



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

1 April 2009, 0908H

Trial Day 3

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

Extraordinary Chambers in the Courts of Cambodia
Trial Chamber - Trial Day 3

Case No. 001/18-07-2007-ECCC/TC
KAING GUEK EAV
1/04/2009

List of Speakers:

Language used unless specified otherwise in the transcript

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

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1 P R O C E E D I N G S

2 (Judges enter the courtroom)

3 THE GREFFIER:

4 Please be seated.

5 [09.09.05]

6 MR. PRESIDENT:

7 The Court is now in session.

8 Yesterday's proceeding was up to the points regarding the issues
9 of the request of the parties and the decisions need to be made
10 by the Trial Chambers regarding those requests. Yesterday, the
11 Trial Chamber was up to that point. however, due to the time
12 limit for yesterday's session and the request haven't was not
13 yet decided yesterday and today we will discuss that issue again.
14 Those requests regarding the following points. First, the Trial
15 Chamber noticed the request by the civil party lawyers to present
16 the factual agreements in public in these hearings which were
17 agreed upon by the Co-Prosecutors and the defence counsels.
18 The Trial Chamber will direct the defence counsels if they have
19 concrete agreements on the facts, then the Trial Chamber will
20 publish in public at the end of the sessions today on those
21 factual agreements.

22 Second. yesterday there was an attempt to put forward the
23 requests and the Trial Chamber would bring up those requests in
24 order to clarify on certain of them, and then the Trial Chamber
25 will note all those requests in order for us to discuss and make

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1 decisions.

2 Next. the Trial Chamber will ask the parties whether they have
3 any other additional requests, and I also would like to remind
4 the defence counsels and the civil parties' lawyers for the civil
5 parties, please follow your group order. Group 1 through 3 and
6 4, et cetera. And when you stand up, before you speak please
7 announce your names and your group to the Trial Chamber because
8 the whole Trial Chamber does not know your names individually.

9 I would like any party who wishes to rest your request or other
10 issues to bring to the attention of the Trial Chamber so that we
11 can make decision.

12 Thank you.

13 [9.12.53]

14 MR. WERNER:

15 Good morning, Mr. President, my name is Alain Werner. I'm
16 co-counsel for (inaudible) civil parties Group 1 and I do have
17 one request for guidance, Mr. President.

18 Mr. President, on the 20th of March, 2009, you issued a direction
19 on the scheduling of the trial and on Point 9 of the Direction it
20 was explained or clarified that the evidence will be divided into
21 topics and you did indicate seven topics. And then it was
22 further clarified that on each topic, first the accused will be
23 questioned, and then relevant civil parties, and then witnesses,
24 and then experts for each topic.

25 Now, Your Honours, most of the civil parties that -- for our

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1 group will come before this Court to talk, do not have anything
2 to say on any of those topics, and the reason is that most of
3 them are relatives of people who were detained at S-21. So they
4 have nothing to say on M-13, S-21, Choeng Ek, or the cadre of the
5 accused.

6 So we would be grateful if, Mr. President, you could clarify the
7 matter for us and tell us when do you intend to call the civil
8 parties, and it is important for us for that reason. we have, in
9 particular, two civil parties, E-286 and E-287, two of our civil
10 parties who will come in front of this Court and will hopefully
11 address Your Honours and they do not live in Cambodia and, as a
12 matter of fact, they live quite far away. So, of course, they
13 will need to have advance notice on when they have to come in
14 front of this Court. So we would be grateful for such
15 clarification.

16 Those are my submissions. I'm grateful, Your Honours.

17 [9.15.31]

18 MS. STUDZINSKY:

19 Good morning, Mr. President. Good morning, Your Honours. My
20 name is -- or perhaps could you also clarify if I should present
21 my name always if I stand up -- and I think the Chamber should
22 know me but I can, however, repeat it. My name is Silke
23 Studzinsky. I'm appearing for civil parties.

24 I would like to make one request that is related to the amendment
25 of the agenda, the scheduling that the Chamber has sent.

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1 We have the point of opening statements and we will notify that
2 the defence will make the opening statement.

3 On Monday, we have learned that also the accused -- no.

4 UNIDENTIFIED SPEAKER:

5 Speak louder.

6 MS. STUDZINSKY:

7 Okay. On Monday, we have learned that also the accused wanted to
8 make his opening statement and he did so yesterday.

9 I would like to make, at this point, short introduction. Civil
10 parties are parties to the proceedings. They have the right to
11 participate. What is the meaning of "participation"?

12 This means of course to be physically present but that cannot be
13 all. The right of participation includes, of course, the right
14 to be heard. And civil parties who heard yesterday the statement
15 of the accused, which was announced to be held only on Monday and
16 then repeated yesterday orally, brought to the civil parties the
17 wish to respond to the accused and to express their concerns and
18 views.

19 I think this is also a Court who emphasizes to bring justice to
20 victims who are here exceptionally, the first time, in
21 internationalized or international tribunals, parties to the
22 proceedings. that they should be granted the right to respond,
23 the right and the fundamental right of a fair trial to be heard.
24 And I would like to draw your attention to the jurisprudence of
25 the International Criminal Court. In the Lubanga case, Pre-Trial

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1 Chamber One decided on 22nd of 2006 that victims were only
2 participants with less rights, have the right to be heard and at
3 all stages -- very important -- at all stages of the proceedings,
4 if their interests are concerned. They are only participants.
5 They were granted the right and the Pre-Trial Chamber One
6 explained the right of participation means -- before the
7 International Criminal Court means that victims as participants
8 are allowed to make an opening statement and a closing statement.
9 That was something that the Pre-Trial Chamber expressed how they
10 understand the participation and what does it mean.
11 Of course participation right -- the participation right cannot
12 be limited to be physically present and it is, of course, not
13 enough to be heard at a later stage of the proceedings when the
14 Chamber intends to invite several civil parties, of course not
15 all, and of course the right to participate must be granted and
16 should be granted at every stage of the proceedings, and that
17 means also at the first day when the accused personally addressed
18 the Court in his opening statement and not only as normally
19 scheduled to give comments on the charges, like spelled under
20 Point 8 of the Agenda, but he made his own opening statement.
21 I would also like to draw your attention on the fact that
22 bringing justice to victims means also that they could express
23 their view on what do they think about the apologies that the
24 accused expressed yesterday, and that they can express their view
25 on what he said, that he is a victim of a DK period of the

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1 leaders of the Khmer Rouge, and I think this should be, in the
2 interest of justice, giving an opportunity to civil parties to
3 respond and all their lawyers to respond to the opening statement
4 of the accused, and of course also in general.

5 And so we request to be granted this right to respond, at least
6 to the opening statement of the accused. This is different. not
7 the same request that was submitted around two weeks ago where we
8 asked to get the right to make an opening statement. Now this is
9 an amended request to react and to respond and to perform -- to
10 respond to the accused and to perform our right to be heard. So
11 I ask the Chamber respectfully to decide on this request. Thank
12 you.

13 [9.23.37]

14 MS. MOCH SOVANNARY:

15 My name is Moch Sovannary in the Civil Party Group 3. First, my
16 respect to the President and the judges. I have another request
17 in addition to requests made by my group. I would like to
18 request to the Chamber for your instructions regarding the list
19 of civil parties which the Trial Chamber intends to call them for
20 their testimonies, and I would like to know the exact date that
21 each civil party has to appear before the Chamber. Thank you.

22 [9.24.38]

23 MR. KONG PISEY:

24 My name is Kong Pisey. I am from the Civil Party Group 1. I
25 would like the Chamber to make an observation during the hearing,

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1 according to the scheduling for the participants. However,
2 during our discussion during the hearing there is an objection,
3 for example, and then there is a protest or objection, and then
4 the judges have to retire for deliberation. So it's not
5 consistent with the scheduling already planned.

6 Second, when the lawyers who make objection to that objection, I
7 would like the civil parties' lawyers also to respond to that
8 objection. Thank you.

9 [9.26.20]

10 MR. SUR:

11 I am Pierre-Olivier Sur. I am a lawyer for Civil Party Group 4.
12 Mr. President, Your Honours, I am in complete agreement with what
13 my colleagues have said with regard to the scheduling. We would
14 like to be able to assist our clients appropriately during the
15 hearings. This goes to equality of arms between the defence and
16 the civil parties in particular, following the opening statement
17 that was made yesterday by the accused. Thank you.

18 [9.27.07]

19 MR. PRESIDENT:

20 Is there any additional request? If there is no additional
21 request the Trial Chamber would like to ask the defence counsel
22 agreements on facts, which was mentioned yesterday, so the
23 agreements on facts with the co-prosecutors do you agree on these
24 particular facts, and if you do, can the agreement be made in
25 public during the hearing in summary. However, it is not to be

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1 done now, it will be toward the end of today's session so that
2 you have adequate time to prepare for the agreements on facts.

3 [9:28:29]

4 MR. ROUX:

5 Thank you, Mr. President.

6 Good morning, Mr. President, Your Honours. We filed to the
7 Chamber yesterday the agreement on the facts which we worked on
8 with the co-prosecutors and the accused and the document that we
9 filed yesterday can, in fact, be made public. The Chamber has
10 been in possession of this document since yesterday evening after
11 the hearing.

12 MR. PRESIDENT:

13 Please, Judge Lavergne?

14 [9:29:36]

15 JUDGE LAVERGNE:

16 Just to clear up our position, we would like a summary to be
17 presented publicly at the hearing so that the parties and the
18 public can be in the know, and we wish to find out whether you
19 could prepare such a summary before the end of the day's
20 proceedings.

21 [9:29:58]

22 MR. ROUX:

23 As my learned friend of the prosecution said yesterday, if we
24 provide such a summary we should have to read each out for at
25 least two hours. I think it might be a little hard to follow.

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1 But if the Chamber considers that this is necessary for the
2 public nature of proceedings we will do so. But I must say that
3 it will necessarily follow the format of the document sent
4 initially by the co-prosecutors, after each paragraph we will be
5 forced to indicate whether we agree, whether we do not agree,
6 whether we agree in part, whether we do not contest the fact, and
7 I'm afraid this will take a lot of time. But if the Chamber so
8 wishes we are ready to do so. It will not be a summary as such.

9 MR. PRESIDENT:

10 Please, the Co-Prosecutor?

11 [9:31:17]

12 MR. PETIT:

13 Thank you, Mr. President, Your Honours. Good morning.

14 Indeed, I second the comment. I will, of course, abide by your
15 order, but I don't think it is possible, nor would it be very
16 helpful, at least on the public side and possibly not that much
17 helpful on the Trial Chamber side, to have some kind of summary
18 made.

19 As we've said, for example, one of the paragraphs of the closing
20 order on which this agreement of fact is based, and as you were
21 able to see from the documents we sent to you, each of these
22 paragraphs or a lot of these paragraphs were subdivided into
23 specific facts that we thought, and obviously the defence
24 concurred because they answered to those specific facts, that we
25 thought an agreement on those specific facts was useful or would

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1 be useful to the Chamber. And I realize that perhaps for the
2 sake of efficient use of the Court's time we may not have been
3 that helpful yesterday to you by suggesting that we simply file
4 into the case file that agreement of facts, which I note again we
5 forwarded to the defence in January of this year, received the
6 French agreement two weeks ago, I believe, and the Khmer version
7 Thursday.

8 So, you know, it says that all the best intentions, et cetera, et
9 cetera, obviously we are there to assist the Chamber, and if the
10 Chamber feels that it would be best assisted and the record would
11 better reflect, we can indeed read these facts that have been
12 agreed to. It would take probably, I would estimate, about two
13 hours of the Court's time. It would certainly clarify for all
14 what the defence position is on each specific relevant facts --
15 at least we submit they are relevant -- and if that is indeed the
16 wish of the Court we will, of course, abide by it, either the
17 defence or us.

18 And again, I apologize if our procedure was not as helpful as it
19 could have been.

20 (Deliberation between Judges)

21 MR. PRESIDENT:

22 The Trial Chamber would like to ask the civil parties lawyers
23 regarding the agreement on the facts between the Co-Prosecutors
24 and the defence counsel. Do the civil party lawyers have any
25 comments regarding these agreements on the facts? Do you have

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1 reason to -- and attempts to show the public the factual
2 agreements? However the co-prosecutors and the defence counsels
3 have their own reasons in presentation of the agreement and I
4 would like to seek comments from the lawyers of this Group 1 if
5 you have any comments regarding this issue.

6 Thank you.

7 [9:40:25]

8 MR. WERNER:

9 Your Honours, I'm grateful. thank you for your request.

10 We have not seen the agreed fact obviously, and if your question
11 pertains to whether or not we would like this fact to be read
12 out, concerning our group, we are in your hands. We are
13 indifferent. We are in your hands.

14 Grateful, Your Honours.

15 MR. PRESIDENT:

16 The lawyers for Group 2 please?

17 [9:41:01]

18 MS. STUDZINSKY:

19 Your Honours, we have not yet, as my colleague said, received
20 agreed facts but -- for how to proceed with this. We think it is
21 really time consuming to read it out in public and which is
22 repetition, of course, of the indictment that we have heard
23 before yesterday. And we suggest to -- if it is filed to put it
24 on the case file, of course. that not to read it out and also a
25 summary, from my point of view, does not make sense to summarize

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1 these points. That is, I would say, impossible. It should be
2 -- if it's made public then it should be read out but we prefer
3 that it is attached and put on the case file. Thank you.

4 MR. PRESIDENT:

5 Please, the lawyers for Group 3?

6 [9:42:29]

7 MS. JACQUIN:

8 Thank you, Your Honour.

9 Well, I would like to repeat the request that I presented
10 yesterday, and I feel that there's a bit of reticence here
11 concerning the participants. I think that, indeed, it would take
12 about two hours, but I think that two hours is rather a small
13 amount of time in relation to the duration of the hearings that
14 has been scheduled, but I think that is extremely important,
15 after having heard on the part of -- heard Duch's confessions,
16 heard his regrets, that we specify in the facts and the facts
17 that are incriminated, what is, indeed, from the start of this
18 file, as being accepted, as well as the points that are
19 contested.

20 Because, even if he's accepting many, many things, if we list
21 them -- there are certain points that are contested. I think
22 it's very, very important, so that we can make this immediately
23 public, in relation to our civil parties as well as in relation
24 to the public, following these hearings.

25 I think that it's very, very important, that in the indictment,

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1 the material facts that have been brought up by your Competence,
2 we have to -- we should present the facts that are accepted,
3 because I think it's very, very important, because this point is
4 going to concentrate the elements on which there is a
5 disagreement, but this point is also go -- immediately going to
6 shed light on the seriousness and the reality of the facts that
7 are accepted. And I think that this is an essential point, to
8 know as of the start, what is accepted, and to know the points
9 that might be contested.

10 And, despite everything, when we take the trouble of following
11 these points, we notice that maybe the points that are contested
12 remain important, but, however, are minor in relation to the
13 points that are accepted. And I think it's an important point
14 that, as of the start, that what is no longer contested in
15 relation to these various grey facts, or that these points are
16 recognized, acknowledged, and that we take act of these. And
17 this is a public point because, on the contrary, the -- in the
18 continuation of these hearings, and this could lead to
19 difficulty, if there's a difference in acceptance of points
20 between the public and the Chamber.

21 [9:45:00]

22 MR. SUR:

23 Your Honour, it was indicated to us yesterday by the defence, and
24 by the accused in particular, as a petition out of principle that
25 acknowledges the facts, and that he regrets these facts, globally

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1 speaking. And I think that if this element is extremely
2 important in detail, the document that relates very exactly each
3 one of the points, I think it would be only necessary to include
4 this document in the case files, so that we can go directly into
5 the examination phase, that is to say, in the substance of these
6 proceedings.

7 MR. PRESIDENT:

8 The lawyer for Group 4? The lawyer for the Civil Party Group 4,
9 please? The floor is yours. Oh, you have already spoken? Okay,
10 then. Please, the counsels for the defence?

11 [9:46:19]

12 MR ROUX:

13 Your Honour, I am aware of the what Ms. Martine Jacquin is
14 presenting to us.

15 Maybe, to make things more clear, maybe we could do this in two
16 different ways, that is to say that the prosecutor would read the
17 paragraphs that he proposed to us, and at the end of each
18 paragraph the defence will rise to say, "We agree," or to specify
19 the comments that the accused wanted to provide.

20 And it will be then more dynamic, let's say. I would say it
21 would be a more dynamic presentation, we could say, and indeed,
22 this would address the concerns that were presented by Ms.
23 Jacquin, and which I perfectly understand. This is my proposal,
24 if, of course, my colleagues from the prosecution side agree.

25 [9:47:44]

15

1 MR. PETIT:

2 I think, sometimes, the more we speak the more complicated things
3 get. As I said earlier, most of the facts are agreed to and will
4 hopefully help this Chamber. Some of them, and some of the key
5 ones, are not agreed to by us, or by the defence, and the accused
6 himself, as far as I understand the procedure that was taken, had
7 himself commented on some of those specific facts.
8 Now, obviously, the defence can file any documents it wish, with
9 whatever comments, and it will be debated if there is to be a
10 debate. However, I fear that if we were to read into the record
11 today or at any other time, written comments by the accused, we
12 will get that debate. In other words, I fear that if the
13 accused, through this means, would be to, in essence, testify
14 about some of the facts, it will lead to, perhaps, debates, which
15 we will have at the relevant times in those proceedings when the
16 accused makes his position known on some of those specific facts.
17 I would suggest, although, as I am sure well-intentioned the
18 request or the suggestion is from my learned friend, that
19 perhaps, if only for the sake of serenity, at this stage we do
20 read into the record what is agreed, without comments. We could,
21 indeed, read the proposal, either singly or by subject or in
22 bunch, after which the defence would make his position -- their
23 position known.
24 I suggest that then the record would be quite clear about what is
25 agreed to, and the rest will be left for its proper time and

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1 proper form during the substantive part of this trial, or the
2 next substantive part of this trial. I suggest, personally, that
3 this is probably the best way to achieve what I think is now
4 developing as a consensus on this issue. Thank you.

5 MR. PRESIDENT:

6 Please, the defence counsel?

7 [9.50.49]

8 MR. ROUX:

9 I agree, so that we only present the paragraphs on which the
10 accused has said that he agrees, or that he does not contest. I
11 agree. I agree with that, yes, but we would, therefore, not read
12 the paragraphs on which the accused has provided comments. We
13 will just focus on the paragraphs on which the accused said that
14 he agrees, or which he says that he does not, which he does not
15 contest.

16 MR. PRESIDENT:

17 The bench now has to retire to deliberate, and it is also a break
18 time, so the Chamber will take a break for half an hour for our
19 deliberation.

20 (Court recesses from 0952H to 1025H)

21 THE GREFFIER:

22 Please be seated.

23 [10.25.31]

24 MR. PRESIDENT:

25 The Trial Chamber will now resume.

17

1 First, the Chamber would make an announcement to the
2 Co-Prosecutors and the defence counsels and all the involved
3 parties.

4 The Trial Chamber decides the Co-Prosecutors and the defence
5 counsels to read the agreement on the facts and the facts that
6 are not disputed, and for some other issues we will address them
7 later. However, for the reading of the agreement on the facts,
8 it may be done in this afternoon. So, please, the Co-Prosecutors
9 and the defence counsels are prepared for the reading this
10 afternoon.

11 For the next proceeding, the Chamber would like to ask the
12 defence counsel, Mr. Kar Savuth, that yesterday you made a
13 statement in response to the charges made by the Co-Prosecutors
14 regarding the legality of the charges against your client.
15 It is unclear whether what -- you rest -- is a request to the
16 Chamber to resolve that particular issue before the proceedings,
17 or it is just to bring to our attention during this part of the
18 proceedings as a response to the Co-Prosecutors. If it is a
19 clear request to the Chamber, we would like the counsels to point
20 to the facts or to relevant issues regarding your request.
21 So the floor is yours, Mr. Kar Savuth.

22 [10.36.06]

23 MR. KAR SAVUTH:

24 I am grateful Your Honours, what I have already stated in my
25 statement yesterday, I began with that I, as a lawyer, would like

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1 to give some observations to the whole Court to consider my
2 following comments. I think those arguments are just the
3 comments for the consideration of the Court.
4 Number two, when the Co-Prosecutors asked whether I challenge the
5 jurisdiction, I am not intending to challenge it because I am
6 quite aware already and I could have raised it in the initial
7 hearing already if I wished to do so.
8 So what I raised was not to challenge the jurisdiction. I only
9 wanted the Court to follow the Rule 98.7 regarding the
10 jurisdiction of the Court over my client because if he is not the
11 most senior person or most responsible person to be prosecuted
12 then he should not be prosecuted. I just want to confirm that
13 position and I think they are just my comments for the Court
14 consideration.
15 For example, I said that the Co-Prosecutor said that my client
16 had something to do with the crimes against humanity because
17 there had been some kind of -- and conflicts and fighting's
18 between the Vietnam -- and I would like to ask why my client was
19 charged of crimes against humanity while Vietnam is not charged.
20 So on behalf of my client, I only ask for justice for my client.
21 it's not to challenge the jurisdiction of the Court.
22 And regarding other points I raised, I asked that Cambodian and
23 sovereignty was not well respected and I quoted Article 31 of the
24 Cambodian Constitution that every citizen, every Cambodian
25 citizen, is equal before the law.

19

1 And I ask how can you say it is equal now because many people are
2 not charged while my client is charged. So I'm afraid that this
3 is the violation to the Cambodian Constitution and the reason I
4 explain to the Court. And I, at this time, would also make a
5 request to the Co-Prosecutor to list down all the names, those
6 people who are most responsible and senior people for the
7 democratic Kampuchea.
8 How many are they and bring them all to be prosecuted or
9 otherwise the Court shall issue a decision or judgement to
10 extinguish criminal actions.

11 So I want the Court to also consider these two issues, such a
12 judgement, to make sure that justice is done for all the dead
13 people and people who survived.

14 But, finally, I do not intend to challenge the jurisdiction.

15 [10.38.43]

16 MR. PRESIDENT:

17 For our next proceeding, the defence counsels and the accused
18 raised an attempt to issue related to the provisional detention
19 of their client.

20 The Trial Chamber would like to ask the defence counsel at this
21 stage if you insist on raising such issue and, if so, what is
22 your request to the Trial Chamber regarding this particular
23 issue?

24 [10.41.38]

25 MR. ROUX:

20

1 Thank you, Your Honour.

2 The defence had indeed informed the Chamber as of the preliminary
3 hearing that it would bring up the question of detention. Can I
4 call it provisional detention still, however?

5 A detention that has been going on for 10 years is no longer
6 provisional detention. And is it -- that is the question that I
7 wish indeed to expand on before you, if you give me the
8 permission, Your Honour.

9 As we have reminded --

10 MR. PRESIDENT:

11 Please, the lawyer. The floor is yours, for the counsel.

12 MR. ROUX:

13 Thank you, Your Honour.

14 As we have reminded initially, our client was arrested on the
15 10th of May, 1999 and he was then arrested by the authorities of
16 the Kingdom of Cambodia. And he was transferred before the
17 Military Tribunal, and he remained before this tribunal during
18 all these years, up until the 30th of July, 2007, when the
19 Co-Investigating Judges of the ECCC presented an arrest warrant
20 against Mr. Kaing Guek Eav, aka Duch, and he was that very same
21 day transferred from the detention centre of the Military
22 Tribunal to the prison here at the ECCC.

23 We have immediately requested that he be released and given the
24 amount of time that he had spent since his arrest, and we
25 reminded that according to Cambodian law, but also according to

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1 international law, it was not possible to maintain someone in
2 detention for such a long time.

3 The Investigating Judges presented an order and, if I can sum it
4 up or summarize it, they stated that, "There is a problem but it
5 is not our problem, however, it is the problem of the Cambodian
6 authorities". We then appealed before the Pre-Trial Chamber.
7 In their review, the Co-Prosecutors, if I can summarize things
8 again, stated that, "There is indeed a problem but it is not our
9 problem". The Pre-Trial Chamber presented a decision in which
10 they stated -- and I will summarize it -- "We have no problems
11 and you will submit this question to the Trial Chamber". And we
12 are before the Trial Chamber now.

13 [10.42.00]

14 So we, of course, are aware of the difficulty, including in
15 relation to the civil parties. How can we imagine, when the
16 accused acknowledges -- when he expresses his remorse, when he
17 asks for forgiveness -- how can we imagine that at the same time
18 he can ask for his release? Well, simply because we have the
19 most heartfelt respect for this Chamber and for the ECCC.
20 We are, therefore, requesting here to state law. nothing else,
21 just to state law. Even if it is a decision that is hard, that
22 would be difficult to understand by the public opinion and by the
23 victims as well, it is the decision that your Chamber should
24 render. Isn't it precisely a decision that should recall law?
25 What does the law state? First of all, the Cambodian law: we

22

1 have reminded -- we have recalled the Constitution of the Kingdom
2 of Cambodia from 19 -- the Constitution of 1993, and the Criminal
3 Code of the UNTAC from 1992, and the law concerning the duration
4 of provisional detention from the 26th August, 1989.
5 By virtue of all of these texts it was provided, and in
6 particular by virtue of the law of August 1999 and of its first
7 Article, it was provided that provisional detention of
8 individuals accused of genocide, war crimes, or crimes against
9 humanity would not exceed three years. That is to say that as of
10 February 2002, Duch should have been released. Or to say things
11 in other terms, since February 2002 there is no legal foundation
12 -- I repeat, there is no legal basis for his provisional
13 detention.
14 So there was, however, renewals that were presented by the
15 Military Tribunal in a rather incomprehensible way, and I
16 remember the very heated debate before the Pre-Trial Chamber, the
17 debate between Madame Chea Leang and my friend, counsel Kar
18 Savuth. Madame Chea Leang explained that we have to maintain
19 Duch, keep him free for public reasons because we are afraid that
20 -- we are afraid, we fear for his safety. We fear for the safety
21 of the victims, so we should maintain him in detention and Maître
22 Kar Savuth answered, "Well, Your Honour, I agree with you". You
23 are entitled to be afraid. For one year, yes. for one year,
24 yes, but you are entitled to be afraid for two years. Do you
25 remember? You are entitled to be afraid for the third year as

23

1 well, but after three years and one day you no longer have the
2 possibility of being afraid because the Cambodian Constitution
3 stated that after three years and one day you must release him."
4 Dura lex sed lex: the law is hard but it is the law.
5 I would like to add that during the proceedings before the
6 Pre-Trial Chamber the President, in regard to the issue of
7 detention, had invited a number of non-governmental organizations
8 to file amicus curiae briefs. Six amicus curiae briefs were
9 filed. You will find them in the case file.
10 If I remember correctly, four of the six non-governmental
11 organizations supported the defence position. According to the
12 law, due to justice and following the image and example that this
13 Extraordinary Chambers should offer to all justice systems in the
14 world, including the Cambodian justice system. How can NGOs come
15 to support us before national courts if the Extraordinary
16 Chambers themselves were to agree to irregular detention? So we
17 ask you to take a difficult decision. We admit it is difficult
18 but it is the only possible one to take.
19 We come before you to request that you put an end to the
20 detention of Duch because it is well beyond the acceptable time
21 limits set by Cambodian law, and we have also exceeded the time
22 limits provided for in international legal instruments. We
23 referred to Articles 9 and 14 of the New York Covenant on Civil
24 and Political Rights and we recalled that in accordance with
25 these Articles it is not possible to extend provisional detention

24

1 for so long.

2 Permit me to shed light, using jurisprudence, on the Articles 9

3 and 14 of the Covenant on Civil and Political Rights. I shall

4 refer first to the jurisprudence of the European Court of Human

5 Rights. That is Article 5 of the European Human Rights

6 Convention which, on several occasions, has found that countries

7 -- including mine, I must add, and very often Italy -- has found

8 them guilty of unduly extending provisional detention.

9 This provisional detention that I refer to has nothing in common

10 with what Duch has suffered. We are approaching 10 years of

11 provisional detention. Can this be imagined? And it is of

12 particular interest, in my view, that I bring to the attention of

13 the Court the jurisprudence of the United Nations Human Rights

14 Commission, or more precisely the Working Group on Provisional

15 Detention of the United Nations in this regard.

16 On the 30th of November 2007 it issued -- that is this group --

17 an opinion on deprivation of liberty for eight persons arrested

18 in Lebanon following the assassination of the former Lebanese

19 Prime Minister, Rafik Hariri, on the 14th of February 2005. You

20 might find it worth knowing that the Special Tribunal for

21 Lebanon, jointly established by the Government of Lebanon and the

22 United Nations, as it begins to do its work this tribunal is

23 facing the same problem that we have before you here today.

24 The International Commission of Inquiry had recommended the

25 detention of these eight people to the Lebanese Investigating

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1 Judges, and the Lebanese Investigating Judges did in fact decide
2 to place these eight persons in detention. The Working Group on
3 Provisional Detention -- that is the United Nations working group
4 -- issued an opinion which indicated that it was not possible to
5 continue keeping these people in detention, and characterized the
6 detention as arbitrary. As the Special Tribunal for Lebanon
7 begins its proceedings, this matter will be brought before it and
8 it will have to render a decision in the near future on this
9 issue with regard to four of these people, as the remaining four
10 were released by the Lebanese Investigating Judges.

11 So what are you going to do, Your Honours? We have passed out.
12 we have shared the decision which was rendered in our case by the
13 Military Investigating Judge on the 21st of July 2008. We
14 requested this decision because we asked the Military Judge what
15 his position was in regard to the Duch case file. that is Duch
16 who had been brought before him. And the Military Investigating
17 Judge said, "Considering that the prosecution of the case of Mr.
18 Kaing Guek Eav, alias Duch, fell within the jurisdiction of the
19 Military Tribunal because at the time there was no law on the
20 establishment of the ECCC, considering" --

21 [11:02:25]

22 MR. PETIT:

23 I beg your pardon?

24 [11.02.32]

25 MR. ROUX:

26

1 I thought it had already been done. I am sorry. You have the
2 Khmer and the French version. Considering that after the
3 establishment of the ECCC, the jurisdiction of the ECCC covers
4 crimes against humanity and grave violations of the Geneva
5 Convention of 12 August 1949 committed during the period from
6 17th of April 1975 to the 6th of January 1979, the Military
7 Tribunal no longer has jurisdiction over crimes falling within
8 the jurisdiction of the ECCC.

9 Considering that the charged person, Mr. Kaing Guek Eav, alias
10 Duch, has been prosecuted or is being prosecuted by the ECCC with
11 effect from the 30th of July 2007, decide to put to an end -- or
12 to bring to an end the jurisdiction of the military tribunal with
13 regard to Case Number 397 of the 6th of March 1999 under which
14 the charged person, Kaing Guek Eav, alias Duch, was questioned
15 with regard to crimes provided for in the law establishing the
16 ECCC, Phnom Penh, 21st of July 2008, the Investigating Judge.
17 Following this decision of the military judge which notes that he
18 has lost jurisdiction in favour of the Chambers, you are the
19 continuation of the proceedings instituted against Duch and this
20 is clearly indicated in the first paragraph of this decision.

21 Previously, the case fell within the jurisdiction of the military
22 court because there was no law on the establishment of the ECCC.
23 So there is a thread of continuity running through the case. You
24 can no longer say this is not our problem. I am sorry to bring
25 this before you. it is now your problem and you cannot avoid it.

27

1 So what do we do now? First, I think we should rely on
2 jurisprudence, and in this regard I can think of no better
3 jurisprudence or precedent than what transpired in the
4 Barayagwiza -- and I apologize to the interpreters -- which I
5 shall spell, which is B-A-R-A-W-A-G-W-I-Z-A (sic). Barayagwiza,
6 Jean-Bosco.

7 So what was the issue at stake? Their defence submitted that Mr.
8 Barayagwiza, of whom it was commonly said that he was one of the
9 main perpetrators or persons responsible for the Rwandan
10 genocide, that his rights were violated or breached during his
11 arrest and he was kept in detention in violation of these rights.

12 I now turn to paragraph 106 of the Judgement of the 3rd of
13 November 1999 by the Appeals Chamber of the International
14 Criminal Tribunal for Rwanda and the former Yugoslavia in which
15 the Appeals Chamber said:

16 "The crimes charged against the accused are very serious. This
17 notwithstanding, in the case in point his fundamental rights have
18 been violated on several occasions."

19 There was a small paragraph for the prosecutor which is not
20 relevant to the prosecutor here but the term by Barayagwiza said
21 and this is -- be undoubtedly worse, the following:

22 "It would seem that the actions or the failure to act on the part
23 of the prosecutor in that case amounts to negligence but of
24 course this would not be true for our Co-Prosecutors in this
25 instance."

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1 And in order to come to this determination, the Appeals Chamber
2 of the ICTR concluded with the two paragraphs that I shall read
3 out to you.

4 "In the instant case, we appreciate the power of words spoken by
5 George Brandes (phonetic) of the United States Supreme Court, we
6 quote, "Decency, security, and freedom require that
7 representatives of the state are subject to the same rules of
8 conduct as ordinary citizens. In a state where the rule of law
9 prevails, the existence of the state is jeopardized if the state
10 itself fails scrupulously to comply with the provisions of the
11 law. The state is the powerful and omnipotent institutor of
12 force for good or evil. It teaches the people by example
13 criminal conduct is contagious. The state that breaks the law
14 encourages contempt for the law. It therefore invites each
15 citizen to make his or her own law and encourages anarchy".
16 To say that for the administration of criminal justice the end
17 justifies the means, to say that the state can commit offences to
18 secure the conviction of a criminal would lead to a terrible
19 boomerang effect. As Judge Brandes said, "The Court must take a
20 firm stand against this pernicious theory."

21 And having quoted Judge Brandes, the Chamber ended its judgement
22 thus. The Court -- and here we make reference to the
23 International Criminal Tribunal for Rwanda -- is an institution
24 whose primary goal is to ensure that justice should be done,
25 should not endorse such violations, and I refer to the violations

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1 I mentioned earlier. That is, it should allow that the appellant
2 should be tried on the basis of charges of which he was accused
3 too late would be a travesty of justice. Nothing less than the
4 integrity of the Tribunal is at stake.

5 If the public were to lose confidence in this Tribunal as the
6 custodian of the human rights of every individual, including
7 those accused of unimaginable crimes, would be one of the most
8 adverse consequences and it would be wrong to allow the accused
9 -- the appellant to be tried in spite of such breaches.

10 Although it is difficult for some to accept such a finding. It is
11 the role of an independent justice system to end these
12 proceedings so that other injustices may not arise.

13 Mr. President, Your Honours, this decision or this judgement
14 honours the international justice system. I can imagine in what
15 state of mind the judges who rendered this decision might have
16 been. They were presided over by Judge Gabrielle Kirk McDonald.
17 I can only imagine.

18 The Chamber had gone very far because it ordered the immediate
19 cessation of proceedings and it prohibited the prosecutor from
20 resuming the proceedings. I can assure you that we have not yet
21 come to that.

22 And I must be exhaustive and I should add, therefore, that in the
23 wake of this decision the prosecutor, Ms. Carla del Ponte, who
24 had just been appointed international prosecutor, applied for a
25 review of this judgement and in a famous statement during a

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1 hearing she said to the Appeals Chamber judges, "If you were to
2 uphold this decision we can stop the proceedings."
3 It was not a very legal thing to say but it is true that the
4 Appeals Chamber did review the decision and the second decision
5 it took was interesting too and the Appeals Chamber said, yes,
6 there was a breach of the rights of the accused, that is true but
7 we cannot ask that proceedings be brought to an end. However, we
8 do say that after these proceedings if the accused were to be
9 found guilty there would be a reduction of the sentence, and that
10 is what happened.
11 Mr. Barayagwiza was found guilty. he was sentenced to life
12 imprisonment, I believe, and his sentence was reduced to 35 years
13 to take account of the breach or violation of his rights.
14 So what do we ask of you today? Primarily to bring immediately
15 to an end the detention of Duch for the duration of the trial,
16 and I emphasize "for the duration of the trial."
17 And so following on from what Mr. Kar Savuth said yesterday, we
18 would re-establish the balance for the duration of the
19 proceedings between what the Co-Prosecutor has now refused to
20 prosecute -- for those that the Co-Prosecutor has refused to
21 prosecute for even more serious crimes and Duch, on the other
22 side, these people are free today. Their names are mentioned in
23 the press. They are not prosecuted. so be it.
24 So that it would not be out of the question, therefore, for your
25 Chamber to say, "Well, for the duration of the proceedings at

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1 least. Whatever the charges for unimaginable crimes pending, we
2 should free Duch for the duration of the trial."
3 The defence would not challenge -- the defence would not
4 challenge the conditionality's imposed on this release. why not
5 decide, for instance, that Duch would be in a safe house, as has
6 been allowed in other courts?
7 And in this regard, Mr. President, Your Honours, permit me to
8 make a commonsense observation. Duch is a co-detainee with
9 people who will be mentioned in the course of these proceedings.
10 Do you not think that it would be preferable for all concerned if
11 he were not detained at the same time as these people?
12 So let us face facts. Let us be pragmatic. Let us apply the law
13 but let us allow what Duch has said or let us allow Duch to be
14 free to speak in the course of the proceedings. So, release,
15 yes, but with conditions that you will decide and justice will
16 have been done.
17 As a side point, if you believe that for such and such a reason
18 you (recording malfunction) the defence is requesting from you to
19 say as of now two things. on the one hand that in the case of
20 sentencing that the time spent in detention since May 1999 should
21 be taken into account and subtracted from the sentence, and on
22 the other hand that he will be entitled to a reduction of the
23 sentence to compensate for the violation of his rights and going
24 -- and restating the second decision of the Appeal Chamber in
25 Barayagwiza case this is, I believe, with the totality of these

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1 possibilities to solutions that are presented to you in order to
2 settle on this difficult issue.

3 May I please say a last word to the civil parties? Nothing, has
4 been done against your rights. Everything is done for law and I
5 can imagine very easily that even as civil parties you will only
6 be able to second this position.

7 I consider that the civil parties can only intervene in a hearing
8 about detention if, and only if, they can provide the evidence
9 that the release would damage their rights. The rest does not
10 concern them.

11 I cannot imagine one single moment, on the one hand, that the
12 release of Duch in a safe house would hinder the rights of the
13 civil -- be detrimental to the rights of the civil parties. I
14 cannot imagine that whereas we are here to seek law that anyone
15 can impose himself to the application above all of law: Law,
16 Cambodian law that states that any person cannot be maintained in
17 detention for more than three years, international law that
18 prohibits arbitrary detention.

19 Thank you.

20 (Judges confer)

21 [11:25:28]

22 MR. PRESIDENT:

23 The Trial Chamber would ask the Co-Prosecutors if they wish to
24 respond to the defence counsels regarding his presentation and
25 the reasons concerning that issue, the issue of the detention of

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1 the accused and other issues which have been raised by Francois
2 Roux. If you have, please comment. Thank you.

3 [11:26:38]

4 MS. LEANG:

5 Thank you, the President, Your Honours. What has been requested
6 by the defence counsel for the release of the accused, we the
7 Co-Prosecutors also have since the Article 82 of the accused
8 right of their rights to make such a request, the Co-Prosecutors
9 wish to state that this is not a new issue, the request for the
10 release on bail has been raised by the defence counsel since
11 during the investigative phase. Therefore, the Co-Prosecutors
12 consider this request has been rejected by the Co-Investigating
13 Judges. At the same time there was an appeal to the Pre-Trial
14 Chamber and the decision of the Co-Investigating Judges, and the
15 Pre-Trial Chamber made a decision to uphold the provisional
16 detention of the accused. That is the historical background
17 regarding the request raised by the defence counsel of the
18 accused.

19 We, the Co-Prosecutors, still maintain our position to request to
20 the Pre-Trial Chamber to continue the detention of this accused
21 with certain reasons as following. One, the Co-Prosecutors
22 consider that Rule 63.3 of the internal rules until this time it
23 is still a necessity because this rule stipulates that if the --
24 if it is to be believed that the accused has been -- committed
25 the crimes and at this time the accused himself acknowledges the

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1 crimes occurred at S-21 in the name of the Chairman of that S-21.

2 So he acknowledges his responsibility at that office too.

3 The Co-Prosecutors consider that in regards to the request of the

4 detention of the accused at the Military Court from the 10th of

5 May 1999 we would like to ask whether we, the Extraordinary

6 Chambers in the Courts of Cambodia, has to be responsible for

7 that detention?

8 The Co-Prosecutors would like to submit that the ECC is an

9 institution which is independent, separate from the Military

10 Court, and this Chamber has not been in function or in operations

11 in relations to or in agreement with the Military Court, which is

12 a local court, and this Extraordinary Chambers in the Courts of

13 Cambodia has never requested to the Military Court to make such a

14 detention. Therefore, this Extraordinary Chambers in the Courts

15 of Cambodia is an hybrid tribunal and this Extraordinary Chambers

16 in the Courts of Cambodia is also an independent institution

17 separate from the National Courts or the Military Court which

18 detained the accused in the past.

19 The Extraordinary Chambers in the Courts of Cambodia which is

20 independent is, again, separate from the Military Court. This

21 Extraordinary Chambers in the Courts of Cambodia is an

22 internationalized court, and I would like to raise the specific

23 pictures of these Extraordinary Chambers. This Extraordinary

24 Chambers in the Courts of Cambodia was established with the

25 agreement between the Royal Government of Cambodia and the United

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1 Nations to create a special law with its own responsibility from
2 its establishment.

3 This Extraordinary Chambers in the Courts of Cambodia is not
4 bound to judge on the appeal of the National Court and the
5 detention rests by the defence counsel involves the National
6 Court. Therefore, the Co-Prosecutors consider that if the
7 defence counsels at the International Court consider that their
8 client's detention, the competence -- the competency of the court
9 -- of the Appeal Court falls within the local Appeals Court.

10 So we, the Co-Prosecutors, know that Mr. Kar Savuth, who has been
11 the French lawyer for this accused, has the rights to make an
12 appeal to the National Court, but his relinquishment of such
13 right is his own responsibility. This Extraordinary Chambers, in
14 agreement -- would not have any agreement with the Military Court
15 and the Military Court also stated the law on the establishment
16 of the ECCC for the charges of the accused.

17 However, I would like to submit that we need to consider the
18 proper proceedings within the Chambers considering the fashioning
19 of the office of the Co-Prosecutors as well as the functioning of
20 the Office of the Co-Investigating Judges. These two offices
21 have their own separate independent duties and these two offices
22 which are composed of both national and international staff,
23 national and international prosecutors, and national and
24 international Investigative Judges. So our unique picture is
25 separate from the National Court. Even if you look at the

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1 appointment of the judges, they consist of both national and
2 international judges and they are not related to the National
3 Court.

4 The National Court -- this Chamber is not responsible for the
5 functioning of the Local Court or the Military Court, so the
6 violation of the accused's rights by the National Court is not
7 the jurisdiction or the responsibility of the Chambers. So the
8 detention at the Military Court cannot be taken into account for
9 this Chamber to make a decision on such issues.

10 Point number 3 that I would like to raise regarding the
11 continuation of the provisional detention, is that while the
12 Pre-Trial Chamber has decided to uphold the order of the
13 Investigating Judges and to continue the provisional detention of
14 the accused, we have observed that since that decision of the
15 Pre-Trial Chamber until today we have not seen any changes in
16 circumstances besides the decision of that Pre-Trial Chamber.

17 Therefore, even if Article 82.3, which allows the defence
18 counsel to raise such a request -- that is his right, either
19 verbally or in writing. however, it needs to be considered
20 whether the circumstances have changed during the rejection of
21 the appeal or any new circumstances arise that need to be
22 considered in order to release him on bail.

23 Point number 4, the Co-Prosecutors still maintain the
24 provisional detention at this time is necessary to ensure by law,
25 as stipulated in Article 35 on the law on the establishment of

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1 the ECCC, which clearly stipulates the prosecution of the accused
2 is only before the Trial Chamber. Therefore, our submissions on
3 the continuation of the provisional detention is to avoid the
4 charge in absentia of the accused. And in order to ensure that,
5 we need the Trial Chamber to continue the provisional detention
6 to ensure his trial in person.

7 Number 5, in order to ensure the safety and the security of
8 the accused, which until this time the public, who are the family
9 members of the victims as the victims themselves, know that
10 clearly. therefore if the Trial Chamber releases him on bail
11 it's going to be an issue, but is a risk, and the victims or the
12 victims' families who are angry because their family members
13 suffered or lost their lives during the Democratic Kampuchea,
14 that might make them angry and take revenge on him.

15 This is an issue on his own safety and security. Moreover,
16 if such revenge occurred on the accused, it will also have an
17 impact on the public order if there is such an attack on the
18 accused.

19 Now the points that I would like to raise is in response to
20 the order raised by the defence counsels. It's the order by the
21 Military Court on the detention. My observation is that it
22 clearly states the Military Court relinquishes its jurisdiction,
23 so after the ECCC has been established with its jurisdiction, it
24 means the Military Court relinquishes its jurisdiction after the
25 establishment of the ECCC, which was in 2006. The Military Court

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1 already relinquished its jurisdiction after the establishment of
2 the ECCC.

3 So this is clearly stated and in this order there is a
4 signature dated the 21st of July 2008, so this decision on the
5 detention, on the relinquishment of the jurisdiction, is
6 appropriate and the Co-Prosecutors agreed upon the content of the
7 order made by the Military Court. Because of these above reasons
8 the Co-Prosecutors still maintained our positions to seek
9 permissions from the Trial Chamber to continue the provisional
10 detention of this accused.

11 And the last point raised by the defence counsel regarding
12 the reductions of the sentence, et cetera, et cetera, is the
13 discretion of the Trial Chamber. Thank you.

14 MR. ROUX:

15 Mr. President, I see the civil parties are on their feet.
16 I'd just like to recall the law. The defence's request to make
17 presentation is within the ambit of Rule 82, in particular
18 paragraph 2, which says at any time the Chamber can order the
19 release of an accused on bail if necessary, or order the
20 accused's detention in accordance with these internal rules. The
21 Chamber shall so decide after hearing the Co-Prosecutors, the
22 accused and his or her lawyers.

23 As I said, the civil parties do not have a place, a role to
24 play in such a discussion.

25 [11:40:32]

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1 MR. ROUX:

2 (Recording malfunction) Civil Party Group 1. We are aware of
3 Rule 82, paragraph 3. However, because it is such a fundamental
4 issue for the civil parties, we would request, Mr. President, to
5 use your discretion to allow at least a few minutes for the
6 lawyers for civil parties to address this Court.

7 [11.42:35]

8 (Judges confer)

9 MR. PRESIDENT:

10 Please, lawyer Group 1, you take the floor first. Could the
11 lawyers please wait a moment? We need to discuss a little bit.

12 [11.43.20]

13 MR. PRESIDENT:

14 The civil party lawyer, what would you wish to state at this
15 moment?

16 MR. WERNER:

17 Your Honours, we would like to address the -- spend a few minutes
18 about the legality, and a lot has been said about the legality of
19 this request, and we would like to have the opportunity, a few
20 minutes, to address the Chamber on the legality of this request.

21 (Short pause)

22 MR. PRESIDENT:

23 Just now, the civil party lawyer tried to make some observation
24 concerning the legality, but this legality matter has been raised
25 by the defence counsel.

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1 But the test matter here is about the comments made by the
2 defence counsel concerning the release on bail of their client so
3 that his client can be kept in a more separate, secured building,
4 and in Rule 82.2 and Rule -- or .3 of the same Rule and the
5 decision to decide on the matter, the Trial Chamber lists -- or
6 hear only the different counsel, the accused, and Co-Prosecutors,
7 and that the Trial Chamber will not listen to the civil parties,
8 so we will make sure that .2 and .3 are -- of Rule 82, are
9 genuinely abided by the Trial Chamber.

10 So who will speak first? What are the other issues you would
11 like to raise?

12 MS. STUDZINSKY:

13 Could I request -- or could we request to reconsider your
14 decision that you have taken and recall the decision from 20th of
15 March 2008 of the Pre-Trial Chamber? This decision was on civil
16 parties' rights concerning the question, if civil parties are
17 allowed to participate, and not only physically but participate
18 in detention appeal hearings, and this Pre-Trial Chamber decision
19 outlined the extent of civil party participation.

20 And I would like to recall that, of course, this Court should
21 also be consistent even if this decision, fundamental decision,
22 on civil parties' rights was taken by the Pre-Trial Chamber in
23 the case against Nuon Chea. And I would like to let you know,
24 the Pre-Trial Chamber, what the reason why the Pre-Trial Chamber
25 decided that civil parties and their interests are concerned, if

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1 the accused appeals the detention order and if it is pending, if
2 maybe the accused could be released.

3 The Pre-Trial Chamber stated that a civil parties' right and,
4 namely, the right to reparation and to seek reparation, could be
5 affected and, therefore, civil parties should perform their
6 rights before -- and this is only an example of course -- but
7 before the Pre-Trial Chamber during the hearing.

8 That means also we were allowed and could submit written
9 pleadings and to give short, oral observations in the hearing
10 itself. And we have here, if I compare the situation in the
11 pre-trial phase with the witness now of the defence asking for
12 the release of the accused which is comparable in content, even
13 if we are now at the trial stage where the situation when the
14 defence -- or the accused as a charged person, sorry -- appealed
15 the detention order or are appealing now in case two, the
16 expunging of the detention order.

17 [11.50.00]

18 And I think the Trial Chamber should reconsider its decision
19 according to Rule 82, and to take into account that, of course,
20 only the reason that civil parties or civil party lawyers,
21 co-lawyers, are mentioned in Rule 82, .2 and .3 does not mean
22 automatically if you have looked on the idea and the spirit of
23 civil party participation, and to look first we are a parties and
24 not anybody or nothing.

25 [11.52.00]

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1 Secondly, civil parties are directly concerned with possible --
2 or the decision the Chamber may take upon the request of the
3 defence. And, of course, therefore, civil parties have -- or
4 their views and concerns have to be taken into account and,
5 again, the fundamental or one of the fundamental rights of
6 participation is the right to be heard, and this is something --
7 and, moreover, if it is a matter that concerns civil parties
8 directly, so that I please -- the Chamber to reconsider its
9 decision from today to reject that civil parties could take a
10 position or again to review and have a consistent jurisprudence
11 within this Court and the whole of this Court, even if not you
12 have taken this decision from -- which I mentioned, the
13 fundamental decision from 20th March 2008.

14 But I think, for civil parties, it is the same matter that is
15 concerned -- and so, of course, the Trial Chamber should not take
16 another position -- and excluding, with a formal argument, civil
17 parties are not mentioned in Rule 82(2) and (3) and this is a
18 formal argument but --

19 (Recording Malfunction)

20 MR. PRESIDENT:

21 The Trial Chamber already notes the request and I think it will
22 take the whole day to hear the acumen -- the Trial Chamber will
23 take this matter to be considered within the day.

24 Would you like to add any further -- or make any further
25 comments?

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1 MS. STUDZINSKY:

2 Not now, sorry -- I do not know when the mic was cut off and what
3 was possible to have it translated because I didn't see it and,
4 therefore, I would like to get guidance.

5 [11:55:29]

6 MR. PRESIDENT:

7 Now, the Trial Chamber would like to inform you that the Chamber
8 will take your request to be considered during lunch break and,
9 after the break, then we will make a decision on the rights of
10 the civil parties in regard to the request, the acumen made by
11 the defence counsel for the release on bail of his -- of their
12 client. And also we need to discuss the matter in conjunction
13 with the existing sub-rule (2) (3) of Rule 82.

14 Are you clear?

15 MS. STUDZINSKY:

16 Mr. President, first, I would like to clarify. which parts of my
17 speech could be heard and could be translated? I didn't observe
18 when the mic was cut out.

19 Okay. And then, secondly, I would like to get guidance if you
20 also take into account -- as far as I understand you want to
21 decide the request of the defence but I think, first, you should
22 decide on the request for reconsideration, taking into the
23 account the Pre-Trial Chamber jurisprudence and --

24 [11:57:16]

25 MS. JACQUIN:

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1 If I may make a few points for civil party group 3. I am Martine
2 Jacquin.

3 The defence immediately referred to Article 82, asking that the
4 Chamber consider its obligation without hearing the civil
5 parties. This is unconscionable for the civil parties because
6 Mr. Duch's application for release is surreal in these
7 circumstances so we have recalled Article 82 which has been
8 invoked for the first time before you because this is the first
9 time that sort of an application for release has been brought
10 before a Trial Chamber.

11 You can hear any party that you so wish. I think that the civil
12 parties have the right to ask for the floor.

13 I recall very briefly that Mr. Duch expressed remorse and regret
14 and a request for forgiveness and the day after that he applies
15 for release, based on a number of arguments -- of legal
16 arguments, seeking to rely on compliance with the law in his
17 argument.

18 He talks about fairness and I think that there is a minimum of
19 recognition of the suffering of civil parties which is due here.

20 In that light, Mr. Duch's application is unconscionable. So how
21 can he say that he's remorseful when he asks for forgiveness and
22 the next day asks for release?

23 I would -- I insisted this morning that we should read out the
24 factual analysis one-by-one as accepted by Mr. Duch. I think it
25 is important for Mr. Duch to realize the gravity of the events

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1 that have brought him here today and these facts are of
2 particular moments to the civil parties who loved their loved
3 ones and whose lives were destroyed.
4 We should bear in mind that the hundred or so civil parties that
5 I represent are brave people in light of the difficulties they
6 have encountered since the end of the Khmer Rouge regime.
7 These are my submissions. Thank you.

8 [12:00:33]

9 MR. PRESIDENT:

10 I would advise you that not to repeat the same acumens.

11 MR. SUR:

12 Three things I shall say in two minutes. First, during the
13 pre-trial hearing on 18th February last, I said that as far as I
14 was concerned the civil parties should not take part in
15 proceedings pertaining to the sentence.

16 However, it is necessary and indispensable for us to respond to
17 the argument put forward by the defence in the issue of the
18 provisional detention as is the case under French law which
19 underpins the hybrid court before which we are today.

20 Secondly, the civil parties are present in the proceedings on
21 detention in the cases that will be brought before you for trial.

22 So how can it then be possible that the civil party would have
23 less rights in a public hearing than in hearings that arise from
24 the investigation? It is not legally possible and it is
25 difficult for our clients to understand.

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1 Thirdly, in view law, Mr. President, we have Article 82, yet we
2 also have Article 63. It is itself the same thing but it applies
3 to the investigation phase, and there you have reference to civil
4 parties, references made to Article 63 and 82.
5 Therefore, it follows that these articles should be read together
6 in light of the existence of the civil party, both in
7 investigative proceedings and at trial. That is why we should
8 and we can, and that is why it is necessary for us to address the
9 Court on this important issue, that is the appearance in freedom
10 of Duch or whether he is detained.

11 [12:02:51]

12 MR. PRESIDENT:

13 We have already informed the parties that your request will be
14 noted and, as I informed you already, that the discussion will be
15 based on the sub-rule (2) and (3) of Rule 82 and the Chamber
16 notes this request and will have them discussed during lunch
17 break. When we resume our session then we will announce the
18 decision regarding the matter. So it is time to break for lunch,
19 so the Chamber would like to adjourn for the lunch break and we
20 resume at 1.30.

21 The detention facility guard, please take the accused back to
22 the detention facility and bring him back before 1.30.

23 (Charged person exits courtroom)

24 (Court recesses from 1204H to 1338H)

25 (Charged person enters courtroom)

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1 (Judges enter courtroom)

2 MR. PRESIDENT:

3 The Trial Chamber is now back in session.

4 For the next proceeding the Chamber would like to ask the defence
5 counsel whether the counsel or the accused himself has anything
6 to state in response to the Co-Prosecutors, regarding the release
7 on bail which the Co-Prosecutor responded to this morning. Thank
8 you.

9 (Discussion re interpreting)

10 [13.53.29]

11 MR. ROUX:

12 So the defence has nothing to add. After what the
13 Co-Prosecutor presented to us, the defence stands by its position
14 and the defence has not been convinced by the Co-Prosecutor,
15 respectfully said.

16 [13.55.07]

17 MR. PRESIDENT:

18 Next the Chamber would ask -- would inform the civil parties'
19 lawyers for their request to express their comments or opinion in
20 response to the request made by the defence counsels for the
21 release on bail during the entire proceedings of the trial.
22 The Trial Chamber will consider this matter tomorrow in order to
23 seek guidelines on the provisions or rules in order to clarify
24 the right to make comments or observations by the civil parties'
25 lawyers and we will inform you the scheduling also on Monday the

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1 6th, next week for our next proceeding.

2 Please, the lawyer.

3 MR. ROUX:

4 Yes, Your Honour, if the Chamber must deliberate on the
5 request from the civil parties, the defence would wish to express
6 itself on this question. We have not expressed -- the Chamber
7 made a decision. The civil parties asked it to revise the
8 decision. The defence has something to say about this request to
9 revise this order. So I would like in a few words to express the
10 defence's position concerning this request to review.

11 MR. PRESIDENT:

12 Please, the lawyer for the defence -- for the accused.

13 MR. ROUX:

14 Your Honour, so the defence took note of the Chamber's decision,
15 indicating in compliance with -- pursuant to Rule 82, indicating
16 that the civil parties did not have to be examined in the hearing
17 for release the civil parties are requesting the Chamber not to
18 interpret the rule but to modify the rule.

19 I believe that the judges always have the power to interpret and
20 I have been fighting for years to grant the judges the
21 possibility of interpreting the rule of law but here it's
22 different. We're not asking you to interpret the rule. we're
23 asking you to correct it on the grounds that there would be an
24 error.

25 So I'd like to remind you that only the plenary, the judge's

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1 plenary has the jurisdiction to modify the rules. The Chamber
2 does not have the jurisdiction to modify the procedural rules. I
3 do not see how we can make this request. And concerning the
4 substance of what I'm saying I can imagine that if the plenary is
5 simply of the judges, in its wisdom has written out the internal
6 regulations in this way it is because the plenary believed that
7 the hearing concerning detention should not concern the civil
8 parties.

9 And this sends us back to this discussion that we already had
10 here on the role of each one of the parties in the criminal
11 proceedings. The civil parties are welcome -- we welcome them to
12 express their suffering, of course.

13 But anything concerning release, anything concerning the sanction
14 is a question that depends on public order. That is to say, a
15 question that depends on -- that hangs on the responsibility of
16 the prosecutors and on the decisions rendered by the Chamber.

17 The civil parties can make observations on detention or on
18 release only if this has an impact on their own interests. And
19 when I'm speaking about their interests I'd like to remind you
20 that we are only speaking about the reparations that the civil
21 parties might request.

22 Civil parties such as this was explained to us the other day will
23 never be satisfied by the sentence itself but detention is part
24 of the sentence.

25 So here we are not in the domain of the civil party itself so --

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1 and I believe that when the rule was established by the judge's
2 plenary I believe that that was the idea.
3 So it is true that the Pre-Trial Chamber is trying to find the
4 way in this area in the same way as the ICC is also trying to
5 find its way, we are, each one of us here trying to build law and
6 in particular the right -- the law for the victims.
7 Let's build this law but let's also try to establish milestones.
8 Who is doing what in these criminal proceeding and I believe that
9 the ICC, after having, at first, in the Lubanga case opens quite
10 broadly the victim's access to the -- the victim's access to the
11 proceedings.
12 The ICC rendered a second decision in which it restrained later
13 on because otherwise it would be impossible. Let's be realistic
14 and I believe that this was what the judges had in mind when they
15 established the internal rules.
16 In this first trial we have 94 civil parties. In the second
17 trial there will be hundreds of them. Are we going to be
18 examining hundreds of civil parties on all the topics? You can
19 see that by trying to do things too well we're going to hinder
20 the idea of justice itself.
21 So I believe that we're obliged to set milestones and I'll repeat
22 it again to the civil parties. we will hear you. We will hear
23 what you have to express to us but, please, do not venture on to
24 areas which are not yours and you will be paying service to
25 justice but also to yourselves.

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1 Thank you.

2 MR. PRESIDENT:

3 The Trial Chamber does not allow any civil party lawyers to
4 express their comments. So let me move on to our next
5 proceeding.

6 I would like to request the Co-Prosecutor to read the agreement
7 on the facts between the Co-Prosecutors and the defence counsel
8 and as well as the uncontested facts.

9 The floor is yours.

10 [14:05]

11 MR. PETIT:

12 Thank you, Mr. President.

13 I will try to make this as clear and as brief as I can. But for
14 the sake of clarity and remembering that in this court we have
15 transcripts that will serve as the record I will endeavour to put
16 as much information in my address to you so that the record
17 reflects accurately the information.

18 Therefore, if you'll bear with me, and I'm addressing you today
19 on this matter in English because this is how we set it up with
20 the translation, even though the agreement has been done in the
21 French version. However, the translators have copies, written
22 copies in all three languages of what I'm about to say.
23 But to clarify, as we've said earlier, on 31 January of this year
24 we forwarded to the defence extracts of the closing order
25 separated into separate factual allegations to seek their

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1 agreement or comments.

2 This filing or this document was later filed, our document that
3 we had sent, was filed in to the record on 11 February 2009 under
4 the "E5/11/2 to 7". More precisely, ERN Number
5 00282115200282155. So this is the document that was sent to the
6 defence and filed.

7 We have not received an official filing in terms of the response
8 but this will serve as, at least the recorded version and I
9 understand there will be an official -- or there has been an
10 official filing.

11 So I propose to read the agreed facts or the not disputed facts.
12 in other words, things that the defence agrees to or does not
13 contest within this trial.

14 And I propose to do so by referring to, first, sections that were
15 duplicated from the indictment, introduction, establishment and
16 structure of Democratic Kampuchea, et cetera, et cetera, so to do
17 so by parts, and for each facts to refer to the paragraph number
18 of the filing that was sent to the defence. This is the number
19 that appears in brackets at the beginning of each factual
20 allegation, and as I said, is reflected individually in the
21 filing of 11 February 2009. And I further propose to cover
22 section by section so that it makes a little bit of sense in
23 terms of the factual matters at hand.

24 So again, with your leave, the following facts are agreed.

25 Paragraph 3, S-21 was chaired for most of its existence by Kaing

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1 Guek Eav alias Duch. Agreed.

2 Paragraph 5. On 5 January 1968 Duch was arrested and sentenced
3 to 20 years imprisonment for breaching state security in relation
4 to foreign states. Duch was set free following the coup of 18
5 March 1970. Agreed.

6 Paragraph 7. From 1975 to 1979 Duch occupied posts at S-21 when
7 he was aged between 33 and 37. Agreed.

8 Paragraph 8. 20 years after the discovery of S-21, Duch was
9 located living under another name in Ta Sanh in Samlot district
10 of Battambang province.

11 That is the section of the introduction I would ask my colleague
12 to confirm.

13 [14:10:35]

14 MR. PRESIDENT:

15 Please, the defence counsel?

16 MR. ROUX:

17 Your Honour, I confirm, in the name of the defence counsel, the
18 points agreed that were presented.

19 MR. PRESIDENT:

20 Please, the Co-Prosecutor continue.

21 [14:11:08]

22 MR. PETIT:

23 Onto the section titled. "Establishment and Structure of
24 Democratic Kampuchea" the following facts are agreed.

25 Paragraph 10. On 17 April 1975 the Army of the Communist Party

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1 of Kampuchea, CPK, the Kampuchea Peoples National Liberation
2 Armed Forces, KPNLAF, entered Phnom Penh and the CPK seized
3 national power.

4 MR ROUX:

5 An equipment problem for the accused so if we could give him
6 another headset?

7 MR. PRESIDENT:

8 Please, the Co-Prosecutor, you may continue.

9 [14:12:09]

10 MR. PETIT:

11 I'll start again. On the section titled, "Establishment and
12 Structure of Democratic Kampuchea" the following facts are
13 agreed. Paragraph 10. On 17 April 1975 the Army of the
14 Communist Party of Kampuchea, CPK, the Kampuchea Peoples National
15 Liberation Armed Forces, KPNLAF, entered Phnom Penh and the CPK
16 seized national power. Agreed.

17 Paragraph 11. with the end of the civil war against Lon Nol's
18 Khmer Republic, the CPK's stated policy was to quote -- was to
19 pass -- to quote, "the next phase of making socialist
20 revolution". Agreed.

21 Paragraph 12. during the three years, eight months and 20 days
22 that followed, the CPK exercised effective authority over
23 Democratic Kampuchea and pursued a policy of completely
24 disintegrating the economic and political structures of the Khmer
25 Republic and creating a new revolutionary state power. Agreed.

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1 Paragraph 13C. the elimination of officials and supporters of
2 the previous regime. Agreed.

3 Paragraph 14. many of the CPK's policies required the
4 transformation of "new people" into peasants. Agreed.

5 Paragraph 15. New people were broadly made up of evacuated city
6 dwellers and peasants living under Lon Nol control until April
7 1975 as the state from old or base people who were essentially
8 peasants from areas under the authority -- already under the
9 authority of the CPK during the Khmer Republic period. Agreed.

10 Paragraph 16. Politically motivated extrajudicial executions
11 were committed at the outset by military units and continued
12 thereafter in security centres throughout the country. Agreed.

13 Paragraph 17. In February 1975 the CPK held a popular national
14 congress of the National United Front of Kampuchea at which it
15 publicly announced that seven so-called Khmer Republic
16 super-traders were to be summarily killed for treason. Agreed.

17 Paragraph 27. Numerous persons, rightly or wrongly, linked to
18 the Khmer Republic or its reported social class foundations, were
19 punished or summarily executed by the CPK in the days and weeks
20 immediately following the liberation of Phnom Penh throughout the
21 end of the regimes.

22 The following facts are not disputed without comments as it
23 relates to the establishment and structure of Democratic
24 Kampuchea.

25 13A. The forced transfer of residents of Phnom Penh and other

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1 former Khmer Republic strongholds to the country sides.

2 13B. The creation of party-controlled, agricultural production
3 cooperatives where people were made to work under extremely
4 difficult conditions to increase food production.

5 Paragraph 18. The congress also declared that lower level Khmer
6 Republic personnel will be welcomed -- would be welcomed by the
7 revolutionary forces "provided they immediately cease their
8 service to the seven traders and stop cooperating with them."

9 Paragraph 19. Any such Khmer Republic personnel who did not
10 immediately defect to the CPK were vulnerable to summary
11 execution.

12 Paragraph 23. All punishments specified in Article 9 of the DK
13 Constitution were applied arbitrarily.

14 Paragraph 24. The CPK established no appropriate facilities for
15 captured enemy combatants or civilians nor any mechanism to
16 challenge the legality of their arrest, detention. or punishment.

17 Paragraph 25. The legal structures were replaced by
18 re-education, interrogation and security centres where former
19 Khmer Republic officials and supporters, as well as others
20 accused of offences against the CPK, were detained and executed.

21 I would ask the defence to confirm both the agreed and not
22 disputed factual allegations.

23 [14:17:10]

24 MR. ROUX:

25 The defence confirms that concerning the readings that just the

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1 word "Duch" concerning the historical and political context and
2 as we mentioned before there's an agreement concerning a certain
3 number of paragraphs and other paragraphs are also not contested,
4 as we have mentioned earlier.

5 But maybe in order to understand your Chamber a bit better, maybe
6 we should specify that in the document that we submitted to you
7 yesterday there are sometimes passages in Italics -- and these
8 are comments from the defence, but we will not speak about these
9 today -- and in your version these comments are included.

10 Thank you.

11 [14.18]

12 MR. PETIT:

13 Thank you, Mr. President. The next section regards the
14 establishment of S-21.

15 The following facts are agreed. Paragraph 29. On 15 August,
16 1975, Duch attended a meeting with Son Sen and In Lorn , alias
17 Nat, from Division 703 of the RAK at the Phnom Penh train station
18 for the purpose -- the purpose of which was to plan the
19 establishment of S-21.

20 MR. PRESIDENT:

21 Mr. Prosecutor, could you please go a little bit slower so --
22 for the translators. Thank you.

23 MR. PETIT:

24 Except, as I have mentioned to Your Honours, the translators
25 have all three versions of the text, so I'm trying to hopefully

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1 finish before 4.00. But they have the text.

2 Agreed. Paragraph 30. Son Sen appointed Nat as chairman of
3 S-21 and committee secretary, with Duch as his deputy in charge
4 of the Interrogation Unit. Agreed.

5 Paragraph 31. Following the meeting, Duch brought a number
6 of his former M-13 staff to Phnom Penh to join forces with the
7 Division 703 personnel. Agreed.

8 Paragraph 32. S-21 became fully operational in October,
9 1975.

10 Paragraph 34. In March, 1976, Nat was transferred to the
11 general staff and Duch replaced him as chairman and secretary of
12 S-21. Agreed.

13 Paragraph 36. Duch confirmed Khim Vat , alias Hor, a former
14 Division 703 cadre, as his deputy responsible for the day to day
15 operations of the office. Agreed.

16 Paragraph 37. The third member of the S-21 committee and
17 head of S-24 was Nun Huy, alias Huy sré. Agreed.

18 Paragraph 38. Under Duch's command, S-21 was divided into
19 distinct units, each with its own function. Agreed.

20 Paragraph 38(a). The defence section was administered by Hor
21 and his subordinate, Phâl. Agreed.

22 Paragraph 38(c). Sous Thy was responsible for maintaining
23 the document unit and he reported to Duch through Hor. Agreed.

24 Paragraph 38(e). There were also a number of other units
25 which included photography, medicine ... (no interpretation)

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1 JUDGE CARTWRIGHT: :

2 Mr. Petit, the added problem is that you are reading a
3 non-redacted version of this document and I'm wondering if,
4 instead of asking you to use the pseudonyms that have been
5 assigned, you simply use an initial because the identity of the
6 particular person is not important to the agreed facts at this
7 stage.

8 Would that be acceptable also to Maître Roux?

9 MR. ROUX:

10 Yes.

11 MR. PETIT:

12 So we'll take that yes and run with it. I apologize. I will
13 use, creatively, initials. Not that I'm confirming that any
14 witnesses so far have been mentioned, but any names of any
15 individuals will therefore be referred to as initials -- or with
16 initials, rather.

17 Someone could remind me where I was. Right. Agreed.
18 Paragraph 38(e). There were also a number of other units which
19 included photography, medicine, cooking and logistics. Agreed.

20 Paragraph 39. Duch ran S-21 along hierarchical lines and
21 established reporting systems at all levels to ensure that his
22 orders were carried out immediately and precisely. Agreed.

23 Paragraph 43. The original S-21 complex was located at Phnom
24 Penh in Boeng Keng Kang 3 sub district, Chamkar Mon district.
25 The detention and interrogation facilities were originally

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1 located in a block of houses on a corner of streets 163 and 360.
2 Agreed.

3 Paragraph 44. In late November, 1975, S-21 moved to the
4 National Police Headquarters on Street 51, Rue Pasteur, near
5 Central Market, Phsar Thmei. Agreed.

6 Paragraph 45. In January, 1976, S-21 moved back to its
7 original location. Agreed.

8 [14:26]

9 Paragraph 46. In April, 1976, upon Duch's decision, S-21
10 moved to the premises of the Pohnea Yat Lycée, a high school
11 located between Street 113, 131, 120 and 350. now the site of
12 the Tuol Sleng Genocide Museum, where it operated until 6th
13 January, 1979. Agreed.

14 Paragraph 47. The central building of S-21, referred to as
15 Building E, was used to receive, register and photograph
16 prisoners and a room was devoted to creating paintings and
17 sculptures that glorified the regime. Agreed.

18 Paragraph 48. Four other buildings at S-21, Buildings A, B,
19 C and D, were used for detention. Agreed.

20 Paragraph 48(a). Buildings B, C and D held the general prisoner
21 population in a mixture of large mass detention cells and small
22 brick or wooden individual detention cells. Agreed.

23 Paragraph 48(b). Building A, together with the block of houses
24 located south of the former Lycée called the Special Prison
25 housed important prisoners. Agreed.

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1 Paragraph 49. The former school and the special prison were
2 surrounded by fences and protected on the interior and exterior
3 by armed guards and were the most secure and secret part of the
4 S-21 complex. Agreed.

5 Paragraph 51. Initially, prisoners were executed and buried in
6 and around the S-21 complex. Agreed.

7 Paragraph 52. At some time between 1976 and mid-1977, partly in
8 order to avoid the risk of epidemic, Duch decided to relocate the
9 execution site to Choeng Ek, located approximately 15 kilometres
10 southwest of Phnom Penh in Kandal Province. Agreed.

11 Paragraph 53. The Choeng Ek execution site consisted of a wooden
12 house where prisoners were held until just before their execution
13 and a large area that consisted of pits for executions. Agreed.

14 Paragraph 54. Even after Choeng Ek became the main killing sites
15 certain executions and burials still took place at or near the
16 S-21 complex. Agreed.

17 Paragraph 55. S-24 was part of S-21. Agreed.

18 Paragraph 56. S-24 was tasked with reforming and re-educating
19 combatants and farming rice to supply office, S-21 and its
20 branches. Agreed.

21 Paragraph 58. The primary role of S-21 was to implement 'The
22 party political line regarding the enemy', according to which
23 prisoners 'absolutely had to be smashed.'

24 The following facts are not disputed and regard the same section,
25 the establishment and structure of Democratic Kampuchea.

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1 Paragraph 13(a). The forced transfer of resident of Phnom Penh,
2 and other former Khmer Republic strongholds to the countryside.

3 Paragraph 13(b). The creation of party-controlled agricultural
4 production cooperatives where people were made to work under
5 extremely difficult conditions to increase food production.

6 Paragraph 18. The Congress also declared that lower-level Khmer
7 Republic personnel would be welcome.

8 Yeah, sorry. Yeah, I'm sorry. I apologize to the Court, I am
9 rereading a section that I already read and if nobody else has
10 noticed that's -- I apologize for that.

11 The following facts are not contested. Under the heading
12 Establishment of S-21, paragraph 30. Duch was feared by everyone
13 at S-21.

14 Paragraph 50. Many other buildings in the surrounding
15 neighbourhood were also part of S-21, serving as interrogation
16 houses, execution sites and mass graves, mass mess halls, a
17 medical centre, houses for the staff, various offices and houses
18 for Duch and a house for the reception of prisoners. These
19 buildings were all situated within a second outer perimeter that
20 was also protected by armed guards.

21 Paragraph 57. S-24 was located outside of Phnom Penh near the
22 execution site of Choeng Ek in the area of Wat Kdol in the Dang
23 Kao, District of Kandal Province. The main structures and
24 activities at S-24 extended from the Prey Sar prison to Chek
25 Village, though the total area of S-24 was larger.

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1 Those are the agreed or not disputed facts under the heading
2 Establishment of S-21 that I would ask the defence to confirm.

3 MR. ROUX:

4 Yes, Mr. President, Your Honours, the defence confirms that it is
5 in agreement and does not dispute the paragraphs that have just
6 been read out by the Co-Prosecutor pertaining to the section on
7 the establishment of S-21.

8 MR. PRESIDENT:

9 May the Co-Prosecutor continue.

10 MR. PETIT:

11 Under the heading The Policy of Smashing Enemies the following
12 facts are agreed.

13 Paragraph 59. The term 'smash' was used and widely understood at
14 the relevant time to mean 'kill'. Agreed.

15 Paragraph 64. In practice a subcommittee of the central
16 committee known as the Standing Committee acted as the highest
17 and most authoritative unit in DK. Agreed.

18 Paragraph 65. A standing committee decision from 9 October, 1975
19 gave Pol Pot general responsibility over the military and Son Sen
20 responsibility for the general staff and security." Agreed.

21 Paragraph 68. Duch primarily dealt directly with Son Sen and
22 Nuon Chea, both of whom we believed to be acting on behalf of the
23 Standing Committee. Agreed.

24 Paragraph 71. From late 1975 and into 1976 S-21 was
25 significantly involved in the imprisonment, re-education,

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1 torture, and execution of persons linked to the ousted Khmer
2 Republic regime. Agreed.

3 Paragraph 72. As of 1976 the CPK had largely eliminated private
4 property, officials of the former regime, religions, teachers and
5 what it considered to be the exploiting classes. Agreed.

6 Paragraph 73. By March 1976 the CPK had clarified the authority
7 to execute at different levels within the regime and increasingly
8 sent members of the revolutionary ranks to S-21. Agreed.

9 Paragraph 74. A CPK central committee document dated 30 March,
10 1976 decided that in order that 'there is a framework in absolute
11 implementation of our revolution' and 'to strengthen our
12 socialist democracy' the right to 'decide on smashing within and
13 outside the ranks' was bestowed as follows. 'If in the base
14 framework, to be decided by the Zone Standing Committee;
15 surrounding the centre office, to be decided by the Central
16 Office Committee; independent sectors to be decided by the
17 Standing Committee; the central military to be decided by the
18 general staff. Agreed.

19 Paragraph 75. The 30 March, 1976 central committee document
20 marked the beginning of internal purges within the CPK. Before
21 that time it was mainly officials of the old regime who were
22 smashed. From that point on executions at S-21 were mainly
23 internal purges of persons from within the party and the
24 military. Agreed.

25 Paragraph 75. Duch's role as chairman of S-21 was to focus the

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1 office on smashing purported traitors within the ranks of the
2 revolution itself. Agreed.

3 Paragraph 78. Initially it was only used for important prisoners
4 -- I'm sorry -- correction.

5 Agreed. Paragraph 78: Initially, S-21 was only used for
6 important prisoners or those from Phnom Penh, as well as members
7 of the central committee. Low-ranking combatants were only sent
8 to S-21 if arrested at Phnom Penh. High-ranking enemies inside
9 the party, state, military or security apparatuses implicated by
10 confessions obtained from other prisoners were generally sent to
11 S-21. Agreed.

12 Paragraph 79. Obtained from other prisoners were generally sent
13 to S-21. Agreed.

14 Paragraph 79. When a superior was arrested, such as X, a member
15 of the Central Committee, his or her subordinates would in turn
16 often be sent to S-21. Agreed.

17 Paragraph 80. The policy of smashing enemies almost always
18 extended to their families, including children. Agreed.

19 Paragraph 82. By January 1979, S-21 had detained persons from
20 nearly every zone, every ministry and every military unit in the
21 nation. Agreed.

22 Paragraph 83. S-21's role also included executing those persons
23 in the revolutionary ranks who were accused of being influenced
24 by or under the control of Vietnam due to their former or
25 contemporaneous associations with the Vietnamese Communist Party.

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1 Agreed.

2 Paragraph 84. As the armed conflict with Vietnam intensified,
3 the numbers of Vietnamese civilians and soldiers arrested and
4 sent to S-21 also increased.

5 The following facts under the heading, 'The Policy of Smashing
6 Enemies' are not contested.

7 Paragraph 62. The CPK governed Democratic Kampuchea primarily
8 through DK state organization, CPK administrative bodies, and
9 Iraq.

10 Paragraph 63. The 1976 constitution of Democratic Kampuchea, and
11 the party's own statutes, gave the CPK Central Committee wide
12 powers, including the ability to formulate party-wide policy and
13 the authority to issue orders to subordinate zones and sectors.

14 Paragraph 70. Although the policy of smashing enemies remained
15 in force throughout the DK period, the definition of those
16 perceived to be enemies of the CPK evolved and broadened over the
17 period as a result of domestic developments and the international
18 armed conflict between Cambodia and Vietnam.

19 The above-stated facts, as agreed, are not disputed under the
20 policy of smashing enemies. I would like the defence to confirm.

21 MR. ROUX:

22 Thank you, Mr. President.

23 The defence confirms its agreement or the absence of dispute in
24 regard to the paragraphs that have been read out by the
25 prosecutor. Thank you.

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1 MR. PRESIDENT:

2 The Co-Prosecutor, you can continue, say the President.

3 MR. PETIT:

4 Dissemination of policy at S-21, the following facts are agreed:

5 Paragraph 85(a). Duch and other S-21 cadre attended general

6 political education and agricultural production planning

7 meetings, convened under the auspices of the centre general

8 staff.

9 Paragraph 85(b). Duch and other S-21 cadre attended training

10 session convened by Son Sen to discuss the need to purge and

11 smash enemies.

12 Paragraph 85(c). The policy of extrajudicial execution was

13 widely disseminated by Duch throughout S-21, at annual meetings

14 of the entire unit, as well as at smaller meetings of its various

15 sub-units.

16 Paragraph 87. Duch and other CPK members, and youth league

17 members at S-21 were also made aware of the role of their office

18 in implementing CPK policies through the party journals,

19 revolutionary flag, and revolutionary youth. Agreed.

20 Paragraph 88. Allegations of treason to which S-21 prisoners had

21 been compelled to confess, represented as fact in the

22 revolutionary flag and revolutionary youth publications, and

23 alluded to in other official DK propaganda. Agreed.

24 Paragraph 89. Alleged traitors, such as Chăn Chăkrei, Mèn Sung

25 alias Yah, Sous Neou alias Chhouk, and Koy Thuon, were repeatedly

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1 referred to by name. Agreed.

2 Paragraph 90. Extracts from tape recorded S-21 confessions or
3 written text were played or read out at meetings outside of S-21
4 to justify the actions of the regimes. Agreed.

5 Paragraph 91. From the time Duch became S-21 chairman, all
6 specific instructions to and from S-21, regarding security
7 matters, were conveyed exclusively through him.

8 Those are the agreed fact under the heading "Dissemination of
9 Policy at S-21" that I would request the defence to confirm.

10 MR. PRESIDENT:

11 The floor is yours, defence counsel, say the President.

12 MR. ROUX:

13 Thank you, Mr. President

14 The Defence confirms its agreement, perhaps with one minor
15 clarification at paragraph 85(c). Our first version which we
16 received is somewhat different from what has been read out. I do
17 not think that will occasion any great difficulty. I do not
18 think this will raise any great difficulty.

19 In the first version we have agreement and the policy for -- of
20 extra-judicial killings, was widespread in S-21, whereas it is
21 said that the extra-judicial execution policy pertaining to
22 detainees was widespread by Duch in S-21. I do not think that it
23 raises any great problem. We are in agreement.

24 May I be allowed to verify this with my team members?

25 MR. ROUX:

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1 Thank you, Mr. President.

2 We agree with the reading that you have just provided of
3 paragraph 85(c) and of course with the others.

4 MR. PRESIDENT:

5 The Co-Prosecutor, you take the floor.

6 MR. PETIT:

7 And just to clarify, I have right here at my disposal the exact
8 filing that was sent to the defence, and it is exactly what I
9 read today, so I'm not sure what happened -- maybe in the
10 translation, but what I read was what was given to the defence.

11 The following facts under the heading, "The Use of S-21
12 Confessions" are agreed.

13 Paragraph 93. The role of S-21 was not to determine whether
14 detainees were traitors, as their guilt was already considered
15 established by the fact that they had been arrested and sent to
16 S-21. Agreed.

17 Paragraph 94. In addition to executing prisoners condemned in
18 advance as traitors, an overriding purpose of S-21 was to extract
19 confessions from prisoners in order to uncover further networks
20 of possible traitors. Agreed.

21 Paragraph 95. S-21 confessions typically took the form of
22 political autobiographies by the prisoners in which they were
23 compelled to denounce themselves and others as traitors serving
24 the intelligence agencies of foreign powers considered to be
25 enemies of the Cambodian Revolution, such as the CIA, KGB, and

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1 the Vietnamese Communist Party. Agreed.

2 Paragraph 96. S-21 confessions contain detailed descriptions,
3 not simply of alleged treacherous activities but also of the
4 structure and operation of all levels of the party and of all
5 administrative units. Agreed.

6 Paragraph 97. The operations of S-21 were "not compatible with
7 the existence of Tribunals and procedural safeguards". Agreed.

8 Paragraph 98(a). Regardless of whether they contain false or
9 fabricated assertions, S-21 confessions were used to decide upon
10 arrest of those denounced as enemy agents and often led to the
11 arrest of many others implicated as traitors. Agreed.

12 Paragraph 98(b). Normally implication in one confession is not
13 sufficient for a person to be arrested. it had to occur several
14 times. Agreed.

15 Paragraph 100. Duch meticulously read, analysed, annotated, and
16 summarized the majority of S-21 confessions for his superiors."
17 Those are the following facts as agreed to under the heading "The
18 Use of S-21 Confessions" that I would request the defence to
19 confirm.

20 MR. PRESIDENT:

21 The floor is yours, Mr. Roux.

22 MR. ROUX:

23 Thank you.

24 The defence confirms that the accused agrees with the paragraphs
25 that have been read out by the Co-Prosecutor.

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1 MR. PETIT:

2 Thank you, Mr President.

3 Under the heading "Composition of the Detainee Population" the
4 following facts are agreed.

5 Paragraph 103. The prisoners were predominately Cambodian.

6 Agreed.

7 Paragraph 104(e). Relatives of DK Cadre were also arrested and
8 detained at S-21. Agreed.

9 Paragraph 104(g). S-24 staff were also sent to Tuol Sleng.

10 Agreed.

11 Paragraph 105. Former Khmer Republic soldiers and officials were
12 held as prisoners at S-21. Agreed.

13 Paragraph 106. A number of Cambodian minority groups, including
14 Cham, were detained at S-21. Agreed.

15 Paragraph 108. The largest group of foreigners detained at S-21
16 was Vietnamese which group included hundreds of Vietnamese
17 civilians and soldiers. Agreed.

18 Paragraph 109. Prisoners at S-24, Prey Sar, included men, women
19 and children and consisted of two main categories: persons whose
20 relatives were considered suspect and subordinates of arrested
21 cadre. There were also combatants from various units and
22 personnel from numerous ministries and offices around Phnom Pen
23 together with members of their families. Agreed.

24 Paragraph 110. Several hundred people work at Prey Sar, at S-24
25 at any given time.

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1 The following facts under the composition -- under the heading
2 "Composition of the Detainee Population" are not contested.
3 Paragraph 104(a). Five thousand (5,000) prisoners came from DK
4 government offices.
5 Paragraph 104(b). Over 4,500 prisoners came from DK military
6 units.
7 Paragraph 104(c). These prisoners came from virtually every
8 office and unit in the country and from all existing zones and
9 autonomous sectors.
10 Paragraph 104(f). Approximately 200 former S-21 staff became
11 prisoners at Tuol Sleng.
12 Paragraph 107. Foreign nationals were also imprisoned at S-21,
13 including Vietnamese, Thais, Laotians, Indians and 'Westerners'.
14 Paragraph 108(a). At least 400 Vietnamese were detained at S-21,
15 of which approximately 150 were recorded as prisoners of war and
16 at least 100 were civilians.
17 Paragraph 108(b). The first recorded arrest at S-21 of someone
18 described as Vietnamese was on 7 February 1976.
19 Paragraph 108(c). The number of Vietnamese detained at S-21
20 increased as the conflict with Vietnam escalated.
21 Those are the agreed and not contested facts under the heading
22 "Composition of the Detainee Population" that I would request the
23 defence to confirm.
24 MR. PRESIDENT:
25 The defence will take the floor.

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1 MR. ROUX:

2 Just one clarification to make it easy for people who do not have
3 access to the document to understand. I'm referring to paragraph
4 104. It should be read in whole.

5 The first part was the largest group. I refer to the detainees
6 in S-21, the largest group was composed of cadre's of Democratic
7 Kampuchéa. We agree.

8 And then there is point (a), (b), and (c) not contested and we
9 added there were more than 5,000 civil servants and employees of
10 the DK administration. I refer to people in the -- in S-21. So
11 we have the prisoners came from all the offices and autonomous
12 sectors of the country.

13 So I just want to clarify this so people listening to us -- I
14 just want to clarify what was -- what we agreed with and what we
15 did not dispute. So we just agree with the reading that was
16 provided by the Co-Prosecutor.

17 MR. PRESIDENT:

18 The prosecutor, you can continue.

19 MR. PETIT:

20 Under the heading "Arrest" -- thank you, Mr. President.

21 Under the heading "Arrest and Transfer to S-21" the following
22 facts are agreed.

23 Paragraph 111. For the arrest of members of the Central
24 Committee, the decision had to be made by the Standing Committee.
25 Agreed.

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1 Paragraph 112. For others, Duch's superior, Nuon Chea, called
2 the head of the relevant unit for discussion and a joint decision
3 on arrest. Agreed.

4 Paragraph 113. For people coming from other regions who were to
5 be sent to S-21, the decision to arrest was made by the Standing
6 Committee which contacted the relevant zones, sectors, or
7 districts in order to remove persons implicated by confessions.
8 Agreed.

9 Paragraph 115(a). On these occasions, Duch provided the names of
10 the persons to be arrested, where the arrest would take place,
11 and how many forces were required to affect the arrest and
12 transfer to S-21. Agreed.

13 Paragraph 117. Duch was informed of the arrival -- I apologize,
14 I'll start again.

15 Agreed. Paragraph 117. Duch was informed of the arrival of
16 Vietnamese POWs by means of a list transmitted by either Nuon
17 Chea or X , his direct subordinate, and former chief bodyguard of
18 X.

19 Under the heading "Arrest and Transfer to S-21" the following
20 facts are not contested.

21 Paragraph 116: Vietnamese POW's were generally arrested in or
22 near the main conflict zone on the border with Vietnam and
23 transported to S-21 by the unit that arrested them.

24 Those are the facts under the heading "Arrest and Transfer to
25 S-21" that are agreed or not contested which I'd like the defence

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1 to confirm.

2 MR. PRESIDENT:

3 The defence counsel, you take the floor.

4 [14:54:38]

5 MR. ROUX:

6 The defence confirms the accused agreement with regard to the
7 paragraphs that have been read out by the prosecutor.

8 MR. PRESIDENT:

9 The Co-Prosecutor, you can continue.

10 [14:56:07]

11 MR. PETIT:

12 Under the heading "Duch's Role in Arrests" the following facts
13 are not -- are agreed.

14 Agreed. Paragraph 120. On 16 September 1976 Duch attended a
15 military meeting of Divisions 290 and 170, also attended by Son
16 Sen and 'X', the purpose of which was to plan arrests. This
17 meeting was called because there were an exceptional number of
18 arrests to be carried out within a single unit. Agreed.

19 Paragraph 122. Decisions concerning arrests were kept secret in
20 order to avoid leaks and ensure that there was no possibility of
21 resistance, especially when large numbers of persons were to be
22 arrested from one place. Subterfuge was also used to keep those
23 units off guard. In such cases Duch would assign 'X' to talk
24 with the person in charge of the unit to calm the personnel and
25 facilitate orderly arrest. Agreed.

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1 Paragraph 123. The decision to arrest people was often based on
2 estimated on confessions which implicated them as traitors.

3 Paragraph 127. Duch was occasionally present at arrest. For
4 example, 'X' was arrested in Duch's house.

5 Those are the paragraphs under the heading, "Duch's Role in
6 Arrest" that I would like the defence to confirm are agreed upon.

7 [14:58:41]

8 MR. ROUX:

9 We confirm, Your Honour, the agreement of the accused concerning
10 the paragraphs that were just read out by the Co-Prosecutor.

11 [14:59:03]

12 MR. PETIT: Under the heading, "Arrest of S-21 Personnel" the
13 following facts are agreed.

14 Paragraph 129. S-21 personnel were arrested and either sent to
15 Prey Sar for education or detained at Tuol Sleng.

16 Paragraph 136. Duch was the only person at S-21 who could report
17 mistakes by S-21 personnel to the upper level, and he did so
18 whenever a report came to him from 'X'.

19 Those are the agreed facts under the arrest of S-21 personnel
20 heading that I'd like the defence --

21 MR. PRESIDENT:

22 The floor is yours, the defence counsel.

23 [15:01:02]

24 MR. ROUX:

25 We confirm the agreement of the accused concerning the paragraphs

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1 that were read concerning the arrest of the S-21 personnel.

2 MR. PRESIDENT:

3 The Co-Prosecutor, you can continue.

4 [15:01:25]

5 MR. PETIT:

6 Thank you, Mr. President.

7 Under the heading, "Conditions of Detention at Tuol Sleng" the
8 following facts are agreed.

9 Paragraph 138. Prisoners entered S-21 on nearly a daily basis.
10 Agreed.

11 Paragraph 140. Prisoners were registered and a list of their
12 names were compiled by S-21 cadre 'X'. Agreed.

13 Paragraph 141. Prisoners were required to provide information
14 regarding their biographies, which was then summarized. Agreed.

15 Paragraph 142. Photographs were taken of newly arrived prisoners
16 which generally included a number and sometimes their name and
17 date of arrest. These photos were taken on instruction from Son
18 Sen to aid in the recapture of any escapees. Agreed.

19 Paragraph 143. Persons who were arrested and imprisoned at S-21
20 were usually not informed of the reason for their arrest. Agreed.

21 Paragraph 144. Prisoners at S-21 were kept in restraints nearly
22 24 hours a day. Agreed.

23 Paragraph 145. The S-21 detention facility had both small
24 individual cells and larger collective cells where prisoners were
25 chained side-by-side with their legs shackled. Agreed.

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1 Paragraph 146. Prisoners who were shackled could not stand up.

2 Agreed.

3 Paragraph 147. Female prisoners generally remained unshackled

4 unless they created problems. Agreed.

5 Paragraph 148. Prisoners at S-21 were kept under permanent

6 guard. Guards from both inside and outside the detention

7 facilities were instructed to be vigilant in preventing escape

8 attempts. Agreed.

9 Paragraph 152. Prisoners were not permitted to exercise or leave

10 their cells. Agreed.

11 Paragraph 159. S-21 detainees only received starvation rations

12 of food. As a result, many suffered substantial weight loss and

13 physical deterioration and some died. Agreed.

14 Paragraph 160. Starvation of prisoners was a deliberate policy

15 of the CPK.

16 Paragraph 161. S-21 guards and important prisoners received

17 better nutrition than ordinary prisoners. Agreed.

18 Paragraph 162. Many detainees at S-21 suffered from illnesses or

19 injuries. Agreed.

20 Paragraph 166. Medicine was in very short supply at S-21. Even

21 when available the medicine was locally produced by unskilled

22 workers. Agreed:

23 Paragraph 167. S-21 medics understood that the purpose of

24 medical treatment for prisoners was to keep them alive long

25 enough that their interrogations could be completed. Agreed.

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1 Paragraph 168. S-21 personnel performed medical experimentations
2 on prisoners. Agreed.

3 Paragraph 168A. Research for poisons was carried out upon the
4 orders of the central committee provided to Duch by Nuon Chea.
5 Agreed.

6 Paragraph 168B. Autopsies were practiced on living persons.
7 Agreed.

8 Paragraph 168C. Blood was taken from prisoners. Agreed.

9 Paragraph 168D. New medicines were tested on prisoners. Agreed.

10 Paragraph 169. The conditions at S-21 severely impaired the
11 physical and psychological health of many of the detainees and in
12 many instances caused their death. Agreed.

13 Paragraph 171. Some prisoners at S-21 attempted to commit
14 suicide."

15 The following facts under the heading "Conditions of
16 Detention at Tuol Sleng" are not contested.

17 Paragraph 139. Prisoners were generally blindfolded and
18 handcuffed when brought inside S-21."

19 Paragraph 150: (No interpretation)

20 MR. ROUX:

21 We had a slight translation problem, just only -- it was
22 translated that the following paragraphs were the object of an
23 agreement, but they are just simply not disputed. It's just a
24 small point that I would like to specify for the purposes of
25 translation. I apologize. You may continue.

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1 [15:09]

2 MR. PRESIDENT:

3 The Trial Chamber may take a 20 minutes' break because I can
4 see that the Co-Prosecutor is tired already. So please take 20
5 minutes' break.

6 (Court recesses from 1509H to 1531H)

7 MR. PRESIDENT:

8 The Trial Chamber is now back in session.

9 May the Co-Prosecutor read the statement -- read the document
10 again? Thank you.

11 [15.34]

12 MR. PETIT:

13 And I am feeling much better. Thank you.

14 I would like first to correct an omission on my part. In the
15 agreed facts under the heading "Conditions of Detention at Tuol
16 Sleng", paragraph 160 is omitted. "Starvation of prisoners was a
17 deliberate policy of the CPK." Thank you.

18 I continue. Under the heading of Conditions of Detention at
19 Tuol Sleng the following facts are not disputed.

20 Paragraph 139. Prisoners were generally blindfolded and
21 handcuffed when brought inside S-21.

22 Paragraph 150. Prisoners at S-21 were not permitted to speak
23 to each other or to the guards.

24 Paragraph 151. When prisoners first arrived at S-21 they
25 were often stripped of their clothes, leaving just their

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1 underwear.

2 Paragraph 153. The majority of S-21 detainees were provided
3 no bedding and slept on the concrete floor. A few privileged
4 prisoners were provided old mats or mattresses to sleep on.

5 Paragraph 154. Many detainees were badly bitten by
6 mosquitoes.

7 Paragraph 156. There were no washing facilities at S-21.
8 Prisoners remained shackled when bathed. Bathing consisted of
9 guards spraying the cell with a hose from the doorway. The
10 primary purpose of this hosing was to clean the cells, not the
11 prisoners.

12 Paragraph 157. Prisoners were not permitted to leave their cells
13 to use the toilet and were forced to urinate in jerry cans and
14 defecate in ammunition boxes.

15 Paragraph 158. Prisoners were typically fed twice a day with
16 poor-quality gruel.

17 Paragraph 163. Medical services at S-21 were provided by a
18 team of three to five medics who had not studied medicine. Some
19 of those medics were children and they worked without the
20 supervision of medical doctors.

21 Paragraph 164. Some prisoners received intravenous fluids in
22 the evening and were found dead the following morning.

23 Paragraph 165. Many S-21 prisoners in need of urgent medical
24 attention were left unattended or given insufficient treatment.

25 Paragraph 170. During one month eight or nine prisoners died

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1 in 'X's cell.

2 Those are the relevant facts agreed to or not contested under
3 the heading "Conditions of Detention at Tuol Sleng". I would
4 request the defence to confirm.

5 MR. PRESIDENT:

6 Please, counsel for defence, the floor is yours.

7 [15.43]

8 MR. ROUX:

9 Thank you. The defence agrees to the previously agreed
10 matters and the undisputed matters in regard to the paragraphs
11 that have just been read out concerning the detention conditions
12 in Tuol Sleng.

13 Thank you.

14 MR. PRESIDENT:

15 The Co-Prosecutor may continue.

16 MR. PETIT:

17 Thank you, Mr. President.

18 Under the heading "Detention Conditions at Prey Sar" the
19 following facts are not contested.

20 Paragraph 172. At S-24 people were sent for re-education
21 through punitive hard labour, also referred to as tempering.

22 Paragraph 174. Persons sent to S-24 were strictly guarded
23 both at work and at night.

24 Paragraph 175. Persons sent to Prey Sar were separated into
25 three levels, one for light tempering, a second intermediate

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1 level, and a third level for the most serious cases.

2 Paragraph 176. Persons considered to be level 3 were kept
3 shackled at night and were not permitted to live in ordinary
4 houses.

5 Paragraph 177. Detainees were provided two meals a day, one
6 at noon and one in the evening. With few exceptions the food
7 provided to prisoners at Prey Sar was insufficient. Persons in
8 level 3 received lower rations than others.

9 Paragraph 179. Detainees at S-24, including women and
10 children, were forced to work in the rice fields, fish, grow
11 vegetables, transplant rice, build paddy dykes, dig canals and
12 carry soil to make ponds.

13 Paragraph 180. Detainees worked day and night, seven days a
14 week, and were not permitted to rest during working hours. A
15 typical working day at Prey Sar started at dawn between 4.00 and
16 7.00 a.m. and finished between 10.00 p.m. and 12.00 midnight with
17 two hours to rest and eat.

18 Paragraph 181. Work was carried out under the supervision of
19 guards that required detainees to be efficient and berated them
20 if they worked slowly.

21 Paragraph 182: When detainees were sick or late or when
22 their work was considered unsatisfactory they were beaten and
23 insulted.

24 Paragraph 183: Prisoners were also punished for 'sexual
25 misconduct, illnesses and stealing'.

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1 Paragraph 184. Inmate 'X' was beaten two or three times.

2 Paragraph 185. On some occasion's guards at S-24 punished
3 detainees by starvation.

4 Paragraph 186. Prisoners feared that if they did not work as
5 hard as they could they would end up dead.

6 Paragraph 187. Regular re-education meetings were held at
7 Prey Sar at which detainees were instructed to work quickly and
8 efficiently, given political training and indoctrination and,
9 required to partake in self-criticism sessions where they were
10 forced to concede their faults and those of others.

11 Paragraph 188. Disappearances of prisoners during the night
12 were common and the persons taken away, never returned.

13 Paragraph 189. Some Prey Sar detainees, most likely people
14 from Level 3 were transferred to Choeng Ek for execution.

15 Paragraph 190. At least 571 persons, including both S-24
16 personnel and inmates, were transferred from S-24 to Tuol Sleng.

17 Those are the uncontested facts under the heading Detention
18 Conditions at Prey Sar to which I would request the defence to
19 confirm.

20 MR. PRESIDENT:

21 Please, the defence lawyer response.

22 MR. ROUX:

23 Thank you, Mr. President.

24 The defence confirms that it does not dispute any of the
25 paragraphs read by the Co-Prosecutor as far as the detention

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1 conditions in place are concerned.

2 MR. PRESIDENT:

3 The Co-Prosecutor may continue.

4 [15:43]

5 MR. PETIT:

6 Thank you, Mr. President.

7 Under the heading "Interrogation" the following facts are
8 agreed to.

9 Paragraph 191. The majority of prisoners detained at S-21
10 were systematically interrogated.

11 Paragraph 192. Interrogations were conducted by S-21
12 personnel who were organized by Duch in various teams.

13 Paragraph 193: -- oh, sorry. Agreed.

14 Paragraph 193. Interrogators did not choose the prisoners they
15 would question but rather were assigned those prisoners. Agreed.

16 Paragraph 195. In interrogation rooms prisoners would
17 typically have their legs shackled to a table, after which their
18 handcuffs were removed to allow questioning and confession
19 writing. Agreed.

20 Paragraph 196. Interrogators questioned prisoners on their
21 biographies and on the activities which led to their arrest.
22 Agreed.

23 Paragraph 197. Not all interrogations led to a written
24 confession. Agreed.

25 Paragraph 199. There were no established limits on the

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1 number of times a prisoner could be interrogated or how long an
2 interrogation could last. Agreed.

3 Paragraph 199(a). Interrogations only ended when the
4 confession of the prisoners was considered completed. Agreed.

5 Paragraph 199(b). Prisoners could be interrogated repeatedly
6 and forced to redraft their confessions numerous times. Agreed.

7 Paragraph 201. Duch introduced three methods of
8 interrogation at S-21, the 'cold, hot and chirring methods'.
9 Agreed.

10 Paragraph 21(a) -- 201(a) -- correction. The cold method was
11 interrogation through the use of propaganda without relying on
12 torture or insults.

13 The following factual allegation is not contested under the
14 heading "Interrogation".

15 Paragraph 198. Interrogations took place every day from 7:00
16 to 11:00 a.m., from 2:00 to 5:00 p.m. and then from 7:00 to 11:00
17 p.m.

18 Those are the factual allegations agreed to or not contested
19 under the heading "Interrogation" in which I'd like the defence
20 to confirm.

21 MR. PRESIDENT:

22 The defence counsel may respond.

23 [15:46]

24 MR. ROUX:

25 The defence confirms that agreement has been reached or there

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1 is no dispute with regard to the paragraphs that a Co-Prosecutor
2 has just read concerning the questioning in S-21.

3 MR. PRESIDENT:

4 The Co-Prosecutor may continue.

5 [15:47]

6 MR. PETIT:

7 Thank you, Mr. President.

8 Under the heading "Systematic Use of Torture During
9 Interrogations" the following facts are agreed.

10 Paragraph 204. Three notebooks belonging to S-21
11 interrogation, the 'statistical list of security office S-21,
12 politics, ideology and organization', the 'X' notebook'
13 attributed to 'X' and the 'Y notebook' recorded instructions
14 received regarding interrogation and torture at S-21. Agreed.

15 Paragraph 204(a). The statistical list included political
16 and interrogation instructions taught to interrogators such as to
17 "break prisoner by propaganda or breaking by torture" and 'if
18 Angkar instructs not to beat, absolutely do not beat. If the
19 party orders us to beat then we beat with mastery, beat them to
20 talk, not to die, to escape not to become so weak and feeble
21 that they fall ill and we lose them. Agreed.

22 Paragraph 204(b). The instructions and political ideologies
23 contained in the 'X' notebook and in the statistical list
24 accurately reflected Duch's teachings and instructions at S-21
25 and primarily his 'thoughts'. Agreed.

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1 Paragraph 208. The purpose of interrogation at S-21 was to
2 obtain a complete answer which included the prisoner's alleged
3 crimes and identified other purported enemies of the regime.
4 Agreed.

5 Paragraph 209. With respect to Vietnamese prisoners, the
6 purpose behind the interrogation was to obtain confessions
7 showing 'that Vietnam had invaded Cambodia with a view to
8 integrating it into and into Chinese federation'. Agreed.

9 Paragraph 211. Unlike Cambodians the interrogation of
10 Vietnamese prisoners were often tape recorded and some of their
11 confessions were then broadcast on the radio for propaganda
12 purposes.

13 The following facts under the heading "Systematic Use of
14 Torture during Interrogation" are not contested.

15 Paragraph 205. Physical consequences of torture, i.e.
16 lacerations, bleeding, bruises, unconsciousness, and missing
17 finger or toenails were visible on the prisoners detained at S-21
18 and noticed by S-21 personnel.

19 Paragraph 206. Most of the prisoners detained at S-21 'had
20 injuries and their faces were swollen and there were burns around
21 their ears from electrical shocks'.

22 Paragraph 207. Certain guards at S-21 also personally saw or
23 heard the torture being carried out there.

24 Paragraph 214. One day in the painter's room, Duch ordered X to
25 exchange blows with a sculptor, Y, by hitting each other with a

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1 rubber hose.

2 Under the heading "Systematic Use of Torture During
3 Interrogation", those are the paragraphs agreed to or not
4 contested that I would like the defence to confirm.

5 MR. PRESIDENT:

6 The defence counsel may respond.

7 [13.57.26]

8 MR. ROUX:

9 Thank you, Mr. President.

10 With regard to the paragraphs that have just been read concerning
11 the systematic use of torture under interrogation, on behalf of
12 the accused the defence confirms its agreement or the absence of
13 dispute. I should just like to provide some clarification.

14 You will observe, for example, that we have agreed with the
15 Co-Prosecutors not to read paragraph 203, although it is
16 indicated that Duch was in agreement, but this is the sort of
17 paragraph where we wanted the entire closing order or the
18 paragraph as it appears in the closing order to be copied in full
19 so you will see that Duch is in agreement, but he wants the
20 paragraph to appear as it does in the Closing Order.

21 Perhaps I might add something. Paragraph 214 which you read
22 already appears in the personal participation of Duch in torture
23 sessions. It already appears there.

24 MR. PRESIDENT:

25 The Co-Prosecutor may continue.

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1 [14.05.16]

2 MR. PETIT:

3 Thank you, Mr. President.

4 Under the heading "Duch's Personal Participation in Torture" the
5 following facts are agreed.

6 Paragraph 215(a). One of the persons who received such orders
7 from Duch plus Comrade X, to quote 'liked to use torture very
8 much'. That fact is agreed. Agreed.

9 Paragraph 216(b). Duch prohibited interrogators from letting
10 prisoners die during torture. Agreed.

11 Paragraph 217. Duch received orders from his superiors,
12 including Nat and Son Sen, to have certain S-21 prisoners
13 tortured, and implemented those orders. Agreed.

14 Paragraph 219. The method of torture most commonly used at S-21
15 was beating with a stick because other methods wasted time.
16 Agreed.

17 Paragraph 220. If a detainee did not properly confess, the
18 severity of torture was increased. A confession was improper if
19 it was insufficiently detailed or failed to name other traitors.

20 Paragraph 221 is agreed. Duch knew about the practice of S-21 --
21 at S-21 of puncturing or removing finger and toenails. Agreed.

22 Paragraph 223. Duch was aware that cold water and fans were a
23 method of torture used at S-21 and did not react to that
24 practice.

25 Paragraph 226 is agreed. Another practice that took place at

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1 S-21 was forcing detainees to pay homage to images of dogs. Duch
2 was aware of this practice and had encouraged it at an
3 interrogator's training session on May 28, 1978.
4 I'd like to correct. the paragraphs I've just read from 215(a)
5 to 226 should have been correctly identified as being under the
6 heading of "Torture Techniques" and those facts, as I've read
7 them, under paragraph 215(a) to 226 are agreed.
8 And under that same heading "Torture Techniques", the following
9 facts are not contested.

10 Paragraph 224. Another method of torture used at S-21 during
11 interrogation was to remove the clothes of a prisoner and use
12 electrical equipment to shock the prisoner's genitals or ears.

13 Paragraph 228. S-21 prisoner X was repeatedly beaten on the back
14 with a piece of wood and had his toenails pulled out from both of
15 his feet. He received electrical shocks on his earlobes and on
16 the third day of torture, fell unconscious twice. X was
17 subjected to this treatment for 12 days and 12 nights.

18 Paragraph 229. S-21 prisoner Y was shown various torture
19 equipment in his interrogation room and asked to choose which
20 implements would be used against him. He was beaten on the back
21 with a whip, a rattan stick and electrical cables while
22 handcuffed and forced to lie down on the ground. His back was
23 cut and bleeding all over the floor. He was also electrocuted.
24 Y was tortured twice a day for a period of two weeks.
25 Under the heading "Torture Techniques", these are the facts which

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1 have been agreed to or not contested which I'd like the defence
2 to confirm.

3 MR. PRESIDENT:

4 The defence counsel may respond.

5 MR. ROUX:

6 The defence counsel confirms the agreement or the non-dispute of
7 the paragraphs that the Co-Prosecutor has just read.

8 MR. PRESIDENT:

9 The Co-Prosecutor may continue.

10 MR. PETIT:

11 Thank you, Mr. President.

12 Under the heading "Prey Sar" the following facts are not
13 disputed, not contested.

14 Paragraph 233. In one room at S-24, men and women were
15 interrogated using electrocution."

16 Paragraph 234. People who were sent to Prey Sar would return
17 with their heads shaved and their skin flayed from the
18 application of electrical shocks, beatings, and whippings during
19 interrogation."

20 Those are the facts -- the factual allegations which are not
21 contested under the heading "Prey Sar" which I'd like the defence
22 to confirm.

23 MR. PRESIDENT:

24 Defence counsel may respond.

25 MR. ROUX:

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1 Thank you.

2 The defence counsel confirms that there is no dispute concerning
3 the paragraphs that have just been read on Prey Sar.

4 Thank you.

5 MR. PRESIDENT:

6 The Co-Prosecutor may continue.

7 MR. PETIT:

8 Thank you, Mr. President.

9 Under the heading "Authority Over Executions" the following
10 factual allegations are agreed.

11 Paragraph 239. Duch and X gave the orders to carry out
12 executions within the S-21 complex.

13 Agreed. Paragraph 243. Prisoners at S-21 were typically
14 killed shortly after completing their confessions.

15 The following factual allegation under the heading,
16 "Authority Over Executions" is not contested.

17 Paragraph 235. Over 12,380 detainees were executed at S-21.
18 Those are the factual allegations under Authority Over Executions
19 that are agreed to or not contested, which I require the defence
20 to confirm.

21 [16.01.22]

22 MR. PRESIDENT:

23 The defence counsel may respond.

24 [16:01:31]

25 MR. ROUX:

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1 Thank you. The defence counsel confirms that there is no
2 dispute or that there is agreement concerning the paragraphs that
3 have just been read and concerning the authority to order
4 executions. Thank you.

5 MR. PRESIDENT:

6 The Co-Prosecutor may continue.

7 [16.01.58]

8 MR. PETIT:

9 Thank you, Mr. President. Under the heading, "Executions at
10 Choeng Ek" the following facts are agreed.

11 Paragraph 247. Duch went to Choeng Ek in 1977 at the request
12 of Son Sen.

13 Paragraph 251A is agreed: Prisoners were blindfolded and had
14 their arms tied behind them.

15 Agreed paragraph 253. On four separate occasions Duch was
16 ordered by Son Sen and Nuon Chea to send the majority of
17 prisoners detained at S-21 to Choeng Ek to be executed. The
18 purpose of these executions was to make room for a large influx
19 of prisoners into S-21 following mass arrest.

20 Agreed paragraph 254. numerous mass executions which
21 occurred and in which Duch received and conveyed orders to
22 execute without interrogation.

23 Agreed paragraph 254A. on one prisoners list Duch handwrote, "To
24 the attention of Uncle Peng. Kill them all. 30 May 1978.'

25 Paragraph 254B is agreed: On another prisoners list

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1 containing the names of 29 prisoners Duch wrote, "Interrogate
2 four persons. Kill the rest."

3 Paragraph 254C is agreed: In December 1978 about 300
4 prisoners from the east zone who had allegedly rebelled were sent
5 directly to Choeng Ek and executed.

6 Agreed, Paragraph 254D. On 2nd or 3rd January 1979, Nuon
7 Chea ordered Duch to smash all the prisoners at S-21.
8 Approximately 200 persons who were Cambodian nationals and
9 Vietnamese soldiers were then transported to Choeng Ek and
10 killed.

11 Under the heading Executions at Choeng Ek the following facts
12 are not contested.

13 Paragraph 245. Many thousands of persons including men,
14 women, and children were executed and buried at Choeng Ek.

15 Paragraph 248. Prisoners were transported to Choeng Ek in
16 trucks two to three times a month.

17 Paragraph 248A. The vehicles in which X was transported to
18 Choeng Ek each contained 30 to 40 prisoners.

19 Paragraph 248B. Prisoners were told that they were being
20 transferred to a new home so that they would not scream during
21 transport.

22 Paragraph 248C. Prisoners were handcuffed and blindfolded in
23 the trucks.

24 Paragraph 248D. During transportation, two guards were
25 positioned in the rear of the truck so that prisoners could not

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1 jump from the vehicles.

2 [16:04:00]

3 Paragraph 249. Three to four guards were regularly stationed
4 at Cheung Ek. When joined by the transport guards there were as
5 many as 10 guards present for executions.

6 Paragraph 250. There were three execution teams: the
7 Special Unit, X's team and Y's team.

8 Paragraph 251C. Prisoners were taken outside by the guards,
9 one at a time, and told they were being transferred to a
10 different house.

11 Paragraph 251D. X stood outside and recorded the names of
12 prisoners before taking them to the pits to be killed.

13 Paragraph 251E. Prisoners were killed using steel clubs, car
14 axles and water pipes to hit the base of their necks.

15 Paragraph 251F. Prisoners were then kicked into the pits
16 where their handcuffs were removed.

17 Paragraph 251H. After the executions were complete the
18 guards covered the pits.

19 Paragraph 252. Several large-scale executions took place at
20 Choeng Ek.

21 Under the heading, "Executions at Choeng Ek" these are the
22 facts agreed to or not contested, which I'd like the defence to
23 confirm.

24 [16.06.52]

25 MR. PRESIDENT:

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1 The defence counsel may respond.

2 [16.06.58]

3 MR. ROUX:

4 Your Honour, the defence confirms that the accused has given
5 his agreement or has not disputed the facts that the
6 Co-Prosecutor has just read to us.

7 [16.07.22]

8 MR. PRESIDENT:

9 There was a problem in the translation. In Khmer it was
10 indicated apparently that there was no dispute to paragraph 251
11 section G. We should probably check the translation that was
12 done because 251G, you haven't read it, but apparently in the
13 Khmer translation it was read by -- indicated that it was not
14 disputed, 251G, so for the needs of the transcriptions I would
15 like to specify that paragraph 251G is not the object of an
16 agreement. Just to let you know for the needs of the
17 transcriptions. You haven't read it, in fact, but it seems that
18 in the translation it was, however, included.

19 [16:09:15]

20 MR. PETIT:

21 Thank you, Mr. President. Finally, under the heading,
22 "Execution at Tuol Sleng" the following facts are agreed.

23 Paragraph 255 is Agreed. while Choeng Ek was used as the main
24 killing site, certain important persons, such as Koy Thuon, Vorn
25 Vet, Hok, Nat and foreigners continued to be executed within

1 S-21's grounds or nearby.

2 Agreed, paragraph 257. Duch, pursuant to a request of his
3 superiors, had pictures taken of important prisoners after they
4 had been executed, including Ly Phel, Vorn Vet and Hok. The
5 purpose of these pictures was to provide evidence that certain
6 prisoners had not been released or escaped.

7 Agreed is paragraph 258. In 1978 four foreigners -- I'm
8 sorry, I withdraw. The following fact is agreed.

9 Paragraph 262. Four combatants from a military unit designated
10 Y-08 who had been arrested and detained at S-21 were killed by
11 S-21 interrogator X using a bayonet. Their bodies were left on
12 beds in S-21 and discovered when the Vietnamese soldiers arrived
13 at the complex.

14 The following facts under the heading Executions at Tuol Sleng
15 are not contested.

16 Paragraph 256. Mass graves were present within and around the
17 S-21 complex.

18 Paragraph 259(b). X was ordered by Y on two occasions to write
19 lists of those detainees who had their blood drawn.

20 Paragraph 259(d). S-21 prisoners who were subjected to this
21 process had four to five bags of blood extracted from them which
22 left them unconscious.

23 Paragraph 259(e). The prisoners would die some time after the
24 extraction of their blood and a vehicle would then transport
25 their bodies to Choeng Ek for disposal.

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1 Paragraph 260. Children of S-21 prisoners were taken away from
2 their parents, killed within the S-21 compound and buried north
3 of the prison.

4 Those are the factual allegations under the heading Executions at
5 Tuol Sleng which are agreed to and not contested and which I
6 would like the defence to confirm.

7 MR. PRESIDENT:

8 The defence counsel may respond.

9 [16:12:35]

10 MR. ROUX:

11 Thank you, Mr. President.

12 The defence confirms that Duch acknowledges the facts that have
13 been read out concerning the executions, whether it be for the
14 points to which he agrees or the points that he does not dispute.
15 And maybe another specification, however, the accused requested
16 that we use the term "S-21" and not the term "Tuol Sleng" that he
17 does not recognize because it's a term that was only given after
18 the fact. What concerns him, he was the director of S-21, Tuol
19 Sleng is a word that was given after the arrival of the
20 Vietnamese troops.

21 MR. PRESIDENT:

22 The Co-Prosecutor, the floor is yours.

23 MR. PETIT:

24 Just to make sure that the record is accurate, I apparently left
25 out three agreed facts which are -- or to mention simply that

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1 these facts were agreed which are listed under paragraph 201(a),
2 211, and 262. those three facts are agreed. I already read the
3 facts. I simply forgot to say "Agreed".

4 And this, Mr. President, Your Honours, complete the reading into
5 the record of the factual allegations which are agreed to or not
6 contested by the Crown, by the prosecution and the defence and I
7 thank you for your indulgence and your patience.

8 [16:14:42]

9 MR. PRESIDENT:

10 The proceeding of today's hearing is going to adjourn for today's
11 session. The hearing will resume on the 6th from 9 a.m.

12 The Chamber orders the detention facility officers to take the
13 accused back to the detention facility and bring him back to the
14 courtroom on the 6th of April before 9 a.m.

15 The participants and civil parties and the public who wish to
16 attend, please arrive before 9 a.m. on that day.

17 (Court adjourns at 1614H)

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