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Case of Nuon Chea and Khieu Samphan

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They had the temerity to say that the policy program was not unusual or unreasonable, and certainly not unlawful. It was unlawful.¹

- Keith Raynor, prosecutor

I. OVERVIEW

Over the course of three days this week, the Trial Chamber concluded the final hearings of Case 002/01. After 64 weeks of evidentiary hearings and 2 weeks of closing statements, this week brought the case to a close, with the conclusion of closing statements from the Khieu Samphan defense, responses to both defense teams' rebuttals from the Civil Parties and the Co-Prosecutors, and rare final statements from the Co-Accused themselves.

The Khieu Samphan defense started the week with their continued depiction of their client as a popular but powerless figure in the DK regime. Lawyers for the Civil Parties followed the next day with an aggressive reaction to the defense teams' dismissal of victims' painful experiences. Prosecutors then sought to establish the legal basis for convictions of the co-Accused for their alleged involvement in a joint criminal enterprise, which directed two forced population movements, as well as the execution of former Khmer Republic officials at Tuol Po Chrey. The Co-Accused and their lawyers spent the final day of hearings responding to these assertions one last time before the Trial Chamber adjourned to determine a verdict.

II. SUMMARY OF DEFENSE TEAM FOR KHIEU SAMPHAN'S CLOSING STATEMENTS

Continuing their presentation from the week before, counsels Kong Sam Onn and Anta Guissé presented their client Khieu Samphan as an intellectual with good motives but without effective decision-making power in the CPK. The defense team sought to rebut the alleged roles of the Accused as laid out in the Closing Order and in the OCP's closing arguments. Furthermore, international lawyers Arthur Vercken and Anta Guissé criticized the OCP for manipulating a low standard of evidence to sensationalize their client's involvement.

A. Specific Responses to Prosecution's Lines of Argument

International Defense Counsel Arthur Vercken criticized OCP's theory that the CPK sought to establish a "slave state," dismissing this claim as an attempt at conviction for establishing communist political and economic structures. Mr. Vercken noted that the OCIJ admitted in the Closing Order that DK policies were not entirely criminal, and he also argued that OCP's argument referred to events that transpired after the alleged crimes of Case 002/01 occurred.

Echoing the arguments of Nuon Chea's defense,² Mr. Vercken criticized the historical narrative that the Khmer Rouge takeover on 17 April 1975 brought about swift and total centralization of power under Pol Pot. Terming such a portrayal as "simplistic," the counsel reminded the Chamber that, prior to 1975, lower-level leaders had functioned with autonomy from Pol Pot within the liberated zones. He also dismissed the claim that an "iron curtain" of diplomatic isolation fell over Cambodia during the DK period. Pointing to CPK documents and contemporaneous media coverage that referred to diplomatic missions and foreign aid from friendly nations, Mr. Vercken accused the OCP of creating such descriptions to vilify the DK policy to specifically shun the United States during the Cold War.³ Khieu Samphan's defense team also addressed the weak evidence concerning the executions of former officials of the Lon Nol regime at Tuol Po Chrey. Mr. Vercken pointed out that none of the witnesses or civil parties who testified on the alleged incidents personally saw the execution.⁴ The counsel also reminded the Chamber of testimonies indicating Pursat was violently captured on 19 April 1975, which may explain the presence of shell casings at the crime site.

B. Role and Character of the Accused and Contribution to CPK Policy

Following these specific responses to OCP claims, the defense team continued its closing statements, asserting that the OCP failed to present strong evidence that attested to Khieu Samphan's criminal intent, his character, or his roles in the CPK. Kong Sam Onn referred to Khieu Samphan's character, which he had described during hearings the week prior as patriotic and intellectual, as he transitioned into an argument of Khieu Samphan's actual role in the DK regime. Citing witnesses who had testified before the Chamber on his client's lack of relative power,⁵ the defense team continuously referred to the "gentle personality" of Khieu Samphan, who merely sought to bring peace and development to his country.

Kong Sam Onn emphasized that the Accused did not have any effective power in decision-making, even though he held several senior positions within GRUNK, FUNK and the CPK prior to 1975. The counsel referred to the primary role of the Accused as a "focal point" between Pol Pot and Prince Sihanouk in that period, resulting in Khieu Samphan's appointment as a Deputy Chairperson of GRUNK and FUNK. Kong Sam Onn also noted the Accused's past statements that he agreed to such powerless positions out of a desire to unite forces for an independent sovereign Cambodia, free from American and Vietnamese invasion. Furthermore, Kong Sam Onn argued that Khieu Samphan failed to fulfill the criteria of a "hardcore member" with effective power, due to his lack of peasant background and little experience in the battlefield. Pol Pot himself, according to Khieu Samphan, dismissed him as an intellectual, which prevented full-fledged membership in the Standing Committee or holding any zone-level position.⁶ While the defense acknowledged Khieu Samphan's elevation as a candidate member of the Central Committee in 1971, and a "full-rights" member in March 1976, counsels maintained he did not have any political and military responsibilities. Although Khieu Samphan was the President of the State Presidium and the Commander-in-Chief of the DK regime, his defense team cited a number of witnesses who confirmed that his roles came with few military responsibilities; rather, the Standing Committee – and behind it, Pol Pot – controlled all decision-making power.⁷

International counsel Anta Guissé addressed the OCP's allegation that Khieu Samphan was the head of Office 870. Guissé sought to establish that Khieu Samphan's role in the office was restricted to technical matters over commerce. Ms. Guissé cited CPK documents that established the head of the Commerce Committee was not Khieu Samphan.⁸ Within Office 870, the counsel asserted that the Accused was in charge of supplies and equipment, citing the testimony from Norg Sophang.⁹ Ms. Guissé cited Witness Sar Kimlimouth's testimony that he did not know Khieu Samphan replaced Doeun as head of Office 870, but he nonetheless claimed not to have worked with Khieu Samphan on the arrest or elimination of anyone. While Phy Phuon confirmed that Khieu Samphan held the office, Ms. Guissé

reminded the Chamber of the Witness' testified that the Accused assumed the position only in August 1978, a period beyond the temporal scope of Case 002/01.¹⁰ Ms. Guissé also reiterated the testimony of Witness Suong Sikoeun, who attended training sessions at Borei Keila and asserted that Nuon Chea usually held the floor, not Khieu Samphan, and both Pol Pot and Nuon Chea were the ones who talked about "smashing" enemies.¹¹

In response to arguments on Khieu Samphan's role in the evacuation of Phnom Penh, Anta Guissé highlighted the unclear nature of his involvement in its planning. Again the counsel was particularly critical of the testimony of Witness Phy Phuon, who contradicted himself concerning the date of the evacuation's planning meeting and the presence of the Accused at said meeting. Ms. Guissé also doubted whether the Witness, as a bodyguard standing at a distance, could have had any knowledge of the discussion between the DK leaders. Moreover, the counsel stressed the contradiction between the testimonies of Phy Phuon and Saloth Ban on Khieu Samphan's participation in the planning. Ms. Guissé recalled evidence that showed her client was away from Phnom Penh, at minimum, between April and June 1974. Concerning the second population movement, the international counsel maintained that Khieu Samphan was not involved in determining the policy he was in North Korea or China, on a mission with Ieng Sary, at the time.

To conclude her dismissal of previous evidence regarding Khieu Samphan's presumed knowledge of the forced evacuations, Ms. Guissé reminded the Chamber that, "When there is a doubt, it is to the benefit of the Accused."¹² Anta Guissé subsequently concluded that the role of Khieu Samphan, according to the narratives of varied witnesses, was not sufficient to prove participation in a joint criminal enterprise. She emphasized that her client did not make the policies for either the first and second population movements of population, or the executions at Tuol Po Chrey. Consequently, she argued that her client must be acquitted.

C. Concerns over Documentary Evidence and Witness Reliability

Khieu Samphan's counsels continuously outlined the weak witness testimony and documentary evidence presented by the Prosecution. Arthur Vercken noted that the OCP employs a strategy of "drown[ing] us in massive heap of documents" to obscure his client's specific role during the DK period. He specifically noted OCP's use of documents outside the scope of Case 002/01, such as minutes of the Standing Committee and documents dated in 1978, pertaining to Doeun's removal from his position in Office 870. Anta Guissé observed that the OCP interpreted many documents in a distorted manner to place Khieu Samphan "in the heart" of decision-making in the CPK apparatus, even though she claimed it was clear that the Accused was never a member of the DK Standing Committee.

Ms. Guissé also criticized the "muddled" testimonies of a number of witnesses. She noted the inconsistent testimonies of Witness Ek Hen¹³ and Civil Party Em Oeun,¹⁴ whose statements the OCP utilized to determine the Accused's participation in education sessions.¹⁵ However, she particularly focused on Phy Phuon, whose accounts to Philip Short (for his book), the OCIJ, and the Trial Chamber have been inconsistent.¹⁶ Although the OCP did not address the contradictions in the witness testimonies, Anta Guissé recounted that they had tried to make up for discrepancies in Phy Phuon's account by calling Nou Mao.¹⁷ The Counsel recounted how this witness was summoned merely because expert Ben Kiernan mentioned him in his notes. The Witness was asked the same question repeatedly before ultimately responding that he did not know Khieu Samphan's position in planning the evacuation of Phnom Penh. Anta Guissé cited these examples to underline the importance of summoning witnesses and civil parties to be examined by the Parties before the Chamber and not merely through their unreliable written statements.

III. SUMMARY OF CIVIL PARTIES' REBUTTAL

On the second day of hearings this week, the Civil Party Lawyers reacted strongly and negatively to the claims put forward in the preceding rebuttals by the defense teams. International Civil Party Lawyer (**CPL**) Lyma Nguyen and national CPL Moch Sovannary led the rebuttal of the Defense's claims for the Civil Parties, and they continually referred to the plight of the victims. The CPLs especially emphasized the state of enslavement in Democratic Kampuchea, and they called for justice and reparations.

A. Responses to Defense Critiques

International Civil Party Lawyer Lyma Nguyen defended the characterization of Cambodia under the DK regime as a "slave state," as Cambodians were reduced to the conditions of slavery. People, she emphasized, were treated as cogs in a machine, and the regime controlled both their labor and their and the regime controlled both their labor and their and the regime controlled both their labor and their livelihoods. Therefore the state of affairs during Khmer Rouge is correctly characterized as a slave state.¹⁸ Ms. Nguyen then proceeded to emphasize that the population movements, unlike what the Defense asserted, were not "evacuations" but actions forced upon the people, including through trickery or the absence of real alternatives. She accused the Defense of misrepresenting the evidence, when asserting the forced movements pushed people "to a place of danger: to the killing fields."¹⁹ Ms. Nguyen also reminded the Chamber that claims of protecting the 'new people' did not translate into practice, as they were treated discriminatively, and, in fact, people were smashed for this differentiation of status.

B. Language in Democratic Kampuchea

Lyma Nguyen discussed at length the use of language under the DK regime, noting that Nuon Chea's defense already concurred that the KR used "warlike metaphors for ideological struggle." However, the lawyer described how many words and phrases actually resulted in the opposites of their original meanings. Ms. Nguyen provided a few examples: "liberation," which, in reality, meant "enslavement"; "study sessions" for "summary executions"; and, "evacuation" for "sending to the killing fields." According to Ms. Nguyen, this kind of violent language justified criminal policies for "smashing" enemies. According to Nuon Chea these "enemies" included the people's state of mind as well as the feudalist and capitalist system, but, in reality, people were smashed. Civil Parties had testified that "to smash" meant "to execute", "to re-educate" meant "to smash," and "Angkar" referred to the CPK leadership. Ms. Nguyen claimed that Nuon Chea was the father of this DK language, speaking of "loving the people" but truly resulting in "killing the people." Ms. Nguyen dismissed the claims of the defense teams in her assertion that, only by internalizing these distorted turns-of-phrase was it possible to view either the "forced movement" from Phnom Penh as a lawful and justified "evacuation," or the deaths of two million people as the best interest of the people.

C. Character and Role of the Accused

1. Character and Role of Nuon Chea

CPL Lyma Nguyen noted at the beginning of the rebuttal that, although Nuon Chea had confirmed his role as a senior DK leader and accepted moral responsibility, he had denied any legal responsibility for policies of the CPK. In her opinion, his acceptance of moral responsibility for a policy of enslavement and controlling the entire life of Cambodian people provides little justice or recourse to the victims.

Like Khieu Samphan, Nuon Chea had claimed that he acted because he believed he was right and acting in favor of the Cambodian people. Ms. Nguyen pointed out, however, that Nuon Chea always had blamed others for the crimes committed, including Sihanouk, the United States, Lon Nol, Thailand, zone leaders, and policy-implementing authorities. According to the lawyer, Nuon Chea said the implementation of the CPK policy was an unintentional mistake without any discriminatory intent. However, Ms. Nguyen explained that the Accused was a key decision-maker who helped to create unlawful CPK policies of smashing people to gain total control over the country.

2. Character and Role of Khieu Samphan

National CPL Moch Sovannary focused on Khieu Samphan's defense's characterization of Khieu Samphan under DK. Moch Sovannary reminded the Chamber that claims of Khieu Samphan's good personality and reputation as the anti-corrupt "Mr. Clean" are irrelevant in determining his responsibility for crimes committed. The lawyer reasoned that, even if the former Head of State did not fulfill all the criteria to be considered a part of the inner circle of the CPK, the fact remains that he was an ally of Pol Pot who demonstrated his willingness to participate in the DK regime.

Moch Sovannary impressed upon the Chamber that it was impossible that Khieu Samphan, as a part of "Angkar" known for his meticulousness, could claim that he did not know what was happening around him. She questioned the Accused's claim that he forced himself to join the revolution, which ran contrary to the fact that the Accused had congratulated the KR on their victory, which paralleled his own political ideas.

IV. SUMMARY OF OCP's REBUTTAL

Following the Civil Party Lawyers, the international prosecutors led a rebuttal of the arguments of the two defense teams. International Co-Prosecutor Nicholas Koumjian led the response to the defense rebuttals, asking the Chamber to decide the case justly and impartially, with a judgment that fits the scale of the alleged crimes. With the support of prosecutors Keith Raynor, Dale Lysak, and Tarik Abdulhak, the OCP sought to respond specifically to defense teams' critiques while providing greater understanding of the responsibility of the Co-Accused under the legal principles of Joint Criminal Enterprise.

A. Fair Trial Rights and Political Conspiracy

On the last day of OCP's rebuttal, international Co-Prosecutor Nicholas Koumjian criticized the defense team's statements to the effect that the trial is propaganda for the backers of the court and was never intended to prove the truth of the charges. He defended the trial process by pointing to the fact that the counsels' presentations were allowed to be made publicly and that the charges against Ieng Thirith were suspended when it was proven that she was unfit to stand for trial.²⁰ Mr. Koumjian characterized the Defense's assertions that the Co-Accused are the victims of international conspiracy as delusional. He emphasized that the KR has been internationally discredited without the Court. The International Co-Prosecutor repeatedly acknowledged that while socialist revolution is not a crime, this does not absolve the acts used to pursue these objectives if they constitute crimes.

B. Joint Criminal Enterprise

Nicholas Koumjian then addressed the alleged Joint Criminal Enterprise (**JCE**). The prosecutor quoted from the Chamber's decision in Case 001 for the requirements of JCE I and II.²¹ He explained that the first form finds an Accused guilty if he or she has contributed significantly to a group's agreement on a crime, while a guilty verdict in the second form

requires proof of an organized system of mistreatment. Mr. Koumjian reminded the Chamber of its discretion to apply whichever form of JCE it sees fit. However, he noted that JCE II, otherwise known as "systematic JCE," is applicable to Cambodia's DK regime as it bears the same historic characteristics of a Nazi concentration camp's system of maltreatment. Mr. Koumjian also echoed CPL Nguyen's description of the system of "enslavement" in DK, in order to rebut the arguments of the defense teams and justify a finding of JCE II.²²

The international prosecutor argued that, in terms of intent, JCE I and II are actually equivalent. He acknowledged the letter of the law, which states JCE I requires intent to commit a crime while JCE II requires the Accused to be aware of a system of mistreatment and continue to support it. However, Mr. Koumjian asserted, the latter already assumes the intent to commit the crime perpetrated through the system. Mr. Koumjian also reminded the Chamber of its precedent in Case 001 when it stated similarly that, "The Accused must have acted with the intent to commit the crime or with an awareness of the substantial likelihood that the crime would occur as a consequence of his or her conduct."²³

The international prosecutor emphasized that it was impossible that Nuon Chea and Khieu Samphan, two DK senior leaders, did not know about the consequences of the forced population movements. In April 1975, thousands of Cambodians died of starvation, lack of medical care, and dehydration during the forced movement of people from Phnom Penh. The prosecutor said that the Co-Accused knew of this crime, yet they continued to participate in it, thus proving their intent. Mr. Koumjian also raised a more direct proof of intent: the publicly broadcasted threats against the "seven traitors," which set an example to lower-level cadres and troops throughout the country. He also cited the inhumane expulsion of two million people from Phnom Penh at gunpoint as setting the standard of "indifference" and "antipathy" to KR cadres in their subsequent treatment of the 'new' people.

C. Underlying Offenses for Crimes Against Humanity

1. Forced Population Movements I and II

Both the international Co-Prosecutor Nicholas Koumjian and prosecutor Keith Raynor argued that the forced population transfers had no legal basis under international law. Addressing the claims of Nuon Chea's counsels, Mr. Koumjian cited Article 49 of the Fourth Geneva Convention,²⁴ which sets the requirements that people must be returned home following military evacuations. Mr. Raynor reminded the Chamber that any military excuse was invalid because the bombing had already stopped in August 1973. Mr. Raynor also strongly denied Nuon Chea's claim that the population movement was part of DK's economic policy:

They had the temerity to say that the policy program was not unusual or unreasonable, and certainly not unlawful... I'm sorry you've got to die; it's all economic. I'm sorry I'm executing you; it's all economic. For good measure, I need to persecute you; it's my economic programme.²⁵

2. Tuol Po Chrey and the Targeting of Lon Nol Soldiers

International prosecutor Keith Raynor then focused on the defense rebuttals against the lack of eyewitnesses in the events at Tuol Po Chrey. He impressed upon the Chamber that circumstantial evidence suffices in substantiating the crime, and that there is enough evidence to prove that former Lon Nol officials and soldiers were killed at Tuol Po Chrey without mentioning a certain number of victims or naming the direct perpetrator.²⁶ He asserted that the OCP already provided evidence of the order, the meeting attended by senior Lon Nol officials at Pursat town hall, their transport in trucks and the sound of gunshots via KR radio. Furthermore, Mr. Raynor cited Duch's testimony to substantiate that there was a policy to purge former Lon Nol officials, including them in a categorization of

people who must be killed. Mr. Raynor also noted the similar circumstances under which they were purged, from the use of loudspeaker announcements to summon them to the deception employed in transporting them to the sites of their execution.

Prosecutor Dale Lysak argued that the killing of these 'enemies' was part of a systematic attack under a common criminal plan. In response to Nuon Chea's defense team, Mr. Lysak emphasized that the OCP have provided evidence on the existence of policies to kill all Lon Nol officials. He also noted that the fact that there were more executions of these officials in certain zones does not signify the proactive decision-making of mid-level cadres but the uneven distribution of former Khmer Republic forces on 17 April 1975.

3. Communication and Administrative Structure

Mr. Lysak primarily sought to rebut the allegation that Zone leaders acted independently from the Party Center. According to the prosecutor, the South and West Zones carried out the policies of the Center, under the leadership of Ta Mok and Rous Nim, respectively. Mr. Lysak noted how the Center encouraged zone cadres; it awarded the Southwest Zone under Ta Mok with an honorary red flag as one of three model zones. Mr. Lysak referred to Michael Vickery's book, which described the Southwest Zone as "a microcosm of Pol Pot's policy" in carrying out purges. Mr. Lysak also emphasized evidence that the Northwest zone was instructed directly by the Center, with Nuon Chea conveying Pol Pot's directives to zone cadres even prior to April 1975. To support this argument, the prosecutor described the relationship between Nuon Chea and Rous Nim, asserting that the latter had reported to and consulted with Nuon Chea about the execution of Nuon Chea's uncle, Sieu Heng. Moreover, Mr. Lysak claimed that the Center had control over zones by demanding the confessions of hundreds of zone cadres and five zone secretaries interrogated and smashed at S-21.

4. Role and Character of the Accused

International prosecutor Dale Lysak detailed Nuon Chea's involvement in the CPK leadership as well as his contributions to the alleged crimes. Mr. Lysak asserted that the Accused knew that evacuating Phnom Penh's most vulnerable, such as the elderly and hospital patients, would result in death. With regards to the deaths at Tuol Po Chrey, the prosecutor argued that Lon Nol officials were identified as class enemies subject to immediate execution, and those who survived were targeted. He then noted that Nuon Chea was "at the very heart" of the CPK criminal plan to 'smash' enemies, and he raised supporting evidence, including Duch's testimonies that Nuon Chea had been his superior in S-21. Mr. Lysak also brought evidence that showed the CPK controlled Rous Nhim of the Northwest Zone, presenting documents from 1975 that showed the Northwest Zone as both an extension of the CPK Central Committee and the command base prior to the invasion of Phnom Penh in 1975.

Prosecutor Tarik Abdulhak concluded the Prosecution's rebuttals by specifically connecting Khieu Samphan's knowledge and contributions to the CPK's policies. Using documents, interviews given by Khieu Samphan, and alternate witnesses, Abdulhak challenged the claim that Khieu Samphan was ignorant of the forced evacuation, suggesting Khieu Samphan continued with his "unreserved, active, and committed participation" in its JCE.²⁷ Prosecutor Abdulhak attested the criminal responsibility of Khieu Samphan to his contribution in the pre-1975 establishment of FUNK and GRUNK, which promoted the recruitment of young Cambodians to fight for Khmer Rouge, a movement which, in turn, utilized executions, enslavement, and forced transfers well before the Khmer Rouge took control of Phnom Penh. To support his argument, the prosecutor referred to the testimony of Meas Voeun who claimed that Khieu Samphan called for violence and the killing of target enemies during a speech in Udong in March 1974. Mr. Abdulhak then noted Khieu Samphan's joint criminal responsibility in his supervision of the Commerce Committee, which imposed the policy of

forced labor camps for agricultural production. To rebut the Defense's argument that the chairman of this committee was Koy Thuon, the prosecutor stated that Koy Thuon was put under house arrest in April 1976.

Prosecutor Abdulhak further noted reports of communication to Khieu Samphan as a senior leader and representative of Angkar, as indications of his contribution to JCE. Mr. Abdulhak referred to Khieu Samphan's ability to order Meas Voeun, the newly appointed head of section 103 in the North Zone, to release his wife's relatives from detention. Additionally, the prosecutor pointed out Khieu Samphan's presence in the 8 May 1976 Central Committee meeting that chose a policy to seek and 'smash' enemies.

5. Responding to Critiques of the Evidence

International prosecutor Dale Lysak rebutted the defense teams' claim that the Prosecution relies solely on secondhand evidence and reminded the Chamber the sheer number of contemporaneous DK and CPK documents presented as evidence. He also reminded the Chamber that bringing evidence from before the Court's temporal jurisdiction is justifiable by the fact that the crimes during the DK era were planned prior to the period and had already been implemented in the 'liberated' zones.

V. SUMMARY OF THE ACCUSED'S FINAL STATEMENTS

The final day of the closing hearings was reserved for the Co-Accused to provide their final statements and reply to the rebuttals of the OCP and CPLs. Both Nuon Chea and his international counsel, Victor Koppe, focused on the Accused's role in DK, violations of his fair trial rights, and the veracity of allegations concerning events at Tuol Po Chrey. Khieu Samphan's international counsel, Arthur Vercken, primarily addressed the forms of JCE that should be applicable in this trial while his client then focused on his reasons for joining the Khmer Rouge and his lack of power within the movement. Notably, Nuon Chea expressed apologies to the victims of the regime and conceded that he was morally – but not legally – responsible for its crimes. Khieu Samphan, however, offered no such acknowledgement.

A. Nuon Chea

1. Role of the Accused

In pleading his innocence for the crimes committed during the DK regime, Nuon Chea maintained that he did not have the authority to commit the alleged crimes. He recognized his three main roles in the CPK at the time: firstly, as Deputy Secretary, he was in charge of disseminating the propaganda on CPK policy to party members and cadres. The Accused focused on the Party's policy to "take care of the people," and he differentiated his position from one of command responsibility within the Revolutionary Army of Kampuchea, which was responsible for "smashing of invading enem[ies]."²⁸ He then described his second role, as Deputy President of the Communication Committee with the Vietnamese Workers Party, a position in which he "learned of the Vietnamese trickery and many secrets towards Cambodia."²⁹ Nuon Chea noted his third role as the President of the People's Representative Assembly after 17 April 1975, which should have placed him in charge of legislation, but he claimed that continued conflict with Vietnam and the communist structure of the state diminished the role of the legislative branch and placed all effective power in the hands of the CPK Secretary and Prime Minister, Pol Pot. The Accused referred to this political structure to specifically rebut allegations of his oversight of S-21 and the military, reminding the chamber Pol Pot and Son Sen, as his deputy, held all supervisory authority over S-21. Responding to the OCP and CPLs' assurances that Duch had nothing to gain by

lying in his witness testimony, which followed final judgment in his case, Nuon Chea accused the former head of S-21 of wanting to evade full responsibility for his own crimes.

2. Fair Trial Rights

In his final statement, the Accused pointed out that some of his rights were not properly guaranteed during the proceedings.³⁰ He firstly claimed that his counsels were hampered from collecting exculpatory evidence on an equal basis with the inculpatory findings of the OCIJ and the OCP. Furthermore, Nuon Chea noted the Chamber's refusal to summon requested character witnesses and witnesses concerning Tuol Po Chrey. Lastly, he criticized the Chamber's bias during the examination of witnesses, observing that the OCP was always able to question them without interruption while the same courtesy was not extended to the defense. This unfairness, the Accused reminded the Chamber, was the reason why he and Khieu Samphan had refused to testify further. Mr. Koppe supported his client on this, asserting that trials such as this are inherently political,³¹ specifically noting the Chamber and OCP's total avoidance in even discussing the exculpatory witness request for the testimony of National Assembly President and former Khmer Rouge leader Heng Samrin.

3. Historical Background and CPK's Principles and Objectives

Overall, Nuon Chea's statement addressed the party's principles and objectives, although it was more focused on Vietnamese interventions in the CPK's affairs. He explained that the Vietcong began to take control of "the people" in the 1950s, before the CPK started to liberate the country. He argued that Vietnam's attempts to control the CPK ran contrary to the Party's policy of independence and self-reliance. Nuon Chea asserted that, even after the CPK took power, many Vietnamese infiltrated the CPK to destroy the revolution and to kill Cambodians prior to their subsequent invasion in 1979.

The Accused dismissed OCP and CPL's allegations of a "slave state," emphasizing the CPK's "liberation" of the poor from the exploitative enslavement by the wealthy and foreign states. Nuon Chea claimed that the main task of the CPK was to create better livelihood for the people in an equal society, and that forced labor was not an official state policy. According to Nuon Chea, mid-level cadres' lack of knowledge, compounded by the misinformation that Vietnamese infiltrators and American agents spread, resulted in poor implementation of policies and the subsequent death of many people. The Accused further explained that the civil war resulted in a bad economic situation and food shortage, which necessitated the system of cooperatives as well as the regime's use of violence. Victor Koppe explained that the classification of DK as a "slave state" was also invalid because the claim was made based on evidence that fell outside of Case 002/01's scope, which was limited to the first and second forced population movement and Tuol Po Chrey massacre.

The Accused denied that a policy existed to kill former Khmer Republic officials, because Lon Nol soldiers were supposed to be forgiven. Nuon Chea also referred to the violent acts of other parties, including the French colonists, the Lon Nol regime, the USA, and Vietnam, before, during, and after the DK period. He asked why the OCP did not categorize the American aerial bombing campaigns as crimes against humanity or genocide rather than only attempting to prove the systematic plans of the CPK.

4. Forced Population Movements

Nuon Chea continuously asserted that the forced movements of people from Phnom Penh were voluntary evacuations ordered to resolve the city's food shortage and out of fear of American bombardment following the collapse of the Lon Nol government. While some have argued that the Khmer Rouge siege caused the city's famine, the Accused reminded the

Chamber that Lon Nol's regime was the first to bombard the people and destroy the country. Both Victor Koppe and national counsel Son Arun argued that the American bombardment destroyed the ability to produce foods and caused starvation during the evacuation.

Nuon Chea stated that Central Committee members agreed that each zone force would implement the evacuation and coordinate with others in doing so. He also emphasized that the establishment of cooperatives officially banned any discrimination against urban evacuees, but that the zone leaders retained autonomous powers of implementation. Mr. Koppe also emphasized the second transfer was within the Zones' prerogative. He reminded the Chamber that Zone leaders such as Ros Nhim and So Phim held as much effective power as Pol Pot and Nuon Chea, because they were founding members of the CPK and powerful members of the Standing Committee.

5. Policy to Eliminate Lon Nol Officials and Tuol Po Chrey

Nuon Chea expressed his lack of culpability for the murder of former Khmer Republic soldiers at Tuol Po Chrey. He reiterated that the CPK never formulated any policy to smash Lon Nol officials but, rather, to forgive them. The Accused placed the blame for those who died on the local cadres who disobeyed CPK policies and took revenge on the soldiers. Nuon Chea rejected the film of Thet Sambath³² and the testimonies of Lim Sat and Ung Chhat,³³ asserting that their statements were filled with lies. Mr. Koppe provided a six-point rebuttal to the OCP's allegation of Nuon Chea's responsibility. He noted that OCP presented weak and contradictory evidence concerning CPK policy to execute former officials, criticizing two items in particular: one, merely a photo of people in front of the Ministry of Information, and the other, Duch's cherry-picked testimony. Mr. Koppe then critiqued OCP's lack of response to defense arguments that there was no positive evidence of either a centralized policy or a systematic pattern for the killings, rather than a series of coincidences. In his fourth point, the counsel addressed the claim that his client was complicit in his participation in an enterprise that executed "class enemies" and other opposition. OCP arguments required a link, Koppe asserted, between "abstract class theories...to a policy of systematic executions."³⁴ The counsel argued that, even if there was such policy, the Prosecution never proved that the people allegedly killed at Tuol Po Chrey were more than ordinary soldiers and civilians. On a related note, Koppe's final point centered on the alleged killings' occurrence after a long war, a context in which revenge killings were common.

6. Acknowledgement of Moral Responsibility

Concluding his final statement, Nuon Chea apologized and recognized moral responsibility for victims and their families. He maintained, however, that the CPK sought to pursue lofty goals of freeing the country from imperialism and exploitation. Unfortunately, he claimed, he did not realize until it was too late that cadres at the Zone level committed traitorous acts. He also maintained that he never planned to commit any crime nor support the commission of it.

B. Khieu Samphan

1. Role of Accused in Forced Movements of Population

The Accused and his international counsel, Arthur Vercken, claimed again that Khieu Samphan was not involved in crafting policy for the forced movements of population. The Accused further elaborated that he did not witness what happened after the victory in April 1975. He and his counsel claimed that he did not have any power to intervene, to sanction or to rectify any mistakes made following the KR takeover. He asserted that he was informed after the population movement that health, military and economic concerns

prompted the evacuation of Phnom Penh. Regarding the second forced movement, Mr. Vercken reminded the Chamber that Khieu Samphan was not even in the country at the time.

2. Application of JCE in Case 002/01

Arthur Vercken closed his statements with remarks on the application of JCE. Regarding the application of “systematic” JCE, he argued that the proof of a system of maltreatment would fall outside the scope of Case 002/01 and that the Chamber “cannot consider that Cambodia nationwide was a single concentration camp.”³⁵ He recalled the requirements of the systematic form of JCE in international jurisprudence, namely that it occur in a limited space in order to lower the burden of proof of knowledge, so that it is impossible for someone to claim (s)he did not know what was occurring there. An entire country, Mr. Vercken insisted, could not be the location where a systematic form of JCE applies. Furthermore, Arthur Vercken claimed that the OCP’s request for the application of the “expanded” form of JCE, which requires that it was foreseeable that certain crimes would have been committed, violated the Trial Chamber’s earlier decision not to apply such form of JCE.

3. Motivation in Joining the Khmer Rouge

Khieu Samphan’s final statement before the Chamber focused on his intention in joining the Khmer Rouge out of a desire to change Cambodia’s situation under the socially unjust Lon Nol regime. He wanted to bring prosperity, justice, independence, and peace to the country, and he supported the KR based on its mission to liberate the nation. After the Khmer Rouge took power, Khieu Samphan claimed, he neither held nor desired any effective power.

4. Decision to Remain Silent Before the Chamber

Khieu Samphan expressed disappointment in the assumption of his guilt on the basis of his ties to the Khmer Rouge. He felt that there was a false expectation that he should have known that the Khmer Rouge would manipulate his personal convictions while seizing control of the country. Despite his repeated attempts to explain his experiences before the Chamber, the Accused claimed, no one listened to him. Due to this indifference, he decided to remain silent, as he did not wish to be “silly trying to explain those who never want to listen to me”.³⁶ Khieu Samphan expressed his regret for having believed the court would provide him with the opportunity to present his perspective rather than continuous pressure to admit his guilt. The Accused claimed he could not admit guilt for crimes he never committed, and he therefore chose to remain silent in order to maintain his dignity. In closing, he stated that it was up to the judges to adjudicate a decision, hoping they would find justice.

IV. TRIAL MANAGEMENT

This week, the Trial Chamber completed the closing arguments in case 002/01 successfully and timely, as set in the court schedule. Attendance was high but the public gallery remained orderly and the proceedings went smoothly, with no major disruptions.

A. Attendance

Accused Attendance: Nuon Chea remained in the holding cell on Monday and Wednesday. He appeared in the courtroom to deliver his final statements on Thursday but subsequently excused himself, citing health concerns. Khieu Samphan was present in the courtroom throughout the week’s proceedings.

Civil Party Attendance: Over three days of closing statement hearings, more than 40 Civil Parties were present in the public gallery and ten persons sat in the courtroom.

Parties Attendance: All Parties were well represented this week. Arthur Vercken was running late on Monday's second session while the Parties awaited his continued rebuttal. On Wednesday morning, National Civil Party Lead Co-Lawyer Pich Ang arrived slightly late.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 28/10/2013	<ul style="list-style-type: none"> ▪ 150 students (10th and 11th grade) from American Intercon School, Phnom Penh ▪ 23 foreign observers 	<ul style="list-style-type: none"> ▪ 150 students (10th and 11th grade) from American Intercon School, Phnom Penh ▪ 14 foreign observers
Wednesday 30/10/2013	<ul style="list-style-type: none"> ▪ 300 villagers from Treang district, Takeo Province ▪ 300 students: 100 foreign students from International School of Phnom Penh (ISPP), 150 students from Human Resources University and 50 students from Royal University of Phnom Penh ▪ 28 foreign observers 	<ul style="list-style-type: none"> ▪ 150 students from Human Resources University, Phnom Penh ▪ 3 monks ▪ 16 foreign observers
Thursday 31/10/2013	<ul style="list-style-type: none"> ▪ 200 official trainees from Royal School of Administration ▪ 300 villagers and students from Pursat Province ▪ 16 visitors from Union of Youth Federations of Cambodia, Phnom Penh ▪ 1 monk ▪ 90 foreign observers 	<ul style="list-style-type: none"> ▪ 300 villagers and students from Pursat Province ▪ 16 visitors from Union of Youth Federations of Cambodia, Phnom Penh ▪ 50 students from Royal University of Laws and Economics ▪ 40 foreigner observer

B. Time Management

The week of hearings proceeded in an efficient and timely manner, although there were some minor delays due to the late attendance of some parties (see Attendance Section).

D. Translation and Technical Issues

On Monday, the translators seemed to struggle in keeping up with the speakers, so the Chamber reminded the Parties to maintain even pace in presenting their statements. On Wednesday, both international and national Civil Party's rebuttal proceeded very quickly, causing some unclear translation in Khmer.

E. Time Table

Following the end of closing statements, the Chamber informed the public that the total number of substantive hearings in Case 002/01 was 222 days, including 212 days of hearings from 21 November 2011 to 23 July 2013, as well as ten days of closing statements, from 16 to 31 October 2013. A total of 91 individuals testified, including two expert witnesses, 57 witnesses, 32 Civil Parties, two treating doctors, and two medical experts.

DATE	MORNING SESSION 1	MORNING SESSION 2	AFTERNOON SESSION 1	AFTERNOON SESSION 2	TOTAL HOURS IN SESSION
Monday 28/10/13	9:01-10:35	10:52-11:59	13:31-14:43	15:01-15:51	4 hours and 43 minutes
Wednesday 30/10/13	9:02-9:59	10:19-11:47	13:29-14:40	15:00-16:08	4 hours and 44 minutes
Thursday 21/10/13	9:01-10:30	10:52-11:59	13:29-14:20	-	3 hours and 27 minutes
Average number of hours in session				4 hours 18 minutes	
Total number of hours this week				12 hours 54 minutes	

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias "Duch"</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or "KRT")
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

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¹ Trial Chamber. Transcript of Trial Proceedings (6 December 2012). E1/149.1 [hereinafter **6 DECEMBER TRANSCRIPT**]. Lines 16-17. 28.

² Trial Chamber. Transcript of Trial Proceedings (30 October 2013). E1/236.1. [hereinafter, **30 OCTOBER TRANSCRIPT**], pp.70-71, lines 18-19.

³ Trial Chamber. Transcript of Trial Proceedings (28 October 2013). E1/235.1. [hereinafter, **28 OCTOBER TRANSCRIPT**]. 18-19.

⁴ Mr. Vercken specifically noted Witnesses Ung Chhat and Sum Alat (See **28 OCTOBER TRANSCRIPT**, 35).

⁵ Mr. Kong Sam Onn referred to testimonies of Philip Short and Meas Voeun, as well as personal statements from the Accused himself (See **28 OCTOBER TRANSCRIPT**, 2-4).

⁶ Counsel referred to Philip Short's testimony to reinforce this. See CASE 002 KRT TRIAL MONITOR, Issue 59, Hearing on Evidence Week 54 (6-10 May 2013).

⁷ The testimonies cited included those of witnesses Phillip Short, Ung Ren, Duch, Steve Heder, David Chandler, Chhouk Rin, as well as the Accused Nuon Chea (See **28 OCTOBER TRANSCRIPT**, 12-16).

⁸ Ms. Guissé pointed out CPK meeting minutes showing the Prime Minister in charge of economy, defense and commerce was Vorn Vet, a "full-rights" member of the Standing Committee. A DK organizational chart showed that Rith, Nhem, and Chhoeun were members of the Commerce Committee. Standing Committee meeting minutes recorded the decision to place Khieu Samphan merely in charge of technical matters and support. (See **28 OCTOBER TRANSCRIPT**, 96-98).

⁹ See **28 OCTOBER TRANSCRIPT**, 105-107.

¹⁰ Ms. Guissé also recalled various issues with Phy Phuon's testimony, as did Mr. Vercken earlier in the session (See **28 OCTOBER TRANSCRIPT**, 64-65, 67). They argued that his testimony was riddled with inconsistencies regarding his attendance of Party leaders' planning meetings, as well as contradictions concerning the planning of Phnom Penh's evacuation. For more on Phy Phuon's testimony, see CASE 002 KRT TRIAL MONITOR, Issues 29 and 30, Hearings on Evidence Weeks 24 and 25 (23 July-2 August 2012).

¹¹ See **28 OCTOBER TRANSCRIPT**, 88-89.

¹² See **28 OCTOBER TRANSCRIPT**, 74.

¹³ Ms. Guissé recounted that Ek Hen testified about a 1976 education session that Khieu Samphan and Nuon Chea attended. She said Khieu Samphan talked about Pang's arrest in the training session, but Pang was actually arrested later, in 1978. The Witness also conceded that "Maybe I gave disorderly answer. My memory is not good as it used to be for over 30 years." For Ek Hen's testimony, see CASE 002 KRT TRIAL MONITOR, Issue 66, Hearing on Evidence, Week 61. (1-4 July 2013).

¹⁴ Em Oeun, Ms. Guissé recalled, testified he heard that Khieu Samphan spoke in an education session about enemies. This Civil Party however was very confused and gave inconsistent facts, such as hearing of Khieu Samphan's appointment to the State Presidium from his father, but then explaining that his father passed away in 1974. Khieu Samphan became the President of the State Presidium in April 1976. For Em Oeun's testimony, see CASE 002 KRT TRIAL MONITOR, Issue 33-34, Hearing on Evidence, Weeks 28-29. (23-29 August 2012).

¹⁵ See **28 OCTOBER TRANSCRIPT**, 84-86.

¹⁶ Rochoem Ton, *alias* Phy Phuon, was a former bodyguard of Pol Pot. At one point during his testimony before the Chamber, he stated that he did not recall the word "smash" was used to describe the act to be directed at enemies. Phy Phuon also said that when Khieu Samphan talked about the Front, the Accused spoke of consolidating the forces and assembling people from all walks of life, without distinguishing and targeted any group. (See endnote 9).

¹⁷ See CASE 002 KRT TRIAL MONITOR, Issue 64, Hearing on Evidence, Week 59. (17-20 June 2013).

¹⁸ See **30 OCTOBER TRANSCRIPT**, 4.

¹⁹ See **30 OCTOBER TRANSCRIPT**, 8.

²⁰ For more on Ieng Thirith's trial, see KRT TRIAL MONITOR SPECIAL REPORTS (November 2012 and December 2012), accessible at: <http://krtmonitor.org/category/reports-2/special-reports>.

²¹ Trial Chamber. Judgment in Case 001 (26 July 2010). E188. [hereinafter, **CASE 001 TRIAL JUDGMENT**].

²² See **30 OCTOBER TRANSCRIPT**, 58-59.

²³ Mr. Koumjian quoted **CASE 001 TRIAL JUDGMENT**, para. 481. For more, see **30 OCTOBER TRANSCRIPT**, 47.

²⁴ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Article 49, on Deportations, transfers, evacuations. The article specifically notes: "Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."

²⁵ See **30 OCTOBER TRANSCRIPT**, 70-71.

²⁶ Mr. Raynor especially mentioned the testimony of Lim Sat, Ung Chhat, Sum Alat and TCW-644.

²⁷ See **30 OCTOBER TRANSCRIPT**, 146.

²⁸ Trial Chamber. Transcript of Trial Proceedings (31 October 2013). E1/237.1. [hereinafter, **31 OCTOBER TRANSCRIPT**]. 6.

²⁹ See **31 OCTOBER TRANSCRIPT**, 7.

³⁰ See **31 OCTOBER TRANSCRIPT**, 30.

³¹ Mr. Koppe bolstered his argument by quoting the Indian judge, Justice Pal, in his dissenting opinion at the Tokyo Tribunal in 1945, as to "whether victors of a war can fairly judge its losers." See **31 OCTOBER TRANSCRIPT**, 44-45.

³² The film, "One Day at Po Chrey," was put before the Chamber by the OCP in January 2013. It consisted of interviews with former soldiers and villagers from the area surrounding Tuol Po Chrey execution site, who explained how victims were transported to the site under the pretense of meeting Prince Sihanouk or Angkar and were then bound together and shot. See CASE 002 KRT TRIAL MONITOR, Issue 50, Hearing on Evidence Week 45 (21-24 January 2013).

³³ See CASE 002 KRT TRIAL MONITOR, Issue 58, Hearing on Evidence Week 53 (29-30 April, 2-3 May 2013).

³⁴ See **31 OCTOBER TRANSCRIPT**, 59.

³⁵ See **31 OCTOBER TRANSCRIPT**, 67.

³⁶ See **31 OCTOBER TRANSCRIPT**, 74.