



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 01-Dec-2014, 12:43
CMS/CFO: Sann Rada

TRANSCRIPT OF PROCEEDINGS
PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

17 October 2014
Trial Day 225

Before the Judges:

NIL Nonn, Presiding
Claudia FENZ
YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Martin KAROPKIN (Reserve)

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Roger PHILLIPS

For the Office of the Co-Prosecutors:

CHEA Leang
Nicholas KOUMJIAN
William SMITH
SENG Bunkheang
Dale LYSAK
Vincent DE WILDE D'ESTMAEL
Salim NAKHJAVANI
SONG Chorvoin
SENG Leang
SREA Rattanak

Accused:

NUON Chea
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Victor KOPPE
KONG Sam Onn
Anta GUISSÉ

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PICH Ang
Marie GUIRAUD
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Yiqiang LIU
MOCH Sovannary
HONG Kimsuon

For Court Management Section:

UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MS. CHEA LEANG	Khmer
MS. GUIRAUD	French
MS. GUISSÉ	French
MR. KHIEU SAMPHAN	Khmer
MR. KONG SAM ONN	Khmer
MR. KOUMJIAN	English
THE PRESIDENT (NIL Nonn, Presiding)	Khmer
MR. NUON CHEA	Khmer
MR. PICH ANG	Khmer
MR. SON ARUN	Khmer

1 PROCEEDINGS

2 (Court opens at 0902H)

3 MR. PRESIDENT:

4 Please be seated.

5 Today, the Trial Chamber of the Extraordinary Chamber in the
6 Courts of Cambodia, established by the Law on the Establishment
7 of the Extraordinary Chambers in the Courts of Cambodia for the
8 prosecution of crimes committed during the period of the
9 Democratic Kampuchea, from 17 April 1975 to 6 January 1979,
10 declares open the substantive hearing on Case File 002/02,
11 relating to the following Accused:

12 1) Nuon Chea, male, whose birth name is Lao Kim Lorn, was born on
13 7 July 1926 in Voat Kor village, Sangkae district, Battambang
14 province. The recorded address prior to his arrest was at Samphan
15 village, Khan Pailin, Pailin city. He is represented by two
16 counsels: Son Arun and Victor Koppe.

17 [09.04.34]

18 2) Khieu Samphan, male, born on 27 July 1931 in Rumchek commune,
19 Rumduol district, Svay Rieng province. The recorded address prior
20 to his arrest was at Kon Khtong village, Sangkat Ou Tavau, Khan
21 Pailin, Pailin city. He is represented by three counsels: Kong
22 Sam Onn, Arthur Vercken and Anta Guissé.

23 Pursuant to the Closing Order, the Accused are charged with
24 genocide, crimes against humanity and grave breaches of the
25 Geneva Conventions of 1949, committed on the territory of

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1 Cambodia and during the incursions in Vietnam, between 17 April
2 1975 and 6 January 1979.

3 [09.05.30]

4 On the basis of commission through a joint criminal enterprise,
5 planning, instigating, aiding and abetting, ordering, and in the
6 alternative, on the basis of superior responsibility, those
7 crimes and modes of criminal liability are set out and punishable
8 under Articles 4, 5, 6, 29 (new) and 39 (new) of the Law on the
9 Establishment of the Extraordinary Chambers in the Courts of
10 Cambodia, hereafter ECCC Law.

11 The Bench in Case 002/02 is composed of myself, Presiding Judge
12 Nil Nonn; Judge Jean-Marc Lavergne; Judge Ya Sokhan; Judge
13 Claudia Fenz; Judge You Ottara; and Reserve Judges, Thou Mony and
14 Martin Karopkin.

15 [09.06.40]

16 A single consolidated group, composed of 3,866 civil parties
17 represented by National Civil Party Lead Co-Lawyer Pich Ang, and
18 International Civil Party Lead Co-Lawyer Marie Guiraud, is
19 participating in the proceedings.

20 There are two pending motions for disqualification of this Bench
21 before a special panel of the Trial Chamber. It was established
22 by the Judicial Administration Committee, and pursuant to
23 Internal Rule 34.5, which authorizes judges subject to
24 disqualification motion to continue to sit until the motion is
25 determined, and in the interests of an expeditious proceeding in

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1 Case 002/02, the Bench has decided to proceed as scheduled.
2 However, yesterday the Trial Chamber received a courtesy copy of
3 the International Co-Prosecutor's disclosure of statements from
4 another case file. The statements at issue appear to amount to
5 hundreds of pages, and concern some of the first witnesses to be
6 called. The Chamber and the parties will need time to consider
7 these statements. The Chamber would like to inform the parties
8 and the public that for this reason, it is postponing the
9 appearance of the first witness in Case 002/02 until 27 October
10 2014. The Chamber is also scheduling a Trial Management Meeting
11 for Tuesday 21st October 2014 at 9 a.m., pursuant to Internal
12 Rule 79.7. The purpose of this Trial Management Meeting will be
13 to allow the parties and the Trial Chamber to discuss, in camera,
14 the legal and practical consequences of this new disclosure. No
15 other topics will be on the agenda for this Trial Management
16 Meeting.

17 [09.09.45]

18 I now declare the hearing open.

19 Greffier, please report to the Chamber on the attendance of the
20 parties to the proceedings.

21 GREFFIER:

22 Mr. President, it is noted that all parties to the proceedings
23 are present.

24 MR. PRESIDENT:

25 Thank you, Ms. Se Kolvuthy.

4

1 The Chamber does not allow you, Counsel, to the floor, as we have
2 to follow the proceedings and the procedures stated in the
3 agenda. And if you wish to be on your feet, please make sure when
4 your turn is on. Please be seated. Thank you.

5 [09.11.02]

6 The Chamber would like to inform everyone that today we will hear
7 a brief opening statement by the Co-Prosecutors, and a brief
8 response from the Accused and/or their lawyers, pursuant to Rule
9 89.2(bis) of the Internal Rules. As just announced, the
10 substantive hearing of the evidence will be conducted from 27
11 October 2014, with the first witness to be heard in relation to
12 the Tram Kak cooperative.

13 For the benefit of the public, the Chamber recalls that on 22
14 September 2011, the Chamber issued a Severance Order pursuant to
15 Internal Rule 89(ter), which limited the scope of the first trial
16 in Case 002 to factual allegations described in the Closing Order
17 as Movement of Population, phases 1 and 2; and crimes against
18 humanity committed in their course.

19 The Chamber subsequently expanded the scope of Case 002/01 to
20 include the executions of former Khmer Republic officers at Tuol
21 Po Chrey. The severance of the case became final on 23rd July
22 2013, and on 4 April 2014, the Trial Chamber issued a decision on
23 additional severance and scope of Case 002/02, which was upheld
24 by the Supreme Court Chamber on 29 July 2014.

25 [09.13.09]

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1 The Judgement in Case 002/01 was rendered on 7 August 2014. All
2 parties, except the civil parties' co-lawyers, have filed notices
3 of appeal.

4 The Chamber will not read the factual analysis of the indictment.
5 Pursuant to Rule 89.1(bis) of the Internal Rules, the greffier is
6 now ordered to read the charges relating to Case 002/02.

7 Ms. Se Kolvuthy, you may proceed.

8 GREFFIER:

9 Pursuant to the Closing Order as amended by the Pre-Trial Chamber
10 decision on appeal against the Closing Order, documents D427/3/15
11 and D427/4/15, as well as by the Trial Chamber's Decision on the
12 Defence Preliminary Objections regarding Statute of Limitations
13 on Domestic Crimes - that is, document E122, the Accused Nuon
14 Chea and Khieu Samphan are appearing before the Trial Chamber to
15 be tried for the following charges:

16 [09.14.49]

17 Having, within the territory of Cambodia between 17 April 1975
18 and 6 January 1979, through their acts or omissions, committed
19 via a joint criminal enterprise, planned, instigated, ordered,
20 aided and abetted, or been responsible on the basis of superior
21 responsibility, for the following crimes:

22 1) Crimes against humanity, specifically: murder, extermination,
23 enslavement, deportation, imprisonment, torture, rape,
24 persecution on political, racial and religious grounds, and other
25 inhumane acts. These crimes are punishable under Articles 5, 29

Corrected transcript. Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript.

1 (new), and 39 (new) of the ECCC Law.

2 2) Genocide, by killing members of the groups of Vietnamese and
3 Chams, punishable under Articles 4, 29 (new), and 39 (new) of the
4 ECCC Law.

5 3) Grave breaches of the Geneva Conventions of 12 August 1949,
6 specifically: wilful killing, torture or inhumane treatment;
7 wilfully causing great suffering or serious injury to body or
8 health; wilfully depriving a prisoner of war or civilian the
9 rights of fair and regular trial; and unlawful deportation or
10 unlawful confinement of a civilian.

11 These crimes are punishable under Articles 6, 29 (new), and 39
12 (new) of the ECCC Law.

13 [09.16.55]

14 Pursuant to the second decision on Severance Order of Case 002,
15 dated 26 April 2013, document E284, and the Trial Chamber's
16 decision on additional severance of Case 002 and scope of Case
17 002/02, dated 4 April 2014, document E 301/9/1, the Trial Chamber
18 will, in the second trial in Case 002, hear evidence relating to
19 the following topics in relation to Nuon Chea and Khieu Samphan:

20 a) Historical background;

21 b) Administrative structures, communication structure and
22 military structure;

23 c) Conflict;

24 d) Roles of the Accused and character;

25 e) Policies of Democratic Kampuchea on the issues raised in the

1 indictment;

2 f) Factual allegations described in the indictment related to

3 population movement phase 2 (limited to the treatment of the

4 Cham); cooperatives and worksites (limited to Tram Kak

5 cooperatives, Trapeang Thma Dam, 1st January Dam, and Kampong

6 Chhnang Airport worksite; Security Centres (limited to S-21,

7 Krang Ta Chan, Au Kanseng, and Phnom Kraol Security Centres);

8 treatment of targeted groups, including the treatment of

9 Buddhists (limited to Tram Kak cooperatives), treatment of the

10 Cham, excluding the Krouch Chhmar Security Centre) and the

11 treatment of Vietnamese (excluding the crimes committed by the

12 Revolutionary Army of Kampuchea on Vietnamese territory; and the

13 regulation of marriage on national wide.

14 [09.19.09]

15 Genocide by killing Cham and genocide by killing Vietnamese:

16 Crimes against humanity, including murder, extermination,

17 enslavement, deportation, imprisonment, torture, persecution on

18 political, religious and racial grounds, and other inhumane acts,

19 through rape, attacks against human dignity, forced marriage,

20 forced transfer, and enforced disappearances, as they pertained

21 to the movement of population phase 2 (limited to the treatment

22 of the Cham); Tram Kak cooperatives; Trapeang Thma Dam, 1st

23 January Dam, and Kampong Chhnang Airport worksite; S-21, Kraing

24 Ta Chan, Au Kanseng and Phnom Kraol Security Centres; and the

25 treatment of Buddhists, the treatment of the Cham and Vietnamese.

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1 [09.20.19]

2 Grave breaches of the Geneva Conventions 1949, including wilful
3 killing, torture, inhumane treatment, wilfully causing great
4 suffering or serious injury to body or health, wilfully depriving
5 a prisoner of war or a civilian the rights of fair and regular
6 trial, unlawful deportation of a civilian, and unlawful
7 confinement of a civilian, as they pertained to S-21 and Au
8 Kanseng Security Centres.

9 Thank you, Mr. President.

10 MR. PRESIDENT:

11 Thank you, the greffier.

12 And before we proceed with the opening statement from the
13 Co-Prosecutors, the Trial Chamber reminds the Accused that they
14 have the right to remain silent, pursuant to Rule 21.1(d) of the
15 Internal Rules. Pursuant to Rule 90 of the Internal Rules, if the
16 Accused choose not to exercise their right to remain silent, the
17 Judges, the Co-Prosecutors, and all the Parties and their
18 lawyers, have the right to question the Accused.

19 [09.21.42]

20 On 30 September 2014, through email communications with the
21 Senior Legal Officer of the Trial Chamber, both Nuon Chea and
22 Khieu Samphan have indicated that they will not be responding to
23 questioning, pursuant to Rule 90 of the Internal Rules, following
24 the opening statement. The question from the Bench is: Nuon Chea,
25 do you confirm this position?

1 (A short pause)

2 09.22.33)

3 MR. PRESIDENT:

4 Mr. Nuon Chea, the question to you is: Do you wish to exercise
5 your right to remain silent?

6 As for the opening statement, your team will have the opportunity
7 to do so.

8 MR. NUON CHEA:

9 I wish to exercise my right to remain silent.

10 PRESIDENT:

11 Thank you, Mr. Nuon Chea.

12 And the question is now directed to the Accused, Khieu Samphan.

13 Through email communications with the Senior Legal Officer of the
14 Trial Chamber on 30 September 2014, you stated that you wished to
15 exercise your right to remain silent. We would like to know
16 whether you still maintain this position.

17 MR. KHIEU SAMPHAN:

18 I would like to make a statement.

19 [09.24.13]

20 MR. PRESIDENT:

21 The question to you is whether you still wish to exercise your
22 right to remain silent, as in the email communication to the
23 Trial Chamber with the Senior Legal Officer?

24 Please only respond to this question, of your position on the
25 right to remain silent so that the proceedings can be arranged

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1 accordingly.

2 As for your opening statement, you and your counsel will have the
3 opportunity to do so soon.

4 MR. KHIEU SAMPHAN:

5 I will respond to your question after I make my opening
6 statement.

7 MR. PRESIDENT:

8 Thank you.

9 The Chamber would like to give the floor now to the
10 Co-Prosecutors to make their brief opening statement.

11 [09.25.52]

12 MS. CHEA LEANG:

13 Good morning, Mr. President, Your Honours, and good morning
14 everyone in and around the courtroom.

15 Two months ago, we gathered in this courtroom to hear Your
16 Honours' historic verdict in the first trial of Nuon Chea and
17 Khieu Samphan. On the 7th of August 2014, a long-awaited day of
18 justice finally arrived for the victims of the Khmer Rouge. But
19 our work in this Court is not done.

20 The Accused have been convicted of crimes against humanity,
21 committed in the early days of their regime, when millions of
22 people were forcibly moved from the cities of Cambodia to the
23 countryside. But the great majority of the crimes suffered by the
24 victims of the Democratic Kampuchea regime, for which these
25 Accused are responsible, had yet to be addressed. In this trial,

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1 we will look through what happened to the people of Cambodia
2 after the forced movements, at the cooperatives and worksites
3 where they were enslaved and subjected to inhumane conditions
4 that led to countless deaths from starvation, overwork and
5 disease.

6 [09.28.02]

7 In this trial, the Accused will be prosecuted for the genocide
8 and persecution of the Cham and Vietnamese people for persecution
9 of the Buddhists, and for subjecting the women of Democratic
10 Kampuchea to forced marriage and rape. And the Accused will now
11 face trial for the biggest crime for which they have been
12 indicted: the extermination and murder of tens of thousands of
13 Khmer at re-education and security offices.

14 At these prisons, the people the Khmer Rouge regarded as enemies
15 were unlawfully detained, brutally interrogated and tortured, and
16 coldly disposed of when their interrogations were complete, and
17 they had provided a list of other alleged enemies to be pursued.

18 [09.28.58]

19 Of all the crimes in Democratic Kampuchea, there was none graver
20 than the relentless and systematic effort of the senior Khmer
21 Rouge leaders to identify and smash all those they feared could
22 one day oppose them: those who came from families not considered
23 part of the peasant or worker class, those associated with the
24 former government, those viewed as suspect because they came from
25 the cities, those who failed to obey and dared to question the

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1 policy of the Communist Party of Kampuchea, and those who tried
2 to flee and escape the Khmer Rouge, an endless and
3 ever-escalating cycle of violence against the Cambodian people,
4 which left a land of mass graves and missing relatives. This was
5 the truly heinous legacy of the CPK leaders who sit before us
6 today.

7 So, for those who have asked why we need another trial when these
8 Accused, elderly men, have already received life sentences, the
9 answer is simple. We are here because the millions of Cambodians
10 who did not survive this regime, for whom the 3 years, 8 months
11 and 20 days of Democratic Kampuchea meant only toil and dust,
12 suffering and grief, pain and death.

13 [09.31.04]

14 Your Honours, the doors of this court cannot be closed until
15 justice is done for the victims of these crimes.

16 This morning I will discuss the crimes committed in Tram Kak
17 district, and at the DK worksites and security centres that have
18 been included as part of this trial, and the crimes of forced
19 marriage and rape. The International Co-Prosecutor will then
20 address you on the crime of genocide. He will also address how,
21 contrary to their claim that they had no knowledge of, or role in
22 the crimes for which they are charged, Khieu Samphan and Nuon
23 Chea contributed to each of the crimes that will be proven in
24 this trial.

25 Tram Kak district crimes and Kraing Ta Chan:

1 The first phase of this trial will involve crimes committed in
2 the cooperatives of Tram Kak district, which was part of Sector
3 13 of the Southwest Zone, and at the Kraing Ta Chan prison, which
4 was the district's re-education or security office. During the DK
5 period, Tram Kak was also known as District 105.

6 [09.32.43]

7 In testimony, you heard from Nuon Chea in his first trial, he
8 described Tram Kak district as one of two core bases of the
9 Communist Party of Kampuchea, going back to its early days.
10 During the Democratic Kampuchea regime, Nuon Chea, Khieu Samphan
11 and the other Party leaders, made trips to these areas to meet
12 the Southwest Zone leader, Ta Mok, and to show visiting
13 dignitaries the CPK's model cooperative in Leay Bour commune. The
14 party leaders received regular reports on the arrest and smashing
15 of enemies, the construction of dams and canals, rice production
16 and the livelihood of the people in Tram Kak and the other
17 districts that formed the Southwest Zone.

18 [09.33.34]

19 On the 30 June 1977, the Communist Party of Kampuchea Central
20 Committee awarded Tram Kak district the honorary "Red Flag",
21 recognizing it as one of the third [sic] model districts in all
22 of the Democratic Kampuchea in terms of defending the country,
23 making socialist revolution and building socialism, in fulfilling
24 the Party's mission to achieve three tons of paddy per hectare,
25 and in waging strong and profound class struggle within the

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1 entire district. In this trial, the Co-Prosecutor will prove what
2 took place in the CPK's model district between April 1975 and
3 January 1979.

4 [09.34.35]

5 The witnesses who have been proposed to testify in this segment,
6 including two former secretaries of Tram Kak district, a commune
7 chief, cadres who worked at the district office and hospital,
8 former guards and cadres from Kraing Ta Chan Security Office, as
9 well as the victims who lived in the district, Base People, New
10 People, and surviving detainees.

11 The Accused have been charged with a broad area of crimes against
12 humanity in relation to Tram Kak district and Kraing Ta Chan
13 Security Office: enslavement, religious persecution of Buddhists,
14 racial persecution, and deportation of the Vietnamese, political
15 persecution of Lon Nol officials and New People, forced marriage
16 and rape, imprisonment, torture, murder and extermination, and
17 attacks against human dignity.

18 [09.35.50]

19 The trial of these crime sites alone will allow us to examine all
20 aspects of life in Democratic Kampuchea and the crimes to which
21 the Cambodian people were subjected on a day to day basis, as
22 experienced in a district held out by the CPK leaders as a model
23 for the entire country. The Co-Prosecutors will prove that in the
24 CPK's model district, people were not free to choose where they
25 lived, what they did for work, or who they would marry. They were

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1 enslaved in cooperatives, where there was insufficient food to
2 eat and many died from starvation and malnutrition. Those who
3 complained about conditions in the cooperatives, or who tried to
4 escape, were regarded as enemies and sent to the district's
5 re-education or security offices. We have asked Your Honours to
6 hear testimony from the Deputy Chief of the Tram Kak district
7 hospital, who has described a meeting with the district committee
8 in which he was asked why there were so many sick people in the
9 hospital. When he told the CPK leaders of this model district
10 that it was because people did not have enough food to eat and
11 suffered from malnutrition, he was accused of attacking the
12 cooperatives, and his request to increase food rations denied.
13 [09.37.32]

14 The Co-Prosecutors will prove that in this model district, monks
15 from all Takeo province were gathered at the Angk Roka Pagoda,
16 forced to disrobe, and converted to soldiers, farmers, and
17 workers. The pagodas in the district were closed, and the people
18 prohibited from practising the Buddhist religion.

19 In the CPK model district, evacuees who arrived from Phnom Penh
20 and other cities, were gathered at the Wat Champa Leuk, a pagoda,
21 and those identified as enemies, including the high-ranking
22 officials and soldiers of the Lon Nol regime, were taken away and
23 killed.

24 As you will see in the surviving records of this district, the
25 persecution of targeted groups, such as the former Lon Nol

1 soldiers, Khmer Krom, New People, continued throughout the DK
2 period. Lists were made identifying the Khmer Krom families and
3 former Lon Nol personnel living in each commune. This is a report
4 from Kus commune, prepared in April 1977, entitled "List of
5 Kampuchea Krom People from Kus Commune." This includes a column
6 entitled "Rank", identifying those who held positions in the Lon
7 Nol military. The column next to that identifies those who were
8 17 April People from Phnom Penh. These groups were closely
9 monitored, and targeted for arrest and execution upon the
10 slightest misstep. As one witness from this district put it,
11 "Just open your mouth a little bit, and they took you away and
12 killed you."

13 [09.39.47]

14 A substantial percentage of the surviving Tram Kak reports of
15 enemies from commune chiefs and district security concern people
16 identified as having connections to the Khmer Republic. Here are
17 a few examples, all from April or May 1977, just two months
18 before Tram Kak was awarded the honorary "Red Flag" by the CPK
19 Central Committee. In this report to the District Office from
20 Cheang Tong commune, dated the 30th April 1977, the commune chief
21 identified two people connected to the Lon Nol regime, one a
22 second lieutenant, and the other a civil servant who worked in
23 the Social Development Ministry, and wrote - quote:
24 "After having received successive instructions from Angkar about
25 being vigilant about the enemy, and purging the enemy officers,

1 we have tracked, examined and found the following persons." End
2 quote.

3 [09.41.03]

4 A document from the Ta Phem sub-district cooperative base branch,
5 also sent in late April 1977, references those same instructions.
6 It reported that Ta Phem commune had "examined and purged the
7 enemies who held ranks, after having received the instructions of
8 the Party", and had found "six more such persons" with "officer
9 and official ranks".

10 On the 11 April 1977, Popel commune sent a "request for advice"
11 to the district which stated: "For those people who held a
12 ranking position in the old regime, we will send them to you, one
13 after another, for soldiers and some teachers who attempted to
14 destroy and are against our Revolution. Could you please give us
15 advice what to do? With high commitment to smash the spies of the
16 enemy to its total extinction in order to serve the Socialist
17 Revolution and building Socialist of the Party."

18 We see the result of the advice given to Popel commune in a
19 subsequent report to the district from that commune, sent only
20 four weeks later, on the 8th of May 1977. In that document, Popel
21 commune reported that 106 military families, 393 people, had
22 already been smashed by Angkar or died. And the commune were
23 screening more families to find out whether or not they are of
24 military personnel.

25 [09.43.02]

18

1 The Tram Kak records contain notes from the District Secretary
2 ordering the arrest of persons reported by the communes, and
3 notes from the Sector Secretary, ordering the execution of
4 prisoners following their interrogation. This is a report from
5 the Kraing Ta Chan on the interrogation of Ung Ly, a Lon Nol
6 civil servant and teacher from Angk Ta Saom, who had been trained
7 to repair air conditioners in the United States. The hand-written
8 annotation in the upper left corner is from Sector 13 secretary,
9 who approves the execution of this person. What did Ung Ly do to
10 deserve to be smashed? His sole crime, considered of dreaming
11 about good times and good food he had in America, having the rank
12 of a major in the Lon Nol government.

13 [09.43.54]

14 Your Honours, there will be no doubt about the existence and the
15 implementation of the CPK policy to eliminate the officials and
16 soldiers of the former regime in the evidence you will see from
17 Tram Kak district. The Co-Prosecutor will also prove that in this
18 model district, Vietnamese were deported and traded for Khmer
19 Krom living in Vietnam. And the Khmer Krom sent to Tram Kak were
20 enslaved and put to work in the district's cooperatives and
21 worksites. Later on, the Vietnamese who had remained behind were
22 rounded up and killed, until there were no more Vietnamese left
23 in Tram Kak district.

24 The Khmer Krom were similarly targeted and accused of having
25 "Khmer bodies with Yuon heads". A former cadre who worked at the

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1 Tram Kak district office from 1976 to 1978, proposed witness TC-2
2 - 822, has described in detail how "every single Vietnamese
3 national living in the district was swept clean", pursuant to a
4 plan from the "upper echelon". He was told by the cadre assigned
5 to arrest the Vietnamese, a relative of Ta Mok, that thousands of
6 families had been taken away and killed.

7 [09.45.54]

8 In the CPK's model district, monthly reports were prepared for
9 the Party leaders, totalling the number arrested and numbers
10 smashed each month at the District 105 re-education office in
11 Kraing Ta Chan. This is the report from November 1977, which
12 states that 75 new prisoners entered that month, 92 prisoners
13 were purged, and six died of illness, leaving a total of 85
14 prisoners at the end of the month. And in the CPK's model
15 district, young children were arrested and killed with their
16 parents. Here is a document written by the Tram Kak district
17 secretary in August 1978, explaining what was to be done with
18 children of female prisoners, who were too young to be put to
19 work, and I quote the CPK District Secretary, as follows - quote:
20 "Any bigger children that have already gone to the mobile unit,
21 or children's unit, let them stay there and take just the
22 mothers. But if children cannot be separated from their mothers,
23 bring them in for interrogation, and after everything is
24 finished, sweep them all clean."

25 [09.47.17]

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1 Your Honours, let there be no mistake about the meaning of this
2 document. When the Khmer Rouge say, "Sweep them all clean", what
3 they meant was to kill. In this case, kill toddlers and infants.
4 And this was life in the CPK's model district. The crimes
5 committed at Kraing Ta Chan will be proven, not only by the
6 hundreds of surviving Tram Kak records, but also by the testimony
7 of the surviving detainees and the CPK cadres who worked there,
8 and who have admitted to the shackling of prisoners in inhumane
9 conditions, the use of torture during interrogations, and the
10 execution of prisoners, who were buried in mass graves around the
11 prison compound. A document written by Kraing Ta Chan prison
12 chief, An, which has been authenticated by the former District
13 Secretary, reported to the Party that "so far, we have smashed
14 15,000 enemies." These are some of the human remains that were
15 discovered from the mass graves around Kraing Ta Chan prison.

16 [09.48.55]

17 Your Honour, Your Honour will determine in this trial who bears
18 responsibility for these crimes, and before I turn to my next
19 subject, let me take you back to one piece of key testimony we
20 have already heard on that issue. In the first trial, former Tram
21 Kak District Secretary, Pech Chim, described a month-long
22 political education sessions held each year in Phnom Penh for
23 district and sector secretaries from across the country. At the
24 meetings he attended, the sole instructor was the Accused, Nuon
25 Chea. When the former Secretary of the CPK's model district was

21

1 asked whether Nuon Chea discussed internal and external enemies,
2 this was his response – and I quote: "Yes, he did. He covered all
3 aspects. Without having covered the subject of enemies, people
4 would never know how to identify enemies from friends."

5 Your Honours, the crimes committed in Tram Kak district were not
6 the acts of the rogue cadres. They were the acts of trained and
7 loyal Party members, carrying out the policies, instructions and
8 wishes of Nuon Chea, Khieu Samphan, and the other CPK leaders.

9 [09.50.31]

10 Now on worksites:

11 After Tram Kak district, the second segment of this trial will
12 examine three of the most infamous worksites in Democratic
13 Kampuchea: the 1st January Dam that was built on the Chinit River
14 in Kampong Thom Province, part of the Central (Old North) Zone;
15 the Trapeang Thma Dam in Banteay Meanchey province, built by
16 Sector 5 of the Northwest Zone; and the Kampong Chhnang Airport,
17 a site managed by the Revolutionary Army of Kampuchea – Division
18 502.

19 Pursuant to the economic plan of the Accused, and the other CPK
20 leaders, large-scale irrigation projects were initiated across
21 the country in 1976, as part of the Party's "Great Leap Forward".
22 The CPK leaders called for the rapid completion of these massive
23 dams, notwithstanding that they were to be built primarily by
24 manual labour.

25 [09.51.40]

1 The Party Centre's plan for the 1st January Dam required that a
2 60-kilometre-long dam be completed in no more than one year. The
3 reservoir at Trapeang Thma Dam was the size of a large lake. It
4 included a 13-kilometre-long dike, built along the east side of
5 the reservoir, a 9-kilometre-long dike on the south side, three
6 bridges and three land-sea canals, one of which was 50 kilometres
7 long. Despite the massive size of this project, the Party's plan
8 called for its completion in only three months, as you will hear
9 from the former economic chief of Sector 5.

10 As a result of the Party's directives, thousands of workers were
11 sent to these sites, given unrealistic and arduous work
12 assignments, and forced to work from morning to night with
13 insufficient food and medical care. Over 20,000 workers were
14 assigned to build the 1st January Dam, and over 30,000 workers
15 sent to Trapeang Thma Dam.

16 [09.53.31]

17 In this CPK propaganda film of what is believed to be the 1st
18 January Dam site, you see the enormous size of these projects,
19 and the tasks performed by the workers who were sent to build
20 dams and dig canals. The workers at these sites were assigned
21 daily quotas, and expected to dig and carry between one to three
22 cubic meters of dirt every day.

23 Your Honour, you can see in this film that many of them are
24 working barefoot. The 1st January and Trapeang Thma Dam worksites
25 were well known to both Accused. The construction of dams and

1 canals were a regular subject discussed in the reports and
2 telegrams sent to the Party Centre. Khieu Samphan visited both
3 work sites and praised the construction of Trapeang Thma
4 reservoir. Nuon Chea regularly travelled to the provinces and saw
5 the conditions at the 1st January Dam and other worksites, as you
6 heard during the testimony of his body guard in his first trial.

7 [09.55.02]

8 The building of these dams was described by the Party Centre in
9 its "Revolutionary Flag" and "Youth" publications. This is the
10 July-August 1975 issue of "Revolutionary Youth". It contains a
11 detailed description of the parameters of the Trapeang Thma Dam,
12 notes that the construction of the reservoir started on the 16 of
13 February 1977, and was completed by mid-May, and provides the
14 following account of what was experienced by the tens of
15 thousands of workers at this site.

16 The CPK leaders also came to these sites to show foreign
17 delegations the accomplishments of their regime. In this photo,
18 you see Ieng Thirith taking a female delegation from Laos to the
19 1st January Dam. In December 1977, the Vice Premier of China was
20 taken by the CPK leaders to visit both dams. At Trapeang Thma
21 Dam, Southwest Zone Secretary Ros Nhim announced that the dam had
22 been built in less than two months in response to the call of the
23 Party Central Committee to be a water conservancy project in a
24 big way. At the 1st January Dam, Central Zone Secretary, Ke Pauk,
25 noted how "Buddhist monks used to say that only God can dam the

1 Chinit River." And in response, Pol Pot exclaimed that the people
2 themselves were now gods.

3 [09.57.18]

4 But the workers at these sites were not treated as gods by the
5 CPK. They were slaves who received meagre food rations, worked
6 from early in the morning to late at night, slept on the ground,
7 and were watched and guarded by CPK militia. And they were skinny
8 and malnourished, with swollen legs. Those who were too sick to
9 work were accused of being enemies, and punished. Those who
10 complained about the work conditions or lack of food, and/or who
11 tried to escape, were arrested and taken away. This was the
12 reality of these sites, as you will hear from the civil parties
13 and the witnesses who worked there.

14 From the top of the 1st January Dam, you can see Wat Baray Choan
15 Dek. Like many other Buddhist temples in Cambodia, it was used as
16 a security office by the Khmer Rouge, and many of the 1st January
17 Dam workers who were arrested were taken there and killed, as is
18 clear from this 1977 photo of the human remains recovered at Wat
19 Baray Choan Dek. Thousands of people died at this site. You will
20 hear similar testimony regarding arrests and disappearances of
21 workers at the Trapeang Thma Dam.

22 [09.59.04]

23 The Kampong Chhnang Airport worksite was operated by RAK Division
24 502. It was a tempering site, used to discipline soldiers who
25 came from purged divisions, or who were otherwise viewed as

1 suspect because of their personal background or connections. It
2 was a work project that was initiated and overseen by the CPK
3 Standing Committee, and was regularly discussed at Standing
4 Committee meetings attended by Nuon Chea and Khieu Samphan, as
5 reflected in the surviving minutes of those meetings. The site
6 was frequently visited by CPK leaders, including both of the
7 Accused, and a site supervisor who worked for the Deputy
8 Commander of Division 502 witnessed Khieu Samphan come to the
9 worksite and meet with Division 502 deputy and the other site
10 chiefs.

11 The Kampong Chhnang airfield site covered 300 hectares, and was
12 one of the largest worksites in all of Democratic Kampuchea. The
13 runway itself, which can be seen in this aerial photo, was 2.4
14 kilometres long. Between 22 and 35,000 people were sent to this
15 tempering site. They were forced to work long days, with sparse
16 food rations, under threat of being killed or sent to a Security
17 Office. Some were sent to S-21. Large groups of purged soldiers
18 from the East Zone were simply taken away from the worksite and
19 killed en masse. Many of the female cadres at the site committed
20 suicide.

21 [10.01.44]

22 The CPK's leaders' plans for the airport site included a massive
23 underground command centre that was to be built into the site of
24 Ta Reach Hill. Workers at the site used dynamite to blast a
25 six-meter-high tunnel that expanded 400 meters into the middle of

1 the mountain. Along the tunnel, a number of large Chambers were
2 cut out of the rock. A "Cambodia Daily" reporter, who ventured
3 into this tunnel, described the thin oxygen, fouled air and
4 darkness, and wrote: "It is hard to believe that anybody could
5 perform hard labour in such an environment." Witnesses have
6 testified that people died or were injured everyday in the effort
7 to build this dangerous and delusional project of the CPK
8 Standing Committee.

9 [10.02.59]

10 The enslavement of Cambodians at DK worksites and cooperatives
11 will also be proven by the numerous telegrams and reports sent to
12 the Party Centre leaders, describing how people who sought to
13 flee or escape such sites, were hunted down, arrested, and either
14 taken back to their worksite or smashed. Here is just one example
15 from the West Zone's monthly report for July 1978.

16 It describes how sector troops found three enemies trying to
17 escape from the Kampong Chhnang Airport location, and fired shots
18 at them, and reports that one of the captured workers had been
19 sent to the re-education place for further interrogation. The
20 same report also describes the arrest of a person who escaped
21 from a cooperative. The West Zone report from the prior month
22 contained an entire section entitled "Escaping from
23 Cooperatives".

24 Your Honours, we have identified over 100 instances in which the
25 Party Centre leaders in Phnom Penh received reports of the arrest

1 of persons whose sole crime was trying to leave, to get out of
2 the cooperative or worksite in which they were enslaved, to make
3 their way to the nearest border, and escape to Thailand or
4 Vietnam. As we have repeatedly heard from the survivors of this
5 regime, Democratic Kampuchea truly was a prison without walls.

6 [10.05.04]

7 On Security Centres:

8 I will now address DK Security Centres which will be the fourth
9 segment of this trial. I discussed earlier the Kraing Ta Chan
10 Prison, the re-education office of Tram Kak District. In this
11 trial, the Accused will also be prosecuted for crimes committed
12 at the Au Kanseng prison in Ratanakiri province, the Phnom Kraol
13 Security Office in Mondulkiri, and S-21. While not as big as S-21
14 or Kraing Ta Chan, Au Kanseng and Phnom Kraol are important to
15 this case, because the evidence linking the crimes committed at
16 those prisons to the CPK leaders in Phnom Penh. Au Kanseng was a
17 military prison, the re-education office of RAK Division 801
18 based in Ratanakiri. The evidence to be presented regarding this
19 security office will focus on the mass execution of 200 Jarai
20 men, women and children from Vietnam captured by Division 801.
21 This execution has been described by the Au Kanseng prison chief,
22 the deputy chief and surviving detainees. It is directly linked
23 to the CPK leaders in Phnom Penh who received a telegram from the
24 secretary of the Northeast Zone that reported the capture of
25 those Jarai prisoners, identified them as Vietnamese soldiers,

1 and requested advice of what to do with the prisoners. The list
2 of recipients of that telegram included Nuon Chea and the office
3 at which Khieu Samphan was based.

4 [10.07.20]

5 The Au Kanseng prison chief has testified that an order to
6 execute the Jarai prisoners was conveyed to Division 801 by the
7 Northeast Zone office.

8 Your Honours, let me make clear why this is significant: normally
9 execution orders for Au Kanseng did not come through the Zone
10 office. But in this case, the Zone Secretary saw instructions
11 from the CPK leaders in Phnom Penh on what to do with the 200
12 Jarai prisoners captured by Division 801. And the instruction
13 that was received was to kill them.

14 Your Honours, because this was an execution of Vietnamese
15 nationals captured by the RAK during a time of armed conflict,
16 the charges against the Accused related to Au Kanseng include
17 grave breaches of the Geneva Conventions. The Au Kanseng Prison
18 chief and deputy admit the use of torture including beatings with
19 clamps or whips and electrocution. They described how executions
20 of prisoners took place in nearby B52 craters and they also
21 described how division soldiers were arrested and detained at Au
22 Kanseng based on S-21 confessions sent from Phnom Penh that
23 implicated those cadres as part of enemy networks.

24 [10.09.16]

25 This is one of the S-21 confessions that was sent to Division 801

1 Secretary Roeun. The note on the cover page written by RAK
2 Chairman Son Sen alias Khieu, asked Roeun to read the confession
3 and pick out the relevant names from Unit 801. The evidence
4 relating to this security office also includes reports or
5 telegrams sent to Son Sen by the Division 801 Secretary in which
6 he expresses his commitment to the CPK policy of arresting anyone
7 suspected of being an enemy and those who were against the Party
8 line.

9 Your Honours, the Co-Prosecutors will prove that the
10 imprisonment, murders and other crimes committed at the Au
11 Kanseng Security Office were done with the knowledge and pursuant
12 to the policies and directives of the CPK leaders in Phnom Penh.
13 [10.10.45]

14 The same is true for Phnom Kraol. It was the security office of
15 Sector 105, the autonomous sector in Mondulhiri Province that
16 reported directly to the CPK Standing Committee. We have already
17 heard testimony from two of the former cadres from that sector.
18 Sao Sarun, the former secretary of Sector 105, has described his
19 regular trips to Phnom Penh to report to the Party Centre
20 leaders, including Pol Pot, Nuon Chea and Khieu Samphan. He
21 testified that it was the CPK leaders in Phnom Penh who made the
22 decisions in regards to political enemies arrested in his sector.
23 For example, persons accused of betraying the Party or
24 collaborating with the "Yuong". We also heard in the first trial
25 from Kham Phan, a cadre who worked in the Sector 105 telegram

1 office and who was the son of the sector secretary who preceded
2 Sarun. He described how telegrams relating to security matters
3 were sent to Nuon Chea and how telegrams were received from Nuon
4 Chea calling cadres to Phnom Penh.

5 [10.11.58]

6 The testimony of these witnesses regarding the authority of the
7 Party Centre leaders for Mondulkiri – that is, Sector 105, is
8 corroborated by the 30 March 1976 Central Committee decision on
9 the right to smash inside and outside the ranks. It states that,
10 for independent sectors, such as Sector 105, decisions on
11 smashing were to be made by the Standing Committee.

12 Your Honours, the Co-Prosecutors will prove that it was the CPK
13 Standing Committee that had direct responsibility for executions
14 at the Phnom Krom Security Office. This responsibility is also
15 reflected in the surviving telegrams from Mondulkiri sector. This
16 August 1977 telegram sent to Office 870 by Sector 105 Security
17 Laing, the father of witness Kham Phan reported the capture of
18 three people – who escaped from Stung Treng – who were believed
19 to enemies because they were carrying pictures of King Father
20 Sihanouk. The telegram requires a decision from the Party Centre
21 whether to purge them here or send them to the Northeast Zone.
22 This telegram from Sector Secretary Sarun reported the arrest of
23 a man and woman for immoral acts – stating: "This comrade was
24 previously implicated in the confessions of the traitor A Chuon.
25 At that time, the sector monitored his activities. But now he has

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1 been involved with these immoral acts and has been arrested and
2 detained."

3 [10:14:02]

4 It requests an opinion on what to do with the prisoners and is
5 sent to, "Uncle, Uncle Nuon, Uncle Van, Uncle Vorn, Office and
6 Documents."

7 In this trial we will hear evidence about crimes committed at
8 Sector 105 Security Office that resulted from the policies and
9 instructions of the CPK leaders. You will hear from surviving
10 prisoners who were part of a large group of 80 people arrested
11 and detained at the Sector Security Office in late 1977 because
12 they were relatives - or, worked at the same office as cadres
13 accused of being traitors, including the contemptible traitor
14 referenced in the telegram you just saw.

15 They will describe how many of these detainees were taken away
16 and never seen again. And, of course, the Security Centre phase
17 of this trial will also include S-21 - the highest level prison
18 in Democratic Kampuchea - a security office located in Phnom Penh
19 that reported to the Party Centre leaders; a security office that
20 was directly supervised by Nuon Chea during the last year of the
21 DK regime; a security office at which over 12,000 people were
22 killed in three years.

23 [10.15.53]

24 The crimes committed at S-21 were meticulously documented by the
25 CPK cadres who worked there and are beyond dispute. They are

Corrected transcript. Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript.

1 proven by the prisoner biographies, photographs, and lists that
2 were prepared upon the arrival of prisoners at S-21. They are
3 proven by the logs kept of interrogations, the reports prepared
4 by S-21 staff, describing the use of torture and the lengthy
5 confessions that would result from weeks or months of torture,
6 many of which were annotations recording how they were sent to
7 Son Sen, Nuon Chea and other CPK leaders.

8 The crimes committed at S-21 were proven by the list identifying
9 the prisoners who had been executed and notes reflecting the
10 approval of executions by Angkar. This S-21 list alone records
11 the killing of 173 prisoners from the North Zone on one day.

12 There is the 8 of July 1977. The crimes are proven by the
13 detailed testimony that has been provided by the handful of
14 surviving detainees, the guards, and interrogators who worked at
15 S-21, and the present chief himself, Kaing Guek Eav alias Duch.
16 And they are proven by the human remains that were recovered from
17 the mass graves at Choeung Ek, whose scars remain today.

18 [10.18.01]

19 One document in particular conveys, in horrifying detail, what
20 was experienced by the victims who were detained and interrogated
21 at the Party Centre's Security Office. This is a report written
22 by an S-21 cadre describing the interrogation of CPK Sector
23 Secretary Ke Kim Huot, over the course of a three-day period. The
24 report states that, on the first day, some forceful torture was
25 used and the spirits of the prisoners fell. Two days later, he

33

1 was pounded again and his health got weaker but he continued to
2 say he was not a traitor. The following afternoon, the prisoner
3 was beaten again and subjected to electric shocks and fed two or
4 three spoonful of shit. Ke Kim Huot told the S-21 cadres to go
5 ahead and beat me to death. That night he received electric
6 shocks again, this time pretty seriously. The prisoner became
7 delirious and confessed a bit. Despite this horrific torture, Ke
8 Kim Huot maintains his dignity and innocence, telling the
9 interrogators he will just close his eyes and wait for death.

10 [10.19.46]

11 The S-21 interrogator concludes the report stating that his
12 operative line is to continue to torture with mastery because the
13 enemy is breaking emotionally and is at the dead end. He asks for
14 opinions and guidance from Angkar in carrying out this task. This
15 one document shows us, all too vividly, the horror that was S-21.
16 And this is how the CPK treated one of their own fellow leader,
17 who had joined the revolution in the 1960s.

18 Your Honours, reports like this summarizing the interrogation and
19 torture of S-21 prisoners were part of the documents sent by Duch
20 to the CPK leadership. So, it is no surprise Nuon Chea has
21 admitted to Thet Sambath his knowledge that the prisoners
22 detained at S-21 were brutally tortured, stating – and I quote:
23 "They normally confessed when they were beaten painfully and
24 seriously tortured." End quote.

25 [10.21.21]

1 Later this morning, the international Co-Prosecutor will talk
2 more about the responsibility of the Accused for these crimes.
3 On the regulation of marriage: the final subject I will address
4 today is the crime of forced marriage. While both Cambodian men
5 and women were victimized by forced marriage, the consequences
6 were felt most by the women of this country. For those fortunate
7 enough to have been paired with a sympathetic and kind partner
8 who respected their wishes, forced marriage may not have been the
9 worst crime experienced in Democratic Kampuchea, but,
10 nonetheless, was a fundamental violation of the most basic human
11 rights and freedoms. For others, many of whom you'll hear from -
12 in this trial, forced marriage was a form of daily torture,
13 enslaved to be with one you did not know and did not love,
14 subjected to abuse and rape.

15 [10.22.52]

16 Forced marriages are another example of the Khmer Rouge regime
17 exercising the power of ownership of human beings, treating the
18 Cambodian people like property, like cattle, to be bred with
19 partners of the owner's choosing. The CPK's plan to destroy the
20 old family structures and to subjugate individuals to the will of
21 the Party - even in the matters as personal as marriage - is
22 reflected in a 1975 Party circular entitled "Revolutionary World
23 Views Regarding the Matter of Family Building". The CPK
24 publication contains specific instructions on the selection of
25 spouses, stating, "In the matter of building a family, no matter

1 the outcome of the organizations and the collectives assessments
2 and decisions, they must be absolutely respected: do not have
3 hard feelings, do not be disappointed. This is because only the
4 organization and the collective are able to make a thorough
5 assessment from every aspect."

6 The Co-Prosecutors will prove in this trial that forced marriage
7 was conducted in every region and every organization of
8 Democratic Kampuchea, including government ministries in Phnom
9 Penh under the supervision of the Accused.

10 [10.24.40]

11 The Co-Prosecutors have proposed, as trial witnesses, a former
12 cadre from the Ministry of Commerce, which fell under the
13 supervision of Khieu Samphan, and a former cadre from the
14 Ministry of Social Affairs, for which Nuon Chea had oversight
15 responsibility. Both were subjected to forced marriages in their
16 respective ministries and can describe the knowledge and
17 participation of senior CPK leaders in those crimes.

18 You will also hear from civil parties and witnesses who lived in
19 different regions of the country but who described a common
20 experience that could only be the result of a centrally-driven
21 program, forced marriages that were ordered, arranged and
22 conducted by the local CPK officials: mass ceremonies that
23 sometimes included as many as 100 couples married at the same
24 time. Not only were men and women victims forced to marry, they
25 were monitored by CPK militia and forced to consummate those

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1 marriages, forced by the authorities to engage in sexual
2 relations against their will.

3 [10.26.11]

4 You will hear in this trial from the women of Democratic
5 Kampuchea who were raped as a result of the CPK's forced marriage
6 policy, courageous women who have come forward to tell this Court
7 their horrifying experiences that have left many scarred for
8 life. Because the goal of the CPK's forced marriage policy was
9 not only to exercise complete control over the individual, but
10 also to increase the population of Democratic Kampuchea. The
11 Accused bear criminal responsibility for the rape that occurred
12 in connection with forced marriage.

13 Your Honours, the Co-Prosecutors looked forward in this trial to
14 seeking justice for the victims of rape, for the people who were
15 enslaved in the cooperatives and worksites of Democratic
16 Kampuchea, and for those who were targeted as enemies and
17 detained, tortured and killed at the Security Centres and
18 execution sites that are part of this trial.

19 And I'm grateful for Your Honours, and this is my conclusion of
20 my opening statement and I wish to hand over the floor to my
21 International Co-Prosecutor.

22 Thank you.

23 [10.28.10]

24 MR. PRESIDENT:

25 The time is appropriate for a short break. And before we take a

37

1 break, I would like to enquire from the Lead Co-Lawyers for civil
2 party, a courtesy information I received is that a group of civil
3 parties would like to submit a motion to the Trial Chamber. This
4 information is conveyed through the Administration. And we'd like
5 to confirm with the Lead Co-Lawyers for civil parties if that is
6 the case.

7 MR. PICH ANG:

8 Good morning, Mr. President, Your Honours, and everyone. In fact,
9 this morning after I arrived, I met some civil parties in front
10 of the main courtroom and NEAR National Road Number 4. Yes, there
11 were civil parties who were here and during this break I will
12 meet them and consult with them whether they wish to file a
13 motion.

14 Thank you.

15 MR. PRESIDENT:

16 Thank you.

17 We will take a short break and we will resume at 10 to 11.00 to
18 continue our hearing.

19 (Court recesses from 1029H to 1054H)

20 MR. PRESIDENT:

21 Please be seated. We resume our session.

22 And before I hand the floor to the International Co-Prosecutor,
23 the Chamber would like to inform the public that if you wish to
24 file a motion to the Trial Chamber, we will not receive any
25 motion directly. Please file your motion pursuant to the Internal

1 Rules of the ECC.

2 Now the Chamber would like to hand the floor to the International
3 Co-Prosecutor to continue with the opening statement.

4 You may proceed.

5 [10.56.04]

6 MR. KOUMJIAN:

7 Mr. President and Your Honours, Civil Party TCCP 98 is a woman
8 from Krouch Chhmar. She said in an interview that in 1978,
9 another group of Khmer Rouge from the Southwest Zone came to
10 where I now live. They searched out the Cham so they could wipe
11 out every last one of us. The eight members of my family were all
12 killed. I was the sole exception because I disguised myself as
13 being from another race.

14 In this case, in this trial, Trial 002/02, there are two charges
15 of genocide: genocide of Cham Muslims and genocide of the
16 Vietnamese. Genocide is a crime under international law. It's one
17 of many serious crimes in international law. And these crimes do
18 not have a hierarchy. There's no ranking of one being more
19 serious than the other. Genocide has a very precise technical
20 meaning in law. And that is, genocide are certain acts done with
21 the intent to destroy in whole or in part an ethnic, racial,
22 religious or national group. And those acts can be killing
23 members of the group, causing serious bodily or mental harm to
24 the group, creating conditions of life that could lead to the
25 destruction of the group, imposing measures to prevent births or

1 transferring children.

2 [10.57.50]

3 And it's important in the definition to recall the words that
4 it's "in whole or in part", and that it's required for genocide
5 that the acts be directed against an ethnic, racial, religious or
6 national group. It cannot be a political group. It can't be an
7 economic group. So for that reason, New People, bourgeoisie,
8 political opponents: these do not qualify as groups under the
9 definition of genocide. Intellectuals do not qualify as a group
10 under the definition of genocide. It's important to keep in mind,
11 of course, in this case, the great majority of the victims, the
12 great majority of the crimes that will be covered in this trial
13 were committed exactly against these groups of Khmer people
14 because of their economic class, because they were classified as
15 New People, because they were intellectuals, because they were
16 perceived as potential political opponents of the regime. And all
17 of these are covered in the counts in which Khieu Samphan and
18 Nuon Chea will face trial in this case, including most
19 importantly the crime of exterminations.

20 [10.59.20]

21 But in this case the evidence will also prove each of the
22 elements of genocide against the two groups: the Cham and
23 Vietnamese. The jurisprudence in international law says that,
24 while it's not necessary that you kill everyone or even intend to
25 kill everyone, it's necessary that there be an intent to destroy

1 the group in whole or in part and that this must be a substantial
2 part. It must be a part that could affect the survival of the
3 group.

4 In the first Srebrenica Appeal Judgement in the trial of General
5 Krsti?, the Appeal Chamber of the ICTY said you can look at three
6 different factors: the absolute number of those killed, the
7 relative number, in other words, what percentage of the group was
8 killed. And also it's important to look at the prominence of the
9 individuals targeted, the group targeted. In paragraph 12 of that
10 judgement, the Appeal Chamber said if the specific part of the
11 group is emblematic of the overall group or is essential to its
12 survival, that may support a finding that the part qualifies as
13 substantial.

14 In two other cases, Jelusic in paragraph 82 of the trial
15 judgement and Sikirica in paragraph 65 of the defence motion to
16 dismiss, specifically hold and recognize that targeting the
17 leadership of the group, that that can be an important means of
18 proving that it was a substantial part of the group that was
19 intended to be destroyed.

20 [11.01.13]

21 It's also important looking at genocide to distinguish the
22 specific intent that's needed from the motive.

23 The intent must be to destroy the group. It doesn't matter if the
24 motive is, because I want to maintain power, because I believe
25 they are my political enemies.

1 In Jelusic, paragraph 49, the Chamber held the personal motive of
2 the perpetrator of the crime of genocide may be, for example,
3 political advantage for power. That does not preclude a finding
4 of genocide. So if the Cham or the Vietnamese were targeted – as
5 they were in this case – because the Accused and the other senior
6 leaders of the Khmer Rouge viewed them as potential enemies, that
7 certainly does not preclude a finding of genocide because the
8 evidence will show they intended to destroy them in whole and in
9 part. One witness that will testify, TCW-641, said in a statement
10 that, "I was told that Cham people were of a different race and
11 had to be smashed, that if we kept them they would rebel against
12 us some time."

13 [11.02.28]

14 Another witness, TCW 813 said, "We were not allowed to obey Cham
15 religion and to speak Cham language. Women were required to have
16 a very short haircut. We were forced to have collective meals and
17 to eat pork. No explanation was made by the Khmer Rouge and those
18 who refused such practices would be killed." So it's not critical
19 that the intent was to destroy, to kill every single member of
20 the group as long as it was to destroy a substantial part that
21 would affect the survival.

22 Professor Ben Kiernan in his book, in table 4 – the document is
23 under case file E3/1593 estimates that there were about a quarter
24 of a million Cham at the start of the regime in Democratic
25 Kampuchea and about 90,000 perished during the regime, 36 per

1 cent.

2 Another study that's on the case file by Ysa Osman - E3/1833 -
3 estimates a much higher number at the start of the regime, about
4 700,000. And he estimates as much as 455,000 could have been
5 killed, up to 70 per cent.

6 [11.03.51]

7 What's important is what the last witness that I just mentioned
8 read out. Even if the intent was not to kill every single Cham,
9 the intent was to destroy the group. And the intent was done in
10 two ways. First, you'll see from the evidence that locations
11 where Chams were particularly concentrated, particularly two
12 villages along the Mekong. One of them was in the Eastern Zone,
13 Krouch Chhmar; and one was in the Centre Zone, Kang Meas. In both
14 of these locations, attempts were made to wipe out, to kill all
15 of the Cham in these locations where the Cham were concentrated.
16 But also, as the last witness I read out, those who were killed -
17 who were targeted - was anyone who'd insist on maintaining their
18 Cham identity; those who insisted on practicing the religion,
19 Islam; those who insisted on speaking their language; they would
20 and could be killed for simply maintaining their identity. If you
21 kill all of the people of a group who have the self identity of
22 the group, you destroy the group. The group can't survive if they
23 no longer have a language in common, religion in common, customs
24 in common; if all those who practice and maintain that identify
25 are killed the group will be destroyed.

1 [11.05.22]

2 If you look back at table 1 of Professor Kiernan's book, he also
3 points out how religious leaders of the Cham were particularly
4 targeted. And you see this on your screen. The community leaders,
5 the hakkem, there were about 113 in '75 and only 20 survived the
6 regime, over 80 percent killed. Their deputies: 226 at the start,
7 25 at the end of the regime. Haji, that is people who have made
8 the Hajj to Mecca, which would tend to be the most religious and
9 most prominent members because they have to have money to do
10 that, be prosperous. So, these most prominent religious members
11 of the community, the Haji, he estimates that over 1,000 were
12 there in 1975 in Democratic Kampuchea and only about 30 survived
13 the regime, so about 97 per cent were killed.

14 The Vietnamese genocide was different. And you'll find from the
15 evidence that the policy on the Vietnamese in in Cambodia
16 evolved, it changed during the regime. In the early years of the
17 regime, the policy was simply to transfer them, to expel them to
18 Vietnam, get them out of the country, sometimes to exchange them
19 for Khmer Krom from Vietnam. But in the latter years in
20 1977/1978, the policy changed and it became simply to kill any
21 Vietnamese that could be found in Democratic Kampuchea. And this
22 isn't something that was decided in individual villages by foot
23 soldiers or small commander, it was incited from the very centre
24 of the regime, it was the policy of the regime.

25 [11.07.14]

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1 If you look at E3/742, and this is the "Revolutionary Flag" – the
2 Party's internal publication to its cadre from April 1977 – you
3 see in there there's this exaltation, they incite their cadre. It
4 says, "The CIA and their agents, the KGB and their agents, the
5 territory swallowing Yuon" – it talks about them – "sneaking into
6 our Party, our army and our people." And then, finally, says, "It
7 is imperative to whip up the people, to sweep more of them clean
8 and make things permanently clean." And we know the vocabulary of
9 the Khmer Rouge, "sweep" and "make clean" means to kill.

10 If we look at another report sent from the Northwest Zone to the
11 leaders in Phnom Penh, and this is from May 1978, they ask a
12 question of the senior leaders. The question was, "'Yuon' with
13 Khmer spouses and the half-breed Khmer 'Yuon', the meeting would
14 like to ask Angkar 870 what to do with them? Whatever Angkar
15 decides, please give instruction." And we know that Angkar 870
16 means the very, very senior leadership of the Khmer Rouge. How
17 was that policy implemented?

18 [11.08.35]

19 One witness you'll hear from, TCW-820 said, "The ethnic
20 Vietnamese were being arrested and killed. Cadres had announced
21 that if the father was Vietnamese, only the father would be taken
22 away and killed. But if the mother was Vietnamese, they would
23 take the mother and all the children and kill them because the
24 children suck the milk of the mother." Similarly TCW-95 said, "No
25 one was left behind if they were connected with the 'Yuon'. If

1 the husband was connected, they took the husband. If the wife,
2 they took the wife and the children too."

3 TCW-949 said, "In 1978, I heard the sounds of people screaming; I
4 saw the Khmer Rouge kill people with bamboo clubs about 1 meter
5 long. They asked, 'Are all of you Yuon?' And then they shouted,
6 'Kill them quickly so we can go and take a rest.'" As for the
7 children, they were swung and beaten against the trunk of a
8 coconut tree."

9 TCW-868 said, "As I estimated, there were about 600 to 700
10 Vietnamese killed at that time in the location where he was." He
11 said, "They killed entire families, men, women and children. I
12 can still remember the girl who had been in my mobile unit, whom
13 they had taken to study sewing. They cut open her abdomen while
14 she was alive."

15 [11.10.16]

16 And going back to table 4 of Kiernan's book about the survival
17 rates of various groups during the Democratic Kampuchea regime,
18 you see that he estimates that there were 10,000 Vietnamese in
19 urban location, 10,000 in world locations in 1975. None of them
20 survived the DK regime, none of them. Now this is confirmed by
21 the CPK itself. If we go to the "Revolutionary Flag" from April
22 1978, it states:

23 "And now, how about the Yuon? There are no Yuon in Kampuchean
24 territory. Formerly there were nearly 1 million of them. Now
25 there is not one seed of them to be found."

1 So Your Honours, genocide and all of the crimes my National
2 Co-Prosecutor described, all of these crimes were the result of a
3 policy. These crimes were done systematically, not randomly, not
4 as individual initiatives in villages.

5 [11.11.31]

6 These crimes were all – they may not have been the final
7 objective that the Khmer Rouge were seeking; their final
8 objective was their ideology, this perverted ideology, this idea
9 of a rapid revolution, agrarian revolution, and to maintain their
10 own power, to keep the senior leadership in power. To do that,
11 they chose these means, to use these crimes to justify – to
12 achieve the ends that they sought. And how did these policies get
13 communicated down to the cadre all around the country in
14 villages? We're not saying that every single killing was ordered
15 by Nuon Chea, Khieu Samphan or the senior leadership. But these
16 policies were communicated. Some orders were given to kill and
17 the policies were given to seek out these enemies, to persecute,
18 to kill. Who communicated these policies? Well, the person in
19 charge of propaganda and education of the cadres was Nuon Chea.
20 And the person who had the role of being the public face of the
21 Khmer Rouge both internationally and within Cambodia was Khieu
22 Samphan.

23 [11.13.00]

24 What all of these crimes have in common and all of the policies
25 of the Khmer Rouge have in common is that in order to achieve

1 their idea, their vision of the Cambodia that they saw, they were
2 willing to do anything to sacrifice any individual and to commit
3 any crime against those individuals. The individual did not
4 matter as Nuon Chea himself has said. Watch your screen, please.

5 (Presentation of audio-visual document)

6 "[Nuon Chea:] If we leave them because the individual do have a
7 sentiment but I make it clear the difference between individual
8 and collective. Because I myself, I think of the nation and put
9 aside the individual.

10 [Interviewer:] Are you sorry for those who were killed?

11 [Nuon Chea:] I have no regrets."

12 (End of presentation)

13 [11.14.15]

14 MR. KOUMJIAN:

15 Your Honour, these policies of being willing to sacrifice and
16 kill Cambodians were clear even before the Khmer Rouge took
17 power, to kill whenever convenient to maintain their power. But
18 it was absolutely clear how the individual to be sacrificed, once
19 the Khmer Rouge seized Phnom Penh and these massive inhumane
20 evacuations of the cities took place. It was clear then that the
21 rights of individuals would no longer exist and that the state
22 would exercise the rights of ownership over all Cambodians and
23 that they would be denied all fundamental freedoms. Most
24 important to the Khmer Rouge trying to maintain complete control
25 of the society is that they set out to destroy the most important

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1 values of traditional Khmer society. And those were religion,
2 king and family. Do Nuon Chea and Khieu Samphan want Your Honours
3 in this Court and the people watching to believe that monks
4 around the country disrobed on their own voluntarily during the
5 period of Democratic Kampuchea, that this wasn't a result of the
6 policy?

7 [11.15.40]

8 We can look at one CPK document - it should be on your screen -
9 E3/99 from September 1975, where the Party is congratulating
10 itself. It says, "Most of the monks from 90 to 95 per cent of
11 them abandoned their monkhood. Pagodas which are the core
12 foundations for the existence of the monkhood were abandoned.
13 People had no longer gone to pagoda, they no longer offer alms.
14 We assume that 90 to 95 per cent of the monks in Buddhist
15 practices will no longer exist. So this special layer of the
16 society will no longer cause any worry. The worry to them was
17 loyalty to someone other than the Khmer Rouge."

18 [11.16.38]

19 For years now even leading up to this trial, Khieu Samphan and
20 Nuon Chea have practised their excuses and justifications for
21 their role in these horrendous crimes inflicted on the Cambodian
22 people. And I want to address briefly some of these excuses and
23 justifications that they have given. Khieu Samphan says, "I had
24 no power." He even told the VOA in an interview in 2007, "I was
25 not a Khmer Rouge leader," which is a rather pathetic statement

1 for a man who was the head of the state of Democratic Kampuchea,
2 who joined the Communist Party in the 1960s, was a member of the
3 Central Committee in 1976 and stayed with the regime all the way
4 up to the end in 1998. He stayed with the Khmer Rouge. He says he
5 had no power but on another occasion in his interview in facing
6 genocide, he acknowledged how important his position was. He
7 said, "My image and my name represented Cambodia." Because that
8 was the importance of being the head of state, especially in a
9 regime where Pol Pot tried to hide his identity and keep such a
10 low profile. So he was the person representing the Khmer Rouge
11 both internationally and nationally.

12 [11.18.15]

13 And he told the VOA that as President I believe I represented all
14 Khmers, I fulfilled my duties to the nation. Well, he certainly
15 was active. He was living and working with the other leaders; he
16 was a member of the Central Committee. As we've said many times
17 before we have 19 surviving records of meetings of the Standing
18 Committee, the single most powerful very exclusive group of the
19 leadership, the decision making body of the Khmer Rouge regime.
20 And Khieu Samphan attended 16 of those, 84 per cent of those
21 meetings his name is on the minutes. Khieu Samphan also brags
22 about the contribution he made to the defeat of the Lon Nol
23 government, about how he served the Revolution, served in
24 contributing to that defeat. Well then, how is he able to say
25 that he's able to make a contribution before 1975, and then once

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1 the Khmer Rouge reaches power, he no longer has any power; he no
2 longer can make a contribution?

3 [11.19.27]

4 In fact after the Khmer Rouge reached power, Khieu Samphan's
5 authority only grew. In 1976 he was made a full member,
6 full-rights member of the Central Committee; and in 1976, he
7 replaced Prince Sihanouk as the head of state, the President of
8 the Presidium of Democratic Kampuchea. And we know that in 1977,
9 after the arrest of Doeun, Khieu Samphan became the sole member
10 of Office 870, the Party's nerve centre that was coordinating
11 with the regions and coordinating all of these arrests that led
12 to executions. And the record shows that Khieu Samphan gave
13 speeches. He spoke to cadre. On occasions, he spoke to tens of
14 thousands of them. He met with foreign ambassadors and
15 delegations, he represented Cambodia abroad. And what did he do
16 in all of these public appearances and opportunities to speak and
17 talk about what was happening in Democratic Kampuchea? What he
18 did in all of them is lie, and hid the crimes of the Khmer Rouge.

19 [11.20.46]

20 If you just look at the speech he gave on the Third Anniversary
21 of the Khmer Rouge Victory - 17 April of 1978. One document
22 estimates 20,000 people were in the audience. He said, "We have
23 achieved our plan for food production." Khieu Samphan said that
24 while people were starving to death in Cambodian villages. He
25 said, "Our medicine meets the needs of the people." Khieu Samphan

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1 said that while people were dying in Cambodia because of lack of
2 medicine and medical care. And finally he said, "Our people are
3 delighted with the development of our collectivist regime." While
4 people were being enslaved in cooperatives and seeing their
5 family members starved and killed, he told the cadre and the
6 world the people of Cambodia were delighted with the regime.

7 [11.21.41]

8 Now, is there somebody in this courtroom who once said, "This
9 movement" - referring to the Khmer Rouge - "committed more
10 violence than any revolutionary movement the world has ever
11 known." It wasn't me that said that. It wasn't my Co-Prosecutor,
12 Her Excellency Chea Leang that said that. Rather it was Khieu
13 Samphan. He said that in the letter he wrote to his compatriots,
14 29 December - 27 - 2003. He acknowledges that while he was
15 president, this movement committed more violence than any
16 revolutionary movement the world had ever known. But in other
17 times, in 2007 in his interview for this video "Facing Genocide",
18 he claimed he didn't hear about the massacres until 1998, until
19 1998 is when the movement finally completely collapsed. Now, this
20 would be funny if it wasn't such a serious topic. This is a man
21 without a doubt, both of these men, highly intelligent, Khieu
22 Samphan very educated, a PhD, speaks foreign languages, formerly
23 a publisher of a newspaper, intellectual. And he wants you to
24 believe that he's the only man in Cambodia that didn't learn
25 about the killings until 1998, that he didn't know what was going

1 on in his own country?

2 [11.23.12]

3 During the regime Khieu Samphan lived and ate with the leaders.
4 Nuon Chea has even said that he used to eat regularly with Pol
5 Pot and that Khieu Samphan frequently would join them. Khieu
6 Samphan travelled abroad and he met foreigners and he met
7 ambassadors within Cambodia. He travelled with the king when the
8 king was not being detained. He managed the king, he knew the
9 king was being detained against his will, separated from his
10 family. But he claims he didn't know anything about the crimes
11 until 1998. And he told the VOA in 2007, "Oh, the executions were
12 all Pol Pot's idea". Well, how would Khieu Samphan know that the
13 execution were - were Pol Pot's idea? He claims he didn't know
14 anything about these killings.

15 [11.24.11]

16 How does he know that the orders came from Pol Pot? He knows
17 because he and Pol Pot would talk about these. Because they
18 discussed these orders and these killings and the executions in
19 their meals together, in the Standing Committee meetings. That's
20 how he knows Pol Pot ordered killings. He told the investigating
21 Judge of this Court, "I observed that some members of the Central
22 Committee disappeared one after the other." And then he said, "In
23 relation to the disappearance of the members of the Central
24 Committee and the Standing Committee everyone seemed to approve.
25 But I did not know the extent or the scope of the arrests."

1 Well what is - let's think about that statement he made. He is
2 saying he is aware that the members, the high leaders of the
3 Khmer Rouge from the Central Committee and Standing Committee are
4 being removed and that everyone, in other words the remaining
5 members, seem to approve. Well, that is - clearly implies that
6 Khieu Samphan himself voiced absolutely no objection to these
7 arrests, that he was one of those who seemed to approve, approve
8 of the arrests.

9 [11.25.30]

10 Even Khieu Samphan's own subordinate in Office 870 was arrested
11 and under torture by - in S-21. He implicated Khieu Samphan. Nuon
12 Chea when he was brought that interview - that confession by
13 Duch, he warned Duch not to collect any more information or
14 record any more information implicating Khieu Samphan. Of course
15 Nuon Chea who regularly ate with Khieu Samphan, who lived near
16 him, worked with him, would have told Khieu Samphan about S-21
17 and Duch and the fact that he himself had even been named under
18 torture in one of these confessions.

19 [11.26.22]

20 There's another strategy that both Khieu Samphan and Nuon Chea
21 have used. And it's certainly not the first time in my career as
22 a Prosecutor that I've seen that. It's very common, and that is
23 for the criminals that remain to blame the dead man. So in this
24 case both Khieu Samphan and Nuon Chea, they want to put the whole
25 blame on Pol Pot. "Oh, we didn't have anything to do with it. We

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1 didn't know. We didn't have anything to do with it. It was all
2 Pol Pot that did this." But Pol Pot could not kill 2 million
3 people by himself. Pol Pot could not run an organization, a state
4 by himself, an army by himself. He could only do it with the
5 support of an organization and particularly the senior
6 leadership. He couldn't have done it without the support of the
7 Central Committee and the Standing Committee.

8 [11.27.18]

9 If Khieu Samphan and Nuon Chea believed that Pol Pot - if they're
10 now saying Pol Pot killed people against their wishes, that these
11 executions are something that shocked them, why is it they
12 remained loyal to Pol Pot for another two decades? For another
13 two decades, they remained with him supporting him. The fact is
14 these were the closest people to Pol Pot, his strongest
15 supporters. In facing genocide, again, Khieu Samphan stated, "Pol
16 Pot was good at analyzing the situation. I respected him a lot."
17 He then said, "They demonized Pol Pot. They accuse him of being a
18 dictator and used the word genocide. It's not true. A great
19 leader of such a movement could never act like that. I will shout
20 it out at the Trial."

21 That's what Khieu Samphan promised in 2007, when he called Pol
22 Pot a great leader. So I'd like to show you a little bit - a
23 video where Khieu Samphan was asked about Pol Pot in this 2007
24 interview.

25 [11.28.45]

1 (Presentation of audio-visual document)

2 "[Khieu Samphan:] I have an image of him in my head."

3 "[Interviewer:] Do you miss Pol Pot?"

4 "[Khieu Samphan:] Yes, he had an exceptional mind, for us."

5 (End of presentation)

6 [11.29.34]

7 MR. KOUMJIAN:

8 So it's clear that Khieu Samphan remained loyal to Pol Pot, at
9 least up to 2007. At the same time, he often tried to avoid
10 responsibility by placing all the blame on Pol Pot alone. But he
11 himself has acknowledged that that would have been impossible. In
12 the VOA interview, Khieu Samphan said that Pol Pot was
13 responsible for starvations and killings, but he could not do it
14 alone. He also said - Khieu Samphan said - "Pol Pot hunted down
15 and made arrests with the participation of the Standing
16 Committee. He never did anything alone."
17 Nuon Chea was even closer to Pol Pot. He was his lifetime loyal
18 deputy and he continues to express great admiration for Pol Pot.
19 He was Pol Pot's principal confidant. He was asked once, "Did Pol
20 Pot keep his promise to always discuss with you what he wanted to
21 do?" and Nuon Chea answered, "He did for the big issues. Issues
22 were always cropping up. We just discussed whenever problems
23 arose."

24 [11.30.58]

25 He also was asked, in this 'Enemies of the People', in the film

1 by – with Thet Sambath, "Did you and Pol Pot ever argue with each
2 other, when you were in government?" and he answered, "No, we
3 didn't have any problems, not between 1975 and 1979. I can't
4 think of a single argument."

5 So, we've already heard that these killings were discussed in the
6 Standing Committee – Khieu Samphan admitted that – and Nuon Chea
7 says he never had any argument or any disagreement with Pol Pot.
8 [11.31.52]

9 Nuon Chea was asked in this – by Thet Sambath, "What did you
10 think of Pol Pot's decision to kill all the traitors?" and he
11 answered, "At the time, I agreed. I just wanted to get the
12 problem solved. It was the correct solution."

13 Again, it's not our case that every single killing in a village
14 was brought to the attention of these two Accused of the senior
15 leadership, that every single killing was a result of a direct
16 order from the Centre, but they were all a result of the
17 instigation, the policies, of the Centre that were spread out to
18 the cadres. It was a fundamental part of the Khmer Rouge
19 doctrine. Even their anthem talks about 'blood turns to hatred'.
20 [11.32.44]

21 Khieu Samphan, in his speech on the second anniversary of the
22 Khmer Rouge victory, 17 April '77, said, "We must wipe out the
23 enemy in our capacity as masters of the situation". In his speech
24 the next year, to about 20,000 people in Phnom Penh, he said,
25 "Only by implementing the Party's line can we defend our country

1 against internal and external enemies." He told all those
2 thousands of cadres present that they must subordinate all family
3 and personal interests to the interests of the Revolution. He
4 told them, "Exterminate enemies of all stripes," and he told
5 them, "Screen and exterminate all enemy elements within our
6 ranks."

7 [11.33.41]

8 Your Honours, I'd ask you to look at this remarkable document
9 from the CPK Central Committee in March 1976. It talks about "the
10 right to smash". And we know, again, the vocabulary of the Khmer
11 Rouge - 'smash' meant 'to kill'. It talks about, number one, "The
12 right to smash inside and outside the ranks", within the Party,
13 and those outside the Party. And it gave that right to - it's in
14 the base framework, we see the Zone Standing Committee in the
15 Central Office the Central Office Committee and independent
16 sectors, the Standing Committee in the Centre Military the
17 General Staff.

18 [11.34.31]

19 So what is this? This is a licence to murder. This is the Party
20 Centre licensing, encouraging, the zones, the army, the sectors,
21 to carry out their policies to kill any perceived enemies,
22 suspected enemies, in order to ensure the absolute implementation
23 of the revolution.

24 Now, clearly, these are not the direct killers nor was Pol Pot.
25 Others carried out these massive crimes, these massive massacres

1 of individuals. People like Ta Mok certainly committed many of
2 the crimes and you'll hear much evidence about his troops, not
3 only within his own zone, but very importantly, being sent by the
4 Centre to other zones to carry out these mass massacres and
5 executions and killings. But was Ta Mok ever punished by the
6 Centre? No, not at all. As time went by, as the killings
7 increased, Ta Mok only remained in the very highest ranks of the
8 Party.

9 [11.35.53]

10 Was - Did Khieu Samphan and Nuon Chea, the Centre - the central
11 senior leadership, did they care about the fact that ordinary
12 people were being killed in villages for things like eating a
13 banana that had fallen on the ground? They didn't care. Listen to
14 the words of Nuon Chea.

15 [11.36.20]

16 (Presentation of audio-visual document)

17 "[Nuon Chea:] We would investigate someone gradually until we
18 knew his full background. Then we would - it was often like
19 looking for a needle in the sea. We did not arrest people
20 randomly. People, and I knew nothing about the ordinary people,
21 but there were so many of them being brought in."

22 "[Interviewer:] When did you realise that the villagers were
23 being killed?"

24 "[Nuon Chea:] I can't really remember the exact moment. I just
25 went on with my work and I did not jot it down.

1 (End of presentation)

2 [11.37.14]

3 MR. KOUMJIAN:

4 "I just went on with my work", and then he laughs. He just went
5 on with his work because the killings in the villages of ordinary
6 people was a result of the policies that he had put in place -
7 he, Pol Pot, Khieu Samphan, the senior leadership of the Khmer
8 Rouge.

9 And there's another excuse that Nuon Chea in particular likes to
10 give to try to avoid his responsibilities. He wants to say that
11 all the killings in the villages, all the killings, were done by
12 enemies. If people were killed, it was by the Vietnamese and the
13 CIA. So on the one hand, Nuon Chea admits to killing all the
14 people that they believe were agents of the Vietnamese and the
15 CIA, because those traitors that they killed were all agents of
16 the Vietnamese and CIA and yet, on the other hand, he states that
17 those that did the killing were the Vietnamese and the CIA. It's
18 a ridiculous, illogical lie.

19 [11.38.18]

20 Instead of accepting responsibility, Nuon Chea's explanation for
21 everything that went wrong and all of the suffering during the
22 Democratic Kampuchea period - the starvations, the killings, the
23 enslavements - all of that was done by spies and traitors who
24 were sabotaging the Party. That's what he wants you to believe.
25 As much as the central leadership tried to delude themselves

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1 about spies being everywhere, he wants you to be deluded also,
2 and to believe that all around the country there were foreign
3 agents and spies who were starving the people and that's why
4 there wasn't rice. But if half the Central Committee and the
5 Standing Committee, who'd been purged by the central leadership
6 during the DK period, if half of them had actually been spies for
7 the CIA and Vietnamese, how would the Khmer Rouge have won the
8 war in 1975?

9 The Defence tries to use the fact that people opposed this
10 regime, this wicked, wicked regime. To say, "Oh, because we had
11 opponents, people who wanted to overthrow us, we were justified
12 in killing these people." What good person would not oppose that
13 regime? What good and brave person would not express some dissent
14 to what was going on in Democratic Kampuchea?

15 [11.39.55]

16 But it was those good and brave people, and just ordinary people,
17 that the Khmer Rouge targeted for killing, for starvation, for
18 enslavement. They're trying now to use their unpopularity to
19 justify the crimes that they committed. And this ridiculous idea
20 that the CIA and the Vietnamese were working together is, you
21 know, completely illogical to anyone who is aware of the history
22 at that time. The United States and Vietnam had just fought a
23 very long and bitter war. The United States was very much opposed
24 to the Vietnamese communist government. They were enemies at the
25 time. They were so opposed to the Vietnamese government that even

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1 after the fall of the Khmer Rouge in 1975, the American
2 government, to the shame of many today, supported the Khmer Rouge
3 maintaining their seat in the United Nations for many years. So,
4 it's of course ridiculous to believe that the CIA and the
5 Vietnamese were cooperating and controlling everything in
6 Cambodia. It was the Accused, the senior leadership of the Khmer
7 Rouge.

8 [11.41.12]

9 Finally, Nuon Chea wants to say, "All the killings that we did
10 do" - that he does admit to, the senior leaders - he says "We did
11 this to protect Cambodia." But these killings were not done in
12 battles. Those arrested and killed - that he admits to - these
13 are generally their own soldiers, including some of the best
14 fighters that the Khmer Rouge had. And those starved and tortured
15 and killed were ordinary Cambodians in the millions. So how did
16 this protect Cambodia? Nuon Chea wants you to believe that those
17 targeted were all enemies. S-21, we know about 12 to 16,000 were
18 killed.

19 These are - look at your screens - these are some of the photos
20 of the enemies that the Patriot, Khieu Samphan - excuse me - and
21 Nuon Chea had killed at S-21.

22 (Presentation of visual documents)

23 [11.42.32]

24 How does killing children protect Cambodia? What's the truth
25 about the Democratic Kampuchea, the Khmer Rouge regime? The truth

1 is, what they did for Cambodia, is they starved and weakened the
2 people. They shrank the population by about a quarter. They
3 destroyed the economy. They killed the most educated, the bravest
4 of the Cambodians. They only weakened the country and Cambodia is
5 still suffering today from the effects of their regime. So who
6 were these killings really designed to protect?

7 In one statement that Nuon Chea wrote to the Danish Communist
8 Party in July 1978, he wrote, "The leadership must be defended at
9 any cost. There can be no comparison between losing two or three
10 leading cadres and 200, 300 members. Better the latter than the
11 former."

12 So we see, it's - again, what he was wanting to protect it
13 himself: the very senior leaders. They don't care if hundreds
14 die, as long as they survive and have power.

15 [11.43.51]

16 When the Vietnamese army was approaching Phnom Penh in 1979, did
17 Khieu Samphan and Nuon Chea pick up a gun and go to the front
18 line and fight? No, they fled to the border. But not before Nuon
19 Chea ordered Duch to kill all the remaining prisoners in S-21.
20 These two men, Khieu Samphan and Nuon Chea, are not patriots.
21 Many people, I know, in Cambodia are hoping that they will hear
22 an apology and the truth from these Accused. I don't believe that
23 they will hear that, but I do promise that we will show by the
24 evidence the truth about what happened and that these two men,
25 Khieu Samphan and Nuon Chea, were among the most powerful figures

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1 in the senior leadership of the Khmer Rouge, that was responsible
2 for three years, eight months and 20 days of misery inflicted
3 upon the Cambodian people. They're directly responsible for the
4 approximately 2 million deaths that occurred, and this trial will
5 prove their criminal responsibility.

6 [11.45.18]

7 MR. PRESIDENT:

8 The time is now appropriate for lunch adjournment. The Chamber
9 will adjourn now and resume at 1.30 this afternoon. Security
10 guards are now instructed to bring the co-accused, Mr. Nuon Chea
11 and Khieu Samphan, to the holding cell downstairs and have them
12 return to this courtroom before 1.30. The Court is now adjourned.

13 GREFFIER:

14 All rise.

15 (Court recesses from 1145H to 1329H)

16 MR. PRESIDENT:

17 Please be seated.

18 The Chamber is now back in session. This morning the
19 Co-Prosecutors concluded their brief opening statement and the
20 Chamber would like to give the floor now to the two Accused and
21 their counsel to make a brief opening response to the
22 Co-Prosecutor's opening statement. First we would like to give
23 the floor to Nuon Chea and his counsel and security guards your
24 instructed to bring Nuon Chea to the dock.

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

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1 [13.31.23]

2 MR. PRESIDENT:

3 Mr. Nuon Chea and counsel, could you inform the Chamber who is
4 going to speak first?

5 MR. SON ARUN:

6 My name is Son Arun I'm a - the counsel for Nuon Chea, and my
7 client, Mr. Nuon Chea, will speak first.

8 MR. PRESIDENT:

9 Thank you. And Mr. Nuon Chea, you may now proceed.

10 [13.31.53]

11 MR. NUON CHEA:

12 My respect to all venerable <monks>, to my beloved fellow
13 Cambodians and to all those who are genuinely committed to truth
14 and justice. I am Nuon Chea and I was the Deputy Secretary of the
15 Communist Party of Kampuchea. Today, as this tribunal begins its
16 second trial against me, I would like to take this opportunity to
17 speak again to the Cambodian people. Judges, two months ago, in
18 this room, you issued your first judgment against me. You
19 convicted me of crimes against humanity relating to the
20 evacuation of the population from Phnom Penh and the execution of
21 Lon Nol soldiers and officers at Tuol Po Chrey and you sentenced
22 me to life in prison.

23 You said that the Communist Party of Kampuchea had a strict
24 hierarchy that was perfectly controlled from the Party Centre.
25 You said that at the very centre of it all were Pol Pot and I.

1 [13.33.47]

2 According to you, the two of us exercised the Party's ultimate
3 decision-making power, could make and implement all Party
4 policies and decisions, and controlled every single Khmer Rouge
5 cadre from the lowest foot soldier to all members of the Party's
6 Standing and Central Committees.

7 In arriving at that decision, you completely ignored clear and
8 concrete evidence that the Party was internally strongly divided,
9 and that zones could and did in fact act autonomously. You
10 ignored evidence that, contrary to being under my total control,
11 standing and Central Committee members like So Phim, Ros Nhim,
12 Vorn Vet, Koy Thuon, and others were actually the leaders of an
13 opposing faction within the Party supported by Vietnam.

14 [13.35.33]

15 This faction acted independently. From the very beginning this
16 faction was determined to fiercely undermine the Party's aims and
17 it was ultimately successful.

18 You also ignored evidence that my lawyers and I raised right from
19 the start of the first trial that many events in Democratic
20 Kampuchea occurred because of long-term aggression towards
21 Cambodia, by the land swallowing, annexationist neighbour,
22 Vietnam. You ignored evidence that Vietnam sponsored So Phim's
23 faction and was essential to its success. Nowhere in your
24 judgment of nearly one thousand pages in Khmer did you ever even
25 bother to directly address this evidence. Instead, you dismissed

1 Vietnamese aggression as some kind of paranoid delusion. In
2 addition, you did not mention the existence of the other faction
3 at all.

4 [13.37.54]

5 Let me be very clear. This was not paranoid delusion. As my
6 lawyers and I argued in the first trial, and will argue again in
7 this second trial, there were severe internal divisions within
8 the Party. It did contain a defecting faction which was supported
9 by Vietnam, led by So Phim and Ros Nhim. And we do not have to
10 have a judge's education to know that Vietnam had long been
11 extremely aggressive towards Cambodia. This is something that
12 every Cambodian already knows. I will speak more about this
13 later.

14 [13.39.04]

15 For now, let me just say that you ignored all this. Instead you
16 presented a story that was simple, but ultimately just a child's
17 fairy tale. And how did this happen? Well, one reason is that
18 despite my lawyer's constant efforts, every single one of the
19 Cambodian Judges among you refused to call Heng Samrin as a
20 witness, even though he was obviously the most important witness
21 in the whole trial. Even though he could give eyewitness
22 testimony about Party meetings at which our supposedly key
23 policies were decided. Even though he could have confirmed my
24 position that there were never any orders to kill Lon Nol
25 soldiers and officials. Even though he could have confirmed there

1 was no decision to kill innocent people during the evacuation.
2 Even though he could have explained my conduct and character in
3 detail, since we have known each other for over sixty years.
4 Despite all of this, you thought that my lawyers were trying to
5 call Heng Samrin as some kind of trick.
6 I wanted to speak to you from my heart today, and so I must tell
7 you that today I am very hurt. This tribunal was established to
8 find the truth and render justice, but in your first judgment
9 against me two months ago you completely failed to do so. You did
10 not reveal the truth, and you made a bitterly disappointing
11 mockery of justice.

12 [13.42.01]

13 Immediately after you rendered your first judgment against me, I
14 instructed my lawyers to file an application to disqualify the
15 Cambodian Judges Non, Sokhan and Ottara, and a French
16 International Judge Lavergne from all further trials against me
17 since your first judgment showed that you were no longer
18 qualified to remain sitting in judgment against me. My lawyers
19 filed this application a few weeks ago and we are still waiting
20 to hear what the decision will be. My lawyers argued that your
21 first judgment showed your lack of independence and your bias and
22 that this is because like all Cambodian judges, you work in fear
23 and under government control.
24 You demonstrated your lack of independence most of all in your
25 decision not to summon Heng Samrin. He was not only the most

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1 important witness in the trial, and my only character witness, he
2 is also the current number three in the government and the
3 honorary president of the Cambodian People's Party. And you, the
4 French Judge Lavergne, my lawyers argued that you were even
5 worse.

6 [13.44.24]

7 For although you agreed with us that Heng Samrin should testify
8 and that he could have given important evidence that other
9 witnesses could not give, somehow you still concluded that I was
10 guilty without a doubt, even without hearing Heng Samrin's
11 important evidence. And you were not even willing to declare that
12 refusing to call Heng Samrin completely violated my right to a
13 fair trial, even though this was obvious. It is pointless to make
14 a decision on principle yet you are not brave enough to stand by
15 it to the end.

16 In this second trial, Heng Samrin remains the most important
17 witness. In fact, he is even more important now because it is
18 even more important in this second trial to understand Vietnam's
19 aggression, expansion, annexation and elimination of the Khmer
20 people.

21 Unfortunately your first judgment showed that you don't agree
22 with this. Therefore, in addition to applying to disqualify four
23 of the Judges among you right after I received the first judgment
24 against me, I immediately instructed my lawyers to appeal it.
25 That appeal will list more than two hundred errors you made in

1 your judgment.

2 [13.46.58]

3 Appealing the judgment does not mean that I want to deny the
4 suffering of the Cambodian people. My position is in fact the
5 complete opposite as I have already explained in this tribunal
6 many times. I recognize that during the Democratic Kampuchea
7 period, many people suffered greatly by the provocation of those
8 enemies within.

9 I am remorseful for that suffering and I accept moral
10 responsibility for it since I was one of the most senior leaders
11 of the Communist Party of Kampuchea. However, as I have already
12 also previously explained to this tribunal, I never intended to
13 cause such suffering.

14 [13.48.24]

15 Everything our Party did was intended to create a better society,
16 an equal society where the people would be the masters of their
17 own independence. During the modern society from the 1930s,
18 Vietnam had spoken of establishing an Indochinese Federation.
19 This federation would have brought Vietnam, Cambodia and Laos
20 together as a single state under Vietnam's control.

21 In January 1979, Vietnam partly achieved this ambition when it
22 successfully invaded Cambodia. In immediate response, King Father
23 Sihanouk went to the United States and spoke before its most
24 powerful organ, the Security Council, and he seeks (sic)
25 intervention from the United Nations. Samdech Sihanouk told the

1 Security Council that Vietnam had – and I quote: "Decided
2 cold-bloodedly to embark upon a very special operation whose
3 ultimate goal was nothing less than to swallow up little
4 Kampuchea just as a starving boa constrictor would fling itself
5 upon an innocent animal." Unquote. And in fact in that Security
6 Council meeting many diplomats agreed that Vietnam had, indeed,
7 illegally invaded Cambodia, including the representatives of
8 America, China and Australia.

9 This is no fantasy. It is recorded in a publicly available United
10 Nations documents.

11 [13.51.04]

12 The Vietnamese boa constrictor sent troops to invade Cambodia to
13 satisfy its insatiable appetite for more territory and more
14 subjugated peoples. Most significantly, it sponsored many former
15 traitorous comrades inside the Communist Party of Kampuchea to
16 serve its purposes. And a standard role of Vietnam is essential
17 to discovering the truth about many parts of this second trial.
18 These parts of the trial include, among other things, the
19 so-called genocide of the Vietnamese and Cham, the events at S-21
20 Security Centre, and the purges in the East Zone.

21 It is also my position that several crimes of which I am accused
22 in this second trial were in fact committed by So Phim, Ros Nhim,
23 and some other traitors and were committed outside my control and
24 knowledge.

25 [13.52.43]

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1 If you summon Heng Samrin to testify in this second trial, I
2 believe he will be able to confirm this.

3 In my lawyer's application to disqualify Judges from the Trial
4 Chamber, they argued that it would be simply impossible to
5 continue with a second trial if the three Cambodian Judges and
6 the French Judge among you remain on the Trial Chamber bench.

7 [13.53.28]

8 Under my instructions, my lawyers presented many reasons for
9 this, but one of the main ones was that the four of you had
10 already sat in judgment in the first trial. You have already
11 found me guilty. You also found that I had the ultimate power in
12 the Party and that our Party established several key policies.
13 You showed that you simply could not bring an open mind towards
14 several important arguments that my lawyers and I wanted to make.
15 You showed that you disbelieved our case in general and that you
16 would disbelieve anything I said that did not suit the fairy tale
17 you were writing.

18 Now that you have found me guilty in that first judgment, I
19 believe that you now have a clear bias against me in this second
20 trial. Under these circumstances, I simply cannot see how you can
21 continue to participate in this second trial. I simply cannot see
22 how I can enjoy my fair trial right, to be presumed innocent
23 until proven guilty, if you will continue to be part of this
24 trial. It is impossible.

25 [13.55.53]

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1 The tribunal has not yet issued its decision about my
2 disqualification application against the four of you. I
3 understand that it may take several months for such a decision to
4 be issued. Now, under Cambodian law, whenever a party has applied
5 to disqualify a judge from a trial, that judge immediately steps
6 down until the disqualification application is decided. Indeed,
7 my lawyers tell me that this is the normal practice in courts in
8 general.

9 However, instead of doing so, you have continued to sit in
10 judgment in this second trial. You ordered us to appear in this
11 second trial and you ordered that this second trial should go
12 ahead, even though we are still waiting for the disqualification
13 decision.

14 [13.57.18]

15 In issuing such orders and sitting on the bench today, you have
16 shown complete disregard for the proper procedures under
17 Cambodian law. This is consistent with the way you have behaved
18 throughout the first trial, which my lawyers also argued in their
19 disqualification decision. Throughout the first trial, you showed
20 contempt for proper procedures. You defined and applied the
21 procedural rules inconsistently during the trial to suit your
22 purpose. You frequently and flagrantly violated my right to a
23 fair trial as my lawyers will detail at length in their appeal
24 against the first judgment.

25 I want to take this opportunity to personally request that each

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1 of you, except the new Judge, reconsider your decision to
2 continue with this trial. I request that you step down now until
3 the tribunal issues its decision on whether you should be
4 disqualified from this second trial. I understand that it might
5 take about three months for a disqualification decision to be
6 issued. Now, I know that you want this second trial to go ahead
7 as quickly as possible.

8 [13.59.33]

9 I too want this trial to proceed so that I have the opportunity
10 to speak to the Cambodian people about what really happened. But
11 we have already waited seven years and one month for this day;
12 waiting just three months more for a disqualification decision is
13 nothing. Judges, if you will not step down while your
14 disqualification application is being decided, you leave me with
15 no choice. I will instruct my lawyers to leave the courtroom
16 after Mr. Khieu Samphan has spoken and to boycott all further
17 hearings in this second trial until the disqualification decision
18 is issued.

19 MR. PRESIDENT:

20 Thank you.

21 Security guards you are instructed to bring him back to his seat
22 at the table.

23 (Mr. Nuon Chea leaves the dock)

24 [14.01.19]

25 MR. PRESIDENT:

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1 Next the Chamber grants the floor to the defence team for Mr.
2 Nuon Chea to respond to the opening statement by the
3 Co-Prosecutors.

4 MR. SON ARUN:

5 Good afternoon Mr. President, since Mr. Nuon Chea, who is our
6 client, has made his statement the two lawyers for Mr. Nuon Chea
7 do not have any response to the Co-Prosecutor.

8 MR. PRESIDENT:

9 Thank you.

10 Next the Chamber grants the floor to the defence team for Mr.

11 Khieu Samphan and Mr. Khieu Samphan himself to make the statement
12 if they so wish.

13 And security guards are now instructed to bring Khieu Samphan to
14 the dock.

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

16 [14.03.54]

17 MR. PRESIDENT:

18 Mr. Khieu Samphan, you may proceed.

19 MR. KHIEU SAMPHAN:

20 Mr. President, Your Honours, members of the Bench and good
21 afternoon to everyone in this courtroom. Venerable monks in
22 pagodas across Cambodia. My beloved fellow Cambodian compatriots.
23 First and foremost, I would like to thank the President for
24 granting me the floor to address your Chamber. On the 7th of
25 August, the Trial Chamber convicted me and sentenced me to life

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1 imprisonment. In the trial of Case 002/01, Your Honours have
2 found me guilty based on the evidence that is speculated and I
3 have strongly objected. And you have mobilized the means that I
4 perceive as the serious violation of my right, that I am entitled
5 to a fair trial.

6 [14.05.59]

7 For this reason, I have advised my counsel to appeal against the
8 judgment to the Supreme Court Chamber. From the date of my
9 conviction by this Chamber, my defence team and myself have
10 worked meticulously on the preparation of the appeal and this
11 trial is even more important because the reasoning as well as the
12 grounds that you have relied upon in adjudicating my case
13 manifestly present the facts that you will have to decide.
14 Whatever you will decide in Case 002/02 in the future is in your
15 hand.

16 [14.07.09]

17 I have no doubt at all, that you will render quite similar
18 decision if you follow the procedures that you have applied
19 concerning the allegations that I have participated in the joint
20 criminal enterprise. I have to – I know in advance that you will
21 find me guilty and you will convict me eventually even with the
22 current trial that you are now hearing. We have filed application
23 to challenge the Judges of this bench. To date there has not been
24 any decision on this application. While we are waiting for the
25 decision on my application for disqualification of judges of the

1 bench, you should not take any procedural legal step against me.
2 But instead of staying the proceeding, you are now proceeding to
3 hear Case 002/02 that's why I have to reiterate that I know well
4 in advance that eventually you will render the decision similar
5 to the ones you have done.
6 Nevertheless, to defend myself I have been left with no choice
7 but to ensure that my appeal with the Supreme Court Chamber is
8 accepted by the Supreme Court Chamber. And I hope that the
9 Supreme Court Chamber will reverse the decision that you made in
10 last August. Even though my defence counsel have expressly
11 explained to this Chamber that they want the delay of this
12 proceeding until the decision is rendered, and they have not been
13 able to prepare the grounds for the appeal very well if they are
14 still engaged in the proceedings of Case 002 that is ongoing now.
15 However you still insist on opening this hearing on the day that
16 our lawyers is preparing for the submission of the appeal.

17 [14.10.16]

18 My counsel has advised me that they cannot on the one hand,
19 participate in the proceeding, and on the other hand, preparing
20 comprehensive appeal before the Supreme Court Chamber. For this
21 reason, what is the choice left for me? What should I do in the
22 face of this situation? This is a big dilemma for me. The Chamber
23 is putting me in a situation that I am being forced to do the
24 things that I do not want to do. We have do not have time to
25 prepare. You are pushing us into this awkward situation. But if I

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1 am left with no choice at all, I am compelled to advise my
2 counsel to make the utmost endeavour to prepare the appeal.
3 They have to maximize their effort in dealing with the appeal.
4 And I hope that they will spend the time that is granted to them
5 within the framework of their defence for my interests so that
6 they can prepare the appeal in the best manner they can.

7 [14.11.53]

8 In this respect, the counsel will not be able to participate in
9 the proceeding of Case 002/02 that is ongoing now. Even though
10 they fulfil their professional obligation as the defence counsel
11 for me and they know very well that this is an important role,
12 but they - it can't be helped because if they come to participate
13 and defend me in the current proceeding, they cannot prepare for
14 the appeal and they cannot have the time to prepare other
15 submissions and briefs to support the appeal I have lodged with
16 the Supreme Court Chamber.

17 In addition if the counsel have to participate in the proceeding
18 of Case 002/02, in Khmer I can quote an old saying which goes, "A
19 rolling stone gathers no moss", so eventually it will be - I will
20 be at a disadvantage in this situation.

21 [14.13.15]

22 For these reasons after considering the circumstance and after
23 consultation with my counsel, I have decided to choose one
24 option, to the effect that I don't consider the ongoing
25 proceeding now as important as the appeal I am filing with the

1 Supreme Court Chamber. From the date of my trial I have worked
2 heartily on this case. Now, I am very tired I have been working
3 hard and I have been tired and exhausted and I have fallen ill. I
4 was admitted to hospital because I have overworked on the case
5 against me. By virtue of the law, I can only work with my defence
6 counsel but unless the appeal for - appeal at the Supreme Court
7 Chamber is decided I cannot fully participate with my defence
8 counsel in my own defence.

9 [14.14.42]

10 But I know for sure that I do not have the freedoms like my
11 counsel that they may not participate in the proceedings, but for
12 myself I have to work in the detention cell to prepare my own
13 defence. So today I would like to make a public declaration
14 before this Chamber that in order to allow me to continue to work
15 on this case, particularly on the appeal that I have filed with
16 the Supreme Court Chamber, I would like to respectfully submit to
17 the Chambers that I cannot participate in the ongoing proceeding
18 in Case 002/02. If your Chamber forces me to participate, I know
19 that I cannot object but I would like to request the Court that
20 it be put on the record very clearly that every day that I have
21 to be present in the courtroom during the course of the hearing
22 it is under duress. And this is a violation of my fundamental
23 right that I am entitled to, in order that I can participate in
24 my own defence. And my appeal until it is decided upon. Once
25 again, I would like to inform your Chamber thank you very much.

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1 I would like to add a bit as to the question by the President put
2 forth to me this morning. I would like to respectfully inform the
3 Chamber that whenever my defence counsel and myself have
4 completed our appeal, we have fully prepared our appeal and
5 submitted to the Supreme Court Chamber within the time limit, we
6 will be happy to return and cooperate with this proceeding. Once
7 again thank you, Mr. President.

8 [14.17.31]

9 MR. PRESIDENT:

10 Thank you, Mr. Khieu Samphan. Security guards are now instructed
11 to take Mr. Khieu Samphan to his own seat behind his counsels.
12 Next, the Chamber grants the floor to the defence team for Khieu
13 Samphan. You may proceed.

14 MS. GUISSÉ:

15 Thank you Mr. President. Mr. President, Honourable Judges, the
16 statement by my client is very clear. We, the Defence for Khieu
17 Samphan, will not repeat what he has just stated. That is that
18 the proceedings are at a crucial stage and that the appeal is
19 paramount to him because it has an incidence on the sentence
20 meted out to him and he would like to hear the judgment on appeal
21 first.

22 [14.19.20]

23 It would have been more logical for this statement to be made
24 this morning but you stopped him from making that statement this
25 morning and he has had to make it this afternoon. But we remained

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1 seated in this courtroom in spite the prior instructions we had
2 received from my client, because being counsel for the defence is
3 sometimes a question of defending his position and his interests
4 and explaining to him what happens. It would have been good for
5 us to explain before this Chamber why Mr. Khieu Samphan took that
6 position or that stand.

7 [14.20.11]

8 As I speak to you now, I know what I am saying may annoy some
9 people. When you have to stigmatize the conduct of the defence,
10 you always want to keep your distance, ironically. How many times
11 have we, counsel for the defence, heard statements that are
12 derisive? What do you have to say, what do you have to do? Your
13 client has been convicted in advance. And for you it is not a
14 question of determining whether the trial is fair or not; all you
15 want is a judgment. Your Honours, the role of the defence is to
16 make sure that there is a fair trial and that everything is heard
17 and even if you take a contrary decision to ours, at least we
18 would have been heard. The position of Mr. Khieu Samphan today
19 has its full meaning particularly in light of the Prosecutors'
20 statement this morning, both that of the National Prosecutor -
21 Co-Prosecutor and that of the International Co-Prosecutor. The
22 National Co-Prosecutor said that you sentenced Mr. Khieu Samphan
23 to life imprisonment on the 7th of August. The appeal is
24 therefore very important because we are accused of wasting the
25 Court's time and dragging our feet in defending Mr. Khieu Samphan

1 fully and to make sure that what we consider as errors made in
2 Case 002/01 could be repeated in the second trial.

3 [14.22.02]

4 Why would we be wasting the Court's time in so doing? Why do you
5 think that the defence of Mr. Khieu Samphan and himself should be
6 based on the contradictory situation of this Court? Mr. Khieu
7 Samphan is 83 today. Why should he rush into being convicted in
8 the second trial? Whereas he is entitled to appeal, as is the
9 case in all international jurisdictions, to make sure that his
10 arguments are presented as announced in his notice for appeal
11 that they should be developed properly in the appeal brief?

12 [14.22.50]

13 Why do you consider it unacceptable, that we should ask that we
14 should be given the same resources and the same staff and that we
15 should take time to prepare our appeal brief properly? Do you
16 think that having two days to prepare for the appeal or five days
17 is the same thing? Today, why do you think we should start this
18 trial with the same judges knowing that we have sought the
19 disqualification of these judges in our motion? Do you think it
20 is logical that we deal - that you should hear the same evidence
21 again? Is it abnormal for us to challenge this logic, this
22 rationale before the appeals Chamber or the Supreme Court
23 Chamber? I've read your memo 318, in which we present the
24 legitimate arguments of the defence. In paragraph E, this is what
25 is written therein: "The Chamber will not be bound by the

1 findings of your judgment at the end of Case 002/01."

2 [14.24.07]

3 You are telling me that the Chamber will not be bound by the
4 findings in that judgment and that there will be a fair trial,
5 that there will be guarantee of a fair trial. With the same
6 Judges? Even though those Judges reached a finding of guilt by a
7 majority in Case 002/01? You are telling me that I should behave
8 as if nothing had happened, as if Mr. Khieu Samphan's defence
9 team should behave as if nothing had happened, that Mr. Khieu
10 Samphan himself should behave as if nothing had happened, as if
11 we can sincerely and reasonably think that you deliberated for
12 eight months to come up with a reasoned judgment of more than
13 seven hundred pages and a few months later, by some magic wand,
14 destiny should be overturned and that you would find you reached
15 another finding. With the same Judges?

16 [14.25.19]

17 It is obvious that if the evidence you took into account in
18 sentencing Mr. Khieu Samphan, finding him guilty, is the same
19 that take into account in Case 002/02. If your reasoning and your
20 arguments are the same, it is in the interest of Mr. Khieu
21 Samphan that your judgment should be appealed by the Supreme
22 Court Chamber. And, how do you think that we would proceed to
23 Case 002/02? Make all the arguments, plead as we wish, lead
24 evidence as we wish, only to reach the same conviction that you
25 have already reached. And you think that Mr. Khieu Samphan's

1 defence should behave as if nothing had happened? Our position is
2 logical. We have asked the Supreme Court Chamber to give us more
3 time and more page limits in order that we may defend Mr. Khieu
4 Samphan properly.

5 [14.26.28]

6 It is not that we are initiating another trial. So bear in mind,
7 that if we were to choose between the appeal brief and Case
8 002/02, you would be asking us to choose between the plague and
9 cholera. It is a difficult choice that we have not taken lightly.
10 I must tell you that we have had extensive consultations with our
11 respective bar associations. Mr. Vercken and myself have
12 consulted our – the president of our bar counsel in Paris and
13 pursuant to our code of ethics, I am telling you that we are
14 making this choice knowingly and with a clear conscience. It is
15 possible for you to cut the microphone off from us. It is
16 possible for you to force Mr. Khieu Samphan to attend Case
17 002/02. But may I crave your indulgence in saying that we will
18 continue to work for his appeal. It is possible for you not to
19 hear our arguments but we have the duty to do our job, and to do
20 what we think is the best thing and to make the best choices in
21 the interest of our client. And the best choice in the interest
22 of our client is to make sure that we file an appeal brief that
23 is worthy of the name, that will enable us to develop all the
24 arguments, and to point out all the errors of law that will be
25 made again in Case 002/02.

1 [14.28.17]

2 Because as you pointed out and noted, you said the decision from
3 the Supreme Court Chamber will necessarily have an impact on Case
4 002/02. Again we are pointing out before this Chamber, and it is
5 not in our interest, our duty is not to please the donors. Our
6 vocation is to defend our client to the best of our means. And
7 the Chamber has placed us in a situation in which we have to
8 choose between one procedure and another. I am almost done. I
9 will give the floor to my learned colleague, Sam Onn. But I want
10 it to be reflected on the record that we are not trying to desert
11 the trial but we are making a choice, taking into account our
12 defence strategy and taking into account the few choices before
13 us.

14 [14.29.23]

15 And we are making an enlightened choice in consultation with our
16 client and I hope that it would ensure that his right to a fair
17 trial is respected. And if we act in this manner we know that it
18 is your decision to proceed with Case 002. We cannot avoid to
19 raise this issue again in future. So again, let me point that the
20 defence is not deserting but we are making the only reasonable
21 choice in the interest of our client that we have to make.

22 MR. PRESIDENT:

23 Thank you. Kong Sam Onn you may proceed.

24 MR. KONG SAM ONN:

25 Good afternoon Mr. President, Your Honours and good afternoon

1 everyone in and around the courtroom and those in the public
2 gallery as well as those who are watching live broadcast of this
3 hearing.

4 As Your Honours have heard, the statement of my client Khieu
5 Samphan and his position and effort in preparing the appeal as
6 well as to attend the proceedings in Case 002/02. The choice made
7 by Mr. Khieu Samphan is not the best choice, however it is to
8 avoid the worst choice that he would have to make. As a defence
9 lawyer for my client, we had to follow our client's instructions,
10 based on the applicable laws as well as the code of ethics for
11 lawyers. As a lawyer, we cannot refuse in whole any requests by
12 our client unless we have to leave our client or to resign from a
13 position. And in this case, based on the instructions from the
14 client, we have to decide whether we will continue to defend him
15 or to resign from the position.

16 [14.32.27]

17 And for us, the co-counsel, we decided to defend our client Mr.
18 Khieu Samphan limited to the preparing for the appeal and not to
19 attend the proceedings in Case 002/02.

20 We will face several challenges based on this decision. Most of
21 it was the fact that we cannot follow the proceedings in Case
22 002/02, which is in the interest of our client. But on the other
23 hand, if we cannot dedicate ourselves to our preparation of the
24 appeal, that is another big risk and it has already stated by my
25 client. So he is in a position that both the rabbit and the fish

1 is gone. I can foresee the necessity for expedited proceedings in
2 this Chamber due to a number of factors including the advance age
3 of the Accused, the burden of financial expenses, etc., etc.

4 [14.34.10]

5 However, I'd like the Chamber to review those challenges as
6 issues, but not to use them as the basis to violate the right of
7 my client in this proceeding in this Court. However the decision
8 not to attend the proceedings in Case 002/02 it is not our
9 intention to neglect the issue or to have any unreasonable base
10 or ground that leads to improper justice. As Your Honours know,
11 Khieu Samphan does not wish not to attend the proceedings in Case
12 002/02, but it is the mere fact that he cannot do these two
13 things at the same time.

14 [14.35.20]

15 So for that he decided to choose the more important task to do
16 rather than to spoil both tasks. I also believe that the Trial
17 Chamber does not want to put my client into a position that he
18 cannot do anything, not to prepare his appeal, and at the same to
19 attend the proceedings so that he may fail in both causes.

20 I would like to remind you that is not to "kill two birds with
21 one stone", but it is a case that we cannot catch two fish with
22 one hand. Because, ultimately, both fish will slip away. I
23 sincerely understand the difficulty faced by Your Honours, but
24 Your Honours must also understand the interest and the
25 application of the law in regards to the legitimate defence of

1 the rights of the accuse, that is my client Khieu Samphan. And
2 for that reason, I urge Your Honours to adjourn the proceedings
3 or to continue the proceedings with no presence from Khieu
4 Samphan's defence. If there is not the case, we have nothing else
5 further to request. In fact Your Honour made a decision yesterday
6 to reject our request for the postponement of today's proceeding.
7 And finally I would like to say good bye to Your Honours from now
8 on, I will leave the courtroom so that I have time to prepare the
9 appeal for my client. I am grateful ,Your Honours.

10 MR. PRESIDENT:

11 The Co-Prosecutors. Do you wish to make any comment?

12 [14.38.14]

13 MR. KOUMJIAN:

14 Your Honour, I would simply point out that, while I have great
15 respect for all of the Defence Counsel involved in this case,
16 it's not up to their clients to run the trial and it's not up to
17 Defence Counsel to decide whether or not they will obey orders of
18 the Court. It's up to Your Honours to make sure that the rights
19 of the Accused are preserved and balance that with your other
20 duties to ensure a fair and efficient trial. When the defence
21 talks about the difficulty of doing the appeal and the trial and
22 the same time, I am sympathetic, because we face exactly the same
23 situation and we simply plan to do both.

24 [14.39.06]

25 We asked and Your Honours granted a reduced trial schedule for

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1 Case 002/02 until all of the submissions are made. So we are
2 starting off at only three days a week. So, I would ask Your
3 Honours to carefully consider this, to order Defence Counsel to
4 appear again. It's not up to them to decide whether or not to
5 walk out of a court in the middle of proceedings, delaying the
6 proceedings. It's their duty, as one of the defence counsel said
7 today, it is their duty to defend their client. It's not up to
8 their client to decide the trial will not go on. It's up to Your
9 Honours to decide the schedule. So I think at this point I do not
10 want - I think everyone should keep cool heads, Your Honours
11 should order Defence Counsel to appear at another hearing where
12 this is discussed and it should be recognized that ultimately the
13 Court decides upon how the trial will be managed and Counsel are
14 officers of the Court obligated to obey the instructions of the
15 Court.

16 [14.40.37]

17 MR. PRESIDENT:

18 The International Lead Co-Lawyer for civil parties, you may
19 proceed.

20 MS. GUIRAUD:

21 Thank You Mr. President. On a subject that is equally important I
22 believe it is worthwhile. Well, rather, I regret the absence of
23 my colleagues on the Defence side so that they could have heard
24 the position of the Civil Parties. It is always and continues to
25 be in the interest of the Civil Parties for the defence rights to

1 be respected. There is absolutely no interest for us in that we
2 will not have any interest in this trial to see the rights of the
3 Defence not respected. The work of justice – the work of justice
4 in this courtroom must come to a completion. When Mr. Khieu
5 Samphan and Mr. Nuon Chea talk about the ascertainment of the
6 truth, it also happens on this side of the courtroom. It is time
7 for Mr. Nuon Chea and Mr. Khieu Samphan to actively participate
8 in their trial and I was of the understanding in their opening
9 statement that they had the will to participate and to explain
10 and to even justify their conducts during the period with which
11 this trial is concerned.

12 [14.42.12]

13 You must balance the rights of the Defence with the rights of the
14 victims. For expeditiousness, as well as other fundamental
15 principles, it is a balancing act and it is incumbent upon you to
16 achieve that. So, on the two points that were raised by the
17 Defence, and I see that the Defence for Nuon Chea as well as the
18 Defence for Khieu Samphan are not invoking the same argument. Mr.
19 Nuon Chea's Defence team seems to be more concerned with their
20 disqualification condition and so long as that request is
21 outstanding, so long as that decision is not rendered, you are
22 not in a position to allow this trial to continue.

23 [14.43.03]

24 We the Civil Parties, we entrust the Judges to make the right
25 decision with respect to the appeal, which is the main point of

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1 grievance of the Khieu Samphan Defence team. I wish to echo the
2 position of the Co Prosecutors; you have already taken into
3 consideration the position of all parties, of the scheduling
4 constraints of all parties and that the appeal process and the
5 evidentiary trial are taking place concurrently. You have sought
6 to strike a balance and today at question is whether or not it
7 can be sustained. But let us take the time to reflect. We would
8 hope to see Defence Counsel return to the courtroom so that we
9 can all discuss how we can achieve all of our common objectives,
10 that is justice and truth, so that they may prevail in this
11 courtroom and prevail in the most serene way possible.

12 [14.44.19]

13 MR. PRESIDENT:

14 Thank you. And the International Co-Prosecutor, you may take the
15 floor.

16 MR. KOUMJIAN:

17 Your Honour, I believe it may assist the Court to consider a
18 prior jurisprudence from the Special Court for Sierra Leone in
19 the Sam Hinga Norman Case, the decision at 8 June 2004, the Court
20 was faced with a similar situation, where in the midst of the
21 proceedings, Mr. Norman tried to instruct his counsel not to
22 represent him, that he would represent himself. The Court in that
23 case, recognized while there was normally a right to
24 self-representation, that had to be balanced with the obligation
25 to ensure fair and expeditious proceedings. And in that case,

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1 given the stage of the proceedings and the inevitable delays
2 caused by Mr. Norman trying to self-represent himself at the end
3 of those proceedings and the fact that he was not qualified to do
4 so, they rejected his motion and they ordered the counsel to
5 continue to represent him. And I think that is applicable to the
6 facts of this case, so I'd ask Your Honours, to consider that
7 jurisprudence.

8 (Judges deliberate)

9 [14.51.40]

10 MR. PRESIDENT:

11 The Chamber would like to some remarks. First, it's on the
12 boycott by the counsel for the two accused Nuon Chea and Khieu
13 Samphan, who have left the courtroom before the Prosecutors made
14 a brief response.

15 Second, the Chamber is hopeful that all parties will attend the
16 Trial Management Meeting, which is scheduled for Tuesday the 21st
17 October 2014. That is at the beginning of next week starting from
18 9 a.m.

19 [14.52.33]

20 And three, the Trial Chamber will issue a decision on the conduct
21 of the counsels for the two defence teams, who left the courtroom
22 this afternoon, at a later stage. As the counsel for the defence
23 boycotted the proceedings, the Chamber will adjourn today's
24 proceedings and it will commence at a later day and we will
25 notify the parties and the public after the Trial Management

1 Meeting, which will be held on the 21st October 2014.
2 Security guards, you are instructed to take the accused Nuon Chea
3 and Khieu Samphan to the detention facility of the ECCC.
4 The Court is now adjourned.
5 (Court adjourned at 1453H)

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