  
3   traitors who are now facing agony to contribute to the activities  
4   of the people in Phnom Penh and other areas under temporary enemy  
5   control and carry on the struggle against the traitors by seeking  
6   all available means to destroy their treacherous administrative  
7   apparatuses, military installations, police stations, armed  
8   depots and so on and so forth." End of quote.

9   (10:30:49)

10  First of all, what is obvious when we study this communiqué is  
11  that two of the seven persons designated here as traitors were  
12  killed during the capture of Phnom Penh. The five others appear  
13  to have listened to the radio. It is interesting, first of all,  
14  to note that expert Short said that he doubted the fact that the  
15  February 1975 Congress really took place. He also stated that he  
16  is not aware that  
17  Khieu Samphan was consulted before that communiqué which he  
18  supposedly signed was broadcast on the radio. That was a mere  
19  hint because I don't want to flee from any debate.  
20  He doubted that -- he doubted the veracity of those events, the  
21  communiqué -- the broadcast of the committee and the events at  
22  Tuol Po Chrey, the GRUNK announcing the future execution of the  
23  seven traitors who had overthrown Sihanouk; those responsible for  
24  the war for five years, those who had caused the war which led to  
25  the country that was bombarded the most in the history of

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1 humanity. So we are during the period of the war and it is  
2 announced that the seven persons responsible for that situation  
3 were going to be punished.

4 [10.32.34]

5 Furthermore, we have -- this is another aspect of the propaganda  
6 relating to this matter. There is nothing here that is  
7 particularly unusual in war time. That was the opinion of Penn  
8 Nouth, Hou Youn, Hu Nim and many others who echoed the contents  
9 of this text. It also echoes the opinion of Samdech Sihanouk  
10 himself who, finding that the GRUNK had been somewhat soft on  
11 this matter -- softer than he would have liked to see -- felt at  
12 liberty to issue or to deliver speeches in which, according to  
13 Samdech Sihanouk, more than 15 names were added to the initial  
14 list of seven traitors.

15 Are we charged with this? Quite on the contrary. We have seen the  
16 strength of the politicians who conquered the country from the  
17 traitors who had betrayed the country.

18 MR. PRESIDENT:

19 Thank you, Counsel.

20 The time is now appropriate for a short break. The Chamber shall  
21 adjourn now and resume at 10 to 11.00.

22 The Court is now adjourned.

23 (Court recesses from 1034H to 1052H)

24 MR. PRESIDENT:

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

1 the Chamber would like to give the floor to the defence team for  
2 Khieu Samphan to continue presenting their oral closing  
3 statement.

4 You may proceed.

5 MS. GUISSÉ:

6 Mr. President, may I apologize on behalf of my learned colleague  
7 who must have had some impediment on the way from his office to  
8 the courtroom.

9 (Short pause)

10 [10.54.16]

11 MR. VERCKEN:

12 I apologize.

13 Before we broke, I was about to refer this Chamber to a speech  
14 similar to the one made by Khieu Samphan, made a few weeks later  
15 by Prince Sihanouk. And I would like to read some extracts of  
16 that speech. It's a statement made by the Samdech, head of state,  
17 denouncing the new manoeuvres of the American imperialists and  
18 their lackeys in Phnom Penh. And it's E3/1287:

19 "On behalf of the FUNK and GRUNK, I wish to inform the entire  
20 world that:

21 "First, the senior officials and cadres of the phoney Khmer  
22 Republic are as different from the Khmer Rouge patriots as night  
23 and day in that, for the past five years already, those phoney  
24 Republicans have been world champions in treason, moral  
25 depravity, social decay, and corruption. I have no doubt that the

1 Cambodian people will eradicate them from our society because  
2 that is what they deserve."

3 [10.55.58]

4 "Second, Lon Boret himself was sentenced to death by the people  
5 of Kampuchea at the National Congress of the 25th of February  
6 1975. The American imperialists are grossly mistaken in thinking  
7 that Lon Boret is in a better position than Lon Nol to break the  
8 resolve of the Khmer Rouge patriots and persuade them to join his  
9 dirty republic. Even though they were not sentenced to death at  
10 the National Congress of the People of Kampuchea, the other super  
11 traitors, such as..." and there Samdech Sihanouk gives 16 names  
12 closing in etc. "These 16 people therefore are still notorious  
13 war criminals. And they should be brought before the state courts  
14 to answer to the countless heinous crimes and misdemeanours they  
15 have committed for five years now against the land, the people,  
16 the nation, and the state of Kampuchea.

17 "By offering such ultra-corrupt fascist traitors, leading  
18 war-criminals, and cowardly common-law criminals as interlocutors  
19 of the FUNK and GRUNK and FAPLNC, the American imperialists are  
20 unconscionably insulting the memory of the Cambodian patriots who  
21 sacrificed their lives in defending the pure high values of the  
22 people of Kampuchea. I urge the USA to immediately stop their  
23 odious, ridiculous, and childish game."

24 [10.58.20]

25 "Third, the FUNK, the GRUNK, and Norodom Sihanouk, affirm that

1 they are ready and prepared to fight to the death against US  
2 imperialism. We shall never accept negotiations or compromises  
3 with the American imperialists and their lackeys as long as we  
4 live." End of quote.

5 In fact, if all of these communiqués on the seven traitors --  
6 because there are quite a few on the file -- are quoted as  
7 testifying to a policy, it is mainly thanks to a posteriori  
8 interpretation of them made before you all by Mr. Short. Short  
9 says that these speeches and communiqués have a kind of hidden  
10 meaning that signified to the populations of the zones that were  
11 not yet liberated that if they did not immediately join the Khmer  
12 Rouge -- and I stress "immediately" -- they too would be  
13 considered super-traitors deserving only of death, and that a  
14 posteriori interpretation by Philip Short was picked up by the  
15 Prosecution.

16 [11.00.00]

17 Our view is that this interpretation will not prosper: Firstly,  
18 because - firstly - sorry -- because all of these messages about  
19 the death of the seven traitors do not necessarily imply for the  
20 listener that there is an immediate duty to join the Khmer Rouge.  
21 Rather they tend to suggest that that should be done as the need  
22 arises. You just need to read these appeals and these radio  
23 broadcasts to see that, in fact, they planned for different kinds  
24 of rallies and movements, different kinds of support to the  
25 Revolutionary Movement. And this includes, crucially, acts of

1 sabotage, and sabotage suggests that those who perpetrate them,  
2 officials and soldiers from the Khmer Republic -- because that's  
3 who we're talking about -- suggests that these people should  
4 remain in their positions so as to perform these acts. And  
5 looking at the February Declaration signed by Khieu Samphan,  
6 participation through sabotage is planned for -- not just  
7 affection -- immediate rallying to the Khmer Rouge cause. And in  
8 this respect, we can pick up on a statement by Sidney Schanberg,  
9 who was at Phnom Penh at the time and who said how totally  
10 obvious it was to him that the Khmer Rouge had a very good  
11 network of informers and agents.

12 [11.02.10]

13 And then you have to think about who these propaganda messages  
14 were meant to be listened to by. We're talking about political  
15 war; these messages are not addressed to Khmer Rouge soldiers who  
16 were supposed to have implemented the extermination policy,  
17 according to the Prosecution.

18 As Short said -- quote: "The chaos soldiers did not listen to  
19 FUNK radio, the message was addressed to the Phnom Penh  
20 population." End of quote.

21 And then, don't let us forget these messages about the seven  
22 traitors were broadcast over a long span of time on the radio and  
23 the Prosecution in fact told us this. And that, with that in  
24 mind, one wonders how for the entire period they could have  
25 maintained this supposed obligation of immediacy that Philip

1 Short seems to have imagined. All of this, in fact, is pretty  
2 far-fetched. And when all is said and done, the various messages  
3 about the seven traitors are certainly not proof of intent by Mr.  
4 Khieu Samphan to collaborate in a generalized or systematic  
5 attack against former officials of the Khmer Rouge Republic.

6 [11.03.52]

7 And what else do the Prosecution tell us about the facts behind  
8 this policy? Which, as far as they are concerned, covers  
9 practically all the facts that are before this tribunal. Well, of  
10 course, they try and trace the existence of this policy against  
11 the former or future former officials of the Khmer Rouge Republic  
12 to before Tuol Po Chrey. With respect to -- after - well, that's  
13 a little less obvious and the Prosecution has certainly been very  
14 industrious in this regard because they go right back to the  
15 1960s.

16 On the 17th of October 2013, at the opening of this Trial, the  
17 Senior National Co-Prosecutor said: "The events of the 17th of  
18 April 1975 were not isolated events in a vacuum. They were the  
19 outcome of policies that had been well established by the  
20 Communist Party of Kampuchea. The forced evacuation of urban  
21 zones that had been captured, the enslavement of inhabitants and  
22 executions of members of the Khmer Republic regime and of other  
23 enemies are all perceived as such. The evidence of such acts at  
24 the end of the 1960s and the beginning of the 1970s are  
25 important, because they show that the events of the month of

1 April 1975 were part of a continuous system of violence, of  
2 brutality and oppression established well in advance by the  
3 accused. As far as they were concerned, everybody who was against  
4 them, had to suffer and die. Violence was at the very heart of  
5 all their actions. It defined the way in which they took power,  
6 in which they exercised that power, and endeavoured to implement  
7 that power against all of those who were not enlisted in their  
8 ranks. End of quote.

9 [11.06.16]

10 The prosecutor then traced the origin of this violence back to  
11 the origins of the Party in 1960. The class struggle and the life  
12 and death contradiction between the life of peasants and land  
13 owners, and she warned you all by saying -- and I quote:

14 "Despite this, the accused will claim that this was not a  
15 struggle against the people but against a system of oppression.  
16 Do not be deceived by this lie; thousands of people died after  
17 the decision to appeal to revolutionary violence and this was  
18 well before April 1975. This perception that they heard of  
19 enemies was rooted in profound persistent paranoia that had no  
20 foundation in reality. They lived in a world of visceral,  
21 illogical, and irrational hatred." End of quote.

22 [11.07.30]

23 After that, the Prosecution quoted various examples of torture  
24 methods that were used in M-13, managed by Duch. She talked about  
25 extra judiciary executions, conclusions of Short, whereby: "After

1 1973, the Khmer Rouge forces systematically eviscerated prisoners  
2 and executed those who were suspected of collaboration and of  
3 being deserters."

4 And she also mentioned the purge of the Khmer's who came back  
5 from Hanoi in 1972. According to her, Khieu Samphan could not  
6 have known what had happened to them -- quote: "Knowing the  
7 history and culture of the Communist Party of Kampuchea, the  
8 systematic execution of those who were perceived as being  
9 enemies." End of quote.

10 [11.08.31]

11 Our plea, Your Honours, is that the Prosecution's reasoning is  
12 irrational. The Khmer Rouge movement was a popular resistance  
13 movement which saw the light to combat a system of violence,  
14 brutality, and oppression. That was the circumstance of the time.  
15 We are not talking about the history and the culture of the  
16 Communist Party of Kampuchea, as the Prosecution told us, but the  
17 history and culture of Cambodia.

18 [11.09.20]

19 The Prosecution tells you not to be deceived by the lies, lies,  
20 which, as we see it, consist in saying that the struggle was  
21 against a system of oppression. But who, here, denies the  
22 historical reality of the time? Even if this Chamber has not  
23 dwelt on this contextual issues and has indeed left the path open  
24 to all sorts of conjectures, despite this, witnesses have come to  
25 this courtroom to talk about the system of oppression that

1 reigned under both Sihanouk and Lon Nol. Testimony has been heard  
2 whereby peasants were not hateful of other citizens but of the  
3 government. And they had no desire for revenge against other  
4 citizens that they did not see as their enemies. I mean what has  
5 been said in this courtroom about Sihanouk's regime, for example.  
6 Well, as we have all discovered, it was very far from being a  
7 peaceful and democratic regime.

8 François Ponchaud and David Chandler talked to us about the  
9 brutality of the regime with respect to the political opponents.  
10 Chandler himself devoted an entire chapter of his book on to the  
11 final days of Sihanouk's regime and he told the Chamber just how  
12 much severity he was capable of against his political opponents  
13 and students, pro-Chinese groups in Phnom Penh and pro-Maoists'  
14 who were systematically harassed and imprisoned.

15 [11.11.27]

16 It was on the 28th of July 2012, page 77 and -- excuse me; I am  
17 mistaken.

18 It was François Ponchaud who talked about images of executions  
19 that were projected in cinemas before the main film started. And  
20 Ponchaud also told the Chamber how Sihanouk accused Khieu  
21 Samphan, Hu Nim, and Hou Youn of being traitors and how he and  
22 his entourage had fully understood that this was not an  
23 accusation that was to be taken lightly. And that they were quite  
24 right to escape to save their skins.

25 The Lon Nol regime was also described to us in this courtroom and

1 it appears to have been an extraordinarily violent one. François  
2 Ponchaud told us that when the Sihanouk regime fell,  
3 demonstrations against the Lon Nol government were controlled by  
4 bombs being dropped on unarmed demonstrators causing dozens of  
5 death.

6 [11.13.00]

7 Hearing in April 2013, Ponchaud also told us how people came in  
8 from the East and North of Vietnam and they had been executed in  
9 their hundreds by Lon Nol's forces and how crimes of genocide --  
10 as he said -- were committed in 1970 when about 2000 people had  
11 been executed. This was the 9th of April 2013 hearing.

12 Philip Short also told this Chamber that the Lon Nol regime was  
13 driven forward on hatred of the Vietnamese and Short told us that  
14 after Sihanouk had been overthrown, the Lon Nol regime  
15 implemented a racial programme based on hatred. And that emanated  
16 from the top level and it led to mass exodus and massacres of the  
17 Vietnamese population: pages 16 and 17.

18 The soldiers of Lon Nol were, therefore, not exactly existing  
19 harmoniously with the population, Ponchaud told us here. If you  
20 want to know how they treated the villagers, I could tell you  
21 about a situation in which some soldiers decapitated villagers  
22 who they had captured and they found this very funny. This was  
23 again in April 2013.

24 [11.14.42]

25 Ponchaud told us about the invasion of Vietnamese troops who

1 were invading the frontier regions and how the National Army for  
2 the Liberation of Kampuchea was set up. He also told the Chamber  
3 how the Americans and the Vietnamese were highly brutal soldiers.  
4 They killed, tortured, and beat the civilian population.  
5 Ponchaud summarized the situation, at that time, by saying that,  
6 for people, the only way to save themselves was to go and join  
7 the Khmer Rouge soldiers. I, myself, in my book, "Cambodia: Year  
8 Zero", wrote that, in those days, I prayed for the arrival of the  
9 Khmer Rouge soldiers. The population had lost all hope under Lon  
10 Nol's regime and, as a result, the only hope for us was the Khmer  
11 Rouge.

12 [11.15.45]

13 David Chandler echoed all of this in this courtroom saying that  
14 the Lon Nol army had been set up very speedily. It wasn't  
15 properly trained; they acted with violence against people; they  
16 were badly armed, and badly led. Lon Nol's army was barbaric and  
17 Chandler -- Schanberg told me how they consumed the livers of  
18 their adversaries. That was in June of this year; pages 57 and 58  
19 About the Khmer Rouge soldiers, Chandler told us the Khmer Rouge  
20 were much more disciplined. They did not commit breaches in the  
21 villages; they had an almost Buddhist code of conduct and that is  
22 what made them popular; hearing of the 20th of July 2013, page  
23 73. And this was confirmed by Father Ponchaud when he related the  
24 testimony of certain witnesses and he said that the Khmer Rouge  
25 were good, kind people who assisted the population in the rice

1 fields.

2 In this courtroom we talked about Lon Nol regime violence, but  
3 there was also talk of its corruption because it was one of the  
4 main features, I think, of that particular government and the  
5 file contains quite a lot of evidence on that particular subject.  
6 Sidney Schanberg, for example, on the 7th of June 2013 told us  
7 that the inhumanity and corruption of that regime made the  
8 population exceedingly bitter and as a result -- I quote: "Some  
9 students and professors went underground to join the  
10 revolutionaries." End of quote.

11 [11.18.08]

12 He also told us -- I quote: "That corruption was the principle  
13 reason for the decline in the government's popularity." End of  
14 quote. That corruption, he said, was also a source of  
15 considerable embarrassment for the United States who were  
16 providing the financial backing to the corrupt regime.

17 François Ponchaud also confirmed that many officers and cadres  
18 working for Lon Nol were selling rice and weapons to the Khmer  
19 Rouge. He said -- quote: "Fatally, the Lon Nol government was  
20 going to end up being beaten." 9th of April 2013. So this was a  
21 policy that spurred the hatred of the peasants against the city  
22 dwellers.

23 In his book and here in this courtroom, David Chandler told us  
24 that the population of Ratanakiri, Kratie, and Mondulkiri became  
25 the most hostile vis-à-vis the Phnom Penh government due to the

1 rubber plantations and road construction which took their land  
2 away and which had a vital impact on their daily subsistence  
3 living. And Ponchaud also talked about the ideological aspect of  
4 what happened in Cambodia at the time, and contrary to what is  
5 claimed by the Prosecution and the civil parties, according to  
6 him, there was no desire for revenge against the city dwellers.

7 [11.20.09]

8 The city was evacuated not out of a spirit of revenge; it was due  
9 to ideological reasons. I don't think there was any need for  
10 revenge, properly speaking; it was a matter of ideology. Perhaps  
11 revenge was used by the Khmer Rouge in the service of ideology  
12 but I think that the root of the question was ideological. They  
13 were trying to set up a new society without cities. And when you  
14 look at these different points that were made before this Chamber  
15 -- and it would seem with absolutely no purpose whatsoever for  
16 the Prosecution -- what you feel is that this is a denial of the  
17 history of Cambodia by claiming that before the 17 of April of  
18 2000 - 1975, everything was going perfectly in the world and that  
19 if the Khmer Rouge had not arrived with their evil set of  
20 intentions everything would have been just wonderful. Now, this  
21 definition is completely disconnected from the facts and history  
22 of this country. It's a denial of reality that is commensurate  
23 with the reproach made by the Prosecution here in their final  
24 submission which they made to the Khmer Rouge of having conducted  
25 a war against the Lon Nol regime with a view to overthrowing it.

1 [11.21.52]

2 We were told in this courtroom that Phnom Penh should have been  
3 taken without any blockade, without any bombing, without cutting  
4 off any kind of supplies, in other words without fighting at all.  
5 To listen to the Co-Prosecutor, the only fault -- if the citizens  
6 of Phnom Penh were famished -- lay with the Khmer Rouge. It was  
7 all their fault; that's what you were told. But the Prosecution  
8 is blind to history, blind to the historical context of this  
9 Trial. They are not going to claim that the Lon Nol regime had to  
10 be defeated through elections but they're almost saying that and  
11 even if, Ratione Temporus, we are not dealing with the period  
12 before April 1975, that does not mean that a disingenuous vision  
13 of history can be allowed in this courtroom. That is completely a  
14 concoction by the members of the Prosecution.

15 [11.23.15]

16 Now since the Prosecution likes hearing references that are  
17 outside the scope of the Trial, I, too, would like to refer you  
18 to an interesting document which is a special edition of November  
19 1977 of the "Revolutionary Flag" -- E3/11 -- in which there is a  
20 long article on the history of the CPK. And when you read that  
21 article you realize just how difficult it is to suggest that the  
22 Communist Party is wedded to violence. Under the Sihanouk regime  
23 before the coup d'état of '97 (sic), it was the peasants who  
24 initiated the Revolution and the Revolutionary Flag explain this  
25 -- and I quote:

1 "Our objective was not to combat individuals but to fight  
2 repressive regimes, feudal regimes, and land owners."  
3 The Revolution emanated from the peasantry, they had encircled  
4 police stations and military command posts with machetes in their  
5 hands. They had applied revolutionary violence because the class  
6 in power had not solved the problem of property stolen from the  
7 very poorest peasants. And this class consciousness had not been  
8 acquired through propaganda or indoctrination solely; it came to  
9 them through the struggle, through class anger, through  
10 irreconcilable class antagonism. And that, ladies and gentlemen,  
11 is the reality behind the Khmer Rouge movement, a resistance  
12 movement that was fighting oppression.

13 [11.25.17]

14 And that is the reality, that at any price the prosecutors are  
15 asking you to ignore in favour of a fictitious narrative whereby  
16 anybody who looks closely at the dossier, or simply, cannot  
17 subscribe to and we therefore ask you to reject that version of  
18 things.

19 I thank you, sir.

20 MS. GUISSÉ:

21 Mr. President, Your Honours, following my learned colleague,  
22 Vercken's closing arguments, it is my turn to talk about the  
23 decision to evacuate Phnom Penh and the so-called participation  
24 of Khieu Samphan. In this event, as we've heard, Phnom Penh fell  
25 on the 17th of April 1975. There is no contemporary document

1 which states exactly on what date that was decided. The Closing  
2 Order in paragraph 251 notes that according to some testimonies  
3 the decision to evacuate the population of Phnom Penh is likely  
4 to have been taken in February 1975. This is also the date  
5 retained by expert witness Chandler in his research in document  
6 E3/1686. And it is also this date referred to by Pol Pot himself  
7 during a press conference in Beijing in September 1977, document  
8 E3/2072.

9 [11.27.27]

10 The Prosecution has given several versions of that event and the  
11 date. First of all, they relied solely on Phy Phuon's testimony  
12 and we shall return to that subsequently. They set the date at  
13 April 1975, and in the course of hearings and as time went on,  
14 the Prosecution changed its position and said that the decision  
15 was taken in June 1974 in the headquarters of Pol Pot near Udong.  
16 And among the documents the Prosecution relies on we have  
17 "Revolutionary Flag" September 1977. The contents of that  
18 document have been referred to at length during these  
19 proceedings, and this is document E3/11. In this document it is  
20 stated that a National Congress was held for 15 days in June  
21 1975, during which reference was made -- and I quote: "To the  
22 national attack, the final attack to liberate the country in its  
23 entirety."

24 [11.28.52]

25 This also explains the various variations of the Prosecution and

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1 the numerous witnesses who have appeared before this Chamber have  
2 stated that this special issue does not refer to the evacuation;  
3 it talks of the final assault.

4 Then we have the statement of Nuon Chea and he stated in the  
5 hearing on the 14th of December 2011 that there was a meeting of  
6 the Standing Committee and of some members of the Central  
7 Committee in May 1974.

8 The problem we face is that the meeting referred to by Nuon Chea  
9 does not tally with the 15-day Congress of the Central Committee.

10 Nuon Chea states that that extraordinary meeting lasted only  
11 three days. And in Nuon Chea's statements, what is interesting is  
12 that he states that Khieu Samphan did not attend that meeting.

13 And he explains why. That was at the hearing of the 14th of  
14 December. He states that at that meeting -- apart from members of  
15 the Standing Committee -- only some members of the Central  
16 Committee were present. And he states -- and I quote: "Those who  
17 were supposed to disseminate the information in their respective  
18 zones and relay the decisions that were taken at that congress."  
19 End of quote.

20 [11.30.49]

21 And here, the point he makes is very important. He explains why  
22 Khieu Samphan was not in attendance at that meeting by saying --  
23 and I quote: "It was up to the zone secretaries to decide who had  
24 to attend those meetings." End of quote.

25 And further down, he states that: "Khieu Samphan was absent

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1 because he was not assigned to a zone." End of quote.

2 He also explains that Khieu Samphan, being an intellectual, it  
3 was Pol pot who -- I quote: "Managed him." He also points out  
4 that, at that period, the number of participants were decided by  
5 Pol Pot depending on the needs felt on the ground.

6 [11.31.42]

7 It is logical for Nuon Chea to explain why Khieu Samphan was not  
8 in attendance at that meeting and why that meeting lasted three  
9 days and why it only concerned members of the Standing Committee  
10 and members of the Central Committee who had zone  
11 responsibilities. Against this backdrop, we have this key witness  
12 of the Prosecution, Phy Phoun -- Rochoem Ton alias Phy Phoun. He  
13 was called to testify before this Chamber and he stated that  
14 Khieu Samphan was present in April 1974, and that he approved the  
15 decision to evacuate Phnom Penh.

16 Now, this witness, Phy Phoun, is very vocal, but if you are very  
17 vocal, Mr. President, it doesn't mean that you are telling the  
18 truth. Now who is this famous Phy Phoun? This Phy Phoun, who was  
19 the source of a lot of data gathered in the course of research --  
20 Short tells us he was his main source as he carried out his  
21 research.

22 [11.33.00]

23 When Phy Phoun was questioned by the investigators from the  
24 Office of the Investing Judges, refers in passing to a meeting in  
25 the middle of 1974 that lasted 15 days or thereabout, but he does

1 not describe that meeting. He says that the decision to evacuate  
2 Phnom Penh was taken in April 1975 at B-5; and throughout his  
3 testimony, Phy Phoun makes the same distinction between the two  
4 meetings.

5 At the hearing on the 23rd of July 2012 when the Prosecution --  
6 with a view to corroborating its case -- asked him whether during  
7 the first meeting in 1974, the evacuation was discussed; this is  
8 what he said -- and I quote: "I do not think this matter was  
9 discussed"; and he remains firm throughout his testimony  
10 regarding this distinction he makes.

11 [11.34.13]

12 The Prosecution insisted and even tried to suggest to him that  
13 during that 15-day Congress, the evacuation may have come up and  
14 he answered on the 30th of July 2012, referring to the  
15 evacuation: "I only heard about it on one occasion on B-5. I have  
16 no other details on this subject." End of quote.

17 And when he refers to this discussion on the evacuation broached  
18 during the second meeting, which he says was in early April 1975,  
19 he goes further and states that the participants -- and I quote:  
20 "Talked about the evacuation of the town but did not give any  
21 details during that meeting."

22 And further down, he points out -- and I quote: "minor details  
23 were not referred to either." End of quote.

24 Whether we believe him or not, it is important to note that even  
25 if the evacuation did take place and was decided in April 1975 in

1 the presence of Mr. Khieu Samphan, an allegation he denies, they  
2 did not talk about the means of implementation. And when you have  
3 to discuss the issue whether Khieu Samphan contributed to the  
4 implementation of that evacuation, if we do not have any facts  
5 supporting the allegation that the evacuation took place in his  
6 presence, how could we have involved him in the implementation?  
7 This point should be raised upfront and emphasized.

8 [11.36.18]

9 However, Phy Phoun's version is problematic. First of all, Phy  
10 Phoun did not attend the meeting. We recall that Phy Phoun was a  
11 body guard and he himself states -- and I quote: "I did not  
12 attend that meeting because I was mounting guard outside.  
13 However, I heard the speeches." End of quote.

14 Now, let us backtrack a little and see what he told the  
15 Co-Investigating Judges in 2008. On that occasion, he said that  
16 he was able to hear what was being said because he was behind a  
17 wall, a fence surrounding the hut in which the meeting was held.  
18 And behind that leaf wall he was able to hear what was happening  
19 at that meeting in April 1975 because -- and then, this time  
20 around, he said he was behind a termite mound. When he was  
21 questioned on this contradiction, this is what he said -- and I  
22 quote: "It is up to you to choose the version you want." End of  
23 quote.

24 [11.37.46]

25 He even goes further -- he could have said I don't want to answer

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1 the questions put to him by the defence counsel. At the 31st June  
2 2012, Judge Lavergne put questions to him to obtain further  
3 clarifications from him. And this is what he said -- I quote: "I  
4 don't want to answer this question because I wouldn't like to  
5 contradict myself." End of quote. And the height of all this, if  
6 you allow me to do so, is that Rochoem Ton alias Phy Phuon, at  
7 the end of that hearing, hasten to meet the press and declared to  
8 the "Cambodian Daily" that he was very confused during the  
9 hearing.

10 Mr. President, Your Honours, this is the testimony of the  
11 Prosecution's key witness regarding the participation of Mr.  
12 Khieu Sampan with regard to the decision to evacuate Phnom Penh.  
13 Now regarding the discussion of the date, of course, it posed  
14 problems and the Prosecution revisited that issue with a view to  
15 try and see whether the expert witness Chandler could confirm  
16 that February 1975 was the right date. And he maintained that  
17 date at the hearing. And further on, he pointed out -- and I  
18 quote: "The decision to evacuate the town was taken by the CPK  
19 leaders shortly before the liberation of Phnom Penh but that was  
20 secretly -- that even took the commanders unawares." End of  
21 quote. That was at the 19th of July 2012 hearing.

22 [11.39.47]

23 Regarding this surprise, several soldiers who came to testify  
24 before this Chamber confirmed that they were surprised; I'm  
25 thinking of Oeun Tan at the hearing of 9th of January 2013, this

1 is what he stated. He talks about a meeting chaired by Son Sen,  
2 15 days before the offensive and he states -- and I quote --  
3 there was also a third point among the points that were discussed  
4 -- and I quote:

5 "If we were to gain ground during the offensive, we had to do our  
6 best to liberate the town." And as I pointed out, in the  
7 interview, he did not talk about the evacuation; he only talked  
8 about the offensive and gaining ground in order to liberate the  
9 town. End of quote.

10 Another witness Sum Chea, at the hearing of the 5th of November  
11 2012, states the following -- and I quote: "We did not receive  
12 any instructions. We were told to fight until we entered Phnom  
13 Penh and captured it and it was only after we captured the town  
14 that we were told that we had to evacuate the people." End of  
15 quote.

16 [11.41.10]

17 And in this regard, Nuon Chea's position makes sense; if you had  
18 a small number of people who are aware of that evacuation, even  
19 the orders that were not issued immediately, there was no reason  
20 to publicize that decision to evacuate the town, if any such  
21 decision had been taken at the time indicated.

22 Expert Short, in his book titled: "Pol Pot: Anatomy of a  
23 Nightmare", says that that decision was taken in September 1974.  
24 And when we ask questions regarding his sources, we find this  
25 famous Phy Phoun who had mixed up the dates and who told the

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1 Chamber, vehemently, that they did not talk about an evacuation  
2 before April 1975. This is the key testimony on which the  
3 Prosecution is relying to say that Khieu Samphan participated in  
4 the decision to evacuate Phnom Penh. We have internal  
5 inconsistencies that are already problematic. We have a hard time  
6 imagining that, in early April -- a few days before the final  
7 offensive -- the risk -- the high security risk would be taken to  
8 assemble all the commanders in one location leaving the troops on  
9 their own without any commanders. That raises problems.

10 [11.43.05]

11 Phy Phoun's testimony is not only riddled with internal  
12 inconsistencies, he also refuses to answer questions. We have the  
13 testimonies of other -- Pol Pot's body guards who were present  
14 with him in his headquarters. We have Saloth Ban; he was nephew,  
15 body guard, care provider to Pol Pot up until the capture of  
16 Phnom Penh. He said that he worked with Phy Phoun and that his  
17 name was Cheam. Saloth Ban talks about meetings at B-5, but in  
18 small committees with one or two zone leaders at the time, which  
19 would appear to be more logical in light of any military strategy  
20 that may have been put in place. And he recalls that Pol Pot  
21 indeed met one or two zone cadres and he said that he himself,  
22 Saloth Ban, had guessed that their objective was to talk about a  
23 plan to attack the Phnom Penh town, but that he did not know  
24 anything precisely because, you maybe a nephew of Pol Pot, some  
25 secrets will be kept from you. Saloth Ban said he was not aware

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1 of the evacuation, and there again, it corroborates statements of  
2 witnesses who appeared here, who showed that things had to be  
3 done secretly during that period. Saloth Ban said he did not see  
4 Khieu Samphan at certain times at the headquarters. He said he  
5 saw him at the headquarters -- I beg your pardon -- but not at a  
6 major meeting.

7 [11.45.09]

8 During the hearing of the 25th of April 2012, this is what he  
9 said:

10 "Yes, I saw Khieu Samphan there. It was not a big meeting; I saw  
11 him drawing up a list. I think he was drawing up a list of  
12 ammunition. As for the subjects discussed at the meeting, I am  
13 not aware of them."

14 Question put to him: "Did Mr. Khieu Samphan have any military  
15 responsibilities during the attack on Phnom Penh?"

16 Answer: "No."

17 Question: "Why did he have to draw up lists of ammunition if he  
18 had nothing to do with military matters?"

19 Answer: "From what I gathered, since he was able to write and he  
20 was educated, he had been asked to lend a hand." End of quote.

21 [11.46.01]

22 An additional point that would help us to recall that the title  
23 of commander of the armed forces doesn't hold. When did we see  
24 the commander of an army going to draw up the list of ammunition  
25 like an ordinary officer? In Saloth Ban's version, the facts, as

1 he recalls them, would show that the small committee meetings  
2 makes more sense, but Saloth Ban did not contend himself with  
3 saying that. This is another issue which contradicts what Phy  
4 Phoun stated. He states that as part of the supervision of  
5 meetings, there was a distance, a security distance of 15 to 60  
6 metres for guards and that was obligatory. By the way, Phy Phoun  
7 agreed to that at the hearing of the 10th of August 2012. Saloth  
8 Ban stated and I quote -- when he was asked whether it was  
9 possible for the guards to spy on what was happening at the  
10 meeting and he said -- and I quote: "I don't think it was  
11 possible, even body guards were not entitled to stand anywhere  
12 close to the venue of the meeting." End of quote. And he explains  
13 that the headquarters and the hut and the distance were decided  
14 or predicated by the need to keep what was said secret.

15 [11.47.47]

16 It's not only Saloth Ban who contradicts Phy Phoun; we have  
17 another body guard at the 13th of June hearing, he stated -- and  
18 I quote: "When they worked, body guards had to stand 20 meters  
19 from the venue of the meeting", and he said that that distance  
20 was too far aware from the venue of the meeting for anyone to  
21 hear what was being said at the meeting. What transpires from  
22 these testimonies is that, on the eve of a major offensive, you  
23 have to pay attention to make sure that what is discussed in  
24 meetings is not open to the public because it would pose risks.  
25 I do not know whether it is as a result of these internal and

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1 external inconsistencies in the testimonies of these body guards  
2 that the Prosecution had the problem and had to call Nou Mao to  
3 its rescue, yes Nou Mao. The Prosecution wanted to use this  
4 witness to fill the gaps in the testimonies of Phy Phoun. This  
5 witness -- let me remind you -- was not on the list of witnesses  
6 of the Co-Prosecutors. This witness was not interviewed by the  
7 Co-Investigating Judges and the Prosecution filed a motion on the  
8 17th of February 2013 to have this witness testify in extremis,  
9 in the last minute. Now, we remember that Nou Mao explained that  
10 he had been wounded on the battlefield as he fell off his  
11 hammock; Nou Mao, who arrived before this Chamber. How did he  
12 arrive before this Chamber? Because in the handwritten notes of  
13 Ben Kiernan, Khieu Samphan's name was mentioned next to the word  
14 "evacuation" and this witness, Nou Mao absolutely had to be  
15 someone to appear before this Chamber. They had to find him. They  
16 had to find out whether he was indeed the person and that was not  
17 in vain because, as you would recall, the witness, Nou Mao -- and  
18 we have dwelt on this at length in our written submissions --  
19 when we asked the question as to the circumstances under which he  
20 was brought before this Chamber, Nou Mao contradicted himself all  
21 the way.

22 (11:50:50)

23 Everything he said from one minute to the other was contradicted  
24 by him and at the 19th of June hearing, it is true that the  
25 Prosecution was at its wits' end to get him to get him to say

1 anything clearly. When he was asked whether Khieu Samphan's name  
2 was on Ben Kiernan's notes, he said he did not have any recorded  
3 -- any recording -- it was said that he didn't have any recording  
4 of Nou Mao's interview; that they didn't know how Khieu Samphan's  
5 name appeared on Ben Kiernan's notes. But since there was mention  
6 of Khieu Samphan, they had to call that witness and at the  
7 hearing of 19th of June 2013, Nou Mao, indeed, appeared before  
8 this Chamber. 19 of June, 11 hours 08, the question was put to  
9 him as follows -- and they were referring to the year 1974:

10 "You talked about Ta Mok's plan to evacuate Phnom Penh; you also  
11 referred to Chou Chet's plan. In this regard, did you know what  
12 the opinion of the other leaders -- that is, other than Chou Chet  
13 and Ta Mok, was?"

14 Answer: "I knew nothing about that. I was in the commune. It was  
15 therefore impossible for me to know anything further on the  
16 subject."

17 [15.51.27]

18 And later on, he points out: "I was an ordinary member of the  
19 commune. I could not have known anything further on that matter."

20 19 of June 2013, 11.12: After asking questions repeatedly, the  
21 prosecutor ended up citing the passage in Ben Kiernan's notes in  
22 which Mr. Khieu Samphan's name appeared.

23 Question: "Mok and Khieu Samphan were in favour of the evacuation  
24 1974. Mr. Nou Mouk, does that refresh your memory, the names and  
25 this sentence: Mok and Khieu Samphan were in favour of the

1 evacuation of Phnom Penh?"

2 Answer: "I do not remember."

3 1123H on the same day and this is a question from the

4 Prosecution: "At the time, did you know what Khieu Samphan's  
5 opinion was regarding the evacuation?"

6 Answer: "I did not know Khieu Samphan. Allow me to remember the  
7 name Khieu Samphan, Hu Nim, Hou Youn, I do not remember. Oh yes,  
8 there was Hu Nim, Hou Youn and Khieu Samphan."

9 [11.53.57]

10 And lastly, painfully at 1125H: Hallelujah for the accusation.

11 The answer is finally given by Nou Mao. "Khieu Samphan was favour  
12 -- was in favour of the evacuation."

13 That was his position, but he doesn't tell the Chamber how he  
14 came by that position.

15 This lasted only briefly for the Prosecution because the next  
16 day, in the morning, I questioned the witness myself. The  
17 question was very clear and I asked him:

18 "Can you explain to the Chamber whether you knew Khieu Samphan's  
19 position regarding the evacuation of Phnom Penh; yes or no?"

20 Answer: "I did not know his position. As I have pointed out, I  
21 knew the position of Hou Youn, who spoke during that meeting. He  
22 stated that the inhabitants of the town did not have to be  
23 evacuated. As for Khieu Samphan and Hou Youn, I did not know  
24 them." End of quote.

25 [11.55.13]

1 And let me point out here, as we wrote in our submissions, E266,  
2 there are no -- there's no confusion on the term "position".  
3 There's -- there can't be any mix-up. And in Khmer, "tjomhaa" is  
4 indeed the position of Khieu Samphan regarding the evacuation of  
5 Phnom Penh and witness Nou Mao, although he explained to us that  
6 he had given us the copy of Ben Kiernan's notes, he had tried to  
7 learn them by heart in order to do what he had to do during the  
8 hearing. He was obliged to admit that he did not know.  
9 This is a witness who had been called to come and rescue people.  
10 So if we want to set the decision to evacuate Phnom Penh in June  
11 1974, which again, is not Phy Phuon's version; if we want to set  
12 that date -- the date of the evacuation on that date to say that  
13 Khieu Samphan was in attendance at that Congress, we should  
14 remember that Khieu Samphan travelled between April and June  
15 1974.  
16 In April 1974, he joined Ieng Sary and Sihanouk in Peking - and  
17 it's document E3/3315 -- and then he went to Romania; in May, he  
18 went to Algeria.  
19 [11.57.01]  
20 Several sources say that he was in Laos in June 1974 -- document  
21 E3/1398 -- we have the written statement; July 2010, the former  
22 Secretary at the embassy, Kurt Schumann, does indeed recall that  
23 in March-July 1974, Khieu Samphan was on a trip.  
24 We also recall, even though the Prosecution tried scandalously to  
25 ask the Chamber to impose sanctions on my learned colleague, Kong

1 Sam Onn, regarding a problem of translation, you will recall that  
2 the wife of the Accused reminded the Chamber that during his --  
3 her husband's trip abroad, she had her baby and that when Khieu  
4 Samphan returned home, he came to spend time with her.

5 We also have Khieu Samphan's position. Of course, no one wants to  
6 believe us because each accused is lying, but he tells us that --  
7 in the "History of Cambodia" -- document E3/18 -- he tells us  
8 that he heard of the evacuation on the day of the evacuation  
9 itself, like other soldiers' did -- besides.

10 [11.58.44]

11 We may believe him or not. Short does not believe him, but he  
12 says that it is in line with what he had told him when he granted  
13 him an interview. You may believe him or not. But as my learned  
14 colleague has told the Chamber, at that date, Mr. Khieu Samphan  
15 was not even a full-fledged member of the Central Committee. He  
16 was not a full-rights member of the Central Committee.

17 We may also take Short's position into account and he says that  
18 at the time you could not have objected to any decision-taking  
19 without facing problems.

20 Mr. President, Your Honours, this is the evidence before you  
21 regarding the decision to evacuate Phnom Penh. I do not know  
22 whether I need to remind you, but it is a fundamental principle  
23 in criminal law: When there is a doubt, it is to the benefit of  
24 the Accused.

25 I think we can take our break here.

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1 [11.59.52]

2 MR. PRESIDENT:

3 Thank you, Counsel.

4 The time is now appropriate for lunch adjournment. The Chamber  
5 will adjourn now and resume at 1.30 this afternoon.

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

9 The Court is now adjourned.

10 (Court recesses from 1200H to 1330H)

11 MR. PRESIDENT:

12 Please be seated. The Court is now back in session, and the  
13 Chamber would like to give the floor again to Khieu Samphan's  
14 defence to continue presenting their closing statement in Case  
15 002/01. You may now proceed.

16 MS. GUISSÉ:

17 Thank you, Mr. President.

18 When we broke, I had completed the review of the evidence on the  
19 evacuation of Phnom Penh, the first phase, and the decision about  
20 it. And now I'd like to come back for a few moments to the  
21 alleged contributions to the population movements and I mean the  
22 contributions of Mr. Khieu Samphan, of course.

23 [13.32.43]

24 Paragraph 1153 of the Closing Order says: "Through the different  
25 roles that he had in the CPK, Khieu Samphan participated in the

1 displacement of populations from the cities and the  
2 conglomerations towards rural areas and from one rural area to  
3 another." End of quote.

4 My learned colleagues have referred to a certain number of roles  
5 played by Khieu Samphan; sometimes purely nominal ones, and I'd  
6 like briefly to touch on other roles now, which have been  
7 discussed in this Chamber. In particular the education sessions  
8 that he is meant to have conducted; his connections with  
9 commercial matters; and briefly, the Prosecution's theory on 870.  
10 And when I say briefly, you would have understood, Mr. President,  
11 Your Honours, that the position of the Defence is to state that,  
12 within the framework of the severance and regarding the period  
13 during which the population movements were decided upon and then  
14 put into effect, we are not supposed to go beyond 1976 - or,  
15 rather, you are not supposed to go beyond 1976 in reviewing the  
16 role, and in ascertaining what Khieu Samphan may have done to  
17 contribute to the event.

18 [13.34.48]

19 The Prosecution's theory on 870 echoes the theory on trade and  
20 commerce. And so I will have to say one or two things about that.  
21 But initially, I do want to check what the Closing Order set down  
22 as being Khieu Samphan's contribution to the policy of the  
23 population movements. And these include public speeches made  
24 after the events.

25 Paragraph 1161 of the Closing Order, the Investigating Judges

1 refer to a 1982 interview with Khieu Samphan in which he  
2 purportedly admitted to participating in the collective decision  
3 to forcibly transfer the population of Phnom Penh. Now this is of  
4 no particular surprise to anybody because it's something that we  
5 have discussed as part of the examination of Steve Heder and with  
6 other witnesses as well. And we made it clear that when we talk  
7 about politicians and when you talk about giving public speeches,  
8 the question is all to do with that you can and cannot say when  
9 you take the podium.

10 [13.36.37]

11 The point is important and it's been underscored a number of  
12 times by Khieu Samphan himself. After 1979, you are not ceased of  
13 the facts but of course you know what actually happened. The end  
14 of our file begins when Vietnam stages its invasion and when the  
15 war continues after that. And when in 1982 Khieu Samphan was  
16 speaking in public, he was doing so in that particular context.  
17 Further on, another role that has already been referred too -- I  
18 will not dwell on this -- is the famous virtual title as  
19 Commander-in-Chief of the army and many witnesses and the experts  
20 who have come here have testified that Khieu Samphan had no  
21 military authority. And that title existed so as to give him a  
22 place at the head of the Front. Now, this is important because as  
23 we, ourselves, have told you during the hearings and in the last  
24 few days, it was the army that organized the first phase of the  
25 evacuation. The second phase, following the rare testimonies we

1 do have, was comparable and we have already explained what the  
2 zone armies were, what their powers were, and what their  
3 historical background was.

4 [13.39.05]

5 I shall not come back to the paucity of evidence on the subject  
6 of the decision. I talked about that this morning. But there is  
7 another element put forward by the Prosecution whereby it is said  
8 that Khieu Samphan must have participated in the evacuation  
9 because he arrived in Phnom Penh shortly afterwards. And the  
10 discussion about the precise date when he came to Phnom Penh is a  
11 complicated one. We have both had different versions for quite a  
12 long while depending on the evidence that we have heard on one  
13 side and on the other. There's Phy Phuon and there's Short's  
14 version of the 20th of April. There's the version of Pol Pot as  
15 he announce it at a press conference on the 24th of April.  
16 There is Khieu Samphan's memoirs where he says he came to Phnom  
17 Penh seven or ten days after the 17th of April. One way or  
18 another, we are in the same kind of time frame and we are  
19 definitely talking about a decision that post-dates the  
20 evacuation decision.

21 [13.40.55]

22 We have also heard evidence that the leaders and Khieu Samphan  
23 did not arrive immediately because the city needed to be made  
24 secure and safe first. And I draw your attention to the elements  
25 I brought up when we talked about the evacuation of Phnom Penh

1 and the military risk with the few remaining pockets of  
2 resistance of Lon Nol soldiers. And these are elements to be  
3 borne in mind about the whole context and timing of the arrival  
4 of the leaders and of Khieu Samphan himself.  
5 You heard Khieu Samphan's own reaction when he heard about the  
6 evacuation and his first reflex was to say: "Well, why was this  
7 really necessary?" And I refer you to E3/18, his book where he  
8 talks about the conversation with Pol Pot who answered him, "You  
9 intellectuals, you are all the same. You never have your feet on  
10 the ground." He, the intellectual, and I'm picking up on what was  
11 said this morning by my learned colleague, Arthur Vercken, about  
12 the fact that he, the intellectual, is meant to be responsible  
13 for the radio broadcasts, who was the front line figure at that  
14 time. And among the elements we should call into the  
15 Investigating Judges contributed to the first population  
16 movement, there are speeches that preceded the 17th of April  
17 1975. And I'll only mention those by saying that, yes, when you  
18 speak openly and when you're in the middle of a war, you usually  
19 talk about the enemy and you usually invite your own troops to  
20 win a victory and you're usually glad when they do win.  
21 [13.43.32]  
22 In paragraph 1161 there is also the fact that Khieu Samphan was  
23 very pleased about the triumph of his new leftist regime. And  
24 expressing pleasure that your own political ideals have won over  
25 is not in itself a crime. The Closing Order also quotes

1 statements that were made at a later stage, which echo the public  
2 positions that I mentioned earlier. And there is a speech on  
3 Chinese radio, the 13th of August 1975 that is quoted here in  
4 document E3/119 and a speech of the 18th of August 1976 at  
5 Colombo at the Non-Align Movement Summit in E3/149. I think a  
6 word or two should be said about these speeches because the way  
7 they have been presented by the Prosecution is a little bit  
8 risible. The way this is referred to in the Closing Order  
9 suggests that Khieu Samphan is giving an idyllic version of the  
10 situation after the evacuation and of the situation of Cambodia  
11 in general. And when you think about these for a second time, I  
12 think you will understand that it's not quite as simple as that.  
13 [13.45.44]

14 The interview of the 13th of August 1975, in other words a few  
15 weeks after the evacuation, paints a difficult picture of the  
16 predicament in Cambodia and it lists the different facets that I  
17 have told you about concerning the overall picture of the  
18 country. And Khieu Samphan, there, is playing his role as a  
19 figure head trying to ensure that friendly countries will give  
20 their support to Democratic Kampuchea in putting its economy back  
21 on its feet again. And that effort for economic restoration comes  
22 up in the other speech.

23 The 1976 Colombo speech is full of the same kind of echoes.  
24 Remember the historical context once again, during '75 to '79, we  
25 were in the throes of the cold war. And some of the Non-Align

1 countries decided that they wanted to have their own voice, act  
2 independently, and not follow the dictates of either of the super  
3 powers. It wasn't a very easy thing to do but it's an important  
4 point for Khieu Samphan because, when he took the floor at the  
5 Non-Align conference, his aim was to share ideas with friendly  
6 countries whose aid and assistance was forthcoming and was  
7 accepted by Cambodia.

8 [13.47.44]

9 And this is what he said in 1976; this is 00912031, ERN in French  
10 -- I quote:

11 "After the liberation, our people and our government had to  
12 tackle many serious problems bequeathed by the extremely  
13 barbarous aggression war waged by the American imperialists. More  
14 than a million people out of a population more than 8 million  
15 inhabitants were victims of that war. Domestic animals that were  
16 our labour force had been killed in the hundreds of thousands,  
17 countless factories, paddy fields, fields, and villages had been  
18 obliterated. Certain communication road ways had been completely  
19 destroyed and others had been 70 to 80 per cent destroyed. The  
20 problem of food rations was extremely grave." End of quote.

21 [13.48.44]

22 So it's not a particularly idyllic picture he is painting. It's  
23 more like a presentation of all the challenges that have to be  
24 met. And in his speech, Khieu Samphan -- whether or not it was he  
25 himself who wrote the speech, we know that most of the speeches

1 were written by Pol Pot -- in his speech to the potential allies,  
2 to the friendly countries who might have provided assistance,  
3 there was a very diplomatic resolve there to ensure that the  
4 country would get the assistance it needed. Unlike the position  
5 taken by the Investigating Judges, this speech was not to justify  
6 the movement of a population; it was to diplomatically encourage  
7 those countries to provide the economic assistance that the  
8 country needed. It, in no way, illustrates Khieu Samphan's desire  
9 to directly or indirectly participate in committing crimes.  
10 Nothing can be adduced of that kind from that speech.

11 [13.50.20]

12 As for his alleged contribution to the second population  
13 movement, we've looked at documents concerning that second  
14 movement and we know -- and this has been acknowledged by the  
15 Prosecution -- that Khieu Samphan and Ieng Sary were out of the  
16 country. Not only were they abroad but they had been there since  
17 well before the time the meeting took place.

18 There was a radio broadcast on the 20th of August 1975; it's  
19 E3/119 that refers to a trip to Korea. And this is, "Khieu  
20 Samphan, Deputy Prime Minister left Peking for Pyongyang on the  
21 19th of August 1979 for a courtesy visit to Democratic People's  
22 Republic of Korea." End of quote. He was in China and then he  
23 went to Korea. So he was a good many miles away from that  
24 meeting.

25 [13.51.43]

1 We also said a word or two about the supposed meeting with Ieng  
2 Sary and in response to the rather bizarre suggestion from the  
3 Prosecution that we should believe Ieng Sary and at the same time  
4 disbelieve him, it's true that Ieng Sary's quotes are often used  
5 in this Chamber in an exclusively inculpatory way. We'll come  
6 back to that. But on the question of Khieu Samphan's contribution  
7 to the second movement of the population, the recent discourse  
8 coming from the Prosecution is that because he was working in the  
9 Ministry on the Commerce Committee, he played a contributing part  
10 in that second population movement.

11 [13.53.05]

12 Before we look at his activity in the framework of the Commerce  
13 Committee and I say in the framework of -- not at the head of.  
14 I'm going to enlighten you on that. Let me just say a word or two  
15 about the education sessions. It is important to look at these as  
16 well because some of them happened before the 17th of April 75  
17 during the period when Khieu Samphan was in the jungle. Kong Sam  
18 Onn, my colleague, said a word or two about this and some of them  
19 took place after that date. And it is quite interesting to see  
20 that in the sessions described by the Prosecution, the evidence  
21 put before you has been carefully side stepped. When I talk about  
22 the evidence, I don't mean the evidence that was initially there  
23 on paper -- a statement by the Co-Investigating Judges or a  
24 statement by civil parties -- I am talking about the evidence  
25 that emerges once questions have been asked, once parties have

1 confronted each other giving testimony and who have gone beyond  
2 the terms of the written statements.

3 [13.54.36]

4 And in the evidentiary hearings, we did not hear anything that  
5 would confirm that there had been a criminal intention or any  
6 kind of incitement to crime by Mr. Khieu Samphan. The dates of  
7 those training sessions are fairly obscure sometimes. But the  
8 dates that are important within the framework of the Severance  
9 Order because you cannot decide that tomorrow's act has a direct  
10 incidence on yesterday's decision. But nevertheless, let us  
11 address some of these education sessions and let us recall two  
12 witnesses who were particularly muddled, but whose testimony is  
13 being used by the Prosecution to support the notion that Khieu  
14 Samphan had a criminal intent here because, at the education  
15 sessions, he is supposed to have said things against the  
16 "enemies", and he's supposed to have talked about policies that  
17 in themselves were criminal.

18 [13.56.19]

19 The first muddled witness that came before this Chamber was Ek  
20 Hen. Ek Hen, who went to education sessions: one given by Nuon  
21 Chea, one given by Khieu Samphan. And on the 3rd of July 2013,  
22 you noticed that she was giving contradictory versions of what it  
23 was like. She was clearly confused between Khieu Samphan and Nuon  
24 Chea's participation and with respect to the relevant dates. And  
25 in the hearing she said that, at an education session, Khieu

1 Samphan talked about the arrest of Pang and she situated that in  
2 1976.

3 Your Honours, you know that Pang, a priori, was only arrested in  
4 1978. And in the conclusion, remember what the witness said on  
5 the 3rd of July 2013 at about half past two -- quote: "Maybe I  
6 gave a disorderly answer; my memory isn't as good as it used to  
7 be. This goes back more than 30 years. But both of them chaired  
8 sessions and I went to sessions where both of them were  
9 chairing." End of quote.

10 [13.58.07]

11 And I have to smile, Mr. President, when I see in the  
12 Prosecutions closing submissions the justification that is given  
13 by the Co-Prosecutors for saying why Ek Hen was not wrong. And  
14 why she was induced into making a mistake by the Investigating  
15 Judges. Well, goodness me, for once we actually agree; that means  
16 all of that battle we were waging to say that we did not want to  
17 have mere written statements as evidence, but that evidence was  
18 something that came out of the mouths of real witnesses in the  
19 Chamber, suddenly the Prosecution agrees because it suits them on  
20 this particular occasion to agree.

21 The second muddled witness -- and when I say "muddled", I think,  
22 I should be using a stronger word was a civil party, Em Oeun. And  
23 Em Oeun was not testifying under oath because he was a civil  
24 party. Em Oeun was meant to come and talk about when Mr. Khieu  
25 Samphan talked in an education session at which he had talked

1 about the enemy. And I am most struck by the way this testimony  
2 is presented in the Prosecution's closing submission. It seems as  
3 if the Defence never interrogated this civil party at all. Em  
4 Oeun was very confused and gave contradictory versions. It wasn't  
5 Nou Mao but it was pretty near. Em Oeun said that he had to be  
6 believed when he says that he remembers word for word what was  
7 said almost 40 years ago at a supposed education session, which -  
8 well, we don't know if it was held in 1975, 1976, or 1977.

9 [14.00.47]

10 And Mr. President, you will remember and there were many dates in  
11 this testimony that it was rather hard to follow what was going  
12 on and it is true there may be people who forget days but there  
13 should at least be some kind of consistency in the unfurling of  
14 the facts. And it's that consistency that is lacking.  
15 Some sort of logic in Em Oeun's statements was looked for, but  
16 there wasn't any. He stated that his father died in 1974. On the  
17 20th of August 2012, in the hearing, he told us about his  
18 father's death, and then when he attended the education session  
19 conducted by Khieu Samphan and Nuon Chea, Khieu Samphan was  
20 President of the State Presidium and his father was the one who  
21 had told him about the appointment. But Mr. President, Your  
22 Honours, Khieu Samphan was appointed President of the State  
23 Presidium only in April 1976, and so it's therefore absolutely  
24 impossible for the deceased father of Em Oeun in 1974 to have  
25 been able to pass on that piece of information.

1 [14.02.42]

2 Another thing is that we are supposed to take it for granted that  
3 Em Oeun could remember everything word for word. When we tried to  
4 find out whether he remembers when his father died, he doesn't  
5 give us any information on that. Following his father's death in  
6 1974, we hear that, subsequently, he was killed in a pagoda by  
7 Pol Pot, by the Khmer Rouge while he was praying. On another  
8 occasion, it was American B-52 bombs that killed him. So, I don't  
9 know where the truth is in all that. I don't know why there are  
10 all these different versions. But I am sure of one thing, and it  
11 is that you cannot rely on his testimonies. Why? Because that  
12 civil party was able to retain word for word what Khieu Samphan  
13 said 30 years ago during a hypothetical training session. And I  
14 refer the Chamber and the parties to Em Oeun's 21 August 2012  
15 statements.

16 [14.04.32]

17 And to conclude on this point, let me remind the Chamber that as  
18 part of his examination, we learned that that supposed training  
19 session lasted only four days. That is what we learned from the  
20 28th of August 2012 testimony. You, therefore, understand why,  
21 Your Honours, I am asking you not to rely on the testimony of  
22 this civil party to form your opinion. And here, again, I am  
23 using these examples to underscore the important of examination  
24 of witnesses and civil parties in Court, because if we had only  
25 had the written statements of Em Oeun, he wouldn't have been

1 caught out. Of the thousands of written statements you would have  
2 to consider, we would find similar statements like that of Em  
3 Oeun.

4 In spite of the similarities between the two statements I've just  
5 referred to, the Prosecution maintains that this is probative  
6 evidence. The Prosecution is trying to put negative words in  
7 Khieu Samphan's mouth. As Kong Sam Onn pointed out in his  
8 presentation on the character of Khieu Samphan, most of the  
9 witnesses came here and said positive things about Khieu Samphan,  
10 but the Prosecution focuses on what is negative. All we are  
11 asking the Chamber to do is to consider all that is on record  
12 regarding training sessions. First of all, Khieu Samphan rarely  
13 attended training sessions. At the hearing of the 20th of  
14 September 2012, it was stated: "Khieu Samphan rarely spoke at  
15 training sessions; it was mainly Mr. Nuon Chea who took the  
16 floor. In attending training sessions, I only saw him once; the  
17 other sessions were chaired by Nuon Chea." End of quote. This  
18 confirms the functions that Nuon Chea always said he held during  
19 that period.

20 [14.07.55]

21 Another testimony is that of Suong Sikoeun and he stated that he  
22 recalled attending a training session at Borei Keila where he saw  
23 Khieu Samphan from a distance, and he said that only Nuon Chea  
24 was the speaker at that session. At the same hearing regarding  
25 the contents of that training session, there is nothing else that

1 would support the Prosecution case, or the Prosecution argument  
2 -- and I quote -- it is still the 6th of August 2012 at about 14  
3 hours, 19, this is Suong Sikoeun speaking:  
4 "It was -- it had to do with the abolition of the situation  
5 particularly with regards to the transition from the Democratic  
6 to the Socialist system. It had to do with the national  
7 liberation movements in different regions of the world." End of  
8 quote. This echoes the presence of Khieu Samphan in Colombo  
9 where, in a political phase -- and he's trying to instil a new  
10 dynamic, a new impetus and it is still Suong Sikoeun testifying.  
11 [14.09.30]

12 Now this is what other witnesses said, even Phy Phuon -- the  
13 famous Phy Phuon, my learned colleague referred to him. He also  
14 stated at the 31st of July 2012 hearing, he said that, "It was  
15 Pol Pot and Nuon Chea who chaired the meetings." He also said  
16 after examination-in-chief by the Prosecution that he did not  
17 recall hearing the word "smash" with regard to the enemy. That  
18 was on the 31st of July 2012, at about 11.33.

19 We also heard the testimony of Chea Say at the hearing of the  
20 20th of September 2012, and he said that: "There was no  
21 instigation during those training sessions to do evil things. It  
22 was an idea of endeavouring to build and construct the country."  
23 He also adds -- and I quote: "That people should always think of  
24 the positive aspects inculcated in them -- that is, to do good to  
25 others and not to harm anyone, and to help everyone to meet the

1 needs." End of quote.

2 [14.11.15]

3 Even Ek Hen has a rather blurred memory of what happened and he  
4 didn't say anything negative regarding what Khieu Samphan would  
5 have said. At the hearing of the 21st of August, he said: "He  
6 talked about the struggle and he said we should help one another.  
7 And these were good pieces of advice." End of quote.

8 We also have Ruos Suy who talks about technical advice. He talks  
9 of Khieu Samphan's visit to the warehouse saying that there were  
10 never any political training sessions involving Khieu Samphan and  
11 that he was involved mainly with technical matters -- and I  
12 quote: "When he attended meetings he told us to properly manage  
13 equipment and the warehouses."

14 [14.12.20]

15 Sao Sarun at the hearing of the 6th of June 2012, also refers to  
16 a training sessions that was allegedly conducted by Khieu Samphan  
17 and Nuon Chea and he said that Khieu Samphan only attended the  
18 opening and closing sessions. That was at the hearing of the 6th  
19 of June 2012, Sao Sarun says the following -- and the question  
20 asked was as follows:

21 "Do you recall what he said when you refer to those economic  
22 issues?"

23 Answer: "It was a question of encouraging and leading people to  
24 participate in farm work in order to avoid the famine." The late  
25 motif here is to avoid the famine. And I call it a late motif for

1 the reasons explained on Friday. It was an idea of trying to  
2 avoid the famine which was inevitable. It is not the Khmer Rouge  
3 saying so; it is from a report regarding American assistance. Sao  
4 Sarun confirms on the 11th of June 2012, at about 9.14; he says  
5 the following: "Instructions were on how to lead the people so  
6 that they should engage in farming and be good citizens. That is  
7 all." There is very little regarding training sessions that Khieu  
8 Samphan allegedly gave to intellectuals. It is only one witness  
9 who relates what his wife said.

10 [14.14.22]

11 If we backtrack a little, still with regard to Phy Phuon, going  
12 back later is important because the Prosecution has told us that  
13 we should be careful with the policy to attack the New People.  
14 The policy to attack the civilian population dated well before  
15 1975, and yet, at the time of the Front, Phy Phuon, on the 25th  
16 of July 2012, said -- and I quote:

17 "From my recollection regarding the forces on the Front, we had  
18 to, first of all, harness the forces of the intellectuals and  
19 assemble all of them. Since we had to assemble the forces within  
20 the country, but there were distinctions between the classes and  
21 we had to assemble as many forces as possible without  
22 concentrating only on peasants and workers; we had to assemble  
23 people from all walks of life." He said that the national forces  
24 should rally all the forces, "We should have very strong  
25 consolidated force and would also need support from external

1 sources." End of quote.

2 [14.15.54]

3 This is, therefore, what Khieu Samphan said during the period  
4 when the Prosecutor says that he supported a plan aimed solely at  
5 attacking the New People. We have heard this many times and not  
6 only from a Defence witness: mobilize the forces, harness the  
7 forces to support the Revolution.

8 We also have Pean Khean at the hearing of 17th of May 2012. He  
9 tells us at about 10.13: "We were reminded of the political lines  
10 on how to build the country to make it prosperous, to make sure  
11 the people had enough to eat. I read all that in the documents."  
12 End of quote. In this regard, I would refer the Chamber to the  
13 original in Khmer because, apparently, there are translation  
14 problems in the French.

15 [14.17.05]

16 I refer to Ong Thong Hoeung, one of the rare people who referred  
17 to one of the conferences, one of the lectures that Khieu Samphan  
18 gave when his wife arrived. And this is what his wife told him --  
19 this is at the hearing of the 7th of August 2012:

20 "Khieu Samphan told us that we had to be good patriots because we  
21 had gone back to Cambodia and that the country needed to develop  
22 itself. That we needed resources and that we needed to form  
23 ourselves." These are examples of what can be said if we believe  
24 those witnesses and this is what Khieu Samphan said during that  
25 period. And this ties in with what I presented on Friday from DK

1 documents at the time. Why am I spending time on what was  
2 allegedly said? Because it is important as far as joint criminal  
3 enterprise is concerned. What is important is criminal intent. If  
4 Khieu Samphan issued such instructions, why were these  
5 instructions not implemented? We cannot blame Khieu Samphan for  
6 the failure to implement his instructions.

7 [14.18.33]

8 And the last area has to do with education. There is a meeting  
9 dated 5th of January 1979, and since it is important, I will  
10 refer to it briefly. We are told that three witnesses refer to  
11 that meeting: Sim Hao, Ruos Suy, and Duch. Duch refers to a  
12 meeting dated the 6th of January 1979, whereas others talk of a  
13 meeting on the 5th of January. What we know, by and large, is  
14 that, on that date, Khieu Samphan referred to the imminent  
15 arrival of the Vietnamese. And that session was put forward by  
16 the Prosecution with the view to showing that Khieu Samphan held  
17 or delivered speeches against the Vietnamese enemies. And this  
18 raises a question, we are on the 5th of January 1979, we know  
19 that the Vietnamese are fast approaching and that they would  
20 attack the following day. When an army attacks another country, I  
21 believe that we refer to the people attack as the enemy.

22 [14.19.56]

23 Another important point is that, contrary to the Prosecution case  
24 that it is proof that Khieu Samphan asked people to take care of  
25 the enemy within, but at the 13th of June 2013 hearing, we are

1 told that -- by Sim Hao, that Khieu Samphan asked people to dig  
2 trenches -- and I quote:

3 "I do not know whether it was to attack or not but it was a  
4 question of he gave us instructions to dig trenches to protect  
5 ourselves from bombs and shells. How could we have attacked  
6 people that evening? We were working; we were not armed."

7 [14.20.49]

8 This is very important as far as this testimony of Sim Hao is  
9 concerned. On that day, Khieu Samphan said that everyone had left  
10 except for himself, 12th of June 2013 hearing. There was a  
11 general panic and we have a situation in which one person is  
12 presented as having all the powers. This is surprising; it  
13 definitely doesn't tie in with the evidence as the Prosecution  
14 would like us to interpret it.

15 I would like to end on the issue of training sessions or  
16 education sessions.

17 I am done with that and I will now talk about trade, Khieu  
18 Samphan's activities regarding trade -- not as the head of the  
19 commerce department, but with regard to commerce. Khieu Samphan  
20 had already described his work in Office 870 as always being  
21 related to trade. This is interesting; it is interesting that, in  
22 the same way as the Prosecution is asking the Chamber to  
23 interpret everything and to say that Khieu Samphan was at the  
24 head of 870, the evidence is distorted to give the impression to  
25 everyone that Khieu Samphan was the head of the commerce

1 department.

2 [14.22.31]

3 As my learned colleague, Vercken, has pointed out, as Doeun took  
4 over from him -- the issue of him taking over from him in 1977 is  
5 obvious in the facts of the case. At the same time we should also  
6 pay attention to his activities with regard to trade since the  
7 Prosecution says that it is at the very heart of the second  
8 population movement and yet, we, of the Defence, argue that Khieu  
9 Samphan always played a technical role in the commerce  
10 department.

11 It also explains why Khieu Samphan was aside. The Prosecution has  
12 said he was at the very heart of things and if he was at the very  
13 heart of the leadership, why was he not in the Standing  
14 Committee? If he was at the centre of power, why is it that at  
15 the time they were discussing appointments in 1975, appointments  
16 to the Commerce Committee, why was he not the person appointed?  
17 That is a question that the Prosecution has eluded because they  
18 want us to entertain another thesis, another case regarding Khieu  
19 Samphan that he was at the very heart of power.

20 [14.24.15]

21 In April 1975, we know that the main issue was to revamp the  
22 economy. You needed a trade policy, but, unfortunately, there  
23 weren't many people in a position to play a technical role. And I  
24 refer you to the minutes E3/230, E3/238. In regard to these  
25 documents, my learned colleague has already told you about the

1 exchanges between friendly countries and assistance in the form  
2 of food and medicine as well as other kinds of aid received by  
3 the DK regime.

4 Nuon Chea, Suong Sikoeun and even Short have explained to the  
5 Chamber that decisions were taken mainly by the Standing  
6 Committee. And as Suong Sikoeun said at the 8 June 2012 hearing,  
7 a number of ministries existed on paper but they were not at all  
8 -- they didn't have an organization chart.

9 Philip Short also tells us at the 6th of May 2013 hearing the  
10 powers to take decisions were held by the Standing Committee,  
11 even though ministries did exist. Some had no authority and  
12 merely served as conveyor belts to pass on information or  
13 decisions taken.

14 [14.26.06]

15 Document E3/182 Minutes of Standing Committee meeting, the  
16 Standing Committee appoints Comrade Hem, Khieu Samphan, as the  
17 person in charge of the Front and the Royal Government, trade and  
18 list of prices.

19 On the 13th of March 2013, second document, E3/230: "The Standing  
20 Committee decides to create a Commerce Committee to examine and  
21 prepare goods that had to be bought." End of quote. Who is the  
22 President in these minutes? It is not Khieu Samphan; it is Thuch.  
23 Khieu Samphan is a simple member at this meeting. Khieu Samphan  
24 is appointed President of the Committee to examine banking  
25 problems. And we will see later on with Sar Kimlomouth that

1 banking activity in Democratic Kampuchea was completely – was  
2 almost inexistent.

3 [14.27.20]

4 In another document we are told that Khieu Samphan was appointed  
5 President of the State Presidium. However, who was Prime Minister  
6 in charge of the economy? Who was at the head of the different  
7 committees, including the Commerce Committee? It was not him but  
8 Vorn Vet, which, contrary to what has been stated in the  
9 Prosecution closing brief -- we are not talking of a simple  
10 candidate member of the Standing Committee but a full-fledged,  
11 full-rights member of the Standing Committee. Vorn Vet was  
12 vice-Prime Minister in charge of the economy and the communiqué  
13 specifies that, "Committees were set up under the vice president  
14 in charge of the economy and the president of each committee had  
15 the rank of minister of the DK government." End of quote. So it  
16 was Vorn Vet who was in charge of the Commerce Committee, not  
17 Khieu Samphan.

18 [14.28.26]

19 A few days later -- document E3/236 -- we have the summary of the  
20 decision of the Standing Committee of the 19th and 20th of April  
21 1976 specifying the organization charge of Office 870 and the  
22 members of the Commerce Committee were Rith, Nhem, and Chhoeun.  
23 Khieu Samphan was not among them. And it was on the 21st of April  
24 1976 that Khieu Samphan was appointed according to the same  
25 document and we read that he was appointed alongside with Van and

1 Ieng Sary -- and I quote: "Regarding problems of commerce and  
2 industry and along with Thuch, as regards problems having to do  
3 with technical matters."

4 Mr. President, Your Honours, we see that Khieu Samphan was not a  
5 president of 870. Not because he was in control of everything and  
6 this document of April 1976 showed that all he had to do was to  
7 provide technical support. And this has been corroborated by  
8 witnesses who have testified before this Chamber.

9 [14.29.56]

10 Furthermore, in May 1976 -- 7th of May 1976 -- document E3/220 --  
11 it is Doeun who was in charge of setting up the team for external  
12 trade and not Khieu Samphan. So, all that Khieu Samphan did in  
13 the 870 office, had to do with this technical issues.

14 The Prosecution has also told us that in commercial matters,  
15 telegrams prove that Khieu Samphan supervised that committee. I  
16 refer you to document E3/240, dated June 1976, and which deals  
17 with the sale of Yugoslavian equipment. We have a document  
18 relating Van Rith and it contains notes by Van Rith. The ERN in  
19 French is 00167627, and therein, it is written as follows:

20 "Bong Hem told us that Bong Vorn did not want to buy all this  
21 equipment and asked us to find a pretext to respond to RUDNAP. So  
22 Van Rith -- Bong Hem told us that Bong Vorn did not want it."  
23 Same thing in November 1976, when a report of a meeting with  
24 Koreans is copied to Khieu Samphan; it's not directed --  
25 addressed to him but it's merely copied -- E3/2041 -- and I

1 quote: "Our opinion: we await Angkar's decision." End of quote.

2 The opinion is given by the person who drafted the report and  
3 this is not Khieu Samphan and it is Angkar who decides and not  
4 Khieu Samphan.

5 [14.32.22]

6 Other documents corroborate this -- E3/2040, E3/2038, E3/2041,  
7 and the Prosecution ignores the fact that some documents were  
8 addressed to Khieu Samphan and others were addressed to Angkar at  
9 the upper level.

10 Another point we should take note of is that, these documents  
11 were merely copied to Khieu Samphan whereas Doeun was still  
12 president of the Commerce Committee. Why was Khieu Samphan  
13 copied? Because he was in charge of technical matters in that  
14 office.

15 Another important point -- this isn't within the scope of the  
16 trial but it does demonstrate the logic of the Prosecution -- in  
17 February 1977, a Yugoslav delegation arrives in Phnom Penh, and  
18 if in February 1977, Khieu Samphan did officially receive the  
19 Yugoslav delegation as President to the Presidium, it is not he  
20 who is going to be in charge of the commercial negotiations, it  
21 is Vorn Vet and Doeun. And it was in fact in Vorn Vet's honour  
22 that the Yugoslav Embassy threw a banquet on the 24th of  
23 February. And it was Doeun, chair of the Commerce Committee who  
24 gave a speech, as you can see in E3/1485. We're outside the scope  
25 of the trial, but here, we have a demonstration that what the

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1 Prosecution is saying is untrue.

2 [14.34.12]

3 Another example, since we are continually told that Khieu Samphan  
4 is in charge of commerce, but Ieng Sary in '78 was in charge of  
5 commercial relations with China. And there's another document  
6 tells us the minutes of the meeting with the trade delegation as  
7 shown in the negotiation minutes -- E3/829 -- which came out of  
8 that actual meeting. It wasn't Khieu Samphan who was in charge;  
9 it was Ieng Sary and Van Rith. So this doesn't really bolster the  
10 Prosecution's theory whereby Khieu Samphan was the successor of  
11 Doeun.

12 Another important point is that the Prosecution, when presenting  
13 these key documents on trade, had made a general and systematic  
14 amalgam between documents that were concerning Khieu Samphan and  
15 other people hoping to pulpit all together as if no difference  
16 could be seen. And you will see in fact that the only letters  
17 that we have that are precisely addressed to Khieu Samphan  
18 concern Yugoslavia and Korea, which is part of their technical  
19 assistance and advice that he gives on things that ought to be  
20 purchased: E3/340, E3/2040, "To Much Respected Brother Hem";  
21 E3/2041, "To Beloved Brother Hem"; all substantiate this. But  
22 when we go into more delicate areas, when we refer to documents  
23 that are more secret or are generally weightier when it comes to  
24 management, Angkar is not addressed by Khieu Samphan but by  
25 somebody else.

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1 [14.36.46]

2 If you allow me to close on this point, Mr. President, we can  
3 then have our break. So I will just finish on this theme.

4 In E3/1902, the mail is sent to "Beloved Angkar", and the answer  
5 to that mail is signed by the Committee of Commerce. So as we saw  
6 in the documents I referred to, Khieu Samphan isn't the person at  
7 the head of that committee. And in E3/875, it says: "I learnt  
8 through Angkar"; in E3/1907, "We were informed of your mail by  
9 Angkar." And all of those references suggest direct management by  
10 the summit of the Party, and not by Khieu Samphan. There is no  
11 mention of copied to Hem and yet the Prosecution asks you to  
12 amalgamate ideas despite the clarity of the documents that do not  
13 suggest that that should be done. That brings me really to an end  
14 of that theme, Mr. President, so that might be a good moment at  
15 which to take our break.

16 MR. PRESIDENT:

17 Thank you Counsel.

18 The time is appropriate for a short break. We will take a  
19 20-minute break and return at 3 p.m. to resume our proceeding.

20 (Court recesses from 1438H to 1500H)

21 MR. PRESIDENT:

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

23 I now hand over the floor to the defence team for Mr. Khieu  
24 Samphan to resume her closing statement. You may proceed.

25 MS. GUISSÉ:

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1 Thank you, Mr. President.

2 When we went on break, I was looking at documents which the  
3 Prosecution would like to absolutely link to Khieu Samphan,  
4 whereas nothing links him to those document, and that is why I  
5 talked of this document presentation session that was meant to  
6 pull the wool over your eyes.

7 [15.02.14]

8 As the Prosecution tried to mix up documents and the different  
9 echelons as if there were no distinctions between the different  
10 levels, as if they did not know that during Democratic Kampuchea  
11 things were very carefully compartmentalized. And that is the  
12 reason why the Prosecution wanted us to believe that Khieu  
13 Samphan was at the head of the Commerce Committee, whereas, the  
14 documents show a different situation. And they tried to put words  
15 in his mouth in order to link him to the arrest and to the  
16 disappearances.

17 And the documents presented during the key documents hearing  
18 were, as I said, meant to pull the wool over your eyes, to  
19 mislead you, because Khieu Samphan's name does not appear on the  
20 document E3/174, E3/ -- are all documents from the Ministry of  
21 Commerce.

22 [11.03.33]

23 Another important point which shows once again the extrapolation,  
24 the distortion that the Prosecution is unfortunately engaging in  
25 -- this is obvious and it was obvious when Sar Kimlomouth came to

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1 testify. Sar Kimlomouth was presented as the key witness on  
2 commerce and it is Sar Kimlomouth who told the Chamber at the  
3 hearing of the 5th of June 2012 -- and I quote:

4 "At the time, there was no communication with Hem. The bank did  
5 not report to him and he did not contact the bank. I did not meet  
6 him either."

7 A question put to him for clarification: "Confirm this: you never  
8 met Hem when you were Deputy Director of the Bank of Internal  
9 Commerce at the time; isn't it?"

10 And he said: "Yes." End of quote.

11 And this confirms what Sar Kimlomouth told you on the 31st of May  
12 2012.

13 The question put to him on that occasion very quickly -- during  
14 -- was as follows:

15 "During that period, did you ever meet or walk with Khieu  
16 Samphan?"

17 Answer: "No."

18 This is the key Prosecution witness on commerce who was supposed  
19 to talk about Khieu Samphan's activities and on which the  
20 Prosecution relies to say that he interpreted documents and which  
21 shows that Khieu Samphan was at the head of the Commerce  
22 Committee.

23 [15.05.30]

24 The witness commented on those documents, but our objections were  
25 not taken into account. He saw him for the first time in the

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1 Office of Co-Investigating Judges. It was the investigators who  
2 showed him the documents that he commented on giving the  
3 impression that he was an expert.

4 And he says so very sincerely at the 5th of June 2012 hearing in  
5 answer to a question put to him.

6 Question: "Allow me to sum up what I have just said. You did not  
7 know the relations with the -- Hem with the economy and commerce  
8 department before the investigators from the Office of  
9 Co-Investigating Judges showed you the document; is that  
10 correct?"

11 Answer: "Yes, that is correct. These suppositions -- and I  
12 underscore the term 'suppositions' -- I did such suppositions on  
13 the documents that were shown me."

14 This is the evidence presented by the Prosecution. This is the  
15 distortion that the Prosecution keeps engaging in distorting all  
16 the documents before you.

17 [15.06.38]

18 However, there is one thing that Sar Kimlomouth did, which is  
19 interesting, which doesn't tie in with the Prosecution case and  
20 it is that it was Van Rith who took over from Doeun at the head  
21 of the Commerce Committee: 5th of June 2012, Sar Kimlomouth  
22 explains -- and I refer you perhaps to the Khmer original because  
23 there may be problems with the translation -- and I quote:  
24 "I did not meet Van Rith immediately after my return to Phnom  
25 Penh nor at the time when the structure of the Commerce Committee

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1 was being reworked; when Doeun was replaced, that was when I met  
2 Van Rith." End of quote.

3 So, Sar Kimlomouth said in his testimony that he met with Vorn  
4 Vet and Van Rith, but that he never met with Khieu Samphan.

5 [15.07.49]

6 And this is what we, the Defence, are denouncing and saying that  
7 it is unacceptable that the investigators pushed the witnesses to  
8 speculate, to say -- this is a key witness, a central witness. He  
9 can talk about documents, but these are documents shown him for  
10 the first time as part of the investigations. Come on.

11 However, we have witnesses who corroborate Khieu Samphan's  
12 statements as to his activities and you heard those witnesses. We  
13 have Ruos Suy and more importantly, we have the famous telegraph  
14 office staff member who was in charge of decoding telegrams and  
15 messages. And what did those witnesses tell the Chamber? Norng  
16 Sophang, for instance, this is what he says:

17 "The communications addressed to Khieu Samphan never had anything  
18 to do with security; they always had to do with supplies,  
19 material, equipment and goods."

20 [15.09.00]

21 Hearing of the 29th of August 2012:

22 Question: "You said that Mr. Khieu Samphan was in charge of  
23 supplies of equipment. How did you know he had such  
24 responsibilities?"

25 Answer by Mr. Norng Sophang: "Mr. Khieu Samphan was not -- it

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1 wasn't easy to know. Whenever there was a head of state visiting,  
2 it was Khieu Samphan who received those foreign dignitaries.  
3 Normally, he sent equipment to stock up the local levels and he  
4 sent telegrams asking me to prepare the quantities of materials  
5 that he had to receive and distribute, so it passed necessarily  
6 through my unit." End of quote.

7 On the 3rd of August 2012, the same Norng Sophang confirms that  
8 food was distributed at the base. "That was his work. That was  
9 Khieu Samphan's work, apart from his activities in the area of  
10 diplomacy and representation of the state as President of the  
11 State Presidium."

12 [15.10.12]

13 And Norng Sophang is reminded of what he had stated in a previous  
14 statement. Based on document E3/64, regarding areas under his  
15 jurisdiction, this is what he said.

16 Question: "How about Khieu Samphan?"

17 Answer: "I had these messages from him regarding the distribution  
18 of salt, husked rice, material, clothing, sandals, and other  
19 material that had to be distributed to the inhabitants. These  
20 were different kinds of materials and products distributed to the  
21 people. I did not often receive messages from Khieu Samphan.  
22 Apart from that, I sometimes decoded messages from Khieu Samphan  
23 in the form of circulars, directives; such as circulars regarding  
24 different national day celebrations."

25 "Does that sum up the description of Khieu Samphan's duties as

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1 you knew them?"

2 Answer: "Yes, that is correct."

3 And Norng Sophang goes even further. He's asked whether between  
4 1975 and 1979 these messages that are attributed to Khieu Samphan  
5 or that are related to Khieu Samphan, whether there was a change.

6 [15.11.32]

7 And this is what he said at the hearing on the 20th of September  
8 2012.

9 Question: "I would like to know whether from your experience  
10 between 1975 and 1979 you observed any change in the subject of  
11 messages that Mr. Khieu Samphan asked you to decode. You refer to  
12 a number of subjects to the investigators. Before this Chamber,  
13 you talked of distribution of equipment and national day  
14 celebrations. During the period from 1975 to 1979, did you  
15 observe any change in the topics and messages that Mr. Khieu  
16 Samphan entrusted to you for decoding?"

17 Answer: "There was nothing new. There was no change in the  
18 messages. They were the same kinds of messages, typical  
19 messages."

20 Kham Phan confirms this on the hearing of 14th of December 2012.

21 This is what he stated. A question was put to him as follows --

22 and I quote:

23 "During the period when you worked in the telegraph office, do  
24 you recall receiving orders from Hem regarding specifically  
25 rice?"

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1 Answer: "No, but I only remember that rice was sent to our sector  
2 and it is Hem who had sent it."

3 [15.12.49]

4 Question: "Very well. Was Hem -- that is Khieu Samphan, I want to  
5 make it clear; was he in charge of the exchange of telegrams  
6 regarding security matters, arrests of persons or any other kinds  
7 of security matters in your sector or region?"

8 Answer: "No. He had nothing to do with security. I never saw his  
9 name associated with security matters. Messages sent to Khieu  
10 Samphan solely had to do with equipment and goods."

11 Norng Sophang said he received and decoded encoded messages and  
12 that they had absolutely nothing to do with security.

13 [15.13.34]

14 You have witness Sim Hao who also describes to the Chamber  
15 activities in the warehouse and warehouses regarding imports and  
16 exports. There is proof of the dispatch of goods and rice to  
17 certain sectors:

18 "Yes, there were also exports."

19 "Why exports?"

20 "Here again, we are in the context of Cambodia during a war  
21 period, and it was important to know how we had to obtain foreign  
22 currency. We had to obtain materials and that is why they had to  
23 export things."

24 Sim Hao confirms at the hearing of 13th of June 2013 that Van  
25 Rith was President of Commerce Committee and that he told them to

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1 work very well as Khieu Samphan was going to come and visit the  
2 warehouse.

3 As for exports -- export commodities, you had rice, iron,  
4 unhusked rice, rubber, cotton and that is the reality. That is  
5 what they tried to do in Phnom Penh. And this is confirmed. And  
6 it is Sim Hao who confirms that Chinese paddy or unhusked rice  
7 was received and we saw this in the report of the Standing  
8 Committee meeting. There is no intention on the part of Khieu  
9 Samphan to famish the people.

10 [15.15.37]

11 At the hearing of the 21st of June 2012, one witness points out  
12 -- and I quote: "He was satisfied that these goods could be  
13 placed at the disposal of the people."

14 And this gives me the opportunity to rectify an error I made on  
15 Friday. Meas Voeun came not from 105 Region, but from 103 Region,  
16 which was supposedly headed by Khieu Samphan. At the time,  
17 communication was not very easy at the time. When he arrived at  
18 Region 103, he discovered that salt and mosquito nets meant for  
19 the people had not been distributed, and nothing is mentioned  
20 about local responsibilities here. The conditions were not ideal  
21 at the time. They were extremely difficult, but they did their  
22 best. He did his best -- that is, Khieu Samphan.

23 [15.17.06]

24 And this strategy used by the Prosecution to cover up decreases  
25 what was done in order to hold Khieu Samphan responsible and to

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1 say that he was head of Office 807 - 870, at the time, I beg your  
2 pardon.

3 I am pressing on because I'm running out of time.

4 We have the issues relating to the scope of the trial. It is,  
5 nevertheless, interesting to read in paragraph 558 in the  
6 Prosecution's closing brief. They said that Khieu Samphan was at  
7 the head of Office 870. We do not know what 870 means. This was a  
8 nebulous organization with many branches and the Prosecution is  
9 trying to confuse matters. We may well have witnesses who explain  
10 the daily activities of Khieu Samphan, but it doesn't matter to  
11 the Prosecution.

12 Even Phy Phuon -- Phy Phuon told the Chamber -- he told the  
13 Chamber so many things; that Khieu Samphan was at the head of  
14 Office 870. Even Phy Phuon -- and this transpires from his  
15 statement, his testimony, he said he went back and forth between  
16 S-21 and he says at the hearing of the 22nd August 2012 in answer  
17 to a question put to him whether - or, how he interacted with  
18 Khieu Samphan and he said -- and I quote: "Communications had to  
19 do with receiving people and visiting the provinces."

20 [15.19.28]

21 Question: "During the entire duration of Democratic Kampuchea  
22 between 1975 and 1979, did you work or collaborate directly with  
23 Khieu Samphan on issues regarding the arrests of persons and  
24 their elimination?"

25 Answer: "No, not at all."

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1 A little further down the same day at 9.48 -- and I quote:

2 "According to what I recall, when -- after Doeun or when he took  
3 over from Doeun, that meant that he had the general duties of  
4 Doeun and when I want -- I worked with him, he only welcomed  
5 others."

6 And it should be noted that in his statement, Phy Phuon says that  
7 Khieu Samphan occupied that position in September 1978 and it has  
8 nothing to do with this Trial.

9 Even Duch, who knew so many things - Duch, who knew so many  
10 things on the Khmer Rouge regime, when you look at his different  
11 statements before the Co-Investigating Judges, he had a different  
12 vision as he took cognisance of the case.

13 And that's how Lomouth speculates. Do we speculate on documents?  
14 Do we focus on those speculations or what was the fact?

15 [15.21.01]

16 My learned colleague, Vercken, at the hearing of the 2nd of April  
17 2012, made an objection at about 10.02 to 10.03. Duch was being  
18 examined by the Prosecution and this is what he said at the time  
19 -- Duch said at the time as of 10 a.m. The question that was put  
20 to him was as follows:

21 "Let me return to my initial question. At the CPK, of Doeun and  
22 Khieu Samphan, who held the highest or the high up position?"

23 And the answer, Mr. President, Your Honours, is very interesting.

24 This is what Duch said: "Mr. President, from what I remember, I  
25 was able to read the minutes of Khieu Samphan's interview by the

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1 Co-Investigating Judges and it corresponds to my version of the  
2 situation I was able to read."

3 [15.22.11]

4 He forms an opinion when a question is put to him and this time  
5 another question put to him at 10.03 -- and I quote:

6 "When you were at S-21, at the time when Doeun left 870, did  
7 Khieu Samphan take over from Doeun in the Central Committee?"

8 Duch said in answer: "I am not sure. There was someone who knew a  
9 lot and who received orders from Pol Pot and that went right down  
10 to S-21 and that was Pang."

11 This Pang which the Prosecution says was not at the head of 870  
12 -- 8 -- we talk of 871, 870; it's a nebulous organization.

13 There's something that doesn't tally with the activities of these  
14 organizations. Did the activities change then?

15 [15.23.06]

16 Another witness referred to this time by Short, since the  
17 Prosecution tells you that there are people who talked of Khieu  
18 Samphan as the head of Office 870 and experts Chandler and Short,  
19 in particular, refer to him in that capacity.

20 And when I asked the question to Short as part of my examination  
21 of Short as to what his sources were -- I asked him whether he  
22 worked on Office 870, which was not in principle his field of  
23 research -- and he said it was -- it was top secret and there are  
24 no decisions, and we asked the-- "Why is it that Doeun is at the  
25 head of 870 and not Khieu Samphan?"

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1 He said: "No, for Doeun, it is a secret, but not for Khieu  
2 Samphan."

3 And when Short is asked what his sources were and he's asked  
4 whether Office 870 could have been headed by Khieu Samphan at a  
5 particular time, he gave two sources. He said Phy Phuon, as he  
6 said himself, and then he also said Suong Sikoeun.

7 [15.24.23]

8 And Suong Sikoeun appeared before this Chamber to testify and  
9 this is what he said on the 6th of August 2012 when the question  
10 was put to him regarding Office 870.

11 Question -- 1404: "Did you hear between 1975 and 1979 of Office  
12 870?"

13 Answer: "Yes, I heard of Office 870. The communication was  
14 through Pang who was responsible for Office 870." End of quote.

15 Reference is also made to Saloth Ban as a source to show that  
16 Khieu Samphan was the head of Office 870; this Office 870 whose  
17 activities are not clear, and when we talk of 870, we should be  
18 sure that we are indeed talking of 870. It is all very vague.

19 What does Saloth Ban say?

20 I think it was at the hearing dated 22nd of April. It was,  
21 rather, on the 23rd of April -- I beg your pardon -- and it was  
22 at about 11:10 -- shortly before 11:10.

23 [15.25.52]

24 Question: "You told the Chamber that both Khieu Samphan and Pang  
25 held office -- some duties in 870, but that wasn't clear to

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1 everyone. What was the difference between the responsibilities of  
2 the two persons in Office 870 when they were working together?"

3 Answer by Saloth Ban: "Let me clarify one thing. Responsibilities  
4 were not clearly distinguished. I use the term 'responsibility',  
5 but I would have preferred to use the term 'assist'; assist in  
6 doing this or that or carrying out this or that activity because  
7 responsibility is related to politics. At the time, I was not  
8 officially informed of the role or position of persons and I used  
9 the term 'responsibility' to mean many things.

10 "Furthermore, regarding Khieu Samphan and his duties in the  
11 office, I had used the term 'responsibility', but I did not know  
12 exactly what his role and his functions were. All those who  
13 worked in Office 870 said that he had responsibilities within  
14 that office and so reference was made to them in general terms to  
15 say that they are persons working in Office 870 -- persons  
16 working in Office 870 attached to commerce."

17 What Mr. Khieu Samphan has said -- what has Mr. Khieu Samphan  
18 stated? "So far I was in Office 870. I delivered supplies. My  
19 activities had to do with trade."

20 [15.27.38]

21 Another Prosecution witness who testified about Office 870 is  
22 Norng Sophang. This is always one of the persons cited in this  
23 paragraph and this is what Norng Sophang said. That was at the  
24 hearing dated 29th of August -- I believe it was the 28th of  
25 August or 29th of August 2012 shortly after 11.55. This is what

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1 he stated regarding the 870 Committee and the distribution of  
2 different domains.

3 "Most of the telegrams regarding economy were from the 870 Office  
4 committees. Directives from 870 regarding -- had to do with the  
5 general situation in the country in all aspects; it wasn't only  
6 limited to economy and farming, but leaders responsible for the  
7 economy and farming were different. Of course, economy and  
8 farming were two different things with two different duties.  
9 Regarding economic affairs at the time, if I remember correctly,  
10 there was one person who was in charge of providing supplies to  
11 the base and that person was Khieu Samphan."

12 [15.28.59]

13 There we are. That is the activity that Norng Sophang links to  
14 Khieu Samphan. It is not arrest. It is not general policy  
15 nationwide, but providing supplies to the base. So there are  
16 things, of course, that we do not know, but when we try to link  
17 what the different witnesses said; when we link up the  
18 description of Khieu Samphan's activities, we realize that  
19 everyone corroborates what he said. "Yes, I worked with Doeun in  
20 Office 870 as part of my duties related to commerce and the  
21 purchase of supplies or goods. I was also involved in export and  
22 the distribution of supplies at the base. Period."

23 Similarly, the Prosecution tried to cover up traces of what was  
24 done. Even when the name of Khieu Samphan was not mentioned, the  
25 Prosecution tried to cover up what the reality is in order to --

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1 to use 870, this nebulous office, in a vague way without telling  
2 us who was doing what.

3 We have the testimonies that describe exactly what Khieu Samphan  
4 did and even Ieng Sary has told or told the Chamber what Khieu  
5 Samphan did.

6 I don't deny what he told Heder after the famous interviews  
7 following the amnesty. He said many things, but he himself says  
8 that he, "headed Office 870 at some time, but he was -- I don't  
9 know exactly what he did. He was a bit a like me". That is what  
10 Ieng Sary said.

11 [15.30.57]

12 So yes, today, we can try to mix things up in this nebulous  
13 organization called 870. Why is it so important for the  
14 Prosecution to establish a link between Khieu Samphan and Office  
15 870? Why in spite of the evidence we have on 870 and the  
16 technical assistance report? Why don't we focus on all these  
17 leads? Because all the documents, all the telegrams addressed to  
18 Khieu Samphan have to do with his activities, equipment and  
19 external trade. And at one point, the Prosecution had to find a  
20 link to say that he knew all that was happening in terms of  
21 security and arrests and that is the reason why the Prosecution,  
22 in spite of the confusion in the testimonies, in spite of the  
23 reality of the descriptions in the evidence presented before this  
24 Chamber, the testimonies before this Chamber, they go -- they  
25 even went further -- the OCIJ even went further and said that he

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1 was at the head of Office 870 because they needed that link in  
2 order to establish a link and to hold him criminally responsible  
3 for what happened throughout Democratic Kampuchea. But the fact  
4 is, it doesn't tally with the reality.

5 [15.32.32]

6 Another point --- Mr. President, Your Honours, another point is  
7 all of these statements that Khieu Samphan made later and the  
8 reality is that it's more the things he said after the fall of  
9 the regime that are problematic to Khieu Samphan today than what  
10 witnesses said about what he was doing during the period. What he  
11 is not forgiven is that loyalty; perhaps a little surprising,  
12 towards Pol Pot. And when I see the videos of Khieu Samphan in  
13 his jungle lodge where he lived for so long in exile and where  
14 he's saying that yes, he did admire a man who had managed to  
15 bring revolution to the peasantry and if you put that in parallel  
16 with the ideals that Khieu Samphan had, what he put across in the  
17 education sessions, what he said about change, what he defended  
18 during this period that he talked about with you and what Kong  
19 Sam Onn talked about, you can see that the problem is not so much  
20 denying what happened between '75 and '79. The problem is  
21 understanding that that is not what he was fighting for; in fact,  
22 not what he wanted and when, on the other side of the room,  
23 people say, "But wait, hang on a minute; he stayed after 1979" to  
24 the extent that he only went back to civilian life in Pailin  
25 after the death of Pol Pot, and on the Prosecution's side, a

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1 parallel was drawn with Samdech Sihanouk and let me make a  
2 parallel too.

3 [15.34.58]

4 In 1982, there was a coalition that Sihanouk belonged to and  
5 despite the rather cold feelings he had towards Pol Pot, he  
6 nonetheless accepted that alliance. Why? Because, at that time,  
7 his country was under attack and he was thinking first of his  
8 country. Perhaps he was thinking, as well, of his own power, but  
9 he was also thinking about the country.

10 And when Khieu Samphan writes the sacred vision of the  
11 independence of Cambodia is something that he has always fought  
12 for, not to reduce his people to slavery, not to attack the  
13 civilian population, but to try and improve life in a situation  
14 that he believed to be critical for his country; there you can  
15 see somebody who is ready to make every sacrifice.

16 [15.36.08]

17 And so I come back to this question when he says "we" after 1979,  
18 when he says "we" in his question by journalists at the height of  
19 the Vietnam War; why does he say "we"? Because, as in the FUNK  
20 period in the 1970s, he wanted to show a united front; he did not  
21 want to pull away from the group. And there were some things that  
22 he was not aware of, some things also that had been said about  
23 the regime which he did deeply believe in even if it was  
24 propaganda.

25 Don't forget that video the Prosecution showed us of Khieu

1 Samphan sitting in front of a pile of books about Democratic  
2 Kampuchea. For years, he read and read. He also wrote as well.  
3 He's been reproached for not speaking here, but he has spoken so  
4 much; he has written so much, and this is a man who is  
5 desperately trying to understand that why what he believed in did  
6 not work. Is that somebody who knows everything? No, I think  
7 that's somebody who's looking for answers.  
8 Certainly, it may have been much easier for him to be able to  
9 say, "Yes, they wanted to commit crimes and that was precisely  
10 their intention."

11 [15.37.56]

12 But he has his own truth that he lived through and that truth can  
13 be expressed by saying that the aim was not to make Cambodia  
14 suffer; the point was to take the country forward. It was not a  
15 success. They weren't starting off with a very easy situation.  
16 They were disorganized. They may have been incompetent, but they  
17 did not have criminal intent and that in a criminal trial is what  
18 matters.

19 I need to make a quote even if Mr. Khieu Samphan may wish to make  
20 a final statement, but I do want to quote what he wrote to his  
21 compatriots in his book on the history of Cambodia and his  
22 positions.

23 He said: "I believe it is my duty to support all the national  
24 forces in order to provide a small contribution to bring it out  
25 of the impasse that it was stuck in and that is precisely what I

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1 did every time I had a chance to do so within the limitations of  
2 my abilities." End of quote.

3 [15.39.25]

4 He continues in his letter to his compatriots dated August 2001

5 -- and I quote: "I have always been a simple intellectual who had  
6 a dream which was to fully fulfil my duty towards the country.

7 Over the last few decades of troubles, aware of my weakness, my  
8 only concern was not to forsake my duty. At no moment, did I wish  
9 to become a leader. At no moment either did I think of killing  
10 people." End of quote.

11 And he will conclude what, in fact, I was trying to say to you in  
12 the following way -- and I quote: "To my compatriots who lost  
13 many dear ones during this period, I ask for their forgiveness. I  
14 ask them to pardon my naiveté. I thought I was doing my duty for  
15 the survival and prosperity of the nation and I was unable to  
16 imagine that it would have led to such killings." End of quote.

17 This is the man that you are called upon to judge today; this  
18 person who has to be judged within the respect for the rules for  
19 procedure, and bearing in mind the decisions that you yourself  
20 took when you made a Severance Order. That, Mr. President, Your  
21 Honours, is the person who, as I said at the start of my  
22 intervention, is now alone -- physically alone on the defendant's  
23 bench.

24 [15.41.15]

25 He represents a period that has now gone by, but which certain

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1 people here remember. He represents ideals that doubtless have  
2 since then been betrayed. He represents weaknesses too; the  
3 failure for having taken the true measure of things in the more  
4 recent years. He's also a person who you have presented as a  
5 diabolical figure, but who in fact did not believe all the things  
6 he is accused of.

7 We are in a court of law here and joint criminal enterprise, as  
8 the Prosecution is claiming applies here, does not in fact hold  
9 water. It does not apply quite simply.

10 Let me remind you of what the Defence has said in its closing  
11 submission and in our conclusions on the applicable law.

12 [15.42.45]

13 In accordance with the case law, there is a distinction to be  
14 drawn between the ultimate objective and the criminal objective  
15 itself. You cannot deduce participation in criminal enterprise in  
16 this way. It -- there has to be significant participation in the  
17 entire enterprise for this to be significant participation in the  
18 criminal means used to pursue that objective is necessary. And  
19 everything that we have heard in this room and everything that  
20 has been described about the functioning and role, what was  
21 described by all of these various witnesses, have you seen or  
22 heard anything that should imply a significant participation in  
23 the criminal means used to put into effect a joint criminal  
24 enterprise?

25 In the framework of the first and second forced movements of the

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1 population or in Tuol Po Chrey, what was done by Khieu Samphan,  
2 the positions he occupied, the duties he fulfilled as a  
3 figurehead or otherwise, do you have any possible way of proving  
4 criminal participation in this enterprise? The answer is no and  
5 because the answer is no, you have to acquit, Mr. President, Your  
6 Honours, the Accused.

7 [15.44.26]

8 Despite the pain that we heard from the voices of the civil  
9 parties in this courtroom, you have to acquit. Despite the  
10 pressure of international opinion, you have to acquit. Despite  
11 the fact that everybody thinks that everything has been played  
12 out already, you are Judges. You have a duty vis-à-vis the law  
13 and a duty vis-à-vis procedure and a duty to be independent in  
14 your judgement.

15 Is this a duty that you are going to fulfil? Only you, Your  
16 Honours, will be able to answer that question when you come to  
17 deliberate.

18 And please do recall that all of the motivation behind your  
19 deliberations will be read most carefully afterwards.

20 Thank you very much.

21 MR. PRESIDENT:

22 Thank you, Counsel.

23 [15.45.57]

24 Today's proceeding to hear the closing statement by the defence  
25 for Khieu Samphan has now concluded as we scheduled.

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1 And before we adjourn today, the Chamber would like to inquire  
2 from the Lead Co-Lawyers for civil parties and the Prosecution  
3 regarding the time allocation for your rebuttal statement that is  
4 to be held on Wednesday the 30th of October 2013. Would the Lead  
5 Co-Lawyers for civil party inform the Chamber of the time needed  
6 and the time shared between the Prosecution?

7 We actually advise the Lead Co-Lawyers for civil parties and the  
8 Prosecution that the shared time allocation for both teams is one  
9 day. Please inform the Chamber of your arrangement and the Lead  
10 Co-Lawyers can start first.

11 Thank you.

12 [15.47.15]

13 MS. SIMONNEAU-FORT:

14 Thank you, Mr. President.

15 We are going to use all of the time that your Chamber has granted  
16 us -- that is to say, one quarter day -- 1 hour and 10 minutes to  
17 be precise.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you for the information for the Chamber.

21 And what about the Prosecution?

22 MR. KOUMJIAN:

23 Good afternoon, Your Honours. We would expect to use the rest of  
24 the day that the Court has allocated to us.

25 MR. PRESIDENT:

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1 Thank you for the information.

2 [15.48.06]

3 The time is appropriate for today's adjournment and the Chamber  
4 will adjourn now and we will resume the day after tomorrow --  
5 that is, on Wednesday the 30th of October 2013 commencing from 9  
6 a.m.

7 Tomorrow -- that is, the 29th of October 2013, is a public  
8 holiday and there will be no hearing tomorrow. And for Wednesday  
9 -- that is, the day after tomorrow, the Chamber will give the  
10 floor to the Prosecution and the Lead Co-Lawyers for civil party  
11 to make their rebuttal statement in Case 002/01.

12 And in order to coordinate the proceeding, the Chamber would like  
13 to remind all the parties to the proceeding that during the  
14 rebuttal, parties shall focus on the subject of this Trial, so  
15 that it can give the information for the Judges to deliberate in  
16 Case 002/01.

17 And this information is also for the parties and the support  
18 staff and the general public to attend the hearing the day after  
19 tomorrow.

20 Security guards, you're instructed to take the accused, Khieu  
21 Samphan and Nuon Chea, to the ECCC detention facility and have  
22 them returned to participate in the court proceeding on Wednesday  
23 morning -- that is, the 30 of October 2013 before 9 a.m.

24 Khieu Samphan shall be brought directly to the courtroom and Nuon  
25 Chea shall be taken to the holding cell downstairs, which is

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1 equipped with audio-visual equipment for him to follow the  
2 proceeding remotely.

3 The Court is now adjourned.

4 (Court adjourns at 1550H)

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