



**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

19 May 2009, 0914H

Trial Day 17

Before the Judges:

NIL Nonn, Presiding  
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I N D E X

WITNESSES

WITNESS: CRAIG ETCHESON

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**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
MR. BATES	English
JUDGE CARTWRIGHT	English
MR. ETCHESON, WITNESS	English
MR. HONG KIMSUON	Khmer
JUDGE LAVERGNE	French
MRS. RABESANDRATANA	French
MR. ROUX	French
MS. SE KOLVUTHY, GREFFIER	Khmer
MS. STUDZINSKY	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	English

1

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

2 (Judges enter the courtroom)

3 [09.14.30]

4 MR. PRESIDENT:

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

6 First the Greffiers are invited to report the attendance of the  
7 parties to the proceedings.

8 THE GREFFIER:

9 Your Honour the President, the parties to the proceedings are all  
10 present.

11 MR. PRESIDENT:

12 This morning's session is the follow-up session of yesterday's  
13 session when we heard the testimony of Dr. Craig Etcheson and we  
14 continue to hear the expert testimony again and we now would like  
15 to give the floor to Judge Silvia Cartwright to proceed with  
16 putting more questioning to the expert. The floor is yours.

17 JUDGE CARTWRIGHT:

18 Yes, thank you, Mr. President.

19 BY JUDGE CARTWRIGHT:

20 Q.Dr. Etcheson, you remain on oath today; the oath that you took  
21 yesterday. You understand that?

22 A.Yes, Your Honour, I do.

23 [09.16.55]

24 Q.Thank you.

25 Now, yesterday I asked you about any documents that you have

2

1 cited where Son Sen gave orders concerning internal security to  
2 military commanders. Following on from that, my next question is  
3 whether the military purged any of its members and what examples  
4 you can give if the answer to that is yes.

5 A.Thank you, Your Honour.

6 If I may, before I turn to your question I would like to recall  
7 for the Court that during my testimony yesterday afternoon  
8 counsel for the defence requested that I provide more complete  
9 documentation for the documents that I am referring to in my  
10 testimony.

11 Earlier this morning I prepared a list of the documents that I  
12 expect to rely on during my testimony, including the case file  
13 document number, the electronic reference numbers to the English,  
14 French and Khmer versions of the documents, and the title of the  
15 document. Because of the short time I had to prepare this, not  
16 all of the information is complete at this point in time, but I  
17 would offer this to the Court in the hopes that it will be  
18 helpful to the parties.

19 Q.Yes, thank you, Dr. Etcheson. Perhaps it is of most use  
20 initially to the defence and to the lawyers for the civil  
21 parties, so could a copy be made available to Mr. Kar Savuth and  
22 Maître Roux and also at least one to the civil parties at this  
23 stage?

24 Well, thank you very much for that assistance, Dr. Etcheson.

25 Now, returning to my question, are you able to say if the

3

1 military purged any of its members and, if so, can you give us  
2 some examples from your research?

3 A.Yes, Your Honour, there were widespread purges throughout the  
4 Democratic Kampuchea military; the Revolutionary Army of  
5 Kampuchea.

6 If it pleases the Court, I would like to illustrate this fact  
7 with some graphs. The Chamber will be aware that the Office of  
8 Co-Prosecutors has placed on the case file a combined S 21  
9 prisoner list, which is Case File Document Number D55, ERN  
10 00172353 through 00172255 in the English version.

11 [09.22.23]

12 The graphs that I would like to show are based on the information  
13 in the combined S-21 prisoner list and so, although these graphs  
14 are not yet on the case file, they actually are just another way  
15 to view information which is on the case file.

16 I am also given to understand that hopefully later this morning  
17 the Office of Co-Prosecutors will be placing these graphs on the  
18 case file along with a larger set of graphs representing  
19 information in the combined S-21 prisoner list, so if it --

20 JUDGE CARTWRIGHT:

21 Does any party have any opposition to this graph being used at  
22 this point in the proceeding?

23 MR. BATES:

24 Just to confirm that Dr. Etcheson is correct, the Co-Prosecutors  
25 intend to file a larger series of graphs that have been taken

4

1 from the combined prisoner list, as the witness says, and I  
2 anticipate that the documents upon which Dr. Etcheson wishes to  
3 rely will all be drawn from the filing later on this morning.

4 Thank you.

5 JUDGE CARTWRIGHT:

6 Yes, thank you.

7 [09.24.06]

8 Is there any opposition from any of the civil party groups?

9 MR. WERNER:

10 None for our group, Your Honours.

11 JUDGE CARTWRIGHT:

12 Thank you.

13 And there appears to be no opposition from any other group? hank  
14 you.

15 Is there any opposition from counsel for the defence?

16 MR. ROUX:

17 Your Honour, the defence regrets that this document arrives a bit  
18 late, and the defence will pronounce itself once this document is  
19 shown, and we will then see if we accept it being included in the  
20 case file at such a late moment. Thank you.

21 JUDGE CARTWRIGHT:

22 Yes, thank you. I will give you the opportunity later to comment  
23 at the end of Dr. Etcheson's evidence on this part or at an any  
24 later stage as you request.

25 BY JUDGE CARTWRIGHT

5

1 Q.Thank you, Dr. Etcheson. You can now display that graph,  
2 subject to the right of the defence to comment on it or object to  
3 it at a later stage.

4 A.Thank you, Your Honour. If the audiovisual section could  
5 switch to my laptop, please.

6 [09.25.56]

7 In an analysis of the combined S-21 prisoner list prepared by the  
8 Office of Co-Prosecutors, we found that at least 855 people were  
9 purged from Division 310 of the Revolutionary Army of Kampuchea.  
10 This chart graphs arrests by S-21 from Division 310 over time by  
11 month. It shows that the purges of Division 310 began in earnest  
12 in December 1976 and continued at a fairly high rate throughout  
13 1977.

14 I would now like to show you a second chart, also based on the  
15 Office of Co-Prosecutors combined S-21 prisoner list, which  
16 compares arrests by S-21 from Divisions 502 and 703.

17 Q.Perhaps, Dr. Etcheson, I could ask you to go back to the first  
18 graph to give everyone time to catch up, because it's in English  
19 -- or what language there is on the chart is in English -- so  
20 we'll just pause there and allow everyone time to fully absorb it  
21 before we move to the next chart.

22 Yes, thank you. We'll move now to the next chart, please.

23 A.Thank you, Your Honour.

24 This graph compares arrests by S-21 from Divisions 502 and 703.

25 Our analysis suggests that at least 299 people were purged from



6

1 Division 502 in an operation that began in June 1976 and lasted  
2 for about one year. At least 406 people were purged from  
3 Division 703 in an operation which peaked in August 1977, and  
4 then spiked again in April of 1978.

5 Although I have not brought graphs for all of the other divisions  
6 of the Revolutionary Army of Kampuchea, purging was widespread  
7 throughout the entire DK military. For example, at least 467  
8 people were purged from Division 450. At least 349 people were  
9 purged from the general staff itself, and so on.

10 [09.30.07]

11 Q.Yes, thank you. Is that the conclusion of the graphs that you  
12 have produced, Dr. Etcheson?

13 A.For the moment, yes.

14 Q.Yes, thank you.

15 JUDGE CARTWRIGHT:

16 Well, the AV can return the screen; thank you.

17 BY JUDGE CARTWRIGHT

18 Q.Following these purges, as you have described in your graphs  
19 and in your evidence, where were the majority of those arrested  
20 sent?

21 A.Some purged military personnel were executed within their own  
22 units of organization; others were sent to forced-labour camps  
23 such as the Kampong Chhnang airport site. However, many were  
24 sent to S-21. If I may, I would like to cite an example which  
25 can be found in the minutes of a general staff meeting dated 1

7

1 March 1977. This document in the English version is ERN 00183949  
2 through 00183955.

3 On the first page of this document Division 502 Secretary Sou Met  
4 is reporting to Son Sen and his report includes the following  
5 comment, and I quote:

6 "It's obvious that a number of elements whom we had previously  
7 arrested really are enemy elements. More than 50 no-goods have  
8 been sent to S-21."

9 This document illustrates the fact that division commanders were  
10 not only aware of S-21 and its operations, but were actively  
11 sending prisoners to S-21.

12 Q.Thank you. When those members of the military were sent to  
13 S-21, was any information sent with them indicating the exact --  
14 for example, the reason for their arrests?

15 A.Yes, Your Honour. For example, in a document dated 2 June  
16 1977, which is a letter from Division 502 Secretary Sou Met to  
17 the accused person -- this document is on the case file at ERN  
18 00002409 through 000 -- excuse me 00002409. This document reads  
19 in part as follows.

20 "Dear Beloved Comrade Brother Duch, I would like to send you the  
21 following persons whose names are as follows: One, Chap,  
22 secretary of Battalion 503; two, Uk, member of Battalion 512.  
23 These names are quoted from the answers of Saom, Mao, and Hak,  
24 all of a former regiment of Division 310."

25 When Met says these names are quoted from the answers of Saom,

8

1 Mao, and Hak, he is referring to earlier confessions by those  
2 persons in which the two people he is now sending have been named  
3 as co-conspirators, and this illustrates the cycle that happened  
4 at S-21 with prisoners being interrogated to name other people;  
5 those who are named then being arrested and interrogated to name  
6 other people and so on.

7 [09.36.58]

8 Q.And I think that there is a reference in your paper to this  
9 material, at two footnotes; 285 and 286. That's in Document D15  
10 at ERN, in the English, 00146872.

11 A.You are correct, Your Honour.

12 Q.Now, in the course of your research did you find any  
13 information concerning arrests from government ministries?

14 A.Yes, Your Honour. There were widespread arrests throughout  
15 all government ministries. Some ministers actually complained  
16 that it was difficult for them to carry out their  
17 responsibilities because of so many people from their ministries  
18 being seized by security forces.

19 Q.Have you any specific examples from particular ministries that  
20 you can give us information about?

21 [09.39.11]

22 A.I do not have contemporaneous documents that would illustrate  
23 this readily to hand at the moment but in the S-21 confessions of  
24 leaders of ministries, such as Commerce, you can find the sorts  
25 of complaints that I just referred to.

9

1 However, in our analysis of the combined S-21 prisoner list, case  
2 file document number D.55 which I referred to earlier, we found  
3 that, for example, at least 532 people were arrested from the  
4 Ministry of Public Works and sent to S-21. That constituted more  
5 than 15 percent of that ministry's entire workforce. At least  
6 386 staff members from the Ministry of Commerce were arrested and  
7 sent to S-21. At least 268 persons were arrested from the  
8 Ministry of Energy and sent to S-21. At least 251 persons were  
9 arrested from the Ministry of Railways and sent to S-21 and so  
10 on.

11 The purging was quite extensive throughout all ministries of the  
12 Government of Democratic Kampuchea.

13 Q.Thank you.

14 Perhaps at this stage it would be helpful to give the ERN  
15 reference to Document D.55, which is the combined prisoner list.

16 I have it only in Khmer but it is 00172349 to 00172352.

17 Dr. Etcheson ---

18 A.Your Honour ---

19 Q.Sorry?

20 [09.41.51]

21 A.--- I have that ERN in English, if you would like.

22 Q.You've already given that, have you not?

23 A.I have.

24 Q.Yes, that's the 00172353 to 00172355.

25 Can you tell me, please, from what other sources did S-21

10

1 received detainees? We focused on the military and on ministries  
2 so far but were there any other sources?

3 A.Your Honour, S-21 received detainees from virtually every unit  
4 of organization in Democratic Kampuchea, across the entire  
5 country. One interesting example of this was provided by the  
6 accused person himself to the Co-Investigating Judges in the  
7 course of his testimony to the Co-Investigating Judges.

8 As an annex to case file document D.73 at ERN 00209180 through  
9 00209182, the accused prepared a document titled "List of  
10 Security Personnel Arrested and Sent to S-21". This list names  
11 40 cadres from security offices all around the country who ended  
12 up as victims of S-21.

13 If it please the Court, I could give a couple of further examples  
14 along these lines to illustrate this process.

15 [9.44.49]

16 Q.Yes, thank you.

17 A.On the case file you will find the S-21 confession of Keo  
18 Meas, alias Achar Kang. Keo Meas was a very senior  
19 revolutionary. He was one of the original members of the Central  
20 Committee of the Communist Party of Kampuchea in 1960.

21 His confession is at ERN 00226729 through 00226773. That is the  
22 Khmer language version. The English language version of this  
23 confession is at ERN 00284015 through 00284019, and the French  
24 version of this document is at ERN 00294500 through 00294504.

25 The case file document number is E.5/2.21.

11

1 On this confession there are handwritten notations by the accused  
2 person in which he describes his visit to Security Office M-99,  
3 located in Aoral district of Kampong Speu province. In this note  
4 the accused person says that he met Tang Khet, alias Khan, at  
5 M-99 and criticized him for making a personal visit to see a  
6 friend. This handwritten note from the accused person is dated 5  
7 October 1976. Sixteen (16) days later Tang Khet, alias Khan, was  
8 under arrest and writing his first confession at S-21.

9 Also on the case file you will find a report written by the  
10 accused person dated 31 July 1977 and entitled "Names of Persons  
11 Who Are Implicated in Chap Nam's History". This document is on  
12 the case file at ERN 00170595 through 00170601. It is part of  
13 the S-21 -- excuse me, that's the Khmer language version of this  
14 confession.

15 [09.49.58]

16 MR. ROUX:

17 Thank you, Your Honour.

18 I have a small problem. We were told that Mr. Craig Etcheson  
19 would be testifying -- if I refer to the Chamber's order, which  
20 is Document E51, which I shall quote:

21 "Following information provided by the Co-Prosecutors, the  
22 Chamber invites Craig Etcheson to give testimony at the hearing  
23 on the military structure of Democratic Kampuchea, the political  
24 and government structure of the Khmer Rouge regime, the  
25 configuration of the communication network of this regime, as

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1 well as its politics or policy and ideology."

2 And after the end of this, the Office of the Co-Prosecutors sent  
3 us a very well documented report which had been prepared by Mr.  
4 Etcheson, which was only translated into French on the 20th of  
5 April 2009, which is in fact about the matters that were  
6 indicated.

7 But I have observed that for a little while now Mr. Craig  
8 Etcheson has now left the report completely aside and is  
9 conducting an analysis of the case file of the Co-Investigating  
10 Judges which is irrelevant. And more importantly, he is dwelling  
11 specifically on S-21, whereas in the report I referred to  
12 earlier, not much is made of S-21, but there is a lot of  
13 discussion of the general organization of the regime.

14 So the Defence would like to know, in order to be prepared, what  
15 Mr. Etcheson's testimony will really be about, but the Defence  
16 cannot be told that there would be a topic for the testimony,  
17 provide documents in support of that topic and then subsequently  
18 move the testimony on to something else completely different,  
19 including asking the witness to comment on the work of the  
20 Co-Investigating Judges.

21 [09.53.33]

22 Your Honour, I would like us to return to the topic that was  
23 announced or indicated in the Chamber's order.

24 JUDGE CARTWRIGHT:

25 Do the Co-Prosecutors have any comment they wish to make?

13

1 MR. BATES:

2 Yes, thank you, Your Honour.

3 Can I remind the defence and Your Honours that the questions from  
4 the Bench were indeed from the Bench and, in the submission of  
5 the Co-Prosecutors, they were entirely proper questions to put to  
6 this witness, given his expertise and given the report that he  
7 conducted and submitted in good time to this Court.

8 [09.54.27]

9 It was Your Honour who formulated the questions in relation to  
10 S-21 specifically and, again, in the submission of the  
11 Co-Prosecutors, that was a perfectly proper course of questions  
12 for this particular witness. If the defence cannot anticipate  
13 questions relating to S-21 from a witness who has spent most of  
14 his professional career studying the documents in relation to the  
15 Khmer Rouge and latterly, the last three years, specifically in  
16 relation to S-21, that is not the fault of this Court.

17 But we submit that the questions put by Your Honour, with the  
18 greatest of respect, were correct and proper. Thank you.

19 JUDGE CARTWRIGHT:

20 Does any lawyer for any civil party group wish to comment? Civil  
21 party group 1?

22 MR. WERNER:

23 Your Honour, thank you. We do support the submissions of the  
24 Co-Prosecutor and we have nothing further to add. Thank you.

25 JUDGE CARTWRIGHT:



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1 Group 2?

2 [09.55.46]

3 MS. STUDZINSKY:

4 We also fully support the prosecution. Thank you.

5 JUDGE CARTWRIGHT:

6 Group 3?

7 MS. RABESANDRATANA:

8 We support the observations of the Co-Prosecutor. I just have a  
9 comment with regard to the objections of my learned colleague,  
10 Mr. Francois Roux.

11 In the study of the organizational structure of this regime we  
12 discussed the military structure, the network, various government  
13 structures, and it appeared that each of these structures knew of  
14 the existence of S-21. It seems logical, indeed inevitable, that  
15 issues pertaining to S-21 in particular be discussed within the  
16 framework of the explanations of expert Etcheson because S-21 was  
17 a tool that had some influence in all of the organizational  
18 structures of this state.

19 JUDGE CARTWRIGHT:

20 Maître Roux, do you have any response?

21 MR. ROUX:

22 Mr. President, Your Honours, this extremely well documented  
23 report is certainly very useful for these proceedings and Mr.  
24 Etcheson's testimony. It has 355 footnotes. I think it is ample  
25 for our purposes today.

15

1 But I note that instead of limiting his comments to the 355  
2 footnotes, the expert witness has come this morning with a list  
3 of new documents which are intended to be discussed in addition  
4 to the topics set out by the Chamber in its order. And I do not  
5 think this is fair for the defence. If Mr. Etcheson is prepared  
6 to talk of documents arising from the investigation, as this  
7 appears to be the case, based on the list that we have just been  
8 given, I regret to say that this is not the framework that was  
9 initially indicated.

10 I have no doubts whatsoever -- quite the contrary, in fact -- of  
11 Mr. Etcheson's qualifications. But I don't think he is here to  
12 comment on the work conducted by the Co-Investigating Judges. To  
13 fish from the Co-Investigating Judges' record a certain number of  
14 documents is not appropriate. It seems to me that the  
15 prosecution called this witness on the basis of his very complete  
16 report which he prepared from the outset because it was  
17 registered as D2/15, although of course we received it only very  
18 recently.

19 [10.00.02]

20 I would have preferred us to stay with this report or the  
21 Co-Prosecutor should have informed the Chamber that it wished, or  
22 that they wished, the witness to be questioned on other matters.  
23 But at point four of the Order the Chamber provided the points on  
24 which Mr. Etcheson would be interviewed. It is because the  
25 Co-Prosecutor has provided this information to the Chamber. So

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1 what do we do now?

2 MR. PRESIDENT:

3 Judge Lavergne, the floor is yours.

4 JUDGE LAVERGNE:

5 I would like a clarification on behalf of the expert. Before  
6 this interruption he just spoke to us about the confessions of  
7 Chap Nam and he gave us some ERN reference numbers and I would  
8 simply like to know if these confessions are included in the  
9 footnotes or if they are included in your report in another way.

10 And I'd also like to know if it is true that there is only a  
11 Khmer version and an English version and that there is no French  
12 version of this document.

13 THE WITNESS:

14 Your Honour, I believe it is correct that there is not yet a  
15 French translation of the S-21 confession of Chap Nam, and let me  
16 just go through this and see. Yes, I believe that the S 21  
17 confession of Chap Nam is not cited in my report "Overview of the  
18 Hierarchy of Democratic Kampuchea".

19 MR. PRESIDENT:

20 The Co-Prosecutor, the floor is yours.

21 [10.03.29]

22 MR. BATES:

23 Thank you, Mr. President. I'll be very brief.

24 Just to correct two issues; all these documents being referred to  
25 by Dr. Etcheson are documents in the case file. They cannot

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1 properly be described as new documents.

2 And, secondly, as we all know, in the civil law system, the  
3 witnesses are called by the Court. The Co-Prosecutors have not  
4 prepared Dr. Etcheson. He is not our, the Co-Prosecutors,  
5 witness, and we, the Co-Prosecutors, have no control over the  
6 questions that are asked by the Bench as the judges bear the  
7 primary responsibility of asking the first questions.

8 That is all I wish to say. Thank you.

9 [10.04.23]

10 (Deliberation between Judges)

11 JUDGE CARTWRIGHT:

12 Maître Roux, just to make sure that we have the correct document  
13 to which you object, could you give the specific reference  
14 because you have mentioned the Co-Investigating Judges' work and  
15 you have mentioned other documents? Could I have the precise  
16 document that you object to, please?

17 MR. ROUX:

18 Thank you.

19 The expert witness referred to the statements before the  
20 Co-Investigating Judges concerning specific points which are not  
21 included in his report and this is why the expert told us about  
22 documents that had been included in the proceedings and, if I  
23 understand correctly, well after the report was established.  
24 So this could have been acceptable, but it would have then been  
25 necessary for the Co-Prosecutors, when they requested the

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1 interview with Mr. Craig Etcheson and when they included his  
2 reports, it would have been necessary then for the Co-Prosecutors  
3 to inform the Chamber and the Defence that he would be testifying  
4 not only on the basis of his reports but also on the basis of an  
5 analysis of Duch's statements to the Co-Investigating Judges, but  
6 this is not at all what happened.

7 So the issue that Mr. Etcheson is called upon to speak is the  
8 military structure of Democratic Kampuchea and the political  
9 structure and the governmental structure of the Khmer Rouge  
10 regime, the organization of the communication network of this  
11 regime, as well as its politics and its ideology, and in the  
12 report, there are only a few words about S-21 as being part of a  
13 whole, but there is no specific analysis of S-21. Whereas now,  
14 the expert witness is giving us a specific analysis of S-21. So  
15 we're no longer -- we're stepping out of the context here.

16 [10.13.44]

17 JUDGE CARTWRIGHT:

18 Maître Roux, I understand your argument, but I want to know which  
19 document you object to. Is it the annex to the Co-Investigating  
20 Judges' interview with the accused, D73?  
21 This is, I understand it, that has a French translation. Or is  
22 it the document that does not have the French translation?

23 [10.14.27]

24 MR. ROUX:

25 Yes, indeed. It is indeed Document D73. D73 is a document in

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1 the Co-Investigating Judges' file and this document has, indeed,  
2 been translated into French, but there are also documents such as  
3 the last one that Craig Etcheson mentioned, Chab Nam's  
4 confessions, which does not exist in French.  
5 And also, I would like to draw the Chamber's attention to the  
6 documents that are indexed E5, among which Achar Kang's  
7 confession, alias Keo Meas, can be found. And I'd like to remind  
8 you that the Documents E5 are included among the documents that  
9 have been included by the Co-Prosecutors after the investigation  
10 was closed, and I complained about this by saying that this -- it  
11 was a pity that these documents had not been included in the file  
12 during the investigation.  
13 And I notice that Mr. Craig Etcheson is using, today, documents  
14 that come about way after the establishment of his reports. It  
15 would have been necessary for the Co-Prosecutors to warn us. We  
16 cannot give the defence a report that is dated from more than two  
17 years by saying that the expert will come speak about this report  
18 while arriving this morning with documents that are very recent.  
19 This is called taking the defence off guard, and this is not  
20 something that is acceptable.  
21 (Deliberation between Judges)  
22 [10.20.13]  
23 MR. PRESIDENT:  
24 Judge Silvia Cartwright, you can proceed putting further  
25 questions to the expert and to the parties to the proceeding to

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1 clarify the opposition from the defence counsel.

2 JUDGE CARTWRIGHT:

3 Thank you, Mr. President.

4 BY JUDGE CARTWRIGHT:

5 Q.The Trial Chamber wants to establish precisely to which  
6 documents there are defence objections and so, Dr. Etcheson, I'm  
7 going to ask you to repeat certain references and ERN numbers so  
8 that we are clear which documents we are referring to. The first  
9 one is the document that you referred to as being in an annex to  
10 the Co-Investigating Judges' interview; D73. And in that annex,  
11 as I understand it, there was the confession of Keo Meas on which  
12 there was a handwritten note from the accused. Is that correct?

13 A.No, Your Honour, that is not quite right. The annex to  
14 Document D73 is a document prepared by the accused person,  
15 entitled "List of Security Personnel Arrested and Sent to S-21",  
16 and the S-21 confession of Achar Kang, alias Keo Meas, is not  
17 related to that document.

18 Q.All right. Well, we'll deal first with the Annex D73 with the  
19 accused's annotation on it, and that is the ERN Number 00209180.  
20 Is that correct?

21 A.Are you referring to D73, Your Honour?

22 [10.22.42]

23 Q.Yes, yes.

24 A.I show that as the larger Document D73. The ERN of the  
25 English version I have as 00209168 through 00209183. The

21

1 specific segment of that document, which is to say the annex  
2 prepared by the accused person, is at 00209180 through 00209182,  
3 and if you like, I could also give the ERN for the French and  
4 Khmer versions ---

5 Q.Thank you.

6 A.--- of the larger document. The French ERN is 00186208  
7 through 00186223.

8 [10.24.28]

9 Q.Thank you.

10 A.The ERN for the Khmer version is 00186192 through 00186207.

11 JUDGE CARTWRIGHT:

12 Thank you.

13 Now, Maître Roux, do you have an objection to that document? I  
14 don't need to hear your reasons. I need to know if you do object  
15 to it.

16 MR. ROUX:

17 Thank you.

18 Concerning this document, we have no problems with it as far as  
19 it is a list that has been established by the accused himself  
20 but, Your Honour, could you please ask the question to Craig  
21 Etcheson and ask him when he wrote his first report, at which  
22 date did he write his first report, this report that we are  
23 working with now?

24 BY JUDGE CARTWRIGHT:

25 Q.Dr. Etcheson, could you answer that question please?



22

1 A.Yes, Your Honour. The report entitled "Overview of the  
2 Hierarchy of Democratic Kampuchea" was completed in early July  
3 2007.

4 JUDGE CARTWRIGHT:

5 Thank you.

6 [10.26.40]

7 Do you have another comment on that document, on the D73  
8 document, Maître Roux, in the light of that response?

9 MR. ROUX:

10 Yes, Your Honour. It seems to me that it would have been fair if  
11 Mr. Etcheson could have used the index number D73. It would have  
12 been fair that he provides us with a complimentary report that he  
13 would have presented to the Chambers and to the parties and in  
14 which he would have referred to index number D73, and I'm sorry  
15 to say that this was not the case.

16 [10.27.41]

17 BY JUDGE CARTWRIGHT:

18 Q.Now, the next document, Dr. Etcheson, is the Keo Meas document  
19 for which you gave three ERN numbers, English, French and Khmer,  
20 and an overall number of E5/2.21; is that correct?

21 A.Yes, Your Honour, that's correct.

22 Q.And that's the document on which there is a handwritten note  
23 from the accused -- written by the accused?

24 A.Yes, that's correct.

25 JUDGE CARTWRIGHT:

23

1 Now, Maître Roux, do you want me to repeat the ERN numbers?

2 Oh, just a moment please. Judge Lavergne?

3 BY JUDGE LAVERGNE:

4 Q.Yes, you intend to refer only to the annotations that were  
5 provided by Duch himself; is that correct?

6 A.Yes, Your Honour, in addition to a typewritten report prepared  
7 by the accused that is incorporated into the confession of Chab  
8 Nam.

9 [10.29.13]

10 MR. PRESIDENT:

11 The lawyer can proceed.

12 MR. ROUX:

13 This appears to be a document which is on a list of documents  
14 that the Co-Prosecutors provided several months after the end of  
15 the investigation, and in that instance also, if Mr. Craig  
16 Etcheson had wished to use them, it would have been appropriate  
17 for him to provide a supplemental report.

18 Allow me to put a question. Who translated this document into  
19 French and English? Who is it?

20 BY JUDGE CARTWRIGHT:

21 Q.Dr. Etcheson, do you know the answer to that question?

22 A.I do not, Your Honour.

23 [10.30.46]

24 JUDGE CARTWRIGHT:

25 Do you wish the Trial Chamber to make further enquiries? Is

24

1 there a purpose in this question, Maître Roux that is of  
2 importance?

3 MR. ROUX:

4 Your Honour, since we have already come up against difficulties  
5 with translations from this list during the study of one of the  
6 documents of one of the lists, we discovered serious errors. The  
7 interpreter used the word "smash" which did not, in fact, appear  
8 in the document. Unless I am mistaken, it is the same list of  
9 documents so, yes, of course, we would be grateful to know who  
10 translated the excerpts -- because that is what it is often -- of  
11 these confessions. That is that confession, and then there is  
12 the next one which is not translated into French, only into  
13 English. I refer to D56, D108/25.1, no translation in the  
14 French. This is the confession of Chab Nam.

15 I'd like to make the same comment. It would have been  
16 appropriate for there to be a supplemental report by Mr. Etcheson  
17 including his own comments on these documents.

18 MR. PRESIDENT:

19 The Co-Prosecutor, you take the floor.

20 MR. BATES:

21 Thank you, Mr. President.

22 Can I perhaps assist the Chamber that there is no French  
23 translation; correct? There is an English translation that was  
24 conducted by the ECCC Translation Unit. I don't have a date of  
25 that, but it has a reference number at the bottom of the

25

1 document, a T number that was one of the ECCC's original  
2 reference numbers from the very early days, and can I just  
3 correct the description of this particular document? It is not,  
4 in fact, a confession. It is a report -- a summary report --  
5 from the accused of Chab Nam's confession.

6 Thank you.

7 [10.33.48]

8 JUDGE CARTWRIGHT:

9 Well, I think we have clarified that the defence objects for  
10 different reasons to each of the documents but with the  
11 overriding reason that there ought to have been a supplementary  
12 -- a report made supplementary to the overview report in order to  
13 warn the defence that these documents might be referred to.  
14 Perhaps, Mr. President, we might wish to take an adjournment and  
15 discuss this during the adjournment.

16 Now that we have clarified the documents and the specific  
17 objections, are there any further comments from the other  
18 parties, please?

19 Office of Co-Prosecutors?

20 MR. BATES:

21 Thank you, Your Honour.

22 I'll not repeat what I said earlier, but in response to the issue  
23 that this witness should have been required to compile a  
24 supplementary report, given that his report was written almost  
25 two years ago, that, in our submission, is a false argument,

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1 given that these are all documents on the case file accepted by  
2 the Court and all documents on the case file that have been  
3 opened to the accused and his defence team to examine, and still  
4 can examine, on the Trial Chamber case file.

5 And my submission that I made earlier on was that Dr. Etcheson  
6 should be allowed, under questioning from the Court, to refer to  
7 documents that he has not previously relied upon, and that does  
8 not breach any unfair principles for the Trial Chamber.

9 Thank you.

10 [10.36.32]

11 JUDGE CARTWRIGHT:

12 Any further comments from any of the civil party groups?

13 MR. WERNER:

14 Your Honour, there are no further comments on the substance. We  
15 would be grateful, if I'm not mistaken, the summary of Chab Nam  
16 confession we do not have any ERN number in English and I  
17 understand that there is an ERN number in English. We just --  
18 we'd be grateful, for the record, if the ERN could be given in  
19 English.

20 Thank you.

21 JUDGE CARTWRIGHT:

22 Thank you.

23 Any other comments from civil party groups?

24 MR. KONG PISEY:

25 Thank you.

27

1 Your Honour, I would like to make some comments concerning the  
2 clarification of the response of the expert. So far as I've  
3 observed the questionings were consistent with the scheduling  
4 order and that the Judge has asked the expert to give some  
5 related examples to support his testimony. So the expert  
6 consequently cited the practical examples which are already  
7 available in the case file. So these are the actual examples for  
8 the Trial Chamber to consider and I think they are appropriate.

9 Thank you.

10 [10.38.20]

11 JUDGE CARTWRIGHT:

12 Thank you.

13 Civil party group 3; Mr. Hong Kimsuon?

14 MR. HONG KIMSUON:

15 Thank you, Your Honour.

16 I have a few comments. Based on my observation as the civil  
17 party lawyer I have observed that Mr. Craig Etcheson, the expert  
18 who has compiled the document submitted to be debated in this  
19 hearing, the President of the Trial Chamber has already notified  
20 the parties and also the Court is informed of when the expert is  
21 expected to give his testimony. And yesterday the President has  
22 already informed that after the expert has made his testimony  
23 parties would be able to make inquiries or observations. And I  
24 can see that after each inquiry to the expert, Mr. Craig  
25 Etcheson, and Mr. Etcheson always says that with Your Honour's

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1 leave then he would proceed by citing, for example.  
2 And I would like to respond to the objections by the defence  
3 counsel regarding the documents as references cited by Mr. Craig  
4 Etcheson. Mr. François Roux, in his response to the Trial  
5 Chamber Judge, is not yet certain whether he accepted those  
6 documents as references yet until there is clarification from Mr.  
7 Craig Etcheson first.  
8 Now, we can see that all the documents cited by Mr. Craig  
9 Etcheson are not any new document and as supported by the  
10 Co-Prosecutor. And Mr. François Roux stressed that these  
11 documents were issued at a later date, and I have observed that  
12 the ERN number, as indicated in this document, are included in  
13 the introductory submission of the Co-Investigating Judges.  
14 [10.41.17]  
15 So I think at the moment Mr. Craig Etcheson is only responding to  
16 the inquiries by the Trial Chamber Judge and there is no other  
17 new document to be cited by the expert. So officially these  
18 documents have been already available at the Court, only he tries  
19 to give us a reference number which the parties insisted that  
20 such references should be given to the parties. And if there is  
21 any objection to the references as cited by the expert I don't  
22 think it is appropriate because he's only responding to the  
23 inquiries by the Trial Chamber Judge and he only, in his capacity  
24 as an expert, respond to the inquiries as requested.  
25 MR. PRESIDENT:

29

1 The floor is yours, Mr. François Roux.

2 MR. ROUX:

3 The Chamber will also see on the list that was provided by the  
4 expert this morning that the last two documents on the list do  
5 not have a French translation. I'm referring to the last two  
6 documents on the list. So this is another problem.

7 If I may provide some clarification to the Chamber, in my view,  
8 the problem arises from the following question. When Mr. Craig  
9 Etcheson submitted his report in July 2007 there was no accused  
10 who'd been charged so this was a general report and that is, in  
11 fact, the purpose of the report. As the Chamber indicated in its  
12 Order, the purpose of the report is to provide an overview of the  
13 situation in Democratic Kampuchea.

14 What makes me somewhat uncomfortable is that today, almost two  
15 years since having become aware of the particular investigation  
16 of Duch, this expert is providing details to his report which  
17 obviously would be useful for the truth to be ascertained, but  
18 which I insist should have been the subject of a supplemental,  
19 specific report, and everybody would have been informed that  
20 after the overview provided, as an expert, Mr. Etcheson would be  
21 providing an analysis of the material collected by the  
22 Co-Investigating Judges and then everything would have been  
23 clear. But as we speak now, nothing is clear.

24 [10.45.08]

25 If you look at the same order; that is, the order of the 23rd of



30

1 April, it is indicated that Mr. Chandler will come to talk of  
2 S-21. That is obvious. It is perfectly obvious. We know that  
3 Mr. Chandler will come to talk of S-21, but nowhere is it written  
4 at point 4 of your order that Mr. Craig Etcheson will discuss  
5 S-21. And in his reports, there are barely a few lines about  
6 S-21.

7 I am very keen to hear what analysis - - Mr. Craig Etcheson's  
8 analyses as announced by the Co-Prosecutors regarding the  
9 political and government structure of the DK regime would be and  
10 I think Mr. Etcheson is a recognized expert in the area.

11 Thank you.

12 MR. PRESIDENT:

13 Now it's time for the Chamber to adjourn. The Chamber will  
14 adjourn until a quarter past 11:00.  
15 Court Services, please facilitate for the expert to go to the  
16 waiting room.

17 (Witness exits courtroom)

18 (Judges exit courtroom)

19 (Court recesses from 1046H to 1132H)

20 (Judges enter courtroom)

21 [11.33.10]

22 MR. PRESIDENT:

23 The Court is now in session and the Chamber would like to inform  
24 the parties to the proceedings and the audience that the hearing  
25 cannot proceed further and we will take the adjournment this

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1 morning at this time, and the hearing will be resumed at 2.00  
2 p.m. this afternoon.

3 The adjournment has been contributed to by the objections of the  
4 defence counsel that the Trial Chamber needs more time to  
5 deliberate and find the best solution before an appropriate  
6 decision is issued in respond to such objection. So the hearing  
7 is adjourned and will be resumed at 2 p.m.

8 The security personnel please take the accused to the detention  
9 facility and bring him into the courtroom by 2 p.m.

10 The Court official, could you please facilitate with the expert  
11 so that he can have his lunch and that he is back by 2 p.m.

12 (Witness exits courtroom)

13 (Court recesses from 1135H to 1430H)

14 (Judges enter courtroom)

15 [14.30.00]

16 MR. PRESIDENT:

17 Please be seated.

18 The Trial Chamber is now back in session and continuing its  
19 proceeding. Before we continue listening to the testimony of the  
20 expert, Dr. Craig Etcheson, the Chamber would like to announce a  
21 decision on objections raised by the defence this morning.

22 The Trial Chamber is not bound by the indication given to the  
23 parties of scope of the testimony or report of an expert. The  
24 reasons: the Trial Chamber and the parties have the right to ask  
25 questions that the Trial Chamber considers relevant. When

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1 answering such questions the expert is not bound by his or her  
2 previous written statement or report.

3 It also follows that an expert is not obliged to file a  
4 supplementary written report. The general rule is that documents  
5 should be available in all three languages of the Court in order  
6 to be put before the Chamber. However, the Trial Chamber will  
7 accept reference to documents which are available in Khmer and  
8 one other language of the Court. The reasons:

9 A. There are Khmer speakers representing all parties and in the  
10 Trial Chamber.

11 B. Translation resources are limited and the material in the  
12 case file is extensive.

13 C. According to Rule 21, the Trial Chamber has the duty to  
14 conduct a fair trial within a reasonable time. There will be  
15 exceptions to this Rule, one of which is where a document is  
16 referred to and no prior notice has been given.

17 Any party may object to its admissibility or seek more time to  
18 give it further consideration. Any translation will be accepted  
19 by the Court unless there are objections concerning accuracy or  
20 inconsistencies between various versions. Such objections must  
21 specify concrete examples.

22 [14.33.27]

23 The Court wishes to remind the parties that documents, including  
24 those referred to by experts, must be read out or summarized in  
25 order to be considered put before the Chamber's disposition.

33

1 The objections by the Defence concerning the scope of Dr. Craig  
2 Etcheson's testimony that he ought to have filed a supplementary  
3 report and that the translation of documents might not have been  
4 prepared by the interpretation and translation pool of the ECCC  
5 are rejected.

6 Document D56, namely the S-21 confession of Chab Nam, has no  
7 French translation and reference to it is expected. The Defence  
8 can elect to seek more time to consider that document or ask for  
9 it to be ruled inadmissible at this stage of the trial.

10 The Trial Chamber will ask the Defence to specify, in the light  
11 of this ruling, whether it maintains its objection to the  
12 reference of documents D2-15, Annex C of the introductory  
13 submission, document number 39 and document number 30, and if so,  
14 to give specific reasons for such objection by 9:00 a.m. tomorrow  
15 morning.

16 This is the decision regarding the objection raised by the  
17 Defence which was raised this morning.

18 [14.38.27]

19 Mr. François Roux, the floor is yours.

20 MR. ROUX:

21 Thank you, Mr. President.

22 One clarification that I would like to request from the expert,  
23 the penultimate document that is mentioned in his list, it is  
24 indicated here number 39. Does this number refer to a footnote  
25 from the expert's report? Because we do not have this number

34

1 indicating a footnote.

2 So what does this number 39 refer to exactly, please? We would  
3 like to be clear about this, if Mr. the Judge has indeed  
4 understood.

5 MR. PRESIDENT:

6 Judge Lavergne, you can respond.

7 JUDGE LAVERGNE:

8 Well, it seems to me that number 39 is number 39 of Annex C from  
9 the introductory submission. So it does not correspond to a  
10 footnote number but it corresponds to a number in the annex of  
11 the introductory submission. So this is why it is indexed as  
12 Document D2-15.

13 [14.40.11]

14 MR. ROUX:

15 Yes, indeed, but I still have a problem because this confession  
16 here from Chan Sam is referred to in Mr. Etcheson's report in  
17 footnote number 59.

18 However, the date referred to is September 10th, 1978, whereas in  
19 the annex you are mentioning, this confession is dated October  
20 25th, 1978. So therefore I need to be clear about this. We have  
21 to be sure that we're speaking about the same confession, unless  
22 we're dealing here with two confessions, but in any case, I, in  
23 the document that has been included by the Co-Prosecutors, E-55.1  
24 at page 003 in the English version; 21680 ERN, under number 31,  
25 4.02, it is indicated that the statement's date is October 25th,

35

1 1978, Chan Sam, alias Kang Chap, alias Sae. That's what's  
2 indicated here.

3 Whereas in today's document, I do not have the right date --  
4 that's -- yes, apparently.

5 [14.42.34]

6 So therefore, I would like to be sure that we're speaking about  
7 the same document here.

8 MR. PRESIDENT:

9 Please, the International Co-Prosecutor, the floor is yours.

10 MR. BATES:

11 Thank you, Mr. President.

12 Can I just correct His Honour Judge Lavergne? This is not a  
13 number -- Number 39 is not an Annex C number. It is in fact an  
14 index attached to this witness' own statement at the beginning of  
15 his statement. In fact, the Annex C number for that document is  
16 4.02.

17 MR. ROUX:

18 May I suggest that we continue with the proceedings and that we  
19 ask the Co-Prosecutors' Office to provide, between now and  
20 tomorrow, clarifications regarding this document, and that in the  
21 meantime, that we do not refer to it, please, until things are  
22 clarified.

23 [14.44.18]

24 Thank you.

25 MR. PRESIDENT:

36

1 The Co-Prosecutors, can you do that according to the request by  
2 the Defence? It means we do not refer to the document at this  
3 time. It may be done at an appropriate time and we will discuss  
4 other documents. So here we can postpone discussion on this  
5 document until it is clarified?

6 MR. BATES:

7 Thank you, Mr. President.

8 Yes, we can do that.

9 MR. PRESIDENT:

10 We can now continue our proceeding.

11 And we do not discuss on this particular document until it is  
12 clarified. So we will discuss on this document at a later stage,  
13 after the verification by the Co-Prosecutor.

14 Now I would like to give the floor to Judge Cartwright to  
15 continue her questions to the expert.

16 [14.45.37]

17 JUDGE CARTWRIGHT:

18 Thank you, Mr. President.

19 BY JUDGE CARTWRIGHT:

20 Q.Well, Dr. Etcheson, you've probably forgotten where we are in  
21 the testimony, but we can now move on, and bear in mind that we  
22 will be making no further reference to any of the three documents  
23 that are still under consideration and to which the defence has  
24 yet to make comment, and also the document number 39 mentioned in  
25 the annex to your overview report.

37

1 Now, when we stopped earlier today I was asking you from what  
2 other sources S-21 received detainees. And I now want to know,  
3 please, if there was any particular period when a greater than  
4 usual number of district cadre were arrested and brought to S-21  
5 for interrogation?

6 A.Yes, Your Honour. If it please the Court, I would like to  
7 illustrate my answer to this question with reference to two more  
8 charts. This morning I discussed the Office of Co-Prosecutors  
9 combined S-21 prisoner list and gave case file, document numbers  
10 and ERNs for that compilation and described how we have created  
11 charts and graphs from the information contained in that combined  
12 prisoner list. The two additional charts I would like to display  
13 before the Court at this time are also drawn from an analysis of  
14 that prisoner list. So if I may proceed with that?

15 [14.48.12]

16 JUDGE CARTWRIGHT:

17 Is there any objection to Dr. Etcheson taking the same approach  
18 to this material from any party?

19 Nothing from the prosecutors.

20 Anything from any of the civil parties?

21 Thank you.

22 Anything from the defence?

23 MR. ROUX:

24 Same observations. It's a pity that this is only presented now,  
25 whereas this report is two years old.



38

1 JUDGE CARTWRIGHT:

2 Thank you, Maître Roux.

3 The defence will be given the opportunity to consider these  
4 charts and make further observations or objections at a later  
5 stage.

6 BY JUDGE CARTWRIGHT:

7 Q. But in the meantime, Dr. Etcheson, could you produce those  
8 charts? You need to refer again to the ERN numbers and other  
9 document numbers from which they are derived, please.

10 A. Very well, Your Honour.

11 [14.49.22]

12 The Office of Co-Prosecutors combined S-21 prisoner list is case  
13 file document number D55. The English language ERN for this  
14 document is 00172353 through 00172255.

15 Q. Can I just interrupt you at that point, Dr. Etcheson? There  
16 seems to be an error in the ERN number. The document starts at  
17 00172353 and ends, according to your description, at 253 -- 2  
18 something or other after that. It doesn't go backwards, we  
19 assume.

20 A. You're quite right, Your Honour. I have an error in my  
21 information here. Because I have drawn these ERN numbers from  
22 the Office of Co-Prosecutors' case management system, we may have  
23 a bad piece of data in that case management system. I'm afraid I  
24 can't provide a correction at this point with the resources that  
25 are to hand.

39

1 JUDGE CARTWRIGHT:

2 Well, perhaps if I ask the Office of Co-Prosecutors to give us  
3 this information when they can, please?

4 Thank you.

5 MR. BATES:

6 It is one mistyped digit. It should read 00172353 through  
7 00172355. And this document, in fact, is the written record of  
8 this witness' statement exhibiting his written report, which  
9 explains why it only appears to cover three pages rather than the  
10 entirety of his report.

11 Thank you.

12 [14.51.36]

13 JUDGE CARTWRIGHT:

14 Yes, thank you.

15 BY JUDGE CARTWRIGHT:

16 Q.Can you continue now, Dr. Etcheson?

17 A.Yes, Your Honour. Excuse me for that confusion.

18 With the assistance of the audio-visual unit, could we please put  
19 my laptop on the screen?

20 Again, this chart is based on an analysis by the Office of  
21 Co-Prosecutors of the combined S-21 prisoner list, which is on  
22 the case file and which I have previously mentioned. This chart  
23 shows that purges of CPK cadres were carried out in all zones of  
24 Democratic Kampuchea.

25 In some zones, however, the purges were much more severe than in

40

1 other zones. In particular, especially severe purges were  
2 carried out in the old North Zone which is also known as the  
3 Central Zone; in the East Zone, and in the Northwest Zone.  
4 When the Chamber has had adequate time to examine this exhibit  
5 I'm prepared to move to the next chart, which goes into more  
6 detail.

7 [14.54.16]

8 Q.Yes, thank you. I think you can move on now, Dr. Etcheson.

9 A.This next chart compares the purges in the Central, Northwest,  
10 and East Zones as measured by arrests at S-21. This chart is  
11 also based on data from the Office of Co-Prosecutors combined  
12 S-21 prisoner list.

13 This chart shows that the purge of the Central Zone peaked in the  
14 second quarter of 1977. The purge of the Northwest Zone got  
15 underway in the third quarter of 1977 and continued into the  
16 first quarter of 1978. The purge of the East Zone was extremely  
17 rapid; it peaked in the second quarter of 1978. More than 1,000  
18 cadres from the East Zone and more than 1,000 cadres from the  
19 Northwest Zone were sent to S-21 in the course of these purges;  
20 many of those cadres were from the district level.

21 So to return to your original question, this graph shows a period  
22 when there was a very high concentration of district cadre being  
23 sent to S-21.

24 [14.54.30]

25 Q.Yes, thank you. Those are the only two charts you want to

41

1 show to us, Dr. Etcheson?

2 A. That's correct, Your Honour.

3 Q. Thank you. Well perhaps AV can return our screens to normal  
4 position, please.

5 MR. ROUX:

6 Your Honour, could we please have a copy as soon as possible of  
7 these diagrams, of these graphs and may I please make an  
8 observation as well? We have been speaking for weeks and for  
9 months even, with the Co-Prosecutor's office in order to  
10 establish a list of acknowledged facts by the accused.

11 Don't you think that it would have been also worthwhile to let  
12 the defence become aware of such documents, documents which are  
13 very useful; why do we have to wait for the expert to testify in  
14 Court? This is not how I imagine an adversarial hearing to take  
15 place.

16 And on the other hand, may I please make a rectification?

17 There's a little error that my learned friend, Alex Bates, made.

18 The index, D55, is not a written record of an interview of Craig  
19 Etcheson, Index D55 refers to a request from the Co-Prosecutors  
20 that was addressed to the Co-Investigating Judges on the 19th of  
21 March 2008, that is to say more than a year ago, and they are  
22 asking to accept the list of prisoners from S-21, the title of --  
23 and this request contains -- is made up of three pages and Annex  
24 A, however, contains 370 pages.

25 And I imagine that it's on the basis of these 370 pages that make

42

1 up the lists of the prisoners that Mr. Craig Etcheson was able to  
2 set up the two tables that he showed us.

3 [14.56.33]

4 So, therefore, I would like to have as soon as possible, a copy  
5 of these tables; better late than never.

6 JUDGE CARTWRIGHT:

7 Yes, I see an indication from the international Co-Prosecutor  
8 that that will be done. By as soon as possible, can you give an  
9 indication?

10 MR. BATES:

11 Yes, thank you, Your Honour.

12 If all the defence requires is a copy of what was shown in the  
13 original language we can do that by tomorrow morning. If the  
14 defence wished copies of it, translating into both the other  
15 languages that will take a week, and I stand corrected; thank  
16 you.

17 JUDGE CARTWRIGHT:

18 Yes, well, Maître Roux, we'll make sure that you have at least  
19 the charts that were shown today by tomorrow morning and  
20 translations as soon as possible thereafter.

21 Do you require translations, because there wasn't a lot of  
22 interpretation needed in these particular cases?

23 MR. ROUX:

24 I think we should be able to make use of the diagrams as they  
25 are. There is no point in providing -- asking the translation

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1 service to do more work.

2 [15.00.47]

3 JUDGE CARTWRIGHT:

4 Thank you for that indication, it's very helpful.

5 BY JUDGE CARTWRIGHT:

6 Q.Now, Dr. Etcheson, I would like to compare the situation at  
7 S-21 with other special security prisons, and I'd like to know if  
8 there were any other special security prisons that received such  
9 a wide range of detainees.

10 A. No, Your Honour, I don't believe so. Democratic Kampuchea  
11 security offices were empowered to arrest persons within their  
12 own area of operations so that, for example, the Sector 103  
13 security office was authorized to arrest anyone within Sector  
14 103. The Southwest Zone security office was empowered to arrest  
15 anyone within the Southwest Zone and so on.

16 But, S-21's area of operations was nationwide. S-21 was the only  
17 security office with the authority to arrest and detain people  
18 from across the entire country.

19 Q.In his testimony, the accused said that S-21 was the tool of  
20 the Standing Committee and he attributed that partly to the fact  
21 that it was located in Phnom Penh. Do you have any comment to  
22 make on that?

23 A.Yes, indeed. The Party centre was known as the Party centre  
24 because that is where national power, at the very apex of the  
25 organizational hierarchy, was concentrated. The security office

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1 that was associated with this penultimate node in the power  
2 pyramid of the Democratic Kampuchea state reflected the power of  
3 those to whom the accused person reported.

4 [15.03.22]

5 Q.And in the statement of agreed facts, at paragraph 21, the  
6 Office of Co-Prosecutors said this:

7 "S-21 was an integral part of the politico-military structure of  
8 the CPK at the centre level, referred to variously as Angkor, the  
9 organization, the Party centre, the Central Committee or the  
10 Standing Committee."

11 And that refers to paragraph 32 of the Closing Order and the  
12 accused noted that he partly agreed to that statement and made  
13 the following additional comment: ...

14 "In Duch's view it would be more accurate to say that S-21 was  
15 managed by the Standing Committee of the Central Committee,  
16 rather than at the centre level. It would have been possible to  
17 assert that S-21 was at the centre level if Duch himself had been  
18 part of the Standing Committee of the Central Committee, but he  
19 was not."

20 Do you have any comment to make on the refinements to the  
21 accused's response to paragraph 66 of the agreed facts?

22 A.It seems to me, Your Honour, that this is a very fine  
23 distinction indeed. For my own understanding of the facts I  
24 think agreed fact number 66 is correct as stated, although of  
25 course we know that the accused person was not a member of the

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1 Standing Committee himself.

2 [15.16.10]

3 Q.Thank you.

4 Were those sent to and detained at S-21 different as a class to  
5 those detained at other prisons around Cambodia? By "class" I  
6 mean different group as opposed to a political meaning of  
7 "class."

8 A.Yes, Your Honour, I think it's fair to say that. For example,  
9 in his own statements to the Co-Investigating Judges the accused  
10 person has said that only S-21 had the authority to interrogate  
11 members of the Central Committee and of the Standing Committee of  
12 the Communist Party of Kampuchea. I don't have a precise ERN  
13 reference for that assertion but it is on the case file in  
14 statements that the accused person has made to the  
15 Co-Investigating Judges.

16 Moreover, if you look closely at the Office of Co-Prosecutors'  
17 combined S-21 prisoner list, you will see that this pattern holds  
18 more generally. Leading cadre from the zone, sector, and  
19 district echelons, along with ranking military leaders and  
20 ranking leaders of government ministries, almost invariably ended  
21 up at S-21 when they were purged. I have seen no evidence that  
22 would suggest this was the case with any other security office in  
23 Democratic Kampuchea. All of the most important prisoners, which  
24 is to say the highest-ranking prisoners in the political and  
25 military hierarchies, were sent to S-21.



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1 Q.Thank you.

2 Did other chairmen of special security prisons report directly to  
3 Son Sen or any other minister?

4 A.Your Honour, this is a particularly difficult question. I am  
5 aware of certain evidence that is relevant to this question but  
6 that evidence is in Case File 2, which is currently the subject  
7 of a judicial investigation by the Office of Co-Investigating  
8 Judges. As you know, judicial investigations are confidential,  
9 so I am not at liberty to describe that evidence in any detail  
10 here today.

11 However, I believe I can say that none of that evidence suggests  
12 the kind of direct personal daily reporting relationship that the  
13 accused person had with Son Sen and Nuon Chea existed with  
14 respect to any other Democratic Kampuchea security office.

15 [15.09.57]

16 Q.Thank you, Dr. Etcheson.

17 I want to turn now to the Constitution of Democratic Kampuchea,  
18 the reference to which is in the English ERN Number 00184833 to  
19 00184839, and in Khmer 00089841 to 00089852. I have no reference  
20 to a French version of the document.

21 You have a reference? Thank you. Can you give it to me, please?

22 A.Yes, Your Honour. The ERN for the French language version of  
23 the Constitution of Democratic Kampuchea is 00012644 through  
24 00012659.

25 Q.Thank you very much.

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1 Now, under chapter 5 of that Constitution, a legislative body to  
2 be known as the Kampuchean People's Representative Assembly, was  
3 established. From your research are you able to say if this  
4 legislative body ever met?

5 A.Yes, Your Honour. It's my understanding that the People's  
6 Representative Assembly met once between 11 and 13 April 1976.  
7 That also corresponded with the time when the People's  
8 Representative Assembly was constituted.

9 [15.13.00]

10 Q.And are you able to say whether the 250 members of that  
11 representative assembly were appointed or elected?

12 A.It is clear, Your Honour, that they were appointed by upper  
13 echelons of the Communist Party of Kampuchea.

14 Q.Thank you.

15 Under chapter 6 of the Constitution an executive body was to be  
16 elected by the Kampuchean People's Representative Assembly. Was  
17 that executive body ever elected or established?

18 A.The Executive Body of the Democratic Kampuchean State was  
19 indeed established, and if you examine minutes of Standing  
20 Committee meetings from March 1976 you can see the process that  
21 the standing committee went through to constitute these organs of  
22 the state. But there was never an election per se by the  
23 People's Representative Assembly. What the People's  
24 Representative Assembly in fact did was vote unanimously in  
25 favour of the organs that were presented to them.

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1 Q.And in chapter 7 of the Constitution, people's courts were  
2 anticipated, with judges chosen and appointed by the Kampuchean  
3 People's Representative Assembly. ...

4 Were those peoples courts established and judges appointed?

5 A.On the case file, Your Honour, there is a document entitled  
6 "Document on Conference One of Legislature One of the People's  
7 Representative Assembly of Kampuchea" 11 through 13 April, 1976.  
8 This document is actually dated 14 April 1976, and it has the ERN  
9 00184048 through 00184078.

10 At ERN 00184076 in this document it says the People's  
11 Representative Assembly has, "...decided to approve the selection  
12 and appointment of a judicial committee with Kang Chap as  
13 chairman." However, in the Standing Committee meeting minutes  
14 dated 8 March 1976 with the ERN 00182628 through 00182634, at ERN  
15 00182629 the Standing Committee notes as follows, "We do not set  
16 up an election in the capitalist style. We use the dictatorship  
17 of our proletarian class." And then it goes on to say,  
18 "Representatives must be selected at Upper Echelon."

19 [15.18.02]

20 So the Standing Committee appointed a senior cadre, Kang Chap as  
21 chairman of a judiciary committee, but there is no evidence that  
22 I have seen anywhere that this judiciary committee ever convened  
23 or took any action to establish courts, people's courts or  
24 otherwise.

25 The Chamber has directed that we should not discuss the S-21

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1 confession of Chan Sam, alias Kang Chap, alias Sae, at this time  
2 so I will just note in passing that there may be additional  
3 relevant information for your question in that confession.

4 Q.Thank you.

5 Now, under Chapter 8 of the Constitution, a state presidium was  
6 to be chosen and appointed by the Kampuchean People's Assembly.  
7 Was it ever established?

8 A.Yes, Your Honour. The state presidium was established.

9 However, as with the other organs we have discussed, in fact, the  
10 state presidium was appointed by the Standing Committee of the  
11 Communist Party of Kampuchea and the purported election of the  
12 presidium or the -- actually the Constitution says that People's  
13 Representative Assembly will choose the state presidium. The  
14 nature of that choice, in fact, was to merely ratify the  
15 presidium candidates who were put forward by the Standing  
16 Committee.

17 [15.20.42]

18 Q.Thank you.

19 I now want to ask for your comments on a few matters raised by  
20 the accused in his testimony. He said that CPK policy was  
21 absolute. Do you agree with that?

22 A.The word "absolute" was an ideological term of art within the  
23 Communist Party of Kampuchea and it referred to the degree of  
24 commitment of a cadre to the policy lines of the Party or the  
25 degree of sacrifice a cadre was willing to offer to the

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1 revolution or to the intensity of the policy directives put  
2 forward by the senior leadership of the party. In the strict  
3 ideological sense there was much that was absolute about the  
4 Khmer Rouge Revolution.

5 Q.The accused also said that at S-21 people who were arrested  
6 and presumably detained there could never be released. In your  
7 research can you confirm or otherwise comment on that statement?

8 [15.22.55]

9 A.It appears to me, based on my research into the history of  
10 S-21, that prior to the time the accused person became chairman  
11 of S-21, under the previous secretary of S-21, Nat, that it was  
12 not uncommon for prisoners to be released. After the accused  
13 person became the secretary of S-21 it seems that release of  
14 prisoners became much less common, indeed very rare,  
15 statistically speaking. But it is not true that no one was ever  
16 released.

17 Q.The accused also said that he had no right to release anyone  
18 from S-21. Do you have any comment?

19 A.I suspect that that was probably true.

20 Q.And he further went on to say that Pol Pot himself had no  
21 power to release anyone. Do you have any comment on that?

22 A.I don't know how to respond to that comment, frankly, Your  
23 Honour. Much of our understanding of how the Standing Committee  
24 of the Communist Party worked suggests that they operated through  
25 the principles of collectivisim and democratic centralism, which

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1 means that policy decisions were discussed and then decided, and  
2 then everyone was bound by the decisions. But it also seems that  
3 Pol Pot, as Secretary of the Party and as a politician, was a  
4 very persuasive individual. So it is difficult for me to imagine  
5 that if he wished for someone to be released from S-21 that he  
6 could not somehow arrange for that to happen.

7 [15.25.57]

8 Q.Thank you.

9 And again in his testimony, the accused said that the Central  
10 Office held confidential documents, some of which the accused  
11 noted he had not seen until comparatively recently and during the  
12 investigation, and he put them into three classes: the first,  
13 the most confidential; the second, internal Party documents, for  
14 example, statutes -- and if you were not a member, a full-rights  
15 member of the Party, you could not read or discuss those  
16 documents; and finally, open documents such as the "Revolutionary  
17 Flag" magazine, the Constitution of Democratic Kampuchea and  
18 radio broadcasts.

19 He then went on to say that what he and others in his situation  
20 did was based on orders, rather than documentation. Do you have  
21 any comment to make on those statements?

22 A.All states, Your Honour -- and indeed many large organizations  
23 -- have elaborate policies for the classification of sensitive  
24 and confidential information. One of the characteristics we have  
25 observed about the Communist Party of Kampuchea and,

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1 correspondingly, the State of Democratic Kampuchea, is that they  
2 had a quite extreme policy on secrecy for a very wide range of  
3 topics; indeed, such that for nearly two and a half years after  
4 this Party seized state power, they refused to publicly  
5 acknowledge that their Communist Party even existed. This was a  
6 devotion to secrecy which was unparalleled in the history of  
7 Communist movements throughout the world, and was quite  
8 astonishing and somewhat bewildering to their fraternal Communist  
9 parties in other countries.

10 Thus it seems certain that the Communist Party did indeed have  
11 some sort of system for classification of sensitive information  
12 but, other than the comments by the accused person, I do not know  
13 what those policies might have been.

14 [15.29.16]

15 Q.Thank you.

16 The accused also said in his testimony that no part of the policy  
17 of "smashing" went through the courts. Do you agree with that  
18 statement?

19 A.Yes. As I suggested when you asked me about the judiciary in  
20 relation to the Constitution, there is no evidence that there was  
21 any such thing as a court in Democratic Kampuchea.

22 Q.Thank you, Dr. Etcheson.

23 JUDGE CARTWRIGHT:

24 Mr. President, I have no further questions of Dr. Etcheson at  
25 this point.

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1 MR. PRESIDENT:

2 Is there any other Judge who would wish to put further  
3 questioning to the expert? Judge Lavergne?

4 JUDGE LAVERGNE:

5 I'd like to obtain some clarification from the expert with regard  
6 to one of the questions put by Judge Cartwright regarding the  
7 policy implemented in S-21 and the fact that it was not possible  
8 to release people who were detained in S-21.

9 [15.31.05]

10 BY JUDGE LAVERGNE:

11 Q.You referred to a change which occurred between the time when  
12 Nat was the head of S-21 and the time when the accused became  
13 head of the centre, and yet when you talk about S-21 you only  
14 refer to the detention centre as such, and not the annex  
15 establishment such as Prey Sar or S-24. That is the first  
16 question.

17 My second question is: you said that there had been change. But  
18 to your knowledge, during the time the accused was in power do  
19 you know whether anybody was released?

20 A.Thank you, Your Honour. Yes, this is an important distinction  
21 between S-21 and S-24. It's my understanding that S-24 was under  
22 the authority of the accused person and administratively  
23 subordinate to S-21. However, while S-24 was a -- excuse me,  
24 while S-21 was a torture and extermination facility from which  
25 very few people indeed ever emerged alive, S-24 was a



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1 re-education camp where many people survived.

2 Our understanding is that there were three categories of  
3 prisoners at S-24. There were what you might call light-offence  
4 prisoners, there were serious-offence prisoners, and then there  
5 was an intermediate category where people were being evaluated to  
6 determine if they should fall into the light-offence category or  
7 the serious-offence category.

8 Living conditions at S-24 were extremely inhumane. People were  
9 subjected to extremely harsh work regimes, lack of health care,  
10 inadequate nutrition, beatings and other forms of physical abuse  
11 so that many people in all three categories succumbed to the  
12 extremely harsh regime. But many people who were classified as  
13 light prisoners were indeed eventually released from S-24 and  
14 sent back to their units of organization, having been judged to  
15 have been reformed through labour. Correspondingly, most of the  
16 people in the serious-offence category did not survive.

17 So if we consider that S-24 was indeed a part of S-21 we can see  
18 then that many more people than is commonly discussed when  
19 referring only to S-21, in terms of the main facility, many more  
20 people did survive.

21 Does this address the first part of your question adequately,  
22 Your Honour?

23 (Inaudible response)

24 [15.32.40]

25 The second part of your question had to do with releases from the

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1 main facility at S-21 after the accused person became chairman  
2 there. We have recently received some new documents from the  
3 Documentation Centre of Cambodia, and I don't believe they are on  
4 this case file at the present time which seemed to persuasively  
5 indicate to me that there were several instances of releases from  
6 the main S-21 facility after the time the accused person became  
7 chairman of S-21.

8 There was one instance when a large group of soldiers from one of  
9 the divisions was sent to S-21, and then three days later the  
10 vast majority of that group who had been sent to  
11 S-21 -- more than 100 individuals -- appear to have been  
12 released. I don't have on hand proper references for those  
13 documents in terms of ERNs or other references, but hopefully,  
14 since this information is in exculpatory nature, defence counsel  
15 will not be too upset that I'm unable to provide proper  
16 documentation at this point in time.

17 Q.I have another question. You spoke about the possibility for  
18 the security sectors to carry out arrests. I believe that this  
19 is a point that has been challenged by the accused concerning  
20 S-21. He always said that there was this clear separation  
21 between the power to detain people and the power to carry out  
22 arrests or to arrest these people. So can you tell us if you  
23 have any specific elements that would allow us to believe that  
24 the accused, in particular, had the possibility to carry out  
25 arrests or when you use this term are you thinking more about the

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1 possibilities of detaining people?

2 A. It is both, Your Honour, and I confess to perhaps, at times,  
3 being somewhat imprecise in use of these terms.

4 [15.38.38]

5 It seems to me that as the S-21 operation became  
6 institutionalized, and the function of S-21 became understood  
7 throughout the organizational apparatus of the Communist Party  
8 and Democratic Kampuchea, the ordinary procedure for persons to  
9 come under detention at S-21 was for them to be, first, detained  
10 within their own unit of organization, and then that unit of  
11 organization would transport the prisoners to S-21 where it might  
12 be more precise to say that they were transferred into the  
13 custody of S-21. That was the most common scenario; however,  
14 that was not the only scenario. For example, the accused person  
15 has described instances where senior leaders were lured under  
16 false pretences to the home or to the office of the accused  
17 person which was within the compound of S-21, and arrested there,  
18 and subsequently detained at S-21.

19 The accused person has also described for the Co-Investigating  
20 Judges at least one instance where forces under his command left  
21 the premises of S-21 to effect the arrest of prisoners in other  
22 units.

23 I believe there are probably considerably more instances of that  
24 happening than the accused person has discussed with us thus far.

25 MR. PRESIDENT:

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1 Next, we would like to give the floor to the Co-Prosecutors to be  
2 able to put questionings to Dr. Craig Etcheson if they would wish  
3 to do so. The floor is yours, the Co-Prosecutors.

4 MR. BATES:

5 Thank you, Mr. President.

6 [15.42.39]

7 Before we start our questions, we wish to raise one issue that  
8 has a direct impact on how we ask our questions of this witness,  
9 and now seems an appropriate time to raise it.

10 Dr. Etcheson produces 148 documents in his report that have been  
11 referred to in list form. As the Court is aware, and has  
12 reminded us all numerous times, by Rule 87.2 -- I'm sorry, Your  
13 Honours, I can hear a noise through my headphones. Thank you, it  
14 seems to have stopped. By Rule 87.2, only evidence which has  
15 been put before the Chamber, and subjected to examination can be  
16 used to support the final judgement.

17 Additionally, by Rule 87.3, only where the Chamber expressly puts  
18 before the parties during the hearing which is requiring the  
19 parties to either summarize or read out in court is that evidence  
20 considered put before the Chamber.

21 The Internal Rules provide no guidance on how, in practical  
22 terms, in such a large document case as this, how evidence may be  
23 read out or how it may be summarized, and the Co-Prosecutors  
24 would seek the Chambers urgent guidance on this issue given that  
25 it has a direct impact upon the way in which we seek to put

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1 questions to this particular witness, and to other witnesses who  
2 will also provide large quantities of documentary evidence.

3 We have one or two other submissions and suggestions on this  
4 issue. If I can first refer back again to the trial management  
5 meeting at which on the 15th of January, Judge Lavergne outlined  
6 a suggested practice for the parties who wished to introduce  
7 evidence under 87.2.

8 [15.43.25]

9 Firstly, according to His Honour, parties should announce their  
10 intention to the Chamber whilst liaising with the Court  
11 Management Service to fulfil all technical requirements. And  
12 that comes from the Trial Management Meeting 15 January, page 65,  
13 lines 11 to 18.

14 His Honour went on to say, for instance, preparation of  
15 hardcopies, indications of portions of documents to be referred  
16 to, et cetera, with the intention, it appears to the  
17 Co-Prosecutors, of requiring -- or requesting, should I say --  
18 requesting the parties to provide photocopies of every single  
19 document upon which or of which they wish to rely on or wish  
20 discussed in court.

21 [15.44.34]

22 We are here before the Chamber asking Dr. Etcheson questions and  
23 the Co-Prosecutors seek the Trial Chamber's guidance as to how  
24 they can put documents before the Court.

25 Obviously if we were to ask for the reading out of every one of

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1 the 148 documents in the witness' report we would be here for  
2 weeks. If we were even to request the reading out of the  
3 summaries of each individual document relied on by Dr. Etcheson  
4 in his report, we would be here for perhaps many hours if not a  
5 number of days.

6 For the speed and efficiency of this trial the Co-Prosecutors  
7 have a suggestion to make and would invite the Court to consider  
8 it at this stage, given that it is crucial to determine this  
9 issue before the parties begin questioning the witness who has so  
10 many documents to refer to.

11 The Co-Prosecutors would suggest this as a way forward; firstly,  
12 any party wishing to rely on documents in fulfilment of Rules  
13 87.2 and 87.3 should submit an index of those documents which  
14 contains a summary, a written summary of each of those documents,  
15 and then the Co-Prosecutors would propose that an oral summary be  
16 made in court of each document type rather than summarizing or  
17 reading out the summary of every single document.

18 [15.47.08]

19 Can I illustrate, with reference to Dr. Etcheson's report, what  
20 the Co-Prosecutors mean?

21 We have 148 documents. The first two documents are analytical  
22 reports. The next five documents are biographies. The following  
23 four documents are books. There are 24 confessions, two  
24 directives, two legal documents, et cetera.

25 The Co-Prosecutors would propose that as this index has been

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1 already submitted to the Trial Chamber and circulated to all  
2 parties, that we should also request the summaries of document  
3 types to be orally read out by us, the Co-Prosecutors, in  
4 fulfilment of Rule 87.2 and Rule 87.3.

5 I pause here just to add one further observation. The documents  
6 individually extracted and discussed by this witness are, of  
7 course, important, and it is important to do so, so that this --  
8 all parties to these proceedings know exactly which documents are  
9 capable of being subject to base the judgment upon finally. But  
10 if we were to go through every single document of every expert  
11 report we would be taking a vast amount of time to do that.  
12 The proposal that we make is that in the first instance the Trial  
13 Chamber accept these indexes of supporting documents and that if  
14 any party has an objection to any of the documents being used to  
15 base the judgment upon, the final judgment upon, then they should  
16 make the objection known and then that objection can be debated  
17 before the parties.

18 [15.50.14]

19 If I can give one brief example; informal discussions have  
20 already taken place between the Co-Prosecutors and the defence in  
21 relation to one particular group of documents, namely media  
22 reports. These documents number in the hundreds. And there are,  
23 in fact, summaries of each individual media report. It appears  
24 that the defence do not have any, in principle, objection to the  
25 totality of those media reports being summarized in a page. That

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1 is the principle that the Co-Prosecutors wish to be adopted for  
2 the other documents that it seeks to put before the Chamber.  
3 And as I said a few moments ago, if the Trial Chamber considers  
4 the need for efficiency in a large document case such as this,  
5 considering also that all parties have the opportunity to object  
6 to any specific document, rights to fair trial are therefore  
7 preserved, and of course, all parties still have the right to  
8 examine the case file throughout these proceedings.

9 I apologize for taking a little time to explain this. It was  
10 hoped to file these observations as a written submission but  
11 there are many submissions to respond to at the moment and I  
12 understand that this submission may be filed either later today  
13 or tomorrow. But I raise it now because if the Trial Chamber  
14 determines that only those documents which are individually  
15 debated before the Trial Chamber can form the basis of the  
16 judgment, then the Co-Prosecutors will have little alternative  
17 but to go through each and every one of Dr. Etcheson's documents,  
18 which individually may bear little weight but collectively they  
19 form the expertise that he has been able to provide before the  
20 Chamber.

21 I hope I've been clear in my submission. If the Court has any  
22 further questions I can outline it in more detail. And I hope  
23 I've explained why I raise it now before I proceed any further,  
24 before we proceed any further.

25 [15.56.11]



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1 MR. PRESIDENT:

2 Lawyers for the civil party, do you have any observations  
3 regarding the observations made by the Co-Prosecutor? If you  
4 have, please rise.

5 MR. WERNER:

6 Your Honours, for my group, it seems to make sense. But of  
7 course if you want us to give a detailed position on exactly how  
8 things should happen or whether we are fully comfortable with the  
9 way proposed then we would request just a little time. Maybe  
10 tomorrow morning we will be in a position, if we can see the  
11 filing, to quickly and orally make a submission. That's the best  
12 I can say at that stage.

13 MS. STUDZINSKY:

14 Thank you, Your Honour.

15 We also would prefer to get the written submission to take a  
16 position in detail and would be able to do this orally. But in  
17 general we support the position of the prosecution that this  
18 question how to put documents -- evidence before the Chamber  
19 should be resolved and decided before we go ahead to question the  
20 expert witness.

21 Thank you.

22 [15.58.07]

23 MR. PRESIDENT:

24 Lawyers for group 3, if you have any observation to make?

25 MS. RABESANDRATANA:

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1 I agree with the previous observations coming from groups 1 and 2  
2 concerning what the Co-Prosecutor proposed and this indeed seems  
3 to be reasonable. However, I do have an observation to make  
4 which seems to be very important in terms of protecting the  
5 victims' rights.

6 In the expert witness' statement when he answered a question  
7 coming from Judge Lavergne concerning the release of prisoners at  
8 S-21 he answered by referring to documents coming from DC-Cam,  
9 documents that were not included in the case file, but the expert  
10 added, when he spoke to the defence, that that is not a problem  
11 because these are exculpatory documents.

12 But I'd like to say that this indeed is a problem, however, for  
13 the civil party lawyers and it's even demonstrating lack of  
14 respect towards them to be presenting documents that are not in  
15 the case file, therefore to which we cannot object because these  
16 documents do not exist per se, but that can favour the defence.

17 But therefore, in this case, where in here are the rights for the  
18 civil parties and for the victims? I believe that there is --  
19 that we should respect a certain amount of neutrality here at  
20 least and that we should be following the same rules.

21 [16.00.24]

22 So there is indeed a question of how we put forth documents but  
23 there's also the issue about how we can object to elements that  
24 are not being produced, because the fact that we speak about this  
25 in the debate has an automatic impact on everything. So,

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1 therefore, I cannot ask for these elements to be taken away  
2 because they do not exist, per se, so you do understand what my  
3 problem is.

4 So, therefore, I believe that, yes, our rights have been indeed  
5 infringed and I submit this very respectfully.

6 MR. PRESIDENT:

7 Lawyers for group 4, if you have any observation regarding this  
8 matter?

9 MR. HONG KIMSUON:

10 Thank you, Mr. President. I am the lawyer representing group 4.  
11 I do not have any major observations to make; however, I would  
12 like to give my support to the observations made by the  
13 Co-Prosecutor regarding the intention to present all the read out  
14 of those 148 documents. It is a worry actually that I think if  
15 all those documents are to be read out it means it consumes a lot  
16 of time, and secondly, the defence already spoke on this matter  
17 that some documents that they do not have it in their possession  
18 yet that they would reserve the right to object at a later stage.  
19 And I would like the President to make a decision as to which  
20 documents or only certain points only needs to be read out. And  
21 we do have some questions regarding the sets of questions that  
22 can be put forward to the expert.

23 [16.03.01]

24 MR. PRESIDENT:

25 The defence, do you have any observations to make or to respond

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1 to the observations made by the Co-Prosecutor and the lawyers for  
2 the civil parties? If you have, the floor is yours.

3 MR. ROUX:

4 Thank you, Mr. President.

5 Mr. President, Your Honours, a week ago my colleagues Ms.  
6 Studzinsky and Mr. Karim Khan and I attended a seminar at the  
7 International Criminal Court in the presence of distinguished  
8 judges and legal practitioners, including Mr. Goldstone. And I  
9 spoke and said, "I have a dream. I dream that in international  
10 criminal tribunals, prosecutors will stop flooding us with  
11 absolutely useless documents."  
12 Some 10 years ago -- or I have been working in international law  
13 for some 10 years now and it is always the same thing: hundreds  
14 of totally useless documents that hamper the work of the  
15 tribunals, that flood the translation services because there is  
16 no order of importance determined by the prosecutors; that is,  
17 from what is absolutely essential and what is tangential. And  
18 this is what we're facing here now.

19 [16.04.16]

20 When you consider the documents that the Co-Prosecutors want to  
21 put before the Chamber in support of Mr. Craig Etcheson's report  
22 it makes you dizzy, as we say in French. It gives you vertigo.  
23 Do we really need all these documents? We have an expert who is  
24 supposed to have done some work and who is supposed to provide  
25 his expert opinion. Do we then need all these references? It is

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1 a very bad habit which has spread in international courts. This  
2 habit is largely responsible for the unconscionable delays in  
3 trials before international courts.

4 In my legal system I was taught three rules; to be clear, to be  
5 concise, and to be precise. And so to insist to put before the  
6 Court, without any prior sorting, these documents, it is  
7 absolutely not clear, accurate, or precise. And since I am  
8 addressing judges who have court experience I refer to page 85 of  
9 the Internal Rules. After consulting all the judges I am going  
10 to start -- begin at the beginning; that is, "The Conduct of  
11 Hearings":

12 "The President of the Chamber shall preside over the proceedings  
13 and facilitate interventions by other judges. He or she shall  
14 guarantee the free exercise of defence rights. In consultation  
15 with the other judges the President may exclude any proceedings  
16 that unnecessarily delay the trial and are not conducive to  
17 ascertaining the truth."

18 I think the solution is more easily found in this paragraph than  
19 in the proposal put before by my learned colleagues of the Office  
20 of the Co-Prosecutors.

21 [16.08.12]

22 You have been told that there are 147 documents, but you are not  
23 told how many pages that actually means. It is considerable. It  
24 is a considerable number of pages. Can the Co-Prosecutors not be  
25 directed to sort through what is indispensable and what is not

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1 absolutely essential in looking for its evidence? As my  
2 colleague said, we have agreed that with regard to press cuttings  
3 that the Office of the Co-Prosecutors wish to put before the  
4 Court; that is, cuttings pertaining to the armed conflict that  
5 there should not be a translation of these 200 press articles  
6 because it is completely useless.

7 And I said to the Office of the Co-Prosecutors, "Give me a  
8 one-page summary of these 200 press articles." But I was  
9 dreaming. My dream would have been that the Office of the  
10 Prosecutor (sic) instead of putting before the Court 200 press  
11 articles would select the most important and avoid flooding the  
12 Chamber with useless material that is necessarily repetitive. I  
13 emphasize this.

14 Quite frankly, do you need 200 press articles to know that there  
15 was an armed conflict between Cambodia and Vietnam? Really, does  
16 the Chamber need 200 press articles?

17 So I return to my proposal.

18 Mr. President, Your Honours, I ask of you to apply the rule,  
19 Internal Rule 85, and indicate to the Office of the  
20 Co-Prosecutors that they should carry out a selection and that  
21 they cannot submerge the debate under tonnes of documents.

22 Thank you.

23 [16.12.59]

24 MR. PRESIDENT:

25 The Co-Prosecutor, would you like to make any further comments?

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1 Take the floor.

2 MR. BATES:

3 Thank you, Mr. President.

4 And I'll just pause so we can all cool down a little. What the

5 Co-Prosecutors are attempting to do is to short circuit the very

6 thing that the defence are complaining of. We are attempting to

7 save time and expense by making summaries of documents, a

8 principle that in fact the defence, as I indicated in informal

9 discussions, appears to agree with. The documents in relation to

10 Dr. Etcheson's written record of analysis have been selected from

11 thousands of documents on the case file. It is this expert, Dr.

12 Etcheson, who has determined that these documents are important

13 and relevant and, indeed, there are many thousands of pages

14 contained within these 148 documents.

15 But the proposal of the Co-Prosecutors is specifically not to

16 inundate this Court with paperwork or to insist that all these

17 documents be read out. It is to request the Trial Chamber for

18 guidance on how best summaries of documents can be put before it

19 under Rule 87(2) and 87(3).

20 We are all in the business of seeing justice done fairly and done

21 expeditiously, and the Co-Prosecutors do not accept the

22 accusation made by the accused or his counsel. We bear the

23 burden of proof. If we put documents before this Chamber that

24 the accused does not like, he can challenge them, he can put

25 documents of his own or he can request the Chamber to reject

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1    them, but the Co-Prosecutors submit documents, and wish to  
2    present evidence that is already on the case file, and we wish to  
3    do it in an expeditious and timely manner so that we avoid the  
4    very thing that Mr. Roux was complaining of.

5    I make no apology for raising this issue now. I do it -- we do  
6    it with a view to saving time in this Court, and with a view to  
7    getting guidance firmly from the Trial Chamber in how best we can  
8    move the proceedings forward quickly.

9    [16.14.30]

10   That's all I wish to say. Thank you.

11   MR. PRESIDENT:

12   I note Judge Lavergne would like to make a comment.

13   JUDGE LAVERGNE:

14   I note that the Co-Prosecutors presented their motion before  
15   questions were put to the expert. I would like to know whether  
16   the Co-Prosecutors intend to use each of the 148 documents  
17   referred to in the motion to put questions to the expert or  
18   whether they just wish to refer to summaries, in which case it  
19   would perhaps be easier to present such summaries rather than  
20   documents which will then have to be evaluated, weighed as  
21   evidence by the Chamber.

22   MR. PRESIDENT:

23   The Co-Prosecutor, you now take the floor.

24   MR. BATES:

25   Thank you, Your Honour. That was a very, with respect, timely



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1 observation. That is, indeed, what the Co-Prosecutors seek.

2 [16.16.08]

3 We do not wish to go through each and every one of these 148  
4 documents; to do so would be a waste of time. We wish to select  
5 certain of those documents to discuss with the witness, but we  
6 also wish to preserve the balance, the other documents within the  
7 148 for use in the Court's judgement, and in doing so -- or to  
8 enable that to happen, our understanding of Rule 87(2) and 87(3)  
9 would be, or is, that those documents -- even those ones that are  
10 not discussed in Court -- will be required to be summarized. And  
11 it was our suggestion that the summarizing process could be even  
12 further shortened to save time. It was certainly never our  
13 intention to discuss each and every one of the 148 documents.

14 MR. PRESIDENT:

15 Mr. François Roux, can you estimate how much time you would like  
16 to raise your comments because the AV indicated that the tape has  
17 already run out and that it is time to change a new disk, so how  
18 much time is needed? You take the floor.

19 MR. ROUX:

20 Just an observation at this stage of the proceedings, what is  
21 more important for us now in these proceedings; distribute and  
22 comment on tonnes and tonnes of documents or have the opportunity  
23 to give voice to the victims and the civil parties? You have to  
24 make a choice.

25 [16.20.39]

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1 It seems to me that there are victims and witnesses who can come  
2 to these proceedings, who are waiting to attend these proceedings  
3 -- and in my personal view, it is more useful than flooding the  
4 Chamber with documents.

5 That is all I wish to say.

6 (Deliberation between Judges)

7 [16.23.17]

8 MR. PRESIDENT:

9 It is now time to take the afternoon adjournment and the Trial  
10 Chamber cannot proceed further now. However, since there have  
11 been matters raised concerning the documents cited by the expert  
12 -- and according to Rule 87(2) and 87(3) as submitted by the  
13 Co-Prosecutor along with the remarks by other parties -- this  
14 becomes the very primary matter before us in the future. So the  
15 matters need to be discussed and the hearing is adjourned now and  
16 resumed tomorrow while the testimony of Mr. Craig Etcheson is  
17 still heard at 10:30 a.m. because the Trial Chamber needs some  
18 significant time to deal with outstanding matters before we can  
19 hear more testimony from the expert.

20 The personnel of the security facility please take the accused  
21 back to the detention facility and bring him in by 10:30 a.m.  
22 tomorrow.

23 [16.25.17]

24 The parties to the proceeding are also advised to come to the  
25 Court by that time while the expert, Mr. Craig Etcheson, is

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1 advised to come to the Court at that time.

2 As mentioned, the Court is adjourned.

3 (Court adjourns at 1630H)

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