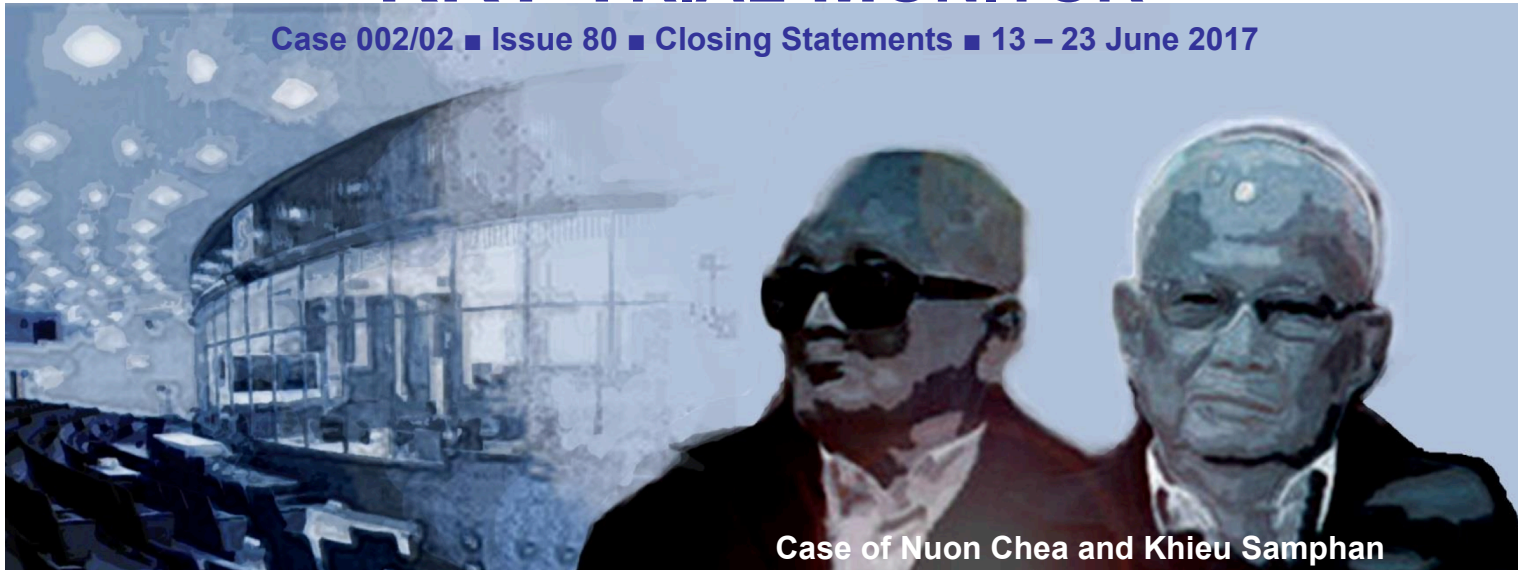


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Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDA Center for Human Rights and International Justice at Stanford University
(previously known as the UC Berkeley War Crimes Studies Center)

“Evidence, not narratives; truth, not propaganda; facts, not conspiracy theories.”¹

- National Co-Prosecutor Chea Leang

“Nuon Chea couldn’t care less if you convict him again to a life sentence.

*He really doesn’t care. Because, rightfully so,
he does not take this institution seriously.”*

- Counsel for Nuon Chea, Victor Koppe

*“Saying that it was self-genocide is, in fact, Vietnamese propaganda.
You can see moreover that Vietnam has profited by this manipulation.”*

- Khieu Samphan, Accused

*“Saying that he accepts the moral responsibility while pleading for a
total acquittal and contesting that the crimes existed,
Nuon Chea presents you with a total contradiction and, in fact, he accepts nothing.”*

- Lead Co-Lawyer for Civil Parties, Marie Guiraud

I. OVERVIEW

In June 2017, Parties to Case 002/02 returned to the Trial Chamber, six months after the end of evidentiary hearings, to hear closing statements from all sides in this second and final trial against Nuon Chea and Khieu Samphan; two surviving senior leaders of Democratic Kampuchea (DK).² Over the course of two weeks, each Party presented their final oral arguments, summarizing the main points contained in the lengthy written briefs they each filed on 2 May 2017.³ This report summarizes the two weeks of closing arguments of the Office of the Co-Prosecutors (OCP), Lead Co-Lawyers for Civil Parties (LCLCP), and Nuon Chea and Khieu Samphan Defense Teams, who together covered a range of legal and procedural issues and cited testimony from among the 185 persons who appeared throughout the case.⁴ Many of these arguments were strengthened or in some way influenced by the recently released Supreme Court Chamber (SCC) Appeal Judgment in Case 002/01, which clarified some of Case 002’s persistent legal issues.⁵ This report begins with a summary of the four major legal arguments made by Parties over the course of the hearings and which underpin their subsequent arguments related to specific alleged crimes. These are: the temporal,

geographical and historical context of the period in question, the reference to topics outside of the scope of Case 002/02, disputes over the probative value of certain evidence and the individual criminal responsibility of the two Accused. After establishing these main arguments, this report then presents a summary of Parties' cases concerning the alleged crimes: those at worksites and cooperatives; security centers and internal purges; treatment of targeted groups; and the regulation of marriage. Finally, the report covers the Civil Parties' request for reparations and the final statement of the Accused, Khieu Samphan. Nuon Chea declined to make a final statement and his lawyer labeled the proceedings "a show trial." At the conclusion of the statements, Trial Chamber President Nil Nonn announced the judges would retire to prepare their judgment, which is currently expected toward the middle of 2018.⁶

II. SUMMARY OF CLOSING STATEMENTS

Closing statements stretched over nine days, between 13 and 23 June 2017. The LCLCP and OCP presented their cases first, followed by the two Defense Teams. One and half days were assigned for rebuttal from the LCLCP and the OCP, and then a half day was scheduled to hear the Defense's closing responses and final statements from the two Accused.⁷ Closing statements provide Parties with the chance to summarize their lengthy written final briefs, present their most compelling final arguments and respond to opposing arguments.⁸ This report discusses only the oral arguments presented in the courtroom during the two weeks of closing statements in Case 002/02. As Parties explained during oral arguments, many of these issues are discussed in greater detail in their written closing briefs. Although this report may refer to those briefs at times, it does not attempt to summarize Parties' written arguments in full.

A. Legal Arguments

Before presenting Parties' arguments on the different crimes and crime sites included in Case 002/02, this report will first outline four of the main legal arguments raised by Parties. Both Defense teams emphasized the need for Judges to situate the crimes alleged within the relevant temporal and geographic context, advising Judges to avoid applying today's standards to the actions of the Cold War. The Defense Teams drew attention to the use of evidence and coverage of topics and crime sites they view as outside the scope of Case 002/02, as characterized by the Severance Decision.⁹ The probative value of evidence, particularly the testimony of Civil Parties, was hotly debated by all sides throughout the fortnight. Finally, Parties raised arguments about the Accused's criminal responsibility, with the debate over the application of modalities of Joint Criminal Enterprise (**JCE**) resurfacing once more.

1. Temporal and Geographic Context

All Parties to Case 002/02 used their closing presentations to invoke the significance of the case in relation to the creation of historiographical narratives and the ascertainment of the truth. The Prosecution closed its pleadings with the recognition that a judgment convicting the Accused and sentencing the two men to life imprisonment would "provide a strong lesson for future generations and governments of Cambodia as to the truth of the history of the DK period." Both Defense Teams repeatedly reminded the Chamber to consider the context of the time period when assessing allegations. Nuon Chea Defense Counsel Son Arun explained that his client had long accepted "moral responsibility for what happened during DK," and that he participated in the lengthy, unfair proceedings against him in order "to help the Cambodian people understand what really happened."¹⁰ While the Khieu Samphan Defense arguments were more legalistic, the Nuon Chea Defense focused on dismantling what they called the "Manichean narrative" of Cambodia's recent history, which they argue oversimplifies DK and scapegoats the Accused. International Civil Party Lead Co-Lawyer Marie Guiraud summarized the difference in the two Defense Teams' strategies thus: "The aspiration of the Khieu Samphan Defense is to recall the law, whereas that of the Nuon Chea Defense is to rewrite history."

Indeed, Nuon Chea's Defense reserved the largest portion of their closing arguments for a summary of their historical perspective of the DK period, which they refer to as "the crocodile." It is their team's position that trial proceedings in Case 002 erred in only covering events of the DK period itself, that is, the "body" of the crocodile, while the "head" and "tail" were either ignored or willfully misrepresented. Their position is that the "head" of the crocodile represents the root causes of the DK period, which can be traced back to the March 1970 coup against then Prince Norodom Sihanouk, subsequent civil war, "devastating" American bombings that led people to join the revolutionary movement, and the alleged efforts of Vietnam to undermine the Cambodian revolution. In contrast, the "tail" refers to the consequences of not only of the regime itself but that original "head"; namely that Vietnamese forces succeeded in a long-term goal to occupy Cambodia for a decade, with support from the People's Republic of Kampuchea (PRK) government.

The Prosecutors made their position on the Defense's re-positioning of history clear when National Co-Prosecutor Chea Leang began her presentation: "Contrary to what we have heard from the Defense, this case is and always has been about the evidence...Evidence, not narratives; truth, not propaganda; facts, not conspiracy theories." Rejecting the Defense's claims of factionalism or disunity within the Communist Party of Kampuchea (CPK), Prosecutors continually emphasized the central role played by Pol Pot, Nuon Chea, and Khieu Samphan in relation to the facts in Case 002/02. International Assistant Prosecutor Dale Lysak underlined the significance of surviving contemporaneous documents as providing evidence that "refutes any claim that [the CPK leadership] did not know what was taking place. They knew, and they knew in excruciating detail."

a. Factionalism and Vietnamese Influence Inside the CPK

A major argument of the Nuon Chea Defense is that factionalism and infighting characterized the DK period and undermined the power held by the CPK center. The Defense cited the Case 002/01 Appeal Judgment, in which the SCC overturned convictions against Nuon Chea for the crimes against humanity of extermination during Population Movement Phases One and Two, political persecution during Population Movement Phase 2, and all charged crimes relating to the massacre of former Lon Nol soldiers and officials at Tuol Po Chrey.¹¹ The Defense noted that the SCC had clearly and fairly assessed witness credibility and laid out each of the elements of the charged crimes that had to be met in order to reach a conviction. Counsel Victor Koppe specifically noted that the evidence related to factionalism within the CPK absolved Nuon Chea of individual criminal responsibility because the modes of liability; namely, Joint Criminal Enterprise (JCE), ordering, and superior responsibility, were not proven beyond a reasonable doubt.¹²

Counsel Guiraud poked holes in the "crocodile" Defense of Nuon Chea, noting that his arguments about factionalism placed Nuon Chea within a "distinct group in the CPK" yet failed to respond to the role of that group in the commission of crimes alleged across the country. Ms. Guiraud asked, "What is Nuon Chea's version? Since in his story all of the traitors had already been legitimately executed. So who was responsible for these crimes if not the group composed of Pol Pot, Nuon Chea, Son Sen and Ta Mok?" In their rebuttal, the Prosecutors argued that the existence of rebellious groups opposed to the DK regime, coup plots, or warring factions within the CPK hierarchy would not legalize or legitimize criminal acts of the Accused at the worksites, cooperatives, and security centers which form the crime sites of Case 002/02.

b. State of Emergency and War with Vietnam

Second, the Nuon Chea Defense argued further that the above-mentioned "existential threat posed by Vietnam" led to the creation of a legitimate national defense and security policy amid the situation of state of emergency after 17 April 1975. As Mr. Koppe explained, "What cannot be repeated enough is that context is key here: Vietnam and DK were at war." Counsel Koppe

argued Vietnam was targeting DK both through external attacks and internal sabotage, and thus that Nuon Chea's response was proportionate and not mere racial hatred or paranoia.¹³ In support of this, Counsel cited contemporaneous quotes from the late King Sihanouk, former Vietnamese leader Le Duan, and Vietnamese defectors who all noted Vietnam's ambitions for an "Indochinese Federation" with Vietnamese dominion over neighboring Laos and Cambodia. Mr. Koppe dismissed the notion that the smaller DK government and military was the aggressor in the border wars of 1977 and 1978, or that the CPK was "delusional" in "imagin[ing] the threat of Vietnam," as the OCP had argued in its closing brief. Khieu Samphan's Defense Counsel Anta Guissé also disputed what she termed "the myth of the warmongering aspirations of DK." She cited the evidence of Witnesses Ou Chunthy and Oak Sok who she said testified that they received instructions to avoid confrontation or starting a war given the "incredible differences between military capabilities between both countries." She justified a speech of Khieu Samphan that the OCP cited for its inflammatory language by reminding the Chamber of the context; that the 1978 Vietnamese invasion that had just preceded the speech. She also pointed to similar language that had come from the late King Sihanouk.

Nuon Chea's Counsel Liv Sovanna explained that any discussion of "enemies in the ranks" or "smashing" was not incitement to violence but rather ideological propaganda concerning socialist economics, which he argued is unsurprising considering the instability of the Lon Nol period. Counsel explained, "To survive in this time, the CPK had to take a strong stance on security...In moments like this, strong defense policies are a standard reaction in most countries worldwide." Counsel Koppe went on to cite the DK Constitution's Article 10 as a legal basis for arrest and re-education as the recourse for "dangerous activities in opposition to the people". Counsel claimed that prisoners found to be innocent were often released, even from S-21, and that proof of mass executions at security centers was unreliable.

Khieu Samphan's Defense also reminded the Chamber about the context of DK and the threat posed by Vietnam. Counsel Guissé criticized the OCP for not mentioning the armed conflict with Vietnam once during their closing statements. She distinguished her team's attention to this matter from the presumed motivation of Nuon Chea's team:

We dedicated a section to armed conflict. Why is it important? Is it because we want to look at history for the sake of history? No. It is because when you separate facts from the situation of armed conflict, there is a lot you cannot understand...It is a minimum of intellectual rigor to put things in their context.

Counsel Guissé repeatedly stressed the need to build a chronology of facts related to armed conflict to "place the factual elements in order." She described how the Vietnamese invasion of Cambodia forced CPK leaders to flee and left the new Vietnam-backed PRK with "a free hand" over remaining documents and communications networks. She noted: "We always have the impression that the CPK wanted to destroy elements or hide things, but the evidence we have is that the destruction of documents was not necessarily caused by the CPK."¹⁴

Co-Prosecutor Koumjian reacted extensively to the claims that the state of emergency and the eventual Vietnamese invasion justified a national security policy that gave the CPK "the right to kill anyone because of a legal suspicion," noting that past perpetrators of mass atrocities, from the Nazis to the Ottomans to the Rwandan Hutus, were not justified simply because those in power were eventually removed from office. He further characterized Nuon Chea's Defense as attempting to "claim a right to extrajudicial killings" and reminded Parties that the International Covenant on Civil and Political Rights (ICCPR) explicitly excludes the invocation of a state of emergency as permitting any violation of humanitarian law.¹⁵

c. Communism

Both Defense Teams emphasized the role of socialism and communism in establishing the policies of the CPK. Nuon Chea's Team spent a considerable amount of time outlining the

main precepts of communism, arguing that the communist roots of the establishment of cooperatives and worksites showed the idealistic intent of the Accused, belying the kind of malicious acts or attempts at enslavement that the OCP alleged. This relates to the “head” of the crocodile; the civil war and American bombing that devastated the agricultural resources of rural Cambodia and created an emergency economic situation that they argue necessitated collectivized labor. Khieu Samphan’s closing brief similarly spoke of the ideals with which the Accused aligned himself to show his lack of criminal intent. In response, LCLCP Counsel Guiraud dismissed this defense:

We are not trying the ideals of Khieu Samphan today, just as we are not trying Marxism-Leninism today. These are the facts flowing from the implementation of a rapid socialist revolution. You cannot simply consider the ideals of the Revolution. You must compare [them]...with the real consequences suffered by the Cambodian people between 1975 and 1979.

The OCP similarly rejected Defense suggestions that the Co-Accused were on trial for their political ideology, noting: “Many countries around the world espoused communism or socialism but did not have the consequences of suffering on the people that this regime did...This was not a typical socialist or communist regime.”¹⁶

d. Propaganda and Collective Memory

Finally, Nuon Chea’s Team argued that documentary evidence as well as much of the witness, Civil Party, and expert testimony is unfairly stacked against Nuon Chea after decades of biased reporting and research has led to the “Manichean Narrative” becoming “the dominant story of the DK.” Counsel Liv Sovanna explained how Vietnam and its allies, the Soviet Union and East Germany, as well as the PRK, presented the CPK “as monsters who cut off children’s limbs and threw people to crocodiles” to justify their 1979 invasion as a humanitarian intervention. Counsel discredited the original contemporaneous stories to come out of DK through refugees, who he claimed were mostly “upper- and middle-class.” He also pointed to academic theories about collective memory; the idea that accepted truths are created in which numerous members of an impacted community claim similar experiences once they learn about events, without objective proof that they themselves directly experienced such events.¹⁷

Counsel Guiraud critiqued Nuon Chea’s re-writing of history and dismissal of established narratives as “propaganda,” arguing: “The Nuon Chea Defense presents its counter-account, which is just as Manichean as the one they condemn, and it is almost somewhat disconnected from the trial before [the Chamber],” given that many of the documents cited in Nuon Chea’s written brief are not on the case file or come from confessions obtained at S-21 likely under torture. The international Co-Prosecutor also took on what he called the Nuon Chea Defense’s “same fake history that the Khmer Rouge tried to sell the world at the time of their crimes.” Mr. Koumjian heavily relied on scenes from the film *Enemies of the People* to demonstrate the way Nuon Chea has shifted his excuses for the DK period since the regime’s fall in 1979. The Co-Prosecutor described Nuon Chea as “lying again, trying to divert attention, divert responsibility for what happened,” particularly with regard to his personal and professional relationship with S-21 Chairman Kaing Guek Eav, *alias* Duch, who was sentenced to life imprisonment in Case 001.¹⁸ While Mr. Koumjian did not go through the evidence piece by piece to show how it proved the Accused’s guilt beyond reasonable doubt, he instead attacked the the overall argument of Nuon Chea’s Defense, that, “Even if there was resistance and this fake history was true, it would not justify a single detention without legal process, not the torture of a single person at S-21, not a single execution.”

2. Topics Outside the Scope

As explained above, the Khieu Samphan Defense generally took a more legalistic approach to closing arguments than the Nuon Chea Team. A major part of their argument involved criticism

of the many elements that entered Case 002/02 “irregularly.” International Counsel Anta Guissé castigated the Office of the Co-Investigating Judges (**OCIJ**) for writing a Closing Order that “meanders” through facts for which they were not seized in initial submissions, as well as the OCP for its closing arguments which reverse the burden of proof onto the Defense and ask the Trial Chamber to re-characterize charges in order to reach convictions.¹⁹ Counsel told the Court that this process has legally framed Case 002 as a case trying the whole of DK and reminded the Chamber and the public: “No, Khieu Samphan is not being prosecuted for everything that happened between 1975 and 1979.”

To make her point, Counsel Guissé provided a series of specific examples concerning topics outside the scope of Case 002/02 that were repeatedly raised at trial. She spoke first about the example of the Khmer Krom; an ethnic group discussed particularly in the first segment of Case 002/02 on the Tram Kak rural cooperatives.²⁰ Citing paragraphs from the OCP brief, Counsel argued that the OCP and Civil Parties sought to have the Khmer Krom included under charges related to the targeting of ethnic Vietnamese despite the Pre-Trial Chamber having explicitly excluded this from the scope of Case 002/02.²¹ Despite this, Counsel argued, the OCP and Civil Parties repeatedly raised the treatment of the Khmer Krom at trial and during closing arguments in order to prove genocide against the Vietnamese.²² Another issue related to the scope of the charges of genocide against the Vietnamese was the geographical limitation of the charges. Counsel Guissé argued that the Prosecution’s initial submissions only discussed treatment of the Vietnamese in present-day Svay Rieng and Prey Veng Provinces, and that therefore only facts in those locations could be included in the eventual Closing Order and subsequently addressed at trial. She similarly noted that the Closing Order only discussed the crime of deportations of ethnic Vietnamese people in the same two provinces and said the Trial Chamber thus erred in hearing testimony of deportations in Tram Kak District. In response, LCLCP Marie Guiraud explained that her team’s inclusion of reference to Khmer Krom was not in order to seek convictions related to their targeting specifically, but rather to show evidence of disappearances in Tram Kak District. She also emphasized that the testimonies her team presented in relation to potentially genocidal murders of Vietnamese people were all related to locations in Svay Rieng and Prey Veng.²³

As another example, Counsel Guissé noted a contradiction between the OCP’s previous strategy and present closing arguments related to DK incursions into Vietnam. Counsel noted the OCP had asked the Trial Chamber in 2013 to remove such incursions from the scope of Case 002/02 as they were “not intrinsically related to the genocide of the Vietnamese who lived in DK.”²⁴ She thus criticized the OCP for now attempting to “use elements relative to incursions in Vietnam to understand the genocidal intent of the defendants” in their closing statements.

Counsel Guissé also spoke about the cases of rape outside the context of marriage, including at security centers and cooperatives or worksites. She explained that the Trial Chamber and SCC already addressed an appeal from the Civil Parties on this matter, finding that the Investigating Judges in Case 002 limited charges of rape to within the context of the regulation of marriage.²⁵ Despite this, however, Counsel noted reference to rapes at security centers and worksites in the Civil Parties’ brief, and also criticized the OCP for suggesting that the crime against humanity of other inhumane acts through rape could be re-characterized as the crime of torture. In response, Marie Guiraud reiterated her team’s “bitterness” regarding the Trial Chamber and SCC rulings excluding rape outside the context of marriage from the trial, saying she “still did not understand” either Chamber’s reasoning. Nonetheless she noted that her team did not include any evidence in its closing arguments that would lead to conviction for rapes in cooperatives or security centers in light of the two decisions.

Counsel Guissé’s final argument on scope related to the fact that the OCIJ was never seized in the OCP’s introductory or supplementary submissions of allegations of torture at Kraing Ta Chan Security Center, and that the Co-Accused should thus never have been charged with this crime or heard this discussed at trial. Counsel Guissé similarly criticized the discussion of other

security centers such as Ang Roka in Tram Kak District, Wat Baray Choan Dek near the 1st January Dam, and the other prisons near to Phnom Kraol Security Center, all of which she argued fell outside the scope of the case and outside the initial submissions raised by the OCP to open the investigation.²⁶ In response, Counsel Guiraud explained that the testimony related to torture at Kraing Ta Chan was included in the OCP's annexes, of which she argued the OCIJ was in fact seized when they included these crimes in the Closing Order. Counsel Guissé responded that Investigating Judges are not "seized of" the annexes to the introductory submission, according to her reading of the ECCC Internal Rules and French legal procedure. The LCLCP also argued that Ang Roka prison geographically fell within the eight communes of Tram Kak District set out in the OCP's introductory submission and that the President had already ruled it fell within the scope of the trial segment.

In her rebuttal, LCLCP Guiraud made a point of noting that Khieu Samphan had never challenged any of these charges in the Closing Order before the Pre-Trial Chamber or in preliminary objections at the outset of Case 002/02. In reply, Counsel Guissé pointed out that the Defense had neither the awareness early on nor the procedural ability later to make an objection and that the present conclusion of the trial phase was the best moment for recourse on these matters. The Prosecution largely failed to provide responses in its rebuttal to Counsel Guissé's arguments on scope and jurisdiction of crimes in Case 002/02, choosing instead to focus on the historical arguments laid out by Nuon Chea, as discussed above. Taking the floor for her final remarks on Friday, 23 June, Counsel Guissé raised the Prosecution's lack of engagement with her legal arguments: "What deafening silence yesterday on the side of the Prosecution. What deafening silence on the essential elements of law that were raised and in regard to which we received no response." She noted that the Civil Party lawyers have had to "bear too much of a burden" to support the Prosecution and asked, "Are the Co-Prosecutors so un-preoccupied with the law? How do I explain their silence? They have no answers."

3. Probative Value of Evidence

One of the most frequent criticisms made by all sides was related to the probative value of evidence including, in particular, out-of-court statements, unsworn testimony, and Civil Party Applications taken by third parties. The debate over the probative value of witness evidence compared to the evidence given by Civil Parties, who do not swear an oath, featured heavily as well. Defending the participation of Civil Parties in court proceedings, LCLCP Marie Guiraud reminded the Chamber of the intrinsic validity of the Civil Party system, arguing: "If there is a system of Civil Party participation at the ECCC, it is first and foremost because the Cambodian penal procedure has this system." Explicitly addressing the issue of testifying without an oath, Ms. Guiraud argued that this was not a choice made by Civil Parties but rather a feature of the ECCC system, which gives Civil Parties the same status as the Accused, who also do not take an oath before testifying.²⁷ Counsel stressed this was not a form of "preferential treatment" but simply part of the rules of procedure and thus should not diminish the value of their testimony. Preempting common criticisms of Civil Party testimony, Counsel also asked the Judges to bear in mind the context in which Civil Parties testify at the ECCC: the unfamiliar setting of the courtroom, their advanced age, the amount of time that has passed since the events in question, the typically low level of education and high rates of trauma suffered.²⁸ Finally, Ms. Guiraud addressed the issue of Civil Party application forms, which often were filled out with assistance from a number of non-governmental organizations unconnected with the court. She said it is the belief of the LCLCP that any discrepancies in the application forms are the result of errors made by those filling them in, not the Civil Parties themselves.

This speech from the LCLCP did not appear to change the arguments of either Defense Team. Counsel Son Arun opened his team's arguments by referencing his interpretation of the SCC Appeal Judgment, arguing that: "Evidence of Witnesses is stronger than evidence of Civil Parties since Witnesses take an oath and Civil Parties do not." A close reading of that document in fact is not so dismissive of the evidence of Civil Parties.²⁹ Kong Sam Onn,

national Counsel for Khieu Samphan, also brought up the issue of Civil Parties testifying without taking an oath, adding that the collective representation of Civil Parties at trial may influence their testimony, as discussed in II.A.1.iv. above.³⁰ As an example of this alleged phenomenon, Counsel cited the testimony of Civil Party Ms. Chea Dieb, who testified in court to meeting Khieu Samphan, but failed to mention this meeting in either her 2009 or 2013 statement.³¹ Khieu Samphan's Defense also questioned the representativeness of Civil Party evidence, considering that by fact of their decision to participate in the process they identify themselves as victims and that therefore are a "biased" sample of the Cambodian population.

4. Accused's Criminal Responsibility and Joint Criminal Enterprise

Throughout closing statements, both Defense Teams repeatedly returned to the central premise that it is the Prosecution and not the Defense who are required to prove the crimes alleged and the responsibility of the Accused beyond reasonable doubt. Nuon Chea does not contest that he held the position of Deputy Secretary of the CPK, nor does Khieu Samphan contest that he was Chairman of the State Presidium and Head of State. However, both men dispute that their positions make them liable for the majority of the crimes alleged.

International Co-Prosecutor Nicholas Koumjian closed his initial oral arguments with a focus on the responsibility of the Accused, making the most of pointed catchphrases concerning Nuon Chea and Khieu Samphan's relationship with Pol Pot and their survival until the Khmer Rouge surrendered almost 20 years after the end of the DK regime. Mr. Koumjian referred to the Co-Accused as "Pol Pot's closest associates," the "Center Center," a "Gang of Three [along with Pol Pot]", and as "a double shadow that supported Pol Pot."³² He argued that the three constituted "the innermost circle of power implementing policy in the DK regime" and supported and contributed to the implementation of the CPK's 'Great Leap Forward' policy.³³ The OCP claimed that the two Accused spread this policy through their speeches and political education sessions, during which they ensured the lower ranks were informed of the messages from the Center. The OCP also repeatedly made reference to telegrams sent from the zones to the Center keeping the upper echelons informed of events taking place around the country.

Counsel Koppe called the 'Gang of Three' theory, and particularly the role of Khieu Samphan, "completely ridiculous." He argued the strict hierarchical structure of the state that the OCP alleged the CPK had implemented would not have been possible to enforce in any society in the world, and that it was not realistic to hold the top leaders criminally responsible for the actions of the lowest levels in any regime. Khieu Samphan's Counsel lamented that the two defendants are often addressed together; claiming Khieu Samphan's role and related arguments are often "drowned out in artificial plurality talk about 'the Defense'." She stressed that her client's defense differed from that of Nuon Chea: "There is no collective defense of the two Accused. There are two final briefs and two Accused with different reasoning and different legal arguments." She later attacked the OCP's version of history and the newly coined term, "Gang of Three," remarking, "It is completely new...a new opportunistic interpretation of the facts because it sounds nice in the press...If Ieng Sary was still alive or Ieng Thirith too would it be a 'Gang of Four' or a 'Gang of Five'?" She castigated the OCP for presenting the same set of facts and pleadings regarding Khieu Samphan's function as they did during Case 002/01 with the exception of this new "sexy" catchphrase.

In Case 002, the main form of liability used was Joint Criminal Enterprise (more commonly referred to as **JCE**). This doctrine dates to the 1999 *Tadić* Appeals Chamber Judgment at the International Court of the Former Yugoslavia (**ICTY**) which identified three forms: JCE I (basic), JCE II (systematic) and JCE III (extended).³⁴ The OCP has consistently argued that JCE III, the most extended form, should be applied in the case against Nuon Chea and Khieu Samphan, however this argument has been dismissed by the Pre-Trial, Trial and Supreme Court Chambers. All three chambers ruled that the extended form of liability was not reasonably foreseeable in 1975.³⁵ Thus, in Case 002/02, the OCP is arguing instead that the Accused

should be convicted under JCE I, the most basic form. The Defense Teams posit that the evidence is not strong enough tying their clients to the crimes on the ground to convict under the basic form. During closing arguments the International Co-Prosecutor disputed the Nuon Chea Defense's interpretation of JCE, in particular its insistence that the perpetrators of crimes on the ground must share the specific intent of the leaders. Mr. Koumjian argued instead that those who carry out executions on the ground do not have to share the intent as long as they are following orders of the leaders who do have intent.³⁶ Both Defense Teams argue that, by using JCE, the Chamber is relying on jurisprudence that post-dates the alleged crimes of the DK period, violating the principle of legality also known as *nullum crimen sine lege*. In her closing statements, Defense Counsel Anta Guissé criticized the Case 002/01 Appeal Judgment for finding *dolus eventualis* an acceptable threshold for the crime of murder, essentially lowering the threshold for a murder conviction by finding that the intent to kill is not an essential element. Ms. Guissé described herself as "flabbergasted" by this, saying: "The principle of legality is going out the window."

B. Crimes and Crime Sites

An understanding of the above four main arguments is instructive when considering the details of the allegations concerning the main crime sites and alleged policies of the DK period. Nuon Chea and Khieu Samphan are accused of crimes related to four worksites, four security centers, the targeting of four distinct groups and a policy to regulate marriages. These crimes are only some of those in the original Case 002 Closing Order but were deemed "representative" of all charges by the SCC when it upheld the Trial Chamber's second severance decision establishing Case 002/02.³⁷

1. Worksites and Cooperatives

The Trial Chamber is seized of three worksites and one cooperative: Trapeang Thma Dam Worksite (**TTD**), Kampong Chhnang Airport Construction Site (**KCA**), 1st January Dam Worksite (**1JD**) and the Tram Kak Cooperatives (**TK**). The Trial Chamber is charged with determining whether crimes against humanity occurred at these sites and, crucially, whether the Accused can be held responsible for these crimes comprising enslavement, murder and extermination, persecution on political grounds, and persecution on religious grounds.

The OCP stressed the criminal liability of the Accused on the grounds of their membership in the small group of top CPK leaders who developed and directed the CPK's 'Great Leap Forward' policy that led to the formation of cooperatives and worksites, calling the crime of enslavement at these locations: "A crime that affected virtually every Cambodian who lived through the DK regime." Throughout their presentation, the OCP drew attention to evidence of the Accused's knowledge and control of the living and working conditions at DK cooperatives and worksites through contemporaneous telegrams and memoranda. The Nuon Chea Defense rejected the alleged crime of enslavement at worksites and cooperatives, deeming the contention "an ignorance of socialism." His Defense emphasized the incompatibility between Marxism-Leninism and the notion of enslavement, arguing that any hardships or shortages experienced by the Cambodian people at worksites or cooperatives were unintentional and "temporary" results of post-war recovery. As noted above, the OCP rejects this argument on the grounds that many other communist regimes did not treat their people in this way. The Nuon Chea Defense responded to the charge of criminal responsibility for worksites and cooperatives by emphasizing the autonomy of low-level authorities. They maintained that Nuon Chea was solely in charge of party organization and training, and since the 1JD and TTD fell under the authority of Public Works and Agriculture Departments and the KCA operated under exclusive military command, Nuon Chea had no knowledge of abuses committed at each worksite and cooperative. The Khieu Samphan Defense Team echoed this argument, stating that the OCP failed to clearly link Khieu Samphan to any alleged crimes at DK worksites.

Khieu Samphan's Defense Team argued that the OCP and the CPLCLs failed to establish the Accused's *actus reus* with regards to enslavement at the worksites and cooperatives.³⁸ They contended that the alleged crime of enslavement did not meet the threshold of two cumulative conditions, namely exercise of the right to ownership and imposition of forced labor. In rebuttal, the Civil Parties re-articulated their perspective on the crime of enslavement, based on the SCC's definition of the *actus reus* for enslavement and the Civil Party testimonies, which underline the level of total control exercised by the CPK.

a. Tram Kak Cooperatives

The LCLCP argued that, in addition to the crime of enslavement that allegedly occurred at the Tram Kak Cooperatives, the Chamber needs to decide if inadequate access to medical care, the imposition of harsh living and working conditions, and the disappearances of family members and friends amount to a crime against humanity or other inhumane acts. To establish the Accused's culpability for the crimes committed at Tram Kak, the OCP reminded the Chamber that the CPK Central Committee praised this cooperative as a model of production for the rest of the country and awarded the cooperative the "honorary red flag" award from the CPK Center in 1977 for building socialism and fulfilling the Party's mission. However, the OCP argued that testimony shows in this CPK 'model district', many other people who dared to complain about the lack of food or difficult work conditions were arrested, sent to re-education offices and never seen again. With regard to the Accused's responsibility for the crimes committed at the Tram Kak Cooperative, Counsel for Khieu Samphan contended that the OCP had not been sufficiently rigorous in indicating the evidence it relied upon for a conviction, and instead relied upon generalized facts from other sites, thus failing to prove Khieu Samphan's culpability beyond reasonable doubt for this specific site.

b. Kampong Chhnang Airport Construction Site

Citing Civil Party oral evidence, the LCLCP argued that crimes of enslavement and other inhumane acts were committed at the Kampong Chhnang Airport Construction Site. The OCP supported this claim and further asserted that the CPK used the KCA as a "tempering site" to discipline and refashion soldiers from purged and refashioned divisions. According to the OCP, the fact that Khieu Samphan and most other top CPK leaders visited this site during their tenure reveals the knowledge and approval of top DK leadership for the crimes committed at the KCA. Khieu Samphan's Defense, however, questioned the reliability of the Written Records of Interview used to support this assertion. The Nuon Chea Defense Team similarly rejected the OCP claim of the KCA as a tempering site for soldiers "stripped of military status as punishment" and instead argued that its strategic significance at a time of war required Cambodians with military training to be present to perform "demanding construction work."

c. First January Dam Worksite

In their presentation, the LCLCP contended that the Accused orchestrated the enslavement, murder, extermination and persecution on political grounds committed at the First January Dam worksite. Building on this argument, the OCP discussed the Accused's criminal responsibility for 1JD and demonstrated their knowledge of the conditions at the worksite through references to a visit to the dam by Nuon Chea and a detailed speech by Khieu Samphan. The OCP also alleged the Accused knew of child labor at the worksite, alluding to Khieu Samphan's specific praise of children helping to build dams and embankments in his aforementioned speech. The Defense for Khieu Samphan, however, rejected his 15 April 1977 speech as a sufficient link to establish the Accused's knowledge and endorsement of the crimes committed at 1JD. Nuon Chea's Defense held that 1JD and other worksites served as means of production rather than enslavement, evidenced by the technical and scientific expertise leveraged to ensure the dam's long-term utility. They also denied allegations of child labor, referencing CPK policy documents' explicit instructions that children were only to be given light tasks at 1JD and other worksites.

d. Trapeang Thma Dam Worksite

Concerning the Trapeang Thma Dam worksite, the LCLCP reviewed Civil Party testimony about the crimes of enslavement, murder, extermination, and persecution on political grounds that took place there. The OCP similarly referred to Witness testimony regarding the conditions at the TTD project, pointing out the lack of freedom of movement, food deprivation, and arrests and killings of workers at the site. On the other hand, Khieu Samphan's Defense accused the OCP of targeting the Accused for new charges outside the scope of those selected by the OCIJ, particularly crimes of racial persecution against the Vietnamese at the TTD worksite.

2. Security Centers and Internal Purges

In Case 002/02, the Trial Chamber heard testimony related to four security centers in DK, out of the total 14 security centers and execution sites of which it was seized in the Case 002 Closing Order. These security centers are Kraing Ta Chan in Tram Kak District, Southwest Zone; Au Kanseng in Ratanakiri Province, Northeast Zone; Phnom Kraol in Mondulakiri Province, Autonomous Sector 105; and, S-21 Security Center in Phnom Penh, the latter of which was covered extensively in Case 001. The segment on security centers also included covered internal purges of CPK cadres and officials, especially during the weeks focused on S-21. In the Case 002 Closing Order, the OCIJ charged the Accused with crimes against humanity of enslavement, extermination, imprisonment, murder, persecution on political and racial grounds, torture, and other inhumane acts through attacks against human dignity, rape, forced marriage, and enforced disappearances, as well as grave breaches of the 1949 Geneva Conventions at these security centers.

a. Kraing Ta Chan Security Center

Kraing Ta Chan was the first security center to be addressed in Case 002/02, as it was heard in coordination with the trial segment on the Tram Kak rural cooperatives discussed above. The OCP and LCLCP repeatedly emphasized this security center's connections to the authorities of this "model district" as evidence of the administrative links between the Party Center and the crimes committed at this rural security center. The OCP relied heavily on a surviving set of photocopies of contemporaneous documents, which have become known as "the Tram Kak District Records" and which provide some of the only contemporaneous documents from a DK security center other than S-21.³⁹ Prosecutor Lysak emphasized the OCP's own research based on these records, that "approximately half of the Kraing Ta Chan prison population comprised former soldiers, officials, or police from the Khmer Republic regime."⁴⁰ He then clarified that targeting of former officials constituted the crime of political persecution, as there was a total lack of due process. Mr. Lysak also described the inhumane conditions at the prison, as well as evidence from surviving detainees and former guards concerning the use of torture and other coercive interrogation techniques. Again, the Prosecutor made efforts to tie this to the Party Center as a policy: "We see in the CPK's model district that torture was systematically used in a virtually similar or identical manner to that we see at S-21."

Both the OCP and LCLCP argued there were "killings on a massive scale" at Kraing Ta Chan. The Prosecutor referred to a variety of evidence: the testimony of surviving detainees and former guards concerning killings and burial pits, a monthly prison report for November 1977 noting "92 purged" prisoners, and a forensic study conducted by Expert witness Voeun Vuthy, who concluded that approximately 1,900 recovered skulls "bore markings of violent trauma."⁴¹ The LCLCP supported these arguments with the testimony of Civil Parties Soy Sen and Soth Saing, respectively a surviving detainee and a former guard, as well as noting the statements of four other Civil Parties whose family members or friends were taken to Kraing Ta Chan.

Nuon Chea Defense Counsel Doreen Chen called evidence provided by the Prosecution largely unreliable. She singled out Meas Sokha and Soy Sen, arguing they were Civil Parties who

provided unsworn testimony, which the Defense views as inherently less reliable.⁴² Counsel Chen also stressed that the two individuals were children at the time of the events in question and made claims that “are not believable at all” due to a tendency to exaggerate. She argued that the lack of credibility meant the Trial Chamber could not “safely base any of [its] findings solely on their accounts.” Mr. Lysak strongly rejected claims that Witness Meas Sokha and Civil Parties Soy Sen and Soth Saing were not credible, arguing that they did not overstate their testimony and consistently confirmed prior statements.

Counsel Chen also argued that the arrests and detentions at Kraing Ta Chan were legal in accordance with the national security policy described above. Lastly, Counsel Chen expressed doubt that 15,000 people died at Kraing Ta Chan given that only Soy Sen and Meas Sokha testified to having witnessed executions, and that the Expert Voeun Vuthy did not date the bones in a forensic investigation so could not confirm they came from the DK period. She provided an alternative reason for the existence of Kraing Ta Chan: that it was merely a re-education center from which people “could or would be released” eventually. As discussed above, Khieu Samphan Defense Counsel Anta Guissé added in her subsequent arguments that the allegation of torture at Kraing Ta Chan was not included in the scope of Case 002/02. Both Ms. Chen and Ms. Guissé emphasized that issues with the Tram Kak District Records, which lack a demonstrated chain of custody to prove the authenticity of the photocopies, render them unreliable and of limited probative value, “especially when not corroborated by any in-court live witness evidence.”⁴³

On rebuttal, LCLCP Guiraud noted that although he denied his own responsibility for the crimes, Khieu Samphan did not contest that crimes of imprisonment or murder had occurred at Kraing Ta Chan, and that, therefore, “Faced with the evidence, doubt disappear[s].” Counsel Guiraud criticized the Nuon Chea Defense’s simplistic strategy of dismissing Civil Party as “liars” and “not credible” and documentary evidence as “false.” Counsel Guiraud also argued that, based on international law, “Simply one testimony *can* lead to conviction...[and] does not need to be corroborated in order to serve as a material or legal foundation.”

b. Phnom Kraol Security Center

In his initial presentation on Phnom Kraol, Prosecutor Lysak cited contemporaneous telegrams and the testimony of former Sector 105 Secretary Sao Sarun to relate the events at the security center to the ongoing purge of the Sector by the Party Center and eventual arrival of relevant detainees from Mondulkiri at S-21 in Phnom Penh. Both Prosecutor Lysak and Civil Party Lawyer Hong Kimsuon noted the evidence of Civil Party Sun Vuth who testified about political events in the Sector, as well as the insufficient food distributed to detainees, and, most significantly, his own torture with electric shocks during interrogation. However, following Nuon Chea Counsel Doreen Chen’s brief but rigorous breakdown of the evidence⁴⁴ and Khieu Samphan Defense Counsel’s call for the Chamber to ignore evidence provided outside the scope of the case, the Prosecutor admitted the weaknesses in their case regarding Phnom Kraol. He confirmed that the OCP no longer seeks a conviction on the crime of extermination at Phnom Kraol.

c. Au Kanseng Security Center

Returning to the arbitrary nature of arrests and detention, Prosecutor Lysak spoke of witnesses Phan Thol and Moeung Chandy, two survivors of Au Kanseng, who testified that they were detained without reason while the latter witness was pregnant. The Prosecutor noted a telegram from the Northeast Zone Secretary to CPK leaders in Phnom Penh at the time of their arrest in mid-June, noting that authorities were imprisoning “contemptibles” identified as part of another’s network. The Prosecutor explained: “That is not due process; that is guilt by association.”⁴⁵ He also cited witness statements concerning the inhumane conditions and lack of medical care or hygiene at Au Kanseng and the use of torture to obtain confessions which

were later employed to justify investigations and further arrests within the zone. The only specific incident discussed by all Parties concerned the OCP's allegation that between 100 and 200 ethnic "Jarai people from Vietnam" were detained and executed at the security center.⁴⁶ Defense Counsel Doreen Chen noted inconsistencies between the testimonies of the three witnesses on this issue and the alleged telegram: the telegram reported "209 Vietnamese soldiers", not ordinary people; two witnesses "specifically agreed" the Jarai were taken away in February or March 1978 while the telegram was sent one year before in March 1977; and witnesses only mentioned "some people" or approximately 100 whereas the telegram specifically noted 209 people. Counsel argued, "It cannot be concluded beyond reasonable doubt that the telegram and the three witnesses were describing the same people." Counsel Guissé argued Khieu Samphan was not aware of events at Au Kanseng. On rebuttal, Prosecutor Lysak remarked it was significant that both the prison chief and his deputy confirmed having carried out the order to execute the Jarai prisoners and that the rarity of such a confirmation from a perpetrator likely meant it was true. He argued that evidence was not vague but proved "killing on a massive scale."

d. S-21 Security Center

The Prosecution repeatedly referred to S-21 throughout its closing arguments as "the most important crime site" in Case 002/02, not only as the largest and most well-documented of the four security centers covered in the trial, but also due to its documented connections to most of the other facts alleged in the case. The OCP's pleadings on rural cooperatives and worksites, on the alleged genocide of the Cham and Vietnamese minorities, on the internal purges of the CPK, on the armed conflict with Vietnam, and on the roles of the Accused, all rely in part on the evidence that individuals determined to constitute internal or external enemies met their deaths at the Center's security center in Phnom Penh, overseen first by Son Sen and allegedly later by Nuon Chea himself. Prosecutor Lysak opened his presentation on the security centers by honing in on the documentation for the month of May 1978 when 1,074 prisoners were noted as having been executed at S-21, stressing that not one of them received a trial and were instead killed on orders from Duch, who was working under Nuon Chea at that time.⁴⁷ Prosecutor Lysak explained the role of S-21 in the context of a "party line or policy generated and directed by the leaders in Phnom Penh" to "sweep clean" the "hidden enemy burrowing from within." He noted that some of the most extreme internal CPK reports concerning the arrests of "enemies" were produced after zone leaders had already been purged, undermining the Nuon Chea Defense's factionalism argument. Mr. Lysak pointed to an August 1978 report from the West Zone (after the former zone secretary Chou Chet had already been purged and sent to S-21) to show the report came "from the new leader put in place by the leaders in Phnom Penh: Pol Pot, Nuon Chea, Khieu Samphan, and others." The vast majority of the Prosecutor's claims rested upon documentation which has grown since Case 001 that they claim shows that more than 18,000 people were detained at S-21 during DK and at least 11,000 were executed.⁴⁸

Prosecutor Lysak went through the crimes charged in relation to S-21 to reiterate the quantity of evidence showing that, "What took place was the very definition of arbitrary and extrajudicial imprisonment and execution," without a system of courts or respect for freedom, due process or human lives. He listed the inhumane prison conditions, as attested to by surviving detainees and guards of S-21 in both Cases 001 and 002. The Prosecutor also cited the evidence of former guards, detainees, and corroborating documents to demonstrate the quantity and variety of techniques of torture used "systematically" at the prison. The Prosecutor referred to prisoner lists noting execution dates, as well as Voeun Vuthy's bone study, which found only 1 of the 6,000 skulls recovered at Choeung Ek, the killing site linked to S-21 prison, lacked any markings of violent trauma. The Prosecutor closed by focusing on the responsibility of Nuon Chea and Khieu Samphan. He explained how Duch testified he "routinely" sent interrogation and confession summaries, which often noted techniques used to draw confessions, to his superiors, first Son Sen and later Nuon Chea.⁴⁹ Although recognizing that Khieu Samphan played a less direct role in events at S-21, Prosecutor Lysak stressed that he had knowledge

and contributed to the JCE that carried out the crimes at the security center.

The LCLCP supported the Prosecution's case with particular attention to the ten Civil Parties who testified on the harm suffered as a result of losing loved ones at S-21. The Civil Party lawyers spent the most time presenting the testimony of Civil Party Chum Mey, one of the only surviving detainees of S-21 who testified about his 1978 arrest and the torture he endured during interrogation until he "confessed" that he worked for both the CIA and KGB. Civil Party lawyer Hong Kimsuon noted that five contemporaneous documents corroborate Chum Mey's detention at S-21. Prosecutor Lysak also preempted Defense arguments otherwise, noting Chum Mey's written confession among the prison records and recalling that every witness to have testified on S-21, from fellow prisoners to former guards and Duch himself, had confirmed his presence.⁵⁰

The Defense for Nuon Chea opted on three occasions not to discuss S-21 Security Center in their closing statements, a decision which appeared to surprise other Parties given this crime site's relative fame. Mr. Lysak even suggested this was an intentional ploy to talk about S-21 only after the OCP had concluded its rebuttal. In his final remarks, Defense Counsel Koppe strongly rejected the OCP's characterization of his team having an ulterior motive, noting that their closing brief contained copious pages or arguments on this site. Although he stated his intention not to discuss S-21, Mr. Koppe briefly expressed his arguments on the topic.⁵¹ The Khieu Samphan Defense did not deny that crimes took place at S-21 but argued that the OCP had failed to prove beyond reasonable doubt that Khieu Samphan was aware of those crimes at the time they were committed or took part in a JCE that commissioned those crimes.

On rebuttal, the Co-Prosecutor focused on the Co-Accused's simultaneous denial of responsibility for crimes committed at security centers and justification for their existence. As discussed in Part II.A.1.iii, the Co-Prosecutor mocked the Nuon Chea Defense's argument about a national security policy that they claimed provided a legal basis due to "suspicion of participation in unlawful activities." He juxtaposed quotes from Nuon Chea in the years since the fall of DK in which he contradicted himself in terms of his knowledge of S-21 at the time. He also attacked Nuon Chea's reliance on S-21 confessions to acquit himself, noting that this was the very purpose of the Convention Against Torture, to prevent those who ordered torture from ultimately profiting from the documents it produced.⁵² Mr. Koumjian argued, "In this trial, [Nuon Chea] does not deny the killings at S-21. [He] can't. The evidence is overwhelming."

3. Policy to Target Specific Groups

The Trial Chamber is seized of crimes related to the targeting of four specific groups: genocide of the ethnic Vietnamese and Muslim Cham minorities living in DK, religious persecution of Buddhists and political persecution of former soldiers and officials of the former Khmer Republic, also known as the Lon Nol regime. These crimes are charged in relation to specific crime sites, as will be detailed below, and not to the territory of DK as a whole.

a. Genocide

The Chamber is seized of the crime of genocide against both the ethnic Vietnamese and Cham Muslim minorities in DK. International Co-Prosecutor Nicholas Koumjian addressed these charges by first elaborating on the crime of genocide, noting that it is "an area of international jurisprudence that is still developing" and that "many people still do not understand the elements of genocide." He reiterated the legal definition of genocide, contained in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, as:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions on life calculated to bring about its physical

destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁵³

Mr. Koumjian argued that genocide is not related to the number of people killed, unlike the crime against humanity of extermination, which requires killing on a mass scale.⁵⁴ Khieu Samphan's Defense brought up the politicization of the term 'genocide', reminding the Chamber that it was initially used by the Vietnam-backed PRK government after the DK regime fell to legitimize its presence in the country. Defense Counsel also argued that, at that time, the Vietnamese only spoke about genocide of the Khmer people and said nothing about the Vietnamese. She asked: "If genocide against the Vietnamese was so flagrant and significant, why did the Vietnamese, who should have used this in their propaganda at the time, why are they not talking about the genocide against the Vietnamese? Why only Khmer?" Similarly, Nuon Chea's Counsel Koppe asked Judges to retain their impartiality, saying he knew it was "tempting to create a legacy as the Chamber who established the Cambodian genocide."

i. Genocide of the Ethnic Vietnamese

The Accused are charged with the crime of genocide for their treatment of the ethnic Vietnamese in Prey Veng and Svay Rieng Provinces in DK's East Zone, which has become one of the more contentious parts of Case 002/02 and on which Khieu Samphan closed his speech on the final day of closing statements. For Khieu Samphan, the crimes alleged to have occurred in DK have only been charged as a result of "manipulation of Vietnam" and the product of "Vietnamese propaganda." Khieu Samphan described Vietnam as "reap[ing] the fruits of its expansionist ambition" and thus labeled a potential Trial Chamber finding of genocide against the Vietnamese as a "shameful and tragic irony." It should be noted that Khieu Samphan referred to the "genocide of [Vietnamese] nationals" in DK, not recognizing the existence of ethnic-Vietnamese Cambodian nationals who were allegedly targeted.

International LCLCP Marie Guiraud presented the Civil Parties' case on the treatment of the Vietnamese, noting that 73 Civil Parties were admitted to Case 002 on the basis of the harm suffered linked to this topic. Seven Civil Parties testified in the courtroom, only one of whom, Choeung Yaing Chaet, identified as ethnically Vietnamese himself. Ms. Guiraud noted two Civil Parties who lost ethnic Vietnamese relatives in the same village, Pochen Dam, in Prey Veng Province. Both testified that no Vietnamese people in their village survived DK. Counsel also discussed the theory of matrilineal descendants testified to by four Civil Parties: the targeting of women of Vietnamese origin and their children in order to destroy the bloodline.

The OCP case argued that the treatment of the ethnic Vietnamese community in Cambodia changed over time. Co-Prosecutor Koumjian argued that, as early as 1973, it was CPK "policy" to remove the Vietnamese inhabitants of Cambodia by sending them to Vietnam. While noting that deportation does not amount to genocide, the Co-Prosecutor did argue that it may indicate the intention to destroy a group. Counsel Koumjian said the intent to kill the Vietnamese came later. He compared this to Hitler's 'final solution' plan which he argued also developed over time, from the intention to remove all Jewish people from occupied Germany to the plan to kill all Jewish people. The Defense for Nuon Chea argued it was not possible to measure how many Vietnamese people were either deported or executed during DK because of the lack of demographic data, noting that the only two relevant censuses were far apart, in 1962 and 1998.

Nuon Chea's Defense argued that the policy of the CPK was to treat everyone equally irrespective of race or gender or religion, a policy incompatible with the targeting of any specific racial or ethnic group. Counsel also argued that, as the goal of the CPK was to rebuild Cambodia after years of civil war, it would make no sense for them to kill people. The Defense called it contradictory that the OCP was arguing that DK had both killed a large number of people while also forcing people to marry to increase the population. Defense Counsel Koppe pointed to the absence of any official CPK documents calling for the extermination of the Vietnamese, and he argued that any reference to the "Vietnamese enemies" in official papers

referred only to Vietnamese *military* enemies. He argued: “They were not victims, they were military opponents. They were not victims of genocide.” The Nuon Chea Defense further argued that any deportation of Vietnamese people was not forced and was willingly undertaken.

Although recognizing that such acts fall outside the scope of crimes charged in Case 002/02, the OCP also brought up incursions by RAK forces into Vietnamese territory, saying they represented the enactment of the policy of incitement.⁵⁵ Conversely, the Nuon Chea Defense spoke of Vietnamese incursions into DK territory, depicting these as indicative of “Imperialist aggression” and Vietnam’s desire to form a Vietnam-led ‘Indochinese Federation’. Expanding on this theory, Counsel Koppe called these external efforts to attack DK “secondary” or “Plan B,” saying “Plan A” was an internal coup led by Vietnamese-backed interests within the CPK.⁵⁶ He argued that the Vietnamese-dominated Indochinese Communist Party trained Cambodian communists who were loyal to Hanoi and sent them to be internal spies and saboteurs inside the CPK, whom he called “the vast internal rot of the CPK.” Counsel then described three coup attempts: a 1976 bombing of an ammunitions depot in Siem Reap, a 1977 plan for members of Northwest Zone forces and forces of Division 310 to seize Phnom Penh and change the government, and the 1978 movements of Sao Phim towards Phnom Penh prior to his suicide. After the last attempted failed, Mr. Koppe alleged, Vietnam enacted “Plan B”: invading Cambodia with forces made up of its own military as well as defectors in December 1978 and installing the puppet PRK regime by January 1979. Extending this argument, Counsel posited that any arrest or execution of an ethnic Vietnamese person in DK was therefore the result of this conspiracy and unlawful activity, not their ethnicity.

However, Co-Prosecutor Koumjian observed that the OCP had previously shown photographs taken at S-21 of children as young as seven who were listed as “Vietnamese spies” and executed in October 1978. Mr. Koumjian argued that it is “typical” of genocides that those in charge will try to depict the victims as an existential threat, particularly in cases where it is easier to look for a foreign enemy to blame for domestic hardships. Mr. Koumjian read out several excerpts of official documents, propaganda and telegrams referring to the Vietnamese as “evil” and “the worst criminals ever.” He cited a January 1978 memo from Office 870 that stated, “It is imperative to constantly stir up national and class anger among the people toward the *Yvon* enemy invader.”⁵⁷ Khieu Samphan Defense Counsel Guissé responded that the speeches of her client cited by the OCP largely coincided with the time of greatest tension between DK and Vietnam, making it unsurprising that the rhetoric was strong. To strengthen his point, Counsel Koppe cited a September 1978 edition of *Revolutionary Flag* which spoke of Cambodia “holding out its hand in peace to the Vietnamese people.” Counsel Koppe asked whether the Chamber could imagine similar rhetoric coming out of the genocidal regimes of Nazi Germany or Rwanda’s Hutu Government. He said that this statement alone eliminated the option to convict Nuon Chea beyond reasonable doubt for intending to destroy or persecute the Vietnamese on account of their race. Defense Counsel Liv Sovanna argued that, in the absence of any document tying Nuon Chea to targeting of the Vietnamese, one reasonable conclusion that could be drawn is that any targeting was done without approval and unbeknownst to Nuon Chea.

As indicated above, the Khieu Samphan Team reminded the Chamber on several occasions that the crimes alleged in the Closing Order against the Vietnamese are limited to Prey Veng and Svay Rieng Provinces.⁵⁸ Counsel Guissé argued that the OCP used evidence taken from other provinces to indicate a pattern of behavior, and to disguise the fact that the evidence on the two provinces in question was weak. The Khieu Samphan Team also pointed to what they saw as the weakness of evidence relied upon by the Prosecution; mainly written statements and the work of Ben Kiernan, which she argued both the Trial and Supreme Court Chamber had been found to have low probative value. She also dismissed the testimony of the expert witness Alexander Hinton, saying he had appeared as an anthropologist to discuss genocide, which uses a different definition from the legal definition. She also drew attention to the OCP’s use of evidence relating to the Khmer Krom, as discussed above, arguing that this fell beyond

the scope of this trial and should not be used to prove anything related to the treatment of the Vietnamese.

ii. Genocide of the Muslim Cham

The Trial Chamber is also seized of allegations of genocide against the Cham minority in DK's Central, East and Northwest Zones. Again, the OCP stressed that the crime of genocide does not depend upon the number of individuals killed, but rather on intent to destroy a group in whole or in part. The arguments of the OCP to support the case of genocide against the Cham differ from those concerning the Vietnamese. The OCP argued that, to destroy a religious and ethnic minority, one need simply to destroy their religious practices and that which makes them a group, regardless of whether any of the group's members are harmed. Thus, the denial of religious rights for Cham people, forcing them to eat pork and women to cut their hair could all constitute the destruction of their group "as such."

Similar to the case with the Vietnamese, the OCP argued that DK policy toward the Cham evolved over time however the intent to eliminate the Cham as a unique group remained constant.⁵⁹ This policy began with forced assimilation, including prohibitions against traditional dress, the practice of Islam and religious dietary restrictions. After the rebellions in Svay Khleang in October 1975, forced assimilation yielded to forced dispersal out of areas of high Cham concentration, particularly Kampong Siem, Kang Meas and Krouch Chhmar Districts in the Central and East Zones. From 1977, the OCP argued, the CPK increasingly carried out mass killings of Cham people. The LCLCP supported these arguments by repeating Civil Party testimony regarding the murder, torture, and disappearances of the Cham people during and after the Cham rebellions in Svay Khleang and Koh Phal, and the killing sites at Wat Au Trakuon pagoda in Kang Meas District or Trea Village in Krouch Chhmar District.⁶⁰

Khieu Samphan's Defense rejected the allegation of their client's criminal responsibility for actions taken against the Cham people. They emphasized the absence of CPK documents detailing any genocidal policy against the Cham, concluding that the OCP's reliance on "uncredible" witness statements remained insufficient to establish the presence of an organized genocidal policy. Emphasizing this lack of documentary evidence, the Khieu Samphan Team said that those who testified to orders to target the Cham only spoke of orders from the Sector-level and no higher. The Nuon Chea Defense presented counter-arguments to the OCP's presentation on two grounds: the absence of an official policy to persecute or exterminate the Cham and the lack of factual evidence to substantiate the charges. According to the Nuon Chea Defense, the OCP had failed to provide sufficient evidence linking the arrest, detention or execution of any individual with their Cham identity, disproving the existence of a CPK targeting policy. They emphasized that the nature of the communist regime was to treat all people equally, and that the Cham may have been treated the same as Khmer but that this did not amount to discrimination, much less persecution or genocidal intent. The Defense also argued that acts such as converting mosques into storage facilities were a matter of economic necessity, not persecution. Both Defense Teams stressed that, yet again, the OCP failed to link Khieu Samphan and Nuon Chea personally with the crimes charged.

During their rebuttal, the OCP repudiated the Defense claim that the Cham were only targeted because they were viewed as a security concern, saying: "As if for some reason, if you destroy a group and you do it for reasons of the security of your nation, that's not genocide." Citing the *Stakić* Appeal Judgment that distinguishes intent and motive in terms of genocide, Nicholas Koumjian argued that the reasons for the desire to destroy a group are irrelevant, as long as the intention is there to target and destroy a group.⁶¹ Continuing this argument, the Co-Prosecutor again pointed out that the evidence showing the execution of children of Vietnamese or Cham descent was impossible to justify on security grounds.

b. Persecution of Buddhists

The Trial Chamber is also seized of crimes amounting to the persecution of Buddhists in Tram Kak Cooperatives only.⁶² The Civil Parties did not spend a great deal of time discussing the treatment of Buddhists. Civil Party lawyer Chet Vanly presented evidence from three Civil Parties who testified at trial on the treatment of Buddhists, including Oum Sophany who said she gave birth inside a pagoda that had been turned into a hospital. Chet Vanly noted that the Chamber heard “abundant evidence” on the centrality of Buddhism to traditional Cambodian culture, and how “the prohibition of Buddhism created a sense of imbalance for the population.” National Co-Prosecutor Chea Leang argued that there was “no credible evidence disputing that Buddhism was eliminated” during the DK regime, saying there had been “hundreds” of witnesses in the courtroom and “thousands” more who provided statements to this effect. The OCP included in their closing brief a list of witnesses from each zone and region of DK who provided evidence about the elimination of Buddhism from their area.⁶³ Chea Leang argued that the defrocking of monks, closing of pagodas and banning of religious practice was not a “coincidence” but rather a decision made by the CPK’s top leaders at a meeting held shortly after the Khmer Rouge took control of Phnom Penh on 17 April 1975. She said this decision was then disseminated with cadres at a mass meeting from 20-25 May 1975. The Defense disputed that Sao Sarun, the Witness on whom Chea Leang relied for this statement, had in fact said this.⁶⁴ Further, the Co-Prosecutor cited a 17 December 1975 CPK circular announcing: “95% of monks and Buddhist practices” no longer existed. Chea Leang stressed that the conversion of pagodas into security centers, killing sites, storehouses and warehouses was a further sign of persecution of Buddhism, while the Nuon Chea Defense instead argued that the use of pagodas for non-religious purposes was because of necessity only.

Defense Counsel Victor Koppe argued that the right to carry out religious rituals is not absolute and that certain restrictions are permitted under international law. The Nuon Chea Defense also argued it was not possible for the CPK to want to destroy the Buddhist religion simply because most of the CPK members were themselves Buddhists. He argued that requiring monks to work like everyone else stemmed from the CPK’s commitment to equality rather than any desire to mistreat or persecute. Concerning the destruction of pagodas, the Nuon Chea Defense said many had in fact been damaged or destroyed prior to DK during the civil war or American bombings. The Defense also pointed to the lack of CPK documents referring to any policy to target Buddhists or eliminate Buddhism. Counsel Koppe argued that, when the CPK was known for its record keeping, “Why would it omit such a policy?” Again, Counsel argued the OCP had failed to show a link between the actions taken toward members of a group and their membership of that group. Mr. Koppe also pointed to the DK Constitution, which guaranteed freedom of religion and the right to worship any “non-reactionary” religion. Counsel Koppe dismissed the evidence of the OCP about the forced disrobing of Buddhist monks, saying only two such incidents were reported as having taken place in Tram Kak and neither explicitly spoke about the threat of force being present. The Defense for Khieu Samphan limited their statements on the treatment of Buddhists to criticism over the way the original investigation was carried out, noting that the OCP initially asked the OCIJ to investigate facts related to specific crime sites in relation to the treatment of Buddhists, however Defense Counsel Anta Guissé argued the CIJs investigated facts throughout the entire country.

c. Targeting of Soldiers and Officials of the Former Regime

In Case 002/02, the Trial Chamber is seized of facts related to political persecution and the targeting of former soldiers and officials of Lon Nol’s Khmer Republic regime at four specific sites: Tram Kak Cooperatives, 1JD, S-21 and Kraing Ta Chan.⁶⁵ The Khieu Samphan Defense emphasized this limitation of scope, as mentioned above. Counsel Guissé argued that during the course of the trial the charges had been wrongly expanded to look at the whole of Cambodia. The Civil Party Lawyers did not dedicate a specific section to discussing the treatment of former Lon Nol soldiers during their daylong presentation. The only Civil Party

testimony they referred to this topic was that of Soy Sen, who testified to being detained at Kraing Ta Chan, he believed, because his father had worked in Lon Nol's Khmer Republic regime.⁶⁶ The OCP presented a number of witness statements and contemporaneous documents indicating former soldiers and officials had been arrested during DK. Assistant Prosecutor Dale Lysak reminded the Court: "Arresting or imprisoning individuals because they or a relative participated in or supported the previous regime is not due process. It is persecution, plain and simple." Mr. Lysak drew attention to a number of prison records and internal CPK memos indicating those connected to the former regime had been targeted, arguing that according to the OCP's own research, approximately half of the prisoners who were sent to Kraing Ta Chan prison had been connected to the former regime in some way. In response to this allegation, Counsel Koppe argued that it had not been proven that their association with the former regime was the reason for their arrest, instead arguing that they had been arrested for unlawful activities.

When addressing the crime of political persecution, the Nuon Chea Defense reminded the Chamber that the topic of targeting soldiers of the Khmer Republic had been a large part of Case 002/01, and that the SCC in its recent appeal decision in fact acquitted Nuon Chea and Khieu Samphan for all crimes related to alleged killings of former Lon Nol soldiers at Tuol Po Chrey. Counsel for Nuon Chea, Doreen Chen, criticized the OCP for relying on some of the same evidence presented in Case 002/01 to prove their case in 002/02. As with targeting of other groups, she pointed to the absence of any document indicating a CPK policy to target former Khmer Republic members. The Defense argued that the OCP interprets the word "enemy" in CPK propaganda and correspondence to refer to whichever targeted group they like, without evidence. Counsel Chen criticized the OCP for selectively choosing only the inculpatory parts of an interview Nuon Chea gave to Thet Sambath.⁶⁷ Ms. Chen also pointed out that, similar to the Cham, some soldiers or officials from the former regime held positions in the DK government, which she argued was not consistent with the existence of any targeting policy. The overall Nuon Chea Defense argument was that people were arrested for their illegal activities, not any association with the former regime, and, if anyone was arrested solely on this basis, then it must have been a lower-level cadre acting against the orders of the CPK.

4. Policy to Regulate Marriage

The regulation of marriage during DK has been characterized by the OCIJ as a crime against humanity of other inhumane acts. LCLCP Marie Guiraud presented the testimony of Civil Parties who spoke about marriage, as well as covering the legal arguments on this issue. She stated that 25 Civil Parties testified on facts related to marriage during Case 002/02: 12 specifically in the segment on marriage, eight who came to testify mainly on other facts and five who testified about the marriages of relatives. She spoke of the variety of the testimony provided by these individuals; their experiences came from all zones in DK and throughout the course of the regime, although Counsel noted the majority testified to marriages taking place in 1977 and 1978.⁶⁸ In response, the Khieu Samphan Defense questioned the representativeness of Civil Party testimony, pointing to the "bias" and "particularity" of Civil Party evidence, arguing Civil Parties were more likely than the rest of the Cambodian population to identify as victims and to have experienced trauma during the DK regime simply by virtue of their having filled out an application, as was discussed above in Part II.A.3.

Counsel Guiraud began her presentation on this segment by explaining that the Accused are charged with the 'conduct' of regulating marriage, which forms an "other inhumane act" under crimes against humanity and is more complex than merely forcing marriages. She argued this was the same case in Case 002/01 with regard to forced population movements. In terms of the conduct of regulating marriage, the LCLCP listed five elements: (1) the climate of fear present at the time of the marriage request, diminishing people's ability to refuse; (2) the lack of choice of spouse and low degree of control over the process; (3) the marriage ceremony itself; (4) monitoring of matrimonial life after the wedding including monitoring of couples, which could

include rape; and, (5) the consequences of these marriages, including unwanted pregnancies and miscarriages. Ms. Guiraud said it was “very clear,” based on the testimony given at trial and the documents admitted into evidence, that the conduct of regulating marriage during DK constituted a “violation of physical integrity...[and] grave breaches of human dignity.”

National Prosecutor Seng Bunkheang emphasized that the regulation of marriage constituted two separate crimes against humanity of other inhumane acts: the marriages themselves and rapes within those marriages. The Prosecutor asserted that the Accused and other Khmer Rouge leaders sought to rapidly increase the population of DK for economic, security, and other reasons by arranging the marriage of people without their consent. Like the Civil Party lawyers, the Prosecutor emphasized that the evidence shows this policy was implemented in every zone and autonomous sector of DK. He continued that Nuon Chea and Khieu Samphan promoted this marriage policy, with reference to a 1981 Nuon Chea interview:

Democratic Kampuchea has pursued a policy of increasing its population. Since 1975, Democratic Kampuchea has always required a rapid increase in its population; thus the four-year-plan of 1977 to 1978 aimed at increasing our population to at least 15 million within 5 to 10 years.

The Prosecutor asserted that, in pursuit of these unrealistic goals, marriage would be arranged and approved by the CPK. He then repeated an oft-cited quote from Nuon Chea’s interview with Thet Sambath, that “The man always want to choose a beautiful girl, so that is why we forced them to get married, and *Angkar* chose the wife.”

Turning to Khieu Samphan’s responsibility, the Prosecutor cited testimony of Civil Party Chea Dieb, who worked in the Ministry of Commerce, overseen by Khieu Samphan, and who recalled him telling workers in a speech that they should get married so that they would “produce children to defend the country.” In order to show the widespread and systematic nature of the regulation of marriage, the Prosecutor cited witnesses from across DK who testified to experiencing group wedding ceremonies, not being informed beforehand about their wedding and not being able to choose their spouse or invite family to the wedding ceremony. He observed: “It is striking to consider the sheer volume of testimonial evidence on the case file concerning forced marriages across Cambodia.” The Prosecutor emphasized the element of coercion, which he argued occurred either explicitly through threats, punishment, and execution for those who resisted marriage or consummation, or through the “overarching climate of fear” present at the time.

Nuon Chea’s Defense Counsel, Doreen Chen, responded to the concept of a “climate of fear” on several occasions, arguing that the ICTY Appeals Chamber has confirmed this is insufficient to prove beyond reasonable doubt that an environment was coercive; that an individual’s personal belief must be supported by objective evidence.⁶⁹ Thus, she argued that witnesses and Civil Parties who testified to marrying or consummating their marriages out of fear of consequences had failed to prove any factual basis for this fear. She cited, in particular, Civil Party Om Yoeurn, who had said she consummated her marriage for fear of being killed like her cousin but could not explain to the Court how she knew the reason her cousin had been killed. Counsel Chen further argued that if the OCP’s argument was true, it would imply that no one could provide genuine consent to anything throughout the entire three year, eight month and twenty day DK regime, a theory which she labeled “absurd.”

While the Defense Teams did not contest that the CPK had a policy regulating marriage, they both vehemently denied that the policy amounted to a crime against humanity. Both Accused focused on the absence of documented evidence indicating a nation-wide policy of marriages and forced consummation. The Nuon Chea Defense made three main points: that the only policy regarding marriage was a legitimate population growth policy not unlike those in many other countries today;⁷⁰ that there has been no proven link between a marriage policy and Nuon Chea; and that any criminal acts were anomalies and carried out by “rogue elements.”

Counsel Chen emphasized the intimate, personal nature of marriage, which “strikes close to home for many” and urged Judges to look beyond the emotion of the charges and public pressure or “lobbying you are under from activists” to the evidence. She called the research into DK marriages relied upon by the OCP as “inherently flawed and biased,” and said “some activists tend to overemphasize isolated cases of what constitutes forced marriage.” Citing the in-court testimony of the two expert witnesses in this segment, Peg LeVine and Kasumi Nakagawa, Counsel Chen argued there was not “even a single piece of evidence” of a nationwide policy of forcing people to marry without their consent. Rather, Counsel explained, the CPK had a policy explicitly based on consent as outlined in the Sixth Revolutionary Principle, which had been referred to multiple times throughout the trial.⁷¹ Counsel cited a speech on 5 August 1978 in which Pol Pot repeated this principle, before citing testimony from former low-level cadres Tek Pok, Chhun Thy, Pech Chim, Sao Sarun and Khoeum Boeum, and even S-21 Chairman Duch, all of whom testified at trial about requiring the consent of the couple before a marriage could take.⁷² The Defense argued that the Sixth Revolutionary Principle forbidding sexual violence against women would have also prohibited rape against one’s spouse (a claim the OCP and LCLCP dispute),⁷³ and Counsel Liv Sovanna insisted it would “go against cultural norms” in Cambodia, where sex remains taboo, to make children spy on older married couples. During his rebuttal, Prosecutor Lysak later responded that, “Violating cultural norms was the norm for the CPK.”

Defense Counsel Doreen Chen argued that even if there had been a policy to force marriages, the OCP failed to prove any link to Nuon Chea’s role in such a policy beyond a reasonable doubt. She dismissed the Thet Sambath interview quote as being insufficient grounds for a conviction, arguing: “If this were all you needed, we would not have needed this trial.”⁷⁴ She concluded by arguing that, to the extent that any marriages were forced or couples were monitored, these were “isolated instances” and the result of “rogue elements.” Finally, Counsel Liv Sovanna returned to the issue of consent. He asked whether anyone in pre-DK Cambodia would have had the opportunity to refuse a marriage proposed by their parents, implying the DK marriages arranged by the state were no different.⁷⁵ The Khieu Samphan Defense made a similar point, saying that, during DK, there was a “transfer of parental prerogatives to local authorities” including marriage. The Defense also pointed to several witnesses and Civil Parties who testified their parents were consulted about their marriage or were present.

As above, the Khieu Samphan Defense did not contest that marriages were regulated but argued that, insofar as this may have constituted a violation of the right to freedom, it was not sufficiently grave as to constitute a crime against humanity.⁷⁶ Admitting that the law may be flawed, Counsel Anta Guissé nonetheless said the law as it stood in 1975 did not judge forced marriage to be a crime against humanity of other inhumane acts. She said this was only first discussed in 2008 at the Special Court for Sierra Leone.⁷⁷ The OCP rejected this argument in its rebuttal, noting that the marriage under DK “has changed people’s lives. It was extremely traumatic at the time it occurred, and, for many, it has left scars that last a lifetime.” Khieu Samphan’s Counsel responded in turn that they had not been dismissing the impact of DK marriages on people’s lives, but rather were arguing that they would not have been considered criminal in 1975. In rebuttal, the Civil Parties argued the Defense had failed to speak to the whole conduct of the regulation of marriage, instead focusing on only the element of forced marriages and consummation, meaning they had not fully addressed the charges. Ms. Guiraud reiterated that the Chamber does not need to find that there was a national-level forced marriage policy for which the Accused were responsible, but rather that the policy of regulating marriage formed part of a JCE to achieve rapid socialist revolution, and that the Accused were indifferent to the eventual possible consequences of the marriages.

The LCLCP took issue with the Defense arguments that the lack of consent in arranging the marriage did not differ from the Cambodian traditional practice of parental arrangements. While highlighting that this formed only one part of the overall conduct of the practice of regulating marriage, Counsel Guiraud also explained that traditional marriages in which couples consent

to the decision of their parents does not violate Article 16 of the Universal Declaration of Human Rights unless consent is not given by either member of the couple.⁷⁸ She argued the evidence shows that couples during DK did not give consent to the authorities to choose their spouses in the same way they would have given consent to their parents in the pre-1975 or post-1979 period. Ms. Guiraud again emphasized the climate of fear prevalent throughout DK, reminding the Chamber that the *Akayesu* case before the ICTR had found coercive circumstances negate the possibility of providing consent.⁷⁹ Counsel argued the same was true with DK marriages.

C. Final Statements of the Accused

At the end of the two weeks of closing statements, both Accused were given the opportunity to make a final statement to the court. In Case 002/01, both Accused made closing statements.⁸⁰ Although Nuon Chea appeared in the courtroom for twenty minutes on the first day of statements in Case 002/02 — the first time he had been seen in the courtroom in Case 002/02 since he made a statement in response to Expert Alexander Hinton in March 2016 — he ultimately declined to appear for a final statement.⁸¹ Nuon Chea's international counsel, Victor Koppe, claimed he was not interested in making any closing statements either, although he ultimately spoke for approximately 25 minutes on the final day of proceedings. Although his final remarks in Case 002 displayed his lack of interest in the ECCC as an institution or in the results of the trial, he emphasized the importance of his team's 550-page closing brief and over 4,000 footnotes for the Cambodian public. Koppe dismissed the OCP's arguments as "bombastic" and "theatrical" rather than grounded in law or "dispassionate analysis of the evidence." Instead he expressed his hope that, thanks to his team's brief, future generations of Cambodians would better understand the "real history" of DK. Counsel Koppe closed by calling for the ECCC to translate Nuon Chea's closing brief into Khmer and to distribute it to the public as "the real legacy" for the Tribunal to have an impact on history.

On the final day of proceedings, Khieu Samphan's Counsel lambasted the Prosecution for failing to address her legal arguments and focusing only on the historical arguments of the other Defense team. Unlike Nuon Chea, Khieu Samphan did choose to make a final statement. Khieu Samphan rejected the charges laid against him and categorically denied responsibility for the suffering endured by the Cambodian people during the DK regime. He pointed to the context of the DK period to justify the use of cooperatives and worksites as a means of post-conflict reconstruction and agricultural production. He denied contemporaneous knowledge of forced marriage policy, discrimination against 'new' people, targeting of minorities or religious persecution. He firmly maintained that CPK leaders did not exterminate their own people, blaming Vietnamese manipulation and propaganda for the persistent narrative of "self-genocide" used to justify their unrelenting "expansionist ambition." Khieu Samphan concluded by "bowing to" the memory of innocent victims, particularly those who died from the American bombings or the civil war between 1970 and 1975, who he said "will never be honored by an international tribunal."

D. Civil Party Request for Reparations

3,867 Civil Parties have been admitted as part of Case 002. According to the LCLCP, 181 have passed away since the start of proceedings, and of those, 34 of their successors have opted to continue the original claim. Of the large number of Civil Parties admitted, 64 Civil Parties testified in court in Case 002/02. Before presenting the proposed reparations projects to the court, Counsel Guiraud reminded the Chamber of the "extraordinary resilience" shown by Civil Parties in the four decades since the alleged crimes took place. It was therefore with "humility and modesty" that LCLCP Marie Guiraud took the floor at the end of her team's presentation to request judicial recognition for 12 fully-funded reparations projects, 11 of which were jointly supported by her national colleague Pich Ang.⁸²

Counsel Guiraud began by highlighting the restrictions on reparations projects: that only moral

and collective reparations can be accepted by the court. She pointed out that many Civil Parties live in poverty and the most useful thing for them would be financial reparations. She also pointed to the amendment of the ECCC internal rules in 2010 which both “opened and limited the ability of Civil Parties to seek reparations.” In addition to limiting reparations to collective and moral, rather than individual or monetary, the rules also require the LCLCP to choose between requesting the costs of the reparations be borne by the convicted person or instead be designed and supported by the LCLCP and the Victim Support Section (**VSS**).⁸³ Ms. Guiraud argued this dichotomy eliminates the option for the reparations to be recognized as the responsibility of the Accused, regardless of their indigent status; a norm she said had been recently established by the Lubanga Appeal Judgment at the International Criminal Court (**ICC**).⁸⁴

A further complication of the system as it currently stands is that the LCLCP have been encouraged by the Court to begin planning and implementing reparations projects before the guilt of the Accused has been established through a verdict. Counsel Guiraud reminded the Chamber that judicial reparations “should stem from the guilt of the Accused,” and that, in this system, the Civil Party lawyers were

in an unprecedented situation where we have available judicial reparations and they are not based on the conviction of the Accused because the implementation of these projects starts before the finding of guilt of the Accused. These reparations cannot even symbolically be paid for by the Accused.

Finally, Counsel Guiraud pointed to challenges in securing funding for requested reparations projects. Ms. Guiraud highlighted two projects in particular: building stupas across the country, and providing free healthcare for Civil Parties, each of which were widely supported by Civil Parties yet did not find support in the donor community. This, Marie Guiraud argued, was an example of how the international community is attracted to collective and moral reparations, whereas the Civil Parties themselves opt for more practically useful projects.

Bearing in mind those limitations, the two Lead Co-Lawyers made it clear that they were very proud of the reparations projects they were presenting to the court. The Co-Lawyers jointly presented 11 projects which have all been fully funded by donors and which are either partially or fully completed: three on guarantees of non-repetition,⁸⁵ three to benefit specific groups,⁸⁶ four to promote satisfaction⁸⁷ and one related to rehabilitation.⁸⁸ At the end of the presentation, Marie Guiraud took the floor again to present the final project that she alone is requesting be recognized as reparations, without the support of her Co-Lawyer. The project, run by Minority Rights Organization (**MIRO**), provided civic and legal education for Civil Parties of ethnic Vietnamese background to assist them with their legal status in the territory of Cambodia.

III. LEGAL AND PROCEDURAL ISSUES

In addition to the numerous legal arguments raised throughout the Parties’ closing statements, two other issues also came up that are worth noting: First, a request from the Nuon Chea Defense related to the timing of translations of closing briefs, and second a debate among the Parties about the correct use of torture-tainted evidence during closing statements.

A. Request to Translate Closing Briefs into Khmer

On the first day of the Nuon Chea Defense’s statements, Counsel Victor Koppe took some time out from his closing arguments to make a request to the Bench. He said that it had recently come to his attention that his team’s closing brief in Case 002/01, submitted in English only, was translated into Khmer one and a half years after the Trial Chamber had already issued its judgment in that case. Speaking directly to President Nil Nonn, Counsel Koppe asked: “Are you not somehow offended by this?” He continued:

I find it a quite shameless display of neocolonialism, and it really should not stand. This is your Court. It is a Cambodian court and Cambodian judges are the majority here. I strongly feel that you should not be relegated to the sidelines while the foreigners decide on justice for your fellow Cambodians.

Counsel Koppe therefore asked the Chamber to ensure adequate resources and funding be provided to the translation unit so that the Defense's closing brief in Case 002/02 can be translated in a timely fashion. He noted that, if this did not occur, "it will be one of our very first appeal ground." The President did not respond to his request.

B. Use of Torture-Tainted Evidence

On 7 June 2017, the Trial Chamber circulated a memorandum outlining some internal rules to aid in the smooth running of the Case 002/02 closing statements, including the continued use of pseudonyms to refer to witnesses involved in ongoing cases, and the use of documents not yet admitted into evidence.⁸⁹ The Chamber noted that, as evidentiary hearings have concluded and there is therefore no longer a danger that documents obtained under torture could "improperly influence" future witnesses, the contents of torture-tainted statements could be used in court as long as Parties noted if any document had a presumption of having been obtained under torture.⁹⁰

Despite these new guidelines, during his presentation Counsel Koppe referred to the "statement" of Koy Thuon, former North Zone Secretary, DK Commerce Minister and member of the Central Committee who was sent to S-21. No one objected to his use of this document at the time. Shortly after this reference, however, Counsel Koppe then referred to the S-21 "statement" of Yim Sambath, Division 170 deputy platoon chief. At this time he explicitly argued that, in his Team's view: "Yim Sambath was not maltreated at S-21 and therefore we should be allowed to use that evidence." President Nil Nonn interceded to stop Counsel using any document deemed tainted by torture. Judge Jean-Marc Lavergne then clarified that, according to the memo issued by the Chamber, such documents could be referred to, however, Parties must announce for the benefit of the public that that the documents were "confessions" and likely the result of torture. After more clarifications from both sides, Counsel Koppe was permitted to continue on the basis that he acknowledged the provenance of these two statements. On rebuttal later, Co-Prosecutor Nicholas Koumjian dismissed Nuon Chea's notion that Koy Thuon and Yim Sambath were not mistreated at S-21. He explained, "When people walked through the gates of S-21, they were subjected to torture. Can you imagine living the terror? ... Does any Defense believe shackling a person 24 hours a day is not mistreatment?"

IV. TRIAL MANAGEMENT

After a six-month break for the final preparation of closing briefs in Case 002/02, the Trial Chamber successfully completed closing arguments over two weeks in a timely manner.

A. Attendance

Nuon Chea sat in the courtroom for 20 minutes on the first day of closing statements on 13 June 2017, then subsequently waived his right to be present in the courtroom and observed proceedings from the holding cell due to his poor health. Khieu Samphan was present in the courtroom throughout the two weeks of proceedings.

Judge Attendance: On the afternoon of the first day of the closing statements, the President announced that International Judge Claudia Fenz was unwell and unable to attend proceedings. International reserve Judge Martin Karopkin replaced her for the remaining two weeks. On 23 June, national Judge Ya Sokhan was also absent due to personal commitments and was replaced by national reserve Judge Thou Mony. All other Judges were present as normal.

Parties: Pich Ang, national Lead Co-Lawyer for Civil Parties was absent on 15, 16 and 20 June for personal reasons. However, his international colleague Marie Guirud was present in the courtroom to properly represent their clients.

DATE	MORNING	AFTERNOON
Tuesday 13/6/2017	<ul style="list-style-type: none"> 300 students from Samdech Techo Hun Sen Chambak High School and Samdech Techo Hun Sen Rorlaeng Chhouk High School, Kampong Speu Province 30 foreign observers Six Civil Parties 	<ul style="list-style-type: none"> 118 students from Chamroeun Vichea High School, Kampong Leav District, Prey Veng Province 47 students from Pedagogical Training Center for Secondary School Level, Kampong Leav District, Prey Veng Province Six Civil Parties
Wednesday 14/6/2017	<ul style="list-style-type: none"> 355 students and six teachers from Kampong Speu High School, Chbar Mon City, Kampong Speu Province 13 foreign observers Seven Civil Parties 	<ul style="list-style-type: none"> 353 villagers from Kampong Siem District, Kampong Cham Province 15 Students from Liger Learning Center, Phnom Penh, Cambodia 10 foreign observers Seven Civil Parties
Thursday 15/6/2017	<ul style="list-style-type: none"> 309 students and teachers including from 24-September High School, Barsedth District, Kampong Speu Province Nine villagers from Barsedth District, Kampong Speu Province 15 foreign observers Seven Civil Parties 	<ul style="list-style-type: none"> 210 villagers from Kandieng District, Pursat Province 15 foreign observers Seven Civil Parties
Friday 16/6/2017	<ul style="list-style-type: none"> 278 students from Hun Sen Ang Kom Trei High School, Kong Pisei District, Kampong Speu Province 48 students from Pedagogical Training Center, Chbar Mon City, Kampong Speu Province 16 foreign observers Five Civil Parties 	<ul style="list-style-type: none"> 223 villagers from Kravanh District, Pursat Province 12 foreign observers Five Civil Parties
Monday 19/6/2017	<ul style="list-style-type: none"> 308 students from Samroang High School in Kampong Speu Province 22 students from the Royal University of Law and Economics, Phnom Penh 21 foreign observers Five Civil Parties 	<ul style="list-style-type: none"> 308 villagers from Battambang Province 18 foreign observers Five Civil Parties

Tuesday 20/6/2017	<ul style="list-style-type: none"> ▪ 270 students from Aoral High School, Aoral District, Kampong Speu Province ▪ 40 villagers Aoral District, Kampong Speu Province ▪ 10 foreign observers ▪ Seven Civil Parties 	<ul style="list-style-type: none"> ▪ 76 students Chea Sim University, Prey Veng City, Prey Veng Province ▪ 14 foreign students from Thacher High School, California, United States ▪ Seven Civil Parties
Wednesday 21/6/2017	<ul style="list-style-type: none"> ▪ 483 students from Oudong High School in Kampong Speu Province and villagers from Koh Andaet District, Takeo Province ▪ Eight foreign observers ▪ Seven Civil Parties 	<ul style="list-style-type: none"> ▪ 497 students from Hun Sen Bat Doeng High School and villagers from Borei Cholasas District, Takeo Province ▪ Three foreign observers ▪ Seven Civil Parties
Thursday 22/6/2017	<ul style="list-style-type: none"> ▪ 100 villagers from Koh Andaet District, Takeo Province ▪ 102 villagers, Koh Andaet District, Takeo Province ▪ 40 villagers from Kaoh Andaet District, Takeo Province ▪ 18 foreign observers ▪ Seven Civil Parties 	<i>No proceedings</i>
Friday 23/6/2017	<ul style="list-style-type: none"> ▪ 207 villagers from Kampong Siem District, Kampong Cham Province ▪ 30 foreign observers ▪ Seven Civil Parties 	<i>No proceedings</i>

B. Time Management

Case 002/02 closing statements proceeded in an efficient and timely manner over two weeks. In general, Parties managed their allotted time appropriately and on limited occasions extra time was allotted. Both the Lead Co-Lawyer for Civil Parties and the Nuon Chea Defense were granted extra 15 minutes to finish their arguments when it was requested.

C. Courtroom Etiquette

There were no significant breaches of courtroom etiquette throughout the two weeks of closing statements; all Parties conducted themselves professionally throughout.

D. Translation and Technical Issues

During the two-week hearings of closing arguments, the Trial Chamber effectively dealt with very minor translation and technical issues. When Parties spoke too quickly for interpreters to follow, President Nil Nonn was fast to remind Parties to slow down. Some Parties provided their text to the interpreters ahead of time to facilitate interpretation. All technical issues were minor and were resolved by the Chamber quickly and efficiently.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Tuesday 13/6/2017	9:00	10:15-10:31	11:47-13:29	14:42-15:01	16:12	4 hours, 55 minutes
Wednesday 14/6/2017	9:00	10:23-10:40	11:34-13:30	14:43-15:01	16:01	4 hours, 30 minutes
Thursday 15/6/2017	9:02	10:10-10:31	11:29-13:30	14:42-15:01	15:59	4 hours, 16 minutes
Friday 16/6/2017	9:01	10:04-10:28	11:35-13:27	14:44-14:59	15:44	4 hours, 12 minutes
Monday 19/6/2017	9:01	10:14-10:31	11:34-13:19	14:35-14:50	15:59	4 hours, 41minutes
Tuesday 20/6/2017	9:00	10:05-10:24	11:30-13:30	14:34-14:54	15:59	4 hours, 20 minutes
Wednesday 21/6/2017	9:03	10:03-10:21	11:07-13:31	14:26-14:45	16:01	3 hours, 57 minutes
Thursday 22/6/2017	8:59	10:12-10:29	-	-	11:35	2 hours, 19 minutes
Friday 23/6/2017	9:00	10:05-10:24	-	-	11:14	1 hour, 55 minutes
Average number of hours in session				3 hours and 26 minutes		
Total number of hours this week				17 hours and 12 minutes		
Total number of hours, day, weeks at trial				1,067 hours and 255 minutes		
282 TRIAL DAYS OVER 81 WEEKS						

*This report was authored by David Cohen, Lina Tay, Daniel Mattes, Caitlin McCaffrie, Daniella Montemarano, Srey Nak and Vantha Sieng as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). 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 Southeast Asia.



Unless specified otherwise,

- § the documents cited in this report pertain to the *Case of Nuon Chea 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 made by KRT Trial Monitor staff; and
- § photos are courtesy of the ECCC.

Glossary of Terms

Case001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (CaseNo.001/18-07-2007-ECCC)
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (CaseNo.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
DSS	Defense Support Section
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
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
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Unless otherwise indicated, all quotations in this report come from KRT Monitor’s internal monitoring notes. As of writing, the official court transcripts for the closing statements have yet to be released.

² The Trial Chamber announced in a memorandum on 27 February 2017 that it would not hear any of the remaining charges in Case 002, and that Case 002/02 would therefore be the final trial against Nuon Chea and Khieu Samphan. In their closing brief, the Nuon Chea Team repeatedly referred to this decision as one of the “new rules of the game.” The Lead Co-Lawyers have noted that 446 Civil Parties were admitted by the OCIJ as direct or indirect victims of charges not contained in Case 002/01 or Case 002/02. See Trial Chamber. ‘Decision on Reduction of the Scope of Case 002’ (27 February 2017) E439/5.

³ The Trial Chamber requested confidential closing briefs be submitted by 2 May 2017, and also asked Parties to file public redacted versions no later than 16 May 2017, in order to continue to protect the confidentiality of ongoing cases, see: Trial Chamber. ‘Decision on Co-Prosecutors’ Request to Lift Redactions and Use of Pseudonyms for Case 002/02 Testimony’ (2 May 2017) E319/35/12. Subsequently, Parties’ redacted versions were made public in late May. Nuon Chea’s unredacted closing brief was made public on 31 May 2017. The Khieu Samphan Team’s brief is only available in French at the time of writing. See: Civil Party Lead Co-Lawyers: ‘Civil Party Lead Co-Lawyers’ Closing Brief in Case 002/02 (Public Redacted with Confidential Annexes)’ (2 May 2017 E457/6/2 (Hereinafter **LCLCP Closing Brief**); Office of the Co-Prosecutors: ‘Co-Prosecutors’ Closing Brief [REDACTED]’ (2 May 2017) E457/6/1 (Hereinafter **OCP Closing Brief**); Défense de M. Khieu Samphan, ‘Conclusions finales de KHIEU Samphan’ (2 May 2017) E457/6/4 (Hereinafter **Khieu Samphan Closing Brief**); Nuon Chea Defence, ‘Nuon Chea’s Closing Brief in Case 002/02’ (2 May 2017) E457/6/3 (Hereinafter **Nuon Chea Closing Brief**).

⁴ 185 people testified in Case 002/02, comprising 114 Witnesses, 63 Civil Parties and 8 Experts. CASE 002/02 KRT TRIAL MONITOR, Issue No. 79, Hearings on Evidence Week 76 (9-11 January 2017), p. 1.

⁵ Supreme Court Chamber. ‘Case 002/01 Appeal Judgment’ (23 November 2017) F36 (Hereinafter **002/01 Appeal Judgment**).

⁶ This estimate is based on the ECCC’s latest publicly released completion plan (revision 12), however, in court on 23 June, the President said the Bench is unable to predict when the document will be completed due to “the sheer scope of this case which is broad and complex,” also recalling the need to publish the document in the three official

languages of the ECCC; Khmer, English and French. For the latest completion plan, see: Extraordinary Chambers in the Courts of Cambodia. 'Completion Plan (Revision 12)' (31 March 2017), p. 13.

⁷ The President of the Trial Chamber shared the schedule for closing statements and deadlines for closing briefs on the final day of evidentiary hearings on 11 January 2017. The OCP later filed a request to extend the deadline for filing of closing briefs and delivering closing statements, asking to push the start of the statements back from 5 to 12 June, see: Office of the Co-Prosecutors. 'Co-Prosecutors' Request to Modify the Schedule for the Filing of Closing Briefs and the Delivery of Closing Statements in Case 002/02' (7 April 2017) E457. The LCLCP supported the request and the Nuon Chea Defense opposed it. The request ultimately amended the schedule largely in line with the OCP request, see: Trial Chamber. 'Decision on Co-Prosecutors' Request for Extended Deadline for Closing Briefs and Delayed Start of Closing Statements in Case 002/02' (28 April 2017) E457/6.

⁸ The Khieu Samphan Defense took issue with the structure of the OCP's closing statement presentation, arguing that they should have used their opening statements to rebut the claims made in the two Defense closing briefs, rather than simply presenting their own arguments. The Defense Teams responded to the OCP's arguments both in their first statements and in their rebuttal.

⁹ Supreme Court Chamber. 'Decision on Khieu Samphan's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02' (29 July 2014) E301/9/1/1/3 (Hereinafter known as **SCC Severance Decision**).

¹⁰ In response to this assertion and related to Nuon Chea's decision not to make a final statement during the fortnight's proceedings, Counsel Guiraud disputed Nuon Chea's claims to have accepted moral responsibility: "To be morally responsible, it is to accept the consequences of one's acts. It is therefore to accept that a third party, you, representing Justice, assign legal and criminal responsibility to these acts... Saying that he accepts the moral responsibility while pleading for a total acquittal and contesting that the crimes existed, Nuon Chea presents you with a total contradiction, and, in fact, he accepts nothing, to rewrite history at any price."

¹¹ See **002/01 Appeal Judgment**.

¹² Counsel Victor Koppe explained, "Specifically, the crocodile's account of treasonous factions demonstrates there was no common purpose. In fact, a subsection of the alleged JCE members was actively attempting to undermine the legitimate DK government. So even when a common purpose can be found, implementing a rapid socialist revolution and defending against internal and external enemies are policies not inherently criminal in nature." To remind the Court of his team's responsibility merely to provide a reasonable doubt rather than prove a crime beyond all reasonable doubt, he explained further: "A reasonable inference from such crimes is that an entirely different JCE was responsible for such crimes, and that they were committed to incite such crimes against the DK." On the modes of liability of ordering and superior responsibility, Counsel Koppe stated: "The crocodile demonstrates Nuon Chea's lack of effective control and authority over the perpetrators who were actively undermining the DK regime."

¹³ Counsel labeled Vietnam as "an imperialist aggressor" and a "proxy of the Soviet Union" with "colonial designs for Cambodia."

¹⁴ Similarly, histories of the armed conflict, best exemplified by Stephen Morris' book *Why Vietnam Invaded Cambodia*, which was tendered into evidence, depended on Vietnamese or Soviet Archives, and thus only saw "a rather unilateral version," according to Defense Counsel.

¹⁵ Article 4(1) of the ICCPR states: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations... provided that such measures are not inconsistent with their obligations under international law..."; Article 4(2): "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision." United Nations General Assembly. 'International Covenant on Civil and Political Rights' (Adopted 16 December 1966, entry into force 23 March 1976).

¹⁶ To support this claim, the Co-Prosecutor cited the demographic study of scholar Patrick Heuveline (E3/10764) which estimated the number of excess deaths under the DK regime as between the range of 1.2 to 2.8 million, with a median value of 1.9 million, or about 21% of the population.

¹⁷ International Counsel Victor Koppe reminded the Court that the Defense was unable to conduct its own investigations or provide much input into the Tribunal's investigations, and he claimed that "there were no neutral investigators," but instead "devoted fans of the simplistic, historically incorrect Manichean Narrative."

¹⁸ Supreme Court Chamber. 'Case 001 Appeal Judgment' (3 February 2012) F28.

¹⁹ On Tuesday, 20 June, Counsel Guissé explained with sarcasm, "Mr. President, you have *carte blanche* then. You can rewrite history. Because, after all, this isn't a trial just of the Accused; it's of DK. So use the facts as you will and issue a guilty verdict. Once facts have been presented before the Chamber or have been presented in black and white, anything goes."

²⁰ The Khmer Krom are ethnic Khmers from a geographical area called Kampuchea Krom, or "Lower Cambodia", which was separated from Central Cambodia under French colonial rule and which eventually formed a sizable part of Southern Viet Nam. Although ethnic Khmers, their birthplace in Vietnam allegedly resulted in discrimination under the DK regime according to the testimonies of some witnesses and Civil Parties in Case 002.

²¹ In May 2015, after Defense requests for clarification on this same issue, the Trial Chamber came to the same conclusion as the Pre-Trial Chamber that the treatment of the Khmer Krom was not within the scope of Case 002/02, Pre-Trial Chamber. 'Decision on Appeals Against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on admissibility of Civil Party Applications' (27 April 2010) D250/3/2/1/5.

²² For a summary of the Trial Chamber's oral decision on the Khmer Krom, see CASE 002/02 KRT TRIAL MONITOR, Issue No. 20, Hearings on Evidence Week 17 (25-28 May 2015) p. 8.

²³ In her rebuttal, Counsel Guissé disputed the Civil Parties' inclusion of one testimony relating to events in Kratie on the issue of the Vietnamese.

²⁴ Office of the Co-Prosecutors. 'Co-Prosecutors' Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A' (5 December 2013) E301/2, para. 11, p. 5.

²⁵ Trial Chamber. 'Decision on Lead Co-Lawyers' Rule 92 Submission on the Confirmation of the Scope of Case 002/02 Concerning the Charges of Rape Outside the Context of Forced Marriage' (30 August 2016) E306/7/3.

²⁶ Counsel further argued Ang Roka, although geographically in Tram Kak District, was neither mentioned in the Closing Order nor received criminal characterization, and it therefore fell outside the scope.

²⁷ Internal Rule 23 (4) states that: "The Civil Party cannot be questioned as a simple witness in the same case and, subject to Rule 62 relating to Rogatory Letters, must only be interviewed under the same conditions as a Charged Person or Accused." Extraordinary Chambers in the Courts of Cambodia. Internal Rules (Rev. 9) (16 January 2015) p. 23 (Hereinafter **Internal Rules**).

²⁸ Marie Guiraud also asked the Chamber to recall the cultural context of Civil Party testimony, reminding the Chamber that names are not as important in Cambodia as they are in the foreign countries many of the international lawyers hail from, and asking them to differentiate between evidence that is "secondary" and "main". The Khieu Samphan Defense questioned this distinction, asking whether what the LCLCP was in fact saying was that those that are "main" are "inculpatory" and those that are "secondary" are "exculpatory."

²⁹ The SCC Case 002/01 Judgment states: "To the extent that Nuon Chea refers to factors that are unique to the role of civil parties (for example, that they take no oath...) these are all factors that feed into the application of the approach the Trial Chamber adopted and are therefore to be considered when assessing the probative value and weight of individual civil party testimony. These factors *per se* do not demonstrate an error of law in the Trial Chamber's approach." 002/01 Appeal Judgment, para 315.

³⁰ Changes to the Civil Party participation scheme from Case 001 to Case 002 are explained and analyzed in David Cohen, Melanie Hyde, Penelope Van Tuyl. *A Well-Reasoned Opinion? Critical Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge*, East-West Center (2015), pp. 22-35.

³¹ Kong Sam Onn claimed that when Civil Party evidence changed, it "always go(es) in the direction of the more incriminating elements." For a summary of the testimony of Civil Party Ms. Chea Dieb, see CASE 002/02 KRT TRIAL MONITOR, Issue No. 65, Hearings on Evidence Week 62 (29 August – 1 September 2016) pp. 5-8.

³² It is not clear how the OCP's claim of a "Center Center" aligns with the Trial Chamber's previous finding in its Case 002/01 Judgment that the joint criminal enterprise constituted more persons than this alleged "Gang of Three", including the likes of Ruos Nhim, Sao Phim, Vorn Vet, and others whom the Defense proceeded to castigate as traitors who could not be shown beyond a reasonable doubt to have formed a criminal conspiracy with the Co-Accused.

³³ International Co-Prosecutor Nicholas Koumjian presented multiple video clips and quotes from interviews with Nuon Chea and Khieu Samphan after the fall of the DK regime in which the Co-Accused described their roles during the regime and their close relations with the then deceased Pol Pot. Mr. Koumjian cited statements from other witnesses attesting to the close relations between the three, namely Duch, Suong Sikoeun, Phy Phuon, and Sou Soeun, the wife of deceased Standing Committee member Ke Pauk. Mr. Koumjian also pointed out that, based on the minutes of DK Standing Committee meetings where attendance was recorded, Nuon Chea, Pol Pot, and Khieu Samphan were present more than any other senior leaders.

³⁴ Judgment, *Prosecutor v. Tadić* (IT-94-1-A), ICTY Appeals Chamber, 15 July 1999, paras. 185-234.

³⁵ Trial Chamber. 'Decision on the Applicability of Joint Criminal Enterprise' (12 September 2011) E100/6; Pre-Trial Chamber. 'Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE)' (20 May 2010) D97/15/9.

³⁶ The OCP cited the Karadžić Appeal Judgment, which states: "The Appeals Chamber further recalls that the relevant question in the context of JCE I liability is whether the JCE member used the non-JCE member to commit the *actus reus* of the crime forming part of the common purpose; it is not determinative whether the non-JCE member shared the *mens rea* of the JCE member or the non-JCE member knew of the existence of the JCE." Judgment, *Prosecutor v. Karadžić* (IT-95-5/18-AR98bis.1) ICTY Appeals Chamber, 11 July 2013, para. 79, p. 2236.

³⁷ SCC Severance Decision.

³⁸ Interestingly, although the conditions at worksites and cooperatives were not part of the charges in Case 002/01, the SCC in its Appeal Decision touched on the issue insofar as it related to the evacuation of Phnom Penh, noting: "Indeed, it would appear that the enslavement of the population was one of the principal objectives of the Khmer Rouge regime, of which the population transfer was but a first step." 002/01 Appeal Judgment, para 828, p. 377.

³⁹ Assistant Prosecutor Dale Lysak gave the example of a list of 29 prisoners which provided reasons for their detention: 20 were former Lon Nol soldiers accused as a network planning to escape Cambodia; 7 broke spoons or hoes in their cooperatives; one complained about food rations; and, another took food to eat.

⁴⁰ The Prosecutor sought to corroborate his documentary evidence with citations of witness testimony from a former Tram Kak District cadre, Riel Sorn, and two survivors from Kraing Ta Chan, Meas Sokha and Vorn Sarun.

⁴¹ Mr. Voeun Vuthy testified as an Expert in December 2016 and January 2017. Summaries of his testimony are available at CASE 002/02 KRT TRIAL MONITOR, Issue 79, Hearings on Evidence Week 76 (9-11 January 2017) pp. 3-4 and CASE 002/02 KRT TRIAL MONITOR, Issue 77, Hearings on Evidence Week 74 (12-15 December 2016), pp. 5-6.

⁴² The Civil Parties and OCP later pointed out on rebuttal that the Meas Sokha was in fact a fact witness.

⁴³ Prosecutor Dale Lysak in turn disputed the claim that the OCP had never tried to establish the veracity of the Tram Kak records and that in fact the Prosecutors regularly presented the documents to witnesses who authenticated them and the handwriting and signatures inside.

⁴⁴ Counsel Chen, for example, pointed out that no piece of evidence or witness testimony ever mentioned two of the three separate facilities noted in the Closing Order as comprising the alleged complex of Phnom Kraol, and she also showed that Civil Party Sun Vuth himself confirmed he had never been detained at that security center but another prison “not near Phnom Kraol.” She argued that the two people who testified about one actual Phnom Kraol facility gave no evidence to prove killings, inhumane conditions, unjustifiable imprisonment, or torture at the site.

⁴⁵ Defense for Nuon Chea later pointed out that the OCP had argued similarly when they claimed Khieu Samphan and Nuon Chea were part of the ‘Gang of Three’ with Pol Pot because the three men were regularly seen to have breakfast together.

⁴⁶ Prosecutor Dale Lysak explained that the former prison chief Chhaom Se, deputy chief, and surviving prisoners all testified to this “mass execution” and that the former cadres specified that orders came from Northeast Zone Secretary Vy. Prosecutor Lysak then presented a June 1977 telegram from the Zone Secretary to the Party Center, including “Uncle Nuon” and Office 870, concerning the arrest of “209 Vietnamese soldiers...almost all Jarai ethnicity” and asking for instructions.

⁴⁷ In order to emphasize the massive scale of this number for deaths in the prison in one month alone, Mr. Lysak compared this to Amnesty International reporting that there were 1,032 executions worldwide, excluding China, in 2016. Amnesty International Global Report: ‘Death Sentences and Executions 2016’ (London: Amnesty International Ltd, 2017).

⁴⁸ Prosecutor Dale Lysak described the background for the changes in data concerning the combined prisoner list. He noted that, in Case 001, the Trial Chamber found there were 12,300 names on the combined prisoner list, and that Duch had mentioned the actual number may have exceeded that. Since Case 001, the OCIJ continued its work analyzing the S-21 entry records eventually determining that 15,100 prisoners were detained at S-21. Mr. Lysak then explained that the OCIJ analyst testified she relied on entry records, so the OCP searched execution records in evidence to fill in the execution dates on the OCIJ list or add them as prisoners where they were not found on the OCIJ list. The OCP identified approximately 18,000 names of prisoners and people detained at S-21 and also confirmed more than 11,000 execution dates, after the OCP found an additional 6,000 that the OCIJ analyst had missed.

⁴⁹ He noted that both Duch and Ieng Sary had testified that Duch began reporting on S-21 directly to Nuon Chea in 1977 after Son Sen was assigned to the Eastern battlefield with Vietnam; he cited a confession from 25 February 1978 with Duch’s annotation recording instructions he received from “Brother Number Two”; and, he cited an interview with Thet Sambath in *Enemies of the People* in which Nuon Chea confirmed he read confessions to “educate our cadres.”

⁵⁰ During his April 2016 in court testimony, Chum Mey was repeatedly questioned by the Nuon Chea Defense about why he had not been photographed at the prison or identified by others who were imprisoned there, going so far as to ask whether Chum Mey was “really an S-21 prisoner. For a summary of Chum Mey’s testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 51, Hearings on Evidence Week 48 (18-21 April 2016) pp 2-4.

⁵¹ These are namely that Duch was an unreliable witness, that many S-21 prisoners were actually sent to Prey Sar worksite rather than the prison at Tuol Sleng and later released rather than executed, that the number of those executed is much lower than estimated, and that Civil Party Chum Mey was never a prisoner at S-21.

⁵² United Nations General Assembly. ‘Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (adopted 10 December 1984, entry into force 26 June 1987).

⁵³ United Nations General Assembly. ‘Convention on the Prevention and Punishment of the Crime of Genocide’ (Adopted 9 December 1948) No. 1021. Article 2.

⁵⁴ The Supreme Court Chamber Appeal Judgment, recalling ICTY and ICTR jurisprudence, defined extermination as “the act of killing on a large scale.” Judgment, *Prosecutor v. Karadžić* (IT-95-5/18-T) ICTY Trial Chamber, 24 March 2016, para. 483, p. 185; Judgment, *Prosecutor v. Milan Lukić and Sredoje Lukić* (IT-98-32/1-A) ICTY Appeal Chamber, 4 December 2012, para. 536, p 178; Judgment, *Prosecutor v. Stakić* (IT-97-24-A) ICTY Appeals Chamber, 22 March 2006, para 259, pp. 86-87; Judgment, *Prosecutor v. Seromba* (ICTR-2001-66-A) ICTR Appeal Chamber, 12 March 2008, para. 190, pp. 68.

⁵⁵ The Khieu Samphan Team pointed out an apparent contradiction: the OCP had in 2013 proposed to exclude incursions into Vietnam from the scope of the case. Office of the Co-Prosecutors. ‘Co-Prosecutors’ Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A’ (5 December 2013) E301/2, para 11, p. 4.

⁵⁶ Counsel Victor Koppe listed the following CPK leaders as Vietnamese-backed interests “who worked to overthrow the CPK and legitimate DK government”: East Zone Secretary Sao Phim, Northwest Zone Secretary Ruos Nhim, Former North Zone Secretary and Commerce Minister Koy Thuon, Northeast Zone Secretary Ney Sarann alias Ya, West Zone Secretary Chou Chet alias Sy, East Zone Division Commander Chan Chakrei, Autonomous Sector 106 (Siem Reap) Secretary Sot, and Division 310 Commander Oeun. As basis for this, Counsel cited the “S-21 statement” of Koy Thuon, which has been alleged as a confession obtained under torture, but which the Defense argues did not emanate from torture or coercion.

⁵⁷ The OCP noted that at this time Office 870 only had one committee member and that was Khieu Samphan. The term *Yuon* is often viewed as a derogatory term for the Vietnamese.

⁵⁸ Trial Chamber, ‘Case 002 Closing Order’ (15 September 2010) D427, para 206, p. 55.

⁵⁹ This differs to the testimony of Expert Witness Alexander HINTON, who stated that, at first the Cham, unlike the Vietnamese, were not considered a threat by the CPK until the rebellions in late 1975. For a summary of Mr.

Hinton's testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue No. 47, Hearings on Evidence Week 44 (14-17 March 2016) pp. 1-5.

⁶⁰ Expert Witness Ysa Osman testified on the treatment of the Cham and the three Cham rebellions in Koh Phal, Svay Khleang and Treang Village. For a summary of his testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue No. 43, Hearings on Evidence Week 40 (9-10 February 2016), pp. 1-5; CASE 002/02 KRT TRIAL MONITOR, Issue No. 48, Hearings on Evidence Week 45 (21-24 March 2016) pp. 3-5.

⁶¹ The Stakić Appeal Judgment states: "In genocide cases, the reason why the accused sought to destroy the victim group has no bearing on guilt." Judgment, *Prosecutor v. Stakić* (IT-97-24-A) ICTY Appeals Chamber, 22 March 2006, para 45, p. 18.

⁶² Prior to the SCC's final decision on severance, the LCLCP argued for the inclusion of the treatment of Buddhists on a nationwide basis in Case 002/02, not only at Tram Kak Cooperatives. The Trial Chamber instead decided to limit the scope to only the cooperatives on the grounds that it "reasonably reflects the scale and nature of the alleged acts while maximizing the efficient hearing of the topic." SCC Severance Decision, p. 17.

⁶³ Although annexes are usually confidential, two of the annexes to the OCP's Closing Brief were published on the ECCC's website on 23 May 2017. Annex E is the chart of witness evidence relating to the elimination of Buddhism in each zone in DK throughout Case 002, nine of whom testified in relation to Tram Kak.

⁶⁴ National Co-Prosecutor Chea Leang said that Witness Sao Sarun, the former secretary of Sector 105, who testified on 29 and 30 March 2016, had testified that both Nuon Chea and Pol Pot spoke about closing pagodas. Nuon Chea's Defense Counsel Victor Koppe disputed this claim, saying Sao Sarun had only mentioned that the reopening of markets had been discussed at the meeting. This is corroborated by our report summarizing Sao Sarun's testimony, see: CASE 002/02 KRT TRIAL MONITOR, Issue 49, Hearings on Evidence Week 46 (28-31 March 2016), pp. 4-6. The National Co-Prosecutor also argued Pech Chim had attended the meeting and saw Ta Mok's daughter Yeay Khom, the leader of Tram Kak District, also attending.

⁶⁵ SCC Severance Decision, p. 6.

⁶⁶ For a summary of Soy Sen's testimony, see: See CASE 002/02 KRT TRIAL MONITOR, Issue 7, Hearings on Evidence Week 4 (2-6 February 2015), p. 8 and CASE 002/02 KRT TRIAL MONITOR, Issue 14, Hearings on Evidence Week 11 (24-26 March 2015), pp. 3-4.

⁶⁷ Counsel Chen cited the interview from the documentary film *Enemies of the People* in which Nuon Chea is shown to discuss the killings of former Lon Nol soldiers with filmmaker Thet Sambath, saying: "If I had known then, we would have taken preventative measures to stop that kind of killing because they'd done nothing wrong. They were normal soldiers."

⁶⁸ The OCP later described the witnesses who testified on this topic. They said that, in Case 002, a total of 54 trial witnesses and 131 witnesses who gave written records of interview provided evidence of forced marriage and rape within them. In particular, 27 witnesses testified in court that they personally were forced to marry while 59 people provided this same evidence to the OCIJ [in written records of interview]. In addition, 22 people testified to personally witnessing other forced marriages and an additional 52 people provided evidence to the OCIJ [in written records of interview] that they personally witnessed a forced marriage. During the Khieu Samphan Team's presentation, Counsel Kong Sam Onn argued that 22 Civil Parties and witnesses testified on marriage and only 6 said they had been forced, while 12 said they had not been forced.

⁶⁹ Counsel did not refer to the specific ICTY case that supports this point during her oral arguments.

⁷⁰ Counsel Chen stated that, in 1974, 45% of countries in the world had population control policies, although it was not clear on what this number was based.

⁷¹ The Sixth Revolutionary Principle states that to arrange a marriage: "First, both parties must agree. Second, the collective must agree. And then it is done." It further stipulates: "Do not behave in any way that violates females" which the Nuon Chea Defense argues is a prohibition on rape but which the LCLCP and OCP argue instead legitimizes sexual violence within marriages.

⁷² Defense Counsel Liv Sovanna also argued low-level cadres who testified said there was no policy to monitor new couples to ensure they consummated their marriages. He cited expert witness Peg LeVine's study saying 70% of her 192 respondents said there was no monitoring.

⁷³ Kong Sam Onn, for the Khieu Samphan Team, also made the point that marital rape has only been recognized as a crime relatively recently in most countries around the world and is still rarely prosecuted.

⁷⁴ The oft-cited quote is: "The man always wants to choose a beautiful girl, and that is why we forced them to get married and Angkar chose the wife." Nuon Chea's Defense argue that there is no recording of Nuon Chea saying this and that Nuon Chea was not permitted to review the book prior to publication, arguing that there is no evidence other than Thet Sambath's word that he actually said this.

⁷⁵ Defense Counsel Liv Sovanna cited expert witness Kasumi Nakagawa's testimony in support of this, as she said pre-DK marriages were the decision of the family, not the individual, and particularly not the young woman. Counsel told the Chamber dramatically: "What the Co-Prosecutors and Civil Party Lawyers are asking you to do is rule on arranged marriage. To rule, in other words, on Cambodian culture." Again without indicating the source, he said that, in 1983, 92.5% of marriages around the world had "an arranged marriage element."

⁷⁶ Counsel Guissé cited the Popović Appeal Judgment from the ICTY to support this argument, citing: "The Trial Chamber correctly stated that "[n]ot every denial of a human right is serious enough to constitute a crime against humanity." Judgment, *Prosecutor v. Popović* (IT-05-88-A) ICTY Appeals Chamber, 30 January 2015, para 761, p. 264.

⁷⁷ Nuon Chea's Counsel Liv Sovanna had previously referred to this case at the Special Court for Sierra Leone, saying it defined forced marriage as requiring three elements: "abduction, detention and the use of women for sexual and other purposes" and arguing: "None of these characteristics are seen in our case."

⁷⁸ Article 16 reads: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family... Marriage shall be entered into only with the free and full consent of the intending spouses..." United Nations General Assembly, 'Universal Declaration of Human Rights,' Article 16, (10 December 1948)

⁷⁹ Judgment. *Prosecutor v. Jean-Paul Akayesu* (ICTR-96-4-T) ICTR Trial Chamber, 2 September 1998, para. 598 defines rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."

⁸⁰ For summaries of the statements of both Nuon Chea and Khieu Samphan in the Case 002/01 Closing Statements see: CASE 002/01 KRT TRIAL MONITOR, Issue No. 72, Hearing on Closing Statements Week 3 (28-31 October 2013) pp. 8-11.

⁸¹ Nuon Chea, like Khieu Samphan, did appear in court to hear the appeal judgment in Case 002/01, announced by Kong Srim, President of the Supreme Court Chamber, on 23 November 2016. This was the most recent occasion he appeared in the courtroom, however, this related to Case 002/01, not the current case.

⁸² A further four have yet to secure full funding. The LCLCP have requested the Trial Chamber consider these projects if funding is secured by 30 November 2017. *Ibid*, para 59, p. 27. The final request for reparations in Case 002/02 was filed by the LCLCP on 30 May 2017. See: Civil Party Lead Co-Lawyers. 'Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes' (30 May 2017) E457/6/2/1

⁸³ See Internal Rule 23quinquies(3)(a) and (b)

⁸⁴ Judgment. *Prosecutor vs. Thomas Lubanga Dyilo* (ICC-01/04-01/06 A 5) ICC Appeals Chamber, 1 December 2014.

⁸⁵ These projects are: (1) "App-Learning Khmer Rouge History," developed by Bophana Audiovisual Resource Center under an agreement with the Ministry of Education, Youth and Sport (**MoEYS**), and sponsored by the European Union (**EU**) and Rei Foundation; (2) "Khmer Rouge History Education through Teacher and University Lecturer Training and Workshops," developed by the Documentation Center of Cambodia (**DC-Cam**) and approved by the MoEYS. It was fully funded by the EU; and, (3) "The Turtle Project" of the Cambodian-German Cultural Association and Khmer Art Action, which promotes historical awareness and civil courage in Cambodia. The project is also supported by the MoEYS and was funded by the Institut für Auslandsbeziehungen of the German Federal Foreign Office and the EU.

⁸⁶ These projects are: (1) "Community Media Project: The Cham People and the Khmer Rouge," developed by the Cambodian-German Cultural Association for the benefit of Cham Civil Parties, financially supported by the Embassy of Switzerland in Bangkok and the Heinrich Böll Foundation; (2) "Phka Sla Kraom Angkar", a joint collaboration of Kdei Karuna, Transcultural Psychosocial Organization, Khmer Arts, and Bophana Center, was a traveling dance performance and mobile exhibition on forced marriage in DK. It was funded by the Swiss Development Cooperation, the German Ministry for Economic Cooperation (**GIZ**), and USAID; and, (3) "Voices from Ethnic Minorities" project, developed by Kdei Karuna to promote awareness about the treatment of the Cham and Vietnamese during DK through intergenerational dialogues. It was funded by the German Civil Peace Service and the Swiss Embassy in Bangkok.

⁸⁷ These projects are: (1) "Unheard Stories of Civil Parties Participating in Case 002/02 at the ECCC," designed by the Cambodian Human Rights Action Coalition (**CHRAC**) with the aim to produce a book of untold Civil Party stories. The project was funded by Heinrich Böll Foundation; (2) "A Time to Remember Song-Writing Contest," organized by Youth Resource Development Program in 2016 to involve youth and funded by the Civil Peace Service of GIZ; (3) "Memory Sketches of Kraing Ta Chan," which was fully implemented by Youth For Peace and the Peace Institute for Cambodia in order to create an exhibition of memories. It was fully funded by International Coalition of Sites of Conscience; and, (4) "Access to Judicial Records of the Khmer Rouge Trials and Civil Party Materials at the Legal Documentation Center" aims to make accessible the full list of civil parties in Case 002 and all oral testimonies and public documents. The project is fully funded by the Royal Government of Cambodia.

⁸⁸ Pich Ang presented this project related to rehabilitation: a project on trauma-healing funded by the United States Agency for International Development (**USAID**) and run by the Transcultural Psychosocial Organization (**TPO**) and Kdei Karuna.

⁸⁹ Trial Chamber. 'Guidelines for Closing Statements in Case 002/02' (7 June 2017) E457/7.

⁹⁰ The use of evidence or confessions that may have been obtained through the use of torture has been a persistent issue throughout Case 002/02, particularly during the segment on security centers and internal purges. The Defense, particularly the Nuon Chea Defense, repeatedly attempted to rely upon such "confessions" to make their case. In February 2016, halfway through Case 002/02, the Trial Chamber issued a decision permitting the use of evidence obtained through torture only as proof that such a statement was made and not for the truth of its contents. The Chamber further ruled that such documents originating from S-21 were presumed to have been produced under torture and that the Chamber would assess on a case by case basis if this were not the case. Trial Chamber. 'Decision on Evidence Obtained Through Torture' (5 February 2016) E350/8.