



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:

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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

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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

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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

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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,

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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

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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

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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

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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

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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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