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**OPENING STATEMENT OF SON ARUN**

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## INTRODUCTION

1. Today you have heard Nuon Chea express himself for the first time before this tribunal. Nuon Chea decided to make a statement, because he believes it is very important that the Cambodian people hear the truth. Nuon Chea does not want to excuse himself; he wants to explain himself. Many books have been written about what happened during the period of Democratic Kampuchea, but unfortunately most have been written by foreigners with a limited understanding of Cambodia's history, and also a limited understanding of the facts that took place in 1975-1979. Nuon Chea, on the other hand, understands the history of this country very well. He understands what the state of Cambodia was when the DK regime came to power in 1975, and in the years before that. Importantly, he understands the intentions of the regime of which he formed a part.
2. Today, I will share with you some observations that are important for Nuon Chea's defence. I will speak about the evacuation of Phnom Penh, and about the transfer of people from the southern zones to the north. I will explain why these transfers were necessary, from a humanitarian perspective. And I will argue that these transfers were lawful, from a legal perspective.
3. In order to do this, I will have to speak briefly about the state of the country in 1975, and especially the state of Phnom Penh. I will have to discuss the role that Vietnam played in these years. I will have to discuss the American bombings in the years before 1975. And I will discuss the *intentions* of the DK regime throughout the period of these transfers; I will argue that it is clear that the regime always acted with the well-being of the Cambodian people in mind.

## THE EVACUATION OF PHNOM PENH

4. Nuon Chea does not deny that an evacuation of Phnom Penh took place in 1975; indeed, he maintains that this evacuation was *necessary* to prevent further famines and widespread disease.
5. Many observers, mostly foreign, have portrayed the evacuation of Phnom Penh as an act of cruelty, stemming from irrational political ideology. This is not a fair portrayal of the facts and reasons for this evacuation. The evacuation of Phnom Penh must be

understood as a rational act by the DK leaders, who cared for the well-being of this city and its people.

6. In April 1975, Phnom Penh was one of the most miserable places on earth. It was a city that was terribly overcrowded with over a million refugees. There was an acute shortage of rice and other food. Diseases were rampant. The hospitals and health services were hardly functioning at all. The little help that came into the city, some limited American food supplies to support the corrupt Lon Nol regime, ceased to arrive immediately after the takeover of the city. In short, Phnom Penh was experiencing a major humanitarian crisis in April 1975. To the leaders of the DK regime, to Nuon Chea, it was very clear what the most important task was after they took over Phnom Penh: the inhabitants of Phnom Penh, *all* the inhabitants, needed to be fed. And there was no time to lose.
7. The DK regime simply had no means to feed this immensely large and suffering population on short notice. Not only was the food and health situation in the city desperate as it was, but the civil war had had devastating effects on the infrastructure of the entire country. In short: no food could be brought into the city on short notice.
8. The decision of the DK leaders was therefore simple and understandable: they decided to evacuate the entire population of Phnom Penh to the countryside. This approach would have two clear advantages: First, this would bring the hungry people from Phnom Penh closer to the actual food source. Second, these people could then in turn assist with the food production, which needed to be built up almost from scratch after the war. There were no sinister motives for the evacuation of Phnom Penh: the DK leaders just tried to take care of the people in Phnom Penh as best as they could.
9. It is important to note, at the start of this trial, that this version of the facts is not some easy excuse that was made up by Nuon Chea 35 years *after* these events took place. In fact, if one looks at the evidence in this case, one will see that these intentions of the DK leadership were clear already in 1975. The DK official documents that will be discussed during trial will show that concern for the Cambodian population, and especially their food situation, was the most important concern for the DK regime. I will get back to these documents a bit later.

10. First, however, I must criticize the investigation that was done by the investigating judges. This incomplete investigation has complicated the defence of Nuon Chea immensely. My defence team has since the very beginning of this case insisted that the *context* in which the DK regime came to power is of crucial importance in this trial. It is of crucial importance to look at the events that took place right before the DK leaders took over power in Cambodia.
11. We *must* look at and understand the terrible corruption and cruelty of the Lon Nol regime. We *must* look at the deadly American bombings, which not only killed thousands and thousands of innocent Cambodians, but which also destroyed the country's infrastructure and food production. We *must* look at the terrible state of the country as a whole just before April 1975, damaged by years of civil war, and without a working system of health care. We *must* consider the constant interference by Vietnam in the affairs of Cambodia in the years leading up to 1975.
12. These are all circumstances that simply cannot be ignored when one is investigating the DK regime. One needs a full picture of these facts in order to properly assess the acts and intentions of the DK leaders when they came to power. When assessing the acts of a leader, it simply matters whether his country has just been destroyed for years by B52 bombers or not. When assessing the acts of a leader, it simply matters whether he takes control over a blossoming and healthy city, or rather a city that is on the brink of starvation. When assessing the acts of a leader, it simply matters whether one of the neighboring countries, in this case Vietnam, has indeed been trying to destabilize a country or not. In short, we cannot understand the acts and inactions of the DK regime if we do not also look at the historical and sociological context in which they had to operate.
13. And yet, this context has been almost completely ignored by the investigating judges in their investigation. The investigating judges have focused exclusively on the facts that allegedly took place in the 1975-1979-period. The investigation has thus been simply incomplete.
14. As an illustration: the murderous American bombing campaign in the 1970's is mentioned in the Closing Order *only in passing*. It is as if the investigating judges found this campaign and its effects wholly irrelevant when assessing the events in the later

years. Another example from the Closing Order: the dreadful situation in Phnom Penh in the days leading up to the DK takeover in April 1975 is described in no more than 3 short paragraphs, which paragraphs even paint a rather *positive* image of Phnom Penh in those days! This is incredible, for anyone who knows anything about the situation in Phnom Penh in those days. In short, the investigation by the investigating judges has not done justice to the relevant facts of this case.

15. You, members of the trial chamber, *could* have ameliorated these shortcomings by allowing to hear at least some of the witnesses that we requested. We wanted to hear witnesses that were in Phnom Penh just before the start of the DK regime, to let them explain to us just how bad the situation in the city really was. We wanted to hear American army officials from that time, to hear *their* assessment of the damage they had done with their B52-raids. And we wanted to hear a whole range of other witnesses that would have provided relevant context to the actions of the DK regime. But your Trial Chamber denied the hearing of all of these witnesses.
16. This approach of the Investigating Judges and of the Trial Chamber really leaves the Defence empty-handed. Nuon Chea is going to assert, during this trial, that the evacuation of Phnom Penh was absolutely necessary for humanitarian purposes. Nuon Chea believes that to this day. The prosecutor, on the other hand, will undoubtedly challenge this assertion. I ask you rhetorically: how can we, now, at this stage, *demonstrate* to you, Trial Chamber, that the situation in Phnom Penh was indeed so bad that evacuation was the only possible remedy? *We*, the Defence, were never allowed to investigate. The Investigating Judges have *not* investigated *for us*. And you, Trial Chamber, have now refused to call witnesses that could have supported Nuon Chea's position. Indeed, we are left empty-handed.
17. Nuon Chea felt that the evacuation of Phnom Penh was necessary to avoid further humanitarian harm. Not only was Phnom Penh threatened by an acute food crisis, the DK leaders also believed that Phnom Penh was going to be bombed by the American forces. By the way, this assumption on the part of the DK leaders becomes much more understandable if we realize that they themselves had been bombed by the Americans in their jungle-hideouts for years on end, together with the innocent villagers and farmers in the Cambodian countryside. If we realize that this was the hard-lived personal experience of the DK leaders, it is suddenly much easier to understand their fear of a

bombardment of Phnom Penh by US forces. But again, *this* part of the Cambodian experience has been left out of the history as it is told by this court.

18. Nuon Chea believed, and believes to this day, that he needed to act the way he acted in order to protect the Cambodian population from further suffering, and in order to ensure the national security against threats from both outside and within. It is important to note that Nuon Chea was convinced, and remains convinced, that his acts were necessary to avoid greater evil.
19. These considerations obviously all relate to the *intent* of Nuon Chea. And as you are well aware, one of the major considerations in criminal law is the question as to intent. However, the approach by the investigating judges, and later your trial chamber, has made sure that whatever picture we will get of the intent of the DK leaders relating to the evacuation of Phnom Penh or, later, the transfer of people to other zones, will be flawed and incomplete at best. In this trial, so far, I feel that we are headed towards a simple confirmation of the Closing Order; everyone seems keen to reach a quick and straightforward conviction. I really do hope that the Trial Chamber will prove me wrong, and will provide ample consideration of the destitute state of Cambodia pre-April 1975.

### **POPULATION TRANSFERS**

20. A similar story as the one about Phnom Penh can be told with regard to the transfers of parts of the population from the South to the North. Commentators have come up with all sorts of motives for these transfers. However, it is crucial to note, at the outset of this trial, that again, the primary concern for the DK regime was *food*. The DK regime wanted, most of all, to feed the Cambodian population. An obvious way to ensure enough food for all Cambodians was to increase the total food production. *This* is the reason that large population transfers took place. There were no sinister motives involved: the DK regime wanted to make sure that as many workers as possible would be located in *those* areas of the country where food production was easiest. And for this, population transfers were needed.
21. And again, this is not an excuse that Nuon Chea came up with long after the fall of the DK regime. I invite you to have a look at the original documents from that time. The documents from that era support Nuon Chea's claim that concern for the well-being of the population was the reason that these transfers took place.

22. Today I will not quote from these documents that are on the case file, but I do want to make clear to the public what they say. These documents show that the population transfers as they took place were done with good intentions. The DK leaders wanted to move people away from hunger, and towards places where food production was easier and more promising. In other words, the intentions of the DK leaders were good, and aimed at *feeding* their people, rather than starving them to death. The DK leaders wanted to have people working at places where agriculture was easiest, at places where the soil was fertile. Not because of some evil ideological plan, but because they wanted to properly feed their people.
23. These concerns explain the transfer of people to the Northern Zone and the Northwest Zone: these zones were more favorable in terms of rice field topographical location, and therefore should receive more people. Again, this is not something that Nuon Chea came up with later; these reasons are described in the historical documents that we will speak about during trial. According to these documents, one of the main goals of the DK regime was to ‘improve people’s living conditions throughout the country.’ Again, these words show the primary concern of the DK leaders: the well-being of their people.
24. Similarly, in another document the objectives of the DK commercial policy are outlined, and the primary objective of this policy is to “serve the livelihood of the people in terms of basic articles.” Again, these are not the words of an irrational, murderous, regime; these are the words of a regime that cared about its people.
25. A last observation that must be made in relation to these original documents is that they will help to undermine another widely held notion: that the DK leaders wanted to transform Cambodia into some sort of backward agricultural society. Far from it! They wanted to develop Cambodia into a modern nation, with modern methods of production, where everybody would have access to enough food and adequate medical treatment. Again, if you read the documents that form part of this case file, one will see that concern for the well-being of its citizens was a top priority for the DK leaders.
26. In that context it must be remarked that the Closing Order states that there existed no ‘grounds as permitted by international law’ for the population movements. The Closing Order discusses all possible justifications for the population movements *individually*, and



then discards them. This is not the right approach, however. In reality, of course, all the reasons and justifications for transferring parts of the population were at work *at the same time*, and therefore must be considered *in combination*. It was not *just* the food shortage in Phnom Penh, or *just* the threat of American bombs, or *just* the general health care situation, or *just* the desire to increase the overall agricultural production, or *just* the need to resist the Vietnamese threat; no, it was all these circumstances *combined* that resulted in the decision to transfer the population. This is simply what happens when one rules a country: one is confronted with a multitude of challenges, and one makes decisions based on one's appreciation of *all those challenges combined*. During this trial we will further explain why this combination of reasons for the population transfer as advanced by Nuon Chea must result in the conclusion that there existed 'grounds as permitted by international law' and that therefore the population movements were legal.

27. For now, I would like to limit myself to the observation that the Closing Order does not even attempt to explain what, exactly, this concept of 'permissible grounds under international law' means. The OCIJ should have explained this. After all, a thoughtful consideration as to possible grounds would have shown that sovereign states can invoke many grounds to lawfully displace its own population. A good, recent, example can be found in China, where the construction of the 3 gorges-dam in the Yangtze-river has resulted in the forced displacement of *over a million people*. It should be noted that these people can never return to their homes, by definition, because their homes and livelihoods will have been flooded. Sure, this project has attracted criticism from many parties; but nobody claims that China does not have the *right*, under international law, to displace its population in this way. And it should be noted that in China, the reasons for this massive displacement are much less convincing than they were in Cambodia in 1975: the Yangtze dam is being built mainly to stimulate economical development and to generate electricity. Compare this to the acute threat of famine, disease and war that the DK leaders were facing in 1975, which led to the evacuation of Phnom Penh!
28. In other words, sovereign states displace persons on their territory for a variety of reasons, and they can do so out of many motives, be they cultural, ideological or economical. Sovereign states are left a wide margin of appreciation in these choices, also because these decisions often need to be made on the spot, based on incomplete

information. One may agree with these decisions or not, and some of them may work out better than others, but they do not constitute a crime against humanity as such.

### **THE ROLE OF VIETNAM**

29. It should be noted that by choosing only the evacuation of Phnom Penh and the other population transfers as topics for this first trial, there does not seem to be much room to talk about the role of Vietnam. However, Nuon Chea feels that the role of Vietnam in Cambodia's recent history is of the utmost importance. Today, you heard Nuon Chea make some remarks about Vietnam. Nuon Chea feels that Vietnam has consistently tried to undermine the efforts of the CPK to bring prosperity to Cambodia. Nuon Chea feels that if Vietnam had not consistently attacked Cambodia, and infiltrated its ranks, Democratic Kampuchea could have prospered. However, because of its territorial ambitions and lust for influence in the region, Vietnam decided to interfere with Cambodian affairs. A lot of the activities of the DK regime were aimed at countering this Vietnamese influence.
30. Nuon Chea thinks it is clear what the Vietnamese intentions were: the constant border wars are a clear sign of Vietnamese ambitions in those years. Cambodia did not want these wars; it simply wanted to develop itself. But of course, it had to defend itself against the Vietnamese aggression. In the end, Vietnam invaded Cambodia in violation of the UN Charter, and committed many crimes in the period thereafter.
31. Nuon Chea expects that he will be provided an opportunity during this trial to talk about the Vietnamese threat. Again, a full understanding of the Vietnamese threat, at least as understood by the leaders of the DK, is crucial if the Trial Chamber wants to understand the actions and, especially, the intent of the DK leadership.

### **CONCLUSION**

32. Your honors, I have come to the end of my opening statement. Again, I urge you: in order to truly understand his actions, you must also consider the context of the DK regime. Your consideration of the facts cannot use 1975 as its starting point. I urge you to look much further back, in order to truly understand the reasons underlying the decisions and events of the DK period. Either way, Nuon Chea remains convinced that a proper investigation of his intent will demonstrate that his intentions were good, and that his actions were always aimed at serving the Cambodian people.