



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 PROCEEDINGS - "DUCH" TRIAL

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

31 March 2009, 0903H

Trial Day 2

Before the Judges:

NIL Nonn, Presiding
Silvia CARTWRIGHT
YA Sokhan
Jean-Marc LAVERGNE
THOU Mony
YOU Ottara (Reserve)

For the Civil Parties:

HONG Kimsuon
KONG Pisey
TY Srinna
MOCH Sovannary
KIM Mengkhy
Silke STUDZINSKY
Martine JACQUIN
Alain WERNER
Pierre-Olivier SUR

For the Trial Chamber:

DUCH Phary
SE Kolvuthy
LIM Suy-Hong
Matteo CRIPPA
Natacha WEXELS-RISER

For Court Management Section:

SANN Rada

For the Office of the Co-Prosecutors:

CHEA LEANG
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Alexander BATES
Jurgen ASSMANN
PAK Chanlino

For the Accused Person KAING GUEK EAV

KAR Savuth
François ROUX

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MS. CHEA LEANG	Khmer
MR. DUCH PHARY	Khmer
MR. HONG KIMSUON	Khmer
MS. JACQUIN	French
MR. KAR SAVUTH	Khmer
MR. PETIT	English
MR. ROUX	French
MS. SE KOLVUTHY	Khmer
MS. STUDZINSKY	English
MR. SUR	French
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	English

1

1 (Judges enter the courtroom)

2 MR. PRESIDENT:

3 The Trial Chamber declares the resumption of the Trial.

4 The Greffiers, have you already verified the list of parties and
5 participants at the proceedings so that it can be recorded in the
6 transcript? I would like to ask the detention facility officials
7 to bring the accused to the dock.

8 You may sit down. Next, the Chamber would like to inform the
9 Co-Prosecutors that the Co-Prosecutors could now make a brief
10 opening statement of the charges against the accused, in line
11 with Rule 89bis (2).

12 If the Co-Prosecutors wish to do so, the Trial Chamber would
13 limit two hours for that. You now take the floor.

14 MS. CHEA LEANG:

15 Your Honours, we the Co-Prosecutors of the ECCC would like to
16 make a brief opening statement in the charges against Duch the
17 head of the S21 office. Having searched the Criminal case file
18 number 002 dated 14 August 2006, noting and reviewing case file
19 number 001 dated 18 July 2007 of the Office of the
20 Co-Investigating Judges which is dated 18 July 2007 by such
21 office, having considered Article 1 of the Law on the
22 Establishment of the ECCC, having considered Rule 66.5 of the
23 ECCC Internal Rules and the conclusion of the judicial
24 investigation, noting the case file forwarded to the Office of
25 the Co-Prosecutors dated 23 June 2008, find the following facts.

2

1 For 30 years, one and a half million victims of the Khmer Rouge
2 have been demanding justice for their suffering. For 30 years the
3 survivors of Democratic Kampuchea have been waiting for
4 accountability. For 30 years a whole generation of Cambodians
5 have been struggling to get answers about their families' fate.
6 Well today, in this Courtroom, before the Cambodian people and
7 the world, at long last this process begins and Justice will be
8 done. The Government of Cambodia, itself struggling with the
9 Khmer Rouge legacy, and the international community that for so
10 long failed the people of Cambodia, have finally recognized that
11 justice must prevail and that there cannot be impunity for the
12 worst of crimes. Even after 30 years.

13 [09.08.23]

14 Circumstances have dictated that this process must start with the
15 trial of this accused. You are called upon to decide the guilt or
16 innocence of one man and only for the crimes with which he is
17 charged. He must not be judged for the crimes of others nor for
18 his beliefs or membership in a group but for the victimization of
19 others on a massive scale for which he is legally responsible.

20 But lest we forget, Your Honours, you are also called upon to
21 determine before all how and why this man was allowed to commit
22 those crimes. You will need to do this because the law calls for
23 it but also because history demands it. Beyond this one case and
24 beyond the day to day business of this one trial, throughout, we
25 must never forget that it is the purpose of courts such as this

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1 one, to establish the truth, unflinchingly, without fear,
2 restrictions or prejudice, so that humankind may learn and
3 history not be repeated.

4 [09.10.09]

5 In this search for the truth we, the Co-Prosecutors, will assist
6 the Trial Chamber to the best of our abilities whilst mindful of
7 our responsibility to prove the guilt of the accused beyond
8 reasonable doubt. We submit that the evidence of this case, some
9 of which we will now highlight for you, will indeed satisfy that
10 burden on all counts.

11 We wish to draw your attention and expand upon some of the
12 evidence gathered in the case file, not to repeat the facts as
13 laid out in the Closing Order but rather to underline some of the
14 evidence and the links and conclusions can be drawn from that
15 evidence.

16 We will, therefore, examine the context in which the crimes at
17 S-21 occurred. We will then speak to the role of the accused and
18 his responsibility for the commission of those crimes before
19 concluding on some of the legal aspects relevant to that
20 responsibility.

21 Obviously what we are about to state are simply arguments and
22 your judgment will validate those arguments or not. Furthermore,
23 you the Chamber will determine if the facts are indeed supported
24 by the evidence and determine what, if any, of that evidence will
25 be taken into account.

4

1 [09.12.35]

2 S-21 formed an integral and indeed a vital part of a widespread
3 and systematic attack on the entire population of Cambodia. This
4 attack was the implementation of a plan that the CPK's leadership
5 agreed to and started implementing much before the inception of
6 S-21. As a subordinate of this leadership, acting on their orders
7 and in furtherance of those policies, the accused crimes were
8 part of this attack

9 Your Honours, the Communist Party Kampuchea was born on 30
10 September 1960 in the Phnom Penh railway station, elected Nuon
11 Chea as Deputy Secretary of the Party and made Pol Pot and Ieng
12 Sary a member of the Central Committee of the Party. In 1963,
13 Saloth Sar alias Pol Pot became Secretary of the Party. Soon, to
14 the Cambodian people and the world they would be known as the
15 "Khmer Rouge".

16 The Khmer Rouge's immediate objective was to foment a political
17 movement to combat feudalism and imperialism, in order to build
18 up the strength to later launch an armed struggle to overthrow
19 the Sihanouk regime and drive western influence out of the
20 country. Their ultimate goal was the establishment of a "pure"
21 communist society unlike any seen before, although the Stalinist,
22 Chinese and Vietnamese models did influence the Khmer communists.
23 The communist rebellion grew slowly, but the Republican coup
24 d'état against Prince Sihanouk in 1970 changed everything.
25 Responding to the former King's calls to rise up against Lon Nol,

5

1 people all over the country joined the revolution. Almost
2 overnight, Khmer Rouge forces grew from a few thousand to tens of
3 thousands. The USA's expanded aerial bombing also helped drive
4 disillusioned peasants into the arms of the Khmer Rouge
5 revolution.

6 [09.15.36]

7 Gradually expanding the areas it controlled the Khmer Rouge, in
8 the guise of a coalition of opposition forces, finally entered
9 Phnom Penh on 17 April 1975. The nightmare of the Cambodian
10 people was about to begin.

11 Some then and perhaps still now argue that the Khmer Rouge came
12 to power with the best of intentions and that something went
13 terribly wrong. But that is simply not true. From the very
14 beginning, as evidenced by its policies in the zones it
15 controlled before April 1975, the Khmer Rouge leadership was
16 intent on ridding itself of its perceived enemies and placed
17 little value in humanrights or life itself. As one of its
18 infamous slogans so chillingly foretold "To keep you is no gain,
19 to destroy you is no loss."

20 Even today despite over thirty years of study it is still hard to
21 grasp the extent of the fundamental changes undertaken by the
22 Khmer Rouge and the ruthlessness and efficiency with which it
23 carried out its utopian social engineering experiment.

24 Once the Khmer Rouge took over Cambodia, they instituted a
25 regimented political hierarchy that broke the country into

6

1 sections and various subsections. The following DK-era Map shows
2 the political hierarchy of Democratic Kampuchea. The six "Zones"
3 seen here were the largest and most powerful sections. The zones
4 were then subdivided into "Sectors," which were further
5 subdivided into "Districts." Districts were composed of several
6 "Communes" or "Sub-districts."

7 [09.18.16]

8 Here is the DK political map, here is the Zone, which reported to
9 the Standing Committee of the CPK and independent or autonomous
10 region is painted in different colours. Example, this is the
11 South West Zone indentified by its DK-era Code. This is the
12 region 13 which reported to South West Zone leadership.

13 From this strict dividing of Cambodia into hierarchal areas, the
14 CPK was able to implement its criminal policies by disseminating
15 orders down through the hierarchy. This structure also allowed
16 the CPK Central Committee --

17 MR. PETIT:

18 Mr. President, I apologize, can we suspend one second as we
19 appear to have a technical problem? We want to present to you and
20 everyone else, apparently some slides that are not showing up on
21 everyone's monitors, so if we could spare maybe five minutes
22 while we are trying to assemble?

23 MR. PRESIDENT:

24 Yes, I agree, please the IT can you resolve the problem for the
25 Co-Prosecutors?

7

1 MR. PETIT:

2 I just want to assure that it worked well when we tried it out
3 before. But now of course it doesn't.

4 [09.20.25]

5 MR. PRESIDENT:

6 May the Co-Prosecutor continue?

7 MS. CHEA LEANG:

8 Your Honours do you see the images on the screen?

9 MR. PETIT:

10 Sorry, can I suggest as a -- is it back on? Thank you.

11 MR. PRESIDENT:

12 Please the Co-Prosecutor continue your statement.

13 MS. CHEA LEANG:

14 Your Honours, would you please allow me to continue from the
15 first picture? Once the Khmer Rouge took over Cambodia, they
16 instituted a regimented political hierarchy that broke the
17 country into sections and various subsections. The following
18 DK-era Map shows the political hierarchy of Democratic Kampuchea.
19 The six "Zones" seen here were the largest and most powerful
20 sections. The zones were then subdivided into "Sectors," which
21 were further subdivided into "Districts." Districts were
22 composed of several "Communes" or "Sub-districts."
23 Here is the Zone, which reported to the Standing Committee of the
24 CPK and independent or autonomous region is painted in different
25 colours. Example, this is the South West Zone indentified by its

8

1 DK-era Code. This is the region 13 which reported to South West
2 Zone leadership.

3 From this strict dividing of Cambodia into hierarchal areas, the
4 CPK was able to implement its criminal policies by disseminating
5 orders down through the hierarchy. This structure also allowed
6 the CPK Central Committee to control the progress of policy
7 implementations as reported by various sections.

8 [09.23.12]

9 By discouraging formal horizontal ties or communications the CPK
10 also prevented alliances that might have jeopardized its control
11 or diminished the efficient implement of its policies.

12 Ultimately, through that State, Party and Armed Forces apparatus,
13 a large part of Cambodia's population was to be subjected to
14 policies of forced movement, forced labour, illegal arrests,
15 detention, inhumane living conditions, torture, and executions.

16 This is a brief forced movement video. Millions of Cambodians
17 were forcibly moved from one part of the country to another. The
18 first forced evacuation within this court's temporal jurisdiction
19 began on 17 April 1975, when the CPK forcibly evacuated Phnom
20 Penh. The following clip shows how literally overnight Phnom
21 Penh's two million inhabitants were driven out of their homes and
22 forcibly marched into the countryside with little but what they
23 could carry on their backs.

24 Anyone who hesitated was executed. Because the Khmer Rouge made
25 no provisions to feed or shelter the evacuees, literally hundreds

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1 of thousands died from exposure, starvation, exhaustion and
2 disease. These images of a ghost town remain a powerful testament
3 to the determination, efficiency and ruthlessness of the Khmer
4 Rouge in implementing their policies.

5 A second wave of forced movements occurred in late 1975 to early
6 1976 that resulted in hundreds of thousands of people being
7 forcibly moved from central and south-western Cambodia to the
8 Northwest Zone. Another large-scale forced movement occurred in
9 mid 1978 when tens of thousands of people were forcibly removed
10 from the East Zone.

11 Following the takeover of Cambodia by the CPK, virtually all of
12 Cambodia's population was unlawfully confined to rural
13 cooperatives or government worksites. In cooperatives, the
14 population was forced to labour under inhumane conditions.
15 People were forced to endure long hours of physical labour,
16 terrible working conditions, insufficient food and inadequate
17 medical care.

18 The forced labour video of the DK. These conditions also existed
19 at government worksites where tens of thousands of people were
20 forced to work on massive construction projects involving dams,
21 reservoirs, airports and other public works. Eschewing modern
22 tools and planning, and substituting political orthodoxy for
23 competency, the CPK leadership let thousands of forced labourers
24 die of starvation, overwork and execution. This clip shows
25 examples of these massive work projects. Here, the projects were

10

1 dam building and rice farming.

2 [09.27.53]

3 To ensure the success of its revolution the CPK sought to

4 eradicate all those it considered "enemies". Beginning on their

5 first day in power, the CPK targeted the political leadership of

6 the Lon Nol regime and the officer corps, many of whom were

7 executed during the forcible evacuation of Phnom Penh.

8 Rank-and-file soldiers and civil servants, though not initially

9 prioritized for execution, were targeted in later waves of

10 killings beginning in 1976. The CPK also pursued an explicit

11 policy of eliminating members of economic classes that were

12 considered beyond redemption: the land owner, the shopkeeper, the

13 merchant, the educated and all those tainted by association with

14 those classes.

15 All of the people expelled from the cities were classified as

16 "New People," and defined as potential "enemies". Huge numbers of

17 these New People were killed because of their perceived

18 disloyalty. Other groups singled out for mistreatment and

19 killings included ethnic Vietnamese, Chams, overseas Cambodians

20 intellectuals lured into returning, Khmer Kampuchea Krom,

21 Buddhists, and many others.

22 The back bone of this persecution was a nationwide network of

23 security centres which were created throughout Cambodia.

24 Mirroring the political hierarchy security centres were created

25 in every subdivision and from one end of the country to the

11

1 other. From the communal prison at the base of the pyramid to
2 S-21 at its apex these centres had but one purpose: to rid the
3 regime of its perceived enemies.
4 Most prisoners were sent to the local commune or perhaps district
5 security office where they were systematically starved, endured
6 inhumane detention conditions and forced labour, tortured to
7 confess their crimes and accomplices and killed.
8 However, if their crime was deemed to have serious political or
9 security implications, there was a strong possibility that they
10 were reported and moved up the chain of security centres.
11 Eventually, certain prisoners would end up at S-21; the end of
12 the line for anyone unfortunate enough to reach it.
13 [09.31.41]
14 Zone, sector and district security offices also received orders
15 from the "upper level" to arrest and deliver individuals who had
16 been implicated as enemies in confessions of the tortured
17 prisoners of S-21. Once detained there, these new prisoners
18 would, in turn, be tortured until they confessed to being
19 enemies, implicating their friends, colleagues and neighbours,
20 creating a new list of traitors to be arrested, tortured and
21 smashed. It was a vicious cycle, and the number of victims only
22 grew larger with time.
23 The DK Mass Grave Site Map This slide is an overlay over a DK era
24 map of the results from a Documentation Centre of Cambodia Mass
25 Grave Sites Mapping Project. It shows about 380 mass grave sites

12

1 spread throughout the country. Linked to those mass graves are
2 approximately 195 security centres which would use these sites to
3 dispose of their victims.

4 During this trial, Your Honours will meet a man who is living
5 proof of the strict hierarchy of the DK prison system. Since all
6 the identities of the witnesses are protected for the moment, we
7 will call him by his pseudonym KW-01. He was arrested at a rural
8 cooperative in the provinces, and first detained in chains at the
9 cooperative security office. Then he was transferred to a
10 district security office, and from there, to the Zone security
11 office, where he was repeatedly tortured. Finally, he was sent
12 to S-21, the top of the hierarchical network of DK security
13 offices where he came face to face with the Accused. He
14 represents one of the lucky few of those detained at Security
15 Centres who did not end up in one of these mass graves.

16 [09.35.00]

17 Your Honours, although Duch is not being charged with any crimes
18 that occurred outside of S-21, S-24 and Choeng Ek; the evidence
19 will show that his crimes were part of a widespread and
20 systematic attack on Cambodia's population. Such attack led to
21 the death of hundreds of thousands of men women and children
22 through inhumane living conditions, forced labour starvation and
23 execution.

24 By his knowledge of this attack and his intent to further it
25 through the commission of the crimes for which he is charged,

13

1 Duch as head of S-21 played a key role in its implementation.
2 Notably, the CPK's attack on their own population was not the
3 only conflict occurring during this period. At the same time,
4 Cambodia and Vietnam were engaged in an armed conflict along
5 their border. The fighting was intensive and prolonged
6 throughout the existence of Democratic Kampuchea.
7 This conflict is relevant to this trial because Duch is charged
8 with grave breaches of the Geneva Conventions arising out of the
9 torture, inhumane treatment and wilful killing of Vietnamese
10 prisoners of war and civilians who were sent to S-21. Under the
11 Geneva Conventions, the parties to an armed conflict are entitled
12 to certain protections. At S-21, these protections were denied,
13 and as such, the killings of Vietnamese soldiers and civilians at
14 S-21, in addition to constituting crimes against humanity,
15 amounted to grave breaches of the Geneva Conventions. Instead of
16 providing protection to these men and women, as required by the
17 Conventions, Duch supervised their detention, torture and
18 execution.
19 The evidence in the case file demonstrates that an international
20 armed conflict between Cambodia and Vietnam began in April '75
21 and increased in scope and intensity throughout the DK period.
22 Eventually, a massive invasion of Cambodia by Vietnamese forces
23 in December '78 resulted in the overthrow of the CPK in January
24 '79. Duch was aware of this armed conflict and knew that the
25 Vietnamese soldiers and civilians he was receiving were captured

14

1 in relation to this armed conflict.

2 Combat between DK and Vietnamese troops occurred along the border
3 with Vietnam and on islands near the coast of Cambodia during
4 1975 and into '76. The following footage shows an example of
5 these border battles. This footage shows Khmer Rouge soldiers in
6 combat with Vietnamese forces. These clashes steadily escalated
7 in intensity and frequency, as well as in geographic scope. Soon
8 there was combat along the entire length of the Cambodia-Vietnam
9 border, with armed incursions by both sides.

10 [09.39.52]

11 The red line drawn on this same DK-era map shown before shows
12 generally where the clashes occurred along the border.

13 In early 1977, Vietnamese troops penetrated into Cambodia in the
14 Svay Rieng Province. In August 1977, the CPK responded with
15 attacks into Vietnam's Tay Ninh Provinces. Allegations of
16 atrocities committed during DK raids in Vietnam served as
17 backdrop for a broad Vietnamese offensive in late 1977 to early
18 1978 when 11 Vietnamese divisions penetrated up to 25 miles into
19 Cambodia before they ended their incursion.

20 This major offensive was followed by a period of widespread
21 border clashes during most of 1978 that culminated in another
22 Vietnamese invasion of Cambodia in December 1978. As many as
23 150,000 Vietnamese troops attacked Cambodia, and the CPK
24 government collapsed with the capture of Phnom Penh on 7 January
25 1979.

15

1 The existence of this conflict between DK and Vietnam is
2 confirmed by more than 400 documents on the Case File, including
3 several books, more than 200 contemporaneous media reports, more
4 than 100 telegrams and reports from DK armed forces reporting on
5 clashes with Vietnamese forces, numerous S-21 documents that
6 record Vietnamese soldiers as detainees, and statements from many
7 witnesses, including the Accused himself. The existence of an
8 armed conflict, and Duch' awareness of it is irrefutable.

9 Your Honours, it is in this context of war with Vietnam and an
10 attack by the regime against Cambodia's population that S-21 was
11 created and operated. Its existence however and the extent of the
12 crimes committed therein only began to be revealed on 14 January
13 1979. On that day vanguard of the Vietnamese army came upon an
14 apparently abandoned fortified location in Phnom Penh. This is
15 what they saw.

16 Your Honours, as difficult as that video is to watch, it was only
17 the beginning. Eventually the world would have to acknowledge the
18 machinery of death that was --

19 [09.44.16]

20 MR. ROUX:

21 The Chamber has yet to rule on the contents of this footage. This
22 has been the subject of an application. And representations made
23 by the prosecution and defence and I am shocked to see that this
24 film has been produced before the Chamber has made its ruling
25 thereon.

16

1 MR. PETIT:

2 Mr. President, I should like to remind my colleague that if he
3 had consulted or watched the video he would have realized that
4 this is not the subject of the presentations made before the
5 Chamber, this is a film that has been on the case record for more
6 than two years. So with your leave I would like to inform my
7 colleague that you had decided that there should be no
8 interruptions by the parties during the opening statement except
9 by the Chamber, so I would respectfully request that my learned
10 colleague be reminded of this fact. Thank you.

11 MR. ROUX:

12 Mr. President, except when there is an objection. I am making an
13 objection. I maintain it. So this film was in the record of the
14 case from the very start. I understand that it is the same as the
15 film that you tried to present at the same time. Accordingly I
16 expect the prosecutors to explain to the Chamber why so much was
17 done to present a film that you already have in the record of the
18 case before that?

19 MR. PRESIDENT:

20 Please, the Co-Prosecutor to respond.

21 MR. PETIT:

22 With your leave, the term "cinema" does not have any role to play
23 in such a court which is in charge of rendering justice for the
24 victims of S-21. Since 2007 we have produced a lot of evidence
25 and material which is on the record, including this video and

17

1 therefore this obviates any objection that my colleague might
2 wish to present. And discoverance on the evidence will take place
3 during the trial when the parties will submit various arguments.
4 I also take this opportunity in the meantime to recall that your
5 order said that opening statements should not be interrupted by
6 the parties so that justice should be done. Thank you.

7 [09.47.07]

8 (Deliberation between Judges)

9 [09.50.33]

10 MR. PRESIDENT:

11 The Co-Prosecutor can clarify clearly on the video footage which
12 has just been shown and which has been objected by the defence
13 lawyer? Whether this video footage is a new footage or the
14 existing one which is already in the case file and which has
15 already been shown for your presentation.

16 MR. PETIT:

17 Thank you, Mr. President, I can assure you that every single
18 piece of evidence that will be talked about by us today, that
19 will be shown to you on your monitors, are in the case and have
20 been in the case file. 90 per cent of them except for the witness
21 statements, for over two years. I submit Your Honour, that if the
22 defence had any objection to any of these pieces of evidence it
23 had ample time to exclude or request the exclusion from the case
24 file by putting forward a motion to the Co-Investigating Judge.
25 My learned friend, himself an expert in the civil law system,

18

1 knows that very well.

2 Bearing that, and I note that the rules say that they are barred
3 from doing this now by the Closing Order's finality. Bearing that
4 all the evidence that is in the case file, and what Your Honours
5 have so clearly stated during pre-trial conference. All the
6 evidence in the case file, can be referred to by the parties, it
7 is after that, up to you to decide what evidence you need to base
8 your judgement on and to weigh that evidence accordingly.

9 So again, to clarify, all the evidence that we will be referring
10 to today is in the case file.

11 MR. PRESIDENT:

12 Judge Cartwright please?

13 JUDGE CARTWRIGHT:

14 Yes, thank you Mr. Petit. However, the Trial Chamber would like
15 to know if this video footage, which you say has been on the case
16 file for a considerable period, is the same video footage is that
17 which the subject of an application before the Chamber; an
18 application that has not yet been determined?

19 MR. PETIT:

20 Thank you. I wasn't listening to the translation; I was trying to
21 enhance your voice. No, the short answer is no. We can, if you
22 want, show you right now the difference in those that will of
23 course take up the court's time. But I assure you that we are
24 very much mindful as Co-Prosecutors of the obligation of our
25 office and we will respect the courts judgment until it is

19

1 rendered. So, no.

2 MR. PRESIDENT:

3 Please the lawyer Kar Savuth.

4 KAR SAVUTH:

5 Your Honour, Mr. President, in point four, of the brief statement
6 and submission. In this submission the President, in this
7 proceeding the Co-Prosecutors would make the opening statement
8 and there is no rules or any document to show which evidence the
9 Co-Prosecutor can present during this brief statement. Thank you.

10 MR. ROUX:

11 Mr. President, as if by chance this is a document which was
12 discussed during the investigation phase. We spent a year with
13 the Co-Prosecutors in the office of the Co-Investigating Judges.
14 I have always asked that the material in the record of the case
15 be discussed adversarially before the Co-Investigating Judges.
16 And I say that it would have been fair that before the
17 prosecution presents this film which is for all intents and
18 purposes identical to the one that has been the subject of an
19 application before you, it would have been fair for the
20 prosecutor -- there is no translation it would appear.

21 [09.56.20]

22 (Test for English interpretation channel)

23 MR. ROUX:

24 There are 16, 000 documents in the record of the case and in
25 these circumstances it would have been fair during the

20

1 investigation for the Co-Prosecutors to request that the material
2 be discussed advisariially.

3 MR. PRESIDENT:

4 Would you please wait for a moment while we sort out the
5 translation issue? Please the defence lawyer you can continue.

6 [09.57.21]

7 MR. ROUX:

8 (Not interpreted)

9 MR. PRESIDENT:

10 Would the IT people please sort out the interpretation issue?

11 Thank you.

12 [09.58.25]

13 MR. PRESIDENT:

14 May the defence lawyer continue? Thank you.

15 MR. ROUX:

16 Very well, Thank you Mr. President. So, as I was saying, we have
17 had a year and a half of investigations on an adversarial basis
18 with the Office of the Prosecutor. A number of documents were
19 discussed or debated during the investigation. But some were not
20 the subject of an adversarial debate. A few days before the
21 beginning of this trial, the Co-Prosecutors announced that they
22 had found an exceptional document that they absolutely wished to
23 produce. And so what do we find out today? We find out that they
24 had in their records something which they had failed to discuss
25 adversariially during the investigation. This something is the

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1 same film! The same footage! This is not a fair trial!
2 At the very least, if the prosecutor wishes in the course of
3 these proceedings to use documents that were not discussed
4 adversarially before the Investigating Judges, the least it could
5 do is to warn the defence before hand. There are 17, 000
6 documents, how do you expect the defence to prepare properly if,
7 at the very last moment, you produce documents that were not
8 discussed adversarially during the investigation without
9 indicating either to the defence or to the Chamber what these
10 documents are. Without indicating either to the defence or to the
11 Chamber that the document that you are seeking to produce is
12 practically is the same as the one that you tried to include in
13 the record of the case that is the film of S-21? We were not told
14 what it was, we were shown images of S-21 we were not told who
15 shot the film, under what circumstances and pictures or footage
16 is projected just like that and they say it's been in the case
17 file for two years now.

18 It was not so during the investigation and under proceedings of
19 this Chamber, everything is discussed adversarially at the
20 investigation stage. Thank you.

21 [10.01.20]

22 MR. PETIT:

23 I apologize to prolong this debate; however, I think it is my
24 duty to correct so many misrepresentations. First of all it is
25 not "our" file. It is the court's file. It is the Investigative

22

1 Judges file; it is now your file.

2 In that file there is not 16,000 or 17,000 documents. There is,
3 in actual fact, 2,900 documents. All of those documents save for
4 the few added during the investigative phase or the witness
5 statements have been referred to specifically, by the
6 Co-Prosecutor as supporting our allegations in the initial
7 submission filed in July 2007.

8 I have no doubt that my learned friend, so experienced in
9 international crimes must have read this initial submission
10 attentively. Must have looked at all the pieces of evidence, we
11 have referred to almost two years ago as being relevant, as being
12 susceptible of being brought forward by the Co-Prosecutors to
13 support these allegations. So, I am a bit confused about this
14 apparent surprise now of the defence as to what we deem to be the
15 relevant evidence.

16 Now if I understand the gist of most of the intervention, this is
17 about this video. As I said, we can share the two videos; you can
18 see that they represent difference scenes. However, we are
19 talking about S-21. Is the defence now telling us that every time
20 we talk about S-21 we can only talk about it once? Show only one
21 piece of evidence, to restrict your consideration of the evidence
22 that is in the case file? Does the defence presume to tell you,
23 to tell us what the parties can refer to in the case file? I
24 don't think - I hope, it's not the intervention of the defence to
25 support that contention.

23

1 So, again, I would request that we may proceed. Of course, being
2 credited for the amount of time we have spent debating this
3 issue, and that we may go forward with this trial. Thank you.

4 [10.06.45]

5 MR. PRESIDENT:

6 After having listened to the objection by Mr. Francois Roux, the
7 defence lawyer of the accused, on the showing of the film
8 footage. At the same time with the clarification and the response
9 by the Co-Prosecutor regarding the objection, the Trial Chamber
10 considers the objection by the defence lawyer is inappropriate
11 and the Trial Chamber will allow the Co-Prosecutor to continue
12 the brief opening statement as planned. Please.

13 MS. CHEA LEANG:

14 Thank you, Your Honour, let me continue with your permission.
15 Your Honours, as difficult as that video is to watch, it was only
16 the beginning. Eventually the world would have to acknowledge the
17 machinery of death that was S-21 and its crucial role in the
18 sufferings of the Cambodian people.

19 However before we look at some of the evidence of the crimes
20 committed at S-21 lets clarify first its physical and
21 organizational structure.

22 S-21 was comprised of a main compound, the neighbourhood
23 immediately surrounding that compound, a subordinate forced
24 labour camp at Prey Sar, known as S-24, as well as a main
25 execution and burial site located at Choeng Ek.

24

1 The map of Phnom Penh and its surroundings. Looking at this map
2 of Phnom Penh and the surrounding area we can see a green box in
3 the upper right hand corner, this is where the main S-21 compound
4 was located. The blue box south and below S-21 is Choeng Ek, the
5 place where most S-21 prisoners were executed and their remains
6 buried.

7 The red box west of Choeng Ek in the lower left hand corner is
8 S-24. S-24 was located in the area surrounding an old colonial
9 prison and operated as a "re-education facility" and forced
10 labour camp. All of these locations were within the hierarchy of
11 S-21 and controlled by Duch as chairman of S-21.

12 Looking now at a 1960's map of Phnom Penh, we can see the area of
13 S-21 in more detail. The red area formed the main compound of
14 S-21 and is now the Tuol Sleng Genocide Museum. The yellow area
15 surrounding that compound was also controlled by and formed part
16 of S-21. This area contained numerous buildings essential to
17 S-21's operation. These buildings included interrogation and
18 torture houses, a special prison for holding important prisoners,
19 a building for the reception of prisoners, a number of execution
20 sites and mass graves, the communal eating hall for S-21 staff,
21 warehouses, guard checkpoints, and houses for the S-21 staff,
22 including a number of houses used by Duch throughout his tenure.

23 S-21 covered approximately the area bound by Mao Tse Tung
24 Boulevard to the south, Monivong Boulevard to the east, Sihanouk
25 Boulevard to the north, and Street 163 to the west.

25

1 [10.12.12]

2 Some of these particular locations outside of the S-21 main
3 compound are identified in this aerial map of the area.

4 Looking more closely at the main compound you can see five main
5 buildings, labelled A, B, C, D, and E. Building E was where the
6 prisoners were photographed and a biography was created as part
7 of the "registration" process.

8 From Building E, prisoners would be taken to Buildings A, B, C or
9 D, which housed the cells. Important prisoners were placed in
10 Building A. The cells in Building A were larger than those in
11 Buildings B, C and D and usually held only a single important
12 prisoner. Buildings B, C and D served as prisons for ordinary
13 S-21 detainees and consisted of a mix of large group detention
14 cells and small individual cells. At any one time these various
15 locations could hold hundreds of prisoners.

16 As we've seen Office S-21 as an administrative unit included Prey
17 Sar and Choeng Eck and we will examine those locations and the
18 crimes committed there. However, we would now like to draw your
19 attention to the evidence relating to the crimes committed at the
20 main compound of S-21. Those crimes have been characterized in
21 the indictment as illegal detention, inhuman treatment, torture
22 and killing. The facts in support of those legal qualifications
23 are irrefutable yet almost beyond belief.

24 The victims brought to S-21 were either seized by armed Khmer
25 Rouge and bundled off in a truck or lured to its gates by

26

1 trickery and then arrested. The legal system having been
2 abolished, the victims were not informed of the charges, much
3 less given an opportunity to respond to them. No lawyer to speak
4 on their behalf, no judge to hear their pleas.
5 [10.15.17]
6 Every arrest was unlawful and all of the prisoners were
7 unlawfully detained. As the Accused himself has acknowledged
8 there was no reprieve to be granted except death.
9 Those prisoners came to S-21 from all over DK. You will hear
10 from witness KW-09, who was responsible for guarding and
11 transporting the prisoners at S-21, that the victims "came from
12 everywhere" and included everybody from "high-level cadres all
13 the way down to ordinary people".
14 The majority of the prisoners were arrested by their units and
15 then transferred to S-21, on occasion in close coordination with
16 the Accused. S-21 staff also actively participated in arresting
17 people. As Witness KW-09 stated: "sometimes they had us go
18 arrest them ourselves in S-21's vehicles". Finally for some high
19 level targets false pretence was used to lure the victim to the
20 vicinity of S-21 where he was then seized.
21 Prisoners entered S-21 on a daily basis, usually arriving in
22 covered trucks. They were unloaded from the truck and temporarily
23 kept at houses outside of the main compound. The prisoners were
24 then blindfolded and bound before being taken to the main
25 compound.

27

1 You will hear witnesses KW-10 and KW-11, former guards at S-21,
2 describe how prisoners arrived at the main compound, handcuffed
3 and blindfolded. S-21. The renowned Cambodian artist and S-21
4 survivor Van Nath drew this powerful rendition of this arrival.
5 For the victim Building E was usually the first stop. Here,
6 Witness KW-07 would record their entry and question the prisoners
7 about their name, birthplace and position so that he could create
8 a short biography.

9 The prisoners were then photographed by S-21 photographers,
10 including Witness KW-16. The photograph would later be developed
11 and attached to the summary biography, as Witnesses KW-07 and 16
12 will confirm at trial. The prisoners' arrival and details would
13 be recorded in a Prisoners List and eventually his execution
14 would also dutifully be recorded in an Execution Log.

15 No one knows exactly how many victims went through this process
16 but more than 5,000 prisoner photographs have survived as well as
17 many of the biographies and an enormous quantity of Prisoners and
18 Execution Lists. This photograph is one example. And here is
19 an example of one of the biographies with an attached photo.

20 S-21 Biography of Phea Chhay. This is the biography of Phea Chhay
21 alias Sour. It contains biographical information on Phea Chhay
22 including his place of birth, age, and parents' names. It
23 indicates that prior to his arrest he worked in Foreign Commerce
24 and that he was arrested at the Ministry of Commerce on 2
25 February 1977.

28

1 [10.20.23]

2 Once the registration process was complete, guards would then
3 take the prisoner from Building E to their cells. KW-21, a
4 former guard at S-21, will testify that new arrivals at S-21 were
5 usually stripped of their clothes at this point and husbands and
6 wives who had been arrested together were separated never to see
7 each other again. In this way did Civil Party XX last saw his
8 wife alive.

9 To this day all he has left of her is a copy of her S-21
10 photograph. Very young children were usually left with their
11 mothers however, to make their detention easier, until they too
12 were killed. The cell number of each prisoner was then recorded
13 by Witness KW-07 so that prisoners could be easily found by the
14 interrogators.

15 Which cell a prisoner ended up in depended on a number of
16 factors, including the gender, nationality and importance of the
17 prisoner. Female prisoners were often kept on the ground floor
18 of Building C. Building A and a house outside of the main
19 compound known as the Special Prison housed important prisoners.
20 Foreigners were held separately from Cambodians.

21 In addition, interrogated prisoners were kept separate from
22 prisoners who were awaiting interrogation. Prisoners were often
23 kept in individual cells while awaiting interrogation and then
24 moved to a larger group detention cell after their interrogation
25 was completed to await their execution.

29

1 Probably the clearest indicator of the primary function of S-21
2 and its status within the security apparatus can be discerned by
3 the types of prisoners who were sent there.

4 The combined S-21 prisoner list was created by merging two lists
5 together. The first list was of 9,805 people who were executed
6 at S-21. The second list was of 4,186 people who were arrested
7 and sent to S-21. Both lists were compiled by the Documentation
8 Centre of Cambodia based on original prisoner lists and execution
9 logs found at S-21.

10 Our office combined the two prisoner lists and eliminated
11 duplicate entries. The result was the combined S-21 prisoner
12 list, which contains the names of 12,380 S-21 victims.

13 It is the most comprehensive list of the S-21 victims that has
14 ever been compiled and the accused has acknowledged that it is
15 essentially accurate and that indeed, the number of victims is in
16 fact higher. Much of our knowledge about who perished at S-21
17 stems from that list.

18 [10.25.02]

19 As this chart shows, 78 per cent of the prisoners at S-21 came
20 from either a DK government office or military unit. A further 4
21 per cent of the prisoners were described as being the wives of
22 arrested cadres. Roughly 3 per cent of the prisoners were
23 identified as being Vietnamese.

24 The remaining 15 per cent of S-21's prisoners were a mix of "New
25 People," former Khmer Republic soldiers and officials, people

30

1 described as ethnic Chinese, intellectuals, a small number of
2 foreigners from foreign countries, and a number of entries that
3 were too vague to allow for categorization.

4 The information in the Combined S-21 Prisoner List indicates that
5 about 70 per cent of the prisoners were male, and that the
6 average age of the prisoners was 29, although this may be high
7 since children were not generally entered into the S-21 logs. At
8 average, a prisoner was kept for 61 days before being executed.
9 The Combined S-21 Prisoner List also demonstrates that many S-21
10 cadres ended up as prisoners at S-21. At least 190 of the
11 prisoners on the list can clearly be identified as former S-21
12 staff.

13 By targeting its own cadres and soldiers the primary function of
14 S-21 is clear; to rid the Party of its enemies who according to
15 the Khmer Rouge slogan were "burrowing from within". By killing
16 the enemy's spouse and children, the Khmer Rouge ensured that the
17 all traces of opposition would be erased.

18 The list also illustrates the role played by S-21 in the
19 widespread and systematic attack that was taking place throughout
20 Cambodia. In April 1978 a well documented purge of the East Zone
21 was ordered by the Khmer Rouge leadership. This chart shows the
22 breakdown of prisoners coming from the East Zone by month.

23 As you can see, the number of personnel entering S-21 from the
24 East Zone was negligible until April of '78, when it suddenly
25 soared. Almost 1,000 prisoners entered S-21 from the East Zone

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1 during April, May and June of 1978. This clearly demonstrates
2 that the crimes the Accused committed at S-21 were an integral
3 part of the CPK's widespread and systematic attack on Cambodia's
4 population.

5 Another fact is certain: for however long a prisoner was held in
6 S-21 he or she would suffer inhumane detention conditions.

7 Prisoners were denied adequate food, water, and medical care and
8 were usually only removed from their unsanitary and overcrowded
9 cells to be tortured and executed.

10 Prisoners were shackled together in confined, overcrowded cells.

11 Witness KW-10 will testify that prisoners in Buildings B and C
12 were shackled and handcuffed together in groups of 10 people
13 sleeping leg to leg the entire length of the room. Witness
14 KW-15, will testify that prisoners slept shackled to a bar about
15 0.7 meters long and that even those prisoners who had been
16 tortured were denied a pillow or mat to sleep on.

17 The food rations at S-21 were completely inadequate. Witness
18 KW-09, a former guard, will testify that prisoners at S-21
19 received two rations of gruel a day and that these meals were
20 given to the prisoners while they were shackled in their cells.

21 Witness KW-10 will testify that prisoners sometimes received even
22 less: meals of one scoop of rice or soup and no meat or fish.
23 Deprivation of already-scarce food rations was also used as a
24 punishment.

25 S-21 prisoners were also subjected to unhygienic conditions.

32

1 Witness KW-15, a former guard at S-21, will testify that
2 prisoners were not permitted to leave their cells to relieve
3 themselves. Instead, prisoners were given pots or ammunition
4 cases to relieve themselves in which would remain in the cell
5 until a relief guard came on duty.
6 S-21 prisoners were kept and washed in the most degrading manner
7 imaginable. Witnesses KW-15 and KW-21 will recall the
8 overwhelming stench of S-21 prisoners, who were not allowed to
9 bath. These Witnesses will also describe how every 7 to 10 days,
10 the guards would enter the cells and order the prisoners to
11 remove their shorts, their only item of clothing, and throw
12 buckets of water over them as they lay shackled to iron bars and
13 to one another.
14 At S-21, medical treatment was inadequate. To begin with, the
15 medics were poorly trained. Witness KW-20 was only a child, had
16 no medical training and was illiterate. Yet, by the time he left
17 S-21, only child medics remained as all the adults had been
18 arrested and killed.
19 In addition to being poorly trained, the medics did not have the
20 appropriate equipment or medicine to treat tortured detainees.
21 In many cases, they were only able to clean the wounds with
22 iodine or saline. This was inadequate because, as Witness KW-20
23 will testify, prisoners who had been tortured sometimes had
24 wounds all over their backs, arms and bodies, as well as serious
25 head wounds and missing finger and toe nails.

33

1 Finally, medical treatment was only used to keep detainees alive
2 for further interrogation and torture. Witness KW-19, a former
3 medic at S-21, will testify that he was specifically ordered to
4 treat important prisoners after interrogation so that they were
5 fit to be re-interrogated.

6 Undoubtedly every prisoner lived in constant fear of torture or
7 death. Not surprisingly, prisoners regularly tried to kill
8 themselves to escape these inhumane conditions. Witness KW-15, a
9 former guard at S-21, describes how guards at the beginning of
10 their shifts would have to inspect prisoners in their cells to
11 ensure they were not concealing nails, needles or other
12 instruments that they could use to kill themselves.

13 Witness KW-10, a former guard at S-21, will testify that some
14 prisoners at S-21 were successful in committing suicide. In his
15 testimony, he will recall the extents to which prisoners went to
16 kill themselves and the methods used, such as stabbing themselves
17 with pencils and ballpoint pens, cutting themselves with shards
18 of broken glass, burning themselves with lanterns and jumping
19 from the upper floors of the prison buildings.

20 Perhaps these illustrations of those conditions will help us
21 understand. This photo appears to have been taken by an S-21
22 photographer inside one of the group detention cells. You can
23 clearly see the prisoners in the cell in the background, lying on
24 the floor in rows. This painting again by Van Nath shows the
25 inside of a group detention cell. Large Detention Cell Here you

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1 can see a photograph of the inside of a group detention cell as
2 they look today.

3 This photograph of an S-21 prisoner was taken inside one of the
4 small cells inside Buildings B, C or D. On the left and right of
5 the picture you can see the crude brick walls that were built to
6 subdivide the larger rooms into small cells.

7 This painting by Van Nath is a self-portrait inside one of the
8 smaller cells.

9 This photo shows the closeness of each of the small cells to each
10 other. However many days a detainee did spend at S-21 there can
11 be no doubt that every minute of those days was spent under
12 inhuman conditions.

13 Next I would like to request that my colleague makes his
14 statement.

15 MR. PRESIDENT:

16 The Trial Chamber may adjourn for 20 minutes until 11 am when we
17 resume our session. So I would like all the audience and
18 participants to come back before 11. Thank you.

19 (Court recesses from 1038H to 1102H)

20 MR. PRESIDENT:

21 The Trial Chamber resumes our proceedings. I request the
22 international Co-Prosecutor to make his brief statement of
23 charges. Thank you.

24 MR. PETIT:

25 Mr. President, Your Honours, learned counsels, civil parties,

35

1 people of Cambodia. I stand today with a deep sense of gratitude
2 at the privilege of assisting you in finally bringing some
3 justice to the thousands of victims of S-21. I have no doubt that
4 all of us here are aware of how significant this trial is and how
5 momentous your judgment will be.

6 As my colleague has pledged, we the Co-Prosecutors will assist
7 you in reaching that decision to the best of our abilities.

8 Abiding by that pledge and with your leave I would now like to
9 continue to address the crimes committed at S-21 and specifically
10 what is probably most associated with S-21 the torture of its
11 victims in order to extract confessions.

12 As the accused admits himself and as the mountain of documentary
13 evidence clearly proves, torture was practiced extensively at
14 S-21.

15 Under the accused's direct orders, and sometimes by his own hand,
16 persons detained at S-21 were intentionally subjected to intense
17 physical and mental pain and suffering in order to extract
18 confessions or sometimes inflicted as punishment. The evidence is
19 compelling and undeniable.

20 For example KW-04, a civil party, is one of only a handful of
21 S-21 survivors. He is one of the few people able to give a
22 first-hand account of being tortured at S-21. He was beaten with
23 whips and electrical cable and electrocuted until he gave a
24 forced confession.

25 Victims were beaten with rattan sticks and whips, electrocuted,

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1 had toenails and fingernails pulled out, were suffocated with
2 plastic bags forcibly held over their heads, and were stripped
3 naked and had their genitals electrocuted.

4 The S-21 interrogators did not independently choose to use such
5 harsh torture techniques, but were taught by the accused. As he
6 detailed in one of his statements, the accused told interrogators
7 to torture prisoners by either beating with a stick, electric
8 shocks, suffocation with a plastic bag, or water boarding
9 -pouring water over a detainee's head after covering his face
10 with a towel. The accused has stated that beating with a stick
11 was used the most because the other forms of torture wasted time.

12 Witness KW-10, a former guard at S-21, will testify that the
13 accused taught these methods and that the interrogators were told
14 to do "whatever was necessary to get the responses". The evidence
15 left behind by the Accused and his subordinates at S-21 confirms
16 these accounts.

17 As Your Honours are aware, the Case File contains approximately
18 120 documents generated at S-21 and annotated at the time by the
19 Accused. They span the existence of S-21 from the first dated
20 annotation on the confession of Um Soen on 1 September 1975 to
21 the last a note on the confession of Kim Sok dated 21 December
22 1978.

23 I submit that those annotations provide you with a path to the
24 truth on some of the most important issues of this case.

25 For example on this document for prisoner Danh Siyan, the accused

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1 instructed the interrogator to "beat her until she stops saying
2 that she has been to Vietnam to have herself healed".
3 In this example, the accused has written a letter to one of his
4 chief interrogators, Pon, about the interrogation of Ya, the
5 former Secretary of the Northeast Zone and a full rights member
6 of the Central Committee of the CPK. The accused tells Pon that
7 he can use "hot measures" against Ya -- hot measures means
8 torture -- and that even if this causes Ya's death, it will not
9 be contrary to Angkar's regulations. In effect, the accused is
10 telling Pon that he can torture Ya to death.
11 The accused has acknowledged that he wrote documents which
12 ordered torture. He claims however that in most instances he was
13 only writing down the decision of his superior as they were
14 dictated to him. We submit that this allegation is implausible,
15 unsupported by the evidence and cannot be believed.
16 I will expand on this point in a moment but first, let's examine
17 what happened to the victims once the accused was satisfied that
18 his interrogators had extracted the confession he and his
19 superiors needed.
20 What awaited those victims was death. There is no dispute that
21 every prisoner detained at S-21, as a matter of CPK policy, was
22 destined for execution. As one of the guards will testify "being
23 arrested meant being killed".
24 The accused has acknowledged that he sometimes temporarily
25 retained prisoners with useful skills, but that even these

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1 prisoners would eventually have to be executed. As will be
2 heard in the testimony of a former S-21 guard, Witness KW-11, and
3 as confirmed by the accused himself, from the day it detained its
4 first victim, the policy was that no one could leave S-21 alive.
5 Much like its Holocaust predecessors S-21 kept meticulous
6 records, including records of those it killed. Thankfully for
7 history but also for justice, some of these documents, but not
8 all, have survived and a portion of them are in the case file.
9 The slides you are now seeing represent a few pages out of the
10 hundreds and hundreds of pages of execution logs that were made
11 at S-21. Each of these lines represents a victim killed.
12 At the beginning most of the prisoners were killed and buried in
13 and around the main S-21 compound. As described by one of the
14 guards, the victims were brought to pits dug beforehand. There
15 they were killed by a blow to the base of the neck using steel
16 clubs. Their bodies would be kicked into the holes, the
17 handcuffs would be taken off their lifeless hands, their bellies
18 would be sliced open and the pits covered by dirt.
19 Witness KW-10, a former S-21 interrogator, will testify about a
20 particularly chilling method of execution, the practice of
21 draining prisoners of their blood. Victims would be strapped to a
22 bed, hooked up to an IV bottle and literally have their life
23 drained out of them. That blood to be eventually, presumably to
24 be used in DK hospitals. It is not clear how many victims were
25 killed this way. Although he claims he had no knowledge of this

1 method the Accused does not deny that it may have taken place.
2 Again you will perhaps determine the truth of that assertion.
3 In early 1977, concerned about the possible spread of disease
4 caused by the large number of dead bodies buried around the main
5 compound, the Accused decided that he needed a new killing and
6 burial ground. From then on, most of the victims of S-21 were
7 killed at a location called Choeng Ek.
8 However, even after the majority of the executions shifted to
9 Choeng Ek, some detainees, including foreign detainees and some
10 important cadres, were still killed in or near the main compound.
11 Indeed, killings continued to take place at the main compound
12 until the very last days of S 21 when, before fleeing the
13 advancing Vietnamese troops, the Accused ordered the executions
14 of the remaining prisoners inside their cells.
15 [11.13.22]
16 What is today known as Choeng Ek actually refers to an area
17 approximately 7 kilometres south of Phnom Penh located in the
18 vicinity of a village of the same name. Prior to 1977 part of
19 that area had been used as a Chinese cemetery. And to this day
20 some of those graves still exist. However, starting in early 1977
21 it became the main killing field for the victims of S-21.
22 Over the next two years, by the thousands, prisoners from S 21
23 would be taken from their cells, blindfolded, handcuffed and
24 pushed into waiting trucks. Sometimes daily and usually at night
25 these transports would then take their victims to Choeng Ek and

40

1 to their deaths.

2 As guards will testify, upon arrival the emaciated, bound and
3 blindfolded prisoners would be dragged out of the trucks and held
4 in a wooden house built on the site.

5 Former Choeng Ek guard and executioner, Witness KW-24, will
6 testify that from the house, in the dead of night, prisoners, one
7 by one, were led by kerosene lamp to the pits, ordered to sit or
8 kneel at the edge, struck behind their necks with iron pipes, and
9 dropped into the pits. Their handcuffs were taken off, and if
10 they were not dead yet, their throats were slit to "finish" them
11 off.

12 In exhumations carried out in the 1980s at Choeng Ek, thousands
13 of remains were unearthed some of which are still to this day,
14 held in a memorial at the location.

15 Evidence of the mass graves at Choeng Ek remains to this day. In
16 this aerial photograph of Choeng Ek, you can clearly see the
17 dozens of mass graves lined up next to one another.

18 This is a picture of a tree with a sign that says it is the place
19 where children were killed. It stands today at Choeng Ek. As
20 the record and more tragically the pictures of S-21 show a number
21 of victims at S 21 were children, even infants. And they suffered
22 the same fate as their parents.

23 The investigation failed to identify conclusively the manner of
24 their deaths. Witnesses have confirmed that children were killed,
25 one even testifying to an instance where a child was deliberately

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1 thrown from the upper floor of a building near S-21. But none of
2 them, surprisingly for such hardened individuals, gave any
3 details. The Accused while not denying the killing of children
4 and indeed the possible authenticity of the sign on this tree,
5 did not offer more information.

6 I respectfully submit that as part of your judgement it now rests
7 upon you to honour the memories of these children by asking the
8 right questions and establishing how these innocent victims were
9 killed.

10 Faced with the overwhelming evidence of killings on such a
11 massive scale and carried out over so long and in such a
12 systematic manner we may never know the true number of victims at
13 S-21 killed under the authority of the Accused.

14 Your Honours, as it has been discussed, the accused is also
15 charged for crimes committed at S-24 better known perhaps as Prey
16 Sar.

17 S-24 was a "re-education" camp that was subordinate to S-21 and
18 reported to the accused. S-24 was based around a former colonial
19 prison named Prey Sar and covered a wide area including nearby
20 worksites and villages. It was initially run by a cadre named Huy
21 Sre, who was the third highest ranking cadre within the S-21
22 hierarchy, behind only the accused and Hor. When Huy Sre himself
23 was arrested and sent to S-21 in late 1978, Phal, who had been in
24 charge of the guard section at S-21, took his place.

25 S-24 was used to "temper" cadres, workers and combatants who had

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1 made mistakes or were suspected of being enemies. Prisoners were
2 divided into three levels, with those in level 3 suffering the
3 worst conditions.

4 Tempering consisted of unlawful detention, forced labour,
5 inadequate food and medical care, political indoctrination and
6 brutal treatment. The forced labour included digging ditches,
7 farming rice, animal rearing and construction work, much of it
8 done by hand, without proper tools. Work would often begin
9 before dawn and last until after dusk. Those who did not work
10 hard enough were whipped or beaten. Thousands of people were
11 detained at various worksites within S-24 at any one time and
12 everyone was subjected to forced labour.

13 Prisoners who were deemed incapable of re-education were killed.
14 Trucks would come during the night and take them to S-21 or to
15 Choeng Ek, never to return.

16 The Combined S-21 Prisoner list indicates that more than 500
17 people, including prisoners undergoing tempering and S-24 staff
18 members were sent from S-24 to be interrogated and killed at
19 S-21. As this document demonstrates those killed also included
20 children.

21 The constant disappearances created an atmosphere of terror that
22 pervaded life at S-24.

23 In addition to being in command of S-24 by virtue of his position
24 as Chairman of S-21; the Accused admits that he visited S-24
25 occasionally, although he denies having seen the conditions.

43

1 Moreover, the accused had the authority to send S-21 staff
2 members to S-24 to be tempered if their relatives were accused of
3 being enemies; an authority that he exercised and admits to.
4 Mr. President, Your Honours, I respectfully submit that you will
5 find in the Case File sufficient evidence to be convinced beyond
6 a reasonable doubt that the crimes charged in the indictment were
7 indeed committed. In fact the accused himself during the
8 investigation has for the most part recognized that those crimes
9 occurred.

10 [11.20.56]

11 The accused has also stated during the investigation and through
12 his Counsels statements that he recognizes his responsibility for
13 those crimes. However, to what extent is that admission of
14 responsibility as framed and argued by the accused and his
15 Counsel truly supported by the evidence? I submit that this is
16 perhaps the most contentious issue facing you and to be resolved
17 by your judgment. The most contentious perhaps but not the most
18 difficult.

19 The accused has attempted to describe his authority as limited
20 and in name only; his participation in the crimes perfunctory,
21 essentially relaying orders; and his commitment to the criminal
22 policies of the CPK and of S-21 reluctant and made under duress.
23 We submit however that the evidence examined as a whole will
24 establish beyond any doubt that the accused had independent
25 authority within the administration of S-21 that he used that

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1 authority knowingly and actively in the commission of the crimes
2 and that he was committed until the very end to the goals and
3 success of S-21.

4 With your leave, I will now go over some of that evidence
5 starting with the authority structure at S 21.

6 This chart depicts the organizational structure of S-21 from
7 March 1976 when the accused became the Chairman until the arrest
8 of Huy Sre in late 1978. This chart is based on the evidence
9 contained in the Case File and described in paragraphs 59 to 78
10 of our final submission. There are two important points that I
11 wish to call to the attention of the Chamber.

12 First, the accused reported directly to the Standing Committee on
13 all matters that related to the detention, interrogation and
14 execution of S-21 prisoners. Originally, he reported to Standing
15 Committee Member Son Sen but in August 1977, began to report to
16 Nuon Chea, another Standing Committee Member. By his own
17 admission, he continued to do so until the end of S-21.

18 Second, there were three main Sections within S-21: the Defence
19 Section, the Interrogation Section and S-24. Each of these
20 sections reported directly to the accused. And as we've seen,
21 subordinates of the accused in each of these sections committed
22 the crimes outlined.

23 This chart - with the changes highlighted in yellow shows just
24 how little things changed after the arrest of S-24 head Huy Sre.
25 Three people changed positions, but the overall structure

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1 remained the same. The important thing to note is that everyone
2 still reported to the Accused.

3 As I've said, these charts are based mainly on the testimony of
4 former S-21 staff and, perhaps unsurprisingly, are different from
5 the organizational charts that the accused has submitted into
6 evidence during the investigation.

7 For example, in this chart, which he prepared, the accused is
8 apparently only responsible for S-24, "annual political
9 education" and receiving confessions from the interrogation
10 section. All other responsibilities and blame is placed on his
11 subordinate Hor who, as the Accused knows full well, is long dead
12 and cannot answer.

13 During the investigation the accused did not deny that what he
14 was describing amounted to little more than a "chairman in
15 theory" and indeed he went as far as stating that during his
16 tenure he "never grasped anything concretely".

17 According to him decisions about who to kill were allegedly made
18 by Son Sen or Nuon Chea and just passed through the accused's
19 office, while the day-to-day decisions about the operation of
20 S-21 were purportedly made by his subordinates. The accused
21 claims to have done little more than read confessions in his
22 office all day while crimes were committed around him.

23 We submit that this contention of the accused is unsupported by
24 the evidence and indeed during the investigation when confronted
25 to by the evidence the accused has had to acknowledge his true

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1 authority. However, as we submit that acknowledgement still falls
2 short of the truth. Let me draw your attention to some of that
3 evidence that may help establish the truth. And, as is often the
4 case some of that evidence comes from the Accused's accomplices.
5 A trusted advisor to the Accused at M-13 and S-21, Witness KW-08,
6 will testify that the Accused "managed the entire security unit",
7 "knew everything at S-21 and made all the decisions at S-21".
8 Interrogators will testify that the accused taught them the
9 theory and practice of torture techniques, including directing
10 them on what questions should be asked and what torture
11 techniques to use in particular situations.
12 Witnesses will testify that the accused ordered the torture of
13 prisoners and that the results of interrogations were immediately
14 sent to the accused for his review. The accused would either
15 order further interrogation and torture if unsatisfied or order
16 the detainee's death if further interrogation and torture was
17 unnecessary.
18 The contention that subordinates were running S-21 and
19 perpetrating crimes on their own volition is contrary to the
20 evidence and indeed logic.
21 [11.27.49]
22 Consider this: Here is a person perhaps better aware than anyone
23 else in the country at the time that the slightest mistake or
24 dereliction of duty, real or perceived, can cost you your life
25 and that of those associated with you. That same person is

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1 personally tasked by the regime with safeguarding it from its
2 most threatening enemies and has been doing so for years. That
3 same person is now asking you to believe that he relinquished
4 that responsibility and literally placed his life and that of his
5 family into the hands of his subordinates. I submit that this is
6 simply not believable.

7 Neither is it plausible that for every decision, every order,
8 behind every damning annotation there is the Accused on the phone
9 or in conversation with his superior dutifully taking down
10 individual instructions on every case.

11 Literally thousands of detainees to torture, interrogate and kill
12 over almost three years and for every decision the Accused would
13 like us to believe that two of the most important men in the
14 regime Son Sen, the Minister of Defence and Nuon Chea the Deputy
15 Chairman of the CPK, spent endless hours micro-managing S-21.
16 And that they did this while trying to establish control of the
17 country, to fundamentally alter all its structures, and fight a
18 war with a powerful and dreaded enemy.

19 You will of course, be the judge of what is true in this case but
20 I submit that such contention is simply not believable. Although
21 he did report to his superiors and they did make decisions the
22 Accused's independent authority cannot be convincingly denied.

23 An analysis of the combined prisoner lists reveals that between
24 1975 and 1979 at least 191 S-21 staff members were executed. Are
25 we to believe that for every staff member that fell asleep on

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1 duty, a capital offence at S-21, the Accused needed the highest
2 authority in the land to authorize their arrest and execution?
3 Clearly, despite his denials, the Accused had authority within
4 S-21 and was not averse to using it.
5 And indeed, what else could he have done tasked as he was with
6 the responsibility of operating such a vital institution as S-21?
7 Contrary to the Defence assertion that there was no particular
8 ranking of Democratic Kampuchea's Security Centres, the evidence
9 clearly shows that none was more important for the regime than
10 S-21.
11 As one witness will testify Son Sen himself acknowledged this,
12 once remarking at a meeting which the Accused attended that "S-21
13 was the important soul of the nation." There is no evidence on
14 the case file nor did the Defence direct the Co-Investigative
15 Judges to any; that another security centre received as much
16 attention from the Standing Committee, played a greater role in
17 smashing the regime's highest ranking cadres, or had a Chairman
18 with access to the leadership of the country like that of the
19 accused's.
20 By virtue of his post, the accused had direct access to the most
21 senior leaders in the DK regime, a privilege shared by few
22 individuals in the Country. The accused was the only S-21
23 official who had the right to contact and report to the CPK's
24 Standing Committee through at first Son Sen and then, Nuon Chea.
25 How can it be convincingly argued that he was not in charge of

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1 the most important security centre of Democratic Kampuchea? I
2 submit that it cannot.

3 [11.32.46]

4 And while the accused tended closely to his operation at S-21,
5 there is also evidence that he played a key role in national
6 security operations. As Witness KW-25, a courier for the
7 Ministry of Foreign Affairs, will testify; the accused, documents
8 in hand, attended the Offices of the Ministry where other leaders
9 were meeting.

10 As this Court will hear through the testimony of an expert
11 historian of the DK era, the Accused was obsessed with analyzing
12 confessions in order to extract information from them for the
13 protection of the regime and to provide valuable information to
14 DK's senior leaders and did so for years.

15 No wonder then, that when a grenade attack in the heart of Phnom
16 Penh or the distribution of leaflets in town threatened Angkar's
17 authority the leaders called on the accused to help track down
18 the culprits.

19 With that position and that level of trust the accused also
20 gained a unique insight into the criminal policies of the CPK and
21 of the attack carried out on the population of Cambodia. By
22 supervising, or sometimes conducting, the interrogation and
23 detailed confession of thousands of victims, from low level
24 cadres to members of the Central Committee, and by interacting
25 with the highest authorities in the land, the accused knew

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1 perhaps better than anyone in the country what was befalling the
2 population of Cambodia.

3 Even if indeed it was the general DK policy that cadre only knew
4 of their own duties and work, there can be no doubt that the
5 accused was fully aware that the crimes committed as S-21, his
6 crimes, were part of a widespread and systematic attack on the
7 civilian population and that he exercised his authority in
8 furtherance of that attack.

9 [11.35.08]

10 MR. PETIT (Speaking in French):

11 Mr President, Your Honours as the highest authority of the
12 largest security centre of Democratic Kampuchea, How did the
13 accused use this authority? How did he participate in the crimes
14 committed S -21? That issue is also contested by the parties,
15 and with your leave I will briefly outline of what I understand
16 to be the respective positions and allude to some of the evidence
17 that may be helpful to you in your assessment of that issue.

18 As outlined in his interviews the position of the accused as it
19 emerges from his interviews, is essentially he was a facilitator
20 in the commission of crimes. According to him, his role was
21 limited to the implementation of policies and decisions of
22 Angkar. Angkar decided who would be arrested, as to the
23 interrogation and torture of prisoners they were the
24 responsibility of his subordinates, and once Angkar was satisfied
25 that the victim has said its last useful word, the accused was

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1 only transmit the decision to kill the victim.

2 According to him, his core responsibility was to report to his
3 superiors and having disseminated their orders; essentially a
4 fairly good description of the legal responsibility of an aider
5 and abettor. We support, however, that the evidence in fact,
6 supports without a doubt, a different conclusion.

7 In fact, we submit that there is sufficient evidence that the
8 accused ordered, planned, supervised and participated in the
9 arrests in fact. That he devised the inhumane conditions of
10 detention in S-21; that he ordered and participated in the
11 torture of detainees and ordered the execution of victims.

12 Witnesses will testify that the accused gave all the orders to
13 make arrests, and would plan the logistics of arresting important
14 targets. These same witnesses will relate how occasionally they
15 were ordered to travel to the provinces to arrest people.

16 The accused once confronted with the evidence, has admitted to
17 sending a subordinate to a military unit to smooth the way ahead
18 for the mass arrests of its personnel. Finally on some occasions
19 the accused personally arrested targets.

20 As torturing confessions at S-21 accumulated, and others were
21 under incriminated, the Accused and his superiors were collecting
22 more targets for persecution and death.

23 While the authorizations of arrest may have stemmed from the DK
24 upper echelons, these decisions were based on proposals of
25 arrests made by the accused. There is ample evidence to this end

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1 the accused knew that those mentioned would in most cases be
2 arrested.

3 Furthermore, using his knowledge acquired M-13, the accused
4 participated in the setting of inhumane living conditions that
5 existed in S-21 and ensured their perpetration. A former S-21
6 guard, witness KW-11, would testify how the accused frequently
7 inspected detention cells and gave instructions on maintaining
8 these conditions. With his own eyes, the accused would have
9 witnessed the emaciated, dehydrated, injured and shackled
10 prisoners, living in the most dire conditions. There is no
11 evidence that he did anything to alleviate their suffering.

12 [11.39.36]

13 Witnesses will testify that the accused devised and monitored the
14 entire mechanism set up at S-21 for interrogating prisoners, and
15 he personally interrogating detainees himself.

16 Like many interrogators will testify in this courtroom.

17 Interrogators from S-21, the accused ordered verbally or in
18 writing the use of torture during interrogation and on several
19 occasions gave instructions how torture should be used.

20 The accused admitted that he had personally interrogated a small
21 number of high value targets, and the documentation and witnesses
22 confirmed such participation.

23 The accused admitted, sometimes after being confronted with the
24 evidence that he did indeed participate in the interrogations but
25 he has denied inflicting torture other than perhaps on occasion

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1 "a few slaps". However, the witnesses say that the accused kicked
2 prisoners, beat them using rattan canes and applied electricity
3 to their bodies until they lost consciousness.
4 Former S-21 cadre, Witness KW-16, will testify to having
5 witnessed an typical event where the accused disapproved of an
6 interrogators performance and beat the interrogator as a result.
7 This interrogator was subsequently arrested and executed at S-21.
8 This was a typical example.
9 Finally, witnesses will testify that it is the accused his
10 annotations on the lists of prisoners who decided who was meant
11 to be "smashed". With these authorizations the guards got out
12 the condemned prisoners, packed them into lorries, checked their
13 identification, before sending them to their death in Choeng Ek.
14 That said, perhaps all the witnesses are in error, or perhaps
15 they are lying and in fact the accused was just a leader. You
16 will be judges of that. However, as we have seen the accused
17 notes have survived and will surely be of use to you in passing
18 judgement.
19 Here for example you will see a report setting out that the
20 accused was consulted during the grenade explosion incident.
21 Here is another one. This is Mr. Bunn Narak's confession. The
22 Accused wrote a long analysis after the confession at the end of
23 which he suggested the arrest of Cham Sam Oeun. In points 2 and 3
24 of his conclusions he also recommends investigating three other
25 people and asks if Security Office 15 can search for or identify

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1 more people who might be connected to Cham Sam Oeun.
2 Here is the confession of Um Soen which Duch annotated on or
3 about 1 September 1975 when he was still Deputy Chairman of S-21.
4 Duch has acknowledged that he wrote: "Not yet confessed. To be
5 tortured" on this confession.
6 This document attests that the accused suggested to Angkar that
7 115 people should be smashed and Angkar agreed.
8 The accused admits writing: "suggest interrogation of four
9 persons and kill the rest". On this document.
10 [11.43.45]
11 And on this one the accused admits writing "Uncle Peng: kill them
12 all."
13 And lastly, here is the confession of Kim Sok dated 21 December
14 1978, which means it is the latest document to come from S-21 in
15 the case file. In it the accused writes a note discussing an
16 individual named Treung and he says "Please allow me to arrest
17 him" 15 days before the regime fell, here you see the accused
18 eagerly asking for another victim.
19 In all honesty it must be said that the accused did offer
20 sometimes detailed explanations for these annotations. For
21 example he claims when he writes "Uncle Peng kill them all" is in
22 fact to give Peng the opportunity to boast of his power to his
23 subordinate. For others, as we have said, the accused claims that
24 all he did was write down the decisions of others. It will be of
25 course, for you to weigh the explanations of heard in light of

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1 the record of the case.

2 We are convinced that once you have reviewed the evidence as a
3 whole including the testimony of witnesses, the admissions of the
4 accused the circumstances of the operation of S-21 and the
5 documents, you will conclude that the accused was knowingly and
6 intentionally in control of the entire S-21 criminal apparatus.
7 That he had the power to arrest, to detain, to interrogate, to
8 torture and kill, and he that he did indeed use that right or
9 authority throughout his Chairmanship of S-21.

10 Should you be convinced beyond a reasonable doubt of facts that
11 we have outlined, you will then have to establish what type of
12 legal liability those facts support.

13 As the reading of the Closing Order has indicated, the former
14 Director of S-21 is charged with committing or with being
15 responsible for the crimes committed at S-21 under multiple forms
16 of individual criminal responsibility. That is, committing,
17 ordering, instigated, planning, aiding and abetting and failing
18 to prevent or not punish the crimes committed in S-21.

19 The Closing Order concluded that those modes of liability
20 supported because the evidence showed that the accused had the
21 power to obtain any criminal result he desired, and showed an
22 accused who contributed significantly at almost every level of
23 S-21's criminal machinery.

24 And yet, we strongly believe that these forms of liability only
25 account with part of the accused's criminal responsibility and

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1 only uncover part of the S-21 criminal operation. As we have
2 outlined from the very beginning of this process, we urge this
3 Court to consider and apply Joint Criminal Enterprise, or JCE to
4 the facts of this case.

5 It is not appropriate at this stage to delve into the details of
6 this submission but suffice it to say in all its categories, more
7 particularly in its first and second ones, JCE applies squarely
8 to the facts of this case and would allow a full accounting of
9 the accused' responsibility.

10 Specifically if you were to find that he had acted as
11 co-perpetrator with his subordinates, in committing criminal acts
12 to achieve an agreed upon result then he would have to be found
13 as having committed those crimes just as if he had committed them
14 directly himself.

15 If on the other hand you were to conclude that by his acts he
16 significantly contributed to the commission of the crimes of his
17 co-perpetrators, then he would not merely be an aider and abettor
18 but, he would have to be found guilty of committing crimes and
19 sentenced as having committed them. That is why I submit that JCE
20 has been consistently applied by courts prosecuting mass crimes.

21 It allows holding someone responsible if he attends the
22 commission of the crimes and contributes to their commission even
23 if he never himself got his hands dirty.

24 Given the allegations of the defence in turning the role and even
25 if the crimes are not contested we should consider - reflect

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1 these crimes as well as the responsibility of the accused. But
2 why must we spend so much time over the facts if they are
3 admitted. This Court was even urged to not waste time on the
4 facts because they are admitted. And indeed the answer is simple,
5 in this system of law, the accused cannot plead guilty but even
6 if the facts have been admitted, the facts have to be judged. .
7 And indeed you should take into account among these facts the
8 collaboration the accused during the investigation. As officers
9 of the court we must recognize that cooperation.
10 From the beginning the accused has waived his right to silence
11 and gave 24 statements to the Co-Investigating Judges gave
12 numerous written documents and explanations such documents. The
13 cooperation of the accused clearly facilitated the corroboration
14 of evidence already on the file and the discovery or
15 clarification of certain other elements of proof which
16 undoubtedly facilitated this process.
17 Notably, he assisted in the understanding of the DK's policies.
18 He facilitated the authentication of certain documents and
19 hand-written elements. He participated in the reconstructions and
20 re-confrontations, answered some of the questions from the civil
21 parties and gave his interpretation of certain documents and
22 Khmer Rouge vocabulary.
23 So, although we submit that this cooperation was limited in terms
24 of acknowledging his true authority and responsibility in the
25 crimes, his testimony has in fact, fostered the finding of the

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1 truth.

2 The accused alleges that his cooperation is rooted in a sense of
3 contrition. He acknowledges the immorality of his past actions
4 and indeed has asked forgiveness from his victims either directly
5 during the reconstructions, or through his lawyer. I have no
6 doubt that he will do so again before you at the first
7 opportunity.

8 But how genuine is that contrition? Contrary to the opinions of
9 psychiatric experts brought forth by the Co-Investigating Judges,
10 I would submit that this is indeed the right question to ask. He
11 never asked forgiveness of his victims while supervising their
12 torture and death; can we believe those pleas now? If the accused
13 is to benefit from the apparent remorse during the determination
14 of the sentence, as an extenuating circumstance, it is necessary
15 that this remorse be well grounded.

16 As often is the case, the past can help us shed light on the
17 present. To judge how far the accused has come, you must look at
18 where he started and for that you begin in 1964 when the Accused
19 joined the CPK. He was recruited to the party by his teacher and
20 mentor Chhay Kim Huor. 15 years later the accused would supervise
21 the torture and execution of Chhay at S-21.

22 That simple fact, I submit, is highly revealing. From the time he
23 heeded the call of the party and went underground in 1966 to
24 about 1992 when he distanced himself from the Khmer Rouge, there
25 is nothing in evidence to convincingly support any other

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1 conclusion than that the Accused was fully committed during those
2 28 years to the cause of the Khmer Rouge and to the success of
3 its policies.

4 The CPK recognized early his commitments and the accused quickly
5 became the leading security cadre of sector 15 of the Special
6 Zone. From there, he established and operated the special zone
7 security centre, known as M-13, which operated along the same
8 criminal lines as S-21 October '71 to April 1975. Of course the
9 accused does not have to answer to these crimes committed at
10 M-13. Not because these are all located beyond the temple
11 competence of this Court but rather because the crimes that were
12 committed there were not the object of an investigation. However,
13 you, Your Honours must confirm M-13 remains pertinent to this
14 case.

15 Under the direction of Son Sen, another mentor, that he smashed
16 later S-21, the Accused developed and refined his talents as
17 prison leader and torturer at M-13.

18 The accused would lead and manage all of the aspects of M-13,
19 including the detention of prisoners under inhumane conditions,
20 their tortures and their execution. The witnesses will attest
21 that the so-called enemies coming from anywhere inside the
22 special zone were brought to M-13. The prisoners were shackled
23 together and detained in big pits under armed guard and didn't
24 receive enough water or food.

25 [11.55.58]

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1 The Prisoners were systematically tortured either by the accused
2 himself or his subordinates. They were beaten with bamboo sticks,
3 burnt using rags dipped in kerosene, their nails pulled out using
4 pliers. The former guards of M-13 will testify that the prisoners
5 were finally killed in various ways. Either by being beaten
6 behind the back of their head by being shot down and that the
7 accused himself has executed prisoners.

8 The last victims killed at M-13 were killed so at the end of
9 April 1975. After the fall of Phnom Penh the accused was called
10 upon to take on his new position. Witness KW-33 will attest that
11 several hundreds of prisoners were detained at any moment in
12 M-13, and during that period the accused would command several
13 million of prisoners who were detained and executed.

14 [11.57.07]

15 M-13 was the training ground of the accused. It is there that the
16 accused created the guard teams and executioners -- a model of
17 command mirrored at S-21. It is also there that the accused
18 established his methodical system of written records of prisoner
19 entries and exits, and that he consecrated his reporting system
20 that he presented to his superiors and then received their
21 instructions. Upon his own confession it is at M-13 that the
22 accused developed interrogation techniques that were to be used
23 later at S-21. His work at M-13 gave him the opportunity to train
24 interrogators and other subordinates who would later end up under
25 his command.

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1 These are not here acts of man who acted under constraint. These
2 are choices. Choices that are followed by a devoted revolutionary
3 and who supported the CPK and participated actively in the
4 implementation of its criminal policies.

5 What happened after the fall of the Democratic Kampuchea in 1979
6 also says a lot. The accused contends that he had become at that
7 time profoundly saddened vis-à-vis what had happened at S-21 and
8 vis-à-vis policies of the CPK. However, we have to note that when
9 the regime fell he did not escape. He did not grab the
10 opportunity offered by the chaos of the aftermath of the war to
11 break ties with the Khmer Rouge, and to acknowledge his actions
12 as well as to make them known. On the contrary he fled once again
13 in the jungles once again in the jungle with what was remaining
14 of the Khmer Rouge troops. There he stayed voluntarily, a member
15 of the CPK for 13 further years.

16 The Khmer leaders had so much trust in him that they even sent
17 him to teach Khmer in China for two years, and that they
18 entrusted him with various official functions. It was only in
19 1992 or 1993 that the accused started finally abandoning the
20 party and to stop supporting its policies.

21 Your Honours, we can not deny that even the ardent cadres have
22 lived in a quasi-constant fear for their own lives under the
23 Khmer Rouge regime. However, law, except in very particular cases
24 does not admit as a defence to say that they have committed such
25 crimes by simple fear of you, yourself being a victim. That would

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1 be too easy.

2 It can be taken into account if it is proven during the
3 establishment of the sentence, and as the evidence will
4 demonstrate in this case, that the accused deliberately chose a
5 pathway that brought him to the commission of the crimes of
6 which he is being accused and that he participated in these
7 voluntarily and perfectly consciously. Rather than a victim of
8 fear, he was the one who created fear which haunted the last days
9 of his victims.

10 Therefore if we have to, at the end of this trial, to establish
11 the truth about what happened at S-21, well then I will submit
12 respectfully that you should confront the accused to the facts in
13 question and to the simple, single and logical conclusion that we
14 can draw from here. Rather than the image of somebody who is just
15 executing, acting against his own volition, that he tried to show
16 us during the investigation, practically unconscious, practically
17 unaware of the horrors that were being perpetrated by his
18 subordinates while he was just busy at his office. He was, in
19 reality, he was the one who put into place in a devoted and
20 merciless way the persecution by the CPK by the Cambodian people
21 at S-21.

22 If he admits, then and only then can he truly claim to have
23 admitted his crimes and then benefit from that admission.

24 To conclude, Your Honours, very soon we will begin very soon to
25 hear the evidence against the accused, the evidence we just

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1 briefly summarized for you today. We touched upon a great many
2 subjects. And did so in a general fashion. We discussed the rise
3 of the CPK, the widespread and systematic attack on Cambodia and
4 its population and the armed conflict with Vietnam.
5 We talked about the horrendous crimes committed at S-21, and the
6 factual and legal responsibility of the accused.
7 All these issues are fundamental elements of this trial, and
8 deserve to be examined thoroughly and also serenely and I am
9 confident you will do so. However I respectfully submit that for
10 justice to be done the truth must be established. And this truth
11 can only be revealed through the personal stories of each one of
12 the victims of the Accused. People, who are hiding behind
13 statistics, behind slogans, behind categorizations. These people
14 had names, families, memories, hopes. They all deserve to be
15 heard, to have their day in court and to have their stories are
16 told and remembered.
17 And maybe when this trial will tell their stories, their torment
18 and their deaths. Maybe the Accused if indeed he no longer is the
19 same man today will finally be troubled by the suffering that
20 meant nothing to him even yesterday. But despite this pain, Kaing
21 Guek Eav aka Duch will have to listen to these stories because
22 justice for the victims so requires. Well before considering the
23 defence approach which consists of trying to comprehend the
24 psychological evolution that brings a human being to abandon his
25 humanity and just to become the executioner, you must first

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1 acknowledge the humanity of his victims.

2 And how rend justice to their memory? You will achieve this by

3 doing what this tribunal has asked of you: Applying the law to

4 the facts. Nothing more, nothing less. Providing a fair

5 judgement, you know the law it is before you. The facts are the

6 victims, their stories offer you the privilege to give back to us

7 a bit of the humanity that we all lose the face of such horrors.

8 By relating their stories with their dignity that was denied to

9 them in their last moments you will also return to them their

10 voices. Their voices muted for so long by impunity and will

11 finally address their aspirations for justice that has been

12 denied for so long. With this being done you will also answer...

13 MR. PRESIDENT:

14 Co-Prosecutor, may I ask whether you need longer than 12 p.m. to

15 finish your segment or are you already there?

16 MR. PETIT:

17 I just need a few minutes. 15 seconds. By examining the stories

18 of the victims, in so doing you will positively answer the

19 question asked by Professor Yosef Yerushalmi who, when speaking

20 about the Shoah, was asking himself if forgetting is not memory,

21 but justice.

22 The whole respectfully submitted.

23 [12.06.38]

24 MR. PRESIDENT:

25 Now it's time to break for lunch, so the Chamber would like to

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1 adjourn the meeting until 1.30 p.m. And we would like to inform
2 all participants and parties to come back before 11.30 (sic)
3 before we can resume our session. I would like to ask the
4 detention facility official to take the accused back to the
5 detention facility and bring him back before 1.30. Thank you.

6 (Court recesses from 1207H to 1334H)

7 [1.34.25]

8 MR. PRESIDENT:

9 The Chamber is now back in session. Next, it comes to the time
10 when the accused and his defence counsel have an opportunity to
11 respond to the opening statements made by the Co-Prosecutors.
12 Yesterday, the Chamber received a letter from the defence
13 counsel, who requested that regarding the opening statement or
14 response, and next I would like also to ask the defence counsel
15 to give some clarification, or arguments, concerning the letter
16 sent to the Trial Chamber and what is the underlying purpose
17 behind the letter. The floor is yours.

18 MR. ROUX:

19 Thank you, Mr. President. The defence considers that the victims
20 have been waiting for a long time for the accused to speak for
21 himself. The defence wishes that the accused be afforded the
22 opportunity to speak now. After that, the defence will decide
23 whether the lawyers for the defence have something to add.
24 First, however, we are seeking leave from the Court so that the
25 accused will be allowed to speak for himself in response to the

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1 opening statements of the Co-Prosecutors.

2 MR. PRESIDENT:

3 The Chamber accepts the change in how the response is delivered
4 concerning -- in response to the statement made by the
5 Co-Prosecutors. Next, I would like to invite Mr. Kaing Guek Eav
6 to stand up, please. I would like you to give your response to
7 the one that was made by the Co-Prosecutors. You now take the
8 floor.

9 THE ACCUSED:

10 Thank you very much, Your Honour, the President. First of all, I
11 would like to state the historical events in Cambodia as detailed
12 by the Co-Prosecutors already. I would like to emphasize that
13 Cambodian people have suffered from this execution for long,
14 starting from 1966, when Lon Nol, General Lon Nol, killed
15 peasants. Later on, the coup d'état on the 18th of March took
16 place, and all political parties competed in the race to kill
17 Cambodian people, until the 17th of April 1975, when these crimes
18 were fallen exclusively to the Democratic Kampuchea regime. So
19 these are the detail of the events that I would like to present
20 to the Court.

21 [1.39.20]

22 Next, I would like to present my position as following. From the
23 17th of April 1975, to the 6th of January 1979, the Democratic
24 Kampuchea party was exclusively in charge of the crimes in
25 Cambodia. The main evidence is the statute of the party of 1976.

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1 The first page of that statute states that after the leadership
2 of the Democratic Kampuchea and with the successful achievement
3 on the 17th of April 1975, the Communist Party of Cambodia led
4 the socialist regime exclusively in all fields. So this is the
5 evidence that I would like to present to the nation through this
6 Trial Chamber of the ECCC.

7 One, I would like to give analysis on the crimes across the
8 country from the 17th of April 1975 to 6th of January 1979.

9 After the 17th of April 1975, Pol Pot was wild, and he raise the
10 line that later affected the lives of people. Mainly, Pol Pot
11 had thousands of candidates in his hands. The crimes in that
12 period was huge. In addition, the loss of life of the people is
13 calculated as equal to one million people, and as a member of the
14 CPK I recognise that I am responsible mentally for the crimes
15 committed by the CPK in those periods of time. I would like to
16 express my regretfulness and my heartfelt sorrow and loss for all
17 the crimes committed by the CPK from 1975 to 1979.

18 I would like to express separately about the crimes at S-21. I
19 would like to acknowledge my responsibility through legal means,
20 legally. I mean, I would like to emphasize that I am responsible
21 for the crimes committed at S-21, especially the tortures and
22 execution of the people there.

23 As what I have already said when the Co-Investigating Judges took
24 me to the site with the re-enactment process at Choeng Ek and at
25 the Tuol Sleng, may I be permitted to apologise to the survivors

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1 of the regime and also the families of the victims whose loved
2 ones died brutally in the regime at S-21.

3 Now, I would like those people to please know that I would like
4 to apologise, and I would like you to consider my intention that
5 I have not asked me to forgive me now, but I am attempting to do
6 so later. I know for sure that my crimes are committed on
7 people, including children and women in particular, are the
8 serious crimes that cannot be tolerated. So my current plea is
9 that I would like you to please leave an open window for me to
10 seek forgiveness.

11 Third, the regretfulness of mine -- when I recall the past, I am
12 very shocked. Whenever I recall the activities in the past,
13 especially those under my supervision and that I order for the
14 implementation of such activities which affected many innocent
15 people including women and children, although I did that because
16 I received the order from Angkar, but I am solely responsible for
17 those crimes. I already informed the Co-Investigating Judges
18 that I am just a scapegoat and a person who were put to play a
19 role of killing in that regime. People regarded me as a coward
20 person, and a person with unjust act, and I do accept all their
21 arguments.

22 [1.46.35]

23 In those times I regarded the lives of my family are more
24 important than those who were detained at S-21. To challenge the
25 order from the top, although I know that the order was criminal,

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1 I never dare to even think about it. So it was the life and
2 death situation of me, myself, and my family as a whole. As the
3 person who was in charge of S-21, I never attempt to find other
4 alternatives other than obeying the orders, although I know that
5 obeying the order meant that the lives of numerous people would
6 be perished. And now I am very regretful, and I am very
7 shameful, and I myself, I know that I committed that crimes, and
8 I have been shameful and in the eyes of people who are victims
9 and those who lost their loved ones during the regime, and
10 including my families who lost members of the family also.
11 The solution, my current solution: I have decided already to
12 co-operate with the ECCC because the offences, the crimes that I
13 committed on the Cambodian people, this is only the remedy that
14 can help me to relieve all of the sorrow and of the crimes that I
15 have committed, and also the crimes committed by the CPK as a
16 whole. I would like to confirm that the notorious crimes at
17 S-21, created at S-21, I am now giving myself to the ECCC
18 honestly, respectfully, and then I am in the hands of the Court
19 now.
20 Finally, I would like to state that I am still continuing to
21 co-operate with the ECCC in hearings and I will answer all
22 questions you may ask me in the Court, and will answer all the
23 questions that the Co-Prosecutors may ask me, and also the
24 questions posed by the civil parties, and based on the evidence.
25 The President, Your Honours, next I would like you to allow me to

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1 express my regretfulness in my life to all of you. I have never
2 been satisfied with my work. I tried in May 1975 to challenge
3 that, but it was not successful. They asked me to establish
4 S-21, but I was that time the deputy head of the S-21, I asked
5 somebody to make sure that my position was changed, but then it
6 was not successful.

7 But on the 31st of January 1972 (sic), it was a shocking event
8 when Son Sen ordered the arrest of cadres from the former zones,
9 and arrest en masse. And I was very shocked. I asked him -- I
10 tried to ask him on the phone about this, and he said that "Duch,
11 these people were arrested based on the confessions of Kuy Thuon"
12 and you could never challenge this, and as the person who once
13 helped liberate the country, I could feel how people who devoted
14 to the Party then were arrested and sent to S-21, that's why I
15 was so shocked.

16 So through the ECCC I had very deep sentiment with the cadres
17 from the north zone, because I once was detained along with these
18 cadres, and my suffering -- my concern was with me until there
19 were more arrests, and later on Hong was arrested on the 13th of
20 March 1978, and then I realised that my life was coming to a
21 close end, because I know that I was very shocked when people
22 were arrested. Other people were arrested, I was shocked now, I
23 knew that my life was close enough to be executed, because I knew
24 that when people were asked to sent to Choeng Ek I know I could
25 not work longer, because I was so heartbroken. Because I stay at

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1 home, and people never saw me at a later date, because I could
2 not concentrate on my work.

3 [1.52.41]

4 And then later on, on the 7th of January then, I saw the tank
5 coming across my house and I could not do anything else, then at
6 night I just went out of the house. So the whole year, during my
7 escape, I lost everyone who once worked with me, two of my
8 brothers died, six nephews also died. The wife of Comrade Pon
9 and Pon himself, and (indistinct) Mam Nai died, and other
10 comrades died. Finally only me survive. So four people, and my
11 wife, and two children.

12 And I asked if I could leave Brother Sarun, deputy secretary of
13 New Zone. He asked me to bring me back, and he asked me to join
14 the Party, and I said that one million people already died, now
15 only four of us survived. It was not a different, anyway. So
16 because my life was not much of any value at that time. That's
17 what I thought. Because I did not give the high value to my life
18 while other people died.

19 So the whole year I could not concentrate on the work, and
20 finally I got a solution, which is to pray and to apologise to
21 the victims, and I myself wished to pay a good tribute to my
22 parents, and I try to find the remedy to make me feel relief. At
23 the beginning I only prayed to ask forgiveness from my parents,
24 but later on I attempted to pray for the forgiveness for the
25 whole nation, of all the people who died, and every year on the

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1 17th of November I could not do anything but to pray to
2 commemorate my forgiveness and the commitment I performed during
3 the regime.

4 [1.55.20]

5 And I have drawn a picture, if the Trial Chamber allow me, and I
6 can even show this picture to you.

7 MR. PRESIDENT:

8 You are allowed to present that picture.

9 THE ACCUSED:

10 Could you please make sure that the paper can be projected.

11 MR. PRESIDENT:

12 Could you please stand up, the accused? Please continue.

13 THE ACCUSED:

14 The last day of the Democratic Kampuchea. The day that the
15 Democratic Kampuchea ended. So November the 30th of 1978 was the
16 last day of Democratic Kampuchea, and if you look at the sign
17 here, we have three people here, three seats. The middle one
18 representing the chair for Pol Pot and the second one on the
19 right for Nuon Chea and the left for Ta Mok.

20 [1.58.15]

21 During the previous days, when the anniversary of the CPK, only
22 Nuon Chea was alone, but later on there was three people. So
23 here, what Pol Pot said was that the good, or the proper line is
24 the successful line. And I wrote what Ta Mok impressed, he said
25 that "nothing is on top of me, Ta Mok is the head, on top of the

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1 head is the sky". And with Pol Pot I wrote that the dynasty of
2 Pol Pot stand firmly on the forces of Ta Mok. For Nuon Chea, he
3 becomes a knight, regardless of anyone becomes a king, so he
4 still maintain that position.

5 And I also refer to the forecast by a senior leader. I don't
6 remember whether it was in Beanteay Ampil or Kôk Mon district,
7 but I remember that you may ask me some questions for
8 clarification. We have Major Nih Vung who could confirm this.
9 So this is the picture that I drew, and this refer to the
10 Democratic Kampuchea party. So this is the method of
11 authoritarian classless regime, and that's all from me. Thank
12 you.

13 MR. PRESIDENT:

14 The Trial Chamber decides to take the painting drawn by Duch so
15 that it can be included in the case file. Next, I would like the
16 defence counsel to make the response to the opening statements by
17 the Co-Prosecutors. You now take the floor.

18 MR. KAR SAVUTH:

19 Your Honours, The President, and the whole Court. I am the
20 national lawyer for the accused, Kaing Guek Eav alias Duch, who
21 has been charged of crimes against humanity and the grave
22 breaches of the Geneva Convention of the 12th of August 1949, and
23 the breaches of the 1956 Penal Code. Your Honours, after having
24 paid great attention to the opening statement of charges of the
25 Co-Prosecutors, the defence counsel would like to submit some

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1 brief responses to the Court and to the whole nation so that
2 justice is balanced.

3 [2.03.05]

4 One, what is the purpose of prosecuting the leaders of the Khmer
5 Rouge regime? In prosecuting the leaders of the Khmer Rouge, the
6 royal government of Cambodia has three main purposes. First, to
7 find justice for the people who died in the Democratic Kampuchea
8 regime, and those who survived the regime. Number two, to
9 prevent this notorious regime being introduced again in Cambodian
10 territory, the second time. Number three, it is to preserve the
11 sovereign of Khmer nation.

12 So, in order to make sure that the dead people, the souls of
13 those people can accept, including the people who survived the
14 regime. It means we have to make sure that justice is done
15 legally, because the law says that only two groups of people are
16 to be prosecuted. First, the people who are senior leaders of
17 the Democratic Kampuchea. So who are the senior leaders of the
18 Democratic Kampuchea? The senior leaders of the DK, how many
19 people were there? And we have to make sure they are all
20 prosecuted, no one should be left unprosecuted. Otherwise, the
21 people who died and those who survived may not be able to accept
22 that justice is done.

23 So again, if any one of the senior leaders is not prosecuted, I
24 think it is better off not prosecuting any one of them. It is
25 not justice. And the people who died and people who have

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1 survived the regime cannot accept it either. So I can submit that
2 all the senior leaders of the Democratic Kampuchea, their names
3 must be well identified, and they all have to be prosecuted and
4 be on trial. So this is the sole responsibility of the
5 Co-Prosecutors. And we the defence counsel would like to submit
6 that the Co-Prosecutor should perform these duties very well,
7 because now the international community may have not known how
8 many people in these leadership role are. So for the senior
9 leaders of the Democratic Kampuchea who died before being
10 trialled, I would like the Court also to issue a judgment to
11 terminate that action.

12 [2.06.40]

13 And the second classification of the people include the people
14 who are most senior people for the crimes committed during the
15 regime which violated the national and international laws. So
16 the people who are most responsible for the grave breaches of the
17 international laws must be brought to trial, so those most
18 responsible people have to be prosecuted, none is spared. Only
19 after doing so that the dead people and all the victims who
20 survived the regime can accept such trial. Otherwise, if any one
21 of them remains unpunished, then it is not -- justice never be
22 done.

23 So as I told you, it's better not to trial anyone other than
24 trying some but leaving the other at large. And people who died
25 and the victims may not accept it. In general, if the people

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1 other than the two classifications as I mentioned are prosecuted
2 then I'm afraid that the dead people or the victims of the
3 regime, who survived the regime, will never satisfy.
4 Also, without identifying the names of people who are most
5 responsible for the crimes and grave breaches of the
6 international and national laws, I think it is really uncertain,
7 because it gives some kind of suspicion to people who were Khmer
8 Rouge soldiers, or Khmer Rouge people, that this generates some
9 kind of atmosphere of fear that other people would feel they
10 would be arrested and prosecuted. So the people who were most
11 responsible for the crimes must have their name listed. No one
12 should be spared. And then they have to be all prosecuted.
13 [2.09.10]
14 So this is, again, the responsibility of the prosecutors, but
15 they have failed to fully perform this duty. As I told you
16 already, to the national and international community, so we have
17 to make sure that these most senior people and most responsible
18 people are prosecuted, and who they are, and for those who were
19 responsible for the crimes and grave breaches and who died before
20 being charged, I would like the Court to issue a judgment to
21 terminate the criminal action.
22 Number three, I would like to present concerning the people who
23 were responsible and senior people of the regime who have
24 breached the national and international laws. So those people
25 include the leaders of the Pol Pot regime, and people who were

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1 most responsible for the crimes and grave breaches of national
2 and international laws. All together, there are only fourteen
3 people, among them Kaing Guek Eav is not listed. Although
4 recently, Kaing Guek Eav alias Duch admitted, or confessed he
5 committed the crimes. However, as the lawyer for him, I have to
6 fight for justice for him, and for people who died and those who
7 survived the regime.

8 So if anyone other than these fourteen people is prosecuted it is
9 violating the Law on the Establishment of the ECCC, because in
10 the law it states clearly that the Court has the jurisdiction to
11 only try those most senior and most responsible people who have
12 committed the crimes and grave breaches of international law, so
13 there are only fourteen of them.

14 [14.11.40]

15 And trying only some among the fourteen, the question is that:
16 how can justice be done, and how can the dead people and the
17 victims, or the people that survived, accept this?

18 And number four, Duch is only prosecuted, is it legal? Is it
19 justified? Because in the Democratic Kampuchea regime, there are
20 196 prisons, and so far as I observed, (indistinct) Phnom Preah
21 Veng province, the prisons in that province were not included,
22 because there were some prisons also in that province, so there
23 would have been more than 200 prisons. The people who were
24 arrested and detained at the prisons, the chief of the prison had
25 the same role and responsibility as the Chairperson at S-21 was

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1 asked to do. First, they were asked to make sure that people who
2 were arrested could not escape, and number two, those who were
3 brought in must be taken confession, and the confession must be
4 taken by way of torture, to draw the confession whether the
5 person being a CIA or KGB, or the Vietnamese spies.
6 Number four, tortures were inflicted in all prisons across the
7 country. First, the practice of torture is called a cool
8 approach. If the person failed to confess, then he would be
9 inflicted what we call the hot approach, followed by chewing
10 approach. So after the confessions were done then they need to
11 be executed. There is the duties in each prison, therefore if
12 Duch is only prosecuted, all those chiefs of the 196 prisons,
13 chiefs needs to be prosecuted as well. And who above those
14 prison chiefs, they have to be arrested and bring for trial as
15 well, because they are above the chiefs of the prisons, and that
16 is called justice and fair. Because article 31 of the
17 Constitution of the Kingdom of Cambodia states clearly that the
18 Cambodian people has equal rights before the law.

19 [14.14.35]

20 And now, is it fair? Because each person receives that same
21 orders from the same Angkar, and each prison also conducted
22 torture, executions, and why only Duch is brought for trial? And
23 only Duch is the only scapegoat on behalf of those 195 chiefs of
24 prisons. Is this called justice of the ECCC? With the UN
25 involvement? Therefore, the prosecution of Duch alone without

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1 taking into consideration there were 195 prison chiefs, is a
2 decision in contradictory to the Constitution of the Kingdom of
3 Cambodia under article 31, and this is the violations of the
4 sovereignty, because this trial is to respect the sovereignty of
5 the Kingdom of Cambodia.
6 According to the third purpose of the government of Cambodia the
7 prosecution needs to respect the sovereignty, but now the
8 Cambodian sovereignty is violated, if they do not obey article 31
9 of the Constitution of Cambodia, it is a violation. Your Honours
10 need to consider this. So I, the defence counsel, can accept it.
11 And I would like the Co-Prosecutors to reconsider this request,
12 you are the ones who bear the burdens on the prosecutions, and
13 needs to explain to the Chamber why only Duch is brought for
14 trial, and not all those 195 chiefs of prisons. And why not
15 those above the chiefs of prisons to be brought for trial and
16 prosecuted and explain to the Chamber before Duch is put in
17 prison?
18 [2.16.50]
19 As I said again, to prosecute Duch alone, if he is a senior
20 leader of Democratic Kampuchea or the most responsible for the
21 crimes and the serious breaches of both national and
22 international laws, then it needs to be clarified. The
23 Co-Prosecutors need to explain to the Chamber whether Duch is a
24 senior leader or the most responsible. What documents to prove?
25 Because I, the lawyer, I have the documents, only the fourteen

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1 people who were the senior leaders, and if the Co-Prosecutors
2 have such documents of proof or what evidence they have or only
3 just by their words of mouth from them, it needs to be clarified.
4 Five. On the 196 prisons, those 196 prisons, 132 prisons had no
5 figures of the killings, and only some prisons, for example in
6 Pursat province, in Leach area, but there was no concrete figure,
7 and only 64 prisons had clear numbers of those killed. And so
8 amongst the 64 who had the numbers of people killed, S-21 is
9 number 10 amongst those 64 prisons. S-21 listed as number 10
10 only. So if S-21 is taken to compare to Chong Chhrôoy prison in
11 Chheu Trach village, (indistinct) Kompong Chhnang province, in
12 that province 150,000 people were killed in that prison. It
13 means ten times the number of those killed in S-21, it is not
14 even equal to that number yet. So why -- can the Co-Prosecutors
15 inform the Chambers why it is such a case?

16 [2.19.05]

17 And I would like to request the Chamber's permission to express
18 that I do not demand that the 196 chiefs of prisons, or the 64
19 chiefs of prisons need to be brought to trial, but it is -- I
20 don't just want Duch to be just a scapegoat, and I want all of
21 you to consider the scope of the risk of the damages and of the
22 tragedy and the scale of the crimes between those who died, of
23 the 12,000 people plus who died in S-21, and the 150,000 who died
24 at Chom Choi. If 150,000 died in Chom Choi and not prosecuted,
25 and only the 12,380 prosecute at S-21, and for prosecution, this

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1 is not right. This is not justice.

2 And it's not in accordance with article 31 of the Constitution of
3 the Kingdom of Cambodia. Because Cambodian people has equal
4 rights before the law. Then it needs to be done in general, not
5 selectively. Because each prison has those who died there. If
6 you prosecute them, prosecute them all. Otherwise do not
7 prosecute them at all. They are the same, they are chiefs of
8 prisons, and people were killed too. And if 195 chiefs are not
9 prosecuted, and only Duch is prosecuted, there is no justice. So
10 the Co-Prosecutors need to justify this to the Trial Chamber.

11 [2.20.55]

12 Moreover, the second purpose of the royal government of Cambodia
13 in the prosecution is for the regime to not to return or to exist
14 again in the Kingdom of Cambodia. And if only some of those who
15 killed some people are prosecuted, and those who kill more people
16 are not prosecuted, then the regime might return. Or it means
17 that more people need to be killed in order not to be prosecuted,
18 as in this case of Duch. Why Duch was imprisoned? Was it
19 because he killed less people? This is the lesson.

20 S-21 is a special prison, as in the indictment it has a special
21 characteristic, the speciality is that it killed less people than
22 it is being prosecuted, and those who kill more are not being
23 prosecuted. And so to prosecute Duch alone is the second
24 violation of the government of Cambodia, as well as the
25 violations of article 31 of the Constitution of the Kingdom of

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1 Cambodia, as well as violations of Article 1 of the Law on the
2 Establishment of the ECCC, because Duch is not a senior leader or
3 the most responsible for the crimes.
4 Another point I would like to raise with Your Honours' leave,
5 it's number six, a response to the brief statement of the
6 Co-Prosecutors and the Vietnamese troops, and the Vietnamese
7 civilians who were arrested and sent to Tuol Sleng were killed by
8 S-21, and allegedly that S-21 involved with the prisoners of war.
9 I would like the Trial Chamber to take this matter into account.
10 These Vietnamese civilians in Cambodia at the time. So if you
11 splash the water to each other, it's going to stain each other,
12 and don't you think that the Khmer soldiers and civilians were
13 killed by the Vietnamese as well? If they kill each other like
14 that, and why the Vietnamese side doesn't commit any war crime?
15 So I would like the Trial Chamber to consider this matter, in
16 order to find justice.
17 [2.23.40]
18 Point number seven. I have seen that the crimes committed as
19 S-21, Duch did not deny it, and he has been co-operating with the
20 Court. Whatever the Co-Prosecutors raised, Duch accepted it with
21 both hands. However, according to the law, to prosecute Duch
22 alone -- is it fair, compared to other 195 chiefs of prisons? So
23 this is a question that needs to be resolved.
24 Another point. Madame Co-Prosecutor this morning said this
25 prosecution is for humankind to learn as a lesson, but the

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1 humankind is not only for the Cambodian people but also for the
2 international community. How can it be learned as a lesson,
3 because those who kill less is being prosecuted, and those who
4 kill more is not being prosecuted. That needs to be considered.
5 In addition, the international co-lawyer, Mr. Robert Petit said
6 the theory of the joint criminal enterprise shall be implemented
7 and exercised for the S-21 crimes. I do not deny to that, please
8 go ahead, however it needs to be exercised for all those 195
9 prisons as well. So you don't mean those are not part of the
10 JCE, and only S-21 is part of the JCE? Please consider this
11 point.

12 So finally, based on the spirit of article 2 of the ECCC law, the
13 Trial Chamber has the jurisdiction to trial and prosecute the
14 senior leaders of Democratic Kampuchea and those most responsible
15 for the crimes and the grave breaches of both national and
16 international laws, and Kaing Guek Eav alias Duch is not a senior
17 leader of Democratic Kampuchea, nor the person most responsible
18 for the crimes, and the grave breaches of those law, he is just a
19 chief of prisons as others, 195 chiefs of prisons who are not
20 being prosecuted.

21 Finally, I hope the Court, as well as the UN, and for the sake of
22 the Cambodian people, before Duch is prosecuted as a scapegoat on
23 behalf of those 195 chiefs of prisons, please consider this fact.
24 Thank you.

25 MR. PRESIDENT:

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1 I would like to ask whether Mr. Francois Roux would like to also
2 respond to the opening statements by the Co-Prosecutor, continued
3 from Mr. Kar Savuth.

4 MR. ROUX:

5 If the Chamber were to decide to take a break now, I should be
6 delighted, and perhaps I might be allowed to take the floor after
7 the break. Thank you.

8 MR. PRESIDENT:

9 In order to not be interrupted by the break, we should now take a
10 break for 30 minutes, and we will resume at 5 minutes to 3.

11 MR. PETIT:

12 Excuse me, Mr. President. Thank you for giving me the floor. I
13 just wish to inform the Court that following the presentation of
14 the opening statements of the co-lawyers I would like to make a
15 number of observations, touching on the consequences that might
16 arise from these two statements. Thank you.

17 (Court recesses from 1428H to 1458H)

18 [14.58.17]

19 MR. PRESIDENT:

20 The Trial Chamber would like to invite Mr. Francois Roux to
21 respond to the opening statements made the Co-Prosecutors to be
22 continued by Mr. Kar Savuth. You may take the floor now.

23 MR. ROUX:

24 Thank you Mr. President, Your Honours. As others before me I am
25 aware of the importance of this moment, which I might describe as

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1 historic. It is historic not only for Cambodia and the victims of
2 the tragedy, but also, for the International community. And for
3 International criminal justice. Which in our turn we shall seek
4 to buttress this court here in Phnom Penh which is hearing the
5 Duch case.

6 We'll contribute to the establishment of International criminal
7 justice. The timeliness of this justice or this justice which the
8 news or what we hear around us reminds us that it is difficult.
9 Today we have heard a head of state being indicted by the
10 International Criminal Court and this head of state is defiant in
11 response to the International Criminal Court and is in defiance
12 of International Judges.

13 Here in Cambodia Mr. President, Your Honours; as I stand here
14 before you, I am pleased that in spite of all the difficulties or
15 obstacles leading up to the creation of this court. I am pleased
16 that today you are here. And so is Duch. He is sitting opposite
17 you.

18 The victims are here as civil parties, and they are represented
19 by their lawyers. In and of itself, that is already worthy of
20 note. I can only support, therefore the communiqué issued by the
21 Ministers of the Kingdom of Cambodia which on 30 March will be a
22 new milestone on the road to success to the Extraordinary
23 Chambers in the Courts of Cambodia. In trying Duch and the former
24 Khmer Rouge leaders. The communiqué adds that, it is a successful
25 reflection of the partnership between the United Nations and the

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1 Government of Cambodia.
2 Cambodia is one of the member states of the United Nations. And
3 it is because Cambodia agreed that we are here today. There is no
4 difference between the National judges and the international
5 Judges sitting on the bench. Nor is there any difference between
6 national and international lawyers or the national and
7 international Co-Prosecutor. In this courtroom all we have is
8 Judges and Officers of the court who are working to ensure that
9 justice shall be done.

10 Mr. President, Your Honours, the prosecutors, or shall I say tge
11 Co-Prosecutors, in their opening statement relied heavily on the
12 material set out in the Closing Order, and you will observe that
13 insofar as much of this material is concerned Duch is in
14 agreement.

15 [15.05.17]

16 When further on into the case we are going to deal with the
17 admissions of fact by the accused, you will note that, most of
18 the cats, or the majority of the facts which are included in the
19 closing order, are the subject of an agreement by the accused. So
20 Mr. Robert Petit when he was closing his address this morning
21 told you that in fact, at the end of these proceedings you will
22 render a decision to determine whether the admission of the
23 crimes by the Accused is really sincere and whether it is
24 consistent with the duties that he actually carried out. That
25 will indeed be one of the points that these public proceedings

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1 will elucidate. That is, what was the degree of autonomy or lack
2 thereon of in Duch in his duties as the head of S-21?
3 And when we come to that, we shall certainly hear experts, we
4 have proposed some for the Chamber, the Office of the
5 Co-Prosecutor has proposed experts of its own, I should like to
6 say here that in my view there was one major element lacking from
7 the Co-Prosecutors. Or better still two. They did not allude to
8 "terror" or "secrecy". All the experts agree, that this
9 dictatorship operator on the basis of the twin pillars of terror
10 and secrecy. It was because of the terror that every link in the
11 chain of command acted zealously to please superiors who were the
12 ones who issued the orders, and this is the reason why Duch told
13 you and told the Co-Investigating Judges "it is I that gave the
14 orders to my subordinates - I assume responsibility". I and I
15 will tell you that not many people in this country today will
16 accept that they, themselves gave the orders.
17 Does this mean therefore that we should cloak in silence the fact
18 that he himself received orders? What we agree happened below him
19 happened equally above him. But he says, "I received orders, I
20 transmitted orders, I assume responsibility for the crimes".
21 [15.10.14]
22 We shall certainly return to the issue of obeying orders, not as
23 an exculpatory element but, since the Nuremberg trials we shall
24 consider this as a mitigating circumstance, my learned friend of
25 the Office of the Co-Prosecutors would do well to refer to the

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1 Article published on 18 March 2008 by Mr. Jacques Lanteau in a
2 Canadian newspaper on obedience of orders.
3 So, we had the Office of Co-Prosecutors dwell on this and my
4 learned colleague and friend Mr. Kar Savuth also touched on the
5 point. Once more, permit me, to say publicly how much respect I
6 have for Mr. Kar Savuth, a former prisoner of the Khmer Rouge,
7 who defends them. He is a credit to the profession. Mr. Kar
8 Savuth, at the beginning of the '80s when he was a teacher took
9 his pupils to visit S-21. Could he possibly imagine that one day
10 he would find himself as a lawyer defending, representing the
11 director of S-21. That such is fate and this fate is totally
12 characteristic of what happened here. As he reminded you, because
13 one of the Co-Prosecutors wished. Only five people will be tried
14 today, so Mr. Savuth addressed the court and he said "please do
15 not make Duch the scapegoat of all that." And then you, or we,
16 heard Duch address the court, I thank the Chamber for allowing
17 this at this stage in the proceedings. You must believe me, Your
18 Honours that it is not easy to come here in public, in this
19 courtroom, facing the victims and the public attending. To come
20 forth and say "I recognize, I am ashamed of all I've done" Do you
21 think that it is as simple as that? It is a long road to travel.
22 It is a long lonely road he has travelled for years.
23 [15.14.43]
24 That is how I found him. From our very first meeting he said to
25 me, "I have recognized. I wish to acknowledge, I want to talk to

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1 the Judges. I want to talk to the Victims." With his agreement we
2 asked or a re-enactment. For those who are not part of this Civil
3 law system, forgive me.
4 Re-enactment in our system is a matter of course in legal
5 proceedings. But in this specific case, it was a major
6 proceeding. Who could possibly have imagined that Duch, a former
7 almighty director or head as he has been described of S-21; would
8 return to S-21 faced by the survivors and the guards. That he
9 would return there between two policemen and two Co-Investigating
10 Judges.
11 Who could have thought such a thing possible?
12 On the proposal of his lawyers, he agreed and he said to us then.
13 Yes, I will go to Choeng Ek, with the judges and the prosecutors.
14 Yes I shall go to S-21. But I ask two things of you. First, I
15 would like to have some time to myself with no one present. All
16 alone. And the Co-Investigating Judges granted him that time
17 alone. And he said again, I would like to be afforded the right
18 to speak to the victims who are present and to the guards of
19 S-21. That is the former guards.
20 You will see now the victims who were not present at this
21 re-enactment. During these proceedings you will see the film of
22 this re-enactment and you will have the opportunity to see the
23 tears he shed, the tears that were shed between the victims and
24 Duch when he spoke to them. Who can say that at that time, none
25 of them were honest? It is also that aspect, that is also the

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1 major advantage of legal proceedings. What other than justice or
2 what other than a judicial system could have organized this
3 meeting between Duch and his former victims?

4 Yes, no matter what may be the tragedy that you have described
5 that the Co-Prosecutors have described this morning. The tragedy
6 that has obviously arouses all of our compassion for the innocent
7 victims. No matter this tragedy I would like that we also, thirty
8 years afterwards, I would like that we take, that we have a
9 thought for the one that today is confronting his past. I am
10 repeating this. It is necessary to have a certain amount of
11 courage and I'm even going to go further with this.

12 [15.20.00]

13 What allows a man who is confronting all of this, what allows him
14 to remain today alive? If it is not because he is convinced that
15 he still has a role to play in humanity? By requesting, by asking
16 for forgiveness from the victims, by address himself to his
17 people. By addressing himself to young people. By telling them
18 'this is it, this is what we have done, this is what we fell
19 into, this is what you should never repeat".

20 So, yes of course, yes Your Honours, the Co-Prosecutors. Duch
21 remains a human being maybe there are certain points with which
22 he has a bit of trouble admitting. Certain things. Of course. But
23 maybe that you as well. You have trouble admitting certain things
24 on his behalf. The hearings will prove to you that maybe you are
25 also I the wrong somewhere. When you say to the Chamber that "we

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1 want to present the book that Duch wrote which is the work of his
2 life" and you will understand that it is not he that wrote the
3 book sometimes, you can be in the wrong. Even Co-Prosecutors.
4 And you can, when you are accused be mistaken in your good faith
5 but you can also have a bit of trouble admitting certain things
6 that are extremely painful.
7 So, I would like to repeat one more time, that these hearings are
8 going to allow us to go even and even further, we have the
9 opportunity in this court for the first time for international
10 criminal justice to have civil parties.
11 Ladies and Gentlemen from the civil parties, you have your full
12 place in these hearings. You will be able to ask Duch the
13 questions that you wish to ask him and as the counsel ministers
14 said, that will be the honour of this justice to allow this
15 encounter.
16 Unfortunately I prefer warning you right away. Not all of the
17 answers will be given to your questions. Your main question and I
18 am aware of this is: Why all of this?
19 I am not sure that Duch on his own has the answer to this tragic
20 question: why all of this? Why these scenes? These unthinkable
21 scenes, these unbearable scenes at S-21? Why these scenes that
22 de-humanize the victims? But who also de-humanize at the same
23 time those that perpetrated these atrocities.
24 Will we be able at the end of these hearings to have, to be able
25 to return to the victims all of the humanity? But to also be able

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1 to allow those or the one who, had exited humanity to return to
2 humanity.

3 This is the stake, for our court. Thank you.

4 MR. PRESIDENT:

5 The Trial Chamber would like to inform that regarding the request
6 of the Co-Prosecutor to respond to the defence council. Your
7 request is not granted, because based on the content of our
8 schedule. This process is not the proceedings where evidence is
9 presented. Its only just the beginning of the proceeding.

10 Next we move to the other item concerning the uncontested facts.

11 I may ask the prosecutors if you have already agreed on some
12 facts with the defence council.

13 MR. PETIT:

14 Thank you Mr. President. With your leave I would like to correct
15 what is obviously a misinterpretation on my earlier comment. I
16 did not ask for a right to respond to the defence presentation,
17 what I asked for was a right to make an observation. Because what
18 I believe happened earlier was a presentation of a motion by the
19 defence. Challenging the jurisdiction of the court over the
20 accused; the constitutionality of the proceedings of this court
21 and indeed qualifying those proceedings as an affront to the
22 national sovereignty.

23 Now, in our culture, when a lawyer stands up he is presumed..

24 [15.27.34]

25 MR. PRESIDENT:

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1 I would like the Co-Prosecutor to go straight to the point, the
2 Trial Chamber asked you to clarify concerning the uncontested
3 facts. Because your request to make observation has already been
4 rejected.

5 MR. PETIT:

6 Thank you for that clarification Mr. President. I note that there
7 is later in the agenda a point for other business and I will
8 certainly return with your permission of course to that "other
9 business".

10 We had indeed at least this, an agreement. If I may? In response
11 to Your Honours request on 5 February 2009. The Co-Prosecutors on
12 11 February 2009, supplied --

13 (Technical problem)

14 As I said on 11 February 2009, we supplied the defence with 351
15 factual allegations. Facts derived from the first three parts of
16 the indictment as amended of course by the PTC. We provided these
17 facts in English, Khmer and French.

18 The first part covered the summary of the facts. The second part,
19 the legal characterization of the facts and thirdly, the
20 character of the accused. Now, when we say these facts were
21 derived from the indictment, for the most part they were in fact
22 taken word for word from the indictment. Cut and paste.

23 In some cases, there has been some editing to exclude references
24 to evidence. Or to remove things that we, the Co-Prosecutors did
25 not agree to, and various other editing measures. Your Honours

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1 will note that with the exception of this dispositive part of the
2 indictment. That indictment only contained 171 paragraphs. Yet,
3 351 facts were submitted to the defence. This is because, as you
4 know, each paragraph contained many facts; sometimes a lot. So
5 these paragraphs therefore, were split into individual factual
6 allegations, to allow the defence to state a definitive position
7 on each of the individual facts contained in any one paragraph.
8 This agreed facts document proposal was given to the defence as I
9 said in all three languages, and the defence was asked to record
10 on this document, whether the defence agreed, partially agreed,
11 disagreed, or did not dispute any of these 351 facts.
12 The defence response was received by the Co-Prosecutors on 19
13 March 2009, in French and then on 26 March 2009 last Thursday, in
14 Khmer. The defence in its response addressed two out of the
15 three main parts of the indictment. They did not respond to the
16 legal qualification of part three that we submitted.
17 Regarding part one of the indictment - the summary of facts, it
18 contained 262 individual factual allegations and the defence
19 responded with in fact, 351 distinct individual positions on
20 these facts. As some of the allegations initially put forth
21 contained multiple parts and were therefore responded to
22 individually. In short, the defence responded in two ways, either
23 with a qualification or comment regarding a fact. Or, without any
24 comment.
25 [15.32.30]

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1 Now, regarding those responses or qualifications or comment by
2 the defence. 157 allegations were agreed to by the defence. 81
3 allegations were not disputed, and 21 allegations were disagreed
4 with. Obviously if I make a mistake in the numbers, I'm sure my
5 learned friend will correct those.

6 So, to sum up, the Co-Prosecutors and the defence have agreed to
7 157 of the 350 factual allegations in Part 1. Additionally, the
8 defence is not contesting 81 of those facts.

9 Therefore, 238 of 351 facts are not being contested by the
10 defence during trial.

11 Regarding the remaining 112 of the 351, they have either not been
12 agreed to or alternatively they have been agreed, partly agreed
13 or not disputed with some comments.

14 Due to the defence qualification of some of these facts, the
15 Co-Prosecutors are not in a position to agree to the qualified
16 facts. And obviously what ever a fact or factual allegation is to
17 be contested it is to be done as appropriately during the stages
18 of the trial that you have set forth.

19 Now I don't propose to read into the record all the single facts
20 that have been agreed to; I could with your leave and if you want
21 me to, but I'd rather not. Instead, I submit that the defence
22 could, and will I believe, submit very shortly into the record.

23 The
24 Details of which allegations of fact which it agrees with,
25 comments, etc.

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1 Obviously as I said, the ones that were put forth and that are
2 agreed and not disputed or commented could be deemed by this
3 Chamber, to be agreed between the parties and not contested.

4 Obviously we are all very much aware that this agreement between
5 the defence and the prosecution does not bind you in anyway
6 whatsoever about these facts.

7 That is quite clear. This agreement was put forth as a Trial
8 Management tool to indicate to the Chamber to indicate where the
9 debate lay between the parties.

10 It will come as no surprise, as I assume the defence will file
11 that most of the disputed facts rest with the part of the
12 indictment dealing with the responsibility of the Accused, but
13 however, as I said, most of these factual allegations have been
14 admitted to and not contested or not commented on.

15 The reference number for this filing I submit will be E5/11/2 and
16 I would, as I said, have indication that this will be done
17 shortly into the record so that the Chamber is aware of the
18 agreed facts.

19 I of course stand ready to answer any questions or provide any
20 clarification.

21 [15.42.48]

22 MR. PRESIDENT:

23 Coming next, I would like to invite the defence council to state
24 your position what was raised by the Co-Prosecutors regarding the
25 agreement on the facts. If you would like to make any comments on

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1 this matter the floor is yours.

2 MR. ROUX:

3 Mr. President, ladies and gentleman, I agree with the comments of
4 my colleagues of the OCP. We therefore suggest that we pass on
5 to you tomorrow, through official channels the work that has been
6 completed by Duch himself and his lawyers concerning the
7 acknowledgement of the facts that has been proposed by the
8 Co-Prosecutors.

9 We have worked in the following way each time agrees with a
10 paragraph, we have mentioned in red "okay" " we agree" and there
11 are a few paragraphs on which the accused that he agrees
12 partially and therefore he explained why he only agreed
13 partially, and you will see as well that a certain number of
14 points are not contested, challenged. And will not be challenged
15 during the Trial, and then we have each time under the paragraphs
16 you will see this in blue on our version we have included the
17 paragraph of the indictment to which this paragraph in the
18 prosecutors document corresponds to.

19 Because we understood that the Co-Prosecutors went over the
20 indictment or the closing order and broke down the closing order
21 and in order to have more clarity we have mentioned to you which
22 paragraph of the closing order this corresponds to. But we have
23 also added sometimes in green and you will see this in our
24 document in green; we also indicated the terms the Co-Prosecutors
25 did not attend to. That sometimes the Co-Prosecutors in their

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1 work just made summaries of the closing order. So sometimes we
2 would like to add the text itself of the closing order so we have
3 added this paragraph in green.

4 Because for reasons of clarity, Duch prefers that the totality of
5 the paragraph in the closing order be specified. And all of this
6 is specified in our document so therefore we suggest that we give
7 to you this document and also an explanatory note explaining how
8 we went about this, and in substance as my learned colleague Mr.
9 Robert Petit said the vast majority of the factual elements are
10 accepted and we have of course a certain disagreements on certain
11 points that the hearings will make clear and therefore tomorrow
12 morning we will be able to transmit this to you through official
13 channels.

14 MR. PRESIDENT:

15 The Co-Prosecutor please?

16 MR. PETIT:

17 Thank you Mr. President, it is true that as my colleague has
18 indicated there are matters that we have not reached agreement on
19 and that we have not discussed. If the accused has comments to
20 make he will do so during proceedings and he will not do so in
21 writing as this might be subject to challenge. Furthermore, as I
22 said before, to the court, it might be possible to read each of
23 the factual allegations that are not contested but I estimate
24 that this should take about two hours which is why I indicated,
25 that we of the prosecution consider that it would be a more

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1 appropriate use of the courts time if these admissions were
2 presented in writing.

3 Because these documents only repeat what is in the closing order.
4 But of course, we are in your hands and do what is in the proper
5 conduct of the proceedings.

6 MR. PRESIDENT:

7 The Co-Prosecutor could you give to the Chamber the documents
8 concerning the uncontested facts and when do you think that these
9 documents are available, especially the documents that you
10 already raised concerning the undisputed facts.

11 So when do you think you can give them to us?

12 MR. PETIT:

13 I apologize Mr. President if I was not clear. The initial
14 document to that we submitted to defence for their perusal and
15 for them to submit on was filed I believe, as I said, in January
16 with this court. And that is the document under the quotation
17 which I mistakenly assigned earlier. So that is in the file - the
18 answer to that filing, in other words, the position, the final
19 position on the agreement of facts can be filed as early as
20 tomorrow morning.

21 So, tomorrow morning you will have in the case file a document
22 amounting to perhaps 40 odd pages, with all the facts that the
23 defence and prosecution agreed to, or are not contested. So as
24 of tomorrow morning you will have in writing in the three
25 languages, I assume. These agreed facts. Again as I said, it is

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1 possible for us to read them into the record, and using the
2 translation of today, but I assume, I am sure, that these poor
3 translations, have had a lot to do today. But it is, of course,
4 up to you.

5 JUDGE CARTWRIGHT:

6 Thank you Mr. President. The Co-Prosecutor and Council for the
7 Accused. The difficulty that the court has is that we're
8 scheduled to start questioning tomorrow. And we still don't know
9 what the agreed facts, are, is it possible to have an informal
10 copy given to us today?

11 MR. PETIT:

12 Personally I don't see any problems, you can have it probably
13 within a few minutes. At least in English and French and I
14 believe, Khmer as well. And I don't think there will be any
15 objections from the defence, and I don't know if the civil
16 parties will -- of course we will give it to all the parties.

17 MR. PRESIDENT:

18 Mr. Francois Roux you take the floor if you would like to address
19 the matter regarding this.

20 MR. ROUX:

21 The defence just wishes to indicate that it can transmit its
22 document to the bench at the end of this hearing. Our versions
23 are in French and Khmer, we do not have an English translation
24 I'm afraid. But as soon as this hearing is adjourned, we shall do
25 what is required to ensure that you receive the document in

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1 French and Khmer.

2 MR. PRESIDENT:

3 Mr. Robert Petit you can now take the floor.

4 MR. PETIT:

5 With your leave and indulgence, the informal copy might not be as
6 pretty as of course the formal one will be, there might be a few
7 for which we will have to answer.

8 [15.55.21]

9 MR. PRESIDENT:

10 Now it comes to another item of the agenda, which is final item
11 for the day's proceedings. This item is about parties' requests
12 and after two days of hearing, I would like to ask whether any
13 parties would like to make any request to be put before the Trial
14 Chamber? The floor is yours if you wish to do so now.

15 MR. PETIT:

16 Thank you Mr. President, I have indeed three requests for your
17 attention and decision. The first one concerns a point that was
18 just raised and in consulting with my colleagues I am heartened
19 that I am not the only one confused. So I am looking for
20 clarification from this Chamber.

21 If I understand correctly, this Chamber intends tomorrow to start
22 questioning the Accused, and if so can we get some clarification
23 as to the ambit of that questioning? Because as I recall from
24 your order, we note that the questioning of the accused on issues
25 relating to M-13 is scheduled for the 6th to the 7th. So I would

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1 be grateful for some clarification as to what we are expected to
2 assist you with tomorrow?

3 My second request is to seek again guidance from this Chamber
4 regarding the presentation of evidence by witnesses. Can we have
5 some indication from this Chamber on how it intends to deal with
6 witnesses who have presumably or at least based on the evidence
7 in the case file; relevant evidence to be brought on several
8 topics which will be of course, chronologically followed. In
9 plain language, it seems to me, that some witnesses will have to
10 either be questioned on topics other than the one of the day; or,
11 be recalled at a later date to be further examined about specific
12 topics?

13 Again as I said I am just asking for guidance so we are in a
14 better position to assist you in whatever manner you deem fit.

15 My third request for the day most probably, is that this Chamber
16 requests the defence to clarify if these proceedings are now at
17 this point or at any other point to be challenged on their
18 legality? I submit that this Chamber cannot proceed at this
19 Trial without having a clear answer from the defence as to its
20 position on the legality of the prosecution of this individual.

21 As I said this morning, we heard words like "unconstitutional",
22 we heard words like "offense to national sovereignty" and we
23 heard to my somewhat trained ears sounds like a challenge to the
24 personal jurisdiction of this court over the accused. I quote
25 "Duch is not one most responsible". Now, as I said, it's been my

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1 experience that when a lawyer stands, two things can be presumed:
2 he is speaking on behalf of his client as instructed and with his
3 approval and two he's not speaking for nothing.
4 So that his words must be weighed and acted on. To me, those
5 words that I just mentioned are very serious indeed. Now, I
6 respectfully submit that this Chamber must request the defence,
7 purely, unambiguously, to state if indeed, it intends now, or at
8 any time during the proceedings to challenge the jurisdiction of
9 this court or its legality. There is a very simple argument, why
10 it must do so.
11 Because the law says that it must.
12 Rule 89 quite clearly imposes a duty on a party who wants to file
13 or has a preliminary objection concerning jurisdiction examined.
14 That party must follow some rules. And as my learned friend is so
15 fond of reminding us. The rules are there for a reason. To
16 protect the fairness of the proceedings. Which is why I am, I
17 must say shocked. That over two years into these proceedings. On
18 the day that the substantive hearings starts, after having heard
19 on numerous occasions and quite eloquently, contrary to me, how
20 the accused wants the proceedings to go. Wants to admit his
21 culpability and wants to receive a fair trial and sentence.
22 How after, he has been charged as I said over two years, under
23 the law of this court. How the closing order specifically
24 referred to him as one most responsible, how defence was given
25 specific instructions back in January that if it did indeed have

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1 any intent to raise any preliminary objection it had to do so
2 following the order. And it did so on 28 January where it said
3 that it did indeed intent to raise eventually one particular
4 point. The statue of limitation on national crime.
5 Not a word about how these proceedings might be unconstitutional
6 or about how this accused far from going through this trial and
7 having the truth known and asking for forgiveness, how rather, he
8 should walk out free because we don't have jurisdiction to
9 prosecute him.

10 Now, obviously any accused before this court has the right to
11 make any defence that is legally available to him and certainly
12 not as an uninterested party, I might welcome a dissertation as
13 to what is constituted most responsible and certainly I was
14 hearted by my learned friends support for prosecution of this
15 court.

16 However, there is an expression that says "you cannot have your
17 cake and eat it" I submit that if indeed the accused has
18 instructed council to claim that this court doesn't have
19 jurisdiction over him. That he must not be prosecuted because
20 this court, this affront to national sovereignty is
21 unconstitutional if indeed those are the instructions of the
22 accused, then I submit that the answer that I raised this morning
23 about the extent of the contrition of the accused may perhaps
24 been answered.

25 Now again I stand to be corrected. If translations, no offense,

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1 have failed us and if indeed what was not raised this morning.
2 Then indeed I think it is very important to ask from this court,
3 from the defence, clearly what is the position on these topics.
4 So Mr. President those are my three requests. Thank you.

5 [16.05.08]

6 MR. PRESIDENT:

7 Is there any other party who would wish to make any request
8 before the Trial Chamber? The civil party lawyer? I know two of
9 you would like to address the court so one of you first.

10 MS. STUDZINSKY:

11 Mr. President, Your Honours, I would like to make a request, but
12 I need, I would say, 10 to 15 minutes to give you the reasons for
13 this request and as I see we have 10 past 4 pm and I would like
14 to know if I would have this time today or if I should do it
15 tomorrow? Thank you.

16 MR. PRESIDENT:

17 Now it is time which is close to a break time, so the Chamber now
18 would wish to know which parties who would wish to make a request
19 so that the Trial Chamber could have them address. So some
20 practical requests have to be addressed tomorrow. However the
21 Trial Chamber would like to confirm regarding the request that
22 have already been put before the Trial Chamber, the same requests
23 shall not be brought again today or in the following days.
24 So I would like to ask whether any of the civil parties who would
25 like to make any requests so the Trial Chamber can have them

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1 addressed.

2 MR. WERNER:

3 Your Honours, let me address you in English because my request
4 will have to do with the direction of scheduling of Trial, and
5 its an entirely new request, and its not going to take long and
6 I'm happy to do that tomorrow morning. But I will have a request
7 for Your Honours tomorrow. I am grateful.

8 MR. PRESIDENT:

9 The civil party lawyer you take the floor.

10 MR. SUR:

11 Thank you Mr. President. It is not a request for time tomorrow. I
12 want to express the regret merely that the civil parties were not
13 afforded the opportunity to speak. Following on from what the
14 Co-Prosecutors, the accused and our learned friends on the
15 defence said.

16 This would have afforded us equality of arms, and this would have
17 required that the civil parties be given the floor, because today
18 we speak for Cambodia, we speak for the United Nations...

19 MR. PRESIDENT:

20 The Chamber has already made decisions concerning this matter and
21 based on the full content of the decision and according to Rule
22 89(2) there is no other rule to support that civil parties can
23 make an opening statement to support those of the statements by
24 the Co-Prosecutors. So this is an old request that has been once
25 rejected and cannot be re-visited. Mrs. Chea Leang you take the

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1 floor.

2 MS. CHEA LEANG:

3 Thank you, the President and Your Honours. I on behalf of the
4 Co-Prosecutors need to add one more point on the third point
5 raised by my colleague. In response to the defence council I
6 would like to remind what they would like to raised would have
7 been raised in the initial hearing but they failed to indicate
8 clearly to the Trial Chamber.

9 What I learned so far was, the matter concerning the statute of
10 limitation. They accuse that the laws to prosecute the accused,
11 does not, or fails to cover the statute of limitations which are
12 as their arguments so I would only like to confirm.

13 MR. PRESIDENT:

14 Mr. Hong Kimsuon you take the floor.

15 [16.12.00]

16 MR. HONG KIMSUON:

17 Thank you the President of the Trial Chamber. I would like to
18 make two requests. One it is about the factual analysis by the
19 Greffiers. I have noted the coding numbers which are inconsistent
20 in compared to the coding numbers during the Trial Management.
21 And the reason that I raise this is to make sure we got the
22 consistent numbers for our convenience.

23 And my second request regarding the cross examination ???

24 "questioning parties". Do you intend to use the cross examination
25 kind of questions or other means? Please advise the party.

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1 MR. PRESIDENT:

2 Another civil party you take the floor.

3 MRS. JACQUIN:

4 Mr. President, I would like to resubmit the consent about the
5 points among the last elements that were brought up concerning
6 the factual agreements that there is an agreement to between the
7 prosecutors and the defence. It was said that written lists would
8 be included in the case file and would be transmitted tonight or
9 tomorrow.

10 I myself as a civil party lawyer, I regret that these points are
11 not presented orally, for three points, due to the principal or
12 morality of the hearings, second of all the possibility for the
13 civil parties to get to know these points directly because the
14 lawyers have access to the documents and the civil parties do
15 not. As well as the people present in this hearing and I think
16 that there is something that is very important to be able to
17 establish that a certain number of points that are important
18 because I think that there are about 160 or 180 points that these
19 points are not challenged.

20 These are factual elements but even if they are factual elements,
21 I think that its important to bring them up and to retain
22 publicly the agreement of the defence concerning these points
23 otherwise, these points might become confused.

24 MS. STUDZINSKY:

25 I want to clarify that I do not want to repeat the same request

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1 of course. And in addition I would like to request that you
2 respond today if you intend to amend the judgement that we have
3 received. And the question Mr. Robert Petit has already asked
4 you, and to tell us if you intend to question tomorrow, the
5 Accused. Thank you.

6 MR. PRESIDENT:

7 The Chamber would like to indicate that now we are collecting and
8 noting all the requests made by parties so that we have them
9 considered late this afternoon and have them responded to the
10 parties tomorrow. So the Trial Chamber reserves our right not to
11 address the requests made by parties today and we will do this
12 tomorrow. The defence council would you wish to make any further
13 request?

14 [16.12.19]

15 MR. ROUX:

16 Thank you Your Honour. The defence maybe tomorrow will present a
17 request that is concerning detention.

18 MR. PRESIDENT:

19 It is time to break now so the Trial Chamber would like to
20 adjourn this hearing now, the hearing will resume tomorrow at 9
21 am. I would like to ask the officer of the detention facility to
22 take the Accused to the detention facility and take him back
23 before 9 am. I would also like to inform the audience and parties
24 who would wish to participate in the proceedings to be here by 9
25 am. The hearing is adjourned.

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- 1 (Court adjourns at 1619H)
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