



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

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

31 October 2013

Trial Day 224

Before the Judges:

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

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
 Andrew MCINTYRE
 Simon MEISENBERG

For the Office of the Co-Prosecutors:

CHEA Leang
 Nicolas KOUMJIAN
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For Court Management Section:

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 KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

| Speaker | Language |
|-------------------------------------|-----------------|
| MR. KHIEU SAMPHAN | Khmer |
| MR. KOPPE | English |
| THE PRESIDENT (NIL NONN, Presiding) | Khmer |
| MR. NUON CHEA | Khmer |
| MR. SON ARUN | Khmer |
| MR. VERCKEN | French |

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

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 As scheduled today, the Chamber will hand the floor to the
6 co-Accused and their defence teams in order to make their final
7 statement in Case 002/01.

8 And before I hand the floor over to the Defence, starting from
9 the accused Nuon Chea, the Greffier, Ms. Se Kolvuthy, could you
10 report the attendance of the parties and individuals to today's
11 proceeding?

12 THE GREFFIER:

13 Mr. President, for today's proceeding, all parties are present.
14 Pich Ang, the National Lead Co-Lawyer for civil parties, will be
15 a little bit late this morning.

16 Thank you.

17 MR. PRESIDENT:

18 Thank you.

19 Security guards, can you bring the accused Nuon Chea to the dock
20 so that he can make his final statement?

21 (Mr. Nuon Chea is taken to the dock)

22 [09.03.56]

23 MR. NUON CHEA:

24 My respect to the venerable monks who are present here today and
25 those at the pagodas. My respect to my beloved compatriots.

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1 Honourable Court, up until now the Chamber has already spent more
2 than two years in order to determine my destiny for actions that
3 took place in Democratic Kampuchea from 17 April 1975 to 6
4 January 1979.

5 This is the period which I spent most of my entire life carrying
6 out my duties to serve my country and my beloved people. Despite
7 some of my indirect participation in this trial due to my poor
8 health, I have paid close attention to the presentation of
9 evidence by both the National and International Co-Prosecutors
10 and the examination of all witnesses before this Chamber from the
11 holding cell under this main courtroom.

12 [09.05.37]

13 Through this trial, it is clearly indicated that I was not
14 engaged in any commission of the crimes as alleged by the
15 Co-Prosecutors. In short, I am innocent in relation to those
16 allegations. Honourable Court, when I make such a claim, probably
17 some people who do not clearly understand the law or those who
18 are partial are mocking at me. However, that is okay for me. In a
19 very short moment, when I make my submission to the Chamber, they
20 will know that everything I say is true. In the spirit of the
21 law, this Court is created with the aim and responsibility to
22 find the truth and justice for me and for all victims by relying
23 on concrete, legal and credible evidence. In contrast, up until
24 now, the Co-Prosecutors have failed to present sufficient
25 evidence in order to satisfy, satisfy the elements of crimes that

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1 I stand accused of.

2 Some of my rights are not properly guaranteed in this Court;
3 namely my right to a speedy trial, a right to legal defence, a
4 right to a fair trial, and other rights guaranteed under national
5 and international laws. Moreover, many doubts regarding the
6 evidence have not been clearly clarified before the Chamber,
7 including, inter alia, the original documents and testimonies of
8 important witnesses who can support my defence.

9 [09.08.13]

10 As Your Honours have known, regarding this point, my lawyers have
11 already confirmed it to the Chamber clearly with proper legal
12 foundation. However, I would like to add some other important
13 points so that Your Honours can understand more clearly about my
14 innocence and integrity concerning the above allegations.

15 I make this claim based on three main points: one, absence of
16 power to control and to prevent.

17 Honourable Court and my beloved compatriots, on 9 July 2013, I
18 told the Chamber once already that I did not have any authority
19 or connection with the commission of the crimes during the
20 Democratic Kampuchea period. And once again, I would like to
21 reiterate that during the Democratic Kampuchea period I had only
22 three main roles; namely, as a Deputy Secretary of the Communist
23 Party of Kampuchea. In this position, I was in charge of
24 dissemination and educational propaganda about policy to CPK
25 members.

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1 [09.10.33]

2 Regarding the content of dissemination, I never educated CPK
3 members to exercise arbitrary authority or to behave badly
4 towards the people. Instead, I educated them to love, respect,
5 and serve the people and the country. I never educated or
6 instructed them to mistreat or kill people, to deprive them of
7 food, or to commit any genocide.

8 I always taught and educated CPK members and soldiers the main
9 principles of the CPK in order to make them do their work and
10 serve the people properly. Specifically, I educated them the
11 principles stipulated in Article 2 of the CPK's Statute so that
12 they could understand clearly their responsibility as the CPK
13 members for their participation in social activities.

14 [09.12.18]

15 Article 2 of the CPK Statute states as follows:

16 "Every Party member has the following duties:

17 "1) Duties amongst the popular masses:

18 "A. Propagandize and educate the popular masses on Party
19 politics, ideology, and organization, and mingle closely with the
20 popular masses, the workers and peasants in the unions,
21 cooperatives, and the Revolutionary Army. Must be highly
22 responsible to the popular masses, serve the popular masses with
23 all their heart and unconditionally, be polite to the popular
24 masses, and learn from the popular masses.

25 "B. Agitate and constantly educate the popular masses movement,

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1 especially the worker-peasant popular masses in the unions,
2 cooperatives, and the Revolutionary Army in connection with the
3 task of national defence and building Democratic Kampuchea in the
4 direction of socialist revolution and building socialism.

5 "2) Internal duties:

6 "D. Always and absolutely preserve, strengthen and expand
7 internal solidarity within the Party."

8 [09.13.57]

9 Your Honours, based on these principles, it clearly states that
10 the Party had the purpose to equip its members with high
11 responsibility to stay closely with the people, be kind to the
12 people, take care of the people, and learn from the people.
13 Especially, the Party encouraged the Revolutionary Army of
14 Kampuchea and people to be patriotic and protect the motherland.
15 Moreover, I always educated Party members to refrain from
16 exercising arbitrary authority, from womanizing, drinking,
17 corruption, and gambling, etc. Especially, the Party educated its
18 members to have solidarity within the Party and amongst the
19 popular masses.

20 What I have raised about is an example of my work that I did in
21 my capacity as Deputy Secretary of the CPK during the DK period.
22 In short, what I educated and taught all CPK members and the army
23 is the building of knowledge for them to be patriotic, protect
24 the nation, love the people, and have good internal solidarity
25 for the purpose of protecting and building a country for it to

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1 develop and prosper, to have real independence, and to absolutely
2 prevent any country, big or small, near or far, from invading and
3 colonizing Cambodia.

4 [09.16.16]

5 Smashing of invading enemy is the responsibility of the
6 Revolutionary Army of Kampuchea for the protection of its
7 motherland. For the same token, security-strengthening and
8 internal political stability must be implemented properly so that
9 the Revolution can develop and prosper. Based on general
10 viewpoint, this rule is not different from any rule implemented
11 by country leaders around the world who have to bear such
12 responsibility in order to maintain security and protect their
13 countries. Countries all around the world always legislate law to
14 serve politics and control the countries. If anyone violates the
15 law, that person will be punished in accordance with the law of
16 that country.

17 [09.17.29]

18 My second role as the Vice President of the Communication
19 Committee with Vietnamese Workers Party: Relationship with
20 Vietnam and its people had long been established. The
21 relationship was further expanded upon the inception and movement
22 of the CPK through the organization of Communication Committee
23 with Vietnam. The committee was established at all levels from
24 the Central to Zone.

25 At the Central level, Pol Pot was the President and I was

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1 President - Vice President of that committee. However, because
2 Pol Pot had many tasks to fulfil, I was appointed by the CPK
3 Standing Committee as Vice President to be in charge of this
4 affair on his behalf. That was the occasion that I had an
5 opportunity to hold meetings with the Communist Party of Vietnam
6 very often. From the time I was in charge of that affair, I
7 learned of the Vietnamese trickery and many secrets toward
8 Cambodia.

9 I recalled that when I joined the Communist Party of Kampuchea
10 Movement in 1950, Vietnamese army - that is, Viet Cong had had
11 its presence already throughout Cambodia. They had their elements
12 infiltrated in the CPK Movement, both in the Revolutionary Army
13 of Kampuchea, amongst civilian leaders, and within the population
14 of Cambodia.

15 [09.19.41]

16 I also recall that when the CPK was initially created it neither
17 had its office nor headquarters; it was under the complete
18 control and leadership of the Vietnamese Communist Party.
19 However, in early 1964, Pol Pot liberated the CPK from the
20 Vietnamese control. Pol Pot and a number of the CPK's Central
21 Committee members created its headquarters called Office 100.
22 Later on, that office was relocated to Ratanakiri province and at
23 that time the office was not completely independent yet.
24 Vietnamese military base, located in Zone 5 in Vietnam, employed
25 all kinds of tactics and strategies to control the CPK

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1 politically, economically, and militarily. In the year of 1960,
2 North Vietnam used Cambodia as their military base to fight the
3 South Vietnam - that is, the Thieu-Ky.

4 At the same time, the CPK Movement expanded dramatically after
5 the coup d'état against Prince Norodom Sihanouk on 18 March 1970,
6 which was led by the United States and traitorous Lon Nol, Sirik
7 Matak, and Son Ngoc Thanh. At that time, the People's
8 Revolutionary Army of Kampuchea was created and expanded quickly.

9 [09.21.59]

10 Also, by that time, Vietnam recruited some 3,000 Cambodian people
11 to receive training and education on technical skills, politics,
12 and psychology in North Vietnam. When they returned in mid 1973,
13 they were appointed to work in the Party line and within the
14 People's Revolutionary Army.

15 In short, Vietnam tried to employ all kinds of trickery to
16 control the CPK militarily, politically, economically, and
17 financially. Nevertheless, CPK leaders envisaged that what
18 Vietnam had done toward Cambodia was not consistent with the CPK
19 policy.

20 In early 1973, with the efforts to liberate the CPK led by Pol
21 Pot, who was then the CPK Secretary, and as the war in South
22 Vietnam intensified, Vietnamese Army decided to loosen its grip
23 on armed force and authority in Cambodia and refocus its effort
24 to fight with the South Vietnam. That was an opportunity for the
25 CPK and the army to gain independence and strengthen its force.

1 The CPK, under Pol Pot's leadership, implemented its principles
2 of independence, self-mastery, self-reliance, and deciding its
3 own nation and own destiny.

4 [09.24.33]

5 On 17 April 1975, People's Revolutionary Army of Kampuchea gained
6 victory over Lon Nol regime, and two weeks later South Vietnam
7 was also liberated. The People's Revolutionary Army of Kampuchea
8 liberated Phnom Penh by itself and they achieved this great
9 victory, and the Party gained full independence in managing the
10 country.

11 However, even though the Communist Party of Vietnam announced in
12 1973 that Vietnamese army had withdrawn and had no direct control
13 over the CPK Movement, in reality, the Vietnamese armed force and
14 many Vietnamese secret agents had long infiltrated in the CPK and
15 People's Revolutionary Army of Kampuchea in all places around the
16 country. Those people did not return to Vietnam. They carried out
17 their tasks covertly and overtly with Vietnamese ethnic
18 minorities and some Cambodian people.

19 [09.26.07]

20 At that time, we failed to realize the depth of Vietnamese
21 trickery; however, later on, we clearly understood their trickery
22 through the following four evidentiary points:

23 1) Reports that Cambodian people were deprived of food and forced
24 to work hard at local bases;

25 2) Cambodian people were killed;

10

1 3) Lower level cadres did not report the said situation to upper
2 echelon;

3 4) Some soldiers had friction and defected to Vietnam, especially
4 at East Zone.

5 The aforementioned points demonstrated that Vietnam had their
6 agents infiltrated in the Party rank and the army in order to
7 destroy Revolution, kill Cambodian people, and annexed Cambodian
8 territory, which had been a long-term ambition of Vietnam.

9 Actually, on 7 January 1979, Vietnam invaded Cambodia when they
10 had destroyed the revolutionary foundation at almost all the
11 local bases by starving and arbitrarily killing the people and
12 creating mistrust within the CPK. Vietnam had exercised its
13 control over Cambodia from 1979 to 1991 and ceased its control
14 only when Cambodia had Paris Peace Accord on 23 October 1991.

15 [09.28.22]

16 Acts of depriving food from the people and the killing of
17 Cambodian people were contradictory to the reason and policy of
18 the CPK, and based on this ground, I can conclude that those acts
19 were really the acts committed by Vietnam.

20 The CPK and I were very painful when we learned that we, the CPK,
21 were deceived by Vietnam that led to the deaths of our own people
22 and the destruction of our country. However, it seemed a little
23 too late to recover from the situation.

24 When Vietnam invaded Cambodia, diplomatic relation between both
25 countries was severed. National defence and military commands to

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1 engage in battle were the exclusive responsibility of Son Sen,
2 who was the Minister of Ministry of National Defence of the
3 Democratic Kampuchea regime. That was the time my position in the
4 Communication Committee with Vietnamese Workers Party completely
5 ceased.

6 [09.29.52]

7 Three, my role as President of the People's Representative
8 Assembly.

9 Honourable Court, after the liberation on 17 April 1975, I was
10 appointed as President of People's Representative Assembly.

11 Legally speaking, my position was to be in charge of legislation.

12 At that time, the war in Cambodia had just ended and the war with
13 Vietnam continued. We did not have sufficient time to legislate
14 many laws in this short time. In addition, considering the
15 situation Cambodia was in at the time, legislation was not a main
16 priority.

17 In line with the Communism doctrine, leadership of Democratic
18 Kampuchea as well as that of other Communist countries was one
19 that the Party leads and the state governs. In this sense, the
20 Party provides principles in its leading, while the state refers
21 to the government or the executive branch which has the authority
22 and power to govern the entire country. Indeed, only the
23 government has complete authority in issuing orders or
24 instructions or in implementing actions in governing the country.

25 [09.31.48]

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1 In that regime, despite the clear distinction in the separation
2 of power into three branches; namely, the executive, legislative,
3 and judiciary, as stipulated in the DK's Constitution, it was
4 merely symbolic in reality. The legislative and judicial branches
5 did not fully function, and in fact, only the executive branch
6 was fully functional with Pol Pot appointed as Prime Minister.
7 Hence, Pol Pot had overall executive power in leading and
8 controlling the Party line and the government as he was both the
9 Party Secretary and Prime Minister. In this position, no one
10 could replace him. Based on this, it shows clearly that I had no
11 effective power in governing and implementing the tasks of the
12 executive branch.

13 [09.33.16]

14 Concerning other allegations for my other positions, I would like
15 to clarify that beside the above positions I had never had any
16 other position. I was dumbfounded when the Co Prosecutors alleged
17 that I used to be an acting prime minister, member of Central
18 Committee on Military Affairs, and linked to S 21 management.
19 That statement is, intentionally or otherwise, is completely
20 untrue and not backed up by any key evidence.

21 Pol Pot had his deputy prime ministers; namely, Ieng Sary, Son
22 Sen and Vorn Vet. Therefore, there was no reason for Pol Pot to
23 appoint me as acting prime minister in addition to his existing
24 deputies; and indeed, he could not appoint me as an acting prime
25 minister when he was absent from the country, simply because I

13

1 did not have any position in the executive branch. If he did so,
2 it would be against the Party's policy.

3 [09.35.03]

4 Concerning the allegation that I was member of the Central
5 Committee for Military Affairs and linked to the S 21 management,
6 it is also not true. Indeed, I never dealt with those affairs.
7 Son Sen personally supervised those affairs.

8 I never met, never supervised, or ordered Duch to mistreat or
9 kill anyone. Everyone should be aware that soldiers or security
10 personnel would never listen to anyone besides their own
11 commanders. Therefore, there is no reason that Duch should listen
12 to me.

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

14 Duch's statement that I supervised S 21 was intentional as he
15 wanted to evade his responsibility for what happened at S 21 and
16 he wanted me to serve a life sentence like him, because Son Sen
17 died and he was convicted for life.

18 A person who is under such circumstance never speaks the truth,
19 as he is full of anger and feels hopeless in life, and that is
20 the real reason for him to implicate me. In short, my Defence
21 have asserted to Your Honours that I did not engage in any of
22 those tasks and there is no evidence to prove that I did it.

23 [09.37.16]

24 And based on that, it proves that I did not have any effective
25 power or position to have a direct control over the forces or

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1 local authority. Therefore, is there any reason for me to order,
2 instigate, or prevent perpetrators from committing the crimes in
3 that period? And I submit that Your Honours kindly consider this.
4 I would like to categorically declare that the purpose of my
5 participation in the DK regime was to liberate the country from
6 colonization and to defend Cambodian territory from invasion by
7 neighbouring countries whose ambition had for long been to
8 swallow Cambodia. I love my people. I did not have any reason or
9 intention to mistreat or to kill my people or to commit genocide
10 against my own nation.

11 Lack of evidence in the allegations. And I'd like to touch up on
12 the killing of Lon Nol soldiers at Tuol Po Chrey.

13 [09.38.47]

14 I would like to sincerely clarify that I am not aware of any
15 killing of former Lon Nol soldiers at Tuol Po Chrey in Pursat
16 province. After the liberation on 17 April 1975, as far as I
17 know, the CPK never established any policy to authorize its own
18 force to kill former Lon Nol soldiers, or any person for that
19 matter. The CPK's policy for prisoners of war was to forgive and
20 pardon. Those soldiers were forcibly drafted into the army to
21 fight and die on their behalf and they were indeed the children
22 of the people who were living in the CPK liberated zones.

23 In principle, to make a revolution means to gather forces. If
24 those people were killed, as alleged by the Co Prosecutors, it
25 was against the CPK policy, and as a result, it would compel the

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1 parents and relatives to take side with the enemy, thus
2 strengthening it, or they would turn against the CPK. If it was
3 true that those Lon Nol soldiers were killed it would have been
4 the decision of the lower cadres who committed the wrongdoings at
5 their own discretion or out of one's revenge that occurred during
6 the war.

7 [09.40.42]

8 Related to this point, some witnesses testified before the
9 Chamber that Khmer Rouge soldiers gathered those Lon Nol soldiers
10 for a meeting which took place at the Pursat Provincial Town Hall
11 one week after the liberation on 17 April 1975. Those witnesses
12 gave inconsistent statements during trial and, in some instances,
13 contradicting own statements that was made before the
14 Investigating Judges.

15 For instance, Lim Sat made a statement before the Investigating
16 Judges that about 3,000 former Lon Nol soldiers attended the
17 meeting at Pursat Provincial Town Hall, and later they were taken
18 and executed. Those soldiers were transported by 20 to 30 trucks.
19 Each was loaded with approximately 30 soldiers. At trial, Lim Sat
20 testifies that there were approximately 2,000 Lon Nol soldiers
21 who attended the meeting at Pursat and they were transported by
22 10 to 15 trucks.

23 Another witness, Ung Chhat, testifies that there were 200
24 soldiers, and later changed his mind and said that there were
25 only between 100 to 150 soldiers.

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1 [09.42.30]

2 One witness of Thet Sambath's video entitled, "One Day at Tuol Po
3 Chrey", said there were around 10,000 Lon Nol soldiers who were
4 taken and killed at Tuol Po Chrey. Furthermore, some witnesses
5 said that they secretly entered the area and saw dead bodies
6 scattered all over the place and they were without any military
7 uniform or backpack. Others claimed that there were many
8 backpacks.

9 I ask Your Honours to be with me for a moment and consider this
10 question together: Is there any reason for those people to risk
11 their lives and enter the area amidst such a dangerous situation
12 just to see those corpses? If there was such killing, and I
13 submit, it would be a dangerous place that no ordinary person
14 dared to go near.

15 When Your Honours heard those testimonies you must ask yourself
16 this question: Are they credible and reliable? And the simple
17 answer is, their testimonies cannot be relied upon or used
18 because they are full of doubts and filled with lies.

19 [09.44.09]

20 And I'd like to submit the following question: As I was one of
21 the leaders, do you think we have time to deal with such a
22 matter? We had overall and pressing task to resolve in Phnom
23 Penh, especially during the first few months. The important task
24 was to resolve peoples' livelihood and defend the country from
25 any attempts to control Cambodia by Communist Party of Vietnam

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1 and opposing parties.

2 Furthermore, I'd like to respond to the allegation made by the Co
3 Prosecutors that the CPK exercised its revolutionary violence
4 even before 1975. This claim shows that they simply looked at
5 events unfolded in Cambodia from just one corner. They pretend
6 not to know, see, or hear anything from another angle. In legal
7 jargon, this would mean victor's justice.

8 Let me remind you that before I made my decision to join the
9 armed struggle for the cause of liberating the country, many CPK
10 members and civilians were secretly executed, arrested, tortured,
11 and disappeared every day. Every Cambodian still can remember
12 these events.

13 [09.45.57]

14 This kind of violence existed in every Cambodian regime and
15 victims in those events were all farmers and innocent people.

16 And I'd like to begin that with the French colonialism:

17 France colonized Cambodia for almost a century. The regime
18 authority used violence to make arrests and killed unarmed
19 peasants at Kraeng Leav village in Kampong Chhnang province.

20 Those peasants could not afford to pay tax and had to force
21 themselves to protest for and demand justice. In the end, the
22 peasants were the losers, and as a result, their village name was
23 changed to "Village of Bestiality" or Phum Direchan in Khmer. Is
24 this not violence?

25 In the Sangkum Reastr Niyum, the powerful bulldozed houses and

1 paddy fields belonging to peasants at Andaeuk Haeb in Samlaut,
2 Battambang province, they grabbed the land of the people who had
3 lived there for many generations. When they protested to protect
4 their property, soldiers indiscriminately opened fire at those
5 unarmed people, regardless whether they were men, women, young or
6 old. Worse than that, the authorities tried to arrest and kill
7 more people.

8 [09.47.53]

9 They were so scared and as a result they fled into the forest. In
10 turn, the authorities accused those people, who were the original
11 landowners, of being Khmer Rouge. Is this not the creation of
12 violence and cause of people's suffering?

13 In the Lon Nol regime, which was supported by the United States,
14 Lon Nol soldiers sexually raped women, robbed people of their
15 properties, and killed people everywhere. They beheaded people
16 and had their heads displayed on fence posts. They committed this
17 act merely upon their suspicion that those people opposed their
18 regime and they were implicated as members of the Khmer Rouge
19 Revolution. In addition, Lon Nol soldiers' systematically raped
20 women, plundered their properties, and forcibly evacuated them
21 from their homes.

22 Vietnamese minorities were massacred everywhere in Cambodia.

23 Furthermore, the United States dropped several tons of its bombs
24 on the people's villages, homes, rice fields, and pagodas. As a
25 result, many tens of thousands of civilian people, including

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1 children, the elderly, pregnant women, and the disabled were
2 killed. Is this not a crime against humanity or genocide?

3 [09.49.31]

4 In 1979, Vietnam invaded and occupied Cambodia and in the
5 following years they deployed their artillery to shell refugee
6 camps situated along Cambodia-Thai border, causing homes to be
7 burned, properties destroyed, and losses of many lives, including
8 the lives of children, women, the elderly, and the disabled.

9 In addition, they initiated a plan known as K 5 to force civilian
10 people to enter the forest for the purpose of transporting
11 ammunitions and digging trenches for soldiers to defend the power
12 that they earned from their invasion of Cambodia. Many hundreds
13 of thousands of people died as a result. Is this not a plan to
14 kill people?

15 In 1997, two political factions fought each other in the middle
16 of Phnom Penh to challenge for power. The fighting destroyed and
17 burned many houses and properties and killed many innocent
18 people. A number of FUNCINPEC prisoners of war were killed after
19 they had surrendered. As an example, Ho Sok, a senior FUNCINPEC
20 leader, was killed within the compound of the Ministry of
21 Interior where he was arrested as hostage. Is this not a violence
22 or crime?

23 [09.51.20]

24 For all the events that I raised above, are they not violence or
25 crime against humanity? All of this can be used as evidence to

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1 compare with the situation under the CPK.

2 If the CPK is alleged of resorting to the use of violence before
3 1975, why do the Co Prosecutors fail to provide just a small
4 glimpse into the reality in regards to the events occurred, as
5 the other side committed toward the Cambodian people? I can see
6 that the Co Prosecutors made an effort to highlight the act of
7 killing each other during the war, and tried to link it to the
8 killing that was immediately taking place after the end of the
9 war. They attempt to show to Your Honours that the CPK made such
10 a systematic plan.

11 This linkage is unfair. If the killing during a war is treated as
12 a systematic plan, why the Co-Prosecutors failed to prosecute the
13 other party to the war? In fact, the CPK made plan to engage in a
14 war to liberate the country from destruction. Combat strategy was
15 used to defeat the enemy, and I submit that this is not an
16 illegal act. People in many countries around the world fight
17 their respective government for what they believe is a proper
18 cause and demand for changes, especially for right to decide own
19 destiny and own nation.

20 [09.54.03]

21 Allow me to give Your Honours some examples: Those countries
22 include Sri Lanka, Syria, Libya, Vietnam, and Iraq. All of these
23 countries used to have civil war. During such war, factional
24 groups designed plans to destroy their enemy. If Your Honours
25 consider that combative planning for a war designed by a

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1 victorious party is a criminal intent, as alleged by the Co
2 Prosecutors, leaders of those countries, whether they are
3 government leaders or opposition group leaders, must be
4 prosecuted, especially the United States, Vietnam and other
5 Cambodian leaders. They should not bring to trial only the body
6 of the crocodile and allow its head or tail to evade the net of
7 the law. This is so unfair for me.

8 [09.55.20]

9 I would like Your Honours to clearly distinguish a plan to
10 liberate the country and a plan to kill people after the war.
11 These two points are totally different from each other. Strategic
12 combat planning of destroying the enemy ended when the war itself
13 ended. However, the intention to kill people is a new phase by
14 the authority when they're in charge of governing the country.
15 Moreover, I recall that this Chamber limits the scope of this
16 trial to hear only the facts that occurred between 17 April 1975
17 and 6 January 1979.

18 Though I do not know much about the law, I understand that what
19 the Co Prosecutors allege, concerning my activities before 17
20 April 1975, is wrong and bears no legal value. In short, what the
21 Co Prosecutors raised regarding revolutionary violence before
22 1975 and relied upon it as a legal basis to satisfy the elements
23 of crime with their intention to prosecute me is simply
24 incorrect. I submit that Your Honours reject this allegation. On
25 the matter of evacuation -

22

1 [09.57.28]

2 MR. PRESIDENT:

3 The accused Nuon Chea, please pause.

4 Yes, Counsel, you may proceed.

5 MR. SON ARUN:

6 Mr. President, I am counsel for Nuon Chea, and I would ask Your

7 Honours to allow my client to rest for 10 to 15 minutes. He spent

8 one hour already, and he seems exhausted. Please allow him to

9 rest briefly.

10 MR. PRESIDENT:

11 Thank you.

12 And the time is also appropriate for a short break. We will take

13 a short break now and return at a quarter past 10.00.

14 Security guards, please bring the Accused back to his table with

15 his counsel.

16 (Court recesses from 0958H to 1018H)

17 MR. PRESIDENT:

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

19 And, again, the floor will be given to Nuon Chea to make his

20 final statement. You may now continue.

21 MR. NOUN CHEA:

22 The issue of evacuation.

23 As I have testified before the Chamber during the last couple of

24 years, after the liberation on 17 April 1975, all city dwellers

25 were indeed evacuated out of the cities. However, it was not a

1 forced evacuation.

2 [10.19.57]

3 There were two main reasons that leaders decided to rely upon in
4 so doing.

5 First, it was the fear of American bombardment on the cities
6 after the Lon Nol government was defeated. And this was one
7 reason that the leadership and Cambodian people believed – they
8 believed that the United States would renew its bombardment in
9 many cities, and especially in Phnom Penh. They believed that
10 because the United States had previously dropped several tons of
11 bombs in Cambodia.

12 The second reason was that war had been waged in Cambodia for
13 over five years. Through this experience of war, Cambodia faced
14 many challenges, including food shortage. And food shortage was a
15 main problem that needed to be resolved urgently, as it was
16 related to the life of people. At that time, Cambodia did not
17 receive any foreign aid or assistance. Facing such pressing
18 circumstance, the CPK leadership devised a plan to evacuate
19 people to regions and provinces where they were rich in economic
20 resources – husk and unhusked rice – that could feed the
21 evacuated people. In turn, they would be required to join in the
22 production activity for self-sufficiency and country
23 reconstruction.

24 [10.22.35]

25 In relation to evacuating people from Phnom Penh City, the

1 Standing Committee instructed the Central Committee to convene a
2 meeting to prepare for evacuation. All <zone secretaries who
3 were> members of the Central Committee attended that meeting, and
4 I recall that the Northwest Zone <alone> agreed to receive 1.5
5 million evacuees. The East, the Southwest, and the Central Zones
6 agreed to take the rest of the evacuees. For the planned
7 implementation, each zone has the autonomy to coordinate amongst
8 themselves to facilitate the evacuation. They had to provide
9 instructions to cooperatives to assist the evacuees from Phnom
10 Penh without any discrimination against them.

11 With the two reasons, the evacuation proceeded on a voluntary
12 basis without coercion, violence, or any killing. It was
13 implemented via clear information being explained to the people
14 to understand the risk of being bombarded by the United States on
15 cities and the need to resolve the living condition of the
16 people, and self-construction of the country.

17 [10.24.51]

18 At that time, people understood the dangerous situation and the
19 pressing need for the country; especially people supported and
20 loved the Revolution. Gradually, people left the cities in
21 accordance with the explanation and appeal by the CPK. Regarding
22 this point, I would like to respond to the Co-Prosecutors'
23 argument. They allege that the CPK surrounded Phnom Penh City,
24 and that led to food shortage. They also allege that shelling Lon
25 Nol's military bases in the city was an inhumane act. However,

25

1 the Co-Prosecutors failed to mention that Lon Nol soldiers,
2 equipped with artillery provided by the United States, emptied
3 many millions of shells, and together with more than half a
4 million tons of bombs dropped by the United States, they
5 devastated the country, as houses, properties, animals, and farms
6 were destroyed. Especially, tens of thousands of people were
7 killed, including the elderly, children, and women. Isn't this an
8 inhumane act or a crime? The bombs that the United States dropped
9 on Cambodia were three times more than those dropped on Japan
10 during the Second World War.

11 [10.27.12]

12 The CPK also considered Phnom Penh city dwellers - my apologies,
13 the CPK did not regard the city dwellers as enemies, contrary to
14 the allegation made by the Prosecution. On the other hand, those
15 Phnom Penh city dwellers were mostly workers, peasants,
16 petite-bourgeoisie and intellectuals whom the CPK needed - and
17 needed to gather their forces and strength in order to build the
18 Revolution.

19 I also would like to respond to the Co-Prosecutors' allegation
20 that the CPK was a slave state. It is simply not true. I would
21 like to inform my compatriots that CPK did not struggle to
22 liberate the country for the purpose of transforming its people
23 into slavery, as alleged. On the contrary, the CPK liberated the
24 people from slavery.

25 [10.28.50]

1 We all should have known that, before the liberation on 17th of
2 April 1975, the majority of the peasants were poor, could not
3 support themselves on a daily basis, and faced a grave difficulty
4 in their living condition. The Lon Nol authority at the time
5 failed to provide a proper public service and social welfare to
6 the poor people. Corruption was ripe, and injustice rooted deeply
7 in Cambodian society. This resulted in people becoming poorer and
8 poorer. Poor people needed to borrow money from the rich in order
9 to support their living, for medical treatment, and to pay tax.
10 That was the time the rich exploited the situation. They
11 persecuted the poor. They demanded interest as they pleased, and
12 monthly interest could skyrocket as much as 50 per cent of the
13 capital. As a result of this excessive interest rate, people
14 could no longer afford to pay their debt, and creditors
15 confiscated farms, rice paddy, and houses. And when they no
16 longer had any farm, rice paddy, or house, they were forced to
17 work as slaves in order to pay debt that was never ended. In many
18 instances, they were forced to sell their children to work for
19 others and became their slaves merely in exchange for food.

20 [10.31.10]

21 This exploitation and the poorness of these people was one of the
22 many causes that the CPK determined to resolve by liberating the
23 nation and people from slavery, from human exploitation and
24 invasion by other countries, by building a country where people
25 could live equally and own the country with independence,

1 self-mastery, self-reliance, and decide own destiny and nation.
2 The CPK did not design any policy or plan to have its people
3 placed in slavery by food deprivation, forced labour, or killing.
4 On the contrary, in mid-1976, the Standing Committee prepared and
5 adopted the four-year planning to build Socialism in all fields.
6 The CPK line and policy was to promote the livelihood of the
7 people. This plan set forth a food regime for people – that is,
8 each person would receive certain tons – or 300 kilograms of rice
9 per year. So, people would have enough food, and they could have
10 three to four meals per day, with two courses of soup and a fried
11 dish. In addition, additional food and dessert would be provided
12 every three days in 1977, and every two days in 1978, and every
13 day from 1979 onwards.

14 [10.33.46]

15 As for work hours, people would be allowed to work eight hours
16 per day and would be entitled to three days off per month.

17 Pregnant women would be allowed a two-month maternity leave after
18 delivery. Sick people could rest depending on actual conditions.

19 In addition, we prepared to increase machinery to reduce physical
20 workload of the people. This shows that the CPK stance was not to
21 force people to work hard.

22 I recall that, one day, I travelled to Siem Reap province via
23 Kampong Thom at night. I saw people walk to the rice fields, and
24 I asked local cadres about this. And I was told that people had
25 high commitment to work extra hours. Only after 1979 did I learn

1 that local cadres lied to me.

2 Concerning health care, the CPK prepared a four-year planning for
3 medicine with a total amount of 35,270,000 dollars. The four-year
4 expenditure for clothing was 66,270,000 dollars. For housing,
5 hygiene, and culture, the four-year expenditure was 80,230,000
6 dollars.

7 [10.35.47]

8 The CPK clearly and specifically set out these plans for zones
9 and autonomous sectors to implement it. The CPK did not design
10 any plan or policy to kill people. On the contrary, it had
11 planned to increase population, and not to reduce it. However, it
12 is so regretful that zones and autonomous sectors did not
13 implement the Standing Committee's decision.

14 Up to now, I can conclude and respond to questions put forth by
15 the Court, and especially by the public, that the strategic
16 events that happened during the DPK period were caused by the
17 following reasons:

18 1) The CPK made incorrect decisions to recruit some cadres, as
19 they betrayed – they did not grasp well the Party line and some
20 leaders occupied themselves with works in Phnom Penh and failed
21 to visit cooperatives regularly.

22 [10.37.17]

23 2) Some zone and autonomous sector leaders and cadres were
24 Vietnamese and American infiltrated agents who betrayed the
25 Revolution. They carried out activities to destroy the CPK

1 movement, the people, and the country of Cambodia. They did not
2 follow the CPK policy and instructions. Instead, they killed and
3 mistreated people by starving them and arbitrarily engaging them
4 in forced labour. They concealed these facts and fabricated
5 reports to the Party Central Committee. They resorted to all
6 kinds of methods to make people upset with, and turn against the
7 Revolution. This weakened the Revolution to make it vulnerable to
8 enemies' invasion under the pretext to liberate the people, thus
9 legitimize its invasion. As a matter of fact, the East Zone
10 leaders deprived people of food and secretly exported rice to
11 Vietnam. They were the ones who seemed to burn the outer skin
12 crisp, while leaving the inside raw. They excessively implemented
13 the CPK policy. The phrase "they left the inside raw" infers that
14 they did not engage in anything at all but let their lower cadres
15 do whatever they pleased.

16 [10.39.16]

17 3) A large number of cadres at zone, autonomous sector, district,
18 and cooperative level failed to sufficiently grasp the CPK line,
19 planning, and policy. They failed to report the situation
20 concerning hardship and shortage faced by the people. Instead
21 they fortified their reports to the Party Centre by boasting
22 about their achievement and success in leading their respective
23 base, and to achieve what they fabricated in the reports they
24 resorted to forcing people to overwork, reducing their food
25 ration, and killing them arbitrarily.

30

1 In summary, the CPK has clear reasons for the evacuation of
2 people. The evacuation was to ensure their safety and to liberate
3 them from slavery and injustice. It was never meant to place them
4 in slavery.

5 [10.40.30]

6 On the issue of fair trial, Your Honours, it is my observation
7 throughout these proceedings that some of my fundamental rights
8 have been violated. Actually, I would not say the trial is -
9 because I am asking the Court to find justice for me, and if the
10 Chamber is upset because of my criticism, then the injustice
11 indeed falls upon me. However, if I don't raise the issue of my
12 rights being violated, the chance to find justice for me is even
13 slimmer as those rights are fundamental to seeking my justice.
14 Concerning this point, I have carefully followed and observed the
15 Court's proceedings and I submit that my many rights have been
16 violated, namely:

17 1) Inequality of arms in collecting evidence. Throughout the
18 proceedings my counsels were not allowed to conduct any
19 investigation for the purpose of collecting evidence for my
20 defence. However, the Co-Prosecutors had ample opportunity to
21 conduct their own investigation since the beginning. My counsels
22 were not allowed to seek for other witnesses except those whose
23 names are on the Co-Investigating Judges' list. This apparently
24 tied my counsel's arms and restricted them from gathering
25 evidence for my defence while the other side was afforded full

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1 opportunity to attack me freely. This has severely affected my
2 defence team and my legitimate interest.

3 [10.42.53]

4 2) Failure to summons important witnesses. My defence counsels
5 repeatedly requested the Chamber to summons some important
6 witnesses to testify before this Chamber; namely, character
7 witnesses and Tuol Po Chrey witnesses. However, the Chamber
8 denied such requests. Such decisions have seriously impacted the
9 process of ascertaining the truth in this case.

10 3) Bias in examination of witnesses before the Chamber. The
11 examination of witnesses is an important process in ascertaining
12 the truth and clarifying some uncertainties regarding some
13 witnesses. Your Honours are to rely upon these testimonies when
14 you make your just decision. In this Chamber, I can see that Your
15 Honours have failed to consider this issue properly.

16 [10.44.21]

17 During the Prosecution's examination of witnesses, Your Honours
18 always afforded them the opportunity with minimal interruption,
19 despite objections raised by the Defence. The defence lawyers,
20 however, were not that lucky, as they were not allowed such
21 opportunity. They were interrupted most of the time by the
22 objections from the Prosecution and Your Honours always agreed
23 with the prosecutor's objections. And sometimes when the defence
24 lawyers raised their objections, instead of being sustained, they
25 were overruled and they received warnings from the President of

1 the Chamber. As we could see the unequal treatment, Khieu Samphan
2 and I decided to no longer testify before the Chamber anymore
3 because we thought that, to Your Honours, our testimonies mean
4 nothing, as you are clearly biased and the proceedings that have
5 been conducted in this Chamber are just for the sake of
6 completing the procedure or making it look good in the eye of the
7 public.

8 [10.45.42]

9 In conclusion, based on the three grounds that I have stated
10 above, it clearly shows that I did not carry out any plan to
11 commit the crimes. I did not provide any support or encourage
12 anyone to commit the crimes. Despite the fact that I had a role
13 as Deputy Secretary of the CPK and President of the People's
14 Representative Assembly, I did not have any knowledge of the
15 crimes committed at base level. Only toward the end of the DK
16 period had I learned the traitorous acts committed by leaders at
17 some zones, sectors, and bases. They had the intention to destroy
18 the CPK movement, and at that time, I did not have any effective
19 authority to prevent those traitorous acts, nor had I any role in
20 controlling the armed forces or local authorities. If I had any
21 authority to lead or commit the alleged crimes during the DK
22 period, surely the Court that was established in 1979 by the
23 People's Republic of Cambodia would have prosecuted and convicted
24 me, like Pol Pot and Ieng Sary.

25 [10.47.26]

1 Evidence of those crimes at the time was still fresh and
2 apparently, there is no need to wait for 38 years to try me.
3 However, they knew that I had no authority and did not commit any
4 crime. Nonetheless, I would like to express my deepest remorse
5 and moral responsibility to all victims and Cambodian people who
6 suffered during the Democratic Kampuchea Regime. As a matter of
7 historical fact, the CPK's policy, line, and plan were solely
8 designed for one purpose and one purpose only - that is, to
9 liberate the country and people from colonization, imperialism,
10 exploitation, extreme poverty, interfering and invasion by
11 neighbouring countries, especially by Vietnam. The CPK's policy
12 was clear and specific. It wanted to create an equal society
13 where people are the masters of their country for the purpose of
14 independence, self-mastery, self-reliance, and deciding its own
15 destiny and nation. The CPK movement was not designed for killing
16 people or destroying the country.

17 [10.49.29]

18 My concerns, my hope and wishes were destroyed by those who
19 betrayed the movement. My people suffered and killed. My nation
20 fell apart. Although the tragedy in the DK period was the result
21 of the acts committed by those traitors in the name of Deputy
22 Secretary of the Party that had the responsibility to disseminate
23 and propagandize education about the CPK policy, I would like to
24 sincerely apologize to the public, to the victims, their
25 families, and all Cambodian people; and I still stand by my

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1 previously stated position that I am morally responsible for the
2 loose and untidy control by the CPK. I wish to show my respect
3 and pray for the lost souls that occurred by any means during the
4 Democratic Kampuchea period.

5 In short, through this trial, I can see that justice is
6 circumstantial. However, reality remains unchanged forever. A
7 black cloud can't ever cover the entire sunlight. Likewise, bad
8 and immoral people cannot tell lies and hide the reality from the
9 eye of the people and the popular masses forever. They cannot
10 hide the reality and courageous struggle by the Cambodian people
11 and the support afforded to them by the people in the world who
12 loved peace and justice.

13 [10.51.42]

14 Therefore, Your Honours, based on the evidence and reasons I have
15 stated above, and especially the closing statements made by my
16 defence team, I respectfully submit to Your Honours to acquit me
17 from all the charges and, accordingly, release me.

18 I'm grateful, Your Honours.

19 MR. PRESIDENT:

20 Thank you.

21 Security guards, please bring the Accused back into where he sat
22 earlier.

23 (Mr. Nuon Chea leaves the dock)

24 [10.52.47]

25 The Chamber would like now to give the floor to Nuon Chea's

35

1 counsel to make your final rebuttal statement. You may proceed.

2 MR. KOPPE:

3 Mr. President, Your Honours, good morning, Counsel, civil
4 parties, everybody in the public gallery. Mr. President,
5 yesterday I indicated that I would speak for 30 minutes, but
6 having heard afterwards that the Khieu Samphan team will use only
7 one hour of its time, I would hope that the Chamber would allow
8 me to speak 15 or 20 minutes extra in my rebuttal to the
9 submissions yesterday of the Prosecution. Nevertheless, Mr.
10 President I will be - I will try to be a brief as possible and
11 try to respond directly to the arguments of the Prosecution and
12 the civil parties. And, in general, I would like to address the
13 arguments advanced by each counsel and although I may, by
14 necessity, move around because of the overlap between the various
15 counsels arguments.

16 [10.54.31]

17 Mr. President, Your Honours, let me begin by addressing the
18 comments advanced yesterday by the civil parties. The first
19 observation I would make concerns the civil parties parroting of
20 the OCP's phrase "slave state". We have heard this catch phrase
21 now many times. Like an advertising campaign, the civil parties
22 and the Prosecution have flashed it in our faces like a neon
23 sign, all in an attempt to argue that it epitomized the common
24 purpose of the CPK. As we have expressed in both our brief and in
25 oral argument, the use of this slogan of "slave state" is not

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1 correct, and is in fact, misleading. Not just because of its
2 inaccuracy in describing the workings of the CPK, but also
3 because it is based on evidence that is not at issue before this
4 Chamber.

5 [10.55.45]

6 What do I mean when I say that this is not at issue before this
7 Chamber? I mean that it is grounded in witness statements and
8 evidence that are outside the scope of Case 002/01.

9 Mr. President, this trial as we are all well aware, concerns two
10 population movements and the alleged Tuol Po Chrey crime site.
11 Cooperatives and their corresponding conditions are not a part of
12 this trial. Despite this, the Prosecution and civil parties have
13 tried to backdoor witness statements recounting cooperative
14 conditions to show that certain individuals were treated like
15 slaves. Having failed to use this phrase in their closing briefs,
16 the civil parties following the Prosecution, almost blindly, now
17 do the same. Mr. President, Your Honours, it cannot be stated
18 more explicitly all of the witness statements alleging
19 individuals in cooperatives were subjected to slave-like
20 conditions are outside the scope of Case 002/01.

21 [10.57.12]

22 We have not been able to examine them or test their relevance or
23 reliability. Civil parties and the Prosecution have made no
24 effort to show whether these statements, based entirely on
25 witness observations of conditions on the ground are in any way,

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1 remotely representative of the country as a whole. By using the
2 "slave state" slogan, the Prosecution and civil parties have
3 tried to have their proverbial cake and eat it too. They have
4 conjured the sensational and evocative tagline to advance their
5 allegations, all the while, keeping the evidence underlying it
6 safe from scrutiny. As it is based on evidence that is not part
7 of this trial, its relevance-

8 MR. PRESIDENT:

9 Mr. Nuon Chea, you may-

10 Please, hold on. Mr. Nuon Chea has something to say.

11 Mr. Nuon Chea, you may proceed.

12 Mr. Nuon Chea, you want to be returned to the holding cell
13 downstairs? You may leave the courtroom.

14 Security guards are now instructed to bring Mr. Nuon Chea to the
15 holding cell downstairs.

16 (Mr. Nuon Chea exits the courtroom)

17 [10.58.45]

18 MR. PRESIDENT:

19 Mr. Koppe, you may now resume your statement.

20 MR. KOPPE:

21 Thank you, Mr. President.

22 As I said earlier, by using the "slave state" slogan, the
23 Prosecution and civil parties have tried to have their cake and
24 eat it too. They have conjured a sensational and evocative
25 tagline to advance their allegation, all the while keeping the

1 evidence underlying it safe from scrutiny.

2 As it is based on evidence that is not part of this trial, its
3 relevance and substance remain untested by the Defence. Indeed,
4 the Defence itself requested this evidence be included in this
5 trial; a request that the Prosecution objected to, underscoring
6 their fear that they did not want to risk exposing that these
7 allegations to the light of day.

8 [10.59.50]

9 Mr. President, the civil parties have applied this tactic in
10 other ways. We can see it, for instance, in their claim that 2
11 million deaths occurred during the Democratic Kampuchea period.
12 This allegation of 2 million deaths is, again, based on untested
13 evidence. Why? Because the report it is based on is not part of
14 this trial. It has not been examined by the parties. The
15 demographer who created it has not been called here in this
16 courtroom as an expert witness.
17 Why? Again, Mr. President, the answer is simple. Because the
18 total number of deaths alleged during Democratic Kampuchea is not
19 a part of this trial. Could it be that both the civil parties and
20 the Prosecution are suffering from acute amnesia when faced with
21 the charges at issue in Case 002/01? Have they somewhat
22 conveniently forgotten that this case only concerns two
23 population movements and Tuol Po Chrey? While I could sympathize
24 with the symptoms of a failing memory, even this explanation
25 seems too generous.

1 [11.01.12]

2 Whatever their excuse may be, Mr. President, the Trial Chamber
3 cannot condone this mode of proceeding. Allowing the Prosecution
4 and the civil parties to base claims on untested evidence outside
5 the scope of this trial violates basic principles of the right to
6 a fair trial and the Chamber must accordingly give such
7 assertions no weight whatsoever.

8 Their - what I would like to call "sensationalizing" of witness
9 statements has not been limited to outside the scope of the
10 trial. Evidence within the scope of Case 002/01 has been treated
11 by the civil parties and the Prosecution in the same manner.
12 Examples of this are seen in the civil party's use of allegations
13 that Khmer Rouge cadre killed babies and people with glasses.
14 These witness allegations cannot be used as the poster children
15 for Democratic Kampuchea. The reality is that these claims are
16 unrepresentative of the experiences of individuals during
17 Democratic Kampuchea. Their misuse in describing a policy of the
18 Khmer Rouge is therefore, disingenuous and it must be
19 disregarded.

20 [11.02.43]

21 Now, Your Honours, I would like to pause for a moment and reflect
22 on the allegation made by the civil parties, yesterday morning,
23 that in defending our client we have somehow made a mockery of
24 the civil parties. This is unwarranted. The Defence has never
25 denied the suffering of the civil parties. We have never called

1 them liars. In fact, we offer the utmost sympathy to their
2 suffering. We have, as we are tasked with doing as defence
3 attorneys, made very precise claims challenging the evidence
4 against our client. If the civil parties cannot appreciate this
5 distinction, it reveals, on their part, we would say, a serious
6 misunderstanding about the role of a defence attorney.

7 In their rebuttal yesterday, the civil parties attempted to paint
8 a picture that the Defence has put forward and entirely
9 unrepresentative image of the CPK, an image, they say, that it is
10 not supported by the evidence. They have cited to various
11 references in our closing brief in an attempt to show that our
12 assertions are outside the scope of the realities of Democratic
13 Kampuchea. They point to our use of language to further this
14 argument, labelling such words as "evacuation" and "liberation"
15 as prime examples of what they call Orwellian newspeak.

16 [11.04.25]

17 To this, Your Honours, we simply remind the parties that these
18 terms are used continually by all the parties throughout the
19 courses of this trial. These terms, Mr. President, are taken
20 straight from the Closing Order itself. We can only speculate
21 that if the lawyer for the civil parties had perhaps read the
22 Closing Order with more care, such terms as "evacuation" or
23 "liberation" may not have come as such a surprise.

24 In contrast, while the civil parties coined phrases like "after
25 liberation", "straight to the killing fields", we have remained

1 measured in our use of language.

2 Finally, Mr. President, it is with irony that the Defence
3 addresses the final claim of the civil parties, that the Defence
4 is guilty of misrepresenting the evidence to suit our own
5 narrative. Specifically, the civil parties attack our use of
6 witness Lay Bony's testimony that the physical conditions of
7 evacuees during the second population movement was both good and
8 normal. The civil parties proclaim that "if the Defence had read
9 but four lines more" of Lay Bony's testimony, it would have been
10 apparent that Lay Bony also testified that the evacuees had
11 swollen bodies and that they received less food than pigs.

12 [11.06.02]

13 Mr. President, Your Honours, the Defence did in fact read those
14 additional lines of testimony and noted that those lines did not
15 address the second population movement, but instead, referenced
16 conditions after resettlement in cooperatives in Pursat.

17 To the conditions in the new cooperatives, Lay Bony observed -
18 and I quote - that:

19 "However, when time passed by, we did not have enough food to
20 eat. We ate the food that was very little. We ate food that made
21 us become - you know, our body parts become swollen, and we
22 believed at the time - we noted that the pigs were even given
23 more food than they gave to human beings." End of quote.

24 Your Honours, I now turn to the Co-Prosecutor's submissions
25 concerning our arguments about the fairness of this trial. The

1 Co-Prosecutors, in an attempt to gloss over these violations,
2 advanced the argument that in allowing the Defence their two
3 allocated days of oral argument, the Chamber somehow showed its
4 commitment to the fair trial rights of our client.

5 The Co-Prosecutor seemed to suggest that, in granting us this
6 time, all the fair trial violations have been absolved. To this
7 statement, we can only ask: Is the standard that low? It seems,
8 Your Honours, that the answer to that question is yes.

9 [11.07.46]

10 As the Chamber knows, the most important of these fair trial
11 violations concerns Witness Heng Samrin, the witness at the heart
12 of our fair trial argument, whose presence at this trial we
13 called earlier a non-negotiable bare minimum for securing a fair
14 proceeding.

15 Heng Samrin, who is a witness of paramount importance to the
16 charges at issue at this trial, the evacuation of Phnom Penh, the
17 events at Tuol Po Chrey and the alleged policy to kill former Lon
18 Nol soldiers and officials.

19 Heng Samrin, a witness in possession of important exculpatory
20 evidence that directly exonerates our client from the allegation
21 that he had intended the killing of former Lon Nol soldiers and
22 officials. Heng Samrin, the one and only character witness
23 requested by Nuon Chea.

24 Your Honours, everyone in and around this courtroom must ask
25 themselves this question: What have you heard from the

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1 Co-Prosecutors and the civil parties in reference to the failure
2 of the Chamber to summons Heng Samrin? Nothing. Absolute silence.

3 [11.09.21]

4 The Co-Prosecutors and the civil parties have not responded to
5 the substance of our complaint at all, and there are numerous
6 arguments the parties could have made regarding our request to
7 call Heng Samrin during this trial, but nothing has been said.
8 For instance, they could have argued that the evidence Heng
9 Samrin had to offer was not important or that it was evidence
10 that could have been established by different witnesses.

11 They could have argued that evidence of Nuon Chea's character was
12 not relevant, or argued that there were other, higher-ranking
13 military witnesses that could have been heard. They could have
14 attempted to argue there was already sufficient evidence of Nuon
15 Chea's intent, and that Heng Samrin's testimony was, therefore,
16 not needed.

17 But did they make any of these claims? No, they did not.

18 Mr. President, Your Honours, Heng Samrin is the elephant in the
19 room that the Co-Prosecutors and the civil parties dare not speak
20 of. Why is it that they are rendered mute by this man? Why not
21 talk about it like Craig Etcheson did this morning in the "Phnom
22 Penh Post"?

23 [11.10.47]

24 We can think of two reasons only. They either agree that his
25 presence is of paramount importance and a fair trial cannot be

1 had without his testimony, or they are simply not allowed to even
2 mention his name. Either one, Your Honours, would be a remarkable
3 position about these proceedings.

4 If the answer is that the parties cannot even discuss the nature
5 and degree of this fair trial violation, then the extent to which
6 the Co-Prosecutors remain in the government's clutches is even
7 worse than we thought. If the answer is that a fair trial is
8 impossible without his presence, then we have confirmation from
9 all parties that our client's fair trial rights have been
10 irreparably harmed.

11 The International Co-Prosecutor, Mr. Koumjian, also addressed our
12 argument that this trial is fundamentally political. We heard him
13 say yesterday that he denies that claim. He says that this trial
14 is not about politics, but about law.

15 [11.12.07]

16 Mr. President, we disagree. We have submitted that a proceeding
17 such as this could never separate law from politics, that a
18 tribunal such as this infuses law with politics.

19 And let it be clear, this view is not constructed from thin air.
20 It is not woven in the minds of a paranoid defence lawyer. It is
21 a viewpoint with a long pedigree in history of international
22 criminal proceedings.

23 The Indian Judge, Justice Pal, gave serious consideration in his
24 dissenting opinion at the Tokyo Tribunal to the question of
25 whether victors of a war can fairly judge its losers, and

45

1 respected academics did the same. Nuon Chea's view that he cannot
2 be fairly judged by representatives of the two principal victors
3 is a serious argument that deserves serious reflection.

4 [11.13.15]

5 If this trial is about law and facts, and not politics, do the
6 prosecutors – why do the prosecutors so consistently ignore facts
7 that are legally relevant to the charges?

8 Mr. Lysak informed this Chamber yesterday that the
9 Co-Prosecutors' final brief included 40 pages of historical
10 analysis, but the question is, which history? Why does it
11 describe the CPK's alleged violence prior to 1975 with almost no
12 mention of the American bombing or the atrocities committed by
13 Lon Nol's forces against CPK cadres? Was the CPK fighting a war
14 against a phantom, or was it fighting a war against an enemy?
15 Does anyone doubt that the intent of the CPK's alleged policies
16 against enemies' changes radically in light of the ruthlessness
17 of the enemy it was actually fighting?

18 More and more powerful actors equally responsible for conduct
19 identical to that for which our client stands charged accused of
20 identical crimes. Do the Co-Prosecutors dare accuse the people
21 who run this country, the people responsible for implementing our
22 client's policies?

23 [11.14.49]

24 Mr. President, Your Honours, the answer to this question is, of
25 course, no. The answer is that the prosecutors who claim this

1 trial has nothing to do with politics cannot even bring
2 themselves to say Heng Samrin's name. They cannot even bring
3 themselves to contest the Defence claim that the trial and the
4 investigation were unfair.

5 Let me now, Mr. President, turn to the crimes which were
6 discussed jointly by Mr. Raynor and Mr. Lysak, and I will begin
7 with the evacuation of Phnom Penh.

8 With regard to the evacuation of Phnom Penh, I would simply like
9 to clarify a serious misunderstanding of our oral argument which
10 became apparent yesterday, and which may have caused some
11 confusion during our client's speech here this morning.

12 [11.15.49]

13 As our brief explains and our client repeated again here this
14 morning, the evacuation of Phnom Penh was driven by a variety of
15 considerations. These included the food supply within Phnom Penh
16 and Cambodia more generally, the effects of the U.S. bombing, and
17 the state of Cambodia's economic infrastructure, including its
18 rice paddies as of 17 April 1975.

19 Our submissions before the Investigating Judges and this Chamber
20 consistently emphasize all of these factors as integral to the
21 decision to evacuate and the manner in which – the manner in
22 which it was carried out.

23 Yesterday, the Co-Prosecutors seized on a single sentence in my
24 Cambodian colleague's remarks from last week to the effect that
25 the evacuation would still have been carried out had the food

1 crisis in Phnom Penh not existed. Prosecutors argued that this
2 sentence amounts to a concession that neither the American
3 bombing nor the food supplies were relevant to the forced
4 transfer charges.

5 Now, Mr. President, that, of course, was a misstatement of our
6 position, and of reality. Those facts are critically relevant
7 now, as they have always been, to Nuon Chea's defence.

8 [11.17.26]

9 First, as Son Arun explained, the bombing devastated Cambodia's
10 economic infrastructure and its ability to produce food. That
11 reality was a fundamental aspect of the CPK's conclusion that the
12 economy could not support unproductive cities in a society in
13 which economic production was driven entirely by the rice
14 paddies.

15 Second, as Son Arun also explained, the evacuation would have
16 looked very different had an impending catastrophe of starvation
17 not existed.

18 During yesterday's hearing, as they have throughout this trial,
19 the Co-Prosecutors repeatedly attacked the evacuation not for the
20 fact that it happened, but for the way it happened, including its
21 immediacy and the fact that it affected all of the residents of
22 Phnom Penh. But those are precisely the features of the
23 evacuation which were driven by the threat of imminent
24 starvation, including the fact that six days' worth of food
25 remained in the city on 17 April 1975.

1 [11.18.44]

2 So, Mr. President, the arguments that you heard yesterday which
3 implied we had somehow abandoned the food supply and U.S. bombing
4 arguments were misguided.

5 My final remarks about the evacuation of Phnom Penh is that both
6 the civil parties and the Co-Prosecutors again make the claim
7 that Nuon Chea did not subject himself to cross-examination. Nuon
8 Chea subjected himself to 12 days of cross-examination, some of
9 which was described by Mr. Lysak yesterday. And he refused to
10 continue only because of the violations of his right to challenge
11 the evidence against him during the appearance of Mr. Steve
12 Heder.

13 So Mr. President, Your Honours, hopefully we can put to rest this
14 myth that our client refused to testify about the evacuation.

15 I would like to turn now to certain comments made by the
16 Co-Prosecutors concerning the second population movement.

17 [11.20.03]

18 While addressing the second population movement, the
19 Co-Prosecutors misconstrued our argument, claiming that we had
20 said that the second transfer was implemented by rogue zonal
21 leaders, that the second transfer was, in fact, a rogue
22 operation. We have never said it was rogue. This portrayal of the
23 second movement is their formulation, and it is nonsense.

24 Mr. President, our point was, and still is, that the second
25 movement was the prerogative of the zones, that both Ros Nhim and

1 So Phim, leaders of the two zones allegedly instrumental in the
2 second population movement, were not mere zone leaders, but
3 powerful members of the Standing Committee – as a matter of fact,
4 founding members of the CPK, at least equally as powerful as Nuon
5 Chea and Pol Pot; that the evidence before this Chamber supports
6 a conclusion that it was the zones that had primary control and
7 authority over the second population movement.

8 [11.21.23]

9 Next, Mr. President, I will turn to Tuol Po Chrey. We have many
10 things to say about Tuol Po Chrey and its underlying policy, but
11 because of the time, I will limit myself to six key points.

12 First, the Co-Prosecutors yesterday simply say nothing about any
13 of the direct evidence that no policy of executing Lon Nol
14 soldiers and officials existed. They say nothing about Phy Phuon.
15 They say nothing about Heng Samrin. They say nothing about Ouk
16 Bunchhoeun.

17 They do not challenge it, they do not contest it. They do not
18 tell the Chamber that it is unreliable. They also do not tell the
19 Chamber how to resolve the direct contradiction between their
20 position and this clear evidence from well-placed CPK insiders.

21 As I have already observed, we claim that there was a violation
22 of our client's right to a fair trial so serious that it required
23 dismissal of all charges concerning Tuol Po Chrey. And again, the
24 Co-Prosecutors did not even mention it, and that is, we submit,
25 remarkable, to say the least.

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1 [11.22.50]

2 Second, Mr. President, the Co-Prosecutors offered this Chamber
3 two pieces of evidence that a policy to execute Lon Nol soldiers
4 and officials existed. The first piece of evidence was a photo of
5 a group of people at the Ministry of Information, supposedly on
6 17 April 1975.

7 Now, Mr. President, Your Honours, I would like to show that photo
8 on the screen, and with your permission, Mr. President, I would
9 like to do that now.

10 And maybe to the AV Unit, we could show it a few times in a row
11 because it's part of a little video.

12 MR. PRESIDENT:

13 You may proceed.

14 (Presentation of document)

15 [11.24.07]

16 MR. KOPPE:

17 Excuse me. Excuse me, Mr. President.

18 The Co-Prosecutors called this photo of some people calmly
19 standing around with their arms folded "very strong evidence that
20 every soldier and every official of the Khmer Republic who was
21 killed in all of Cambodia on or around 17 April 1975 was, in
22 fact, killed pursuant to a CPK policy."

23 This photo, Mr. President, was one of the two pieces of evidence
24 that the Co-Prosecutors claimed conclusively prove the existence
25 of that policy. Now, maybe the Co-Prosecutors see a secret code

1 in this photo that we do not.

2 And contrary to the Co-Prosecutors claims, we responded to this
3 evidence directly in our oral argument last week. We conceded
4 that the people depicted in this photo were present at the
5 Ministry of Information, which is all - all that this photo
6 shows. We explained why that fact is irrelevant to any supposed
7 execution policy.

8 [11.25.22]

9 Co-Prosecutors chose not to respond to those arguments. Instead,
10 they just reiterate the fact that these people were present at
11 the Ministry of Information. And this supposedly very strong
12 evidence, Mr. President, is irrelevant.

13 The second piece of supposedly conclusive evidence was a series
14 of quotations from Duch. As we have argued before, Duch has
15 admitted to having had no basis to make any conclusions with
16 regard to CPK policy. His testimony is irrelevant. However, I
17 will add that even the irrelevant excerpts cited by the
18 Co-Prosecutors yesterday establish that no execution policy
19 existed. Yesterday, the Prosecution quoted Duch saying - and I
20 quote: "During that initial stage, people were evacuated and then
21 some of the senior soldiers were arrested and secretly killed."
22 End of quote.

23 We do not know how Duch came to this conclusion, but even this
24 evidence suggests that only senior soldiers were apparently
25 executed, and even then, that only some of those senior soldiers

1 were executed.

2 [11.26.56]

3 And the Co-Prosecutors' other evidence from Duch was just as
4 inconsistent with this supposed policy. As the Prosecution noted,
5 Judge Lavergne asked Duch in Case 001 whether people linked to
6 the Lon Nol regime were executed. Now, Duch answers – Duch's
7 answer was as follows – and I quote: "People in Lon Nol's regime
8 were classified into three categories. First category referred to
9 the people who were smashed secretly." End of quote.

10 Now, this is the point where the Co-Prosecutors stop reading, but
11 as your Chamber is well aware, the excerpt continues – and I
12 quote: "The second category referred to the people who were
13 detained in the re-education camp, and the third category
14 referred to the people who were regarded as the New People." End
15 of quote.

16 So this is the Co-Prosecutors' final concluding evidence of a
17 policy of systematically hunting down and executing all Lon Nol
18 soldiers and officials. It proves that no such policy existed.
19 Mr. President, my third of the six points about Tuol Po Chrey
20 concerns pattern evidence. Yesterday, the Co-Prosecutors did not
21 even attempt to contest our systematic demonstration that no such
22 pattern existed. Mr. Raynor spoke very theatrically about the
23 systematic nature of the pattern.

24 [11.28.43]

25 You might remember he asked the Chamber five or six times whether

1 it was a coincidence – a coincidence that killings occurred in
2 exactly the same way across the country. And our question is
3 this, Mr. President: Is it a coincidence that the Co-Prosecutors
4 failed to identify one single witness proving the existence of
5 this pattern, which they say happened everywhere? Is it a
6 coincidence that they failed to respond to a single one of the
7 numerous concrete arguments we presented to the Chamber in our
8 closing submissions?

9 Mr. Lysak also commented on the supposed pattern evidence. He
10 told the Chamber that the Defence has a "thesis" about the
11 supposed execution of Lon Nol soldiers in April 1975. He said our
12 thesis was that executions happened in the Southwest and
13 Northwest Zone, but not elsewhere.

14 [11.29.51]

15 In reality, Mr. President, we have no "thesis" about the
16 execution of Lon Nol soldiers. Our only thesis is that the
17 Co-Prosecutors have failed, manifestly and completely, to
18 establish the existence of a centrally directed policy.
19 The reasons for their conclusions are: firstly, that it is
20 inconsistent with the direct evidence; secondly, that the
21 so-called pattern evidence is systematically unreliable; and,
22 third, that the systematically unreliable evidence is
23 geographically concentrated in the Southwest and Northwest Zone
24 and is, therefore, irrelevant to state-wide policies.
25 The Prosecution contests none of these facts. In order to

1 establish the existence of a policy based on unreliable evidence
2 not tested in open Court, which is concentrated in only a small
3 part of the country, the Prosecution should be ready before this
4 Chamber with quite an extraordinary explanation.

5 [11.31.00]

6 Now, Mr. Lysak proposed a possible explanation. He suggested that
7 maybe there were more Lon Nol soldiers in the Northwest and
8 Southwest Zone than elsewhere in the country. Yet, at the same
9 time, he does not offer the Chamber even a shred of evidence in
10 support of this proposition.

11 The evidence we showed the Chamber last week demonstrated
12 overwhelmingly that Lon Nol soldiers were not executed in
13 liberated zones prior to 1975. There's no reason to believe that
14 Lon Nol soldiers did not continue living in those zones until and
15 after April 1975. Nor does the evidence merely show that fewer
16 Lon Nol soldiers and officials were killed in the Special,
17 Central, North, the Eastern and the North-eastern Zones in April
18 1975. It shows they were not killed in those zones at all.

19 We have adduced substantial evidence affirmatively demonstrating
20 that Lon Nol officials who were present in the East Zone or
21 within the control of East Zone troops were not harmed.

22 [11.32.25]

23 Like Mr. Raynor, Mr. Lysak failed to say anything about the
24 evidence. He failed to give a single reason why the analysis we
25 presented to the Chamber last week was erroneous. He failed to

1 refer to a single statement of a single witness.

2 Mr. President, Mr. Lysak then suggested that a concentration of
3 evidence in the Southwest Zone would be consistent with Party
4 Centre policy because Pol Pot had a close relationship to the
5 Southwest Zone. It seems he would like this Chamber to make two
6 conclusions.

7 He would like this Chamber to conclude, first, that Ta Mok was
8 close to Pol Pot and, second, that because Ta Mok was close to
9 Pol Pot, everything that happened in the Southwest Zone reflected
10 the intent of the Party Centre. But there is no evidence to
11 support either claim.

12 Neither claim has been the subject of so much as five minutes of
13 witness testimony. Neither claim has been the subject of a single
14 filing.

15 [11.33.43]

16 Before yesterday, neither claim had been the subject of five
17 minutes of debate before the Chamber. And just last month, the
18 Co-Prosecutors' position was that executions happened everywhere.

19 Mr. President, just last week the Co-Prosecutors' position was
20 that the executions happened everywhere in Cambodia. And five
21 minutes before Mr. Lysak took the floor, the Co-Prosecutors'
22 position was that executions took place everywhere.

23 Never did they try to link events in any particular part of the
24 country with the Party Centre. And they did not have to because
25 the position was that everything happened the same way

1 everywhere.

2 It is critical to realize that Mr. Lysak's theory would be
3 irrelevant to Nuon Chea's criminal liability only if Nuon Chea
4 conspired with Ta Mok and Ros Nhim, but not with So Phim or Ney
5 Saran, to execute Lon Nol soldiers.

6 Now, could that theory be true? It could be true. Lots of things
7 could be true. But the Chamber, and that is the point, has never
8 considered it.

9 [11.35.06]

10 The Co-Prosecutors never, before yesterday, argued it - argued
11 it. There's no evidence at all to support it. And the Chamber has
12 no basis on which to make that conclusion.

13 Mr. President, my fourth of the six points about Tuol Po Chrey
14 concerns the Co-Prosecutors' assertion that we failed even to
15 address the core claim about Tuol Po Chrey. They describe their
16 core claim as being that Nuon Chea participated in a joint
17 criminal enterprise to execute class enemies and all those
18 opposed to the CPK.

19 In fact, we showed the Chamber that, at worst, the CPK
20 categorized soldiers and officials along with other groups such
21 as monks and intellectuals, who were never - people who were
22 never subject to a policy of execution.

23 The Co-Prosecutors' position that the CPK viewed soldiers and
24 officials with suspicion is insufficient, as a matter of law, to
25 establish our client's criminal liability.

1 [11.36.20]

2 The Closing Order alleges that, at Tuol Po Chrey, soldiers and
3 officials were indiscriminately murdered en masse. It follows
4 that only a policy that required executions of soldiers and
5 officials en masse is of any relevance to the Chamber's
6 deliberations. Abstract class theory without a clear link to a
7 policy of systematic execution is plainly insufficient.

8 Mr. President, Your Honours, it's critical to recognize here that
9 this difference between the CPK's general suspicion of Republican
10 officials and it's supposed decision to execute those officials
11 summarily, that this difference is exactly - exactly the subject
12 of Heng Samrin's statement to Ben Kiernan.

13 Heng Samrin does not say that Nuon Chea never thought about
14 former regime officials. He does not say that those officials
15 were not a subject of discussion. What he says is that when the
16 Party Centre decided how to deal with Republican officials, they
17 - I quote him - "did not say kill". Instead they said - and I
18 quote him again: "Don't allow them to remain in the framework."
19 Unquote.

20 [11.37.51]

21 Mr. President, this distinction got straight to the ambiguity at
22 the heart of the Co-Prosecutors' allegation about the CPK's
23 treatment of so-called opponents, which is that there is simply
24 no evidence that such people were systematically executed.
25 That brings me, Mr. President, to my fifth point about Tuol Po

1 Chrey, which is that the Co-Prosecutors' submissions yesterday
2 prove that they agree with us, because while they claim their
3 principal submission to be that soldiers were enemy of the Party,
4 they end up saying something much narrower and much simpler. They
5 end up saying that there was a policy to kill "officers of a
6 certain rank and above".

7 Now, of course, we dispute this. But the point is that the
8 Co-Prosecutors know that the vague class theory Duch claims to
9 have read in a "Revolutionary Flag" was never intended to, and
10 never did, translate to execution. Even they know that they
11 cannot credibly claim that our client intended to execute
12 soldiers and officials regardless - regardless of rank.

13 [11.39.18]

14 And as we observed last week, the Co-Prosecutors fail even to
15 assert that the alleged victims at Tuol Po Chrey were anything
16 more than ordinary soldiers and civilians.

17 Yesterday, they conceded that our client never intended to
18 execute ordinary soldiers or civilians. Now, put together, these
19 concessions establish that Nuon Chea never intended the execution
20 of the alleged victims at Tuol Po Chrey, and this alone, Mr.
21 President, requires the Chamber to acquit Nuon Chea of all crimes
22 charged in connection with Tuol Po Chrey.

23 My fifth - my sixth and final point is that the Co-Prosecutors -
24 the Co-Prosecutors say nothing at all, nothing at all, about the
25 possibility that, if any killings did take place at Tuol Po

1 Chrey, they were constituted locally directed revenge killings.

2 [11.40.20]

3 Let's not forget, Mr. President, the liberation of Pursat marked
4 the end of a year's long bloody civil war. The alleged victims
5 were supposedly the CPK's former opponents. Revenge killings
6 under these circumstances are typical.

7 Your Honours, Mr. President, my very last comments today in this
8 trial will concern the Co-Prosecutors' analysis yesterday of Ros
9 Nhim's role in the CPK and the role of zone leaders more
10 generally.

11 Now, the critical point, and I cannot stress this enough, is that
12 Ros Nhim was not a mere "zone leader". He, himself, was a member
13 of the Standing Committee. He, himself, was, according to the
14 Co-Prosecutors reasoning, an equal participant in the Standing
15 Committee's practice of democratic centralism.

16 Now, yesterday, the Co-Prosecutors said that Nuon Chea met with
17 Ros Nhim every three months in the Northwest Zone. And our
18 question is: So what? What could the fact that Ros Nhim met Nuon
19 Chea possibly say about the content or nature of their
20 relationship?

21 [11.41.40]

22 The Co-Prosecutors tell us that at one of these meetings, Nhim
23 told Nuon Chea about the execution of Nuon Chea's uncle, Sieu
24 Heng.

25 Now, Mr. President, we have trouble seeing their point. Nhim did

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1 not ask our client for permission to kill Sieu Heng. He was not,
2 as the Co-Prosecutors observe, afraid to tell him he had executed
3 Sieu Heng.

4 They asked why would Nhim tell Nuon Chea about Sieu Heng and not
5 about Tuol Po Chrey. And to us, Mr. President, the answer is
6 obvious. Tuol Po Chrey was none of Nuon Chea's concern. The death
7 of his uncle, quite obviously, was.

8 Now, the hard evidence of the relationship amongst the various
9 members of the Standing Committee, including those who were also
10 zone leaders, is almost completely non-existent. As we saw last
11 week, just about the only person able to speak with any authority
12 is Ieng Sary. And he says that within Angkar, "each zone was
13 independent: 'Kill as you please, do as you please'".

14 [11.43.00]

15 Ros Nhim's flippant attitude towards Sieu Heng's execution
16 corroborates exactly that description. The best the
17 Co-Prosecutors can find in response is a small handful of
18 telegrams purporting to show Ros Nhim seeking advice or guidance
19 from the Party Centre. They do not mention the consistent
20 testimony that communication from the Party Centre to the zones
21 was limited and mainly concerned goods requested by the zones,
22 that Nuon Chea almost never sent telegrams to anybody.

23 And even this very small selection of telegrams are all in 1977
24 and 1978, years after Tuol Po Chrey.

25 A period, Mr. President, of years in which Ben Kiernan tells us

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1 the Centre's control over Northwest Zone forces was "gradually
2 increasing".

3 The only document they show you during a time period remotely
4 relevant to these charges showed only that information was
5 conveyed to the Party Centre without any request for advice or
6 instructions delivered to the zone.

7 The question is: Why is every other document the Co-Prosecutors
8 presented from a period so far from April 1975? To paraphrase the
9 Co-Prosecutors, we must ask: Was that a coincidence?

10 [11.44.45]

11 Mr. President, Your Honours, there's only one hard reality about
12 Ros Nhim. That reality is that he was ultimately purged. The
13 Co-Prosecutors tell the Chamber that he was purged but, for them,
14 the story ends there. And for us, it just the beginning.

15 The Co-Prosecutors do not take the next step and tell you why Ros
16 Nhim was purged. The answer is, Mr. President, he was considered
17 a traitor. He was considered a traitor because he was
18 deliberately acting contrary to Party policy. He deliberately
19 imposed harsh conditions in the Northwest Zone for the purpose of
20 destabilizing the Party Centre.

21 Mr. President, Your Honours, the Co-Prosecutors have never
22 adequately answered a simple question, and these are my last
23 words: If Nuon Chea could so easily control Ros Nhim's behaviour,
24 why did they deem it necessary to use military force against him?
25 Thank you.

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1 [11.46.10]

2 MR. PRESIDENT:

3 Thank you, Counsel.

4 The time is now appropriate for lunch adjournment. The Chamber
5 shall 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 1146H to 1329H)

11 MR. PRESIDENT:

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

13 I now hand over the floor to the defence team for Mr. Khieu
14 Samphan to make their final rebuttal statement.

15 You may proceed.

16 MR. VERCKEN:

17 Thank you, Mr. President.

18 As I said yesterday, we will not take up much of your time,
19 basically because yesterday we did not hear anything yesterday
20 that would warrant any fundamentally different responses on our
21 side, or because the arguments that we heard were not relevant,
22 or because in our final submission we have responded already or
23 have done so through our pleadings.

24 [13.30.48]

25 I'll just quote one example of an irrelevant argument: There was

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1 reference to a telegram referring to Mr. In Tam who was a former
2 military officer from the Khmer Republic, who after April 1975
3 continued to fight against Democratic Kampuchea from the Thai
4 Border. And you were told that the content of the telegram,
5 referring to what Mr. In Tam was doing and the possibility of
6 eliminating him, was some kind of form of proof with reference to
7 the former people from the Khmer Republic, but that is completely
8 false since the man was continuing his war effort against
9 Democratic Kampuchea. I believe that this has nothing to do with
10 the trial and it's the kind of trial that doesn't really merit
11 any response because it's not our intention to waste your time
12 with it.

13 With respect to the arguments we've already answered in our
14 submission, let me mention the proposal that was made by the
15 Prosecution yesterday to use paragraphs 1360 to 1372 of the
16 Closing Order to expand the scope of the trial on the grounds
17 that the five Democratic Kampuchea policies are set out in those
18 paragraphs. And in paragraph 105 of our final submission, and in
19 our oral remarks, we have answered to that by referring to our
20 response to your Decision of April 2012.

21 [13.33.21]

22 These are the kinds of things that we do not wish to dwell on at
23 this stage, because it doesn't seem to have any point. There are
24 some minor points that I will quote to you here – and it won't
25 take long.

1 Yesterday, the Prosecution and the civil parties said that the
2 reasons why we had discussed the health, military, and economic
3 situations as they prevailed in Phnom Penh and in Cambodia in
4 general in April 1975, was to serve as a justification for the
5 evacuation.

6 Now, that isn't exactly right. And so let us say once again that
7 if we took the time to describe that situation, it was for two
8 reasons. The first was to illustrate the fact that the
9 Investigating Judges have been selective in studying the
10 historical context and had failed to pay due attention to
11 important matters such as the humanitarian, health, military, and
12 economic situation in Cambodia before the regime was established.
13 And if we described that situation, it was also because we wanted
14 to talk about Khieu Samphan and intent.

15 [13.35.09]

16 The problem is not to do with knowing why Khieu Samphan decided
17 to evacuate Phnom Penh, because he didn't decide that; he was not
18 party to that decision regarding the evacuation of the capital.
19 So, the question you have to ask is if the explanations that were
20 given subsequently appear to be plausible. And that is the case.
21 Even if his view was asked before, Khieu Samphan has told us he
22 would not have taken that decision to evacuate Phnom Penh. The
23 explanations he was given subsequently were based on genuine
24 practical facts on a health and a military and an economic
25 situation about which this Chamber has examined evidence. The

1 explanations were not idiotic and they convinced other people as
2 well as him.

3 Last Friday, we saw a clip of an interview with Samdech Sihanouk
4 that was done in October 1975 in New York, and Sihanouk was
5 saying that he agreed with the work done by the Khmer Rouge so
6 far. He was back in Phnom Penh and he knew that the city had been
7 emptied, but that is what he said and it's on the case file.

8 [13.37.14]

9 With respect to the second population movement phase, we have
10 undeniable proof - and it's not contested on the other side of
11 this room - that Khieu Samphan was outside the country when the
12 decision was taken for the second population movement. And here
13 we have heard no evidence adduced that Khieu Samphan took part in
14 the implementation of those - or, that movement from August '75
15 to 1976.

16 Another comment we wish to make to Your Honours before you
17 withdraw to deliberate, concerns the request that the prosecutors
18 made to you yesterday to consider that the testimony gathered on
19 elements that are external to the file should reinforce the
20 relevant proof. When the principle is defined in such general
21 terms, it certainly appears to be acceptable, but it is the
22 practical application of it, as requested by the Prosecution,
23 that entails a serious judicial error, because what the
24 Prosecution is asking you to do is to consider that Khieu Samphan
25 is guilty of facts that have not been tried here, that are

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1 supposed to be being tried at a later stage, and that despite
2 that, according to the Prosecution, these facts should be used by
3 this Chamber to qualify the facts and the ultimate penal
4 responsibility of Khieu Samphan. That is not acceptable and it's
5 a breach of essential legal principles.

6 [13.39.33]

7 By way of closing, I would say a few words about that type of
8 responsibility - that is, joint criminal enterprise, and I would
9 say two things about it: The Prosecution is asking you to apply
10 the criteria of the systematic form of criminal enterprise, JCE.
11 And apart from the reasons just mentioned about why this is
12 impossible, apart from reasons connected with the scope of the
13 trial, I would like to point out something that must be clear to
14 all, and that is that if the case law of international criminal
15 tribunals has conceived of a variation on the basic form of joint
16 criminal enterprise, a variation in which the necessary threshold
17 of proof of intent is lower, then it was because there were
18 reasons for that, there was a specific context, it wasn't to
19 award some kind of gift to all prosecution teams throughout the
20 world, and more particularly, the one sitting opposite me today.

21 [13.41.12]

22 And the reason for that happening was, of course, that the person
23 guilty of systematic joint criminal enterprise had contributed to
24 running an extermination camp in a confined limited space, and
25 when that individual could not claim, because of the very

1 confined nature of the camp, when that person could not deny what
2 was occurring therein, then it was felt that the threshold for
3 proving intent could be lower.

4 Now, today what you're being asked to do is to say that all of
5 Cambodia was a concentration camp and that therefore that kind of
6 JCE applies. This is quite beyond the bounds of reason and that
7 isn't the kind of context for which that case law, creating a
8 variation on JCE, was originally established and it does not
9 correspond to the spirit of the law.

10 In addition, of course, to all of the other arguments concerning
11 the scope of the trial and the fact that today you cannot
12 consider that Cambodia nationwide was a single concentration
13 camp, the facts that might possibly allow you to say such a thing
14 in any case are going to be judged at a later stage, and not now.

15 [13.43.32]

16 The second point I'd like to make is that the Prosecution is
17 going even further. In many of their arguments, they are asking
18 you to apply the expanded form of joint criminal enterprise, the
19 form that you, before this trial even opened, excluded from what
20 you could apply. And I include in this all of the developments by
21 the Prosecution, which consist in saying that the criminal
22 responsibility of the Accused can be secured through the fact
23 that it was foreseeable that crimes could have been committed.
24 Now that cannot be applied before this Chamber, and you, Your
25 Honours, decided that before the trial began, and the Prosecution

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1 is entirely aware of this.

2 That, Mr. President, Your Honours, brings me to a close on the
3 comments I would like to make at the closure of this debate.

4 Thank you very much.

5 MR. PRESIDENT:

6 Thank you.

7 Mr. Khieu Samphan, do you wish to make any statement? And if you
8 wish so, security guards are instructed to bring Mr. Khieu
9 Samphan to the dock.

10 Security guards, please bring Mr. Khieu Samphan to the dock, and
11 he will make his final statement from there.

12 (Mr. Khieu Samphan is taken to the dock)

13 [13.46.52]

14 Mr. Khieu Samphan, you may proceed now.

15 You may be seated, Mr. Khieu Samphan, due to your health concern.

16 MR. KHIEU SAMPHAN:

17 My utmost respect to venerable Buddhist monks in various
18 monasteries and pagodas across Cambodia. My respect to my fellow
19 national compatriots. My respect to the civil parties. My respect
20 to Mr. President and Your Honours. My respect to counsels and
21 everyone in the courtroom. My respect to the Co Prosecutors.
22 Over the last couple of days, I have listened attentively and
23 heard it clear and loud the interventions by all parties,
24 particularly the interventions of those who have criticized me
25 for not speaking enough in my current case. Ironically, at the

1 same time, those same individuals have manoeuvred and manipulated
2 my little speeches as the basis for their allegation against me.
3 Therefore, although I try to explain in good faith, refuting the
4 various charges brought against me, you will continue to
5 criticize me, and if I choose to remain silent, you still accuse
6 me.

7 [13.50.30]

8 I would like to make it clear that I never wanted or decided to
9 evacuate the people, and neither did I plan or decide the
10 massacre of innocent people. My political conviction and
11 conscience at that time, given the reality on the ground,
12 whatever I did was to protect the weak, was to uphold the respect
13 for their fundamental rights, and to build a Cambodia that was
14 strong, independent, and peaceful.

15 Indeed, widespread social injustice made me disheartened and
16 became discontented with the regime, but I was not so
17 discontented that I sought tit for tat or revenge. My underlying
18 intention and wisdom was to bring about independence, peace, and
19 prosperity to Cambodia. I only wanted people to live with
20 dignity.

21 However, when I heard the charges brought against me, and how
22 these charges were constructed here, and in addition, when I
23 witnessed that those who will sit to decide on my case have
24 refused to take into consideration the real situation on the
25 ground at that time, but instead form a preconception that I was

1 a monster, I have lost desire to say anything further.

2 [13.54.18]

3 Indeed, during the Lon Nol era following the coup d'état, I

4 wanted the Khmer Rouge and Samdech Sihanouk alliance to win the

5 war against Lon Nol, and I did rally them at the time. And

6 indeed, following the resignation of Samdech Sihanouk from the

7 head of state in 1976, I had the full confidence that we would

8 help each other to rebuild the country to be a prosperous one.

9 Everyone who is here today, you seem to have believed that I was

10 guilty, because all of you believe that I should have foreseen

11 what would happen following the 17 of April 1975, and that I

12 should have recused or deserted the Khmer Rouge. The fact that I

13 remained with them amounts to the allegation that I was a culprit

14 and deserved conviction, even though I have explained the truth

15 to the best of my knowledge.

16 To them, I should have remained indifferent and let Lon Nol

17 regime pursue their course of action. To them, I should not have

18 taken any action to respond to Lon Nol; and to them, following

19 the victory over war against Lon Nol and America, I must have

20 known that my political conviction and wisdom would not be

21 implemented, but instead it would be reversed completely under

22 the absolute control of the power of the Khmer Rouge who enforced

23 their various measures strictly.

24 [13.57.55]

25 I would like to reiterate that I did not witness the things that

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1 could have happened days following the victory, and neither did I
2 have any power to intervene, or sanction, or rectify anything.
3 Some even said that I was a coward. The reality was that I did
4 not have any power and I did not care about it either.

5 This could have been probably my mistake because subsequently, I
6 remained close with those powerful individuals, but I was
7 powerless, but all of you believe that I had effective power at
8 that time. That is why today I was brought and put on trial
9 today.

10 Today, it is easy to say that I should have known everything, I
11 should have understood everything, and thus, I could have
12 intervened or rectified the situation at the time. Do you think
13 that I did not try my best to understand the situation? Do you
14 really think that that was what I wanted to happen to my people?
15 [14.00.52]

16 When I was a youth, I tried my best in order to change a regime
17 full of injustices, and later I had to escape for my life from
18 persecution. I would have been killed if I had not fled into the
19 jungle. Subsequently, upon learning that there was a group of
20 people who were better equipped to fulfil this noble task, in the
21 interest of Cambodian people and nation, I wanted this group of
22 people to succeed in their endeavours. I then provided them with
23 my little support I could.

24 At the time, I had the faith and confidence in their
25 revolutionary plan. I was convinced that it would bring about a

1 betterment for Cambodia and Cambodia would last. Although our
2 poor unfortunate nation had suffered from destructive war, our
3 country was destroyed so badly that widespread famine was
4 looming.

5 Completely contrary to what had been raised before this Chamber,
6 never had I participated in the plan that later led to the
7 suffering of the people. I was never, at any one time, a part of
8 this plan - never. As I have tried to explain to the civil
9 parties who testified and stated their suffering before this
10 Chamber thus far, that I never thought that such a thing would
11 happen to my people. This is the only one thing that I would like
12 to reiterate today because it is the truth, but nobody wants to
13 listen to me.

14 [14.04.51]

15 Given this indifference, regardless of my attempt to explain the
16 truth, and given the state of conditions of the current
17 proceedings before this Chamber, I have a strong feeling that no
18 matter how hard I try to explain, they will only turn their deaf
19 ears at me. They will still not pay attention to what I have to
20 say. Instead, I feel that the more I speak, the more vengeance
21 they have against me. Therefore, I think that I don't have to be
22 silly trying to explain those who never want to listen to me.
23 I, myself, have a deep regret - regret, rather, that I had all
24 the faith and confidence in this tribunal from its early day, the
25 confidence that this Court would secure me an opportunity to

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1 explain. But unfortunately, to date, it is clear that everyone
2 wants only one thing from me - that is, my admission of guilt
3 according to the charges brought against me, the charges
4 concerning the acts that I have never, ever committed at all.
5 Because I did not know what happened subsequently following the
6 victory, I had no reason to admit the guilt despite mounting
7 pressure on me. I am of the view that if I remain silent I can
8 maintain my honour and dignity and I will leave it entirely to
9 you wise Judges to adjudicate on my case.

10 [14.07.59]

11 My defence counsels and their team, their dedicated team, have
12 defended me vigorously and with conviction for which I am most
13 grateful, regardless of the result. I firmly hope that whatever
14 it is, you wise Judges will find justice.

15 Thank you.

16 MR. PRESIDENT:

17 Thank you, Mr. Khieu Samphan.

18 Security guards, please bring Mr. Khieu Samphan to his seat
19 behind his counsels.

20 (Mr. Khieu Samphan leaves the dock)

21 [14.09.47]

22 Now the proceedings to hear the closing statement by all parties
23 in Case 002/01, as part of the Case 002, has come to an end
24 following - in the light of the completion of the evidentiary
25 hearings and the parties' oral closing statement in Case 002/01.

1 I, the President of the Trial Chamber, wish to inform the parties
2 and public as follows.

3 The trial Chamber of the ECCC has now finished the substantive
4 hearing on Case 002 on the evidence in Case 002/01, which forms
5 the first phase of Case 002, in which two Accused, Nuon Chea and
6 Khieu Samphan, are charged with crimes against humanity.

7 Since the start of the evidentiary hearings on the 21st of
8 November 2013 – 2011, rather, which concluded on the 23rd of July
9 2013, the Trial Chamber has held 212 days of hearings, along with
10 the oral closing statements, which commenced on the 16th to 31st
11 of October 2013, and took another 10 days. The substantive
12 hearing takes 222 days in total.

13 [14.11.55]

14 During the course of the proceedings in Case 002/01, the Trial
15 Chamber has heard 92 individuals, among whom there are three
16 expert witnesses, 57 witnesses, and 32 civil parties. Two
17 treating doctors and two medical experts also testified on the
18 health conditions of the Accused.

19 The Chamber has been seized of more than 290 written applications
20 and rendered more than 250 written and oral decisions.

21 The parties to the proceeding have made a request for the
22 admission, as evidence, into Case 002/01 of numerous documents
23 and materials. This includes news articles, magazines, minutes of
24 the meetings, national and international telegrams, books
25 authored by experts, maps of the crime sites, photos taken during

1 the period of Democratic Kampuchea, written records of the
2 witnesses and civil parties' interviews, transcripts in Case 001,
3 the records of the Accused's statements, interviews, and other
4 statements by witnesses and individuals compiled by non judicial
5 institutions; and as a result, more than 4,000 documents,
6 consisting of 166,500 pages in three languages have been admitted
7 as evidence in Case 002/01 by the Chamber.

8 [14.14.29]

9 At this juncture, the substantive hearing in Case 002/01 is
10 considered complete.

11 Before announcing the official conclusion of the closing
12 statements, the Trial Chamber wishes to thank Your Excellences,
13 Lok Chum Teav, ladies and gentlemen, the parties to the
14 proceedings, witnesses, experts, and civil parties for having
15 given testimonies before the Chamber.

16 Likewise, the Chamber would also like to thank the Office of
17 Administration, the units and sections under its supervision,
18 especially the Interpretation and Translation Unit, and in
19 particular the booth interpreters for their assisting with the
20 trial proceedings.

21 Moreover, the Chamber also wishes to thank the staff of the Trial
22 Chamber, the Audio-Visual Unit, the Witness and Expert Support
23 Unit, the Defence Support Section, the ECCC's detention facility,
24 security guards, the Public Affairs Section, the Security and
25 Safety Section, the General Service Section, and other relevant

1 national and international sections under the Office of
2 Administration for their help.

3 [14.16.12]

4 Similarly, the Chamber would like to thank the officials,
5 personnel from the Royal Government of Cambodia's institutions or
6 units, which include the General Security Section, the
7 Firefighter Brigade, the Medical Section, and other sections
8 relevant to the work of the Chamber for their assistance.

9 Last but not least, the Chamber wishes to thank personnel from
10 organizations or centres, including the Transcultural
11 Psychosocial Organization Cambodia, or TPO Cambodia; the
12 Documentation Centre of Cambodia, or DC Cam, for their
13 participation in and physical and emotional support to the trial
14 proceedings in Case 002/01 from the beginning to this fruitful
15 end.

16 The Trial Chamber now wishes to pronounce the conclusion of the
17 proceedings in Case 002/01. The Chamber would like to inform the
18 parties to the proceedings and the public, that after this, the
19 Trial Chamber will commence its deliberation and prepare its
20 judgement regarding Case 002/01.

21 In respect of the date for the pronouncement of the judgement,
22 the Trial Chamber has not been able to set a particular date as
23 yet due to the fact that the case is voluminous and complex, and
24 that the judgement has to be prepared into three working
25 languages of the ECCC.

1 The Trial Chamber will notify the parties and public of the
2 notification of the date for the pronouncement of the judgement
3 in due course, prior to the actual date of such pronouncement.

4 [14.18.37]

5 With regard to the proceedings in Case 002/02, as indicated in
6 the decision on Severance of Case 002 of the 26th of April 2013,
7 the Trial Chamber would like to inform the parties to the
8 proceedings in Case 002 that the Chamber will hold the Trial
9 Management Meeting from the 11th to the 13th of December 2013 to
10 discuss on the preparation of future trials in Case 002/02. The
11 Chamber will notify the parties of the agenda of that meeting in
12 due course.

13 The Trial Chamber is now adjourned.

14 Security guards are now ordered to take the Accused to the ECCC's
15 detention facility. A warrant to bring the Accused to the hearing
16 date on the pronouncement of the Judgement will be rendered prior
17 to the set date of that hearing.

18 The Court is now adjourned.

19 (Court adjourns at 1420H)

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