

Nuon Chea's Defense Team Responds to Prosecution's Key Document Presentation

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On Monday, July 8, 2003, the Extraordinary Chambers in the Courts of Cambodia heard the response of Nuon Chea's defense team to the documents presented by the prosecution in their Key Document Hearing, which took place during the week of June 24, 2013.

All parties were reported to be present, with the exception of Nuon Chea, who observed the proceedings from his holding cell due to his ongoing health conditions.

Before the response to documents began, Trial Chamber President Nil Nonn issued to stern reprimand to Arthur Vercken, international co-lawyer for Khieu Samphan. He told the court that at the close of proceedings on July 4, 2013, Mr. Vercken had shouted angrily at the bench and remained seated as the judges left the courtroom. This, the president said, fell way below the standards of professionalism expected of lawyers before the court and is a bad example to other, more junior counsel. Mr. Vercken was issued an official warning in accordance with ECCC Internal Rule 37.1.²

Mr. Vercken's request to reply to this reprimand was denied, so the defense counsel told the court that he would find a time to express himself in due course.

Assistant Prosecutor Dale Lysak also raised a preliminary question about the use of trial transcripts by the Nuon Chea team. This, he said, was a method not used by the prosecution. He told the court that if the Nuon Chea team wished to use key document hearings to highlight testimony, then there would be an objection from the prosecution.

Nuon Chea's Defense Presents Key Documents

Victor Koppe, international co-lawyer for Nuon Chea, began the response to the Key Documents that had been presented by the prosecution and civil parties. Introducing his team's aims, Mr. Koppe said that over the next day and a half, the defense would address the five policies that formed an alleged Joint Criminal Enterprise (JCE) and then the role of his client in Democratic Kampuchea (DK). Nuon Chea would himself make a statement in the last hour of their allocated time.

Before turning to the substance of the documents, Mr. Koppe opened with comments on the scope of the trial. This was a topic that had already been the subject of objections from the Nuon

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

² ECCC Internal Rule 37.1 states, "Where, in the view of the Chambers, any person is disrupting the proceedings, they shall first issue a warning. In cases of continued disruption, the Chambers may order the person disrupting the proceedings to leave or be removed from the courtroom or the premises of the ECCC and, in case of repeated misconduct, may order the exclusion of that person from attending the proceedings."

Chea defense team, as well as an addendum to an appeal in the Supreme Court Chamber. Today he argued that there was a distinction between evidence on the existence of policies and evidence of their implementation. The prosecution and Civil Parties had strayed over this line, both knowingly and deliberately, Mr. Koppe asserted. In order for Nuon Chea to have a fair trial, he continued, the evidence regarding the implementation of policy must be accorded no probative value. Otherwise, these documents would end up in the pool of evidence being considered by the court, which they should never have been allowed into, according to Mr. Koppe.

Mr. Koppe said he did not dispute that to some degree, evidence of the implementation of policy is conducive to showing that policies existed. However, he contended, the court's approach had been to only allow documents on implementation and not "live" witness evidence. Mr. Koppe argued that the court should ask itself a simple question: if a question to a witness raised the same issue that the documents it was looking at did, would that question be admissible? If not, then the document should not be allowed into evidence either.

The defense counsel stressed that on the facts of the case this distinction was important, as Nuon Chea does not dispute he was a DK senior figure who formulated policy but does deny that he formulated policies to commit crimes. It was accepted by the defense that there is overwhelming evidence of local cadres committing criminal conduct, which varied hugely from place to place. In evaluating the evidence before the court, Mr. Koppe argued, attention had to be paid to what was said by the party center, leading the court to the conclusion that the CPK had no intention to commit criminal acts, merely create a socialist revolution.

Mr. Koppe highlighted that the prosecution had said that "this is not a political trial in which the accused are being prosecuted because they are revolutionaries, socialists, or communists." This, he told the court, was false, and the prosecution had "systematically failed" to show criminal intent in the party center.

Moreover, he continued, secondary sources, such as the books of Ben Kiernan referenced by the prosecution, were written a long time after the events they describe. As a lawyer, Mr. Koppe said, he found the reliance of such texts before a court as unacceptable and not in accordance with the way a trial should be conducted. Excerpts from books by Philip Short and Mr. Kiernan concerned the acts and conduct of the accused, which was not something the court should be hearing expert opinion on. By way of contrast, he stated that expert opinions on the demographics were more acceptable. Opinions on conduct derived from unattributable sources would not be admissible in a sworn statement of a witness, he argued, and there is no reason why they should be admissible from an expert.

With regard to the writing of Thet Sambath, little weight should be given to the excerpts quoted by the prosecution, as their origin was unclear, Mr. Koppe contended. The volume they were contained in had excerpts from Mr. Sambath's original interviews with Nuon Chea, the manuscript of Nuon Chea's book that was given to Mr. Sambath, and the author's own conclusions. Further, the defense counsel concluded, Mr. Sambath had not himself testified before the court.

Policies Regarding the "Enemy"

Turning to the Communist Party of Kampuchea's (CPK) alleged policy of "eliminating through the use of violence all enemies of the CPK," Mr. Koppe proceeded to examine documents that

had been presented to the court by the prosecution. He declared that he would demonstrate that they contain political arguments and do not show intent to commit crimes. Mr. Koppe went so far as to assert that these documents are illustrative of legitimate goals that are not different from the legitimate goals of every other country in the world.

The first documents were secondary sources, including the books of Mr. Short and Mr. Sambath, which described the communist and revolutionary literature read by top leaders of the Khmer Rouge. The prosecution argued this reading formed the foundation of later crimes. However, Mr. Koppe stressed that these books have been read by literally millions of people. The story is more complicated than that which the prosecution presents, he asserted. Mr. Short himself accepted that the readings were not in themselves conclusive, Mr. Koppe said; however the author still claimed they were formative. Mr. Koppe questioned how Mr. Short could know what the future leaders were thinking. This, Mr. Koppe claimed, demonstrates the way Mr. Short comes to conclusions throughout his book, and this signifies a systemic flaw in his reasoning.

Next the use of the *Revolutionary Flag* magazine was questioned. The court heard that the Nuon Chea team had been appalled by the “manipulation” of this source and that they had been portrayed in a manner that did not give a truthful interpretation of their true meaning. The prosecution had thus “distorted” the meaning of the documents to their own ends, Mr. Koppe told the court, which was not fitting behavior of officers of a civil court.

Turning to a passage read during hearings by the prosecution on the need to liberate Cambodia, Mr. Koppe reminded the court that this was followed by a quote on class contradictions and a quote on the contradiction of landowners and peasants, as well as a section on how these were life and death contradictions, which the people had to be “whipped up” to tackle. However, in a subsequent part of the same document, not read to the court by the prosecution, Mr. Koppe continued, it was written that these contradictions should be reconciled peacefully between the workers and the landowner class.

Similarly, on the suggestion that religion had perpetrated class differences, Mr. Koppe argued that this was something that hundreds of professors in western universities would agree with.

At this stage, Mr. Lysak objected to the characterization of the prosecution’s case by the defense. In addition, he argued that Mr. Koppe was presenting both testimony and a commentary in his own right, which he claimed was not acceptable. In response, the defense counsel said this was the nature of a defense case and he could not see anything he could be doing differently.

Resolving the issue, Judge Cartwright stated that the Trial Chamber is not treating this as an objection and did not wish to interfere with how the defense uses documents. However, she did remind the parties that statements made that are not based on documents or evidence will be afforded little weight by the bench.

Going back to the issue of the *Revolutionary Flag*, Mr. Koppe highlighted that the prosecution had quoted an issue that said two enemies had to be fought: U.S. imperialism and the feudal class. However, the next sentence of that document had suggested that all “forces” had to be gathered up to form part of the revolution, including the petty bourgeoisie and capitalists. Mr. Koppe argued that the rest of the document was on the need to reconcile contradictions in a mutually beneficial way and that at the end of the document, it was written that the petty

bourgeoisie are the allies of the workers and that the national capitalists could become allies also. Read together, he submitted that the revolution was an alliance of many parts of society, which were to work together against a landowning class.

Turning to the references in the documents presented by the prosecution to “revolutionary violence,” Mr. Koppe claimed these to be irrelevant. He said that every revolution could use violence in a civil war against a colonial power – which the Lon Nol regime surely was. A quote was read out that showed the CPK had defeated the enemy by 1975. Thus, he asserted, their intention had been to change a system, which they had succeeded in by 1975.

When it came to “grasping the people,” Mr. Koppe suggested this meant informing the people of what the revolution was about and getting them on its side.

With regards to three further issues of the *Revolutionary Flag* magazine, which had been quoted by the prosecution, Mr. Koppe reminded the court that two of these were from 1977 and one from 1978. As such, they could not be considered as having probative value to the issues central to case 002/01, which primarily occurred in 1975. The increasing harshness of the language used in these passages, which were not read to the court, was symptomatic of the country going to war, Mr. Koppe stated.

The next topic was documents relating to an explosion in Siem Reap. Mr. Koppe argued that these documents, which included reports of arrests and suspects, were in no way exceptional. They merely showed interrogations were taking place after a major explosion and that reports of their findings were being sent to the central party.

All references to “smashing” the enemy lacked descriptions of any harm actually being done, the defense counsel continued. The word “smash” is made in a number of contexts, he contended, and as such it couldn’t be assumed that the word has violent connotations.

He also asserted that it was no secret that the Khmer Rouge, like many communist regimes, did not approve of religion. However, documents relating to the fall in the number of pagodas did not demonstrate criminal conduct, he argued, but rather approval that the monkhood was in decline and integrating into society.

The prosecutor’s final documents on this subject had been on issues of implementation, the admission of which, Mr. Koppe argued, were in contravention with the practices of the last 20 months and to consider these documents would be a breach of Nuon Chea’s rights of confrontation. Any documents Mr. Koppe did not talk about before the chamber should automatically be presumed to be out of scope, he averred.

Nonetheless, the defense counsel did tackle Pol Pot’s claim that “no matter how we do things, if the imperialists are alive, they will continue to oppose the revolution,” claiming that it was just general political rhetoric and should be taken in context. This context was the opposition of other world governments to the CPK regime, rather than an internal enemy, he said, as the speech goes on to explain how China and Russia had faced isolation in their early days. Mr. Koppe stressed that any state would fail if it wasn’t defending itself against overt and covert threats, and the defense envisaged by the Khmer Rouge was to come about through education, not violence. The orders to smash spies and saboteurs was not an order to kill anyone, according to the Nuon Chea

defense team, as Pol Pot himself described the aims of the external enemies as to “smash the revolution”; therefore the term “smash” must have a metaphorical meaning, Mr. Koppe argued.

Mr. Koppe further asserted that the telegrams received by Nuon Chea about arrests did not demonstrate that the accused had a role in attacking enemies. Noting that the earliest of these telegrams came two years after Tuol Po Chrey and that they merely showed receipt of reports rather than action taken by Nuon Chea, the defense counsel asserted that they had no probative value and were outside of the scope of case 002/01.

Following a short morning adjournment, Mr. Koppe continued to discuss the documents that had been presented by the prosecution on the Khmer Rouge’s treatment of the enemy. He attempted to establish the global context in which rhetoric concerning enemies takes place. In doing so the defense counsel tried to read a number of quotes to the court; however, as he began to quote George W. Bush on “finding the enemy and smoking them out,” the prosecution successfully objected on the grounds that the quote did not come from evidence before the court. Clearly disappointed, Mr. Koppe remarked, “That’s a pity, I had some nice quotes for you actually, but my point was that the US had done the same recently and during the time of the Japanese internment.” Nevertheless, he agreed to move on.

Policies on the Targeting of Lon Nol Officials

Next, Nuon Chea’s defense “vigorously disputed” the prosecution’s argument that there was a policy of targeting Lon Nol soldiers and officials. Setting forth his argument, Mr. Koppe said he would first offer general observations on the limitations of the evidence before the chamber and then go through the documents that the prosecution presented, showing the general weaknesses that applied. Finally, he stated, he would establish his own analysis, showing the prosecution’s documents to be chronically unreliable and lacking in substance.

Mr. Koppe argued that what the evidence did not include was itself illustrative of failings in the prosecution’s case. Not a single piece of physical evidence showing a single soldier had been killed had been included in the prosecution’s case - there were no forensic exhibits. This, Mr. Koppe argued, was not standard procedure in war crimes tribunals. He juxtaposed the evidence before the International Criminal Tribunal for the former Yugoslavia (ICTY), before which there had apparently been ample forensic evidence. Further, there was not a single witness able to identify the killer of a single soldier. Mr. Koppe told the chamber that in a domestic court, it would be difficult to obtain a conviction with no body and no witness; it should be no different in an international court.

Further, Mr. Koppe maintained that in both the witness statements and the key documents themselves there was a systematic flaw – none talk about killings. Victims are allegedly separated, or taken away, or sent to Angkar; however, he stated, there is no evidence of actual executions. The chamber was being urged to believe that because people were targeted by the Khmer Rouge, they were necessarily killed, which, he argued, could not properly be inferred from the evidence before the chamber.

In order to support this argument, Mr. Koppe attempted to put three examples before the court. The first of these examples was a passage of the evidence of Nou Mao, who testified before the

chamber on June 19 and 20, 2013.³ However, the prosecution successfully objected on the grounds that testimony was not a key document. As such Mr. Koppe was only able to give his final two examples.

Mr. Koppe's second example was from a telegram presented by the prosecution, which stated that soldiers were purged and sent to work. The prosecution had asked the chamber to believe that "purged" meant "executed"; however, Mr. Koppe argued, this was clearly not the case, as according to the telegram soldiers were sent to work and could not be dead.

Thirdly, according to Philip Short's work, factory workers were split from the population during the evacuation of Phnom Penh, and many had assumed them to have been killed. However, in actual fact, Mr. Koppe recounted, Mr. Short claimed they had been taken to factories in Phnom Penh in order to resume production.

Mr. Koppe argued that in reality there were actually orders issued by the Khmer Rouge leadership not to kill or hurt captured Lon Nol soldiers. He made reference to witness statements directly discussing this, which he said contradicts the second-hand evidence from the prosecution.

Introducing a personal touch to the day's proceedings, Mr. Koppe informed the court that when the prosecution had claimed to be addressing the Nuon Chea's defense team question of where the evidence is that the party center was in control of a CPK execution policy, he had personally felt pleased that the prosecution was listening to his case. However, he had been disappointed by what they had presented.

Moving on, the defense counsel argued that the *Revolutionary Youth* and the *Revolutionary Flag* issues that had been shown to the court could not be conducive as an indication of policy. Further, he argued, they had been used deceptively by the prosecution. The first document was on the feudalist and capitalist classes, defining the capitalist class as to include everyone from the monarchy to the lowly clerk. However, Mr. Koppe asserted, the prosecution had skipped a page where it was said that "we must persuade them" to join the revolution and eliminate their prior ideology. Similarly, with regard to the feudalist landowner class, it is said that they should not be attacked constantly but rather persuaded to join the front rank. The prosecution skipped this crucial page, Mr. Koppe stated, and then cited only part of a quote identifying students as a capitalist class. He contended that if the prosecutor had read more, it would have become clear that the intellectuals were seen as peaceful and not oppressive of the other classes but that their primary problem was that they were afraid of hardship.

From an interview of Ieng Sary, the prosecution had also stated that Ieng Sary had identified three groupings: on the far right, the likes of Lon Nol, in the center Sihanouk who supported genuine independence, and on the left, the likes of Khieu Samphan. Mr. Koppe argued that this quote had nothing to do with the current trial. Further, it was a vague political analysis – "it is almost as if the prosecution is forgetting that Ieng Sary was himself the leader of a movement fighting a war against Lon Nol." In the circumstances this is mild language, the defense counsel averred. Finally, Mr. Koppe argued that there is little doubt that Lon Nol was a puppet of the

³ Cambodia Tribunal Monitor's reports on Mr. Mao's testimony may be found at <http://www.cambodiatribunal.org/blog/2013/06/former-khmer-rouge-cadre-testifies-phnom-penh-evacuation-plans> and <http://www.cambodiatribunal.org/blog/2013/06/confusion-abounds-continued-testimony-former-cadre>.

United States and was very corrupt and that the only interesting thing in the quote was that Sihanouk is seen as a being a central and patriotic figure. Mr. Koppe concluded that it is hardly surprising that Ieng Sary saw Lon Nol as a traitor as he had given tacit consent to the obliteration of the Cambodian countryside by the United States.

Turning to the topic of the so-called “seven super-traitors,” who were Lon Nol regime senior leaders whom the Khmer Rouge had declared would be killed, Mr. Koppe maintained that if the documents shown by the prosecution do exhibit a desire to kill them, these documents must also be deemed as reliable when they show an intention not to kill the other captured soldiers.

Describing the Lon Nol leaders, Khieu Samphan had purportedly said that the supreme committee did not represent the interests of any but a few people and that “all brothers and country men in Phnom Penh should unite their strength to overturn this treacherous institution.” However, Mr. Koppe argued, the meaning of this was clear. Accordingly, Khieu Samphan’s reference to “all brothers and country men in Phnom Penh” refutes the claim that inhabitants of the cities were believed to be enemies.

Mr. Koppe conceded that the next document to be presented to the court was the prosecution’s strongest evidence, namely an order to execute 17 specific people. However, he continued, what the document did not show was who gave the order or who received it. The claim that the order had come from “Angkar” was irrelevant, Mr. Koppe argued, as the term was used to refer to more than just the upper echelons of the party. Further, he maintained that the decision to kill these individuals could not have been based on their military status, as the document mentions an examination, which would not have been necessary if there was a policy to kill all soldiers regardless of their backgrounds and actions. If this document had been one of many similar documents that demonstrated widespread killing of Lon Nol soldiers, Mr. Koppe said, he could accept that such a policy as the prosecution alleged did exist; however as it did not, he refused to accept that the prosecution had shown the existence of such a policy.

Still on the topic of the treatment of Lon Nol officials and soldiers, Mr. Koppe raised a news article from the French press, which reported the executions of 54 generals. He argued that the prosecution’s reliance on news reports was symptomatic of a lack of stronger evidence and that the French article in question was especially lacking, as it did not name its sources. Further, he said, it did not make sense, as the list of generals was reported to be sent to foreign governments. Rhetorically, Mr. Koppe asked the court why the Khmer Rouge would send such a document. Further, he questioned, if it had been disclosed to other government, why wasn’t the list available from any of them?

Moving on, three S21 prisoner lists, which allegedly document the executions of 328 soldiers, were examined. According to Mr. Koppe, this number would have totaled 2.5 percent of the population of S21. From the lists, he argued, there was allegedly no indication that the reason these people were sent to S21 was because they were Lon Nol soldiers. Further, he said, documents showed that it took 11 months before certain soldiers were killed, and thus, there could not have been a clear policy to kill soldiers straight away.

After the lunch break Mr. Koppe turned to another issue of the *Revolutionary Flag Magazine* that, the prosecution had argued, contained instructions to execute former Lon Nol soldiers who were in positions of power within the communes. First Mr. Koppe argued that as this document

was written two years after the events of Tuol Po Chrey, it could not be regarded as of probative value with regard to the events that allegedly occurred there. Secondly, Mr. Koppe stated, the article contained no instruction or orders to hurt or kill anyone. He maintained that three unrelated excerpts had been tied together by the prosecution and that on a holistic reading, the reference to soldiers was just one example of a non-worker class in control of a commune. According to Mr. Koppe, it is clear from the rest of the document that the other classes are not necessarily regarded as being “antagonistically” against the revolution.

Moving on, Mr. Koppe tackled a number of documents the prosecution had exhibited that documented the identification of former Lon Nol soldiers in power. He accepted that these documents proved that two soldiers had been arrested; however, he stated, they did not demonstrate that either had been executed.

Nuon Chea’s defense present key documents on the targeting of Lon Non soldiers

Turning to the presentation of documents for the Nuon Chea defense, Mr. Koppe claimed that he would show that there was consistent testimony that Lon Nol soldiers were unharmed and that the prosecution’s argument that execution was widespread is “systematically unreliable.”

The initial document he presented was an excerpt from the documentary “One Day in Tuol Po Chrey.” Nuon Chea was interviewed within the documentary and asked to explain the Khmer Rouge’s policy towards Lon Nol soldiers after the revolution. He replied that as far as he was aware the soldiers were to be ordered to surrender their weapons and return home. When asked what happened to the top four Lon Nol leaders, Nuon Chea informed the interviewer that “they were to be liquidated.” Nuon Chea also claimed that if he had known about the killing of Lon Nol soldiers after the revolution, he would have taken preventative measures.

Mr. Koppe reminded the chamber that the prosecution believed Nuon Chea to be honest in this video, having introduced a number of statements from it. In this video he denied that he was involved in such a policy to kill Lon Nol soldiers, which the defense claimed to be corroborated by other documents. For example, the counsel stated, in Ben Kiernan’s book a meeting is described in which the leaders “did not say ‘kill,’ they said ‘scatter’ the people of the old regime, scatter them away and don’t allow them to remain in the framework. It doesn’t mean kill.”

An argument subsequently ensued as to whether or not it was permissible for the defense team to cite from one of its own motions. It was quickly held that the defense was not permitted to quote from such a document, and Mr. Koppe was asked to move on.

Acknowledging that he had previously told the court that he would simply be responding to the other side’s key documents, Mr. Koppe requested to place his own documents before the court, which Judge Cartwright affirmed he could. So he turned to a witness statement from Mr. Phi Phoun, in which the witness had been asked if there were orders to attack Lon Nol Soldiers. The witness replied that there were strict orders not to touch them or hurt them as they had surrendered and “were Cambodians.” As Mr. Short had identified only one source aware of a policy of execution and that source had been Mr. Phoun, Mr. Koppe submitted that this statement was highly significant.

Next, Mr. Koppe told the court that his team had identified 100 instances where the prosecutors, civil parties, and OCIJ had claimed there were testimonies of a policy of killing Lon Nol

soldiers. Mr. Koppe told the court that in not one of those documents did a witness testify to seeing an execution. If not one in 100 had seen an execution, Mr. Koppe asked, what had their statements said? Answering his own question, he explained that some said they saw soldiers separated but do not know what happened to them. Other witnesses said they saw dead bodies of soldiers shortly after April 17, 1975. However, he asserted, this was not probative as it followed a war.

Concluding his argument on the treatment of Lon Nol soldiers, Mr. Koppe stressed that if the chamber is to accept evidence, which Nuon Chea's defense argued is inadmissible, then the Nuon Chea defense team urged the chamber to remember its prior holding that evidence would be awarded no probative value if it was not challenged in adversarial proceedings. Summarizing, Mr. Koppe described the evidence of systematic killing of Lon Nol soldiers as "non-existent."

The Issue of Forced Marriage

On the subject of forced marriage, Mr. Koppe first addressed the closing order, as the order itself related to regulation of marriage and specifically the forcing of people to marry. The prosecution had argued that this policy had been implemented because it furthered the goals of the revolution. The question to be asked, according to Mr. Koppe, was why the policy was not advertised loudly, as in the past, the Khmer Rouge had been clear as to its goals. The prosecution wanted the court to accept that just because forced marriage occurred, there was a policy, he contended.

However, he continued, the evidence that forced marriage had occurred was outside of the scope of the trial, leaving only theoretical documents available to the court. The prosecution had first shown a document that related to increasing the population to 15 to 20 million. However, no mention was made of forced marriage in any of the documents raised, Mr. Koppe said; rather, the documents instead talk about raising the population through increasing living standards. This, he stated, was supported by the documents, including a speech by Ieng Sary, which he quoted. He then characterized the prosecution as "turning water into wine," trying to draw proof of policy from vague ideological statements.

A quote was read to the court from a copy of *Revolutionary Youth*, in which a young person said the DK regime was his new family. This, the defense argued, was not of probative value. It was said that the prosecution was suggesting people think of the party as their family rather than their biological relatives. Mr. Koppe argued it only showed the CPK saying it would protect its people in their time of need.

Following a break, Mr. Koppe moved briefly off topic for to wish his client a happy birthday, as Nuon Chea had turned 87 on the preceding day.

Returning to the subject of documents, he cited a Khmer Rouge article in which it was stated that "back in the old society before liberation, many youths adopted the world view of the oppressor class." They seek out self-interest through setting up families for their own well-being, rather than the good of society as a whole. A second extract urged the reader not to jump "helter-skelter in a rush" into a relationship. Mr. Koppe argued that the fact this advice was being given showed that people were being able to choose their own spouse. This merely demonstrated that the party was concerned whom people married, which, as Mr. Koppe told the court, so was his mother. "But that doesn't mean I had an arranged marriage," he retorted.

Mr. Koppe also read a quote from Ieng Sary in which he claimed people would now be free to marry. The prosecution had argued this showed that prior to that point people had not been free to do so. Dismissively, Mr. Koppe argued that no such inference could be made and that this was no proof of policy.

Defense Discusses Cooperatives

Mr. Koppe accepted that whether a policy existed to create cooperatives was a key question. Evidence, such as party minutes should be admissible on this area, he said; however, evidence as to the implementation and the situation on the ground was not admissible. He went on to say that if the chamber is to make a finding on cooperatives, it must be with regard to direct evidence on the criminal intent of the party leaders. No document so far had demonstrated such intent, he contended.

Collectivity in itself is not illegal, he continued. Maintaining that the chamber was being asked by the prosecution to infer criminality, Mr. Koppe argued that the documents presented by the prosecution actually showed that there was a desire to feed the nation and lift it up economically.

The minutes of Standing Committee meetings that had been presented by the prosecution failed to show a “smoking gun,” the defense counsel argued; rather, they showed that the party felt the rice production was on target, considered a site of an airport, and suggested more salt needed to be made. While the prosecution may argue that the targets set by the central party were unrealistic, he stated, they did not show that the leader felt them to be unreasonable.

Mr. Koppe also asserted that documents that demonstrated the aims of collectivization merely support Nuon Chea’s argument that the main aim of the regime was the production of food. In addition, he argued, there is nothing criminal about using a social structure as security and protection; every human society had organized itself for security, and the mere mention of the word “security” was not synonymous with the targeting of people. Issues of the *Revolutionary Youth* magazine stated that the cooperative was responsible for educating and accommodating the 2 million liberated from oppression. A further document showed that the aim was that the workers would be in control and not exploited. According to Mr. Koppe, neither of these aims was to be considered illegitimate or illegal.

Providing his final remarks on forced transfer, Mr. Koppe accepted that Nuon Chea did take part in formulating the policy, which led to the evacuation of Phnom Penh. The primary dispute before the court was whether this is a criminal policy, he stated, arguing that the prosecution was incorrect in their claims that all city dwellers were seen as enemies. And, to the extent that crimes were commuted, he concluded, there was no evidence that Nuon Chea ordered such acts.

Son Arun addresses Nuon Chea’s role in Democratic Kampuchea

At this stage Mr. Koppe handed over to his fellow co-lawyer for Nuon Chea, Son Arun. Mr. Arun began by acknowledging that Nuon Chea accepted and was proud of his role in education and as Deputy Leader of the CPK. However, the accused denied that he had a role in security affairs or acted as Duch’s superior, and he was “baffled” by the persistent allegation that he was for a year the acting Prime Minister of the DK government.

A substantial part of the prosecution's argument had been focused on these areas, Mr. Arun said, and so he would also focus on them. Like Mr. Koppe, he told the court that he would not be presenting a comprehensive response but rather a broad outline.

Having said that he would be addressing Nuon Chea's role, Mr. Arun proceeded to complain that on numerous instances Nuon Chea had asked for access to original documents, which were being used against him, and on a number of instances these requests had been denied. "With respect, these requests were reasonable," Mr. Arun told the court. Predictably, the prosecution interjected at this stage and argued that this was not the time for legal submissions. This objection was affirmed by the president; however Mr. Arun remained on this topic, to the frustration of the chamber, which eventually forced him to move on.

Mr. Arun next discussed Nuon Chea's role, specifically addressing the argument that Nuon Chea was acting prime minister for a time. He noted that the prosecution had not argued that Nuon Chea took any extra responsibilities as Prime Minister. Stating that Nuon Chea never disputed his position as deputy secretary of the CPK, Mr. Arun again stated that his client vigorously disputes being active Prime Minister. In the view of his defense, the counsel stated, there was little significance in the matter, as there was little criminal responsibility tied into the role of deputy secretary.

Telegrams presented by the prosecution were argued to lack substance in that they demonstrated nothing about Nuon Chea's role. All that they demonstrated was that as a senior leader, Nuon Chea was at times sent military updates.

Further, he stated, the group of telegrams highlighted by the prosecution was from the end period of the DK regime, which is important because most of the alleged crimes before the court occurred in April 1975. He stressed that the chamber should pay close attention to the fact that no document could be found showing Nuon Chea's involvement in military proceedings prior to mid-1976, and that the chamber should therefore conclude that Nuon Chea had no military power in the period of the Chamber's jurisdiction. The receiving of military updates is insufficient to show military control, he asserted.

Before the president concluded the day's session, Mr. Arun highlighted a document in which the author apologized for contacting Nuon Chea directly with a matter of internal discipline. This, Mr. Arun suggested, showed that his client was not routinely involved with discipline matters.

The court was adjourned for the day, to reconvene on Tuesday, July 9, 2013, when it will continue to hear the defense teams respond the prosecution and civil parties key documents.