



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

CONFIDENTIAL - CLOSED SESSION

Case File N° 001/18-07-2007-ECCC/TC

21 May 2009, 0921H

Trial Day 19

Before the Judges:

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. BATES	English
JUDGE CARTWRIGHT	English
MS. CHEA LEANG	Khmer
MR. KAR SAVUTH	Khmer
MR. KONG PISEY	Khmer
JUDGE LAVERGNE	French
MR. PETIT	English
MS. RABESANDRATANA	French
MR. ROUX	French
MS. STUDZINSKY	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	French

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1 (Court resumes in Closed Session at 0921H)

2 MR. PRESIDENT:

3 The IT section, could you please give the live feed to the
4 interpreters' booth. They do not see the pictures now. Please
5 send the video to the computer -- to the interpreters' booth.

6 Ms. Studzinsky, do you have any comments to make?

7 MS. STUDZINSKY:

8 Thank you. Good morning, Your Honours.

9 Mr. President, normally I would like to make this comment in the
10 public. It concerns the exclusion of civil parties. They are
11 present, and I didn't see that they were excluded already in
12 advance before you, or I didn't remark when they were excluded,
13 and I do not see any rule or law that they should be excluded.
14 And they're civil parties, and they were -- the practice of the
15 Chambers and rules after the trial-management meeting in January
16 that civil parties were allowed to participate. There are three
17 civil parties that I met this morning present, and I would like
18 to request -- and I could if you plan to repeat this in public
19 session because it's not a matter of in camera trial meeting --
20 the management meeting, and I would request to allow the civil
21 parties to participate.

22 [09.26.25]

23 JUDGE LAVERGNE:

24 I think first there is a technical issue. It seems that the
25 audio systems can be heard in part of the public gallery so I

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1 think it would be well before we continue to make sure that we
2 are, in fact, in closed sessions.

3 MR. PRESIDENT:

4 Just then Ms. Studzinsky raised an issue regarding the exclusion
5 of civil parties who are present in the Chamber. This matter --
6 the Chamber would like to inform the parties that this is
7 technical issues for the Chamber to discuss with the relevant
8 parties to find solutions to those contentious issues which were
9 raised yesterday, and we tried to find a technical solution to
10 these technical issues in order for smooth proceedings; we will
11 not delve into the essence of the facts.

12 Therefore, your request or the request of Ms. Studzinsky is
13 rejected, and you have the right to raise the matter at a time
14 when you're in public. When we're in public session you can
15 raise this issue on the matter of the exclusion of those few
16 civil parties.

17 [9.31.53]

18 So I would like to reconfirm that we will discuss only the
19 technical issues for our discussion to find appropriate technical
20 solutions which each party can accept for our smooth proceeding,
21 and to avoid the waiting of the audience, as we are talking only
22 on the technical part of the proceeding.

23 First, the Chamber would like to request to the defence to
24 acknowledge the expertise of Craig Etcheson in the making of his
25 report, which is the subject of the last few days' discussions.

Closed Session

3

1 This is the first matter.

2 Does the defence have any comments to make on this particular
3 issue?

4 Judge Lavergne, the floor is yours.

5 JUDGE LAVERGNE:

6 Maybe to clarify the object of this question we would like to
7 know if the defence intends to challenge Mr. Etcheson's
8 qualifications as an expert, or if the defence accepts that he is
9 -- he has a sufficient level of competence that allows him to
10 perform an analysis on the topics brought up in his report.

11 [9.34.20]

12 MR. KAR SAVUTH:

13 Mr. President, Your Honours, we are the defence lawyers.

14 We acknowledge the expertise of Dr. Craig Etcheson.

15 Thank you.

16 MR. ROUX:

17 Which, however, does not prevent us from observing that he is a
18 member of the Co-Prosecutors' Office however.

19 MR. PRESIDENT:

20 Judge Cartwright, the floor is yours.

21 JUDGE CARTWRIGHT:

22 Thank you, Mr. President.

23 It seems to me, Maître Roux, that coupling the observation that
24 he is a member of the Co-Prosecutors' Office, with comments on
25 his report, suggested to the Court that you doubted his expertise

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1 in some way. We simply seek a clear statement that you do not
2 challenge his expertise to make this report.

3 That is the problem that, as I understand it, or as I perceived
4 it, that the Co-Prosecutors reacted to, and we're simply trying
5 to find a solution to enable us to move forward to have a fair
6 and expeditious trial, as you have been asking us to do.

7 [9.36.21]

8 MR. PRESIDENT:

9 Judge Lavergne, the floor is yours.

10 JUDGE LAVERGNE:

11 The fact that Mr. Craig Etcheson is part of the Co-Prosecutors'
12 Office is an objective element indeed, but, however, what we
13 would like to know is do you believe that because of this that
14 Maître Etcheson's quality as an expert is questioned or do you
15 believe that this does not have any specific consequences?

16 MR. ROUX:

17 Mr. Kar Savuth answered very clearly; we do accept his expertise.
18 But as you are reminding, Your Honour, we are also saying, on an
19 objective basis, that he is part of the Co-Prosecutors' Office.
20 I do not know how to express this more clearly. We are not
21 questioning his quality as an expert, we accept his expertise,
22 but no matter what you say he is -- it is clear that he's part of
23 the Co-Prosecutors' Office and therefore we will examine him as
24 an expert who is part of the Co-Prosecutors' Office, but we are,
25 of course, not challenging his expertise.

5

1 We are not challenging his expertise, I repeat. He has led a
2 scholarly life before, and he will continue his career as a
3 scholar, so we do consider that he is an expert.

4 JUDGE LAVERGNE:

5 Okay. In order to be even more sure that we understand each
6 other I would like to ask the question again. Does the objective
7 fact that Mr. Craig Etcheson is part of the Co-Prosecutors'
8 Office, does this have, according to you, an influence or a
9 consequence on his -- on the quality of his analysis, and do you
10 believe that this can lead to -- how should I say this -- to a
11 bias?

12 MR. ROUX:

13 My apologies. Please do not ask the defence to tell you that it
14 is the same thing to be Mr. David Chandler, who is an expert, who
15 is completely independent of the Co-Prosecutors' Office, or to be
16 Mr. Craig Etcheson, who is an expert, an embedded expert --
17 that's how you say it in English, right -- embedded in the
18 Co-Prosecutors' Office. Please do not ask me to say that this is
19 the same thing. It is not the same thing.

20 Mr. Raoul Jeannar, who is the expert who was quoted by the
21 defence, is not part of the defence team. The defence team has
22 paid Mr. Raoul Jeannar to be a consultant for a few months, to
23 provide us with his consulting services. He worked for the
24 defence team but he is not part of the defence team.

25 So these three individuals are not at the same level. I cannot

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1 tell you the opposite. These three people have different
2 positions. Mr. David Chandler is completely external to our
3 proceedings, Mr. Raoul Jeannar has been paid as a consultant by
4 the defence, and Mr. Craig Etcheson is an official; a member of
5 the Co-Prosecutors' team. So therefore, they do not have the
6 same position.

7 [09.40.50]

8 However -- however -- we do indeed acknowledge his quality as an
9 expert, Mr. Etcheson's quality as an expert. I do not know how
10 to put it to you more clearly.

11 JUDGE LAVERGNE:

12 Of their reports, in this expert report that you consider as
13 being subjective, given his quality as a member of the
14 Co-Prosecutors' Office, or do you think that this quality is just
15 -- this characteristic is just a fact? But how concretely,
16 according to you, how does this have an influence on the quality
17 of his analysis?

18 MR. ROUX:

19 Indeed

20 JUDGE LAVERGNE:

21 Maybe a little bit slower, please, for the interpreter.

22 MR. ROUX:

23 Indeed, I can make a distinction between two periods. I would
24 say that the report that was filed by Mr. Etcheson in July 2007,
25 whereas no accused had yet come before the Court this report is

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1 certainly, I would say, the most objective.
2 [09.42.17]
3 However, it is unquestionable that as of the moment when Duch was
4 arrested, then Mr. Etcheson assisted the Co-Prosecutors team to
5 bring together evidence against Duch and this was perfectly clear
6 in the questions that were put to him beyond his report.
7 Therefore, to answer your question, Your Honour Judge Lavergne,
8 if we just focus on Craig Etcheson's initial report, well, there
9 we have no problems. But if we question him on the basis of the
10 elements that he became aware of because he followed the
11 investigation, well, please do not tell me that he was impartial.
12 Do not tell me that he was not impartial. He indeed assisted the
13 Co-Prosecutors in the accusation, so let's please be clear about
14 this.
15 So therefore, since we're now in camera, if you want to
16 understand the substance of my thinking, well, I believe that it
17 is a casting error on the part of the Co-Prosecutors to have
18 proposed as an expert somebody who is part of their team. That
19 is a casting error. They should not have done that. But if we
20 focus on the report from July 2007 the defence there has no
21 problems. That is the limits for us. And I, therefore, would
22 like Mr. Craig Etcheson not to be examined on everything that he
23 became aware of after July 2007; that is to say during the
24 investigation phase. I believe that this is where we might come
25 to an agreement.

8

1 MR. PRESIDENT:

2 Judge Silvia Cartwright, you take the floor.

3 JUDGE CARTWRIGHT:

4 Thank you, Mr. President.

5 Perhaps it's necessary to spell out the full proposal that the
6 Chamber wishes the parties to consider. Certain concessions have
7 been sought from the defence because, in the Court's perception,
8 the fact that the expert is also employed by the prosecutors gave
9 rise to the prosecutors' insistence on summarizing every single
10 document annexed to his report, in order to satisfy the Chamber
11 that he is indeed an expert.

12 [09.45.28]

13 We wish to find a way through this conundrum because to read out
14 these summaries, even if we suggest to the prosecutors that they
15 don't have to read out the ERN numbers, et cetera, et cetera, is
16 going to take a very long time. All of those annexed documents
17 are available at any time to put before the Court in accordance
18 with the rules. Defence can do it, civil parties can do it;
19 prosecutors can do it at any time. We just don't see that there
20 is a need, an essential need to do that in bulk now and I
21 perceive that the defence would agree with that because it's been
22 protesting, protesting, protesting, and I might say, taking a
23 considerable amount of time to do that.

24 The intention is if there is a clear acknowledgement of

25 Etcheson's expertise in the writing of this report, to invite the

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1 prosecutors then to read out three or four summarized documents
2 from the annexure that in their view are the most pertinent, the
3 most relevant to the facts that this Court needs to determine in
4 this trial, that is the concept. However, acknowledging that Dr.
5 Etcheson is indeed a member of the prosecutions' staff, and
6 coupling that with a description of his expertise, seems to me,
7 in English, to be like a red rag to the bull of the prosecution
8 and we need to find a way through this.

9 So that is the concept, Maître Roux.

10 Am I going too fast?

11 [09.47.46]

12 And Mr. Kar Savuth has made the acknowledgement, which we would
13 want to have repeated publicly, and then would ask the
14 prosecutors also to compromise. That is the concept. We can't
15 insist but that is the idea, to find a way to have a more
16 expeditious trial which is at the same time a fair one and gives
17 some information to the public.

18 Does that help clarify the situation, Maître Roux? Is there any
19 -- is there any flaw in that reasoning that you would like to
20 raise?

21 MR. ROUX:

22 This exactly agrees with the distinction I was making. Mr. Kar
23 Savuth said to you we indeed accept the expert report from Mr.
24 Craig Etcheson. This expert report was completed in July 2007.
25 If Mr. Craig Etcheson is questioned only on the basis of this

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1 expert report we have no trouble with that. We will have trouble
2 if Mr. Craig Etcheson is asked questions of the period since July
3 '77 -- July 2007 to today. And if we add, as Mr. Co-Prosecutor
4 has done, new elements that come from the investigation I do not
5 wish Mr. Craig Etcheson to be questioned on the investigation to
6 which he participated for the benefit of the Co-Prosecutors.
7 In July 2007 there was no investigation yet and we accept -- as
8 Mr. Kar Savuth said, we accept the report that was established in
9 July 2007 and we do not wish Mr. Etcheson to speak about the
10 period after July 2007 because there he was working with the
11 Co-Prosecutors in order to support the Co-Prosecutors' accusation
12 during the investigation. So it seems to me that the modus
13 vivendi is here.

14 [09.50.56]

15 MR. PRESIDENT:

16 We note the Co-Prosecutor would like to make some comments. The
17 floor is yours.

18 MR. BATES:

19 Thank you, Mr. President.

20 There were two reasons why we sought to have the documents
21 summarized before the Court. The first, as has been identified
22 already, was because it appeared to the Co-Prosecutors that doubt
23 was being cast on the impartiality and therefore the credibility
24 of Dr. Etcheson's report.

25 The second reason, however, that has not yet been mentioned, is a

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1 matter of principle that affects not only Dr. Etcheson's
2 documents but also the documents that we seek to put before the
3 Chamber, for example on the question of establishing an
4 international armed conflict for which there is no one witness
5 who produces those documents.
6 And in the light of the ruling yesterday clarifying rule 87(2)
7 and (3) it's only if documents are read out in full or summarized
8 that they are available for the judgement. And the
9 Co-Prosecutors submit that the documents should be read out for
10 this reason as well. They should be summarized for this reason
11 as well. How else do we establish the features of Dr. Etcheson's
12 report relating to widespread and systematic, relating to the
13 communications structure, but by referring to the underlying
14 documents?
15 [09.53.11]
16 I have to say that of course neither my colleague nor I are the
17 Co-Prosecutors in their highest form, and this is a matter of
18 extreme importance for our office, which is why we were so
19 insistent and regrettably took up so much time. But we have
20 instructions to seek clarification of how this can meaningfully
21 be done when we are all seeking to work towards a speedy and fair
22 trial.
23 I mentioned the international armed conflict documents. I don't
24 have the total number at hand but I believe they number in the
25 hundreds, if not more -- three to four hundred, I'm told.

12

1 The result of the ruling yesterday, it seems to the
2 Co-Prosecutors, would mean that each one of those documents would
3 be required to be either read out or summarized and,
4 unfortunately, we do not have one expert that produces the
5 International Armed Conflict documents, so-called. And I'm
6 talking specifically about media reports, about telegrams, and
7 sources external to Cambodia.
8 So there are two issues. Just to summarize, there are two issues
9 here. In relation to Dr. Etcheson, the Co-Prosecutors consider
10 that the way the defence responds suggests that there is doubt to
11 be cast on his partiality. The Trial Chamber has already ruled
12 that it is not for any party to limit the ambit of the
13 questioning of an expert and that the Trial Chamber is free to
14 question an expert as it sees fit. And with the greatest of
15 respect, that appears a logical conclusion to draw.

16 [09.55.44]

17 But there is a wider issue here for all the other documents that
18 we seek to put before the Chamber, and we are hoping that there
19 is a way of doing this speedily without the need to read out all
20 the summaries of all the subsequent documents that we wish to
21 rely on. Otherwise, we won't have them available for the
22 judgement, and that is something that concerns us greatly.

23 MR. PRESIDENT:

24 Judge Cartwright, you take the floor.

25 JUDGE CARTWRIGHT:

13

1 Yes, thank you.

2 In relation to the matter that you have raised, armed conflict, I
3 acknowledge the problem. First, the accused does not fully
4 accept the fact of an armed conflict and, therefore, it must be
5 proved. It is the intention to use the witness -- the expert,
6 rather -- Nayan Chanda to examine or put before the Court a
7 cross-section of documents which would be within his knowledge,
8 we assume, and if not then he would have to say so and other
9 means be found to put this documentation before the Court, if
10 necessary, by calling or recalling Dr. Etcheson. So that's one
11 matter.

12 The second matter is the one that concerns the Trial Chamber,
13 which is that we are trying put before the -- that you are trying
14 to put before the Court, using this expert, a very wide range of
15 documents that do not necessarily -- that are not necessarily
16 essential to this topic which is CPK policy as practiced at S-21.
17 And we were hoping to find a way whereby you could select a
18 cross-section of documents and then use the other documents you
19 or any other party at a relevant time, to put them before the
20 Court and then make them subject to examination, perhaps as you
21 see the need to fill gaps, or as the defence sees the need to use
22 them or the civil parties see the need to use them.

23 [09.58.400

24 And as a practical matter, I would like to suggest that when you
25 are reading summaries that you don't -- when they're in the form

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1 that you've presented them thus far, that you don't need to read
2 out the ERN numbers because they are of use only to the parties,
3 that you need only the title, perhaps the date if that's
4 relevant, and the summary itself, and we can perhaps save a
5 little bit of time in that way. But that's just a suggestion for
6 the parties to think about.

7 So do you think you would be able to select some documents that
8 are relevant to this topic and then wait and see if we need to
9 fill gaps using the rest of the annexures at a later time?

10 MR. BATES:

11 I don't wish to commit our office at this stage without taking
12 instructions from our superiors on this point. I hope Your
13 Honour can understand the reason for asking for a little time,
14 perhaps 15 minutes?

15 JUDGE CARTWRIGHT:

16 Yes, and the other thing that I omitted to mention is that the
17 Trial Chamber is considering a rule under the ICC provisions
18 which, with careful examination, may be able to assist us in the
19 future. But we have an immediate problem and we're not at all
20 sure that the ICC rule which is, I suppose, primarily a
21 common-law based rule, will be able to be adapted. But we have
22 an idea that can't be promulgated until September by which time
23 we were hoping that the testimony in this trial would be
24 concluded.

25 So we have an idea, but it's not of immediate benefit. Perhaps

15

1 you could recommend strongly to your superiors that the Trial
2 Chamber thinks that this is a good compromise.

3 MR. BATES:

4 Thank you, Your Honour, for that. Can I just make one
5 observation? I see His Honour, Judge Lavergne.

6 [10.01.03]

7 If I may make one observation, just to understand what Your
8 Honour has explained. It appears to us that Your Honour and the
9 Trial Chamber is suggesting on a case-by-case basis we look at
10 the universe of documents for each issue and then decide how each
11 issue is to be proved, rather than laying down a general rule
12 that there is one way to resolve this issue for each of the
13 topics that we will be faced with; for example, the international
14 armed conflict may be slightly more complicated.

15 Do I understand Your Honour's explanation correctly?

16 JUDGE CARTWRIGHT:

17 Well, as I understand the civil law system, it is possible at any
18 time to read out or summarize documents and so by the end of the
19 trial, if the prosecutors or any other party think there are
20 gaps, then it can be done then. Is that a correct understanding?
21 We don't need to put a huge amount of material at each point in
22 the trial in case.

23 MR. PRESIDENT:

24 Judge Lavergne, the floor is yours.

25 JUDGE LAVERGNE:

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16

1 This is perhaps a personal viewpoint but as a civil law judge,
2 when you wish to put before the Court a document, the document
3 must be evaluated by the Judges and be subject to an adversarial
4 debate.

5 If I take the example of the 148 documents that you have stated
6 you wish to put before the Court, I think only 20 or thereabouts
7 of them are completed translated into French. As a
8 French-speaking judge and a member of the Bench, it is obvious
9 that I will have some difficulty. It is also obvious that for
10 each document it is possible to exceed the exact ambit of Mr.
11 Craig Etcheson's expertise. We might have questions which go to
12 the individual responsibility or people who are being charged in
13 other files or in other case files or who are suspects, which
14 also raises the question of the proper administration of justice.

15 [10:04:16]

16 There will be some material which, if taken individually will
17 require debate which I fear might lengthen this trial by several
18 months quite easily. That is my personal concern.

19 MR. ROUX:

20 Mr. President, I shall return to the Rules of Procedure. Once
21 again, we are considering the Closing Order of which you are
22 seized. For the time being, I shall limit myself to Mr. Craig
23 Etcheson's July 2007 report.

24 What I understand is that this report falls within paragraphs 10
25 to 19 of the Closing Order and that's it. I repeat that the

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1 Co-Investigating Judges analyzed the historical and political
2 context of Democratic Kampuchea. For this reason, they added 30
3 footnotes to their paragraphs, which footnotes were not
4 challenged by anyone; they are now part of the record of the
5 case.

6 [10:06:32]

7 So if Mr. Craig Etcheson is to support what the Co-Investigating
8 Judges have already worked on, then that is perfect. Is it
9 necessary to add endlessly other documents? What is the purpose
10 of that?

11 To be pragmatic, and I think this is one of the recognized
12 advantages of the common law system whose usefulness I
13 acknowledge - so I was saying, to be pragmatic could we not
14 follow the proposal by Judge Cartwright and ask the
15 Co-Prosecutors to carry out further questioning of Mr. Craig
16 Etcheson who was questioned or interviewed at length by the
17 Judge. Can the Co-Prosecutors not be asked to put questions to
18 Mr. Craig Etcheson and if in relation to one question or another
19 it becomes necessary to rely on one of the 148 documents, Mr.
20 Craig Etcheson could put this document before the Court and the
21 document can be summarized.

22 I think - my view is that Mr. Etcheson's statements are enough.
23 It's only when there is a bone of contention or emphasis on a
24 particular point that a document will be taken out to justify
25 what Mr. Etcheson has said on the basis of that document, and we

18

1 certainly do not need 148 documents.

2 [10:08:42]

3 Once more I entreat you; please bear in mind - please keep to
4 hand paragraphs 10 to 19 of the Closing Order which describe very
5 clearly the historical and political background of Democratic
6 Kampuchea. The prosecutors did not appeal against these
7 paragraphs nor did the defence, and there was no appeal against
8 the footnotes 1 to 30 documents which were provided in support.
9 This would help us avoid wasting time.

10 MS. RABESANDRATANA:

11 Mr. President, may I address the Court?

12 Thank you, Mr. President.

13 I have two submissions to make as a civil party lawyer. The
14 first is with regard to the status of victims before your Court.
15 The first is with regard to the status of victims before your
16 Court. This status is somewhat different from that of victims
17 before the International Criminal Court. I am on the ICC
18 lawyers' roster, and in that Court, victims may present
19 observations, but here it is clear that the status of victim has
20 the direct effect -- and I'm referring here to Article 23 or Rule
21 23; that is, the victim is a party in the proceedings.

22 I may wish to say something with regard to the Closed Session
23 because if you are a party to the proceedings, you are so in the
24 same capacity as the prosecution and the defence, so the Closed
25 Session does not apply here.

19

1 In any event, the status of victims means that the Court must
2 protect the rights of the victim as a fully-fledged party before
3 the Court. That is my first point.

4 [10.11.14]

5 My second point is the subtle distinction that the defence is
6 making between the acceptable part of the report -- that is, the
7 2007 part -- and what subsequently is not, the defence considers.
8 Actually, the status of the expert does not mean that he has
9 links with the Office of the Prosecutor though this is what the
10 defence maintains, and also the defence says that this leads to
11 bias. I must say that in light of Rule 31, this situation is
12 envisaged.

13 When reference is made to an expert, it is said in Rule 31(6)
14 that if necessary for the completion of the assignment, the
15 expert may participate in the interview of the Co-Investigating
16 Judges or the Chambers of a witness, a charged person, an accused
17 or a civil party. If appropriate, the Co-Investigating Judges or
18 the Chambers may allow the experts to interview a witness, a
19 charged person, an accused or civil party directly. And a little
20 further on -- this is in paragraph 8:

21 "The report will be filed in the case file or the record of
22 proceedings."

23 It is, therefore, clear that in the mind of the Court in drafting
24 this rule, the expert report was considered as coming from an
25 independent expert, and an expert who had subsequently

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1 participated in prosecutorial activities either with a civil
2 party, an accused or a charged person, and when reference is made
3 to records of the proceedings, these documents that are
4 subsequent to the initial report. I think that this Rule 31,
5 with the leeway it offers, is an alternative that would enable us
6 to settle once and for all, and fairly, the issue of this report
7 which, in my view, should be considered as a whole and not
8 piecemeal, and not based on personal convenience because one is a
9 defence team.

10 [10.14.23]

11 MR. ROUX:

12 Mr. President, may I respond?

13 JUDGE CARTWRIGHT:

14 Yes, before we hear from Maître Roux, this is a separate,
15 practical issue. The Co-Prosecutors have indicated that they
16 must have the authority of the prosecutors, Chea Leang and Robert
17 Petit. I'm suggesting that we get them to come now to save time,
18 if at all possible. Perhaps you could attend to that or a member
19 of your staff attend to that so that we can save a bit to time
20 while we're still discussing these issues.

21 Thank you.

22 MR. PRESIDENT:

23 The defence, the floor is yours.

24 MR. WERNER:

25 I understand the reasons why it is a little complicated for the

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1 prosecutors just now. I also understand the arguments advanced
2 by Judge Lavergne and the other members of the Bench. Perhaps,
3 we might have a proposal that would help to us to make progress
4 which would be acceptable for the defence, and be consistent with
5 your decision yesterday as well. The defence does not challenge
6 the report of 2007. This report attaches 140-odd documents, and
7 I understand Judge Lavergne's concern that some of these
8 documents are themselves of many pages, and this raises the
9 problem of summaries, and there is not enough time to make this
10 summary so it is obvious that this is not going to work.

11 [10.17.45]

12 In all our previous trials, when an expert report was presented,
13 the annexure were also put before the Court because this was
14 considered to be the material on which the expert based his
15 report. If I look at Annex B, Number 14 of Mr. Etcheson's report
16 which is a PCK magazine, it is 34 pages and the expert mentions
17 page 22 which means probably that he focused only on page 22 of
18 the 40-odd pages for the relevant part of his report. In other
19 words, in this number of documents -- large number of documents,
20 for each document, he used a paragraph or a page or perhaps even
21 a few lines for his report, and it seems to us that it is
22 possible to do this quickly. If possible, Mr. Etcheson could
23 explain the page or the paragraph, and this is what has happened
24 in all previous trials I have attended. It is then possible to
25 put these documents before the Court -- not the 100 or the 30

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1 pages, just the relevant part for each exhibit; that is, the
2 relevant part which he used in the report. And since the defence
3 does not challenge the 2007 report, and these documents were used
4 solely in support of the report, it seems to us that this would
5 be the most appropriate solution. It would avoid a situation of
6 having to summarize the document, and only the relevant part
7 would be used, and the expert would be able to explain what parts
8 of the document he referred to, and if, at some point, the
9 prosecutor for one of the documents were to rely on other parts,
10 then he would have to make a summary or return to the documents
11 or the exhibit.

12 It seems to me the best solution; it preserves the rights of the
13 defence because they don't have a problem with the 2007 report,
14 the exhibits have been put before the Court for the relevant
15 parts. That is our proposal.

16 And since we are in Closed Session, and I am well aware that this
17 is a concern of the Court, it is important for me to say this
18 however. We are in a delicate situation because we understand
19 the prosecutors' concern, but in this part of the courtroom there
20 is real concern as to the duration of this trial.

21 [10.20.44]

22 I wish to take some time to say this. You know that our civil
23 parties are dying. As you know, one of them died in December.
24 You agreed to hear her husband in lieu of her. So there is a
25 real concern that this trial move forward and be concluded as

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1 soon as possible.

2 The second part of my proposition is that all of the lawyers on
3 this side of the courtroom are the only people not being paid by
4 the Court. The judges are paid, the defence is paid, the
5 prosecutors are paid, the greffiers are paid, the interpreters
6 and the guards are paid. We are not paid. None of us is paid.
7 And our team has five people working in Phnom Penh; nobody is
8 paid.

9 We took on the task on the proviso that the trial would last
10 three or four months. It's going to be very difficult for us if
11 things were to extend beyond that. We are in a really difficult
12 position and I think that this proposal would be reasonable
13 enough to make -- enable us to make progress. It would enable us
14 to take account of the interests of the prosecution and the
15 defence.

16 I thank you.

17 MR. PRESIDENT:

18 Thank you very much for your well-elaborated remarks.

19 I note Ms. Studinzky would like to make a comment. The floor is
20 yours.

21 [10.22.27]

22 MS. STUDZINSKY:

23 Thank you, Mr. President.

24 First of all, I would like to make an additional comment, and
25 first of all, I would like to support a reasonable dealing with

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1 these many documents that are part or referred to in the report
2 of Mr. Etcheson.
3 However, I find that these documents are relevant or parts, as
4 they are referred to, because I do not share the view of the
5 defence who wants to limit the charges to S-21 and not go beyond.
6 Why going beyond? There was not a single act committed and a
7 separated S-21, it was embedded in a system, and it is the duty
8 of the Chamber to examine this system and systematic attack
9 against the civilian population. And this attack was composed by
10 different attacks; it is evacuation; it is forced labour, and so
11 on and so on.
12 Therefore, as we -- the Chamber -- I would like to remind you
13 that the Chamber split up the whole issue in different matters.
14 We are talking now about the CPK line and its implementation. We
15 have now the expert here related to this issue. Therefore, I
16 think it is reasonable to discuss and put before the Chamber
17 these evidence, and in accordance with your ruling from
18 yesterday, documents have at least to be summarized.
19 And if it is possible I support the view of Mr. Werner to refer
20 only to relevant parts of the documents, if this is perhaps only
21 a paragraph.
22 [10.25.46]
23 Another argument, these are not new documents, as raised again
24 and again by the defence; these are part of the case file.
25 The repeated argument from the defence seems to be defender of

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1 the civil parties is not shared by all civil parties. The civil
2 parties have, of course, an interest in an expeditious trial, but
3 they have, as well, an interest that the full truth and the whole
4 scope of what happened in this DK period is examined.

5 And this is part of the duty of the Chamber to show the whole
6 picture and not only this part exclusively S-21, and to show it,
7 as well, in this trial. And they do not want, as Maître Roux
8 said yesterday, to be heard as soon as possible, yes, they want,
9 but not before it is not clear what is the scope and the whole
10 picture.

11 And, therefore, it is, at least in the interest of part of the
12 civil parties, to examine these evidence and this before they are
13 heard, and they themselves, they cannot contribute and prove, for
14 example, the systematic widespread attack. They have not enough
15 knowledge. They are not experts on this. But for them it is
16 important to get these proofs put before the Chamber.

17 And, therefore, I ask the Chamber to balance and to have in mind
18 that this is very important interest to examine in depth and not
19 to limit as the defence wants and emphasizes and -- but also of
20 course to find an appropriate balance.

21 Thank you.

22 [10.29.13]

23 MR. PRESIDENT:

24 The floor is yours, Mr. François Roux.

25 MR. ROUX:

26

1 Thank you, Your Honour.

2 Well, I would like to make -- provide a few answers to the
3 comments from the civil parties, and once again I would like to
4 suggest some constructive ideas.

5 First of all, concerning the quality of an expert to answer my
6 esteemed colleague from Avocats Sans Frontières, Mrs.

7 Rabesandratana, thank you for reminding us of Rule number 31.

8 That was the right thing to do because Rule 31 refers directly to
9 the Co-Investigating Judges or to the Chambers. And in no case
10 Rule 31 speaks about an expert who would be part of a defence
11 team or who would be part of a prosecution team.

12 Article 31 mentions an expert who is completely independent from
13 defence or from a prosecution team and the Co-Investigating
14 Judges, it is true, can then authorize a completely independant
15 expert to participate in the investigation. And here, indeed,
16 Mr. Craig Etcheson was absolutely not an independent expert, and
17 if he participated in the investigation he participated as a
18 member working for the prosecution team.

19 [10.31.08]

20 So thank you, indeed, for having reminded us of this article
21 which demonstrates clearly the difference that is necessary to
22 make between Mr. Craig Etcheson and a completely independent
23 expert.

24 But, however, I would like to get back to my initial proposition.

25 Up to July 2007, indeed, Mr. Craig Etcheson was in the

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1 Co-Prosecutors team but, however, there was still nobody yet who
2 was being charged. So therefore, at that moment he produced a
3 general report on the situation in Democratic Kampuchea which is
4 extremely useful for the proceedings. I acknowledge that.

5 And for this report he relied on a certain number of documents
6 which are also extremely useful for these proceedings and
7 therefore I would like us to get back to Rule Number 87 because I
8 believe that there is confusion when we're speaking about the
9 documents.

10 What is the main document here at question? It is Craig
11 Etcheson's report. The document that is going to be included in
12 the case, it is Craig Etcheson's report and the defence said we
13 have no problems with Mr. Etcheson's report which means,
14 obviously, that we have no problems with the documents that are
15 annexed to this report.

16 We have no problems with these documents so therefore, why -- I
17 think that we're mixing things up here between two categories of
18 documents. We have here an expert report with annexed documents
19 to it and we are therefore suggesting that this expert report
20 after the questioning of the expert by the Chamber and the
21 parties -- we propose that this expert report be included in the
22 case file with all of the documents that are annexed to it, yes.

23 [10.33.39]

24 But, however, we regret that we did not receive the translation
25 of these documents, that is a side point.

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1 But once again, the main element here that will be included in
2 the case file is the expert report and if later on in the
3 proceedings we want to use the documents that were annexed to the
4 report, we will always use them by referring to the report, of
5 course -- by referring to the report.
6 So this is different from the documents that the prosecutor
7 wishes to introduce in an independent way, I could say,
8 concerning the armed conflict.
9 Here, indeed the prosecutor is saying that, "I have 200 or 300
10 documents that I want to include without having the support of
11 any expert," and here in this case we are facing a different
12 issue. There is no expert to support these documents, as far as
13 I understand, or in any case these documents are not included to
14 Nayan Chanda's report.
15 So these are documents that the prosecutor wants to take out of
16 the case file and wants to present one by one before the Chamber.
17 There indeed that is true, that if we want to summarize these
18 documents we will -- this will take us weeks and weeks.
19 The defence, therefore, concerning this specific part of the
20 documents relating to the armed conflict has already stated that
21 we will not ask for the exhaustive reading of these documents.
22 We will not -- we are suggesting that the Co-Prosecutors provide
23 us with a one-page -- one single page -- one single page, we're
24 not asking for too much -- one single page under their direction
25 in which they will state, "This is what these 200 documents are

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1 mentioning," and this will be under their direction.

2 [10.35.59]

3 That is to say that if one day when I become old, when I'm
4 retired, I discover that there was a lie -- which I cannot
5 imagine, of course -- well then I will be able to come and
6 protest but, however, I do trust the Co-Prosecutors to present in
7 one page what is contained in the 200 documents that I want to
8 include, relating to the armed conflict.

9 And I would like to add, however, that concerning the issue of
10 the armed conflict, the defence stated for quite a while -- quite
11 a while ago that it will not intervene regarding this question
12 because this question is included in Case File Number 2. And I
13 would like to draw your respectful attention to what the
14 Co-Prosecutor is trying to do.

15 The Co-Prosecutors are trying to seek a decision from the Chamber
16 that goes against everything that has been said up until now on
17 the diplomatic level. That is to say that the international
18 community believed that the armed conflict between Vietnam and
19 Cambodia started in December 1977, and the Co-Prosecutors wished
20 your Chamber -- whereas we are not here facing the highest
21 leaders of Democratic Kampuchea, well the Co-Prosecutors want you
22 to say that the armed conflict started much earlier. That is a
23 serious, serious error that you could be facing and a
24 responsibility to make that decision, whereas we do not have here
25 Mr. Nuon Chea, Mr. Ieng Sary and Mr. Khieu Samphan here present

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1 at the proceedings.

2 [10.37.57]

3 So I would therefore would like the Chamber, please, to not
4 settle on this question. The accused said that in compliance
5 with what the international community has decided, he does indeed
6 recognize that there was an armed conflict at least as of
7 December 1977 and therefore that during the year of 1978 there
8 was indeed war crimes that were committed at S-21.

9 We don't need to look any further; he accepts that. So therefore
10 I would like, therefore, to make the distinction between these
11 two situations: on one side Mr. Etcheson's report -- and I'd
12 like to state again the report from July 2007, before his
13 implication in the investigation, Mr. Etcheson's report with its
14 annexes, the defence accepts those and the defence does not,
15 however, accept that these documents are read during the
16 hearings, except that when Mr. Etcheson will be questioned, if
17 indeed concerning certain points.

18 Of course we might have a point of criticism; well in that case,
19 yes, he will be able to produce the document to justify his
20 stance. But these are documents that are annexed to a report and
21 it is this report here that is provided for in Rule 87.

22 Rule 87 did not state anywhere -- anywhere did Rule 87 state that
23 we must also include as evidence all of the documents that are
24 annexed to an expert report. It is written nowhere here in Rule
25 87.

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1 So therefore, the defence is requesting to receive as evidence,
2 pursuant to Rule 87, Mr. Etcheson's report from July 2007 and to
3 cast aside all of the new documents that the Co-Prosecutor wished
4 to put before the Court to support Mr. Etcheson's interview.

5 And I will not repeat what I already said concerning the armed
6 conflict.

7 Thank you.

8 [10.40.29]

9 MR. PRESIDENT:

10 Judge Lavergne, the floor is yours.

11 JUDGE LAVERGNE:

12 I would like to be sure that I have entirely understood the
13 defence's position. If I understood correctly, you consider that
14 there is a document, which is the expert report, and that the
15 documents that are annexed come to support this expert report and
16 that -- and in their function and as so, they must also be
17 considered as being produced -- as being put forth before the
18 Court during the interview of the expert, without it being
19 necessary to read them out individually. Is that ---

20 MR. ROUX:

21 That's exactly so. And if in the continuation of the proceedings
22 these documents are used, well, they will have to be used as
23 referring to the reports and not in an autonomous way.

24 (Deliberation between Judges)

25 MR. PRESIDENT:

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1 The floor is yours, Judge Cartwright.

2 [10.46.28]

3 JUDGE CARTWRIGHT:

4 Thank you, Mr. President.

5 The Co-Prosecutors who are prosecuting this trial indicated that
6 it would be helpful to have Ms. Chea Leang and Mr. Petit present
7 during this part of a trial management meeting which has been
8 concerned with trying to find a compromise between reading the
9 summary of every document in the annexure to Dr. Etcheson's
10 report and an expeditious trial. We're trying to find a balance
11 between the fairness and the efficiency of the trial.

12 The Chamber came into the trial management meeting specifically
13 to discuss this issue and I won't rehearse all the various parts
14 of the discussion but we have reached a stage now where Maître
15 Roux has very helpfully acknowledged openly, and presumably will
16 do so if necessary when we resume in public, that he does not
17 challenge Dr. Etcheson's expertise to write this report -- or,
18 rather, Mr. Kar Savuth made that acknowledgment -- and, moreover,
19 that the defence acknowledges that the report and its annexures
20 are put before the Court.

21 It seems to the Trial Chamber that this now means that it is not
22 essential to read out the summaries of each annexure at this
23 point. However, if any party wishes to refer specifically to a
24 part of the report, and Dr. Etcheson is thereby obliged to refer
25 to the annexure, then at that point a summary must be considered.

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1 Now, I think I've covered the essential elements of what Maître
2 Roux has indicated, and simply it would be very helpful for the
3 Trial Chamber if Ms. Chea Leang and Mr. Petit were able to
4 comment and/or accept or assist us in what is a very difficult
5 procedural matter.

6 I should add that the Trial Chamber has an idea for a rule
7 amendment but that's not possible to solve this immediate problem
8 [10.49.29]

9 MS. CHEA LEANG:

10 Your Honours, and thank you, Judge Cartwright, for inviting the
11 two Co-Prosecutors in relation to the certain documents and the
12 objection raised by the defence.

13 What I have listened to so far, and if my understanding is
14 correct, is that certain reports that the Judge raised do not
15 require a full read out or summarized. Is that my clear
16 understanding of your mentioning?

17 JUDGE CARTWRIGHT:

18 The defence has acknowledged that Dr. Etcheson's reports and its
19 annexures can be considered as material placed before the Court.
20 If at any time there is a need to refer specifically to any
21 annexure, then a summary of that annexure must be given to the
22 Court.

23 [10.50.52]

24 MS. CHEA LEANG:

25 Yes, I understand, Your Honour, and the lawyers also acknowledge

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1 the fact.

2 And whether it will be read out or not, I think the evidence of

3 this report is part of the case file. However, we have to be

4 mindful what is important for a public hearing, as well as the

5 judgement of the Trial Chamber when it issues a final judgement,

6 what evidence does it base on. I personally understand that if

7 the evidence or report which are already in the case file which

8 are deemed essential in order to find the truth, we have to show

9 to the public and the world to understand what the accused had

10 committed.

11 I will raise an example of a case. For example, the accused

12 agreed on what has been raised by the Co-Prosecutor but the

13 Chamber doesn't show it to the public, we only know amongst

14 ourselves, the judges, the staff and the Co-Prosecutors working

15 here at ECCC, but the public has no knowledge of what the accused

16 has committed. And for proper judgement and for the good

17 administration of justice we should show what he has committed,

18 meaning to show all the evidence in the case file, depending on

19 the decision by the Chamber whether the evidence -- which

20 evidence is important. This is the discretion of the Chamber in

21 order to have good administration of justice.

22 As we all know, the documents in the case file, the prosecutors

23 acknowledge they are voluminous and it doesn't mean that the

24 Trial Chamber has to show all those documents. This is my

25 observation. However, we should not limit the evidence showing

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1 that the accused had committed such crimes. If they limit only
2 certain parts and we only work on other certain parts, it doesn't
3 seem to have any inculpatory evidence on the accused. This is my
4 opinion.

5 And I would like my international colleague to express his
6 observation if he wishes to do so.

7 [10.54.15]

8 MR. PETIT:

9 Good morning, Mr. President, Madam Judge, Your Honours.

10 Thank you very much for this opportunity to assist the Chamber
11 this morning. Although, as often has been the case during my
12 career, I find that I'm usually very helpful when I don't say
13 much.

14 So I will concede that apparently there has been a revised -- a
15 revision of the position of the defence, and I consider indeed
16 that the proposition put forth seems to be an acceptable
17 solution, inasmuch as my understanding is correct, which is that,
18 as you so clearly stated, Madam Judge, the report, including his
19 annexures, if the Trial Chamber decides, can be deemed to have
20 been put before the Chamber so that it may consider the report
21 and its annexures for its final decision, if that is the ambit of
22 the concession of the defence and the understanding of the Trial
23 Chamber.

24 I again, unfortunately, cannot be much more of an assistance than
25 that because it seems to be a reasonable solution.

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1 [10.55.45]

2 Of course, this is not to concede the Co-Prosecutors' right at
3 any time during the proceedings to request the Chamber to
4 consider any such document for any purposes that the
5 Co-Prosecutors would deem helpful to ascertain the truth. But as
6 I understand it, for the sake of Dr. Etcheson's testimony and the
7 expediency of the process, this seems to be a perfectly
8 acceptable solution.

9 May I, however, in closing, mention that I do take strong
10 objection to the insinuation of the defence this morning that the
11 Co-Prosecutors are somehow attempting to divert or subvert the
12 course of the next trial by having this Chamber reach a decision
13 on the war crimes issue that it may not reach in this trial. We
14 are perfectly aware of the implication of any charges that were
15 put forth and that were indeed sanctioned by the Closing Order.

16 We will address the armed conflict issue at the proper time.
17 But again, I would like the record to reflect that the
18 Co-Prosecutors have at no time, nor do intend to ask the Trial
19 Chamber to decide on any issue that it need not decide for the
20 purposes of this trial. And again, I strongly take exception to
21 the insinuation of another purpose in our representation. But
22 again, as I said, we will address that issue at an appropriate
23 time, which is not now.

24 I hope that has been of assistance. And if I can be of any
25 further assistance.

37

1 JUDGE CARTWRIGHT:

2 Yes. Thank you, Mr. Petit.

3 I just want to make one other observation because neither you or
4 Ms. Chea Leang were present. The Trial Chamber is keenly aware
5 of the need to balance the public's right to know against the
6 expeditious conduct of this trial. For that reason it is
7 suggested to the Co-Prosecutors that they select two or three of
8 the items from the annexes -- I'm going too fast -- two or three
9 items from the annexes which are particularly relevant to this
10 subject in this trial and summarize those, but no more than two
11 or three.

12 Now, it may not be deemed necessary, given the very helpful
13 concession that the defence has made, and they're in a spirit of
14 trying to reach a compromise and not attack each other at this
15 moment. So it would be helpful if we kept to the subject under
16 consideration.

17 [10.58.48]

18 So perhaps the prosecutors might like to consider that
19 possibility that they read out two or three particularly relevant
20 summaries only to ensure that the public has some understanding
21 of the material.

22 Can I just check with the defence? I don't think you need to
23 respond to Mr. Petit's last impassioned comments, Maître Roux,
24 because I don't think they're particularly helpful.

25 Thank you.

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1 MR. PRESIDENT:

2 The IT will need to change the tape so please wait for awhile
3 before you take the floor in order to continue the recording.

4 (Break for technical requirements)

5 MR. PRESIDENT:

6 Now everything is fixed, so Mr. François Roux, you can take the
7 floor.

8 MR. ROUX:

9 Thank you, Mr. President.

10 This is not to respond to the gauntlet that was thrown down but
11 to rephrase the question that I had put before. I would prefer
12 that after we will have discussed publicly Mr. Etcheson's report
13 and therefore the annexures thereto, I would like the document to
14 be published on the site. I agree with Ms. Chea Leang that
15 public opinion must be informed as thoroughly as possible about
16 what is going on here.

17 I therefore consider that a document which was hitherto
18 confidential and is discussed in an open session becomes a public
19 document and should accordingly be accessible to the public and
20 specifically the media. I therefore suggest that the report of
21 Mr. Etcheson and its annexures be placed on the website.

22 [11.03.12]

23 Lastly, I would like to point out again, in the presence of Mr.
24 Robert Petit and Ms. Chea Leang, in order to avoid difficulty I
25 would like Mr. Etcheson's testimony as an expert to be limited to

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1 the report that he produced in July 2007 and the annexures of
2 2007.

3 I do not wish him to give testimony on the entire investigation
4 period because, as my learned friend of the civil parties said,
5 if he had to participate in the investigation he would have
6 required the authorization of the Co-Investigating Judges to
7 participate in the interviews of the accused. This was not the
8 case.

9 So if we wish to each make a step in the right direction, we
10 should restrain ourselves or limit ourselves to July 2007 and not
11 go beyond that date. However, I should like to add that this
12 submission does not concern the diagrams that Mr. Etcheson
13 presented, which are undeniably useful for the proceedings. This
14 is new material.

15 I regret that the defence was only provided with these documents
16 at the time of that session but we shall conduct a closer
17 analysis and undeniably they are diagrams prepared on the basis
18 of the July 2007 reports and they can be included in the
19 discussion.

20 Thank you.

21 MR. PRESIDENT:

22 Mr. Co-Prosecutor, Robert Petit, you take the floor.

23 MR. PETIT:

24 Thank you, Mr. President.

25 [10.06.04]

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1 I will be very brief. I will let my colleague address the issue
2 of the publicity of the report as we seem to have -- well, I will
3 let my colleague address that issue. And I will let my learned
4 friend, Mr. Bates, continue the discussions that I understand he
5 has started on the scope of Mr. Etcheson's testimony. I think it
6 will not be much of assistance for me to speak, basically,
7 without knowing the background.

8 I would simply request the Trial Chamber that once you deem it
9 appropriate, that my colleague and I retire before you go back
10 into public session, for the sake of appearance in terms of the
11 proceedings. But I leave it up to you.

12 My colleague will address you on the report. Thank you.

13 MR. PRESIDENT:

14 Ms. Chea Leang, you take the floor.

15 MS. CHEA LEANG:

16 Thank you very much, Your Honour, the President.

17 I would like to add two more points concerning what Judge Silvia
18 Cartwright raised concerning the reading out of the documents.
19 Regarding the numbers of documents, we have not restricted to
20 just a few documents. We, the Co-Prosecutors, deem important
21 that we have to use all the documents that prove beyond the
22 reasonable doubt which are the burden of proof for supporting the
23 charges against the accused. And how they are presented is
24 another question.

25 [11.08.05]

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1 Another point regarding the publicity of the documents; we the
2 Co-Prosecutors are willingly looking forward to see the
3 expeditious trial and we would like to make sure that the
4 audience is well-informed of what has happened during the regime.
5 The question remains whether the publicity has damaged us or
6 violates the rule of confidentiality of the related Case File
7 number 2. We are not worried that this publicity is not doing
8 good to the Case File 001 but we are afraid that we would like to
9 make sure that the confidentiality of the document is
10 well-maintained if it is dealt with Case File 002 while the
11 publicity of the document would be revealed in the Court during
12 this Case 001.

13 I am very grateful. Thank you.

14 MR. PRESIDENT:

15 Lawyer, I note your presence.

16 MR. KONG PISEY:

17 Thank you, Mr. President.

18 Your Honours, I have observed and I would like to make a few
19 comments. As Ms. Chea Leang already pointed out concerning the
20 principle of the presentation of the evidence as stated in the
21 Constitution, the evidence must be proved beyond the reasonable
22 doubt. That is obvious.

23 [

24 However, there is no other provision or none of the parties is
25 obliged to provide a certain amount of documents to make sure

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1 that they are proved beyond the reasonable doubt. There is no
2 threshold for that. The Co-Prosecutors have been working very
3 hard to make sure they can prove beyond the reasonable doubt,
4 though we don't really have the threshold for that.

5 [11.10.41]

6 Regarding the publicity of the documents on the website, I
7 support the idea. However, I think by doing so it is not really
8 a kind of message to be put forward to the Judges for their
9 consideration. It is for the public as a whole.

10 So in the proceedings, in the courtroom, it is very important
11 that Judges are well-informed and presented the documents, so
12 that they can really base for their judgements. I still maintain
13 that it is really difficult to assure that some certain numbers
14 of documents must be presented to prove the charges beyond a
15 reasonable doubt, and when it comes to the expert I note that
16 everyone is well-informed that he has taken an oath that he would
17 only speak the truth, the whole truth, nothing but the truth. In
18 light of that his testimony is bound by the oath.

19 According to Article 332 of the Criminal Procedural Code, the
20 Trial Chamber is vested with the discretion to consider this
21 case. I'm very grateful, Your Honours.

22 MS. STUDZINSKY:

23 Thank you, Mr. President. I seek only clarification.

24 Am I right that there are now three ways how to put evidence
25 before the Chamber? That is reading out a document, summarize a

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1 document or through agreement or declaration, and that now
2 through this declaration made by the defence no further steps
3 must be undertaken to consider all annexes and the report; that's
4 all annexes of Mr. Etcheson's report as put before the Chamber so
5 that a judgement can be based on these documents and annexes.

6 I would like to seek only this clarification, if I am right in
7 understanding. Thank you.

8 [11.14.13]

9 MR. PRESIDENT:

10 Judge Silvia Cartwright, you take the floor to respond.

11 JUDGE CARTWRIGHT:

12 I am probably not the best person on the Bench to go into details
13 relating to the civil law system. However, these documents, by
14 acknowledgment by the defence -- that is the report and its
15 annexures -- are now put before the Court in terms of Rule 87.

16 Any part of the report or any of the annexures can be challenged
17 at any time or referred to specifically in order for the Judges
18 to decide whether they are admissible. We have reached only the
19 first stage in the process.

20 The next stage is the admissibility stage. We are simply trying
21 to avoid the reading out of vast numbers of summaries,
22 particularly at a point when they may not be directly relevant or
23 all of them -- each part of the summary be directly relevant to
24 the topic under consideration and/or to this trial.

25 If you challenge, or particularly wish to emphasize any one of

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1 those annexures, it is your privilege to make that reference
2 specific.

3 [11.16.06]

4 Let me be clear: we are dealing only with this report; only with
5 the annexures to this report. This is not a new ruling of the
6 Court with general application. Is that -- does that clarify
7 things for you?

8 MS. STUDZINSKY:

9 If I may go ahead, partly a response to my question, then to
10 specify a little bit more.

11 If the annexes or the documents in the annexes are not challenged
12 by any party, can the Chamber base the judgement, the decision at
13 the end, on these annexes without being read out, without -- or
14 summarized? That is my question.

15 Of course they can be challenged. That is clear if they are
16 admissible or whatever. That is possible. But if they are not
17 challenged, is this enough to be put before the Chamber -- that
18 is my question -- by agreement or through agreement of the
19 defence? Thank you.

20 MR. PRESIDENT:

21 Judge Lavergne, you take the floor.

22 JUDGE LAVERGNE:

23 To enable the Chamber to use a piece of evidence in coming to a
24 decision, firstly the evidence should be put before the Court.

25 In the case in point there appears to be a proposal that the

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1 expert report and all its annexures be -- insofar as they support
2 the expertise, be put before the Court -- or expertise or the
3 expert report.

4 [11.18.23]

5 When the document is put before the Court, the parties can make
6 submissions as to the admissibility of the report. They can
7 challenge the scope in respect of the evidence that is being
8 adduced. But if there is no discussion, the mere fact of it
9 having been put before the Court and that there may have been a
10 possibility of an adversarial debate appears to me to be
11 sufficient. Is that clear?

12 MR. ROUX:

13 Mr. President, matters seem perfectly clear to me now.

14 I'd just like to make a comment on the question raised by Ms.

15 Chea Leang with regard to making public documents.

16 Ms. Chea Leang, do you think that Mr. Etcheson's report and its
17 annexures could be detrimental to the preparation of Case 2? If
18 that is the case then we can't even discuss them in public; at
19 least I don't think so. I don't think so. I do not think that
20 Mr. Etcheson's report and its annexures will adversely affect
21 Case number 2, and this is why we began to discuss it in open
22 session yesterday. So please, you need to make this clear for
23 us.

24 [11.20.44]

25 JUDGE LAVERGNE:

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1 I am not convinced that the Chamber is required to take a
2 decision on this point. In my view, this is a problem that would
3 involve the Co-Prosecutor if it wishes to take a stand. It was
4 on this issue at some other point. I think we have covered the
5 items on the agenda of this trial management meeting, I should
6 think.

7 MR. PRESIDENT:

8 The lawyer, the floor is yours.

9 MS. RABESANDRATANA:

10 I shall be very brief, Mr. President.

11 I do not wish my thoughts to be distorted; that is, with regard
12 to Article 31. I do not wish to be used as an instrument to say
13 what the defence meant. I just wanted to most respectfully
14 indicate the defence referred to inconsistency between the fact
15 of being an expert witness and working within the Office of the
16 Co-Prosecutors. The defence considered this to be unimaginable.
17 I thought it appropriate to submit, based on Article 31, that
18 there was no inconsistency because Article 31 refers to experts
19 appointed by the Co-Investigating Judges and it says clearly that
20 these experts can take part in investigative acts.

21 The purpose of my submission was to reassure the Court and shed
22 some light on the options and the scope of the expert's activity,
23 and I maintain that, in my view, after 2007 he could very well
24 have continued to prepare his report based on facts that he had
25 become aware of in the course of an investigation. That is a

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1 summary of my submission or my intended submission which was, in
2 fact, an explanation.

3 And I therefore dispute the interpretation that the defence made
4 of my statement, and not necessarily in good faith, which -- and
5 the defence seemed to imply that I, myself, was challenging the
6 validity of the expert's report after 2007. I hope -- I think I
7 was clear. Thank you.

8 [11.23.57]

9 MR. PRESIDENT:

10 The Co-Prosecutor, the floor is yours.

11 MS. CHEA LEANG:

12 Regarding to what has been raised by François Roux concerning the
13 Office of the Co-Prosecutors and the publication of the report of
14 the expert, I think this question, firstly, is related to the
15 Co-Investigating Judges as I myself think there are certain
16 points which are related to Case 002; therefore, the
17 Co-Investigating Judges shall be consulted before its publication
18 whether it's contradictory to the confidentiality of case file
19 002. So this can be discussed with the Co-Investigating Judges.
20 Also in the case file -- and the lawyers have already seen the
21 report in the case file because it is part of the case file, and
22 we all have examined it. I myself, after my review, I think
23 there is some mentioning of a certain suspect in the second case
24 file. So it is the decision of the Co-Investigating Judges
25 whether it's going to interfere with the investigation.

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1 This is my observation, and if the Co-Investigating Judges think
2 this does not interfere with his next case file or if he thinks
3 it's going to have an impact on the four suspects in the next
4 case file, this is their discretion.

5 Thank you, Your Honour.

6 [11.26.14]

7 (Deliberation between Judges)

8 MR. PRESIDENT:

9 We have discussed extensively, and actually we only timed it for
10 one or one and a half hours, but it almost occupies the entire
11 morning; however, I would like to extend my thanks to the
12 national and international Co-Prosecutors for their clarification
13 and position.

14 Now we seem to have enough discussions and suggestions and
15 submissions for the Chambers to consider.

16 Next, the Court official, can you arrange the opening of the
17 curtain? And the IT, please connect the hearing or the
18 proceedings to the public audience.

19 And the Chamber will adjourn for 15 minutes for these
20 preparations. And after the break, the Chamber will decide the
21 result of our discussions to the public audience, and then we
22 will adjourn for our lunch.

23 (Court recesses from 1128H to 1202H)

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Closed Session