



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

25 November 2009, 0901H

Trial Day 75

Before the Judges:

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Language used unless specified otherwise in the transcript

Speaker	Language
MR. KAR SAVUTH	Khmer
MR. ROUX	French
MR. SMITH	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer

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

2 (Judges enter courtroom)

3 [09.01.43]

4 MR. PRESIDENT:

5 Please be seated. The Court is now in session.

6 Mrs. Se Kolvuthy is now instructed to report on the attendance of

7 the parties to the proceedings during today's session.

8 THE GREFFIER:

9 Mr. President, the parties to the proceedings today are all
10 present.

11 MR. PRESIDENT:

12 The security personnel are now instructed to take the accused to
13 the dock.

14 We would like now to give the floor to the international
15 Co-Prosecutor to make his final closing statement. You may now
16 proceed.

17 MR. SMITH:

18 Mr. President, Your Honours, yesterday we completed our
19 submission on the evidence in relation to the crimes and the
20 jurisdiction of the crimes charged and in relation to the
21 evidence on the accused's participation in those crimes. To
22 finalise our submission today, we would like to now address you
23 on two areas.

24 First, how the accused's participation in the crimes can be
25 legally characterized in terms of the accused's individual

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1 criminal responsibility under Article 29 of the ECCC Law. And
2 second, we would like to address Your Honours on what factors
3 should be taken into account when considering a sentence.
4 Your Honours, given the unplanned breaks yesterday, I believe the
5 prosecution has about an hour and 25 minutes left of their
6 allotted five hours, and I will finish well within that time
7 allotted.

8 Briefly, before I commence, I'd like to make two corrections to
9 yesterday's submission -- well, one correction. First, in
10 relation to the evidence of the accused's physical mistreatment
11 of detainees at S-21, I referred to him beating prisoners with
12 sticks in 1977. I sourced this incident to the evidence of Lach
13 Mean, Chhun Phal and Nhem En. The evidence reference, in fact,
14 should just be to Nhem En, which I can refer Your Honours to at
15 trial day 4th of August 2009, the English transcript at page 119
16 to 120 and 128.

17 [09.06.00]

18 Your Honours, the accused is charged in the indictment under
19 Article 29 of the law as a planner, instigator, orderer, aider
20 and abetter, and a person who committed the crimes at S-21. Put
21 simply, if we bear in mind the accused's role in the
22 establishment of S-21 right up until the managing and its final
23 day, the evidence clearly establishes that he undertook all of
24 those forms of participation as identified in the indictment.
25 He had to act in these different ways to commit the crimes, due

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1 to the fact that he was involved in the establishment of the
2 prison, the sheer size of the prison and the staff at S-21 and
3 S-24, as well as because of the fact of the length of the
4 operation of the prison and the accused's hands-on management
5 role. Although this makes common sense, we have detailed the law
6 and applied the facts to it; how his participation fulfils each
7 mode of this liability in our written brief, which we filed two
8 weeks ago with Your Honours, and we refer Your Honours to that
9 for further submissions.

10 Your Honours, the accused is also charged as a superior who
11 failed to prevent or punish his subordinates from committing the
12 crimes. Again, there is no doubt that he had absolute control
13 over his staff at S-21 and S-24, and that he was well aware that
14 the crimes were occurring and he failed to prevent or punish
15 them. This is obvious, of course, because he wanted his
16 subordinates to commit them.

17 I will now discuss more specifically the accused's responsibility
18 for the crimes under the mode of liability called commission. We
19 have asked you to reflect in your judgement the full scope of the
20 accused's criminal activity by finding him guilty for his crimes
21 at S-21 as part of a Joint Criminal Enterprise. This form of
22 liability, as you are well aware, has been determined by
23 international tribunals to be a form of commission.

24 [09.08.52]

25 And why is it important? Simply because in such a case as this

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1 it more accurately reflects the facts and captures the essence of
2 the accused's criminal responsibility. The accused did not act
3 alone, nor could S-21 have achieved its horrific efficiency had
4 the entire enterprise not involved the accused planning and
5 working together with his immediate superiors and his immediate
6 subordinates. Your Honours, this was an enterprise of an
7 enormous scale, criminal to its core.

8 The legal recognition of commission of crimes by participation in
9 a criminal plan or enterprise has been a part of international
10 criminal law since the Nuremberg trials. It has been applicable
11 before both the International Criminal Tribunal for the Former
12 Yugoslavia, the International Criminal Tribunal for Rwanda, the
13 Special Panel for Serious Crimes in East Timor, the State Court
14 of Bosnia and Herzegovina, the Special Court of Sierra Leone,
15 whose statutes refer to the same modes of liability as Article 29
16 of the ECCC Law.

17 By following the language of these statutes and on this issue,
18 the drafters of the ECCC Law clearly intended the provision to be
19 interpreted and applied consistently with the law of
20 international tribunals.

21 Applying commission by a Joint Criminal Enterprise to this case
22 is consistent with international criminal standards as practiced
23 before international courts. In fact, given the facts of this
24 case, refusing to apply this mode of liability would place this
25 Court at odds with every international criminal court and would

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1 amount to an error in the application of the law.

2 The essence of committing a crime via JCE is that individuals in
3 positions of power must be held accountable for the full extent
4 of their criminal responsibility. The gravity of their
5 criminality comes from their grand criminal vision. It comes
6 from the abuse of their power and authority through which they
7 employ others as tools to achieve their criminal objectives.

8 [09.11.41]

9 Being a form of criminal responsibility that arises out of a
10 systemic criminal enterprise is far more serious than the sum of
11 individual criminal orders and individual crimes. The
12 application of JCE, or Joint Criminal Enterprise, in this case is
13 appropriate because it perfectly captures the scope of the crimes
14 committed by the accused. It also captures the evolution of
15 these crimes and the ways in which the accused developed and
16 refined the criminal plan over time to identify the enemies and
17 to smash them.

18 The defence cannot complain about lack of notice on this issue.

19 The Co-Prosecutors have pleaded the existence of this Joint
20 Criminal Enterprise since its final submission prior to the
21 indictment being issued in 2008. When the Co-Prosecutors
22 appealed the indictment last year as it did not include the
23 charges of national crime nor the mode of liability of Joint
24 Criminal Enterprise, the accused in their response said such an
25 appeal was not necessary as the prosecution could raise the issue

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1 at trial.

2 At the opening of this trial, the Co-Prosecutors raised the issue
3 of Joint Criminal Enterprise and it has been thoroughly argued in
4 written briefs before this Chamber. We respectfully disagree
5 with the Pre-Trial Chamber's findings on the issue of Joint
6 Criminal Enterprise and invite Your Honours to find the accused
7 guilty of the crimes through participation of a Joint Criminal
8 Enterprise and, consequently, because of this notice from 2008,
9 the accused cannot argue that they have had lack of notice of
10 this mode of liability.

11 Your Honours, with regards to the accused's physical commission
12 of crimes, it's limited to a relatively small but significant
13 number of acts. I have referred Your Honours both today and in
14 our written briefs to the evidence that clearly proves his
15 personal mistreatment and torture of prisoners when he slapped,
16 beat and kicked them, as well as ordering prisoners to beat each
17 other. Consequently, for these acts, he should be found guilty
18 under the mode of physical commission.

19 [09.14.28]

20 We therefore, Your Honours, ask that you find the accused guilty
21 on all counts for committing, planning, instigating and ordering
22 the crimes, as well as for failing to prevent or punish his
23 subordinates as a superior. Although the accused's actions would
24 clearly qualify his participation under the form of aiding and
25 abetting the crimes, we submit that the other modes of liability

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1 better reflect the seriousness of his acts.
2 For all the reasons I have mentioned, we wish to submit that the
3 prosecution has proved beyond reasonable doubt that the accused
4 bears criminal responsibility for the following offences: crimes
5 against humanity, namely murder, extermination, enslavement,
6 rape, imprisonment, torture, persecutions on political and racial
7 grounds, and other inhumane acts; in relation to grave breaches
8 of the Geneva Conventions against the Vietnamese civilians and
9 military prisoners of war, namely wilful killing, torture and
10 inhumane treatment, wilfully causing great suffering or serious
11 bodily injury, wilfully depriving a prisoner of war or civilian
12 the right to a fair and regular trial, and unlawful confinement
13 of a civilian; and torture and homicide contrary to the Cambodian
14 Penal Code of 1956.

15 [09.16.21]

16 Your Honours, I will now turn to the second part of our
17 submission today. The issue is sentencing.
18 Your judgement on these crimes will be unprecedented in Cambodian
19 judicial history. There are no guiding principles in national
20 law, in particular for crimes against humanity and grave breaches
21 of the Geneva Conventions. And apart from the minimum and
22 maximum penalties prescribed under the ECCC law, five years to
23 life imprisonment, this law, the agreement and the Internal Rules
24 do not provide any additional assistance. Therefore, this
25 Chamber is bound to examine the sentencing principles found in

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1 other international criminal tribunals dealing with similar
2 crimes. I will now deal with each principle in turn.

3 It's widely accepted that the most important consideration in
4 determining a sentence is the gravity or the seriousness of the
5 crime. The sentence must reflect the inherent gravity or
6 totality of the criminal conduct of the accused. Gravity of the
7 crime is, therefore, the starting point for the Chamber's
8 deliberations upon the appropriate sentencing range.

9 Under international jurisprudence the gravity of a crime is to be
10 assessed by considering at least three factors: one, the nature
11 of the crimes and the means by which they are committed; two, the
12 extent of impact upon the victims; and three, the degree of
13 participation of the accused. I will now examine these factors
14 separately.

15 Regarding the nature of the crimes and the means by which they
16 were committed, there is no doubt that the crimes at S-21 were of
17 the utmost gravity both in number and type. More than 12,000
18 human lives were destroyed. A large percentage of these victims
19 were brutally tortured. All suffered unspeakable conditions.
20 Most significantly, these crimes were not a collection of
21 individual random acts of brutality that occurred sporadically or
22 without design, they occurred daily, systematically and
23 deliberately within the 41-month life of the prison. These acts
24 are heinous and shocking.

25 [09.19.03]

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1 Now, regarding the impact of the crimes on the victims and
2 witnesses, particular consideration is given to the long-term
3 physical and psychological effects suffered. This impact extends
4 to the family and friends of the victims as well as the wider
5 community.

6 As we know, for a prisoner, S-21 was a place of no return. Only
7 a handful survived. Three survivors who testified are
8 permanently scarred, mentally and physically, from their
9 imprisonment and mistreatment. These men have testified in
10 graphic detail of their suffering which has caused them to endure
11 it to this very day. They have suffered emotional instability,
12 anguish, anxiety, nightmares, knowing their survival was but pure
13 chance.

14 For the victims of S-21 who did not survive, a network of
15 traumatized family members and friends extends across not only
16 Cambodia, but across the entire world. Civil parties have
17 testified that the murder of their loved ones has ripped their
18 families apart. Evidence has been heard that such suffering has
19 led them or some family members to commit suicide as the only way
20 to deal with their grief. The number of these relatives and
21 friends directly affected by the loss at S-21 is unknown, but
22 almost certainly reaches to the tens, if not hundreds, of
23 thousands.

24 There also should not be forgotten that there were many
25 lower-ranking staff members at S-21, most from poor, peasant

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1 backgrounds who were forced to participate in the crimes against
2 their will. These staff, recruited by the accused, will suffer
3 today from what they saw and what they were ordered to do.
4 Clearly, the costs and consequences of the crimes at S-21 for the
5 wider community are still being felt today. For example, Dr.
6 Chim Sotheara testified at length about the country-wide,
7 post-traumatic stress disorder suffered by the victims of the CPK
8 crimes. The crimes at S-21 form an integral part of these crimes
9 which have left a legacy of trauma, violence, depression,
10 separation and destruction of familial, cultural and societal
11 identity.
12 [09.21.54]
13 Your Honours, the extent of the accused's participation must also
14 be considered in determining the sentence. Under international
15 criminal law, cases often fall into two categories; one, where
16 the accused inflicts pain and suffering upon the victims with his
17 own hands; and two, where the accused, because of his superior
18 position, was able to inflict his pain and suffering through
19 others. When an accused is both a superior and an active
20 participant in the crimes, he becomes more culpable. Similarly,
21 where an accused displays enthusiasm while he participates in the
22 crime, the crime is viewed as more serious. The same is true
23 when the accused commits the crime voluntarily, willingly,
24 knowingly and with premeditation.
25 As we've explained earlier, the accused voluntarily joined and

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1 stayed with the CPK in full knowledge of the violence with which
2 it sought to achieve it's aims. Over the course of his
3 involvement, he worked his way up the CPK hierarchy, becoming a
4 highly reliable and trusted security expert working in close
5 co-operation with the very highest leaders of the party.
6 In committing these crimes, the accused exhibited great zeal and
7 enthusiasm. He was a committed teacher who relished transforming
8 individuals into torturers and killers. He was a perfectionist
9 who took pleasure in assuring the proper administration of S-21
10 whether it be by choosing locations, training staff, devising
11 questions or ordering interrogation and torture techniques. In
12 his role as Chairman, the accused was significantly responsible
13 for the widening net of torture, terror and suffering in
14 Cambodia. Because of his analysis of confessions and subsequent
15 recommendations, thousands were arrested, tortured and ultimately
16 executed.

17 [09.24.10]

18 Within S-21, he ordered his subordinates to interrogate and kill.
19 By his own admission, he toured interrogations cells. He
20 personally kicked and hit prisoners and caused prisoners to beat
21 each other. His faith in the CPK was unqualified. It allowed
22 him to remain absolutely committed to his role in the system and
23 indifferent to the suffering of the victims or their pleas for
24 mercy. Taken as a whole, his extensive participation in the
25 crimes made him one of the most effective tools of the CPK's

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1 policy by seeking out, arresting and killing its perceived
2 enemies. The crimes committed by the accused at S-21 are rarely
3 matched in modern history in terms of their combined barbarity,
4 scope, duration, premeditation and callousness.
5 I would now like to turn to the circumstance of the accused as a
6 factor to be considered in sentencing. Particularly relevant are
7 his age and education at the time that he joined S-21. Unlike
8 most of the staff he employed, the accused was highly educated,
9 intelligent and exceptionally logical. It is clear that he had
10 the ability to move towards the CPK or away from it, and he made
11 his choice. When he started at S-21 in his early 30s, he was not
12 naïve and impressionable like most of the staff he personally
13 employed and indoctrinated.
14 Having spent four years as the Chairman of M-13, he knew what was
15 expected of him. Although perhaps less sophisticated in its
16 operations than S-21, M-13 had the same purpose and method of
17 operation; its goal was to arrest, detain, interrogate, torture
18 and execute CPK's enemies. From his experience, the accused was
19 not just well versed in the ordering of interrogation, torture
20 and killing, he had personally tortured many times himself.
21 Therefore, from the moment he was asked to establish S-21, his
22 second interrogation, torture and killing centre, the accused
23 understood the exact nature of the undertaking and he was ready
24 and willing to accept it. The fact that he was an intelligent
25 man who had undergone extensive education when he made his free

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1 choice is a relevant matter that the Chamber should consider in
2 sentencing.

3 [09.27.11]

4 Having dealt with the gravity of the offence, degree of the
5 accused's participation and his circumstances, I will now turn to
6 factors that international criminal courts consider as
7 aggravating in the consideration of an appropriate sentence.
8 Three particular recognized aggravating factors are relevant in
9 this case. First, the accused's abuse of power, second the
10 particular cruelty inflicted and, third, the defencelessness of
11 the victims.

12 Abuse of power. Although the mere fact that an accused holds a
13 position of authority is not an aggravating factor; the manner in
14 which that authority is exercised may be. The accused, as a
15 prison warden, had legal and moral obligations to protect the
16 rights of its detainees, yet, in reality, he presided over the
17 systematic mistreatment, torture and murder of those under his
18 care.

19 At no point during his chairmanship could it be said that he had
20 any intention or felt any duty to protect the welfare of the
21 prisoners. The accused did and thought the exact opposite. The
22 purpose of his role was not to protect but, in fact, to degrade,
23 torture and kill those who otherwise should have expected his
24 protection.

25 Second, turning to the cruelty, the particular cruelty, for which

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1 the crimes were committed. International jurisprudence holds
2 that the infliction of unusual pain and suffering should be seen
3 as aggravating in sentencing. Such pain and suffering must go
4 beyond the normal commission of the crime and display a
5 particularly savage, sadistic or ruthless quality. And cruelty
6 can be considered to be psychological or physical.

7 [09.29.32]

8 The catalogue of brutality employed by guards and interrogators
9 at S-21 was truly grotesque. The prisoners were subjected to
10 savage beatings which left them with bloody, exposed wounds.
11 Their toenails and fingernails were ripped out with pliers. They
12 were humiliated and forced to pay homage to images of dogs and to
13 physical objects. Some prisoners were electrocuted to the point
14 of unconsciousness; others were nearly drowned. Particularly
15 cruel was the force feeding of excrement. Prisoners also
16 suffered the horrors of being surgically operated on whilst alive
17 and having their blood drawn resulting in a slow, agonizing
18 death.

19 The brutality of S-21 was particularly unbearable
20 psychologically. The terror, shock, fear and utter confusion
21 endured by the prisoners is beyond our imagination. These
22 prisoners were held in cells, aware of the torture and suffering
23 that surrounded them, seeing wounds and moans of the victims that
24 foreshadowed their own fate.

25 The degrading and humiliating unsanitary conditions in the cells

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1 made many prisoners fall sick. Some prisoners died in these
2 conditions, their corpses often remaining in the communal leg
3 irons for hours or, at times, overnight, before they were taken
4 away. Imagine what each prisoner would have felt, lying in those
5 shackles, when fellow prisoners disappeared, wondering when their
6 name would be called. It's no wonder prisoners committed suicide
7 or attempted; believing that ending their pain was better than
8 enduring it whilst they lived. Again, from this distance, we
9 cannot even begin to understand the extreme psychological effects
10 of being subjected to multiple interrogation and torture sessions
11 with the savage violence these prisoners endured.

12 [09.31.57]

13 The final act of cruelty committed against each prisoner came at
14 Choeung Ek. Blindfolded and handcuffed, the prisoners were
15 forced to kneel down in the dark next to their own burial pits.
16 There they waited until the blow of a shovel or cart axle broke
17 the back of their heads and, if that did not kill them, their
18 throats were slit before they were kicked into their grave.

19 Your Honours, the third and final factor we submit for
20 consideration as an aggravating factor relates to the particular
21 defencelessness of the victims. These prisoners had no
22 protection. Starved, shackled, tortured, with no ability to
23 defend themselves, they were helpless.

24 Yours Honours, we submit that, in this case, all three
25 aggravating factors -- abuse of power, particular cruelty in the

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1 crimes, and the defencelessness of the victims -- are directly
2 relevant and must be taken into account in determining the
3 accused's sentence.
4 Your Honours, just as you should take into account the
5 aggravating factors when determining your sentence, you should
6 also take into account any mitigating factors that may be
7 present. The defence may argue that the accused committed his
8 crimes under duress and because he was acting under superior
9 orders. In addition, they may request that you take into account
10 his co-operation, his de facto guilty plea, remorse and the
11 consequent effect these factors may have on national
12 reconciliation in Cambodia.

13 [09.33.57]

14 I will first discuss duress. As we've explained at length, the
15 accused claims he hated his work and committed these crimes under
16 duress out of fear that he would be killed if he disobeyed his
17 orders and, as I've said it earlier, the evidence does not
18 support this interpretation of the facts. The assertion the
19 accused was both a hostage and a prisoner of the CPK, even at an
20 early stage of his involvement in the criminal activities, is
21 contradicted by recollections from François Bizot, his prisoner
22 and confidante at M-13. Bizot writes:

23 "Terror from that moment became all powerful. It seduced him by
24 putting on the face of morality and order."

25 Bizot did not see a man in terror, but rather a man of terror.

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1 The accused's assertion that he was in fear throughout S-21's
2 operations is contradicted by his own statements to the
3 Investigating Judges. He told them, and I quote:
4 "I was particularly affected after seeing the mass arrest of
5 cadre from the Northern Zone on the 31st of January 1977 because
6 I felt a lot of sympathy for them. I was terrified. And after
7 the arrest of Nget You alias Hong on the 13th of March 1978 and
8 Vorn Vet on the 2nd of November 1978, I began to fear for my
9 life."
10 Therefore, in his own words, he began to fear for his life in
11 1978. This is likely to be closer to the truth and conforms with
12 the analysis of Dr. Chandler.
13 [09.36.16]
14 In arguing their claim of duress, the defence contend that the
15 fear which motivated the accused emanated from a climate of
16 terror that gripped Democratic Kampuchea. The existence of such
17 a claim is undoubtedly true and has been established by both
18 witness and expert testimonies at trial; that is, the existence
19 of a climate of terror. But what the defence have not
20 established is that the accused was subject to that terror. In
21 fact, the evidence demonstrates that he was unaffected. It
22 demonstrates that he was not a victim of terror, but its cause.
23 The accused, as protector of the CPK party centre, was entrusted
24 with intelligence gathering and state security. His position
25 also made him -- in the words of Elizabeth Becker -- "one of the

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1 half dozen most important leaders in the country".

2 Taken together, the evidence does not show a fearful man. To the
3 contrary, it demonstrates a confident man who spreads terror
4 across Cambodia through his work at S-21; a man who was
5 irreplaceable in his position.

6 It's well recognized that totalitarian regimes that maintain
7 control through terror -- that they do maintain control through
8 terror. It's also accepted that these terror systems often turn
9 on their creators. As the philosopher and Holocaust survivor,
10 Hannah Arendt states:

11 "Terror turns not only against its enemies but against its
12 friends and supporters as well. The climax of terror is reached
13 when the police state begins to devour its own children; when
14 yesterday's executioner becomes today's victim."

15 [09.38.26]

16 Given the all consuming terror that existed in Democratic
17 Kampuchea, it's not surprising that the accused and the other
18 senior leaders eventually felt fear. It would be far more
19 surprising if they didn't. Ultimately, the fact that the accused
20 may have felt fear in 1978 does not overshadow the fact that he
21 freely and willingly designed a system of terror or that he was
22 once an enthusiastic and willing participant in these crimes.
23 Your Honours, the accused should not be able to hide behind the
24 effects of the terror that he, in fact, created. Furthermore, he
25 cannot be credited for fear he says he may have felt in 1978 when

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1 the vast majority of crimes had already been committed.
2 The presence of duress is closely linked to the mitigating factor
3 of committing crimes pursuant to superior orders. Under Article
4 29, it leaves open the possibility that acting pursuant to a
5 superior order, at the discretion of this Court, may mitigate
6 punishment, although the presence of them cannot be a basis to
7 extinguish criminal responsibility. Under international criminal
8 law, a subordinate attempting to rely on a superior's orders as a
9 mitigating circumstance must show that the orders had an
10 influence on his or her behaviour. If the subordinate was
11 already prepared to carry out the criminal conduct, no such
12 mitigating circumstance can be said to exist.
13 This, Your Honours, we submit is a situation in the case of the
14 accused. As we've already shown, it was the accused's own desire
15 to advance the revolution and smash its enemies and not his
16 superiors' specific orders which caused him to participate in the
17 crimes in the way he did. He believed in the validity of the
18 orders and, in fact, supplied recommendations which in many cases
19 led to those orders being issued. For these reasons, we submit
20 that the mitigating circumstances of both duress and superior
21 orders do not apply in this case.
22 I will now turn to four other interrelated mitigating
23 circumstances that you may be requested by the accused to take
24 into account in determining his sentence. These four are
25 co-operation, guilty plea, remorse, and the consequent effect

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1 these factors may have on national reconciliation in Cambodia.
2 International jurisprudence clearly recognize that an accused's
3 co-operation with a prosecutor is a mitigating factor to be taken
4 into account in sentencing. Actual credit depends on the quality
5 and quantity of the information provided and whether it was given
6 voluntarily and selflessly without asking for anything in return.
7 When co-operation makes the trial more efficient, substantial
8 credit can be given. Consequently, early co-operation in the
9 process will have a greater value.

10 [09.41.59]

11 An accused can also co-operate by testifying against others in a
12 subsequent trial. The information by the accused must strengthen
13 known facts and, therefore, save resources during trial or the
14 investigation. If the information provided is limited or if it
15 is not wholly true, the giving of that information is
16 insufficient mitigation. Your Honours, I will suggest that in
17 this case the easiest way to assess the accused's co-operation is
18 by looking at his actions prior to his arrest and through to his
19 investigation and trial.

20 After the accused committed his crimes at S-21, he made a choice
21 not to surrender himself to the authorities. In fact, he missed
22 every opportunity to do so from 1979 until his discovery and
23 arrest in 1999. For 20 years he lived as a fugitive; for the
24 first 15 with the former senior leaders of the CPK.

25 The accused and his work colleagues testified that in the 1990s

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1 he concealed his past by changing his name and not revealing his
2 role as chief torturer and executioner of S-21. He said he
3 changed his name particularly to avoid being located by
4 investigative journalists. This, of course, would have
5 jeopardized his freedom.

6 One of those investigative journalists, Nic Dunlop, tracked him
7 down in 1999 and that ultimately led to his arrest. It was only
8 after he was confronted by Dunlop with evidence of his
9 involvement in S-21 that the accused considered it impossible to
10 deny the truth.

11 He also made it clear in these proceedings that had he not been
12 found by Dunlop it was unlikely he would be on trial. He stated
13 that, "Everything was compromised when Nic Dunlop found me".

14 It's on the 2nd of September, page 55 and 56.

15 [09.44.30]

16 Years after his arrest, it appeared that the perseverance of
17 Dunlop infuriated the accused. Whilst the accused was in
18 custody, Dunlop records in his book asking his lawyer, Mr. Kar
19 Savuth, how the accused felt about being arrested when so many
20 others were walking free. Mr. Kar Savuth told him that the
21 accused was angry, saying "It was because of you that he was put
22 in jail".

23 However, Your Honours, while in custody and over time, after
24 receiving legal advice the accused has come to accept that he
25 does bear individual responsibility for the crimes at S-21; that

22

1 he cannot just blame the policies of the senior CPK leaders for
2 his actions. After this realization, he has provided evidence to
3 the Investigating Judges and prosecution on the inner workings of
4 S-21, and he's provided evidence on the structure and policies of
5 the CPK and the implementation of those criminal policies during
6 the DK period. And he's also provided information which is of
7 significant value in the prosecution of other senior leaders.
8 That said -- and we welcome that and he should be given some
9 credit for that -- but that said, with regard to his own
10 responsibility, as we have submitted he has only admitted part of
11 the truth. Despite accepting general overall responsibility for
12 the crimes he is, in effect, telling the Court, "I did terrible
13 things but it's not really my fault. It's the fault of my
14 superiors." It should also be recalled that he has mostly
15 admitted crimes that are undoubtedly established by the
16 documentary evidence and not more.

17 Your Honours, the accused's lack of co-operation with the Court
18 in deciding to only admit a limited responsibility for the crimes
19 to minimize his sentence is further demonstrated in the defence
20 strategy at Trial. The defence have continually tried to limit
21 the scope of the evidence and the ability of this Trial Chamber
22 to review the relevant facts of this case. This has been done
23 through a number of legal challenges. If you look at the
24 cumulative effect of these challenges, it's clear that they've
25 been designed to reduce the impact of the crimes and his personal

23

1 responsibility. I will briefly outline some aspects of this
2 strategy.

3 [09.47.35]

4 First, at the outset of this case in their opening, the defence
5 were effectively asking you to find that there was little
6 evidence to support the personal jurisdiction requirement
7 necessary to prosecute the accused arguing, on the one hand, that
8 this jurisdictional element is not made out and yet, on the other
9 hand, stating that the accused has been completely co-operative
10 with the Court, and yet still trying to undermine the case
11 against him. I'm referring to the jurisdictional requirement
12 that the accused was either a senior leader or most responsible
13 for the crimes in Democratic Kampuchea.

14 Second, the defence's objection to the admission of any evidence
15 or testimony concerning the accused's prior conduct and prior
16 behaviour occurring for four years at the M-13 security centre
17 was clearly designed to reduce the ability of this Trial Chamber
18 to determine his motive and intent for committing the crimes at
19 S-21.

20 By trying to restrict Your Honours from hearing this evidence,
21 Your Honours would have had less ability to address the key issue
22 in this case as the accused's willingness to commit the crimes at
23 S-21. They did not want you to take into account the fact that
24 he was an experienced, hardened torturer and killer well before
25 arriving at S-21. Yet the defence were more than happy for Your

24

1 Honours to hear of his good character in his early years as a
2 student and teacher before arriving at S-21.
3 [09.49.35]
4 Third, the defence objection to the submission by the prosecution
5 of detailed witness summaries of every key witness statement in
6 this case to the Trial Chamber was clearly motivated to ensure
7 that the impact of the crimes and the role of the accused was
8 less easily discovered. The practice of providing comprehensive
9 summaries of large amounts of evidence, particularly witness
10 statements, is common at other international criminal courts.
11 This is to ensure that the focus is kept on the key issues so
12 that all parties, including the Chamber, do not become lost in a
13 sea of evidence. In effect, these tools are a road map to assist
14 the Trial Chamber and the parties to understand the key issues of
15 the case more quickly. The purpose of the objections was clear.
16 Less clarity in the case would lead to less clarity as to the
17 role of the accused and the impact of the crimes.
18 Fourth, the defence clearly attempted to inhibit the flow of
19 evidence to this Chamber by objecting to a proposed reserve
20 witness list. A reserve witness list was put forward by the
21 prosecutors to fill potential evidentiary gaps that may have been
22 left if the scheduled witnesses suffered memory loss or were
23 reluctant to tell the truth. Due to the fact that the parties
24 were not able to assess the reliability of a witness by meeting
25 them prior to the trial, it submitted that the reserve list

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1 proposal was reasonable. In this case particularly, there was a
2 reasonable risk to take into account, bearing in mind most
3 witnesses who survived were the staff at S-21.
4 [09.51.32]
5 To put it mildly, it was reasonable to expect that these
6 witnesses would have been less than enthusiastic about testifying
7 due to feelings of personal guilt and embarrassment of having
8 participated in the crimes at S-21. With the first S-21 staff
9 witness, these predictions proved to be true.
10 As these witnesses continued to come, it was evident that there
11 was a general reluctance by most of them to talk freely,
12 especially in public and in the presence of their former chief.
13 Luckily, most of them gave prior statements in the judicial
14 investigation, allowing them at the least to be firmly guided
15 back to a truer account of events.
16 Fifth, and unfortunately for this case, the defence decided to
17 energetically take over the Court's role of advising the first
18 S-21 interrogator witness that if he testified it was quite
19 possible he would be prosecuted for crimes he may have committed
20 at S-21 in the national courts. Despite the fact that this
21 possibility on any account was less than remote, the effect of
22 raising that fear by the defence in the manner that it did in the
23 mind of the first S-21 witness, sent a message through the media
24 to all the remaining S-21 witnesses that testifying was a risky
25 business.

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1 These early warnings, beyond the defence's mandate, done in
2 public, based on dubious legal reasoning no doubt put fear into
3 every S-21 witness into fully disclosing what they knew about the
4 crimes and the accused's role at S-21. We can only speculate
5 what effect these unsolicited warnings had on the witnesses, but
6 we can certainly say the warnings of the defence did not
7 encourage the witnesses to tell the truth.

8 [09.53.41]

9 Amazingly, when witnesses like Mam Nai clearly did not tell the
10 truth, the defence appeared to take great satisfaction about such
11 failure. Here's an actual quote from the defence counsel
12 following Mam Nai's testimony:

13 "Mr. Prosecutor, I'd like to thank you. If you have any other
14 witnesses like this one, please do not hesitate to call them."

15 This remark by the defence was particularly disturbing, bearing
16 in mind Mam Nai was the very witness they warned of the dangers
17 of testifying in this Court.

18 Your Honours, the accused and the defence may submit to this
19 Court, "We are co-operating and want to admit full responsibility
20 and have told the truth about S-21 to assist in this country's
21 reconciliation process". It's difficult to see how taking such
22 great satisfaction from witnesses not telling the truth in this
23 assists that process.

24 Finally, the defence have also attempted to limit the flow of
25 documentary evidence to the Chamber which would otherwise assist

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1 it in resolving the factual issues in this case. For example,
2 the documents supporting Craig Etcheson's expert report, the
3 armed conflict documents and documents containing annotations of
4 the accused's handwriting were all challenged by the defence on
5 the basis that they were unnecessary and repetitive. This led to
6 time-consuming and unnecessary argument before the Chamber about
7 the relevance and probative value of such documents.

8 So, Your Honours, to sum up. What is the overall effect of the
9 accused's co-operation with this Court? It should be judged at
10 two levels. At one level, he has co-operated by providing
11 evidence that has given the Court a better understanding of the
12 CPK regime, its criminal policies, its structure and
13 communication methods, as well as the inner workings of S-21. At
14 the same time, he has assisted in providing valuable information
15 which will assist the prosecution of other suspects. Therefore,
16 he has provided valuable information to the prosecution.

17 [09.56.05]

18 However, at another level, he has been unco-operative and not
19 truthful about his role at S-21. He has sought to shift
20 responsibility for his crimes elsewhere and in a number of cases
21 where he has given truthful answers, it was largely because he
22 found it difficult to maintain the falsehood, particularly when
23 he was less conscious of maintaining his defence.

24 As I've illustrated, through his defence the accused has been
25 less than co-operative by attempting to limit the evidence flow

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1 and clarity of the evidence so as to reduce this Chamber's
2 ability to understand the full gravity and impact of the crimes
3 and the accused's role in them. Of course, these challenges and
4 objections are within their rights. However, you cannot heavily
5 challenge the trial process at every stage and then claim at the
6 end that you are co-operating.

7 I will now move to two interrelated mitigating factors, the
8 entering of a guilty plea and expression of remorse. Both of
9 these acts require a level of sincerity and honesty on the part
10 of the accused. Although there is no concept of guilty plea
11 under ECCC and Cambodian law, Your Honours are required to
12 evaluate the accused's admissions when considering the
13 appropriate sentence. Full admissions of responsibility and
14 unequivocal guilty pleas can be particularly beneficial for
15 victims and play an important role in reconciliation and
16 establishment of an historical record.

17 [09.57.53]

18 I will not repeat our arguments about the fact that the accused
19 has not been truthful about his willing role in carrying out the
20 crimes at S-21, but will simply ask Your Honours to take them
21 into account. No one should make the mistake of believing that
22 this case is equal to an unqualified guilty plea before an
23 international tribunal. It should be recalled that significant
24 differences remain between the prosecution and the defence in
25 relation to the issue of the accused's voluntary and active

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1 involvement in the crimes.

2 We acknowledge that as these proceedings have continued, the

3 accused has appeared to make more concessions about this role.

4 This was also the case with the Investigating Judges. We accept

5 that even this qualified acceptance of responsibility may have

6 helped some of the victims' families, corroborated the available

7 evidence and facilitated, to some extent, the shortening of this

8 first Trial. And yet it should be recalled that whenever pressed

9 on his own involvement, the accused has been consistently

10 recalcitrant and in our view, dishonest.

11 As an example, I would refer Your Honours to Judge Cartwright's

12 questioning of the accused on the issue of his character, in the

13 final stages of the Trial. Despite Her Honour putting to him

14 evidence which showed that his behaviour at S-21 far exceeded

15 that of someone who acted under threat or otherwise unwillingly,

16 he failed to make one concession. This was the accused's

17 opportunity to speak candidly and openly to the Chamber and he

18 abandoned it.

19 What are we left with? Essentially, the accused's claim that he

20 was forced to torture and kill against his will unless, of

21 course, he now chooses to take us up on the offer we made earlier

22 and confirms the brief statement he made when questioned by his

23 counsel. The accused must accept the reality that unless he

24 faces up to the truth and admits that he committed his crimes as

25 a devoted man with the enthusiasm and zeal of an ardent

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1 revolutionary, he has not accepted full responsibility for the
2 crimes in this Court.

3 [10.00.17]

4 Your Honours, as with admissions of guilt, the Trial Chamber must
5 evaluate whether an expression of remorse is genuine. It's fair
6 to observe that the accused's expressions of remorse have been
7 numerous. Yet that remorse is clearly limited by the
8 considerations of denial of responsibility to which I have just
9 referred. The evidence from the psychologists is that the
10 accused has an inability to empathize but the psychologists have
11 also said, in effect, he's a pragmatist. They suggested that
12 that he converted to Christianity because he took the view that
13 Communism was a spent force.

14 To the extent that the accused has expressed remorse openly in
15 these public proceedings, it is a relevant consideration for this
16 Chamber. However, in light of his failing to admit his full
17 responsibility in the crimes and his limited ability to empathize
18 with the victims, this consideration should be limited.

19 Finally, the defence have argued that the accused's co-operation
20 and remorse will contribute to national reconciliation and that
21 that will be best achieved by a sizeable reduction in his
22 sentence. In our view, while national reconciliation is a
23 legitimate consideration for this Court, the accused's behaviour
24 has not added significantly to it. The central purpose of this
25 trial is to ascertain the truth, impose a just and proportionate

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1 sentence and end impunity.
2 [10.02.06]
3 To the extent that that process will contribute to national
4 reconciliation, we submit that a heavily reduced sentence will,
5 in fact, hamper and not help the attainment of national
6 reconciliation in Cambodia. But first it must be said that
7 national reconciliation is a by-product of a criminal trial, not
8 its purpose. As much as the defence would prefer a truth and
9 reconciliation process that simply lays out the facts, Cambodia
10 and the international community chose instead a court of law that
11 applies imprisonment as punishment if convictions are found. It
12 should be recalled that before this trial, he opted to stay with
13 the Khmer Rouge until only a few years before his arrest. His
14 current qualified co-operation, admissions and remorse, while
15 helpful, confirming that the Khmer Rouge committed international
16 crimes, cannot claim to have any discernable impact on peace in
17 Cambodia or in the minds of the victims.
18 More significantly, the defence have failed to show how a lighter
19 sentence would have any effect on national reconciliation. For
20 example, would there be public disapproval and unrest were the
21 accused to receive a sentence of long-term imprisonment? Our
22 understanding of the facts and sentiments in the Cambodian
23 community is quite the contrary. We believe that to take the
24 first step in righting the wrongs of S-21, humanity must be made
25 whole by sternly punishing one of its own for ignoring it so

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1 gravely. Doing so will do far more for humanity, and even the
2 accused's humanity, than giving in to a misguided notion that a
3 disproportionately low sentence somehow facilitates
4 reconciliation.

5 [10.04.17]

6 Your Honours, the next factor I'll turn to in favour of the
7 accused is the time that he's previously spent awaiting trial in
8 custody. This Chamber has already ruled that, upon conviction,
9 he's entitled credit for time served in detention of the ECCC
10 since the 31st of July 2007 and for the eight years, two months
11 and 20 days he was detained under the orders of the Cambodian
12 military court prior to his transfer to the ECCC.

13 Your Honours have also ruled that the accused is entitled to an
14 additional remedy to compensate him for the serious violation of
15 his rights in being detained contrary to applicable law. The
16 case law of other international tribunals suggests that such a
17 remedy would require a specific reduction in sentence. The ICTR
18 cases of Barayagwiza and Kajelijeli are particularly relevant.
19 In these two cases, the accused received reductions of their
20 sentence of life imprisonment to sentences of 35 and 45 years,
21 respectively, due to the violation of their rights and being
22 unlawfully detained.

23 The Co-Prosecutors recognize that the violations of the accused's
24 rights in this case are more serious than in either of those two
25 cases. The maximum length of a pre-trial detention under

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1 Cambodian law for the offences with which the accused was charged
2 is three years. It follows that at least the additional five
3 years, two months and twenty days of his pre-trial detention by
4 the military court were unlawful. The Chamber has pointed out
5 to other irregularities in the accused's detention by the
6 military court, including a failure on the part of the
7 authorities to carry out a substantial and systematic
8 investigation into the allegations against him.

9 [10.06.29]

10 Here before the ECCC, as before every properly constituted court
11 in the world, the rule of law must be applied. The principals of
12 fair trial and due process must be applied. Therefore, when an
13 accused is not brought to trial within a reasonable period of
14 time or is held in pre-trial detention without proper
15 justification, such violations must be remedied. And because the
16 violations of the accused's rights are so substantial, the only
17 reasonable response is to grant a remedy that would affect the
18 ultimate sentence he must serve for these crimes.

19 In a case such as this, given the gravity of the crimes and the
20 extensive aggravating circumstances, the starting point for
21 considering a sentence must be life imprisonment. However, the
22 clear principals established by international jurisprudence
23 require the Trial Chamber to take this breach into account.

24 The Co-Prosecutors submit that the fair and appropriate course
25 for the Trial Chamber would be to commute the sentence of life

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1 which would have otherwise have been imposed to a determinate
2 sentence, such reduction to be an express and measurable remedy
3 for the breach of the accused's rights. And this leads me to my
4 conclusion.

5 Let's recall that unlike his prisoners at S-21 to whom this
6 accused denied even the slightest shred of humanity, he has been
7 met with open even-handed justice in this Court. He has received
8 a fair trial in accordance with the law and a bench of
9 independent and impartial judges. If convicted, he will be
10 sentenced to a punishment proportionate to those crimes.

11 Although he belonged to one of the most murderous and barbarous
12 regimes in the history of mankind, he will be sentenced only for
13 the crimes he committed.

14 [10.09.03]

15 At S-21, prisoners never received such treatment. They were
16 falsely accused and arbitrarily punished. No counsel argued
17 their case, no opportunity to confront their accusers at a public
18 trial, no ability to challenge the verdict and sentence in a
19 higher court. On the contrary, the accused insured they were
20 treated as animals. To him, they were enemies of the state who
21 deserved no mercy and no compassion.

22 Of course, Your Honours, nothing can justify the brutality and
23 humanity at S-21 and yet this accused clearly believed the
24 unthinkable acts perpetrated on the victims were not only
25 justified but necessary. Nothing shook that misguided belief

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1 throughout the years during which he engineered, perfected and
2 meticulously managed the CPK's most effective killing machine.
3 As we've illustrated, he worked tirelessly to identify, arrest
4 and smash perceived enemies. He created the very multiplier
5 effect which spread the web of S-21 throughout Cambodia.
6 The accused's repeated apologies and his tears at Choeung Ek when
7 confronted with the skulls of thousands of his victims, will be
8 held up to Your Honours as evidence of his contrition. We do
9 acknowledge that he's admitted the majority of the underlying
10 crimes at S-21 and his responsibility as Chairman and yet, you
11 must view his alleged remorse in the context of his continued
12 refusal to admit his active and enthusiastic participation in the
13 crimes.

14 Clearly, Your Honours, any denial of the base crimes at S-21
15 would have been futile in the face of the physical, testimonial
16 and expert evidence before this Court, but wherever possible, the
17 accused has adamantly sought to minimize his role. He accepts
18 responsibility only on his own terms where he attempts to paint a
19 picture of himself as an unwilling participant caught up in a
20 machine he could not escape; trapped by secrecy and terror. You
21 must not allow him to hide behind these false claims. You must
22 recall that he was not a victim of the system, but its loyal and
23 dedicated agent.

24 [10.11.59]

25 Mr. President, allow me to refer to a quote which encapsulates

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1 the dilemma that human dignity would have put before the accused
2 when he perpetrated these crimes. William Shawcross, the leading
3 British prosecutor at the Nuremburg War Crimes Trial, said:
4 "There comes a point when a man must refuse to answer to his
5 leader if he is also to answer to his own conscience."
6 Your Honours, in committing these crimes, the accused abandoned
7 his conscience. In fact, he abandoned every duty we, as human
8 beings, owe to one another.
9 The primary focus of this trial must be the gravity of the
10 crimes, their impact on the victims, and the accused's role in
11 the infliction of that suffering. The sentence must, therefore,
12 properly reflect the destruction the accused perpetrated so
13 willingly and enthusiastically. It must reflect his conscious
14 and free choice to abandon all respect for human life and his
15 choice of abuse of power over conscience.
16 In ordinary circumstances, in case of conviction, the only
17 appropriate punishment for the accused would be a life sentence
18 of imprisonment. In this case, however, specific factors warrant
19 a reduction from life imprisonment to a fixed number of years.
20 First, we submit that the conversion of a life sentence to 45
21 years would provide an express, measurable and appropriate remedy
22 for the accused's prior unlawful detention.
23 [10.14.06]
24 Second, we ask that a further reduction of five years be granted
25 for his general co-operation, limited acceptance of

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1 responsibility, his conditional remorse, and the possible affect
2 it may have on national reconciliation.

3 We submit, therefore, that the sentence to be imposed by this
4 Trial Chamber should be 40 years imprisonment.

5 Your Honours, we ask you to remember the stories of the thousands
6 of those victims who suffered at S-21. Your Honours should be
7 mindful of the dreams and opportunities that were denied. Also,
8 keep in mind the S-21's unrelenting brutality that was meted out
9 with no mercy to all prisoners, including hundreds of children,
10 the most defenceless of victims.

11 Finally, bear in mind the loss and suffering of the families of
12 those victims who are still suffering to this very day. Not just
13 the victims and their families, but the whole of humanity demands
14 a just and proportionate response to these crimes and this Court
15 must speak on behalf of that humanity. It must punish the
16 accused justly and send a clear message that crimes like these
17 must never be perpetrated again.

18 Cambodians have come to this Court from their towns and villages
19 from around the country. Many have come from overseas and
20 millions of others are watching intently on TV. They are waiting
21 for a justice that tells us how humanity will be protected. They
22 are waiting for a justice that tells them and tells those distant
23 voices from S-21 that this justice was done in their name, every
24 single one of them.

25 [10.16.44]

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1 Mr. President, Your Honours, let your judgement speak for justice
2 in finding this accused guilty and imposing the sentence we have
3 recommended; a sentence which reflects criminal responsibility
4 for more than 12,000 crimes. In imposing this penalty, you are
5 not taking away the accused's humanity, but you are giving it
6 back; back to the victims of S-21.

7 That concludes the prosecution's final statement, Your Honours.

8 MR. PRESIDENT:

9 The floor will be then given to the defence counsel to make their
10 oral closing statement, however, since it is now an appropriate
11 time to take an adjournment and we do not wish to interrupt mid
12 of their submission, so it would be appropriate to take the
13 adjournment for 20 minutes. The session will be resumed by
14 twenty to eleven.

15 (Judges exit courtroom)

16 (Court recesses from 1018H to 1040H)

17 (Judges enter courtroom)

18 MR. PRESIDENT:

19 Please be seated. The Court is now in session.

20 In a moment, we are going to hear the remarks from defence
21 counsel and the accused who will be presenting their closing
22 statements. The Chamber would like to remind the accused and his
23 counsel that you will have seven hours-and-a-half all together
24 for the counsel and the accused.

25 And the Chamber would like to be informed from the defence

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1 counsel whether the counsel would wish to make the closing
2 statement first or would it wish to give the floor to the accused
3 to make such remarks?

4 [10.41.55]

5 MR. KAR SAVUTH:

6 Mr. President, may it please the Court, the accused is allowed to
7 make his final remarks first.

8 MR. PRESIDENT:

9 The accused, you may now proceed with your closing remarks. You
10 can do that while you are still on your feet. It would be good.

11 THE ACCUSED:

12 Mr. President and Your Honours, I am very grateful to you for
13 giving me this opportunity to make my final remarks.

14 To begin with, I would like to read the statement I prepared
15 which is about the continuous killing by the Communist Party of
16 Kampuchea, CPK. The objective is to ascertain the general aspect
17 from which a particular aspect can be derived in accordance with
18 the general and particular principle, both being usual
19 contributors.

20 The general aspect in this case refers to the killing carried out
21 by the CPK during its entire history, whereas the particular
22 aspect refers to the crimes committed from the 17th of April 1975
23 to the 6th of January 1979 at S-21 in particular.

24 Killings before the 17th of April 1975.

25 1. The CPK began to kill people as soon as it began to carve out

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1 a liberated sector.

2 2. The misleading slogan used to conceal the CPK's crimes was to
3 destroy infiltrators in order to protect the revolutionary force.

4 3. The most publicized song at the supporting base was entitled
5 "The Malicious Infiltrator".

6 People who entered from the Lon Nol Sector.

7 4. During that time, people in the territory occupied by Lon Nol
8 forces who entered the liberated sector would definitely be
9 arrested and sent to the police office.

10 5. The police office had to be ready to receive the arrested
11 people so as to have them detained, interrogated and smashed.
12 Smashing the enemy was the policy adopted by the Party.

13 MR. PRESIDENT:

14 The accused, could you please hold on? You now may be seated
15 while reading your document but, number two, could you please be
16 reminded that you have been rather fast, and for the good record
17 could you please repeat point number 5 so that the interpreters
18 could well catch up with what you are saying?

19 THE ACCUSED:

20 People in the liberated sector.

21 7. Having read and analyzed the text in the Revolutionary Flag
22 magazine, the second semester issue of the 1971, particularly the
23 text on the experience acquired in the suppression of the Khut
24 Oudomvong Ratana and rebellion, I am convinced that there were
25 arrests and executions of people in the liberated sector as from

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1 the beginning. The sector armed force was deployed to oppose
2 those who engaged in armed rebellion against them. Suspects were
3 arrested and sent to the police office.

4 [10.47.45]

5 III. The people in the supporting base.

6 8. Amleang Commune in Thpong District, Kampong Speu province,
7 was the supporting base. Widespread and systematic arrests of
8 the children of Amleang villagers were carried out after the B-52
9 bombs had been dropped on Kraing Thkov village which was a zone
10 office location. There were human casualties.

11 Next I would like to report on the actual situation. A day after
12 the bombardment Ung Choeun, alias Mok, ordered the arrest of
13 three Chinese who he suspected and had them sent to M-13. Mok
14 ordered Chou Chet alias Sy, to observe this interrogation closely
15 in order to ensure that the problem was solved in good time.

16 When suspicions and arrests proliferated, two people arrived
17 separately in Amleang in order to live there. Other people, the
18 children of Amleang villagers, each sought refuge in sight in
19 turn. A while later they left.

20 [10.49.16]

21 The four of them were arrested by the zone and sent to M-13.
22 Three confessed that they were asked to infiltrate the area. The
23 fourth person who was a middle-aged man with a full-grown
24 daughter had abducted his best friend's wife to Udong. He
25 confessed that Colonel Hang Yiv and Lieutenant Colonel Sary Say

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1 had discharged approximately 200 rifles and had them brought into
2 the liberated sector already. Mok and Sy were convinced that the
3 confessions were true because both of them fully grasped this
4 person's personal biography. It was a fortunate coincidence that
5 Mok was indeed in need of weapons to build up military forces to
6 fight Phnom Penh.

7 Mok ordered me to find the weapons mentioned in the confession.
8 To the best of my recollection hereforth (sic) Sy required me to
9 report regularly to him on the matter. Sy helped determine the
10 objective thought in interrogating some individuals as well as
11 the methods of torture to be used. I worked very hard for about
12 six months, searching for the weapons, but none was found.

13 During that time, about 50 Amleang villagers died in terrible
14 conditions. The cause of death was a combination of the fact
15 that they were under suspicion and had been implicated by other
16 people's confessions. As a result, the inhabitants of Peam
17 village lost more lives than those of surrounding villages. Peam
18 village was a former public gathering place of Thpong district
19 during the Sihanouk and Lon Nol regimes.

20 10. Sy called those who perished the feudalists and capitalist.
21 This characterization is intended to convey contempt. A
22 medium-level cadre, the son of a villager who was part of the
23 supporting base, had blamed the villagers for a change of heart.
24 He said that in 1971 we had been "chet muoy" or one of heart,
25 however, in 1972 our heart broke into two. That is "chet pi" or

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1 two hearts.

2 [10.52.03]

3 I was completely terrified at this destruction, but I just did
4 not know what I could do about it. The only opinion available to
5 me was to devise a proper interrogation tactic. I brought
6 Comrade Pon to interrogate an old bachelor who once worked as a
7 newspaper reporter. As his interrogation progressed, we learned
8 on the job. It took us more than a month to complete that
9 interrogation.

10 13. My commitment and the skill Pon and I developed had plunged
11 us both deep into a criminal act. We were made to work
12 endlessly. The work we were assigned was criminal.
13 Internal purge. Party cadres were arrested even before the 17th
14 of April 1975.

15 14. I still remember two Party lines concerning the internal
16 purge. First, the 10 criteria for selecting a cadre were based
17 on a principle characterized by the organizational policy to
18 demote and promote Party members and cadres at the behest of the
19 Party. The sincerity of the Party member no longer satisfied the
20 criteria set forth in the Party's statute of 1960.

21 A second line was the theoretical principle on whose basis the
22 Party could carry out purges. That theory was whose class the
23 line belongs, the cadre shall be from within that class. The
24 notion was propounded in the Revolutionary Flag magazine in 1973.
25 Note, the Party statutes of 1960 and 1971 and the Revolutionary

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1 Flag magazine of 1973 were never published. However, the 10
2 criteria appeared in Article 5, chapter 2 of the Party statute of
3 1976.
4 [10.54.31]
5 15. Anyone the Party identified as an enemy had to be smashed.
6 The Chief of Police Office had no right to challenge such a
7 decision.
8 Now, I would like to recall the events of 1973. That year, a
9 platoon secretary accused his deputy secretary of attempting to
10 shoot while he was asleep. Luckily, the bullet pierced his
11 mosquito net and hammock. Mok had great trust in that person who
12 was reporting the incident. He gave me firm orders to be hard on
13 him.
14 Meanwhile, Mok let me meet the complainant to obtain more
15 information from him and to examine the exhibits, the mosquito
16 net and the hammock. I analyzed them and observed him, including
17 his facial expression. I reported my finding to Mok through Vorn
18 Vet, as I did not wish to upset him. According to the finding,
19 it was the comrade secretary of the platoon himself who had fired
20 the bullet. As a result, no-one dared release the defendant. I
21 learned through Vorn Vet that Mok told Pol Pot he found it
22 difficult to employ me. In 1976, Son Sen advised me that
23 politics govern technique.
24 16. I now turn to the event of the internal purge in the former
25 Southwest Zone which, according to my recollection, occurred as

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1 follows. As from 1968, Mok started to destroy the intellectual
2 and petit bourgeois cadres. Within 24 hours, he expelled four
3 cadres from the Southwest Zone. They were all former primary and
4 high school teachers.

5 In July 1971, Mok had basically accomplished his plan to destroy
6 people. The Special Zone created in July 1971 was the place
7 where people gathered. The elements expelled by Mok were seen
8 working in the surrounding office of the zone. In the former
9 Southwest Zone, no intellectual or petit bourgeois cadre could be
10 appointed chief of a subdistrict, district or military unit.
11 Between 1971 and 17th of April 1975, Mok ordered the smashing of
12 some important cadres.

13 [10.57.18]

14 17. At that time, I was not yet critical thinker. The only
15 thing that stuck in my mind was that I was afraid of being
16 removed. "The movement sought people" was the common phrase used
17 at the time. In other words, the movement renounced people.
18 Even now, I am still convinced that I owe my survival in part to
19 the fact that I have followed Vorn Vet's advice, which is do not
20 make any decision to arrest people, do not touch the spoils of
21 war, do not get into moral misconduct with women.

22 18. I am not going to describe the event of the internal purge
23 within other zones as I have no supporting documents.

24 19. Before the 17th of April 1975, the characteristics of the
25 killing were, firstly, collective. People were killed regardless

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1 whether they were from Lon Nol's territory, were living in the
2 newly liberated sector, were of the supporting base or
3 combatants, Party members or cadres.

4 Secondly, non-scientific. People were killed because they were
5 suspected by the leaders of the zone or because they were
6 implicated by confessions extracted at the Police Office. It can
7 be said that they ordered the killing of the people for the
8 short- and long-term economic and political gains of their
9 groups.

10 The implementation line of the Police Office. The Chief of the
11 Police Office had no right to make arrests; the Party made such
12 decisions. Note, the term "Party" in this context refers to the
13 secretary and under-secretary of the zone, or deputy secretary of
14 the zone.

15 [10.59.14]

16 21. Physical torture was a method they made us use. Most often
17 it was inevitable. Note, I received instructions from Chhay Kim
18 Huor regarding the torture at M-13. Later on, I received the
19 instructions from Vorn Vet.

20 22. The policy to smash who were called infiltrators or the
21 traitors of the revolution was adopted by the Party. In
22 practical terms, when someone was arrested and sent by the Party
23 to the police, the police had to interrogate him or her and then
24 smash the person. As regards my leadership and working
25 behaviour, I knew how to control and manage myself. I did not

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1 want to be criticized by a Khmer proverb which goes:
2 "They offer you a chance to take the lead but you do not know how
3 to swing your arms while walking. They ask you to walk behind
4 the others but you do not know how to carry things."
5 Killing after the 17th of April 1975. For the period from the 17
6 April 1975 until the 30th of March 1976, the evacuation of the
7 population and the expulsion of the foreigners from Cambodia was
8 a CPK plan which was known as the plan to prepare for victory.
9 The study session conducted from 24th of June 1975 to the 27th of
10 June 1975 reflects its essence and can be found in document 2,
11 entitled "The Vision on the Current Situation of Our Revolution
12 and Some of Our Measures."
13 25. During these orders military force was used. The military
14 was ordered to use violence as well as barbaric rhetoric to
15 terrify and expel people, first by making them leave their homes,
16 then the cities. And finally they were taken to the countryside.
17 During the mass evacuation the military was ordered to arrest
18 high-ranking soldiers, police, civil servants and senior
19 religious leaders so that they could be smashed secretly. The
20 names and personal biographies of the people who reached the
21 countryside were registered by the base cadres who were appointed
22 by the zone Angkar. This was done to screen for elements to be
23 smashed. In the Southwest Zone, which was to the north of the
24 National Road Number 4, Sy, the deputy secretary of the zone, was
25 the one who bore the greatest responsibility of this killing.

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1 [11.02.17]
2 All across Cambodia, those who were enjoyed full power and were
3 most responsible for crimes during the first period were Pol Pot,
4 First Party Secretary; Nuon Chea, Deputy Secretary; Sao Phim,
5 Secretary of the East Zone; Mok, Secretary of Southwest Zone,
6 former and new; Vorn Vet, Secretary of the Special Zone; Son Sen,
7 Deputy Secretary of the Special Zone; Koy Thuon, Secretary of the
8 North Zone; Ke Pauk, Deputy Secretary of the North zone; Sy,
9 Deputy Secretary of Former Southwest Zone and Secretary of the
10 West Zone; Nhim, Secretary of the Northwest Zone.
11 Note, before and after the 17th of April '75, all divisions of
12 the army belonged to the zone. And from the 17th of April, all
13 Cambodian territory except Phnom Penh belonged to the zone. The
14 forces including party members, the youth league and progressive
15 people belonged to the zone. The old people were also under the
16 zone. Therefore, the millions of evacuated people were managed
17 by these 10 individuals. They decided who was to be killed and
18 who was to be spared. I do not have any supporting documents in
19 regard to the number of those who were killed during this first
20 phase. However, I believe that the number could be as high as
21 several thousand. In May 1975, Cheng An was ordered by the Party
22 to collect workers who were evacuated out of Phnom Penh to get
23 back to the factories.
24 Separate note: Since I had wished to escape the police work, I
25 pleaded with Cheng An to make me work with him in the fields of

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1 industry. Cheng An was pleased with my plea, but Son Sen
2 rejected it.
3 [11.04.28]
4 On an unidentified date soon after the 17th of April, the Special
5 Zone was dissolved. The territory within Sector 15, including
6 Ang Snuol, Kandal Steung, Ponhea Leu, and Dangkao was placed
7 under Sy's authority. The Party renamed it the West Zone. The
8 territory within Sector 25, S'ang, Koh Thom, Loerk Daek, Kien
9 Svay was placed under Mok's authority. It renamed the new
10 Southwest Zone.
11 According to the information I obtained, the committee of Sector
12 25 was completely dissolved by the Party. Practically the entire
13 force under Kuy Thuon, plus himself, were removed from the North
14 to be scattered in the ministries. Kuy Thuon himself was in the
15 Commerce section. The majority of the people in the section were
16 from the North. Other ministries such as Energy and Water,
17 Transportation were staffed by people from the North. Soeu Vasu,
18 alias Doeun, was ordered by the Party to work at 870 and Chea
19 Chhan, alias Sreng, was left to work at the base as Deputy
20 Secretary to Ke Pauk.
21 The military personnel of the four zones which attacked Phnom
22 Penh were recruited as the centre military which was under the
23 direct supervision of Son Sen. The offices and ministries
24 surrounding 870 were put to use soon after the 17th of April.
25 However, the committees of these offices and ministries were

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1 gradually modified until there was a meeting of the Standing
2 Committee on 19th, 20th and 21st of April 1976 when it was
3 officially appointed.
4 Meanwhile, alongside the organizational arrangement of the centre
5 of military offices and ministries surrounding 870, the
6 commanders and soldiers, chiefs of police, the chiefs of civil
7 servants were searched and arrested, some of whom were sent to
8 S-21. The blood of the Cambodian people, both in the rural areas
9 and Phnom Penh, kept shedding endlessly.

10 [11.07.03]

11 Document of the 30th of March 1976 was the document decided and
12 determined when the CPK had appointed the zones for overseeing
13 rural bases across the country, had appointed the offices and
14 ministries for the functioning of state activities, had appointed
15 the independent zone, due to its unique geography, had appointed
16 the centre army to be under supervision of the Chief of the
17 General Staff. Note: Document of the 30th of March 1976 was
18 known to me at the ECCC.

19 Through this document, the power to make a decision to smash was
20 given to four groups of people as follows: the Standing
21 Committee of the Zone, the Committee of the Central Office --
22 Standing Committee here refers to the Central Standing Committee
23 -- the General Staff. There were 11 individuals who were
24 nominated in the groups. One, Pol Pot, Nuon Chea, Sao Phim, Mok,
25 Son Sen, Khieu Samphan, Ya, Ros Nhim, Ke Pauk, Sy and, 11, Se.

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1 The policy of power sharing was the strictest one. Apart from
2 the 11 people, no-one else had such right. For example, Kuy
3 Thuon, the full-fledged member of the Centre, but in his capacity
4 as the minister, the right to decide to smash was not vested in
5 him. Nath, former secretary of S-21, received the tough measure
6 from the Party because he subjectively made a decision to arrest
7 people.

8 [11.09.01]

9 The second purpose of the first paragraph of the document about
10 the rights to smash states that it was in order to strengthen our
11 democratic socialism. Democratic socialism, or centralized
12 democracy, means that the collective rule, which each individual
13 is responsible individually. Collective is the entire Party
14 which was represented by the Party Secretary, who was Pol Pot.
15 Individuals and the framework of the right to smash were each of
16 the zone secretaries, the Chief of the Central Office and the
17 Chief of the General Staff. This means that if an individual
18 failed to respect the leadership of the collective, he or she had
19 to be punished. For example, Kang Chap, alias Sae, secretary of
20 the North Zone, had the right to smash people according to the
21 Party line. However, when Se went to arrest the relatives of
22 Khieu Samphan's wife, he was arrested on the order of Pol Pot and
23 sent to S-21. Khieu Samphan's wife's relatives were released on
24 the order of Pol Pot.

25 Note: Sy, the secretary of the West, experienced the same

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1 problem. To put it simply, they never allowed a knife to cut its
2 own handle.

3 Soon after the 30th of March 1976, the internal purge of people
4 in the Party's rank held sway. The purge swept through all zones
5 starting from each zone. The purge was carried out across all
6 ministries; each minister at a time. The purge was conducted in
7 all divisions, one at a time.

8 It can be said that the internal purge started from the April
9 1976 and stemmed from two main events: first, a grenade attack
10 behind the palace on the 2nd of April 1976; second, Koy Thuon was
11 placed under house arrest from the 8th of April 1976.

12 Thanks to the confession of the person who was behind the grenade
13 attack, Chann Chakrei, was arrested on the 19th of May 1976. His
14 arrest and Suos Noeu's arrest were the stepping stone leading to
15 the subsequent purge in the East Zone.

16 [11.11.40]

17 People within Koy Thuon's network could have been arrested much
18 earlier. The delay was due to the fact that they were waiting
19 until Koy Thuon's confession was extracted. I would like to note
20 that on the 25th of January 1977, Thuon was sent to S-21. On the
21 29th of January 1977, Thuon wrote and completed his first
22 confession. On the 31st of January 1977, people in Thuon's
23 network in Phnom Penh and the North Zone who were implicated by
24 him in his confession were all arrested and sent to S-21.

25 The purge of Koy Thuon's network terrified me again for the

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1 second time. This time it was most shocking. I wondered why the
2 North peasants had to die. Why most peasants were always on the
3 right side and more prosperous. I had known many of the people
4 who were sent here. Some used to be in jail in Prey Sar with me;
5 some used to pay visits to my parents' home. It was very
6 distressing. I couldn't help feeling that the revolutionaries
7 who had been doing everything for the people had now ended up
8 being treated as the Party's traitors and were detained and I, as
9 the child of the North, could do nothing to help.

10 I still recall the instance in which I was trying to express my
11 views concerning a comrade while on the phone with Son Sen only
12 to hear him threatening me at the other end of the line. He
13 said, "Hey Duch, that was Khuon's confession." Khuon was the
14 revolutionary name of Koy Thuon. Later, during the course of
15 conversation, I would hear him talking about the expression,
16 "Keeping you is no gain, losing you is no loss."

17 Mok second son-in-law was appointed to oversee Division 450 after
18 the North people had been arrested. People from Kampot, for
19 example, were employed to work as Secretary of Staung District
20 replacing Kampong Cham people. Mok's son was given control of
21 Kampong Cham Commune, my village, replacing the former staff who
22 were the children of the local villagers of Kampong Cham.

23 [11.14.26]

24 Based on my analysis, I am convinced that the killing of people
25 of other groups was meant to remove them by having them replaced

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1 by Mok's people. This is characteristic of the purge during that
2 time. I believe that was the theory of the super cultural
3 revolutionaries; destroying all humankind, creating a new one.
4 The CPK regarded Mok and his people as the top people who could
5 solve every problem. I would like to quote from Pol Pot's speech
6 during the 17th of April 1978 and it was read as follows:
7 "Nothing can be more scientific than the peasants who are
8 experienced in rice transplanting and the warriors who have
9 known how to win a battle."
10 I'd like to unearth the truth as follows. First, Kampot people
11 who were assigned the post of the Secretary of Staung District
12 forced peasants to look for a kind of rattan to tie rice bags.
13 It was not very easy to find such rattan in my village. It was
14 very inconvenient. Second, when I reported to Son Sen that
15 people were deprived of their food, he replied to me by phone
16 right away that this could happen because enemies had not been
17 all arrested. Later, I once again reported to him based on the
18 information I received from my mother to the effect that the
19 Southwest people had also deprived villagers of their food. This
20 time Son Sen was silent.
21 I believe that assigning cadres from other places as the
22 secretaries of the co-operatives was proved to be a grave
23 mistake. On the one hand, the Party's line was criminal in
24 nature already; on the other hand, it was even more destructive
25 to have people from distant locations to break the local people.

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1 This led to more destruction in all fields; in particular, the
2 souls of more than 1,000,000 vanished.
3 [11.16.40}
4 According to my analysis and conclusion, people of every village
5 experienced the same thing as what happened in my village.
6 The purge was carried out further into the West Zone after the
7 zone or the Central Zone had been purged. First, they just
8 wanted to request Sy to give them some people who could be the
9 sources to arrest Sy, such as the brother-in-law and the chief of
10 the zone police who could be the sources to the arrest of Sy.
11 They maintained the notion that before you harvest the bamboo,
12 you must trim off its thorns.
13 Note: Sy was hungry to kill people and so were Pauk and Mok;
14 however, Sy made them feel uncomfortable because he had an
15 attempt to reshuffle Phal's force. Phal was the Secretary of the
16 West Zone. He was very trusted by Pol Pot and Nuon Chea.
17 Sy was arrested just after April 1978 -- the 17th of April. Mok
18 was appointed as the Secretary of the West Zone on top of his
19 current rank. Phal remained the Deputy Secretary. The remaining
20 of Sy's force was reshuffled.
21 After Sy had been arrested, Nhim, too, was arrested. Nhim was
22 arrested, perhaps, in May 1978. Nhim was arrested when Mok was
23 appointed to be the Secretary of the Northwest Zone; an
24 additional position on to -- of his current ones. Mok, himself,
25 made it clear by saying that he wished to become the patriarch of

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1 as many pagodas as he could.
2 [11.18.33]
3 Someone from the West Zone was made the Deputy Secretary while
4 its members were those from the Southwest Zone. The local cadres
5 from the community level were surely the people from the
6 Southwest and the West Zone.
7 The purge was conducted at the East Zone in June 1978. The purge
8 of the East Zone was carried out in an unprecedented large-scale
9 fashion. Approximately, 300 East Zone combatants were sent to
10 S-21 and smashed without being interrogated. The cadres of the
11 sectors, zones, military cadres were all sent to be smashed.
12 Interrogation was no longer needed.
13 As for Sao Phim who did not expect that Pol Pot would make a
14 decision to smash him asked somebody to comply or to accompany to
15 see Pol Pot. I heard that when Pol Pot learned of the news that
16 Sao Phim was committing or coming to see him, he ordered his
17 force to arrest him. Finally, Sao Phim shot himself.
18 11 October '78, Kang Chab alias Se was arrested and sent to S-21
19 and on the 2nd of November 1978, Vorn Vet was arrested and sent
20 to S-21. As of the 2nd of November 1978, the organizational
21 nature had changed in all sections. The Central Standing
22 Committee changed. The members of the central changed. The
23 committees of zone, sector, districts, sub-districts also
24 changed. The committees of the ministry offices changed. The
25 Central Army changed. The Standing Committee's meeting that

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1 appointed the general assembly of 1976 which included the seven
2 people: Pol Pot, the secretary; Nuon Chea, the first secretary;
3 Sao Phim, the second deputy secretary; Ung Choeun alias Mok, the
4 fourth deputy secretary; Ieng Sary, the full-fledged Standing
5 Committee member; Vorn Vet, the candidate member for the Standing
6 Committee; Son Sen, also the candidate for the Standing
7 Committee.

8 In that general assembly of 1978, the decision was made as
9 follows. Pol Pot was appointed as the secretary; Nuon Chea, the
10 first secretary; Ung Chouen, the second deputy secretary; Ieng
11 Sary -- I have no idea whether he was promoted to the third
12 secretary or the full-right -- or still remained as the
13 full-rights member. Son Sen was, I don't know, promoted to the
14 full-rights member or still be the candidate member. Khieu
15 Samphan was promoted to be the full-rights member or the
16 candidate member but I'm not quite sure.

17 [11.21.58]

18 The Standing Committee or the office of the 870 changed
19 significantly including that of the industry, energy, et cetera.
20 The committee of the zones, the sector, the districts, the
21 sub-districts have completely changed into its roots, including
22 those at the Kampong Cham area, Prey Veng, Svay Rieng, Pursat and
23 Battambang.

24 The central military so far as I remember, only Division 164
25 remained. Division 503 and Division 801. Even Division 703,

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1 appreciated fully by Pol Pot during the Standing Committee's
2 meeting on the 9 of 1975, disappeared. The name of division
3 disappeared and the secretary was nowhere to be found. Regarding
4 other divisions, for example Division 310, 450, 170, 290, was
5 disarmed and the combatants and cadres were used to work at the
6 Kampong Chhnang airfields and later on they were arrested and
7 smashed en masse before the 6th of January 1978.
8 Cambodian people were arrested and were put to work very hard,
9 and there were only two classes -- the peasant and the worker
10 classes. Pol Pot used these classes as official classes from the
11 6th of January 1978.
12 The recollection of the events. On the 20th of July 1962, Tou
13 Samouth disappeared. End of February 1963, the general assembly,
14 the Extraordinary one, rubberstamped Pol Pot as the secretary of
15 the Party replacing Nuon Chea. In 1968, Ma Mang died. Mok
16 became the secretary of the Southwest Zone.
17 In 1974, Pol Pot abandoned Ke Pauk. I thought that it was the
18 trick of Mok. In 1974 and 1985, Pol Pot did not allow Son Sen to
19 maintain his current position and I thought that this was the
20 trick of Mok again.
21 [11.25.00]
22 In 1997, Pol Pot smashed Son Sen and his whole family. This is
23 the last event Pol Pot tried to order the execution of people. I
24 believe that this was the conflict or the dispute between Pol Pot
25 and Son Sen. I think that during the meeting, Mok ordered the

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1 killing of Sareun San and Mok declared the war in order to save
2 his criminal regime.

3 63. If we talk about Pol Pot, and Tou Samouth disappeared, he
4 was the highest person. He really designed the theory and the
5 line to destroy, to kill people heinously. And the ten criteria
6 for selecting cadres, if you look at this notion, it was
7 flexible, humble, but in reality it was very cruel. It was a
8 selfish policy.

9 However, I believe that Pol Pot used a kind of trick used by
10 Stalin when he killed Trotsky in order to kill Haing Ngor and me
11 and my wife. Luckily, I survived. Unfortunately, my wife died.
12 Haing Ngor was killed because he appeared in the film "The
13 Killing Fields" and they wished to kill me and my wife in order
14 to shut us up. Although these three people were not able to kill
15 them, but they tried their best.

16 64. The details of the events, the recollecting events that I
17 wish to address before the Court is to tell the Court that the
18 Khmer Rouge regime would like to use the killing as the mechanism
19 to build their dynasty in Cambodia and to fulfill their ambition.
20 I already made it clear before the Chamber already that Pol Pot
21 was a criminal person.

22 Pol Pot really wanted to become a king, a so-called king, and he
23 regarded Mok as his force who was supporting him both in the
24 military and economically. Pol Pot wished to become the
25 so-called king under his revolutionary class policy in which he

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1 said the pure class -- from the 17th of April 1975 to the 6th of
2 January 1979.
3 [11.28.22]
4 Throughout the entirety of the 17th of April 1975 until the 6th
5 of January '79, it was the period the CPK had the full control
6 over the complete territory of Cambodia. First, the party tried
7 its best to change the people into the collective peasants, the
8 collective workers, and those who rejected or challenged such
9 policy ended up being smashed.
10 Number 2. Within the Party. The Party purged and destroyed
11 other forces and put their own forces to replace the positions.
12 The people who had the full-fledge right according to the essence
13 of the document on the 30th of March 1976 were as follows. Pol
14 Pot, Nuon Chea, Sao Phim, Ung Chouen alias Mok, Vorn Vet, Son
15 Sen, Khieu Samphan, Kuy Thuon, Men Ya, Ros Nhim, Ke Pauk, Chou
16 Chet alias Sy, Kâng Chap alias Se.
17 About the Santebal of the CPK or the Democratic Kampuchea. There
18 were at least -- I would like to repeat -- there were at least
19 Santebal offices, 196 offices.
20 1. The general aspect of all Santebal offices about the
21 organizational mechanism. Each Santebal was under the clear
22 supervision of the Party. For example, the district Santebal
23 offices were under the direct supervision of the secretary of the
24 district. It was not under the supervision of the committee of
25 the district.

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1 71. The confession from the Santebal office was the very
2 confidential document and it has to be given directly and in
3 person to the superior. It was the superior who assigned someone
4 to pick up the documents. Santebal offices at the rural area was
5 under the supervision of the district secretary -- or under the
6 supervision of the secretary of the sector or the zone. Any
7 confession had to be sent through such organizational arrangement
8 to Pol Pot. This is the principle which could not be violated.
9 For example, on the 5th of September '07 I reported to the
10 Co-Investigating Judges already about the confession from Sector
11 32, D16.2, document D58/2, which was the confession from the
12 Santebal office of Sector 21 of the east. Document E52/4.62, Mok
13 annotated in person on the cover of that confession to be sent to
14 Pol Pot. D32/4 or D43/4, the accompanied letter sent to Se, Kang
15 Chap.

16 [11.32.20]

17 The secretary of the North Zone or 801, New, sent the confession
18 to Eap, alias Khon, and Saey, alias Phang to Pol Pot. Note,
19 these four documents reached Pol Pot so that Pol Pot could
20 manage.

21 Regarding S-21, it was under the supervision of Son Sen. The
22 confessions Son Sen was interested would be -- he would be
23 annotated on them and have them sent to Pol Pot to examine and
24 make the final decision. For example, document E3/20, the
25 confession of Heng Pich, alias Chhorn; D93/3, the confession of

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1 Long Muy, alias Chuon. Note, E3/86, Son Sen annotated for the
2 decision made by Nuon Chea, so he sought a decision from Nuon
3 Chea. At that time Nuon Chea was the minister, the acting
4 minister. Or, in other words, he was the acting secretary of the
5 Party.

6 The Party valued the confession. S-21 was under the supervision
7 of Son Sen, who was the Standing Committee's member. Actually
8 Son Sen was the seventh individual; Sao Phim the third
9 individual; Mok the fourth one. All Santebal offices were equal
10 before the Party. Now look at document D32/4 or D43/4. The
11 Party was interested particularly in the Say's letter sent along
12 on the 17th of April 1978. Nuon Chea read it on the 19th of
13 April 1978.

14 [11.34.46]

15 E3/416 was a document of S-21 which was interested by Pol Pot
16 very much. The confession that derived or that was from the
17 Santebal office of Sector 32, the West Zone, Pol Pot was also
18 interested in those confessions. That's why he asked or
19 instructed Son Sen to advise S-21. At that time Nath was the
20 chairman and I was not. D16/2 was the reference document.
21 The right to smash. The Santebal office had no right to smash.
22 To put it simply, the chief of the Santebal office, whoever he
23 was, had no authority to issue any subjective order to arrest
24 anyone. Document dated on the 30th of March '76 was the nature
25 and essence of such policy.

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1 Who violated such measures of the Party would be punished. For
2 example, Nath, the secretary of S-21, was a practical example.
3 According to the meeting of the Standing Committee on the 19th --
4 or 20 and 21 of April 1976, they prohibited Nath to control any
5 forces. Note, if we use the term "arrest" in the eye of the
6 history it was to be done clearly by the order and it was real.
7 Santebal office had to wait to receive people who were arrested
8 and sent to them. The people who were superior had to send the
9 people to them to be interrogated and smashed at the end.
10 Important people who were being interrogated and who were smashed
11 accidentally were -- those who were responsible of the smash of
12 those people would be considered to be violating the rule.
13 [11.37.18]
14 Now, the torture, the physical torture during interrogation.
15 Physical torture was inevitable. It was the tactic allowed by
16 the Party. It was well known by the Party. Document D43/4,
17 which was dated on the 26th of October 1977 under ERN 00173920,
18 the interrogator indicated that he inflicted torture to extract
19 this confession to be sent to the Central Office. Document
20 number -- in Case File 002 -- D43/4, document dated 28th of
21 October '77 under page ERN 00174762, the interrogator indicated
22 that torture was used and the confessions were sent to the
23 Northwest Zone; Case File 002.
24 Therefore torture or physical torture was employed at all
25 Santebal offices. Otherwise the Party would not inform the S-21

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1 to employ such techniques. The interrogator had the same
2 privilege. During Sihanouk/Lon Nol regime the interrogation work
3 was the work of the inspectors, the police inspectors. In the
4 Khmer Rouge regime it was the work of the interrogator. When I
5 was in jail I was never seen -- or I never saw any colonel or the
6 person who ranked lower than the colonel came to visit me. The
7 Chief of the Santebal of the Khmer Rouge altogether, including
8 them and I, believed that no-one would be maintaining the ruling
9 position.

10 The aspect of S-21 is unique from other Santebal offices. Office
11 S-21 was unique because the members of the Standing Committee all
12 were detained and interrogated and smashed here and this is true.
13 The other reason is that Pol Pot regarded these people as the
14 thorns in his eyes which have to be monitored, observed, and
15 measures had to be taken; for example, Kuy Thuon, 25th of January
16 '77, Thuon was sent to S-21.

17 On the 29th of January 1977, Thuon completed his confession. On
18 the 31st of January 1977, the purge of Thuon's network was
19 conducted according to the implication in his confession.

20 However, the more than 195 Santebal offices all across the
21 country -- I don't know whether any of the members of the
22 Standing Committee was ever sent there and smashed. So this is
23 true, I think. They were not sent there. Actually, according to
24 my analysis, the Santebal office -- all Santebal offices received
25 orders to smash people from the zone. And those people were the

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1 innocent, the clean, the very honest people and there were more
2 than 1 million of them who perished.

3 I don't believe that the more than one million people who were
4 killed had committed any wrongdoing as accused by the Central
5 Committee members of the Party including Pol Pot. Having
6 considered or having looked into this matter, I am still very
7 terrified.

8 [11.41.56]

9 So all the people of the zone -- most of them have been sent to
10 S-21. They included the chief from Santebal offices. And it is
11 true because Pol Pot wanted to understand, to grasp the
12 information of the zones. To put it simply, it was to monitor
13 the secretaries of the zone whom Pol Pot did not trust.

14 People who were sent from the zone -- some were sent by Pol Pot
15 through the -- and through the confessions at S-21.

16 So from this power, I can conclude that when KW-30 was sent to
17 M-13 for awhile, he was regarded as a semi-prisoner. I was
18 interested that maybe at the rural level the Party would use this
19 kind of policy to replicate the phenomenon happened at S-24.

20 I would like to recall some of the events of S-21 crimes. On the
21 15th of August 1975, Son Sen presented and suggested the
22 establishment of S-21. On October 1975, I worked at S-21 as the
23 Deputy Chief. On the 3rd of 1976, I became the Chairman of S-21.
24 From the 15th of August 1975 to October 1975, my core role was to
25 collect evidence from the senior officials' houses and public

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1 buildings -- those who were working for the Lon Nol regime -- and
2 to examine confessions sent from 703. Document E5/2.2 could be
3 used as the reference.

4 From October 1975 to the 3rd of '76, when Nat was the Chief, I
5 was the Deputy Chief. There were two points I would like to
6 clarify. He asked that I would go to the sector 25 to arrest
7 some people. It was not part of my capacity or my role to arrest
8 people and Nat had no right to make such order or decision.

9 [11.44.50]

10 But at M-13, it was the same. No one allowed or the Party did
11 not allow us to communicate with the base. According to the
12 document, I can conclude that the Party was interested in the
13 crimes.

14 The crimes onto the more than 12,380 people, I still am
15 responsible and I will forever be liable for the crimes.

16 86. Other aspects of the crimes at S-21 and in Phnom Penh and at
17 Prey Sar and Choeung Ek that have already been well debated in
18 this Chamber.

19 MR. PRESIDENT:

20 The Accused, could you please slow down a little bit for the good
21 record?

22 THE ACCUSED:

23 About my position and behaviour.

24 1. For Cambodian people throughout the country. Before its
25 victory day, the Communist Party of Kampuchea had solemnly

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1 declared that it would only prosecute the seven super traitors,
2 but in reality the Party forcibly evacuated the people, many
3 hundreds of thousands of whom were executed. They were innocent.
4 Those people did not commit any crimes after the 17th of April
5 1975.

6 The killing went on. More and more people were put to death --
7 endlessly -- until more than one million souls perished. Among
8 them, people who were outside the ranks, those who did not wish
9 to become peasants or workers -- sometimes simply because they
10 were not able to do so -- were executed.

11 [11.47.27]

12 Within the ranks, Party members who were associated with groups
13 other than theirs were arrested and killed so that their people
14 would be deployed to fill in their places. This monumental
15 destruction both within and outside the ranks is solely the crime
16 committed by the Communist Party of Kampuchea.

17 I still -- honestly -- stand by the statement I made earlier in
18 the hearing in which I attested that Pol Pot was overjoyed and
19 dared impose such an extremely criminal line due to the fact that
20 he enjoyed the support of his force especially the Party's force
21 which are comprised of hundreds of thousands of Party members who
22 abided by his order.

23 I still acknowledge that I was a member of the Pol Pot's force.
24 Accordingly, I am psychologically accountable to the entire
25 Cambodian population for the souls of those who perished during

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1 the period from the 17th of April 1975 until the 6th of January
2 1979.

3 I am deeply remorseful of and profoundly affected by destruction
4 on such a mind-boggling scale. I clearly understand that any
5 theory or ideology which mentions love for the people in a
6 class-based concept and class struggle is definitely driving us
7 into endless tragedy and misery. I still maintain that a
8 decision to choose which path to walk is made in a matter of
9 seconds. However, its repercussion with its wrong choice will
10 result in a lifelong remorse.

11 [11.49.19]

12 Instead of being convinced that I could be contributed to
13 liberation of the nation and its people and having hoped that I
14 would be serving my people, I instead had devoted myself, my
15 strength, my heart, my intelligence and everything including my
16 preparedness to sacrifice my own life for the nation and the
17 people. I found I had ended up serving a criminal organization
18 which destroys its own people in an outrageous fashion.
19 I could not withdraw from it. I was just like a cog in a running
20 machine. For the victims of S-21 and their families, I still
21 claim that I am solely and individually liable for the loss of at
22 least 12,380 lives. These people, before their deaths, had
23 endured a great and prolonging suffering and countless inhumane
24 conditions. I still and forever wish to most respectfully and
25 humbly apologize to the dead souls.

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1 I have worshipped God to honour the dead. To the survivors, I
2 stand by my acknowledgment of all crimes which were inflicted on
3 you at S-21. I acknowledge them both in the legal and moral
4 context.

5 As for the families of the victims, my wish is that I will always
6 maintain my humble and respectful behaviour by asking you to
7 kindly leave your door open for me to make my apologies. May I
8 plead with you to allow me to share your immense and enduring
9 sorrow any time? In order to express my excruciating remorse, I
10 have fully and sincerely co-operated with the Court any time the
11 Court has needed me. I have been assisting the Courts for 10
12 years and 17 days, including during the investigation phase as
13 well as in the interrogation at the Military Court and at this
14 Court.

15 [11.51.32]

16 Finally, I have made my genuine proposal to psychological and
17 psychiatric experts to help me with the ideas on what I shall do
18 to make people recognize me again as part of humankind,
19 contribute to relieve the great sorrow of Cambodian people. I
20 promise I will do everything for my people, should they need me,
21 in whatever circumstance in the future. I pray the Court to
22 consider this additional matter. November 23rd, 2009. Kaing
23 Guek Eav, alias Duch.

24 Mr. President, Your Honours, I have only read the entire text.
25 In my text there are footnotes. There are 34 footnotes that I

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1 may wish to read one by one.

2 Footnote number 1. The military forces and the militias at the
3 front line.

4 2. The eight people were arrested by Vorn Vet because he
5 believed that they were no enemy.

6 3. Moeng Samnang controlled Sector 25 and Tang Khet, alias Khan,
7 conquered the Southwest Santebal office, or police office.

8 4. The supporting base people here referred to the people who
9 supported the revolution long before the 18th of March coup
10 d'état.

11 5. The number of the people who died was not clear.

12 6. These people implicated in their confession. The reference
13 is E2/2.5 and E2/2.29 for further information.

14 [11.54.00]

15 7. Before the coup d'état of the 18th of March 1970, Serei Soy,
16 the commander, and who was the district chief.

17 8. Before the coup d'état this person lived on gambling. This
18 person's wife paid a visit to the person's house and she was the
19 infiltrator.

20 9. This confession made the superior satisfied. However, I
21 believe that the confession was drew up only 50 percent; for
22 example, the killing of the person by injection into the blood
23 vein.

24 10. The annex of D21 chapter 4, section 5 and section 6.

25 11. This person was not interrogated by me. He died before the

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1 17th of April because of
2 malnutrition.
3 12. Annex D24. Please read section 6.4, ERN 00146679.
4 13. Annex D21. Please read section 5 on the point about the
5 Southwest, ERN 00146678.
6 14. Annex D21. Section 5, ERN 00146678.
7 15. D11/9, ERN 00146481 in Khmer.
8 16. In the written notebook Mam Nai, ERN 00077661 through
9 00078056. I would like to repeat the ERN number: ERN 00077661
10 through 00078056.
11 [11.57.20]
12 17. Sim Mel, alias Man. He was the member of S-21 who reported
13 about his personal political life view through study session in
14 1975.
15 18. This confession or speech was quoted from Khim Pin, the
16 secretary of 703.
17 20. I met Cheng An at his wife's house in Tonle Sgnot, Sector
18 15. Cheng An was pleased and he promised on the 31st of May 1975
19 we would meet. On that day he asked his messenger to tell me
20 that the Angkar didn't agree or approve of my plea.
21 21. Norng Suon alias Chey, the secretary, was removed by the
22 Party to now conquer the cash warehouse. Sok Butchamroeun and
23 Huot Se were sent by Mok to the nokobal or the police in the
24 Southwest.
25 22. Nob Moeun, alias Rith, was the secretary. Later on Chhay

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1 Kim Huor, alias Hok, was the Secretary of Energy.

2 23. Dr. Roth Kot, the Professor Tit Mom, Police Inspector Chhit
3 Iv, alias Chat, Song Hak, who were the base cadres, were confused
4 or was mistaken for Song Sak, the head of the former Phnom Penh
5 bank.

6 24. The Standing Committee of the zone here referred to the
7 secretary of the zone. Ya, Nuon Chea was in charge. The East
8 Zone was under the supervision of Phim. The Southwest, New
9 Southwest, Mok; Sy, the West. After Sy was arrested in April
10 1978, Mok became the secretary of the Southwest and the West.

11 [12.00.21]

12 Northwest, Nhim. North New, Se, after he was arrested on the
13 11th of October '78, Mok was the secretary of the Southwest, the
14 West and the Northwest and the New North.

15 25. D45, page 5. The record of the interview of Khieu Samphan,
16 14th of December 2007, Case File 002.

17 26. The Chief of the Zone Office, who was the in-law of Sy,
18 alias Suon, the person named Suon - I don't remember his full
19 name. Sy's intention to reshuffle Phal's force made it clear
20 that he intended to destroy the forces. Sy said in his final
21 report that he did not wish to see that nepotism was part of the
22 working process. In the Revolutionary Flag it was a reference to
23 this point.

24 28. When Nhum was arrested, Kung Sophal, alias Keu, was not yet
25 arrested. I just received the information that the member of the

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1 Northwest Zone were armed to fight in the battle. I only took
2 note of this information.

3 29. Sok Knol, alias Peam, the Chief of Peam office, came to S-21
4 on the 5th of June 1978.

5 30. According to the speech of Comrade Lin Islam, the committee
6 of S-71.

7 31. The Statute of the Party of 1976 and Article 21 and 22.

8 32. Referring to my understanding, according to the interview
9 with Ieng Sary by Steve Heder, page 54.

10 33. The name of the Standing Committee I have ever heard of were
11 Khieu Samphan, Pauk, Phal, Saroeun, Sambath, Meas Muth, Sou Met
12 and Suon.

13 Mr. President, I have already completed reading the document, but
14 I would like to request for the submission of this document
15 before the Chamber, or to the President.

16 THE PRESIDENT:

17 The Chamber now accepts the written remarks by the accused which
18 has already been made before the Chamber, including the footnotes
19 and attached documents herewith.

20 Mr. Phary, could you please go and fetch the documents and have
21 them placed in the case file.

22 It is now an appropriate time to take a lunch adjournment. The
23 chamber will take the adjournment and resume the session at 1.30
24 p.m.

25 The security personnel are now instructed to take the accused to

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1 the waiting room and return him to the courtroom by 1.30 p.m.

2 (Judges exit courtroom)

3 (Court recesses from 1205H to 1332H)

4 (Judges enter courtroom)

5 MR. PRESIDENT:

6 Please be seated. The Court is now in session.

7 In a moment we are going to hear the oral closing statement by
8 the defence counsel, so you may now proceed.

9 MR. KAR SAVUTH:

10 Mr. President, Your Honours, the Trial Chambers, we, the counsel
11 for the accused Kaing Guek Eav alias Duch, who is charged with
12 crimes against humanity and grave breaches of the Geneva
13 Conventions of 12 August 1949 and the violations of Cambodian
14 Penal Code of 1956.

15 [13.33.56]

16 As the phrase "grave breach of Geneva Conventions of 12 August
17 1949 and the violations of the Cambodian Penal Code of 1956", as
18 it is a long phrase and I have to use this phrase very often,
19 thus I would like to seek leave from the President to use a short
20 expression as saying "grave breach of national and international
21 law".

22 From the outset, I would like to take leave from the Court to
23 address to my fellow Cambodians for their information,
24 understandings and indulgence to work with the defence counsel
25 since our obligations to defend the accused do not serve the

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1 interests and the demand of the fellow Cambodians whose
2 grandparents, brothers, sisters, children, relatives, who have
3 unjustly and tragically lost their lives during the DK regime.
4 The fellow Cambodians, please grant your understandings and
5 indulgence to us as the defence counsel for the accused. And I
6 would like to humbly share my most condolence and may the souls
7 of those victims rest in peace and great happiness.
8 The Trial Chamber. After its historical victory of 17th April
9 1979 (sic), it must have been the Cambodian people to take
10 control of their country, no more imperialists, no new or old
11 colony, no expansionism to take control over the country on their
12 behalf.
13 This victory, the Cambodians hope that they will live in peace,
14 independent and freedom to reconstruct their country which used
15 to be a civilized nation, especially those people who were in
16 Phnom Penh who waved the white flag to congratulate the victims
17 with a smiling face and hope that the Cambodian stops the
18 bleeding of -- Cambodians have a good solidarity in the Angkor
19 motherland of their own.
20 [13.37.22]
21 Few minutes later, the hopes were completely faded because at
22 that time the whole Cambodia became the great outdoor prisons.
23 The Khmer Rouge evacuated the people from the cities, the towns,
24 and moved them to the rural area. At each co-operative, there
25 was no religious practice, no school, no hospital, no market, et

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1 cetera. There were only forced labours, starvation, terror,
2 tragedy, destruction, murder. Brothers killed brothers. The
3 children killed their parents mercilessly, which cannot be
4 thinkable during this 20th century. The real evidence of their
5 crimes remain until today, including 388 killing sites including
6 the mass graves, 19,733.

7 In the Kingdom of Cambodia, there were 170 districts and each of
8 those districts contained mass graves. The memorials storing the
9 victims' bones and ash built by the surviving people, there was
10 81 of them. Security or prison was the place to smash people.
11 There were 196 of them including S-21. I would like to take
12 opportunity to tell the Court that the researcher did not find
13 all of the security offices as far as I know in Prey Veng
14 province. We cannot find on the report information regarding
15 Baphnum district security, such as Kok Chruol as a Chruol prison.
16 And I could not find one of the prisons on Chheu Kach Mountain.
17 So during the DK period from the 17th of April 1975 through the
18 6th January 1979, approximately 1.7 million Cambodians were
19 murdered during the period. During that period, the Khmer Rouge
20 established the detention centre (prison), hundreds of them,
21 which were organized in the similar structure. First, the
22 arrest; second, detention, torture, interrogation; thirdly,
23 execution. Every prison had a similar nature. The Trial Chamber
24 of the ECCC arrested one of the Khmer Rouge cadre, Kaing Guek Eav
25 alias Duch, who was the former Chairman of S-21 for trial.

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1 Among those hundreds of prisons, S-21 was the biggest and killed
2 the most people than other. That bring the chairman of this
3 prison for prosecution. The chairmen of other prisons are living
4 peacefully and happily with their families. Some of the other
5 prisons killed much more people than S-21. Why the chairmen of
6 those prisons were living free? Each prison used the same
7 torture, the same murder under the same order from Angkar. Why
8 those chairmen are free?

9 [13.42.46]

10 It's only Duch, by himself, who killed very few people and he is
11 brought for trial to get the situation of a scapegoat. Is this
12 justice for the standard of Cambodia tribunal? The Trial
13 Chambers, Your Honours, after my consideration of the case file,
14 after listening carefully to the witnesses and experts and after
15 listening carefully to the final submission by the civil parties'
16 lawyers and the final submissions by the Co-Prosecutors, the
17 defence counsel would like to address a number of arguments to
18 the Trial Chambers for its consideration, assessment and seeking
19 for the justice under the law.

20 Legal matter. I would like to address the preliminary
21 objections. Pursuant to Rule 89.1(b), the defence counsel wishes
22 to raise a preliminary objection concerning the termination (sic)
23 of the prosecution. The accused is charged with the mistaken
24 offence for violation of the 1956 Penal Code for the commission
25 of murder, Articles 501 and 506; Torture, Article 500 and other

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1 offences defined and punishable and Articles 3(new), 29(new) and
2 39(new) of the Law on the Establishment of the Extraordinary
3 Chambers in the Courts of Cambodia for the prosecution of crimes
4 committed during the period of Democratic Kampuchea.

5 THE PRESIDENT:

6 Mr. Kar Savuth, could you please repeat the final paragraph
7 because that paragraph was not communicated and then you can
8 proceed.

9 MR. SAVUTH:

10 Defined and punishable under Articles 3(new), 29(new) and 39(new)
11 of the Law on the Establishment of the Extraordinary Chambers in
12 the Courts of Cambodia for the prosecution of crimes committed
13 during the period of Democratic Kampuchea.

14 [13.46.47]

15 The defence counsel notes that Article 3 of the Law on the
16 Establishment of the Extraordinary Chambers in the Court of
17 Cambodia states that the Statute of Limitations set forth in the
18 1956 Penal Code shall be extended for an additional 30 years for
19 the crimes enumerated about which are within the jurisdiction of
20 the Extraordinary Chamber.

21 However, the defence also notes that pursuant to Article 109 of
22 the 1956 Penal Code, the limitation period for such crimes is 10
23 years. Accordingly, the defence counsel considers, on the basis
24 of Article 109 of the 1956 Penal Code that when the Law on the
25 Establishment of the Extraordinary Chambers in the Court of

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1 Cambodia was promulgated on the 27 October 2004, the limitation
2 period for the crimes alleged committed during the period of
3 Democratic Kampuchea during the period from 17 April 1979 to the
4 6th of January 1979 had already expired for the period of 15
5 years 9 months and 14 days. I would like to add, further, that
6 the defence file its missions to the Trial Chamber. Please
7 consider our submission in due course.

8 On the other hand, we believe that the elements of the crime
9 under the national law, Article 500, defines torture. Article
10 401 and 406 defines murder and in the ECCC law, it defines about
11 the crimes against humanity at Article 5(new) also defined murder
12 and torture. Therefore, the offences and the crimes against
13 humanity have the same elements overlapping that define the
14 torture and the same murder.

15 They signify that when you prosecute a person for crimes against
16 humanity you don't need to prosecute him for crimes under the
17 national law. Therefore, may it please the Court, consider and
18 make decisions based on that.

19 In conclusion, the defence counsel submits that Kaing Guek Eav,
20 alias Duch, cannot be prosecuted under national law. Any
21 decision to the contrary would violate the mandatory rule of law
22 and fundamental principle of non-retroactivity of the criminal
23 law because the limitation period under the Penal Code of 1956
24 was expired for 15 years nine months 14 days. For this reason
25 the defence counsel requests the Trial Chamber to adjudicate and

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1 declare that the prosecution of the crimes of murder and torture
2 under Articles 500, 501 and 506 of the 1956 Penal Code is
3 time-barred.

4 [13.52.29]

5 In section B the defence counsel would like to address about the
6 prosecution under the international law, crimes against humanity.
7 The defence counsel believes that the Government of Democratic
8 Kampuchea and the Government of Socialist Republic of Vietnam
9 were solely responsible for the military violence between the
10 armed forces of Democratic Kampuchea and those of the Socialist
11 Republic of Vietnam. The conflict was between them and it was
12 not Kaing Guek Eav, alias Duch, who started it.

13 It was the Communist Party of Kampuchea and the Government of
14 Democratic Kampuchea who made the decision to send Vietnamese
15 soldiers and civilians to be smashed at S-21. Kaing Guek Eav,
16 alias Duch, did not have the authority to make such a decision.

17 The defence recalls that Duch has not denied the existence of the
18 armed conflict between DK government and the Republic of Vietnam.

19 In relation to the specific dates of the commencements of the
20 international conflict between the Democratic Kampuchea and
21 Vietnam, the defence counsels solely rely on the wisdom of the
22 Trial Chamber. However, the defence counsel would like to
23 address that.

24 There is uncertainty in relation to the existence of the armed
25 conflict before late 1977. Related to the same topics, the

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1 defence counsel would like to address that. The expert Nayan
2 Chanda, based on his interviews with Vietnamese leaders, he
3 indicated during his testimony before the Trial Chamber as the
4 following.

5 In 1977 Hanoi government has no intent to start any war at all.
6 The Hanoi government just to give a signal to the Khmer Rouge.
7 It is only in late 1977 the Vietnamese government concludes that
8 it is not a misunderstanding or a problem of the controversials
9 at the border area. In response to the question by Judge
10 Cartwright, Mr. Nayan Chanda has also confirmed that the
11 bombardment, a large-scale offensive of Vietnamese armed forces,
12 had just occurred during June or July 1978, after the declaration
13 to break diplomatic relationship on the 31st of December 1977.

14 [13.56.35]

15 However, the defence counsel believes that the accused had just
16 received the information about the armed conflicts between the DK
17 regime and Vietnam after the declaration of cutting diplomatic
18 relationship on the 31st of December 1977. The defence counsel
19 would like to address that under international law the admission
20 of the facts indicating the existence of the armed conflict, it
21 is necessary to identify criminal responsibility for the war
22 crimes.

23 The defence counsel would like to submit that in his statement
24 before the Co-Investigating Judges and before the Trial Chamber,
25 Duch indicated that he had never known about the border conflict

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1 between Cambodia and Vietnam before the 31st of December 1977.

2 The existence of such conflict in Mondulkiri in relation to

3 Brévié line was confirmed by Nayan Chanda as existed. He also

4 addressed that that conflict was just only an ordinary raiding

5 between the two countries, but it was not an armed conflict --

6 international armed conflict -- in the meaning defined under the

7 Geneva Convention of 1949.

8 On top of that, the defence counsel is of the opinion that the

9 speech by Duch was very convincing, if you pay attention to the

10 very strict implementation of the CPK's policy, and it is also

11 very convincing that when we talk about the relationship between

12 Cambodia and Vietnam, and furthermore the statements by Duch are

13 very consistent with that of Suos Thy, the witness. At that time

14 Suos Thy was the registrar, the person who kept register of the

15 prisoners who entered S-21. Suos Thy said in 1976 or 1978 there

16 was no Vietnamese prisoners of war. Only after the armed

17 conflicted started that he saw incoming Vietnamese prisoners of

18 war.

19 [14.00.18]

20 This statement is plausible and is consistent with the prisoners

21 list at S-21. They were described as the Vietnamese soldiers at

22 S-21. The list was already included in the case file by the

23 Office of Co-Prosecutor; E68 Annex 28. So the statement proves

24 that it's most likely there would have been only two Vietnamese

25 soldiers who were ever arrested and detained at S-21 before the

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1 31st of December 1977.
2 The defence counsel therefore -- having analyzed the confidential
3 policy of the Democratic Kampuchea and observed the silence of
4 Cambodia and Vietnam in relation to the hostility and the
5 characteristic of the intensity of the dispute between the two
6 countries at S-21 before the 31st of December 1977 -- the defence
7 counsel submits that the Co-Prosecutors have failed to prove
8 beyond the reasonable doubt that Duch has any knowledge of the
9 armed conflict between the two countries before the 31st of
10 December 1977.
11 [14.02.11]
12 Regarding the violations or the grave breaches of the Geneva
13 Convention dated on the 12th of August 1949, the Communist Party
14 of Kampuchea was the violator of the Convention. It was not
15 Kaing Guek Eav, alias Duch, because he was led, ordered and
16 instructed by the Party. He just obeyed the order.
17 Concerning the Standing Committee of the Communist Party of
18 Kampuchea and the members of this committee, there are still
19 three surviving people now including Nuon Chea, Ieng Sary, and
20 Khieu Samphan. And the government, the people in the government
21 of the DK, are also still alive, which includes Ieng Sary who was
22 the deputy prime minister in charge of foreign affairs.
23 Defence therefore submits that these armed conflict matters shall
24 not be concluded in this Case File 001 but instead it should be
25 referred to Case File 002 instead, which is more appropriate.

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1 I would like now to touch upon the responsibility, the agreement
2 between the United Nations and the Royal Government of Cambodia
3 and the Law on the Establishment of the ECCC.

4 Article 1 of the agreement between the United Nations and the
5 Royal Government of Cambodia dated 6th June 2003 states that the
6 purpose of the present agreement is to regulate the co-operation
7 between the United Nations and the Royal Government of Cambodia
8 in bringing to trial senior leaders of Democratic Kampuchea and
9 those who were most responsible for the crime and serious
10 violations of Cambodian penal law, international humanitarian
11 law, and custom and international conventions recognized by
12 Cambodia that were committed during the period from the 17th of
13 April 1975 to the 6th of January 1979.

14 [14.04.50]

15 According to Article 1 of the Law on the Establishment of the
16 ECCC dated on the 27th of October 2004, or known as the ECCC Law,
17 it states that:

18 "The purpose of this law is to bring to trial senior leaders of
19 Democratic Kampuchea and those who were most responsible for the
20 crimes and serious violations of Cambodian penal law,
21 international humanitarian law and custom and international
22 conventions recognized by Cambodia that were committed during the
23 period from the 17th of April 1975 to the 6th of January 1979."

24 So I would like to emphasize strongly that the laws to bring to
25 trial those Khmer Rouge leaders are only having the jurisdiction

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1 to try these two categories of people -- the senior leaders of
2 Democratic Kampuchea. So who were the senior leaders of
3 Democratic Kampuchea? And if they are identified then the
4 Co-Prosecutors should have prosecuted them all.
5 And the other category of those who are to be on trial were those
6 who were most responsible for the crimes. So those who were most
7 responsible for the crimes have to be punished. Otherwise the
8 office of Co-Prosecutor has to terminate the criminal action.
9 But so far the Office of Co-Prosecutor has failed to fulfil its
10 mission and on top of that it even fails to list even one single
11 individual who is classified as the most senior leaders of the
12 Khmer Rouge regime or the most responsible people.
13 [14.07.31]
14 So none of them has ever been listed in the list of the
15 Co-Prosecutors as those who were to be liable for such crimes.
16 So without knowing any name and that the Office of Co-Prosecutor
17 arbitrarily implicating other people as senior leaders or those
18 most responsible people for the crimes, it would not be
19 appropriate.
20 The trial of the senior leaders of the Khmer Rouge. The Royal
21 Government of Cambodia has three main purposes. First, to find
22 justice for the souls, the dead souls, those who perished during
23 the Democratic Kampuchea regime, and the survivors of the regime.
24 So regarding this first purpose, it is the more than one million
25 dead souls, those who perished in more than 196 prisons, could

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1 only be put to rest if the proceedings are seen to be just and
2 that only the people who have been classified in these two
3 categories are being brought on trial. Otherwise, justice will
4 never be done or will never be seen to be done.
5 On top of that, the position of the Government of Cambodia is to
6 maintain security, political stability and national sovereignty
7 and that to ensure such crimes will never re-occur on the
8 territory of Cambodia. And number three, that the Khmer
9 sovereignty shall be respected.
10 I would like now to move to the senior leaders of Democratic
11 Kampuchea who were actually the senior leaders of Democratic
12 Kampuchea. Paragraph 129 at page 54 of the Co-Investigating
13 Judge closing order dated 8th August 2008 expressly states that
14 the judicial investigation demonstrated that while Duch was not a
15 senior leader of Democratic Kampuchea, therefore under Article 1
16 (new) and 2 (new) of the Law on the Establishment of the ECCC.
17 Duch was not a senior leader of Democratic Kampuchea. The
18 following seven persons were the senior leaders of Democratic
19 Kampuchea: one, Pol Pot, Party Secretary; Nuon Chea, First
20 Deputy Party Secretary; Sao Yann alias Phim, Second Deputy Party
21 Secretary, Ung Choeun alias Mok, Third Deputy Party Secretary,
22 Ieng Sary, alias Brother One, full-rights member of the Standing
23 Committee, Vorn Vet alias Vorn, candidate member of the Standing
24 Committee and Son Sen alias Khieu, candidate member of the
25 Standing Committee.

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1 I would like to also address the Court that -- why these seven
2 people were the senior people of the Democratic Kampuchea.
3 During the Khmer Rouge regime, it was the Party -- it was the
4 Standing Committee that was vested with power to make all
5 decisions so no other person was allowed to make any such
6 decision. So other than these people, no other people, at all,
7 who were regarded as the senior leaders of the Khmer Rouge
8 regime.
9 So these seven people -- if you look carefully does not list
10 Kaing Guek Eav among them.
11 [14.12.26]
12 And according to the documents by the Co-Investigating Judges and
13 Office of Co-Prosecutor and that the documents have already been
14 confirmed that the most senior people of the Democratic Kampuchea
15 comprised only these seven people. There's none document,
16 whatsoever, to prove that Kaing Guek Eav alias Duch was the
17 senior leader of the Democratic Kampuchea.
18 The Standing Committee or the senior leader of the Democratic
19 Kampuchea or the Central Committee of the Standing Committee was
20 the sole mastermind of the crime and there were only seven of
21 them. And until 1997 -- and according to the DC-Cam documented
22 archive, until 1977 two additional or three additional people
23 were added; Ke Pok, Ros Nhim and another person; however, these
24 three names did not include Kaing Guek Eav alias Duch as the
25 senior leader of the Democratic Kampuchea. So on what count

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1 which was used by the respective chamber to charge Duch as the
2 most senior or the senior leader of the Democratic Kampuchea.
3 In relation to the violations of the national and international
4 laws so who were those who were most responsible for the
5 violations? Those who were most responsible were classified into
6 two categories and two phases. The first phase starts from the
7 17 of April 1975 to the 13th of March 1976. So this is the first
8 stage as I may call.

9 [14.14.55]

10 On the 17 of April 1975 when the Khmer Rouge entered Phnom Penh
11 crimes were committed overtly with the people being forcibly
12 evacuated and covertly by secretly executing people. These
13 crimes were committed with the explicit objective of enslaving
14 the entire Cambodian population by placing them in co-operatives
15 according to a preconceived plan as indicated at paragraphs 15
16 and 16 of the Co-Prosecutors final submission dated 18 July 2008
17 and paragraphs 10 and 11 of the Co-Investigating Judges Closing
18 Order dated 8th of August 2008 in which it is expressly indicated
19 that the CPK exercised effective authority. The Co-Prosecutors
20 confirmed it and the Office of Co-Investigating Judges also
21 confirmed this statement. It was not Duch who made such order.
22 I would be touching upon who put the order in tomorrow's
23 session.

24 Moreover, paragraph 12 of the Co-Investigating Judges Closing
25 Order dated 8th of August 2008 unequivocally states that

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1 politically motivated extra-judicial executions were committed
2 from the outset by military units. So it is very clear that
3 extra-judicial executions were committed by the military units
4 and Duch worked in the fields of the police so Duch was no way
5 involved in such extra-judicial killing.
6 And not long before and after the 17th of April 1975, military
7 units of each division and local authorities of each zone were
8 placed under the command of the zone secretary and deputy
9 secretary. In other words, they were in the possession of the
10 zone secretary and deputy secretary so each zone had its owner.
11 So the secretary of the zone had its own military so if they wish
12 to order any arrest or execution or smash then they would be
13 ready to do that.
14 The zones whose forces were combined to attack and take control
15 of Phnom Penh were the East Zone with Sao Yann alias Phim as
16 Secretary, the special zone under Vorn Vet and Son Sen, the old
17 Southwest Zone under Ung Choeun alias Mok and Chou Chet alias Sy
18 and four, the old North Zone under Koy Thuon and Ke Pauk.
19 [14.18.44]
20 Ros Nhim, the Secretary of the Northwest Zone attacked Battambang
21 alone with his unit so only Phnom Penh that was not yet fully
22 conquered. The other zones were already liberated so these zones
23 were jointly attacking Phnom Penh. But Ros Nhim alone only
24 conducted or led the force to attack Battambang. So altogether,
25 they worked to attack Phnom Penh and there were 10 people who

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1 were responsible for such attacks: Pol Pot, Nuon Chea, Sao Yann,
2 Vorn Vet, Son Sen, Koy Thuon, Ros Nhim, Chou Chet, Ros Nhim and
3 Duch was not included.

4 So these 10 people after having control the power, they started
5 to really implement their criminal plan. They therefore are
6 those who are most responsible for the crimes and serious
7 violations of Cambodian and International Law during the period
8 from the 17th of April 1975 to the 30th of March 1976.

9 During the first stage from the 17th of April 1975 to the 30th of
10 March 1976, Kaing Guek Eav alias Duch, was not amongst those who
11 were most responsible for the crimes and serious violations of
12 Cambodian and international law.

13 First, from the 17th of April '75 and after the people were
14 evacuated and executed, the executions were conducted by the
15 military unit, according the indictment. Duch worked in the
16 police section, so he did not work in the military unit. So he
17 was not involved in such execution before the 17th -- during that
18 time because, as the police, he should have been spared from
19 being prosecuted.

20 Number two, when people were evacuated out from Phnom Penh to the
21 countryside, people were already executed but Duch was stationed
22 at Amleang in Thpong district. He as not part in the evacuation
23 because he was working there. So it is a kind of
24 misunderstanding to prosecute him on that account. And the
25 secretaries of the zones who were in charge of attacking Phnom

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1 Penh and Battambang and who were behind the evacuation and the
2 execution of the people, were those 10 people and that Duch was
3 not amongst them.

4 [14.22.21]

5 And after the 17th of April 1975 until the 30th of March 1976,
6 Duch had been the Deputy Chairman of S-21. The Chairman was In
7 Lorn, alias Nat. He was the deputy. He was not the one who was
8 most responsible for S-21 at that time, so the person who was
9 fully in charge was Nat. So even we had to call those chiefs of
10 prisons during that period of time, it was far beyond Duch's
11 ability to be involved in such crimes. So Duch was not involved.
12 So the crimes committed from the 17th of April 1975 to the 30th
13 of March 1976 and those who were most responsible for the crimes
14 were those 10 people as I have already indicated and it is clear,
15 obviously, that Duch is not included. So during the first stage,
16 Duch is free from being prosecuted as he was the Deputy Chairman
17 of S-21 while In Lorn was the Chairman.

18 I would like now to talk about the second stage, starting from
19 the 30th of March 1976 to the 6th of January 1979. According to
20 paragraph 35 of the Co-Investigating Judges' Closing Order dated
21 8th of August 2008, it is acknowledged that the Party had
22 clarified authority to execute, so in this paragraph 35 the
23 Co-Investigating Judges made it already clear that the Party had
24 clarified the framework, the authority to execute. Therefore,
25 who actually had the authority to execute or smash? Those who

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1 were vested with such power were those who were most responsible
2 for the crimes and the violations of both domestic and
3 international law.
4 [14.25.14]
5 The Party delegated power and rights to these groups of people
6 and I will touch upon how many groups of people who were
7 entitled to smash, to kill, to spare anyone's life during such
8 regime. So let's bear with me to see whether Duch is included in
9 the group. If he comes in the group, then I would be very
10 disappointed anyway but I hope he will not be in that statement.
11 According to a Central Committee decision dated 30th of March
12 1976, the Party, or Angkar, vested authority to smash within and
13 outside the ranks in the following four groups of people. I can
14 say that the organization assigned four groups of people to smash
15 within and outside the ranks, so these four groups of people were
16 assigned. Was Duch included in the groups?
17 First group, in the base framework, the zone standing committee.
18 This means that the secretary of the zone who was the one to make
19 such decision. The surrounding the Centre Office, the offices
20 surrounding Phnom Penh, the Central Office Committee was the one
21 who made the decision. Within independent sectors, the Standing
22 Committee, it was Pol Pot. The Centre military, the general
23 staff. So please bear with me to the following statement who
24 were included in these four groups of people.
25 So by this decision, the Central Committee expressly vested in

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1 the aforementioned four groups of people the authority to smash,
2 to eliminate millions of people within and outside the ranks. So
3 these four groups of persons were, therefore, those who were most
4 responsible for the crimes and serious violations of Cambodian
5 and international law due to the fact that they were the ones
6 vested with the power of life and death over everyone.

7 [14.27.51]

8 And according to these very well deliberate decisions by the
9 standing committee, the rights, the power, the authority was
10 given to the standing committee of the zone. So the standing
11 committee of the zone had the authority to smash anyone within
12 and outside the rank in its base framework.

13 So there were seven zones during the period. The Northeast Zone
14 -- Rattanakiri, Mondulkiri and Stung Treng -- Men San alias Ya,
15 was the secretary and who was the authority to make any decision
16 to smash anyone. So he could spare anyone's life if he would
17 wish to do so. The East Zone, Sao Yann alias Phim, the zone
18 secretary, had the power to decide on smashing.

19 Three, in the Southeast Zone including Takeo, Kampot, Kampong
20 Speu, S'ang, Koh Thom, Leuk Daek, Dangkao, Kandal Steung, Ung
21 Choeun alias Mok, the secretary, had the power to decide on
22 smashing.

23 Four, in the West Zone north of Kampong Speu, Kampong Chhnang,
24 Koh Kong, Chou Chet alias Se was the zone secretary and had the
25 power to smash.

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1 Five, in the Northwest Zone -- Pursat, Battambang -- during that
2 time Battambang included Pailin and Banteay Meanchey. Ros Nhim,
3 the in-law of Nuon Chea, was in charge.

4 Six, in the Central Zone -- Kampong Thom, Kampong Cham -- there
5 was Ke Pauk alias Ker Vin, the zone secretary who had the power
6 to decide on smashing.

7 Seven, in the new North Zone in Preah Vihear, Oddar Meanchey,
8 Stung Treng, it was Kâng Chap alias Sae, the zone secretary who
9 had the power to decide on smashing.

10 [14.30.30]

11 I would like to also emphasize that after Chou Chet, alias Sy,
12 was arrested Mok was promoted to be the Secretary of the Central
13 Zone, replacing him. And later on he was promoted to be the
14 Secretary of the Northwest, replacing Ya. Later he was promoted
15 to be the North Zone secretary, so he later on became the
16 secretary of four zones.

17 So those who were most responsible for the crimes and violations
18 of the national and international law from the 30th of March 1976
19 to the 6th of January 1979 were comprising of these people. And
20 according to the decision of the Central Committee, the power to
21 smash people inside and outside the ranks was vested in the
22 Central Office Committee.

23 So the Centre Office Committee had the right to smash people who
24 were surrounding the offices. So Khieu Samphan -- it was Khieu
25 Samphan who decided on smashing, as he was the Chairman of the

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1 Centre Office Committee also known as Office 870. So Khieu
2 Samphan was among the most responsible people for the crimes and
3 violations committed from the 30th of March 1976 until the 6th of
4 January 1979.

5 [14.32.37]

6 And according to the same document under the same Central
7 Committee decision, authority to smash inside and outside the
8 ranks was delegated to the independent sectors or autonomous
9 sectors which includes Siem Reap, Oddar Meanchey, Preah Vihear,
10 and Kampong Som, or Sihanouk province.

11 So these sectors are independent and the Standing Committee with
12 Pol Pot as the secretary had the authority to smash anyone in
13 these autonomous zones or sectors. And at that time it was Pol
14 Pot who made such decision to smash because the secretaries of
15 the sectors were not the full-rights members of the Standing
16 Committee and without such title no one was allowed to make such
17 decision.

18 That's why in these autonomous sectors it was the Standing
19 Committee that was vested in such a power to smash, and it was
20 Pol Pot among the other people who were most responsible for the
21 crimes and violations of national and international laws.

22 Four, the fourth group within the army. In the decision by the
23 Standing Committee dated 30th of March 1976, the right or the
24 authority was given to smash within the military rank. So it was
25 the General Staff who was given such authority and it is

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1 obviously clear that it was Son Sen, who was the most responsible
2 person among the other most responsible people for the crimes and
3 violations of national and international laws.

4 [14.34.58]

5 I would like to also indicate that according to the documents of
6 the Standing Committee meeting dated on the 9th of October 1975,
7 it states that:

8 "2. Comrade Deputy Secretary, Party Affairs, Social Affairs,
9 Culture, Propaganda and Education."

10 So this signifies that besides Party affairs, Nuon Chea was also
11 responsible for four ministries, namely Social Affairs, Culture,
12 Propaganda, and Education. So he was responsible for all affairs
13 under these ministries, especially internal screening inside the
14 ministries, since none of the four ministries was a member of the
15 Centre. Only members of the Centre had the authority to make
16 decision to smash. So Nuon Chea was the one who was in charge.
17 None of the members of the ministry was the full-rights member of
18 the Standing Committee, so it was Pol Pot who was given the right
19 and here, referring to this ministry, since there was none who
20 was member of the Standing Committee, it was Nuon Chea who was
21 given the authority to smash. And Duch was not a member of the
22 Centre. So it can be drawn from this conclusion that only the
23 members of the Standing Committee had the right to smash people.
24 So the question is, was Duch given such authority to smash
25 because he was not the member of the Centre? Of course not. And

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1 Nuon Chea was also appointed to the additional position of
2 secretary of the Northeast and East zones after the previous zone
3 secretaries had been arrested by decision of the Standing
4 Committee. To that effect, and to the two instances mentioned
5 above, Nuon Chea supervised the ministers of the four ministries
6 and was also secretary of two zones.

7 [14.36.21]

8 This provides additional confirmation that Nuon Chea was one of
9 those who were most responsible for crimes and serious violations
10 of Cambodian and international law.

11 Mr. President, could we take an adjournment now?

12 MR. PRESIDENT:

13 Since it is an appropriate time to take an adjournment, then we
14 will take 20 minutes adjournment. We will resume at 3 p.m.

15 (Judges exit courtroom)

16 (Court recesses from 1438H to 1501H)

17 (Judges enter courtroom)

18 THE PRESIDENT:

19 Please be seated. The Trial Chamber is back in session and the
20 defence counsel may take the floor to continue your final
21 submission, please. The floor is yours.

22 MR. KAR SAVUTH:

23 I would like now to start.

24 In conclusion, those who were most responsible for the crimes and
25 serious violation of the Cambodian and international law during

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1 the period from 17 April 1975 to 6 January 1979 including eleven
2 of them: One, Pol Pot; Nuon Chea; Sao Yann alias Phim; Ung
3 Choeun, alias Mok; five, Son Sen; six, Khieu Samphan; Men San
4 alias Ya; Chou Chet alias Sy; Ros Nhim; Ke Pauk; and Kang Chap
5 alias Sae.

6 [15.02.41]

7 I have just addressed to the Court about the stages of the purges
8 and I would like now to start from the 17 April 1975 to 6 January
9 1979. Those who were responsible - most responsible for the
10 crimes and international law during the period of 17 April 1975
11 to 6 January 1979: Pol Pot, Nuon Chea, Sao Yann, Ung Choeun,
12 Khieu Samphan, Koy Thuon, Men San alias Ya, Ke Pauk, Chou Chet
13 alias Sy, Ros Nhim, Kang Chap alias Sae.

14 In conclusion, among those who were most responsible for the
15 crimes and serious violations of the Cambodian and international
16 law during the period from 17 April 1975 to the 6th of January
17 1979 and Kaing Guek Eav alias Duch was not one of the 13 persons
18 named about. Under Article 1 of the ECCC law, it does not
19 include Duch because he was not a senior leader of the Democratic
20 Kampuchea and he was not those who was responsible for the crimes
21 and serious violation of the national and international law from
22 the 17 of April 1975 to the 6th January 1979.

23 In conclusion, who were senior leaders of the Democratic
24 Kampuchea and those who were most responsible for the crimes and
25 serious violations of Cambodian and international law from 17

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1 April 1975 to 6 January 1979? And I would like to combine
2 together of the senior leader of the DK and those who were most
3 responsible all together, but in this case, some of the people
4 played two roles. Who was the senior leaders and also the ones
5 who were most responsible? Some of them just the senior leader
6 and some of them were just those who were most responsible for
7 the crimes.

8 [15.06.29]

9 So those who were the senior leader of the Democratic Kampuchea
10 and those who were most responsible for the crimes, all together
11 there were only fourteen of them -- fourteen of them. On the
12 top, he is the most senior leader and the most responsible person
13 for the crimes and the Cambodian law and international law.

14 There were only nine of them so those who played two roles, only
15 nine of them: One, Pol Pot; two, Nuon Chea; three, Sao Yann
16 alias Phim; four, Ung Choeun alias Mok or Chhit Choeun; five,
17 Vorn Vet; six, Son Sen. So I would like to address to the Court
18 that seven, eight and nine - the three last people based on the
19 history document of DC-Cam, there was the seven, Khieu Samphan,
20 Ke Pauk and nine, Ros Nhim.

21 Secondly, those who were senior leaders, he was not the one who
22 is most responsible for the crime, he was Ieng Sary.

23 So those who were most responsible for all the crimes, all
24 together, I may now conclude that there were four of them who
25 were not senior leaders, but they were those who were responsible

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1 for the crimes: number one, Koy Thuon; Men San alias Ya; Chou
2 Chet alias Sy; Kang Chap alias Sae. So these fourteen
3 individuals, eight were executed or smashed before the 6 of
4 January 1979 so seven out of fourteen died before the 6 of
5 January 1979. They include Sao Yann alias Phim, committed
6 suicide in 1978; Vorn Vet alias Penh Thuok, arrested on the 2nd
7 of November 1978 and smashed in the same year; three, Koy Thuon,
8 arrested on the 25th of January '77; four, Men San, alias Ya,
9 arrested the 20th of September '76; five, Chou Chet alias Sy,
10 arrested the 17th April 1978; six, Ros Nhim alias Moul Un alias
11 Sambath, smashed 1978; seven, Kang Chap, alias Sae, alias Chan
12 Sam was arrested and smashed on the 31st of October, 1978. They
13 were executed or died after the 6th of January 1979. There were
14 four of them including Pol Pot who died in 1998; two, Choeun,
15 alias Mok died in 2006; Son Sen, number 3, was smashed by Pol Pot
16 in 1997; four, Ke Pauk died in 2002. So among these 14 people,
17 11 of whom died, three remain to be brought to trial -- number
18 one, Nuon Chea, the senior leader of the Democratic Kampuchea as
19 the first secretary and the most responsible person for the crime
20 and serious violations of the domestic and international law, as
21 Nuon Chea was the one who oversaw the implementation of the
22 policies and decisions rendered by Pol Pot.
23 He was monitoring the ministers of four main ministries including
24 the purges of the four ministries including the secretary of the
25 east and whose secretary was purged earlier.

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1 Number two, Khieu Samphan, was the most responsible person for
2 the crimes and violations of the domestic and international law.
3 Khieu Samphan was the secretary of Office 870 who had the
4 authority to smash anyone surrounding the Central Office.

5 [15.12.22]

6 Khieu Samphan became the Standing Committee member in 1977 so he
7 was part of the system.

8 Number three, Ieng Sary, who was the most senior leaders of the
9 Democratic Kampuchea because he was the Deputy Prime Minister in
10 charge of Foreign Affairs.

11 Duch was not the senior leader of the Democratic Kampuchea nor
12 was he classified in the category of those who were most
13 responsible for crimes and serious violations of domestic and
14 international law because the senior leaders of the Khmer Rouge
15 regime, the Democratic Kampuchea comprised only those people and
16 that Duch had not been included.

17 The three additional members of the Standing Committee were
18 included and Duch was never been included.

19 Regarding those who were most responsible for the crimes and
20 serious violations of the domestic and international law, I can
21 conclude there were only 13 people. Among them Duch was not
22 listed. In thousands of pages of documents in the case file,
23 there is no document indicating that Duch as the senior leader or
24 those who were most responsible for the crimes.

25 [15.14.29]

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1 Duch only was mostly responsible for the crimes at S-21 so those
2 who were sent to S-21 were under the supervision of Duch and this
3 authority could only be exercised in the confinement area of
4 S-21.

5 So Duch's responsibilities was to hold the prisoners and not to
6 allow any of them to escape, to torture them, to extract their
7 confessions, to determine whether they were genuinely obtained,
8 otherwise he would be in big trouble. And to determine whether
9 they were CIA, KGB agents or Yuon spies, whoever it is, not to
10 let them die, and confessions cut off.

11 If anyone was found to have tortured the victims -- at that time
12 they were called as detainees -- and if they died and their
13 confessions were cut off then Duch would be responsible for that.

14 Duch was responsible to send the prisoners or the victims who
15 were already interrogated to be smashed but never executed those
16 people in person. So to smash the prisoners for them means to
17 smash as ordered by Angkar whose leader was Pol Pot, the top
18 leader who issued orders to Nuon Chea and Son Sen who then issued
19 orders to Duch who, in turn, issued order to the smashing squad.

20 This confirms that Duch was not one of those who were most
21 responsible as Duch received orders from his superiors who had
22 the authority to make decisions on smashing as well as the
23 authority to order the smashing accordingly. So it is they who
24 were most responsible. A person who received orders and executed
25 them is not one of those who were most responsible as in fact he

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1 was ordered from above. So someone ordered from his above.
2 [15.17.26]
3 So Duch would have been one of those who were most responsible if
4 he were vested with the authority to order other people to make
5 arrests and smash those who were arrested. And since he had no
6 authority to smash and he had nothing to choose but to obey the
7 order, otherwise to kill or be killed.
8 Whether the Chairman of S-21 was regarded as the senior or those
9 who were most responsible for the crimes and serious violations
10 of international and domestic law is still in question so in the
11 Khmer Rouge regime there were 196 prisons and there were 196
12 prison chiefs. So Duch alone shall not be tried if the other
13 prisoner chiefs still enjoy the impunity.
14 So in conclusion, it would be fair enough if all these people are
15 arrested and brought to trial and according to the Constitution
16 of Article 31 of the Constitution of the Kingdom of Cambodia, the
17 Article clearly states that every Khmer citizen shall be equal
18 before the law, enjoying the same rights, freedoms and fulfilling
19 the same obligations regardless of their race, colour, sex,
20 language, religious belief, political tendency. Is the equality
21 here? Is Article 31 of the Constitution of the Kingdom of
22 Cambodia being respected when amongst the 196 prison chairmen,
23 only the S-21 prison chairman is being prosecuted?
24 The other 195 prison chairmen remain free. Each prison received
25 the same orders from the same Angkar and each prison implemented

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1 the same system of torture and killing. Why Duch the only one
2 being prosecuted? Is justice being done by the ECCC with the
3 involvement of the United Nations?
4 More concretely, only 64 of the 196 prisons have statistic
5 showing the number of people who died. S-21 ranks number 10 out
6 of those 64 prisons in terms of the number of people who were
7 killed. By comparison, in Chong Chroy Prison, located in Chheu
8 Trach village, Kouk Banteay subdistrict, Rolea B'ier district in
9 Kampong Chhnang province, the number of people killed was
10 significantly higher than the number of those killed at S-21.
11 Despite all that, the chairman of that prison has not been
12 prosecuted. So the number of people killed at S-21 was far less
13 than those people who died -- who were killed at the Chong Chroy
14 Prison. So why the prison chief who ordered the execution of
15 12,000 victims is being brought to justice? I know the
16 Co-Prosecutor would wish that justice is done but the defence
17 counsel wants justice to be done to the accused too.
18 I'm now talking about the damages and by comparing the number of
19 prisoners who were killed at that prison and those who were
20 killed at S-21 so you can see the lives, the number of lives who
21 perished. But please, I would like to apologize to everyone that
22 I'm not really downgrading the dignity of those dead souls of the
23 more than 12,000 people who died at S-21 among the 12,280
24 prisoners died as compared with the 150,000 prisoners who were
25 killed at the Chong Chroy Prison and the chief of that prison

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1 still enjoys freedom of the impunity.

2 [15.22.46]

3 So if that chief of the prison remains at large, then Duch should
4 also remain at large because they were the chiefs of the prisons.

5 If they were to be prosecuted then everyone shall be equally
6 prosecuted. Why some chiefs of prisons were prosecuted while the
7 others were not? So how can we call this justice and how can
8 justice be done and seen to be done?

9 This is the role of the Co-Prosecutors. At the beginning of the
10 hearing on the 30th of March 2009, the first hearing, I asked the
11 Co-Prosecutor to indicate clearly the reason why the
12 Co-Prosecutor failed to prosecute the other prisoners (sic) of
13 other prisons, because only having prosecuted those people that
14 the victims of the regime are satisfied or are informed or rely,
15 having heard it, because those perpetrators finally ended up
16 being prosecuted.

17 The second point is in relation to the purpose of the Royal
18 Government of Cambodia. The government intends to make sure that
19 the Court is established so that to stop such crime from
20 occurring again. So the question is if people who killed more
21 victims are still at large but people who killed less are
22 prosecuted, is it a good message to the public that the purpose
23 of seeking justice by the government is served? And if the
24 accused is prosecuted then it would be a violation to the
25 Constitution of the Kingdom of Cambodia Article 31 and also the

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1 Law of the ECCC itself.

2 [15.25.18]

3 And if Duch, as the Chairman of S-21, were regarded as the person
4 who was most responsible or senior people, or responsible for the
5 crimes, then the chiefs of the 195 prisons are also regarded as
6 the people who were most responsible for the crimes and the
7 serious violations of the national and international law equally,
8 and they have to all be prosecuted and brought before this Court.
9 Only by doing so that justice is done.

10 In the contrary, if the chiefs of the other 195 prisons are not
11 included in the category of those who were most responsible for
12 the crimes, then the Chairman of S-21 shall not be included in
13 such category and should be spared from being prosecuted. I
14 therefore request for the exemption of such prosecution against
15 my client, Kaing Guek Eav, alias Duch.

16 I would like now to reiterate that the chiefs of the 195 or 196
17 prisons, none of them had the authority to make any arrest,
18 interrogate and smash. They received orders from the four
19 groups, as I already indicated. They received orders from those
20 four groups of people. Why he was now -- or why he receives the
21 falling stone onto his head? So the Court should also consider
22 whether they now expel the prosecution, or exempt the prosecution
23 of Duch or otherwise prosecute other chiefs of prisons.

24 The law states clearly that only the senior leaders of the Khmer
25 Rouge regime and those who were most responsible would be brought

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1 to trial, and those who are not included in these categories
2 would be free, regardless of their having committed such crimes,
3 having killed hundreds of people. This law is very special. It
4 is very extraordinary, I may say, because it is contradictory to
5 the code, the domestic code which is about the accomplices, the
6 perpetrators and those who were aiding and abetting the crimes
7 all have to be prosecuted. Now the law only allows us the
8 prosecution of those who were most responsible for the crimes and
9 the senior leaders of the Khmer Rouge regime.

10 [15.29.11]

11 If you look at the situation of Duch, Duch was the Chairman at
12 S-21. He did not kill people in person. He had his subordinates
13 smash those people and the chiefs of his subordinates, who were
14 the direct perpetrators, are not prosecuted. They're only
15 prosecuting the senior, the most senior one. So the lower cadre,
16 lower-level cadre, would not be prosecuted, as the law says.

17 So if the prosecutors indicate or determine Duch -- or put Duch
18 into any categories of these two groups of people, then the
19 prosecutors should now tell the Court clearly how we can really
20 identify the status of the most responsible people for the crimes
21 and the senior leaders. So without doing so, the question --
22 there would never be justice and that if --- it makes my client
23 fall victim as a loyal servant of the regime. And he is not
24 clear as to what kind of status he should be classified in, and,
25 therefore, the Co-Prosecutors shall have the position to clearly

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1 indicate who were those most responsible people and senior
2 leaders.

3 Other cadres, the former cadres of the Khmer Rouge regime have
4 been living with this kind of uncertainty. During Khmer Rouge
5 regime, when the people were arrested and sent to S-21, no-one
6 would be spared regardless of the arrest that was made by
7 mistake. The Angkar would say that killing someone by mistake is
8 better than releasing someone wrongfully, or to keep you is no
9 gain or to lose you is no loss, as such.

10 So it can be concluded that S-21 had no authority to make any
11 decision to arrest or to release anyone. S-21 killed people and
12 the photos of the dead bodies had to be taken and sent to Pol Pot
13 to make sure that he believed those were killed. Pol Pot did not
14 trust anyone easily.

15 [15.23.39]

16 So my client just obeyed the order of the Angkar. If he failed
17 to do so he would have been implicated as the enemy of the
18 Angkar. So he had to do his best to survive by respecting the
19 order. Of course, it is no doubt that at S-21 there was
20 execution, but those who directly killed the prisoners were the
21 guards in which Khim Vak alias Hor who was in charge of the unit.
22 So Duch never killed, never smashed, any prisoner in person.
23 The most responsible people, those who were most responsible for
24 crimes all across the country were those who made the decision to
25 arrest and smash. So who made such decision? Who made the

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1 decision to smash? There were the committee of the steering
2 committee in which Pol Pot was the secretary; it was not Duch.
3 I, therefore, submit that Duch did not commit the crimes against
4 humanity or the war crime as being charged.
5 The ECCC Law states that only those who were most responsible for
6 the crimes and senior leaders of the Khmer Rouge regime are to be
7 prosecuted. And no medium- or low- level cadres would be
8 prosecuted because they just exercised -- they just obeyed their
9 superiors and they had no choice but to obey it. During the
10 Khmer Rouge regime, those who had come across the regime could
11 have been quite familiar with the situation.
12 Killing anyone at S-21 is no different from killing other people
13 all across the country. This killing was conducted by the
14 Communist Party of Kampuchea led by Pol Pot, not by my client,
15 Duch. So it is a mistake to prosecute my client now. It is good
16 that the real senior and most responsible people for the crimes
17 are prosecuted.
18 [15.35.51]
19 It is too bad that these people could never stand trial; they
20 died too early. Ung Chouen alias Mok arrested Pol Pot and that
21 he died and people started to realize that they should now put
22 the rest of the people on trial. So according to the history,
23 the prosecution of the Hitler's group and also the President of
24 Chile and also the President Mr. Slobodhan Milosevic, these
25 people were the real most responsible people for the crimes.

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1 Now, the Court should have been quite informed already who were
2 the senior leaders and most responsible for the crimes. Who were
3 the masterminds of the lines, the criminal lines? And they were
4 Pol Pot and his people. And I think prosecuting just Pol Pot
5 alone would be significant already as he was the real mastermind.
6 According to the Penal Code of 1956, the crimes Duch committed --
7 or the crimes that had been committed at S-21 are not included in
8 that Penal Code because the Article states that:
9 "It cannot be regarded as the criminal offences if the crimes
10 were committed based upon the order of the superior."
11 And in the rule of law, we should stick to this rule, and
12 according to the law during the Khmer Rouge, the Pol Pot's rule
13 and law when people were sent to S-21, it was the Party -- it was
14 the Angkar who made the decision to smash or to execute them. At
15 that time, the Party was the court. The speech of the Party was
16 equivalent to the final judgement of current court. No one could
17 contest.
18 [15.38.52]
19 Whatever order rendered by the party, everyone had to be abided
20 by it. Only after the Khmer Rouge regime that people could
21 challenge. People could never do that in the Khmer Rouge regime.
22 And I wish they could do so in that regime if they would wish to
23 do so and I believe that would end up being smashed if they did
24 so. So if the Angkar asked someone to be smashed, then they have
25 to be smashed. If they opposed, then they would be regarded as

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1 enemies and enemies had to be smashed.

2 It was in the proceedings that the witnesses who talked about the
3 parents who came to see the children. And the children were
4 happy to see their parents coming home, but the children was
5 proud to tell the parent that according to Angkar you were my
6 parent, but then killing parent was no different. And who orders
7 such execution? It was Son Sen. It was Son Sen. On top of Son
8 Sen was Nuon Chea. On top of Nuon Chea was Pol Pot, and so on
9 and so forth.

10 So Son Sen, Nuon Chea and Pol Pot were the legal authority of the
11 Democratic Kampuchea because during that time Democratic
12 Kampuchea was the legal state recognized by the United Nations.
13 The United Nations still recognized the Democratic Kampuchea as a
14 state, the legal legitimate state, long after the collapse of the
15 regime.

16 So we can see that the Democratic Kampuchea was the legitimate
17 country recognized by China, France, and allowed Pol Pot to have
18 a seat at the United Nations. So Pol Pot's hand was stained with
19 blood but still the United Nations allowed him to have a seat, a
20 place in such internationalized body.

21 We, the defence counsel, admit that the crimes at S-21, like the
22 crimes committed at other prisons, existed. You cannot cover an
23 elephant with a rice basket. The accused has repeatedly made it
24 clear two leaves of tamarind could never be used to cover the
25 dead elephant. So who are to be accountable for the crimes?

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1 [15.42.22]
2 According to our ancient practices it was those who ordered the
3 killing would be brought to trial. Article 238 of the Penal Code
4 states that if the criminal only obeyed his superior under
5 duress, for example like Duch -- he had to really obey Son Sen's
6 orders. So in such a case the prosecution could only be brought
7 against the superior; the superior who ordered such execution.
8 So Rule 238 can be a good reference for this. So if the boss
9 ordered to commit such crimes then the boss shall be prosecuted
10 for the commission. Even in the United States there was an
11 execution of the person who set the house on fire.
12 During the Sangkum Reastr Niyum, Preap In was executed; Mak Thura
13 was also executed. Those who were allowed to execute those
14 people were not prosecuted because they were allowed by law. So
15 those who just obeyed the superior order would be spared from
16 being prosecuted, and my client falls in that category.
17 The defence counsel have examined and found out that Duch should
18 be free from being prosecuted because if he failed to abide by
19 the order he would have been prosecuted by the Penal Code of 1956
20 because if he failed to respect the order, according to that
21 Article. In the Khmer Rouge regime, if Duch failed to obey the
22 orders he would have been smashed already, long ago.
23 Only in the case when the Chamber has found out that Duch has
24 exercised his authority or abused his power, or he did more than
25 what he was ordered to do, that he would be prosecuted according

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1 to Article 240 of the Penal Code of 1956. So only in that case
2 that Duch could be prosecuted.
3 [15.46.14]
4 According to Article 5 on the outlaw of the Khmer Rouge, the
5 Article states clearly that this law allows, six months after it
6 comes into existence or in force, the forces who were in the
7 Democratic Kampuchea to return or to surrender, to be integrated
8 under the supervision of the Kingdom of Cambodia. Those who
9 could turn in within this period of time would be exempt from
10 being prosecuted.
11 So those people who were the members of the political group or
12 who belonged to the Democratic Kampuchea and who came or
13 integrated into the society with the Royal Government of Cambodia
14 before the 7th of January 1995 were not charged or prosecuted
15 under this law.
16 So having considered this law, my client has genuinely been free
17 from being prosecuted already. And he came to join the
18 government long before such law established. He came two years
19 six months before the law was adopted. So whatever crimes he
20 could have committed, he shall not be prosecuted based on these
21 articles of the law.
22 As the Court is already informed that according to the law on the
23 outlaw of the Khmer Rouge and from the date this law came into
24 force, which was 1995, so if any individual who was the member of
25 the political organization or in the military of the Democratic

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1 Kampuchea who failed to integrate into the Royal Government of
2 Cambodia and who continued to exercise its execution or killing
3 of people, then the law can be used to prosecute those people.
4 And of course they have violated this article.
5 [15.49.28]
6 But so far, and in 1997, Pol Pot arrested Son Sen, Yun Yat, and
7 the whole family -- 11 people -- and had them shot at. And they
8 were lying down on the road while the tank was seen rolling on
9 them and it was a very heinous crime and these people could have
10 been prosecuted for such crime but who could prosecute Pol Pot at
11 that time? At that time only Ta Mok. He conducted a meeting and
12 arrested Pol Pot and placed him under a house arrest, and to
13 inflict him the harsh condition and put him in the room which was
14 so stuffy and hot to make sure that Pol Pot died sooner. So this
15 is a crime. Pol Pot died; Ta Mok was free.
16 I therefore submit that Duch is not guilty and he shall be free
17 from being prosecuted. From 1995 Duch has never violated this
18 law, and according to the same law one article states that those
19 senior leaders of the Democratic Kampuchea are not pardoned. So
20 the law states that according to this conclusion Duch was not
21 among the most responsible people or senior leaders. If we refer
22 to the appeal of the Royal Government of Cambodia, the appeal
23 signed by Samdech Krom Preah, the first prime minister, and the
24 second prime minister, Mr. Hun Sen, signed in 1994 to appeal to
25 the people, the soldiers who were still under the supervision of

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1 Khmer Rouge to surrender, to integrate in the society. The
2 government at that time promised not only to pardon them but to
3 maintain their previous rank and status.
4 [15.53.09]
5 Now, at the Ministry of Defence there are still some former Khmer
6 Rouge soldiers with the same ranks. Unfortunately Duch, who came
7 to live under the supervision of the government long before the
8 Khmer Rouge outlaw law adopted, ends up being prosecuted. So
9 this is a clear message that Duch is not a person who is stubborn
10 or violates the law, because he even came to live with the
11 government long before the law was adopted or before he heard the
12 appeal. So Duch came very early already. He should have been
13 appreciated and he did not commit any crimes for that certain
14 reason, so he should be free and the Court may consider this case
15 as well.
16 And according to the Paris Peace Accord of the 23rd of October
17 1991 concerning Cambodia, Article 1 -- rather, Article 21 of that
18 agreement, it states that the release of the prisoners and
19 detained prisoners are to be determined in due course -- as soon
20 as possible. There were factions, there were troops, there were
21 civilians who were trapped in the -- and then when UNTAC came
22 they were released and people could come to sit at the table at
23 Jakarta, for example, at New York, and these people were equal
24 before the law and all past crimes or matters were forgotten.
25 And according to this period, Annex 5 of this agreement states

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1 clearly that the institution prohibits any execution of the
2 criminal law on the crimes that are committed in the past. So in
3 1991, the Paris agreement which established United Nations
4 Transitional Authority in Cambodia, or UNTAC, in 1973 has
5 pardoned and recognized the Khmer Rouge as a party in the
6 election, because if they were regarded as the convicts then they
7 would not be allowed to take part in such elections.

8 [15.56.44]

9 At that time the Khmer Rouge were allowed to take part but they
10 boycotted such election and Duch was not a part of any leaders,
11 of the Khmer Rouge leaders, so there has no more remaining
12 offences to be left and that he shall not be prosecuted. I
13 therefore request that the Trial Chamber accept the motion of the
14 defence concerning the termination of the criminal action as
15 prescribed or pursuant to Article 500, 501 and 506 of the Penal
16 Code of 1956 or declare that the armed conflict which led to the
17 war crime which violated the Geneva Convention dated on the 12th
18 of August 1949 was the part of the Government of Democratic
19 Kampuchea and those of the Socialist Republic of Vietnam.
20 The conflict was between them and it was not Kaing Guek Eav,
21 alias Duch, who started it. It was the Communist Party of
22 Kampuchea and the Government of Democratic Kampuchea who made the
23 decision to send Vietnamese soldiers and civilians to be smashed
24 at S-21. Kaing Guek Eav, alias Duch, did not have authority to
25 make such decision. Therefore it is not Kaing Guek Eav, alias

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1 Duch, personally but the Communist Party of Kampuchea and the
2 Government of Democratic Kampuchea who violated the Geneva
3 Convention of the 12 August 1944 (sic). So I request that Duch
4 is now free from being prosecuted.

5 Thank you, Your Honour. I would like to share the floor with my
6 co-counsel.

7 MR. PRESIDENT:

8 Mr. François Roux, you may now proceed with your final closing
9 statement.

10 MR. ROUX:

11 Thank you, Mr. President. Given the time, I would prefer to
12 begin tomorrow morning so that I will not be interrupted, if the
13 Chamber is so inclined. I don't think I'd like to do my
14 introduction now and continue with the rest of my pleadings
15 tomorrow morning.

16 [16.00.03]

17 MR. PRESIDENT:

18 As requested by the defence counsel and due to the time limit,
19 because we only have 15 minutes left for the session to end, so
20 we now grant the defence counsel such a request and that he shall
21 be making his pleading tomorrow's session.

22 We will now adjourn the afternoon session by now and we will
23 resume the session by 9 a.m. tomorrow.

24 The security personnel are now instructed to take the accused
25 back to the detention facility and return him to the courtroom by

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1 9 a.m. The Court is adjourned.
2 (Judges exit courtroom)
3 (Court adjourns at 1601H)
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