



**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

27 November 2009, 0902H

Trial Day 77

Before the Judges:

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

Lawyers for the Civil Parties:

TY Srinna  
KONG Pisey  
MOCH Sovannary  
HONG Kimsuon  
Karim KHAN  
Silke STUDZINSKY  
Philippe CANNONE  
Martine JACQUIN

Trial Chamber Greffiers/Legal Officers:

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

For Court Management Section:

KAUV Keoratanak

For the Office of the Co-Prosecutors:

CHEA Leang  
William SMITH

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth  
Francois ROUX  
Helene UÑAC  
CHAN Ravuth

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. KAR SAVUTH	Khmer
MS. CHEA LEANG	Khmer
MR. KHAN	English
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 [09.02.24]

4 MR. PRESIDENT:

5 The Court is now in session. Mrs. Se Kolvuthy is now instructed  
6 to report on the attendance of the parties to the proceedings  
7 today.

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 In a moment, the Chamber would like to give the floor to the  
15 prosecutors to make their rebuttal statement if they would wish  
16 to do so. Please be informed that the prosecutors will have one  
17 hour to make such statement. You may now proceed.

18 MR. SMITH:

19 Good morning, Mr. President. Good morning, Your Honours. Good  
20 morning, learned counsel, civil parties, members of the public  
21 and people of Cambodia.

22 Your Honours, today we have a very short time to respond to quite  
23 a number of things, so we will be brief on the topics and try and  
24 lead you to the evidence through our briefs. I briefly will give  
25 an introduction on some remarks we would like to make and then

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1 I'll hand the floor to my national colleague, who will address a  
2 number of issues. And following that I will address a few more.  
3 [09.05.05]  
4 Your Honours, the prosecution take great exception to the remarks  
5 by the defence made yesterday that we have been representing this  
6 case by untruths, stating things that are not based on the  
7 evidence. And in relation to that, Your Honours, I would invite  
8 Your Honours to look at the final submission that we filed back  
9 in 2008 prior to the indictment being issued. Look at that  
10 200-page final submission with all of those footnotes, look at  
11 the opening address of the prosecution at the start of this case,  
12 and look at the final submission with 1,000 footnotes, 160 pages  
13 which supports everything we have said about this case from the  
14 beginning until the end.  
15 The prosecution case has been clear and it's been consistent and  
16 we invite Your Honours to scrutinize these claims by the defence  
17 by actually looking at the evidence, rather than rhetoric.  
18 And perhaps one brief example of the absolute inaccuracy of the  
19 defence comments. Your Honours will remember yesterday when the  
20 defence stated that in this brief, in the prosecution's final  
21 submission, there wasn't one word, one sentence acknowledging the  
22 limited co-operation that this accused has given. We have said  
23 that; we stand by that. It's limited co-operation and he should  
24 receive some minimal credit for that, and we've explained that to  
25 Your Honours in our sentence.

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1 If Your Honours look to page 6 of our final brief, and I will  
2 read:  
3 "The accused has agreed to the facts of most of the underlying  
4 crimes, accepted his overall responsibility and generally  
5 co-operated with the authorities and offered his apologies to the  
6 victims and their families. These are important concessions  
7 which should have a mitigating factor on his sentence if he is  
8 convicted."

9 [09.07.30]

10 We've said that in our brief and defence counsel yesterday stated  
11 that not a word was there. Those comments about prosecution  
12 untruths, that relates to so many other aspects of this case and  
13 by looking at the footnotes, Your Honours, you'll see that's  
14 completely and utterly inaccurate.

15 Secondly, Your Honours, what has happened, though, in this trial  
16 is that Your Honours, the prosecution, the civil parties have  
17 been grossly misled by the defence. Two weeks ago they filed a  
18 brief which had nothing in it in relation to evidence of  
19 mitigating circumstances and, sure, they don't have to put  
20 anything in the brief. It's not their job to prove the case,  
21 however, it's been particularly unhelpful only hearing what the  
22 defence's position in relation to the evidence is yesterday.

23 But we're not complaining about that. What we are complaining  
24 about is that throughout this trial and through this brief  
25 they've generally accepted that they are going to be pleading

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1 guilty to these charges. Now, under the civil law system, you  
2 know, there's no such thing as a guilty plea but they have been  
3 saying throughout this case that certainly they would not be  
4 asking for an acquittal; and that's what they've done yesterday.  
5 They've asked for an acquittal for this accused, for a man that  
6 says he's co-operating with the authorities. That's loud and  
7 clear.

8 So what does it mean? I think one thing that needs to happen  
9 today is that this needs to be rectified. It needs to be  
10 rectified whether or not this accused instructed his counsel to  
11 ask for an acquittal. As Your Honours are well aware, counsel  
12 can only act on instructions of their client. If counsel make  
13 submissions on an acquittal when he, in fact, wanted to  
14 acknowledge the crimes and plead guilty, then the counsel is  
15 leaving his client behind and that's improper conduct.

16 [09.09.59]

17 And, Your Honours, the reason why it's important, because we will  
18 act on the assumption that the accused has instructed the defence  
19 to ask for an acquittal. Now, if that's the case, he should get  
20 no -- no -- mitigating factors in relation to his sentence, none  
21 at all, because that's not co-operation at all.

22 So that's the assumption that we make, but I have a feeling that  
23 that's not the case. I have a feeling that counsel have acted  
24 without instructions and I think, Your Honours, this needs to be  
25 resolved before we leave the courtroom, because if we don't

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1 resolve this point either the accused is going to be  
2 short-changed where he'll lose any mitigation that we've put  
3 forward and then he will appeal this case and say, "My counsel  
4 didn't act on my instructions", and we'll go through this again;  
5 or alternatively, if Your Honours just assume that the counsel  
6 didn't act on instructions and the accused is, in fact, not  
7 pleading not guilty and pleading guilty, then you may, in fact,  
8 be giving him credit for something he's instructed his counsel  
9 not to do.

10 So, Your Honours, this is very important for sentencing and I  
11 would ask, and my suggestion would be, that this accused be asked  
12 first, rather than their counsel, as to whether or not he's  
13 instructed them to plead not guilty or, in practical terms, to  
14 ask this bench for an acquittal. That affects the mitigating  
15 factors whether they're present or not. And, Your Honours, it  
16 will also avoid an appeal point which the accused may raise.

17 [09.12.12]

18 Secondly, Your Honours, in relation to what was the substance of  
19 the acquittal submission, obviously the defence have said there  
20 was no personal jurisdiction for the accused, he's not a "most  
21 responsible". The defence have also said that he shouldn't be  
22 prosecuted because he's got an amnesty. He's also said that  
23 there's no material jurisdiction for national crimes. The  
24 defence have also said there's no evidence for the grave breaches  
25 of the Geneva Conventions, and the defence have also said that

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1 there's a full defence of committing these crimes because he was  
2 obeying superior orders.

3 Now, the international counsel supported his national counsel by  
4 saying, "Yes, yes, things have changed and my client pleads not  
5 guilty". And then the international counsel continues on and  
6 provides submissions on pleas of mitigation. It's very, very  
7 unclear what the defence are, in fact, doing but one thing that  
8 is clear is that from that defence yesterday, they asked for an  
9 acquittal of this accused, and I strongly suggest to Your Honours  
10 that you speak directly to the accused and find out whether they  
11 were acting on instructions or not.

12 Your Honours, the fact of this change of approach by the defence  
13 on the second-to-last day of the trial -- this is unacceptable in  
14 any courts and it should be unacceptable in this Court. However,  
15 regardless of the submissions the defence and the prosecution  
16 make, Your Honours, Your Honours have hear the evidence; you can  
17 make your own minds up on the evidence.

18 Your Honours, my learned colleague will be addressing you briefly  
19 on the issue of the question of whether the accused is a "most  
20 responsible" under the statute. I will briefly address the issue  
21 of amnesty. Amnesty clearly doesn't apply. The ECCC Law takes  
22 away any amnesty that could apply and even if it wasn't for the  
23 ECCC Law, amnesty wouldn't apply for this accused in any event,  
24 but there's no need to go into that. Those matters should have  
25 been raised one month after the indictment was issued, which is



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1 probably about a year-and-a-half ago; a year-and-a-half late on  
2 the day before the end of the trial. That's Rule 89, Your  
3 Honours.  
4 [09.15.03]  
5 My colleague will address the matter of national crimes, of  
6 whether they should apply; that was raised by the defence. And  
7 in relation to the defence raised -- a full defence raised of  
8 superior orders to these crimes, Article 29 clearly states that  
9 committing crimes via superior orders, in fact, is no defence and  
10 that reflects the international jurisprudence in relation to  
11 crimes against humanity and war crimes.  
12 Your Honours, I will hand the floor to my learned counsel. I  
13 will then come back and say a few words about the plea of  
14 mitigation, bearing in mind it was in the context of a defence  
15 request for a complete acquittal for this accused. Thank you.  
16 MR. KHAN:  
17 Mr. President, with your leave, a small intervention if I may  
18 have permission.  
19 Your Honours, the prosecution have proposed, quite sensibly in  
20 the submission of civil party group 1, a preliminary issue that a  
21 question be put from the Bench to the accused in order to have  
22 clarity. Your Honours, it's my respectful submission for the  
23 proper conduct of proceedings that instead of ploughing straight  
24 on with the rebuttal of the prosecution facing a very uncertain  
25 picture, the more prudent and efficient course would be for Your

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1 Honours to consider the preliminary application of the  
2 prosecution and decide whether or not to put the question to the  
3 accused.

4 [09.16.57]

5 It may well be that once some clarity either way has been  
6 restored to these proceedings, then more fruitful and more  
7 focused submissions can be put forward by the prosecution. If we  
8 do not adopt this approach, of course, the danger is that after  
9 all the prosecution submissions facing an uncertain case put  
10 forward by the defence, there is no opportunity to have any  
11 additional submissions. So Your Honours, it is my respectful  
12 submission that in the interests of justice, Your Honours decide  
13 the preliminary matter now before we proceed further.  
14 Your Honours, I'm most grateful and I do apologize for  
15 interrupting.

16 MR. PRESIDENT:

17 The Chamber would like to give the floor now to the national  
18 Co-Prosecutor to make her rebuttal statement.

19 MS. CHEA LEANG:

20 Mr. President, Your Honours, I will be trying to respond to the  
21 defence counsel concerning the comments made by them regarding  
22 S-21. As we already indicated earlier, the role of the  
23 prosecutors is to find justice for the victims of the Khmer Rouge  
24 regime, based on the law and the facts.

25 Yesterday, the defence counsel indicated that the trial would not

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1 be used as a venue for revenge but it was used for seeking  
2 justice. The question is, did the crimes exist at S-21 and if  
3 they existed, who would be responsible for them? And we, the  
4 prosecutors, have to find evidence to support these arguments.  
5 And it is the important role of our office to find all the  
6 evidence for the interest of the public and the victims.  
7 However, it is quite contradictory to this notion that the  
8 defence counsel only brought forward the exculpatory evidence.  
9 [09.19.41]  
10 It is very interesting that after having heard the submission of  
11 the defence counsel, we have doubt that the accused already  
12 acknowledged all the crimes committed at S-21, but the defence  
13 counsel has not touched upon the crimes at S-21 and that they  
14 maintain that Duch shall not be liable for the crimes committed  
15 at S-21. So their statements are very contradictory and we would  
16 also like to ask the question whether it is the genuine statement  
17 or submission by the defence counsel to reduce the sentence of  
18 the accused when he is found guilty or to acquit him of the  
19 crimes he has committed.  
20 During the preliminary hearing, or the initial hearing, there was  
21 a contest in relation to the Penal Code of 1956. However,  
22 according to our Internal Rules, Rule 87.2, such submission shall  
23 not be raised now since the time allowed already lapsed. I still  
24 have another question and I would like to also make it clear why  
25 this person falls into the jurisdiction of the ECCC and why he is

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1 among the most responsible persons of those who were the senior  
2 leaders of the Khmer Rouge regime.  
3 Before this hearing, the defence counsel made in their statement  
4 yesterday that according to the Penal Code of 1956, Article 109,  
5 the defence stated that the statute of limitation has already  
6 lapsed. The Penal Code of 1956 indicates the statute of  
7 limitation of any crime which is in the scope of 10 years, and  
8 the crimes was committed from the beginning until 1979, so the  
9 jurisdiction -- the statute of limitation of such crime was  
10 within 10 years, within the legal framework of or the  
11 jurisdiction of the Court to put the accused on trial.  
12 [09.22.43]  
13 So, later on, after some amendments and agreement, then the  
14 statute of limitation has been extended to 30 years, another 10  
15 years, and the defence counsel indicated that the murder or the  
16 torture, as prescribed in Articles 500, 501 and 506 of the Penal  
17 Code of 1956 already overdue concerning its statute of  
18 limitation, and they also submitted that applicable 500, 501 and  
19 506 of the Criminal Penal Code of 1956 should not be applied  
20 before the Chamber. However, the prosecutors found that the laws  
21 are applicable and the reason why these statute of limitations is  
22 extended is because that Article 500 and 501 and 503 are not  
23 violating the principle of legality and the principle of legality  
24 is prescribed in Article 15 of the ICCPR.  
25 And the extension of the statute of limitations concerning the

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1 Penal Code of 1956 has nothing to do with the authorization of  
2 the crimes as charged. This extension of the statute of  
3 limitation allows the authority or gives the jurisdiction to the  
4 ECCC to bring to trial those people who are most responsible and  
5 who were the senior Democratic Kampuchea regime and those who  
6 were responsible for the murders and tortures.

7 [09.25.13]

8 It is not against the principal of non-retroactivity.  
9 Retroactivity means that the crime is committed but the law was  
10 adopted later. The Penal Code of 1956 was already adopted before  
11 the crimes were committed. It is obvious that Duch, who was well  
12 educated, could have well been familiar with the existence of  
13 such laws. So the accused must have known the laws before the  
14 crimes were committed. On top of that, the magnitude of the  
15 crimes committed by the accused, including murder, torture, which  
16 was systematic, which were inflicted onto more than 12,000  
17 detainees at S-21, were foreseeable. And it is true that the  
18 accused could have known clearly that the acts were criminal in  
19 nature because he made it clear that he was quite familiar with  
20 the criminality of the Khmer Rouge regime by way of evacuating  
21 people gradually from the cities and have them moved and forced  
22 to labour in the rural areas.  
23 So we submit that Kaing Guek Eav alias Duch had pre-knowledge of  
24 the murder and torture which were prescribed in the Penal Code of  
25 1956 and the law which was based when he was being charged.

12

1 So we conclude that there is no violation of the  
2 non-retroactivity when the Criminal Code of 1956 is referred to.  
3 Article 3 of the ECCC law -- and based on the spirit of the  
4 negotiation between the Royal Government of Cambodia and the  
5 United Nations, some national or domestic crimes have been  
6 included into the Agreement. Finally, the Royal Government of  
7 Cambodia, and with the approval of the National Assembly of  
8 Cambodia, agreed to extend the statute of limitation of the crime  
9 to another 30 years.

10 [09.28.46]

11 We would wish the Trial Chamber to also review the decision by  
12 the Constitutional Council which was dated in 2001. The decision  
13 dated in the same -- there were two decisions of the  
14 Constitutional Council in relation to the extension of the  
15 statute of limitation concerning the Penal Code of 1956, and this  
16 decision has already been well put in Article 3 of the ECCC's  
17 Law. The decision is final and the appeal is not subjected.  
18 This shows a strong purpose of the lawmakers and the drafters of  
19 the law who wish to include these crimes into the rules before  
20 the ECCC and that these laws are to be applied for the crimes  
21 committed during the Khmer Rouge regime. So the law before the  
22 ECCC is not contradictory to the decision made by the  
23 Constitutional Council.

24 I would like now to touch upon the decision made by the Pre-Trial  
25 Chamber. Having seised of the appeal by the Co-Prosecutor to

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1 include murder and torture within the framework of the Penal Code  
2 of 1956, to include these crimes into the ECCC law and these  
3 matters have already been prescribed in Article 3 of the ECCC law  
4 and the Pre-Trial Chamber has already ruled on this matter with  
5 the majority decision to include domestic crime, including murder  
6 and torture. According to Rule 89.2, the Trial Chamber shall  
7 only make a decision or rule on the facts which we listed in the  
8 indictment or the decision by the Pre-Trial Chamber.

9 The Trial Chamber has the jurisdiction to rule on the matters as  
10 listed in the indictment, as I already submitted. So the Trial  
11 Chamber has the jurisdiction to decide or to rule on the matters  
12 that have already been listed in the indictment.

13 Mr. Kar Savuth already indicated that why Duch alone was liable  
14 for the crimes while the other chiefs of detention facilities  
15 still at large? The defence counsel maintain that their client  
16 was just like a scapegoat. Such an argument does not make any  
17 sense because if the defence counsel relied on the facts, on the  
18 ample evidence put before the Chamber, then they should never  
19 have come up with the term "scapegoat" that they would like to  
20 describe for the accused.

21 I would like to quote the case of Lubanga before the ICC. The  
22 accused maintained that when Lubanga surrendered before the  
23 Court, then it was accused that he only pretended to -- or he was  
24 the scapegoat. However, if we look at the case of the accused  
25 here whether he should be called the scapegoat, but the accused

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1 in this crime was not the scapegoat and we, the Co-Prosecutors,  
2 would like the Chamber to look at the accused before our Chamber.  
3 In these proceedings, the Trial Chamber only looks into the facts  
4 of S-21 and the Chamber is not looking at all the crimes  
5 committed all across the country during the Democratic Kampuchea.  
6 [09.34.46]  
7 From the crimes committed at S-21 and according to the indictment  
8 and the decision made by the Pre-Trial Chamber, all the crimes  
9 related to S-21 have been well-listed and provided to the Trial  
10 Chamber. The facts concerning S-21 are substantiated by the  
11 ample evidence because there are several victims, including  
12 Cambodian nationals and the foreigners who were detained and  
13 smashed. All of them had endured severe tortures and inhumane  
14 acts before they perished.  
15 The accused himself already acknowledged that such facts existed  
16 at S-21 and that he is solely liable before the victims. And he  
17 said, and it is found out in the evidence and his statement, that  
18 he said he was the deputy chairman and later on the Chairman of  
19 S-21. He already pleaded guilty for the crimes he committed.  
20 The accused was among the most senior leaders and most  
21 responsible people for the crimes because he was among those who  
22 committed such crime, including the arrest, the torture and the  
23 execution, and all enemies all across the country were executed.  
24 As we already noted in relation to the policy of the CPK, all  
25 security system in the whole country -- the security system was



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1 the core part of the structure of the Khmer Rouge and S-21 was  
2 the very important prison or structure.  
3 Although there is no evidence to prove that S-21 did not control  
4 other detention facilities, but it is clear that S-21 was the  
5 main security centre in the whole country which had the direct  
6 contact with the Standing Committee. The centre provided the  
7 advice and recommendation to the superior in relation to the  
8 perceived enemies. This office was the sole office in charge of  
9 arrests, interrogation and execution of the senior cadres of the  
10 CPK. This office was in charge of the arrest and torture and  
11 execution of the senior ministers from ministries and senior  
12 cadre from all zone sectors.  
13 [09.38.25]  
14 The centre was used as the tool to purge internal staff or  
15 members. This document can be found under document E2/41. Duch  
16 himself initiated, supported the arrests and the smash and he  
17 ordered, under his supervision, several executions. The  
18 superiors would not be familiar with who would have been  
19 considered as enemies if Duch did not really tip off such  
20 incidents, and Duch maintained that he had good contact with his  
21 superiors. So Duch was the one who made the decision on the fate  
22 of the detainees at S-21. The statement is very contradictory to  
23 the defence counsel yesterday, who said that the accused has no  
24 authority to make any arrest. According to Him Huy's statement,  
25 D19/4, Huy said that the accused sometimes went to arrest in

16

1 person.

2 S-21 was the only security centre of the Democratic Kampuchea  
3 which has the huge operational scope. Its scope covered the  
4 operation all across the country. The centre received prisoners  
5 from all ministries, including the Ministry of Public Affairs,  
6 the Energy, Industry, the Foreign Affairs and the Social Affairs.  
7 This office used its resources extensively and used its very  
8 skilful skills to make arrest of the detainees during the regime.  
9 So S-21 Security Office was the biggest security office within  
10 the regime.

11 Having compared the staff members of each detention facility  
12 during the regime, S-21 had the most people under its  
13 supervision. Some Westerners who were arrested from the coastal  
14 area of Sihanoukville were also sent straight to S-21. Those  
15 people were not sent to any other autonomous prisons in the  
16 Sihanoukville vicinity, so it is clear that S-21 had the most  
17 authority compared to other prisons.

18 [09.41.50]

19 The uniqueness of S-21 already reflects its complexity because  
20 the security centre was designed to focus on searching for the  
21 enemies of the regime, because the Democratic Kampuchea found out  
22 that enemies were posing great threat to the regime and that the  
23 centre was designed to track down these enemies. And the  
24 operation was very confidential. Even the security guards within  
25 the vicinity were not allowed to go beyond their confined

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1 allocated or designated area for guards.

2 Everyone who was detained at S-21 was terrified because of the

3 policy of secrecy. The accused aided and abetted and helped

4 manage the smooth operation of S-21 and his contribution has led

5 to the great destruction and great execution at the vicinity.

6 I do not know why Mr. Kar Savuth claimed that his client was not

7 liable or responsible for the crimes which have been committed

8 onto the victims at S-21 and why his client was not the most

9 responsible person, because he said his client only received

10 orders to kill or he would be killed, and he maintained that his

11 client was not among the senior leaders. This argument was just

12 an excuse.

13 This accused person is a real criminal and he is behind the

14 crimes committed at S-21. He was the secretary of S-21 who

15 oversaw all the administration, the management of the whole

16 function of the centre. It proves that the accused was the most

17 senior person among the other people who were most responsible

18 for the crimes during the jurisdiction of the ECCC.

19 [09.44.56]

20 Finally, I would like to also talk about the existence of armed

21 conflicts. The defence counsel stated that the accused had no

22 knowledge of the armed conflicts before the 31st of December

23 1977. It is a false argument because the accused indicated that

24 he learned from Son Sen about the armed conflicts at the border

25 with Vietnam in the vicinity of Mondulkiri province, and that Son

18

1 Sen had to go to the battlefield on the 15th of August 1977 and  
2 the accused was familiar with this. We would like to draw your  
3 attention to document E2/30.1 under ERN 00339830. Son Sen went  
4 to the battlefield before the 15th of August 1977 and Nuon Chea  
5 ordered Duch and briefed him on this.

6 William Smith, my co-colleague, already put questions to the  
7 accused regarding this matter and the accused still agreed with  
8 his statement, or stands by his statement before the  
9 Co-Investigating Judges, although the accused did not remember  
10 when exactly the armed conflict existed, but through the arrests  
11 of the Vietnamese prisoners of war at S-21 in early 1976, the  
12 accused could have been familiar already, and more prisoners of  
13 war were arrested in February 1976 when they were found coming  
14 into the territory of Cambodia in Sector 25. The accused  
15 received those prisoners and he also summarized the confessions  
16 of those prisoners. In his work to summarize two confessions of  
17 the two Vietnamese prisoners of war, he was quite familiar with  
18 the intention of those prisoners who came into Cambodia.

19 Yesterday, during the hearing -- or the day before yesterday --  
20 at the end, the accused expressed his remorse and said he would  
21 be responsible for all the crimes before the victims, but it is  
22 quite contradictory to the statement because the accused was not  
23 genuine in his expression of remorse. But we acknowledge that  
24 the accused co-operated with the Chamber but that it is his  
25 statement that he maintains he is responsible for all the crimes.

19

1 He is responsible for the crimes in legal and emotional context.

2 [09.49.06]

3 If the accused still maintains his genuine position that he keeps  
4 co-operating with the Court and expressing his genuine remorse,  
5 then the victims would probably accept his apologies.

6 I would like to now give the floor to my co-colleague to add the  
7 final point.

8 MR. SMITH:

9 Thank you, Your Honours.

10 Your Honours, the defence, in their submission yesterday,  
11 basically put forward indirectly that this accused -- well,  
12 firstly, of course, that he should be acquitted; secondly, if  
13 he's not acquitted but convicted, the international counsel put  
14 forward a penalty range of about 17 to 20 years of imprisonment  
15 for this accused. Bearing in mind the huge scale of crimes and  
16 the atrocious way in which they were committed, and the pain and  
17 cruelty suffered by so many, that would be a completely and  
18 utterly inadequate response. It would not reflect what  
19 international jurisprudence states about an accused that commits  
20 crimes of such a large scale.

21 Your Honours, in support of that request, the defence put forward  
22 two cases; the case of Obrenovic and Albert Speer. Your Honours,  
23 I worked at the International Criminal Tribunal for the Former  
24 Yugoslavia and I know about that case of Obrenovic, and it is  
25 completely and utterly different to the case of this accused.

20

1 In that case, Obrenovic was a military officer of very good  
2 character prior to the war, unlike this accused who had been  
3 torturing and killing for about four years at M-13. And you  
4 remember what François Bizot said; on Christmas Eve in 1971, when  
5 he said, "Who does the beating?" and the accused said to him, "I  
6 can't stand their duplicity. I beat them. I beat them till I'm  
7 out of breath."

8 [09.52.10]

9 Obrenovic was not that person. He was an upstanding military  
10 officer and then he got involved in crimes in the Bosnian war.  
11 The crimes that he was charged with was in relation to the  
12 Srebrenica massacre where eight to ten thousand people were  
13 killed in a large-scale military operation that happened over a  
14 three-day period, and certainly Obrenovic wasn't the instigator  
15 of that operation. The way the Judges explained it, he played a  
16 passive role by allowing his men to be involved in that operation  
17 in the thick of war. In addition to that, Obrenovic allowed the  
18 investigators into his office and to actually investigate the  
19 case against him on the case files, which is quite different to  
20 this accused.

21 Your Honours, this accused's crimes lasted for about  
22 three-and-a-half years at over 12,000 victims -- probably 13,000  
23 or 14,000 as we've heard -- it just cannot be compared at all  
24 with the case of Obrenovic. In fact, if you look at Obrenovic,  
25 it would probably guide Your Honours to give him triple the

21

1 sentence that Obrenovic got.

2 Secondly, they compare this accused to the accused, Albert Speer,

3 and the difference between this accused and Albert Speer is that

4 this accused was a loyal, enthusiastic implementer of the

5 regime's policies, he wanted to do it, but Albert Speer was

6 someone quite different. The defence keeps stating that these

7 types of crimes that this accused committed are the crimes that

8 all of us would commit; ordinary people in his shoes would have

9 committed. Well, ordinary people don't commit these types of

10 crimes and certainly, in relation to Albert Speer, he had a

11 conscience and it stated in the decision, and I quote:

12 "In mitigation it must be recognized that Speer's establishment

13 of blocked industries did keep many labourers in their homes and

14 at the closing stages of the war he was one of a few men who had

15 the courage to tell Hitler that the war was lost and to take

16 steps to prevent the senseless destruction of production

17 facilities, both in occupied territories and in Germany. He

18 carried out his opposition to Hitler's scorched earth programme

19 in some of the Western countries and in Germany by deliberating

20 sabotaging it at considerable personal risk."

21 [09.54.56]

22 Clearly, Your Honours, this is the complete opposite in relation

23 to this accused who -- and we stand by it along with the experts

24 -- sent a web of terror throughout Cambodia by implicating many,

25 many people through torture, knowing that -- and on his words --

22

1 90 percent were innocent.

2 Stéphane Hessel was called by the defence to show how

3 reconciliation should influence your sentencing considerations.

4 However, in the cases of this type of accused, his view was that

5 there must be justice, proper justice, before there's any chance

6 of real reconciliation. And I quote, this is Stéphane Hessel:

7 "I shall take the example of Albert Speer. This example is

8 something close to my heart because of his positive action

9 towards those unhappy people, unfortunate people, in the Dora

10 Concentration Camp where I ended the Second World War, Mr. Speer

11 assured that it was important to take into account the unbearable

12 working conditions of those who were deported in the camp. So,

13 in his favour, he took a stand which enabled the Nuremburg judges

14 to be less harsh on him than they were in regard to the other

15 accused before the court. I do not think that the same shall

16 apply to a person who has admitted guilt, but who has not

17 provided clear material to support the view that he opposed the

18 instructions that he received when he committed his deadly

19 crimes."

20 [09.56.50]

21 Clearly, the case of Albert Speer is completely different to the

22 case of this accused in that he objected in the end to the

23 policies and, secondly, he actually accepted his guilt which, as

24 we know from yesterday subject to your clarification with the

25 accused, this accused -- although he says he psychologically



23

1 accepts it, he generally accepts accountability, however. as we  
2 heard in the pleas of mitigation from the defence, he was a small  
3 cog in the machine -- he had no choice, he had to do it and he  
4 tried, in fact, to minimize the pain and the suffering.  
5 Your Honours, you heard the international defence counsel read  
6 out the notebook that he put to Prak Khan, a witness in this  
7 case, and in that notebook it basically stated that, look, don't  
8 torture all the time because if you torture all the time you may  
9 not get to the truth. And, as a result of that, you should use  
10 discussions about politics to find out the truth of the matter so  
11 that you, in fact, don't get people that are falsely implicated.  
12 That notebook was used to infer that this accused somehow wanted  
13 to minimize the deaths and minimize the pain and suffering.  
14 That's completely at odds with the accused's testimony. The  
15 accused has testified that he would take the interrogators in and  
16 train them and dare them to be cruel. And, as I've previously  
17 stated, he's also stated that his process of interrogations and  
18 collecting confessions enabled 90 percent of the names of the  
19 people that were referred to in those confessions to be innocent.  
20 And those confessions were sent forward to his superiors and more  
21 people were arrested and the terror multiplied emanating from  
22 S-21.  
23 [09.59.06]  
24 Your Honours, the defence, at the end of the case -- at the end  
25 of the evidence on the 16th of September, in the final stages

24

1 before any of the parties could clarify this particular question  
2 which was raised by Robert Petit at the beginning of the case.  
3 And he said to the accused, and I think you remember:  
4 "Are you a man that enjoyed the trust of your superiors,  
5 implemented in a devoted and merciless fashion the persecution of  
6 the CPK and Cambodia?"  
7 And the accused said, "Absolutely, yes."  
8 Now, in our submissions earlier this week, this left some great  
9 doubt as to what he meant by that because if he meant, as we  
10 said, that he willingly, believing in the CPK, carried out these  
11 crimes; not under the threat of fear or not for the reason that  
12 they were orders but he believed in the basis of the orders, then  
13 he should state that and he should state that clearly.  
14 They say that the defence counsel has been complaining throughout  
15 this case about the use of leading questions because it's a  
16 common law principle of cross-examination and it's absolutely  
17 amazing -- the classic leading question at the end of the case  
18 when no one can examine what that answer meant -- was led by the  
19 international defence counsel who was complaining about that  
20 information or evidence-gathering technique. The reason why, of  
21 course, is because sometimes leading questions lead to very  
22 ambiguous answers. They suggest the answer to the accused or the  
23 witness and, as a result, they can become unreliable unless  
24 clarified further; done at a time when no clarification could be  
25 made.

25

1 [10.01.06]  
2 Your Honours, we gave the accused that opportunity about two days  
3 ago to say to this Court, to say to the people of Cambodia, yes,  
4 I committed these crimes, I committed them willingly, I committed  
5 them because I believed in the CPK, and I'm sorry for that. But  
6 what he's done, apart from denying all guilt through this counsel  
7 by saying "give me an acquittal," which -- I doubt he said that  
8 and hopefully Your Honours will clarify that -- he's had his  
9 international counsel come and say he was a small cog in the  
10 machine.  
11 Your Honours have seen all of the annotations in this case.  
12 Encouraging torture, proposing arrests to the senior leaders,  
13 "Please can I arrest this one; please can I arrest that one," and  
14 then his international counsel seems to forget about the evidence  
15 that is a clear photograph of the state of mind of the accused  
16 back in 1975 to 1979.  
17 He chose not to take that opportunity to actually accept full and  
18 complete responsibility rather than just being someone forced to  
19 obey orders under complete terror. And I can only reiterate one  
20 of the last questions to the accused and I think it completely  
21 undermines his case.  
22 He stated, second to last question by the prosecution:  
23 "And what about your relationship to Son Sen?"  
24 The one that the international defence counsel was putting  
25 forward yesterday, that there was no relationship -- it was

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1 superior/subordinate authority and that was it.  
2 And he said -- and I ask Your Honours to look at the transcript:  
3 "This is the question I've been waiting for. I've been waiting  
4 to tell the world that I had the utmost respect and faithfulness  
5 for Son Sen."  
6 Now, Son Sen is what the national defence counsel said was in his  
7 top 13 list of the most responsible people for the killings in  
8 the country. Son Sen was the one that taught the accused, that  
9 brought him up through M-13, brought him up through S-21, who  
10 stayed with him for 15 years after S-21, and the accused has the  
11 utmost respect and faithfulness to him? I mean, he's got to be  
12 joking because if he's not joking, and I'm sure he's not, that  
13 proves with all of the other evidence, this is just a complete  
14 lie. And for some reason or another, he's coming to Court to try  
15 and accept political or general responsibility, but he's not  
16 facing up to who he was back in 1975 to 1979.  
17 [10.04.48]  
18 Your Honours, maybe in his final statement he might turn towards  
19 the civil parties. Maybe in his final statement he might turn  
20 towards them and say, "Yes, I did believe in the CPK. It was  
21 madness. I did terrible things but I believed in it. I believed  
22 it was a means to an end." That's what the evidence says.  
23 That's what the hundreds and hundreds of annotations say. I ask  
24 Your Honours to look at them. That's the truth.  
25 How can you be proud of your boss that's told you to torture and

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1 kill for years on end? That was an invitation, a non-leading and  
2 open, clear invitation to this accused, and he shut that door;  
3 the door that he says and his counsel says needs to be open to  
4 the victims. Why would they want to go through that door?  
5 Your Honours, this case is about over 12,000 people that were  
6 brutally tortured and murdered. To think of the experience of  
7 any one of them, of any one of them, with the eagerness and  
8 enthusiasm with which this accused committed those crimes, it  
9 cannot -- it cannot let you give him a light sentence, and we  
10 implore you that you do not come back with a sentence for less  
11 than 40 years.

12 Some civil parties have complained. Some civil parties have  
13 complained because the lives of their families and friends have  
14 been lost and he gets 40 years, and they've been through this  
15 cruel suffering and he gets something less than that. We  
16 understand that. However, as we've said at the beginning of the  
17 case, this is not about revenge. This is about respecting  
18 humanity, respecting the humanity of this accused, respecting the  
19 humanity of the victims at S-21.

20 [10.07.16]

21 And so the law has told us that because of that illegal detention  
22 we must -- we have to -- give a reduction because of that.  
23 That's the law that tells us that and that will make this  
24 judgment something that is a judgment to be proud of rather than  
25 the ones handed down by the accused many years ago.

28

1 In respect of the victims, in respect of Cambodia's future, in  
2 respect of the principle of "no peace without justice", I would  
3 ask that you remember the victims of S-21 and, as we said at the  
4 beginning, allow your judgment to send a clear message to the  
5 future of Cambodia.

6 Thank you, Your Honours.

7 MR. PRESIDENT:

8 The Chamber will give the floor next to the defence counsel to  
9 respond, to have their final response, but in order that their  
10 response is not cut by the break, then the Chamber would wish to  
11 take the morning adjournment for 20 minutes. At ten-thirty, the  
12 session will be resumed.

13 (Judges exit courtroom)

14 (Court recesses from 1009H to 1037H)

15 (Judges enter courtroom)

16 MR. PRESIDENT:

17 Please be seated. The Court is now back in session.

18 In a moment, we are going to hear the rebuttal statement of the  
19 defence counsel and the accused. This is going to be the final  
20 one. During the course of their rebuttal, the defence counsel  
21 including the accused, have one hour to do so and the Chamber  
22 would like to ask to the accused whether he would wish to make  
23 any final remarks and, of course, if he would wish to do so then  
24 the Trial Chamber will reserve some time for him.

25 [10.38.57]

29

1     However, since the Chamber is not yet clear in relation to the  
2     statements made by the defence counsel, which are rather  
3     inconsistent, the Chamber expects the defence to clarify its  
4     position during the rebuttal. You may now proceed. The defence,  
5     you may proceed.

6     MR. KAR SAVUTH:

7     Mr. President, Your Honours and the Court, first of all I would  
8     like to express my thanks to the civil parties for paying great  
9     attention to the case and for having said that they are here not  
10    to take any revenge but to seek justice in the eyes of the law,  
11    and the prosecutors also confirmed this position and that the  
12    prosecutors wish to find justice. And we, the defence counsel,  
13    are very grateful to them because we, the defence counsel, are  
14    here to seek justice and the objective is ultimately the same.  
15    Your Honours, first I would like to respond to the matter of the  
16    extension of the statute of limitation to 30 years. The defence  
17    counsel has not challenged such matter. However, the defence  
18    counsel is submitting that from the 6th of January 1979 and  
19    between 1979 to 1989, the statute of limitation already lapsed  
20    and that if there would have been any extension, such extension  
21    should have been made already. It is more like the person died  
22    and that you are now trying to save the death. It was  
23    impossible.

24    Point number 2. I'm responding in relation to the domestic  
25    crimes. According to Article 3 of the ECCC Law which refers to

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1 Penal Code of 1956, there are 10 articles: 209, 210, 501, 503,  
2 504, 506, 508 and so on. Among these 10 articles, there are  
3 references to the Penal Code. There are four relevant articles.  
4 I would like to reiterate that according to the ECCC law, Article  
5 3.1, there are references to the 1956 Penal Code and there are 10  
6 articles which are referred to: Article 209, Article 210,  
7 Article 500, 501, 503, 504, 505, 506, 507 and 508. Among these  
8 10 Articles there are four related articles: Article 209,  
9 Article 500, Article 506 and 507 which state about the  
10 third-level criminality. According to the same Penal Code,  
11 Article 21 states that the third-level crime or felony is  
12 referred to the killing. So the essence of Article 3  
13 subparagraph (1) of the ECCC Law is contradictory to the  
14 provision in the Constitution. Article 32 subparagraph (2) of  
15 1993 and 1998 states that the capital punishment shall be  
16 abolished.

17 So the defence counsel is of the opinion that Article 3  
18 subparagraph (2) of the ECCC Law extends additional 30 years on  
19 top of the statute of limitation concerning the crimes. There  
20 Article 109 of the 1956 Penal Code states already that such  
21 statute of limitation could be violated for 10 years, so  
22 according to this, the Article 3 of the ECCC Law is contradictory  
23 to the legal principle, which is about the non-retroactivity  
24 concerning the crimes committed in the past.

25 [10.46.21]



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1 I would like to indicate that in the world, even in the criminal  
2 system, for example Anglo-Saxon legal system or Islamic system or  
3 the socialist system or civil legal system, these systems have to  
4 be abided by the core legal principle. Failing to be abided by  
5 this principle is a violation of the law. So the defence would  
6 like to pinpoint that this Constitutional Council of the Kingdom  
7 of Cambodia has not made it clear whether this fundamental  
8 principle has the same value as the Constitution and it has  
9 failed to have it included in the Constitution. This fundamental  
10 principle is not stated in the new Constitution of 1993 and 1998.  
11 However, Annex 5 of the Paris Peace Accord, the 23rd of October  
12 1991, has been referred to and this agreement has referred to  
13 such principle. Although such principle was not included in the  
14 Constitution, the Annex 5 of the Paris Peace Accord shall be  
15 applicable. This Annex states that the Constitution prohibits  
16 any criminal laws in relation to the crimes which occurred in the  
17 past. So any additional extension of the statute of limitation  
18 has to be made in the spirit of this fundamental principle,  
19 otherwise it would be a violation to such law.  
20 So Duch cannot be prosecuted based on the domestic law.  
21 Regarding the non-retroactivity, this matter is not powered in  
22 the Constitution but in the Penal Code of 1956. We would like  
23 you to look at the fundamental principles of the 1956 Penal Code  
24 which is about the exception. Article 6, subparagraph (2) of the  
25 Code states very expressly that -- however we are now referring

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1 to that old law, not the ECCC Law, so if this new law abolishes  
2 any crimes committed before the law was adopted, then the crimes  
3 which were committed before the law were adopted would not be the  
4 subject of the crimes to be used for the prosecution of my  
5 client. So the principle of the provision of the ECCC Law has  
6 been consistent to the Penal Code of 1956, Article 6,  
7 subparagraph (2).

8 [10.50.47]

9 Article 38 and 39 of the ECCC states about the punishment. So  
10 anyone will be punished to the maximum of life imprisonment; that  
11 capital punishment has already been abolished. So it is not Duch  
12 alone who has to be freed from being prosecuted on domestic laws.  
13 Other senior leaders of Khmer Rouge or Khmer Rouge people have  
14 already been freed from being prosecuted based on this domestic  
15 law.

16 I would like to humbly and respectfully ask for the Chamber to  
17 concede the decision 04T/002/2001 -- I would like to read again:  
18 04T/002/2001 -- of the Constitutional Council dated on the 12th  
19 of February 2001, and I would like once again to humbly request  
20 the Trial Chamber to concede this decision before it renders the  
21 final judgment.

22 The third point in the submission or the statement by the  
23 Co-Prosecutors and that of the civil parties, they indicated that  
24 S-21 was the main centre or office. That's why this location was  
25 the prime location for the prosecution before the ECCC and other

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1 detention facilities, 195 of them, would not be the subject for  
2 such prosecution and the defence counsel is doubtful, since we  
3 are just the seekers, why these other detention facilities where  
4 more people had been executed -- some prisons have seen the  
5 execution of more than 20,000 people and in Pursat in one prison  
6 more than 200,000 people were killed. I would not like to  
7 pinpoint that prison because I haven't got the supporting  
8 documents but still I am convinced that there were more prisons  
9 in Cambodia in which more prisoners were killed. Why S-21 alone  
10 was considered as the primary location or prison?

11 And I want to seek this clarification for the interest of the  
12 public and the accused to understand why S-21 was more important  
13 than the other prisons, and we would like the prosecutors to  
14 clarify this. However, they failed to do so. They indicated  
15 that S-21 was the top security prison and S-21 was unique because  
16 they said it was the only security office in Cambodia which had  
17 direct contact with the Standing Committee, so and so forth as  
18 what they stated.

19 [10.55.07]

20 I would like to indicate that during the Khmer Rouge regime all  
21 the prisons of the Khmer Rouge regime belonged to the Party.  
22 They did not belong to no-one except the Party. Son Sen, who was  
23 the seventh individual of the Party or the CPK, oversaw the  
24 prison in Phnom Penh. Pol Pot, the Secretary of the Party, who  
25 was the first person in the Party, oversaw indirectly all the

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1 prisons across the country but he directly oversaw the prisons in  
2 independent zone, including those in Kampong Som and Oddar  
3 Meanchey.  
4 So these people could have been prosecuted. There were prisons  
5 in the east. Sao Yann, who was the third individual in the  
6 Democratic Kampuchea, oversaw all the prisons in the East Zone.  
7 Chhit Chhoeun alias Mok, or Ung Choeun alias Mok, was the fourth  
8 individual in the Democratic Kampuchea who oversaw all the  
9 prisons in the Southwest. So S-21 was just an only security  
10 office in Cambodia that had contact with the Standing Committee  
11 and I think, having said that, it is a kind of great  
12 misunderstanding because S-21 worked with Son Sen, who was the  
13 seventh individual of the Party, and he worked with Pol Pot.  
14 He worked with Pol Pot, who was the first individual, so he was  
15 the special person and his mission was special also. In the  
16 east, if someone worked with Sao Phim as the third individual of  
17 the Party, then it would be unique because the third person was  
18 superior than the seventh person. So people who worked for Ta  
19 Mok, who was the fourth individual in the Party, then those  
20 people were superior to the seventh person. So having said that  
21 S-21 had direct contact with the Standing Committee was  
22 misleading. Other security offices also had contact with the  
23 Standing Committee.  
24 [10.57.57]  
25 The statement that S-21 was important, was unique, that it was

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1 entitled to arrest, to torture, to interrogate and execute cadres  
2 of the Khmer Rouge regime, including those from other ministries,  
3 so on and so forth, is not appropriate. The defence counsel  
4 rejects such argument because the Chamber here is set up to find  
5 justice for the dead souls, those who lost their lives unjustly  
6 during the Khmer Rouge regime, and to find justice for the  
7 Cambodian people who are still living these days and who have  
8 come across such regime.

9 So if S-21 was perceived to be the most important security  
10 personnel because it was used to execute the senior cadres, it  
11 would not be appropriate and I don't know whether this Tribunal  
12 is now set up to really find justice for the cadres whose hands  
13 covered with blood, or was it established to actually find  
14 justice for the victims? Men Yan, Kuy Thuon, who were sent to  
15 S-21, they could have killed, they could have made decisions to  
16 kill a lot of people before they were sent to S-21, including  
17 Vorn Vet, including Ya, including other senior people.  
18 The defence counsel submits that ECCC is here to find justice for  
19 thousands -- hundred thousand of victims of the Khmer Rouge and  
20 to find justice for the survivors. It is not the intention of  
21 the ECCC to find justice for the cadres of the DK who were  
22 smashed at S-21.

23 Now, having said that S-21 was important, as they indicated,  
24 because S-21 used a lot of resources and the number of staff  
25 members deployed at S-21 outnumbered staff members at other

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1 detention facilities, the defence counsel would like to respond  
2 that the Co-Prosecutors have failed to collect statistics to  
3 prove the number of staff members at other detention facilities.  
4 How could they conclude that S-21, which killed only more than  
5 12,000 people, had the most staff members?

6 [11.01.15]

7 What about the other detention facilities which killed more than  
8 100,000 people? Did they have more staff members than S-21 and  
9 have they researched? How could they really conclude that S-21  
10 got the most staff? So the defence counsel respectfully rejects  
11 such assertion.

12 Point number 4: I would like to reiterate the defence counsel  
13 acknowledged the crimes at S-21 as having existed. We have  
14 maintained our position and the accused already confirmed that  
15 statement; but as the defence counsel we are entitled to find out  
16 who are responsible for the crimes, and I will say that the CPK  
17 is solely responsible for such crimes. And as the prosecutors  
18 already made it clear just now, that the Trial Chamber cannot try  
19 any crime which is not listed in the indictment or the closing  
20 order by the Co-Investigating Judges or the indictment altered by  
21 the Pre-Trial Chamber.

22 So the CPK is bearing the sole responsibility for the crimes and  
23 it is clear that the CPK was the person who was behind all the  
24 orders for execution. According to Article 38 of the Penal Code  
25 of 1956, states clearly that those who order such execution or

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1 killing would be bearing the responsibility for the crime.  
2 So Duch was not the person who ordered such killing and the Party  
3 -- the Communist Party of Kampuchea -- was ordering such crimes.  
4 So why was it not prosecuted?  
5 Finally, we would beg the Court to consider the statement by the  
6 Co-Prosecutors who wished to lock up the accused for 40 years in  
7 relation to the crimes charged because the prosecutors believe  
8 that the accused was both the senior leader and those who were  
9 most responsible for the crimes. So they wish that the accused  
10 be imprisoned for 40 years.  
11 However, according paragraph 129 of the indictment, the  
12 Co-Investigating Judges already made it clear that, through their  
13 investigation, Duch was not the senior leader of the Democratic  
14 Kampuchea, and when the Co-Prosecutor made such assertion and  
15 that Duch was not among them, so then 40 years imprisonment as  
16 suggested by the Co-Prosecutors would not be substantiative  
17 anyway because Duch does not fall in that category.  
18 [11.05.08]  
19 There is still another 20 years imprisonment left as proposed.  
20 For example, he would have been perceived as the senior leader.  
21 So if he could have been considered as the senior leader, then he  
22 could have been prosecuted based on the domestic law, the Penal  
23 Code of 1956. However, such law has no retroactive nature and he  
24 could have been prosecuted for the war crime. So there is  
25 another 10 years left since the domestic law could not be

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1 applied.

2 And regarding the armed conflict, armed conflict had nothing to  
3 do with the Chairman of S-21. These conflicts happened because  
4 of the dispute between the CPK and the Communist Party of  
5 Vietnam. It is the sole responsibility of both parties during  
6 the regime and how could the accused be implicated in such crime?  
7 That's why we say that the accused was a scapegoat. Why not the  
8 prosecutor prosecute those who really instigated, who really  
9 initiated such armed conflicts? So my client should be free from  
10 that prosecution.

11 Duch has been detained for more than 10 years -- or -- for 10  
12 years. Other chiefs of prisons have not been detained, so I  
13 think it is an appropriate time that the Chamber release my  
14 client and allow him to go home.

15 Thank you. I would like to now share the floor with my  
16 co-counsel.

17 MR. PRESIDENT:

18 Mr. François Roux, you may now proceed.

19 [11.07.47]

20 MR. ROUX:

21 Thank you, Mr. President. We are going to shed light on the  
22 questions put by the Chamber and the questions put by my learned  
23 colleagues on the other side.

24 First of all, with regard to some technical matters, the  
25 Co-Prosecutor, the international Co-Prosecutor, you challenged



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1 the words I spoke yesterday and you used as an example the  
2 alleged error that I committed when I said that your final  
3 submission -- the final submission it is, isn't it -- only had  
4 half a sentence on the admission of responsibility. And this  
5 morning you say, "Look at page 6". What page 6 are you referring  
6 to? On page 6 of your final submission, which was filed 15 days  
7 ago, there is a paragraph 8 in which the Co-Prosecutors, in one  
8 paragraph, acknowledge that the accused admitted the fact -- the  
9 facts pertaining to the majority of the underlying crimes -- has  
10 accepted his general responsibility, has collaborated in general  
11 with the authorities, and has asked for forgiveness from the  
12 victims and their families.  
13 You say these are important concessions which should be taken  
14 into account as mitigating circumstances in calculating the  
15 sentence if he is found guilty. Mr. Co-Prosecutor, I agree that  
16 this paragraph appears in what you describe as your final  
17 submission. Be so kind as to acknowledge in turn that this  
18 paragraph does not exist, as I said yesterday, in your final  
19 submission which is the one that you sent to the Co-Investigating  
20 Judges after one year of investigations. For one year of  
21 investigations, the accused admitted the facts, he asked for  
22 forgiveness, he took part in the re-enactment and, in spite of  
23 all that, in your final brief you only had one half of a sentence  
24 which, to tell the truth, I am unable to locate today. My words  
25 were buttressed by evidence when I said that you said little or

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1 nothing in your final brief.

2 [11.11.40]

3 As to our 16-page brief, which you criticized because you said it  
4 was not comprehensive enough, in general when I need to make an  
5 answer I first read what I am being accused of. I fail to see  
6 how I could have drafted a 160-page brief whereas I did not know  
7 your arguments as yet. So I wrote 16 pages, trying to gauge or  
8 imagine what your arguments might be, and I respectfully  
9 submitted to the Chamber that as the defence did not know the  
10 arguments to be put forward by the prosecution, it would respond  
11 during the hearing, which is what we have done and we're still  
12 doing.

13 Mr. President, Your Honours, I would like it to be clear to  
14 everyone inside and outside this courtroom that the defence did  
15 not seek to build a strategy. In fact, it is not a word I like  
16 which I don't really know as being applicable within my system.  
17 It is the duty of the defence, and this is what it did. It  
18 attempted to convert into a legal framework what the accused has  
19 been saying since 1999 when he was arrested.  
20 Since 1999, when the accused was arrested, he said, "I  
21 acknowledge the crimes I committed". When the accused was  
22 brought before the Co-Investigating Judges of this Court, he  
23 said, "I acknowledge my crimes. I would like to apologize to the  
24 victims, to ask for forgiveness from them." He even added, and  
25 repeated, this on several occasions before you the following, "I

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1 am also morally responsible for all the crimes committed in  
2 Cambodia under the CPK regime because I was a member of this  
3 Party." It, was therefore, henceforth for the defence to convert  
4 to legal arguments what the accused had said from the bottom of  
5 his heart, which is what we sought to do.

6 [11.15.10]

7 You attempted, and I -- and this is what's normal -- to challenge  
8 the references we made to international law with regard to  
9 sentences that were handed down in similar cases. You may  
10 attempt before this Court to minimize the Obrenovic case, but  
11 since you worked in the Tribunal for the Former Yugoslavia, you  
12 are well aware of the importance of this.

13 You know the tragedy of Srebrenica. You know what the entire  
14 international community felt with the Srebrenica case. These  
15 people who were under the protection of the United Nations, who  
16 in three days were massacred, in particular because of Obrenovic.  
17 In three days, 7,000 people were massacred whereas we all should  
18 have protected them. Srebrenica is a tragedy that we all bear  
19 within us. The judges that you saw yesterday on the screen, on  
20 the video we projected, like you, Your Honours, took into account  
21 the sincere remorse; the profound remorse of Obrenovic. They  
22 took into account Obrenovic's co-operation which was so useful.  
23 These judges said 17 years.

24 Let us move on to Albert Speer. You said at the end he prevented  
25 Hitler in part from pursuing his scorched earth policy; that

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1   Speer had means that were not available to the accused. He was a  
2   Minister of Defence. Do not forget this. He had much higher  
3   responsibility than that which was vested in the accused who is  
4   here before you in the dock. His crimes were a thousand times  
5   more serious. He participated in the deportation of millions of  
6   people. You are well aware of this. But the Nuremburg Tribunal,  
7   in its wisdom, took into account this admission of guilt and  
8   co-operation with the tribunal. That also is international  
9   criminal law.

10   [11.18.50]

11   How can you, today, in your rebuttal, Mr. Prosecutor, say that  
12   the accused instituted a reign of terror throughout Cambodia?  
13   Nothing in the case file; nothing but intellectual constructs  
14   which I challenge. You can accuse Duch of 12,380 dead in S-21 if  
15   you will, but you cannot rely on any material in the case file to  
16   say that he caused a period of terror to operate or to obtain  
17   throughout Cambodia. Throughout Cambodia you said. How is this  
18   possible?

19   You are holding against me the fact of having put a closed  
20   question that was directed to the accused? Whereas I told him,  
21   this is what Robert Petit's precisely accusing you of. These are  
22   the terms of Robert Petit: are you willing to say to the Court  
23   today that you are admitting this or do you reject what Robert  
24   Petit is stating to you? Is this what you a closed question?  
25   Well, yes, in that case yes, in that case yes, when you ask an

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1 accused, are you responsible or you're not responsible, that is  
2 indeed a closed question.  
3 This is not what is forbidden in common law, and you know this  
4 better than I. There are questions such as, "Am I right in  
5 saying" in which we follow up with our own thoughts. This was  
6 not my own thought, this was the prosecution of your office  
7 represented by its international prosecutor. "Mr. Duch, I am  
8 accusing you of this", and I put the question to him, "Do you  
9 agree?" and he answered, "Yes." What do you want more?  
10 So you say to him and you hold against him today that he said  
11 before the Court that he had faith in Son Sen and that he  
12 believed in Son Sen. Do you know what Speer said? Albert Speer  
13 said, "I was always fascinated by Hitler." Yes, indeed. The  
14 fact of saying that "I had faith in Son Sen" does not mean that  
15 today he does not consider Son Sen for who he was. Counsel Kar  
16 Savuth pleaded this in length. Son Sen is part of the senior  
17 leaders of this country who should have been brought before the  
18 Court instead of the accused. So please, do not hold against the  
19 accused what he believed in back then.  
20 [11.22.05]  
21 We know very well that indeed -- and this is why you prosecuted  
22 him -- he believed in the CPK, he obeyed the CPK, he followed the  
23 orders of the CPK, and this is his tragedy as well as the reason  
24 why he is here today. When I say "his tragedy", yes indeed.  
25 I have a question to put to you, Mr. Co-Prosecutor. Do you

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1 believe that if Duch had resigned from his position at S-21, do  
2 you believe that S-21 would not have gone on with its morbid  
3 task? But, of course, we know the answer to this. With Duch or  
4 without Duch, S-21 would have continued. With Duch or without  
5 Duch, S-21 would have been, unfortunately, this killing machine  
6 in the hands of Son Sen.

7 So now we are judging Duch, who got lost, whereas he believed in  
8 this revolution because he believed at the start that this  
9 revolution was good for his people.

10 Since it is necessary to return to very practical matters, Your  
11 Honours -- and legal matters at the same time, the Prosecutor, as  
12 we have just seen in this paragraph of page 6 and paragraph 8,  
13 acknowledges that there are indeed mitigating circumstances. We  
14 are, therefore, requesting with full faith in your Chamber to say  
15 indeed that the accused must benefit from mitigating  
16 circumstances.

17 And I will not get back to this in detail, but I listed these  
18 detail yesterday and I will re-list them today. The mitigating  
19 circumstances that the accused must and can enjoy was duress and  
20 the orders of his superiors. Nobody can say on a reasonable  
21 basis that Duch was not just a cog in the machine, just a link in  
22 the chain of command that went from Pol Pot down to the smallest  
23 ranking guard at S-21, and from one end to the other of this  
24 chain everybody would pass on the orders that he received from  
25 his superiors and everybody was an extremely thorough, rigorous,

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1 harsh leader towards his subordinates.

2 [11.25.08]

3 Duch did not escape from this system; Him Hoy did not escape from  
4 it, Mam Nai, and the more we go down the more it's the same.

5 Each one in his way passed on orders and each one imposed upon  
6 his subordinates to enforce these orders, duress and orders from  
7 the superiors.

8 And I beg the Chamber here to always keep in mind in these  
9 proceedings this decision of March 30, 1976. It is this decision  
10 that defined the entire policy of the elimination of the  
11 so-called enemies of the revolution. Never forget decision from  
12 March 30, 1976. Duch was not participating in this decision.  
13 This decision was taken at the level of the Standing Committee.  
14 He knew nothing of this decision but he's going to receive all of  
15 the directions on the basis of this tragic decision.

16 Duress and orders from his superiors, again with -- as I said  
17 yesterday -- this impossibility to escape, which was not only  
18 described by Duch but which was also described by so many other  
19 cadres who were questioned by my colleague Kar Savuth. We are  
20 perfectly facing these mitigating circumstances.

21 Second mitigating circumstance is cooperation. We will not  
22 return to this. We have spoken enough about this. And the  
23 Co-Prosecutor is not even challenging it.

24 [11.27.00]

25 Remorse, contrition, the sincerity of the contrition that we

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1    tried to question: I spoke about this, the tears at Choeung Ek,  
2    the tears at S-21, the tears here; I believe that the Chamber is  
3    sufficiently aware to say that the accused has expressed often  
4    several times his contrition and asked the victims for  
5    forgiveness while saying to the victims at the same time, "I am  
6    not asking you to forgive me, no; I am asking you to only keep  
7    the door open for this."  
8    And now the personality: this is again one of the mitigating  
9    circumstances that you must take into account.  
10   Amendment: I would like to refer you once again to those who  
11   analyzed more in depth this desire for amendments. I'm speaking  
12   about the psychiatrists that the Co-Investigating Judges had  
13   nominated, and that the Chamber was willing to accept for the  
14   psychiatrist to return and speak with Duch once again one year  
15   after they compiled their assessment. And you obviously have  
16   present at mind this development, this change that the  
17   psychiatrist described. They said to you that over the course of  
18   that year we have witnessed this change, this change in his  
19   psychological development.  
20   I put the question to Ms. Sironi, before you: may Duch be  
21   re-humanized, and since you expanded on this to say that it is  
22   known that in all expertises compiled on what we refer to as  
23   executioners it is known that before dehumanizing their victims  
24   the executioners dehumanized themselves. And Francoise Sironi  
25   answered if we cover all of the elements that we have analyzed



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1 regarding his character -- and we're speaking here about the  
2 accused -- regarding the fabrication of common history, the  
3 influence of common history on the accused while also analyzing  
4 the accused psychology since the beginning of the proceedings, we  
5 will then be able to say yes to your question -- no one is born  
6 an executioner, one becomes so, and we can also be re-humanized.

7 [11.30.40]

8 And referring to Ms. Sironi once again, regarding one of my  
9 questions, when I asked her if there's not things that are  
10 difficult for the accused to admit; "Yes, Counsel Roux," she  
11 said, "Indeed the admission of heavy matters always go through an  
12 inner process. Yes, Counsel Roux," she added, "there is  
13 sincerity, sincerity in this process."

14 Mr. President, Your Honours, we are absolutely facing mitigating  
15 circumstances that national as well as international  
16 jurisprudence requires. So please, may I please quote the law on  
17 sentencing of 2002 in New Zealand -- let's also use this example  
18 -- which provides that the sentence must take into account all of  
19 the restorative aspects of justice, including any offer or any  
20 advance towards amendment, addressing apologies, contrition, the  
21 guilty plea and the character of the accused. All systems, no  
22 matter what they may be, follow this idea that a person who has  
23 committed crimes, included the most serious ones, may amend  
24 himself, otherwise there would be no justice if it was only there  
25 to punish.

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1 And I note, Mr. President, Your Honours, that Cambodia itself in  
2 its Penal Code project which, if my information is correct,  
3 should be applicable in the very near future in its Article  
4 L/1222/3 under the heading "Life Imprisonment and Mitigating  
5 Circumstances", the Cambodian legislator in his own penal code  
6 includes the following:  
7 "When a breach is punished by life imprisonment, the Judge who  
8 grants the benefit of mitigating circumstances may require a  
9 sentence included between 15 years and 30 years of imprisonment."  
10 Mr. President, Your Honours, no matter what may be the sentence  
11 that you're going to hand down, it will never repair the  
12 suffering of the victims and we know this perfectly well, and for  
13 the victims it will always be insufficient as long as we do not  
14 follow the eye-for-eye and tooth-for-tooth law, but criminal  
15 justice today is no longer at such a primitive level.  
16 [11.34.46]  
17 So it is indeed with faith that we are stating to your Chamber  
18 that if you take into account this new legislation that is  
19 progressing here in Cambodia, if you take into account the  
20 reparations which the accused will be entitled to for the  
21 violation of his rights because he was imprisoned for eight years  
22 in an illegal fashion -- or let's say five years illegally  
23 because he was imprisoned eight years under the Military Court,  
24 whereas according to your law he should have only been detained  
25 for three years, so therefore his rights were breached for a

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1 five-year period.

2 If you take into account all of these factors, if you take into  
3 account the mitigating circumstances, if you take into account  
4 the fact that, yes indeed, we know very well that there is in  
5 this country today many, many people -- there are many, many  
6 people who are more implicated than Duch and who will never be  
7 prosecuted, and in any case who are never prosecuted, whereas he  
8 already has spent 10 years in detention. He already spent 10  
9 years in detention.

10 It's true, you cannot draw the parallel between the other prison  
11 chairmen who have not been imprisoned. It's true, you cannot  
12 draw the parallel with those who were above him and who are not  
13 prosecuted which, of course, I can understand. The law on  
14 amnesty, I understand it. I understand that when the prime  
15 minister of this country says, "I make peace with my enemies", I  
16 can accept this. I accept this. I accept it when he says, "Yes,  
17 I put an end to the civil war because I made peace with my  
18 enemies." And by the way, generally speaking, it is with the  
19 enemies that one makes peace.

20 I understand this, but let's please be fair. Let's be fair all  
21 the way. We gave the possibility to people who had more blood on  
22 their hands than the accused to join the military forces of this  
23 country. That was part of the solutions that were sought after  
24 an order to restore peace. I understand this, whereas your  
25 decision -- so your decision should take all of this into

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1 account. It is the only means to not turn Duch, indeed, into a  
2 scapegoat.

3 [11.38.20]

4 And you might remember yesterday I said to you Duch is dead, and  
5 you remember on 25 June 2009 Duch explained to you how he had  
6 joined this revolution in which he believed, and he said to you  
7 the following:

8 "I had the intent of transforming myself and to go from an  
9 ordinary human being to become a Communist. It was in the year  
10 1964 through my re-education and due to the fact that I  
11 transformed myself and through the Communist Party I became a new  
12 Duch who was so different from Kaing Guek Eav; he who was a  
13 mathematics teacher in Skun."

14 I am sure that you have enough elements today in this case file  
15 to have understood that yes, indeed, Duch is dead and that we are  
16 facing again Mr. Kaing Guek Eav, the former mathematics teacher.

17 Mr. President, I have finished with my explanations. I have a  
18 last request to present to the Chamber and I believe that we'll  
19 be numerous in supporting it. We would like to know when the  
20 Chamber will be ready to hand down its judgment. Thank you.

21 MR. PRESIDENT:

22 We note the international Co-Prosecutor is on his feet. You may  
23 proceed.

24 [11.40.33]

25 MR. SMITH:

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1 Your Honours, I'm not sure whether it's an oversight; I don't  
2 think it is. The defence have evaded your question in relation  
3 to why this change of plea. On the one hand, we have the defence  
4 saying mitigate his sentence and on the other hand they're saying  
5 acquit him for all of those jurisdictional grounds that were  
6 raised, and I think it's very important to find out why they are  
7 running these two defences at the moment.

8 And I think it will be important to find out in terms of if  
9 there's any sense of mitigation for the accused, whether or not  
10 he's instructed the defence counsel to ask for his acquittal,  
11 because the victims of Cambodia will find it no relief whatsoever  
12 to come to this Court and say -- the accused comes and says, "I'm  
13 generally accountable, generally, but I'm not legally  
14 accountable. I shouldn't be before this Court."

15 Now, neither of the defence counsel have answered your question  
16 and, Your Honours, because of that, because of that evasion, I  
17 would suggest it would be a better course to ask the accused  
18 whether or not he instructed his counsel to enter pleas of  
19 acquittal on everything. Otherwise you will leave this courtroom  
20 with two defences: I'm not guilty and then, if I am, mitigate  
21 me. That's not really co-operation, that's not really true  
22 remorse.

23 I would ask Your Honours that this be resolved today, the reason  
24 being, as you know what can happen, if Your Honours find that his  
25 request for an acquittal in fact undermines his plea of remorse

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1 then you will give him, more than likely, a heavier sentence and  
2 then we'll have this argued before an Appeals Chamber where other  
3 lawyers may come in and say his lawyers weren't following his  
4 instructions.

5 [11.43.02]

6 It's a very, very costly exercise, Your Honour, and I would ask  
7 that that be resolved now.

8 MR. PRESIDENT:

9 Mr. Francois Roux, you may now proceed.

10 MR. ROUX:

11 Mr. President, Your Honours, there is no provision in the  
12 Internal Rules, to the best of my knowledge, that the prosecutor  
13 should be granted leave to take the floor after the defence  
14 rebuttals. However, if we have not been clear enough on this  
15 point I am sorry. I am sorry the prosecutor was not listening to  
16 us closely enough. Acquittal was not used this morning -- this  
17 word was not used. Both defence lawyers asked that the accused's  
18 sentence, were he to be found guilty, should be reduced and that  
19 he should be freed as soon as possible.

20 It is not an acquittal. My learned friend, if this is not clear  
21 for you, then I'm sorry.

22 [11.44.23]

23 He should be freed after being imprisoned for ten years and after  
24 fully recognizing his responsibility for the crimes in S-21.

25 There is no change.

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1 MR. KHAN:

2 Mr. President. Mr. President, with your leave ---

3 THE PRESIDENT:

4 The counsel is not allowed to address the Court now.

5 (Deliberation between Judges)

6 THE PRESIDENT:

7 The proceedings are now coming to an end except that the accused  
8 has not yet made his final remarks and he has been informed of  
9 his right to make his final remarks if he would wish to do so,  
10 especially the remarks in response to the comments made by the  
11 civil parties and the Co-Prosecutors. And he also has been  
12 informed of the right to speak his last words if he so wishes.  
13 However, there has been some doubts in relation to the comments  
14 made by both counsel for the accused. We already informed the  
15 defence counsel in relation to the Chamber request that the  
16 Chamber expected the defence to clarify its position during the  
17 rebuttal; however, after having heard their statement, the  
18 question seemed to be not well answered yet. So the Chamber  
19 would like now to hear directly in person from the accused  
20 himself because the Chamber and the public have observed the good  
21 memory of the accused in the proceedings.

22 [11.50.51]

23 The Chamber would wish to hear the personal position of the  
24 accused in relation to the rebuttal statement made so far and  
25 especially in his final words. If he so wishes to do so, then he

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1 may now be granted the floor.

2 You may now proceed.

3 THE ACCUSED:

4 Mr. President, Your Honours', I am most grateful for the  
5 opportunity offered to me to make my last words. First, I would  
6 like to tell the Court about the spirit of my co-operation with  
7 the Court. I was arrested and sent to the Military Court on the  
8 8th of May 1999. From then, I was determined to report to the  
9 Court sincerely, honestly based on my best memories and to prove  
10 it, at the Military Court, all the documents that I already  
11 co-operated in responding to the questions of the judges have  
12 already been provided to the Trial Chamber. And here, at this  
13 Court, I have responded to all the questions put to me by the  
14 Co-Investigating Judges and additional questions by the  
15 Co-Prosecutors. The records of the interviews at the ECCC are  
16 well used as the evidence and proof.

17 Before this Court, during the hearings, there have been debates.  
18 Questions have been fully been put by parties to me and by the  
19 Bench to me, and I have fully responded to such questions and the  
20 proof can be found in the transcript, hundreds of pages of  
21 transcript.

22 I made a note in paragraph 86 that the crimes that gone through  
23 S-21 -- I already made the request that all the crimes committed  
24 at S-21, I requested the Chamber to take into account those  
25 crimes and consider based on the facts. And I would not talk



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1 more because otherwise it's just like the way I am now bargaining  
2 for something, but I'm just telling the Court -- reiterate my  
3 statement that I wrote and I requested that the Chamber to  
4 consider. These three lines of statement compared to the  
5 statement, the 33-page document I made, it was just a fraction of  
6 that bit.

7 So I am here to tell the Court that I have fully co-operated with  
8 all levels of the Court, including that of the Domestic Court,  
9 the Military Court and this hybrid Court.

10 [11.55.07]

11 Second point, I would like to express concerning my apologies,  
12 and rather my guilt admission. We were discussing about the  
13 jurisdiction, the jurisdiction which falls from the 17th of April  
14 1975 to 1979 -- the January of 1979. But here the matters of  
15 M-13 was also discussed because it was the matter of  
16 jurisprudence, and I also responded well to the Court in relation  
17 to the facts of M-13. And later on I was asked about the matters  
18 after 1979. So the documents I have submitted before the Chamber  
19 concluded the aspects, the generic aspects of the crimes  
20 committed by the Democratic Kampuchea onto my people.

21 Having taken into account the more than one million souls who  
22 perished, I never forget them, including those of my relatives,  
23 and I have acknowledged how these people had suffered before they  
24 died. And I also used another word that all crimes committed by  
25 the CPK, I myself, as the member of the Party, acknowledge and

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1 apologize for them as the member of the Party, and Pol Pot relied  
2 heavily on the members of the Party and those members -- and I  
3 was among them. So I would like to seek for apologies before my  
4 people and my nation.

5 In paragraph 85 when I talked about M-13 I indicated about the  
6 numbers of people who died, which amounted to 12,280 people.

7 Yesterday the prosecutor, the national prosecutor indicated the  
8 new number of 12,300. I never challenged such number anyway  
9 because I admit that even more than -- there were more than the  
10 number that already indicated who died at S-21, and I am  
11 responsible for the crimes without any denial.

12 In paragraph 86 I indicated that what happened and what had been  
13 put before this Chamber will be subjected to the consideration of  
14 the Trial Chamber.

15 [11.59.00]

16 I still maintain my position that I am responsible for the crimes  
17 as the member of the criminal party. At the beginning I thought  
18 that the Party would be a decent one but later on it was the  
19 criminal party and I was part of the Party.

20 In relation to the matter of S-21 I also indicated that I  
21 acknowledged that these people died at S-21, the facility I was  
22 overseeing. Even Hor, my subordinate, who was in charge of the  
23 execution, I never really wanted him to be bearing the  
24 responsibility of the crimes at S-21; Mam Nai too. Even Comrade  
25 Hor could have lived until this day, I would never ask the Court

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1 to prosecute him because I was the person alone who was in charge  
2 of the crimes and I still maintain the position.

3 I have learned from Madame Guilbaud and Mr. Ka Sunbaunat and I  
4 asked them how I could do to make sure that I would be restored  
5 into the ambit of humankind. I am not talking about the Buddhist  
6 principle and history about Ang Kulimear and I know that Buddhist  
7 people are quite familiar with the story of Ang Kulimear but I  
8 don't want to talk about that. I want to be more scientific  
9 here. When Dr. Chhim Sotheara came I asked him how I could do to  
10 contribute to the relief of the grievance of the victims, and I  
11 also made it clear in my statement.

12 I was detained at the Military Court on the 8th of May 1999,  
13 although it was registered as on the 10th, and the co-operation  
14 between the Royal Government of Cambodia and the United Nations  
15 were underway. Sometimes it was interrupted but then I learned  
16 the news of the process.

17 [12.02.18]

18 And when I came or when I was sent to ECCC I saw the Royal Decree  
19 by the King. In that decree it is clear that the people who  
20 would be prosecuted would be falling in two categories, the  
21 senior leaders of DK -- and this statement has already been  
22 confirmed in the closing order by the Co-Investigating Judges --  
23 the seven people of the Standing Committee. And these seven  
24 people were vested with authority by the general congress, and  
25 later on when people were arrested and the congress started to

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1 recruit new people and fewer numbers of people could be seen in  
2 the list. So we have Pol Pot, Nuon Chea, Ung Choeun, Ieng Sary,  
3 Son Sen and Khieu Samphan. So these people were leading the DK  
4 and everyone knows they were the top people, I already indicated  
5 in my statement, so according to the decision in the indictment  
6 the senior leaders of the DK comprised only six people. At the  
7 beginning there were seven but later on the number reduced to  
8 six.

9 However, in the introductory submission, or rather the same  
10 closing order, the Co-Investigating Judges acknowledged the  
11 document of the 30th of March 1976 which is used as the  
12 fundamental document concerning the rights to smash people, and I  
13 cannot really substitute this document with any other documents  
14 because Kuy Thuon, who made the decision to arrest people, he  
15 fall victim consequently. And Nat, although I could not have any  
16 document to prove, he would fall victim because of such a  
17 decision to violate the decision.

18 [12.05.11]

19 And Kang Chap, who stupidly arrested the relatives of the wife of  
20 Khieu Samphan, and later on he were arrested and detained and  
21 executed, so no-one could violate the line and, as I already  
22 indicated clearly, the line at that time was called centralized  
23 democracy; in French, centralisée.

24 THE ACCUSED (Speaking in French):

25 (no interpretation)

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1 THE ACCUSED (Speaking in Khmer):

2 In the language, the more simplified one, it is the principle  
3 that the collective led but individual is responsible  
4 individually.

5 So Pol Pot was the Secretary of the Party who was in charge and  
6 when it comes to execution, the secretaries of zones had the  
7 authority to smash. However, if they violated the spirit of the  
8 collective then they too had to be smashed. So this document, as  
9 my defence counsel already made it clear, there were a number of  
10 people in the list and I would not need to say that again.

11 So to sum up, the purpose of bringing to trial the senior Khmer  
12 Rouge leaders is to find justice for the people all across the  
13 country and also for the peace and security for the people, and  
14 for national reconciliation. So these are the purposes already  
15 well considered.

16 Personally, I never challenged the crimes at S-21 and the reason  
17 that I had been detained from the 8th of May 1999 until now, it  
18 has been 10 years already -- 10 years, six months, 18 days. So  
19 during this course of my detention I had been co-operating with  
20 the Chamber and I do not really challenge such detention as  
21 illegal. I will leave it to the Court to decide. So I would ask  
22 the Chamber to release me. I'm very grateful, Your Honours.

23 [12.08.00]

24 (Deliberation between Judges)

25 MR. PRESIDENT:

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1 The accused, could you please be on your feet.

2 The Chamber has already heard your final remarks and that last,  
3 but not least, you requested the Chamber to release you. The  
4 question is now what made you ask for the release? Would you ask  
5 the Chamber to acquit all charges against you or would you want  
6 the Court to reduce the sentence, based on your co-operation with  
7 the Court and the time you had been detained since 1999?

8 So it would be very good if you can really shed light on this so  
9 that the Chamber and the public is of clear mind to make our  
10 decision. Could you please clarify your position again?

11 THE ACCUSED:

12 Thank you, Mr. President.

13 My ability to analyze is limited to what I could have reported to  
14 the Court and I have already made. I would like the Chamber to  
15 release me and if Your Honours may, please allow my co-counsel,  
16 Mr. Kar Savuth, to say a few more words.

17 MR. PRESIDENT:

18 The Chamber may not allow any other party to be on their feet to  
19 address the Court because it is the concluding proceeding  
20 already.

21 Do Judges of the bench wish to make any comments? The accused  
22 can be seated now.

23 [12.12.15]

24 The proceedings has been long and it is rather strange at the end  
25 of the proceedings, which is unique if we have it compared to the

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1 national practices.

2 So finally, in order to respond to the request made by the  
3 accused in his final remarks by pointing to his national  
4 co-lawyer to help say a few words, since the accused himself is  
5 not quite familiar with the legal context of the proceedings, so  
6 the Chamber would allow Mr. Kar Savuth to clarify the position of  
7 the defence concerning the plea or the request to release as made  
8 by the accused, because the accused's statement is consistent  
9 with that of the national co-lawyer. So the Chamber will grant  
10 five minutes to Mr. Kar Savuth to make his final statement.

11 MR. KAR SAVUTH:

12 Mr. President, Your Honours and the Court, I am most grateful to  
13 Your Honours for giving me the opportunity to clarify this. When  
14 my client asked that he be released, he based his argument on  
15 Paragraph 129 of the Co-Investigating Judges, since the  
16 Co-Investigating Judges made it clear that he was not the senior  
17 leader of the Khmer Rouge.

18 [12.15.00]

19 And, as I already made in my statement, there were two phases  
20 from April 1975 to March 1976 when he was the deputy chairman of  
21 S-21 and he shall not be prosecuted for the crimes at S-21 since  
22 he was not the Chairman. And according to the letter dated on  
23 30th of March 1976, the Standing Committee of the Party assigned  
24 four groups of people and those people had been given the right  
25 and authority to smash, including the secretaries of the

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1 Independent Zone and the offices surrounding the Office 870, and  
2 Son Sen to be in charge of making any decision to smash or to  
3 spare anyone.

4 Since these four groups of people had already been given the  
5 authority and they're only the people in the group could have  
6 such authority, and only those people could be prosecuted. And  
7 the people, as I already quoted in our Penal Code that those who  
8 ordered such execution could be prosecuted, not those who was  
9 under the duress of such order could be prosecuted, and he was  
10 not the senior leader of DK and he was not among those who were  
11 most responsible for the crimes. So he only obeyed the CPK. So  
12 the CPK was the culprit; was the criminal behind all the crimes.  
13 That's why my client asked that he be released.

14 THE PRESIDENT:

15 Judge Silvia Cartwright, you may proceed.

16 JUDGE CARTWRIGHT:

17 Mr. President, I'm most grateful to you for allowing me to take  
18 the floor.

19 Counsel Kar Savuth, do I infer from your last comments that the  
20 accused is seeking an acquittal?

21 [12.17.20]

22 MR. KAR SAVUTH:

23 I'm grateful to you, Your Honour. I did say that because to  
24 release means acquittal.

25 THE PRESIDENT:



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1 We may break for one minute so that the AV can manage its  
2 technical matters.

3 (Pause for AV technical reasons)

4 THE PRESIDENT:

5 Now the proceedings in which the Chamber is hearing the closing  
6 remarks or the closing statement by the party has come to an end.

7 Having heard the evidence and the closing statements by the  
8 parties to the proceedings, in the name of the Trial Chamber of  
9 the Extraordinary Chambers in the Courts of Cambodia, I wish to  
10 provide the following information to the parties and the public.  
11 The Trial Chambers of the Extraordinary Chambers in the Courts of  
12 Cambodia is seised of Case Number 001, 18 July 2007 relating to  
13 the accused Kaing Guek Eav, alias Duch, charged with crimes  
14 against humanity, grave breaches of the Geneva Convention of the  
15 12th of August 1949 and violation of the 1956 Cambodian Penal  
16 Code; the crimes stated in Articles 501 and 506.

17 The trial proceedings relevant to the examination of the evidence  
18 were held between March 2009 and the 17th of September 2009.

19 There were 72 days and the closing statements were delivered on  
20 five consecutive days between the 23rd of November and the 27  
21 November 2009. Altogether, the substantive hearing of Case 001  
22 took 77 days.

23 [12.22.58]

24 The substantive hearing in Case 001 has now come to an end.

25 Before concluding the hearing, the Trial Chamber would like to

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1 thank Your Excellency, ladies and gentlemen, including the  
2 parties to the proceedings such as the civil parties and the  
3 survivors of S-21, S-24, Prey Sar; the witnesses and expert  
4 witnesses who testified before the Chamber; the Office of  
5 Administration and its units or sections, especially the  
6 Translation and Interpretation Unit, in particular the  
7 interpreters in the courtroom; the Audio-Visual Unit; the Victims  
8 Unit; the Witness and Expert Support Unit; the Defence Support  
9 Section; the Detention Liaison Unit; the Public Affairs Section;  
10 the Security and Safety Section; and the General Services  
11 Section, as well as other units and sections of the Court, both  
12 national and international staff.

13 The Trial Chamber would like to extend such thanks to the  
14 relevant government institutions providing medical and security  
15 support, including the fire brigade and other institutions and to  
16 the non-government organizations who provided support, especially  
17 the transcultural psychological organization known as TPO. Those  
18 excellencies, ladies and gentlemen, participated in and supported  
19 the trial of Case 001 from the beginning until now and made the  
20 trial happen by their sincere and committed efforts.

21 [12.25.03]

22 The Trial Chamber declares now the end of the hearing of the  
23 evidence and the closing statements in Case 001. The Trial  
24 Chamber wishes to inform the parties and the public that from now  
25 on the Trial Chamber will deliberate and prepare the judgement in

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1 Case 001.

2 The Trial Chamber cannot yet schedule the precise date of the  
3 pronouncement of the judgement in Case 001 due to the size of the  
4 case file and the necessity to work in different languages. The  
5 Chamber will, however, notify the parties and the public of the  
6 final date of the pronouncement of judgement duly in advance.

7 The Trial Chamber concludes hereby today's hearing.

8 The detention personnel are now instructed to take the accused to  
9 the detention facility. The Chamber will issue an order to call  
10 the accused to be returned to the courtroom during the proceeding  
11 of the pronouncement of the judgement at a later date.

12 (Judges exit courtroom)

13 (Court adjourns at 1226H)

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