



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

20 May 2009, 1056H

Trial Day 18

Before the Judges:

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

Lawyers for the Civil Parties:

HONG Kimsuon
TY Srinna
Silke STUDZINSKY
KIM Mengkhy
Elizabeth RABESANDRATANA
KONG Pisey
Alain WERNER
YUNG Phanit

Trial Chamber Greffiers/Legal Officers:

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

For Court Management Section:

KAUV Keoratanak

For the Office of the Co-Prosecutors:

TAN Senarong
Alexander BATES
PICH Sambath
Stuart FORD
PAK Chanlino

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
François ROUX
Heleyn UÑAC

I N D E X

WITNESSES

WITNESS CRAIG ETCHESON

Questioning by Judge Cartwright resumes page 7

Questioning by Judge Lavergne commences..... page 14

Questioning by Mr. Bates commences page 28

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
MR. KONG PISEY	Khmer
JUDGE LAVERGNE	French
MS. RABESANDRATANA	French
MR. ROUX	French
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 courtroom)

3 [10.56.03]

4 MR. PRESIDENT:

5 Please be seated.

6 The Trial Chamber would like to inform the parties and the
7 audience that the hearing this morning cannot be conducted
8 because the discussions on certain issues and the application by
9 the Co-Prosecutor for guidance and the implementation of Rule
10 87(2) and (3) is complicated. And due to the complexity of this
11 case file and other files, the Trial Chamber needs to have
12 serious considerations and discussions to consult on the guidance
13 of some of the documents of the International Criminal Court.
14 We had our discussion yesterday up to this morning and we haven't
15 yet reached our decision. Therefore, the Chamber will adjourn
16 the hearing this morning and we will resume at 1.30 p.m. this
17 afternoon.

18 The detention officials, take the accused back to the detention
19 facility and bring him back before 1.30 p.m. this afternoon. And
20 for the Court official, please facilitate with the expert to
21 arrange for his facility and bring him back at 1.30 p.m.

22 (Judges exit courtroom)

23 (Court recesses from 1058H to 1350H)

24 (Judges enter courtroom)

25 [13.50.33]

2

1 MR. PRESIDENT:

2 Please be seated. The Trial Chamber is now back in session.

3 First for this afternoon's proceedings, the Trial Chamber will

4 make an announcement of two decisions as follows.

5 First, is the decision on admissibility of material on the case

6 file as evidence.

7 The Trial Chamber is currently seized of a request from the

8 Co-Prosecutors to use three documents in evidence before the

9 Chamber. This request, which is opposed by the defence, referred

10 to the following documents:

11 A. Statements of two deceased witnesses taken by representatives

12 of the non-governmental organization, Documentation Centre of

13 Cambodia.

14 MR. ROUX:

15 Excuse me, Mr. President. The interpreters are having trouble

16 following, so perhaps you might slow down. Thank you, Mr.

17 President.

18 MR. PRESIDENT:

19 Thank you, Mr. Roux. I will now read the decision again.

20 Oral decision on admissibility of material on the case file as

21 evidence.

22 The Trial Chamber is currently seized of a request from the

23 Co-Prosecutors to use three documents in evidence before the

24 Chamber. This request, which is opposed by the defence, refers

25 to the following documents:

3

1 [13.53.38]

2 A. Statements of two deceased witnesses taken by representatives
3 of the non-governmental organization, Documentation Centre of
4 Cambodia, placed on the case file as documents D59/4 and D59/12.

5 B. A statement of the accused taken in May 1999 by a
6 representative of the United Nations High Commissioner for Human
7 Rights, UNHCHR, placed on the case file as Document D9.

8 It is also seized of a further request by the Co-Prosecutors for
9 authorization to use document number 19/25, the so-called Chheun
10 Sothy report, before the Chamber. A detailed written decision
11 with reasons on these matters has been finalized by the Chamber
12 and will be issued as soon as the necessary translations are
13 available. This is expected shortly.

14 [13.55.49]

15 In the meantime the Chamber announces its oral decision in
16 relation to these specific documents as follows.

17 The Trial Chamber grants the defence request in relation to the
18 deceased witness statements, DC-Cam article and the UNHCHR
19 interview, and excludes these documents as evidence in the
20 present trial pursuant to Rule 87(3) of the Internal Rules;
21 grants the Office of the Co-Prosecutor's request in relation to
22 the Chheun Sothy report and permits it to be put -- to put before
23 the Chamber and subject it to examination, in accordance with
24 Rule 87(2) of the Internal Rules orders the office of the
25 Co-Prosecutor to provide the defence with the original

4

1 translation of the Chheun Sothy report.

2 This is the first decision of the Trial Chamber for this
3 afternoon.

4 Next, the Trial Chamber will make an announcement on a decision
5 on a request by the Co-Prosecutors yesterday as follows.

6 The Office of the Co-Prosecutors has sought guidance concerning
7 the method by which documents relating to the testimony of expert
8 Dr. Craig Etcheson should be put before the Court.

9 The OCP has notified at least of 148 documents under the Document
10 E55/1, it seeks to put those documents before the Court that
11 least sets out full -- identifying that of each document,
12 including the state of translation, the original language, and a
13 summary of each individual document or excerpt, for example, Item
14 3.

15 [13.58.50]

16 The Trial Chamber appreciates the efforts made by the Office of
17 the Co-Prosecutors to assist it and the parties in managing the
18 extensive material on the case file and encourages it to continue
19 to produce such consolidated material in the future.

20 In response to the Office of the Co-Prosecutors' request the
21 Trial Chamber now sets out its guidance in relation to this
22 notification.

23 One, Rule 87(2) and 87(3) is fundamental to the conduct of a fair
24 trial. Documents which any party or the Trial Chamber intends to
25 use to support the decision of the Chamber must be put before the

5

1 Trial Chamber and read out in full or summarized.
2 Only those documents or parts of documents which have been put
3 before the Trial Chamber in this way and have been subjected to
4 examination are considered formally put before the Court.
5 The requirement of Rule 87(2) to subject a document to
6 examination is fulfilled if a party makes no comment. Only those
7 parts of documents which have been summarized are considered put
8 before the Court. For instance, if only one chapter of a book is
9 summarized only this part is considered put before the Court.
10 However, if discussion of the document extends beyond the initial
11 summary the entire discussion is available for the Trial Chamber
12 decision.
13 When a document is to be put before the Court, the party
14 introducing it should specify whether it seeks consideration of
15 the entire document or not. If the party seeks to introduce only
16 part of the document it should specify which part is relevant.
17 [14.02.17]
18 When a document is put before the Court any party has the right
19 to object to its admissibility for any valid reason. Parties
20 also have the right to seek further information or clarification
21 concerning a document that any party seeks to be put before the
22 Court.
23 In summary, the filing of the consolidated list attached to E55
24 does not comply with Rule 87; each document must be read out or
25 summarized in order to give the parties and the Chamber the

6

1 opportunity to assess the document.

2 Two; in principle summarized documents should be in Khmer as the
3 official language of the Court and the language of the accused.

4 Three; the parties are reminded of Article 15 of the Torture
5 Convention which says:

6 "Each state party shall ensure that any statement which is
7 established to have been made as a result of torture shall not be
8 invoked as evidence in any proceedings except against a person
9 accused of torture as evidence that the statement was made."

10 These are the decisions and I now would like to give the floor to
11 Judge Cartwright.

12 JUDGE CARTWRIGHT:

13 Thank you, Mr. President.

14 One small correction to the decision that has just been given by
15 the President which I think derives from the document before the
16 interpreters. Under 1, the reference is to Rule 87 as being
17 fundamental to the conduct of a fair trial. We do not intend to
18 suggest that only Rule 87(3) is relevant so that should read,
19 "Rule 87 is fundamental to the conduct of a fair trial."

20 Thank you, Mr. President.

21 [14.05.36]

22 MR. PRESIDENT:

23 Before I give the floor to the Co-Prosecutor, the Trial Chamber
24 would like to give the floor to Judge Cartwright since she has
25 some questions to be put forward before Dr. Craig Etcheson.

7

1 Judge Cartwright, the floor is yours.

2 JUDGE CARTWRIGHT:

3 Thank you, Mr. President.

4 QUESTIONING BY THE BENCH

5 BY JUDGE CARTWRIGHT:

6 Q.Dr. Etcheson, would you please summarize those parts of your
7 report, "Overview of the Hierarchy of Democratic Kampuchea" which
8 have not yet been the subject of questions to you? Are you in a
9 position to do that? I require the briefest of summaries.

10 A.Yes, Your Honour, of course, I'd be pleased to.

11 Q.Thank you.

12 A.I may wish at various junctures of this process to confirm
13 with you whether or not a particular section has been adequately
14 discussed previously to constitute a summary.

15 [14.07.21]

16 This document in the case file is formally described as a written
17 record of analysis. To reiterate for the record what we
18 discussed yesterday, the case file document number of this
19 document is D2/15/66. The English ERN is 00146822 through
20 00146887. The main body of the paper is 37 pages long, and it
21 begins with a section entitled, "Overview of Hierarchy of
22 Democratic Kampuchea," which is the title which we have been
23 using to refer to the entire report.

24 The first section describes the Centre, the zones, the sectors,
25 and the districts of Democratic Kampuchea, and this has been

8

1 previously discussed.

2 The second section of this report is titled "Standing Committee".

3 We have also discussed this section at some length, and the

4 various parts of this section of the paper, including personnel

5 and organizational matters, the composition of the Standing

6 Committee, the security responsibilities of the Standing

7 Committee, the economic policy responsibilities of the Standing

8 Committee, and the communications patterns, and capabilities of

9 the Standing Committee.

10 The next section of this paper is titled, "Zones". It begins by

11 describing the statutory responsibilities of zone committees as

12 described in the CPK statutes, and includes a graphic which shows

13 the zone leadership of Democratic Kampuchea.

14 This section of the paper goes on to describe personnel and

15 organizational matters that were the responsibility of district

16 committees, the security responsibilities of district committees

17 -- excuse me, of zone committees, the economic responsibilities

18 of zone committees which included, prominently, achieving the

19 three tonnes per hectare target of rice production and the

20 construction of elaborate hydrological works.

21 This section of the paper concludes with an examination of the

22 communication patterns of zone leadership both to upper echelon

23 at the Standing Committee, and to subordinate echelons at the

24 sector, district, and commune echelons.

25 [14.11.42]

9

1 The next section of this report is entitled, "Sectors". It
2 begins by briefly describing the statutory responsibilities of
3 sector committees as provided in the CPK Party statutes. It
4 includes an illustration of sector leadership by showing the
5 leaders of the various sectors of the Eastern Zone.
6 This section of the report continues by discussing personnel and
7 organizational matters that were of concern to sector committees,
8 and we have discussed this in part previously.

9 It continues discussing the economic responsibilities of sector
10 committees, in particular, the three tonnes per hectare
11 production target and the singular focus on the construction of
12 dams, canals, and other waterworks.

13 This section of the paper concludes with a brief discussion of
14 the communication patterns of sector party committees including
15 their communications with upper echelon at the zone and Centre,
16 and subordinate echelons at the district and commune or
17 cooperative.

18 The next section of the paper is entitled, "Districts". It
19 begins with a brief overview of the responsibilities of district
20 committees as provided in the statutes of the Communist Party of
21 Kampuchea. It includes an illustration of district leadership by
22 depicting an organizational chart showing districts and their
23 leaders in the Northwest Zone, sector 5.

24 [14.13.49]

25 The next section of this report discusses personnel and

10

1 organizational matters that are the province of district Party
2 committees. It goes on to discuss the security responsibilities
3 of district Party committees, and then continues with the
4 economic responsibilities of district Party committees.
5 The next section of the report is entitled, "Communes,
6 Cooperatives, Branches." This section begins by explaining that
7 the branch was the lowest level of the organizational hierarchy
8 in the Communist Party of Kampuchea. This section of the report
9 continues by discussing personnel and organizational matters at
10 the branch echelon of the Party, but then discusses security
11 responsibilities at the branch echelon, and economic
12 responsibilities.
13 [14.07.58]
14 This section concludes with a brief discussion of communication
15 patterns at the branch echelon and how the branches communicated
16 with upper echelons at the district, sector, zone, and Centre.
17 The next section of the paper is entitled, "Party Centre Military
18 Committee". It describes the constitutional arrangements for
19 military organization in Democratic Kampuchea and then briefly
20 discusses the provisions and the statutes of the Communist Party
21 of Kampuchea for military organizations, and goes on to describe
22 the composition of the Military Committee of the Central
23 Committee of the Communist Party of Kampuchea.
24 The remainder of this section discusses what we know about the
25 activities and policies of the Party Centre Military Committee.

11

1 The next section of the paper discusses the General Staff of the
2 Revolutionary Army of Kampuchea. This section includes an
3 organizational chart which describes what we think we know about
4 the structure of the General Staff. This section of the paper
5 concludes with the discussion of the communications capabilities
6 and patterns of the General Staff of the Revolutionary Army of
7 Kampuchea.

8 [14.09.55]

9 The next section of the paper looks at lower-level echelons of
10 the Revolutionary Army and is entitled, "Division Military
11 Commanders and Commanders of Independent Regiments". This
12 section of the paper begins with a section titled, "Personnel and
13 Organizational Matters" and includes an organization chart which
14 describes the independent regiments and divisions of the
15 Revolutionary Army of Kampuchea as of early 1977.

16 This section of the report goes on to discuss the internal and
17 external security responsibilities of the Revolutionary Army of
18 Kampuchea, as well as the economic responsibilities of the
19 Revolutionary Army. This section of the report concludes with a
20 discussion of communication patterns within the Revolutionary
21 Army of Kampuchea.

22 The next section of the paper is entitled, "Ministries". This
23 section of the paper discusses the executive body of Democratic
24 Kampuchea, otherwise known as the government, and the legislative
25 and judicial institutions, such as they were. It includes a

12

1 description of the various appointments which were made in
2 various areas of responsibility within the government and a
3 diagram depicting my understanding of the structure of the
4 Government of Democratic Kampuchea.

5 This section concludes with a more detailed analysis of what was
6 happening inside various ministries of Democratic Kampuchea and a
7 variety of bureaucratic and organizational difficulties that were
8 encountered in these various ministries. This section concludes
9 with a discussion of communication patterns within and among the
10 ministries, as well as between the ministries and upper echelon
11 at the Party Centre.

12 [14.12.38]

13 Finally, this report concludes with a brief discussion of the
14 constitution of and functioning of the People's Representative
15 Assembly.

16 The report continues with Annex A, which consists of 355
17 footnotes that cite 161 different sources that I relied upon in
18 preparing this report. I'm given to understand that the
19 prosecutors wish to enter into evidence before you 148 of those
20 161 sources. Also annexed to this report were two additional
21 annexes which included all of the sources that I relied upon in
22 preparing the report.

23 Do you find this to be an adequate summary, Your Honour?

24 Q.Yes. Thank you very much, Dr. Etcheson. That is most
25 helpful.

13

1 JUDGE CARTWRIGHT:

2 Mr. President.

3 MR. PRESIDENT:

4 Mr. François Roux, you take the floor.

5 MR. ROUX:

6 Mr. President, you asked the defence to state its position with
7 regard to documents that the Co-Prosecutors had distributed, or
8 distributed to the parties yesterday afternoon. Perhaps it is
9 time now for us to make our submissions.

10 [14.22.25]

11 Specifically, Mr. Etcheson has just indicated that there is an
12 Annex A to his report and he also said that there are two other
13 supplementary documents. It would, therefore, appear -- and I
14 say these in the conditional advisedly -- that there is also an
15 Annex B and an Annex C. Regrettably, the defence was not
16 provided with a translation of Annex B or Annex C.

17 After searching on several occasions -- and indeed, one might
18 add, wasting time -- we finally came to understand that the
19 reference numbers of the last two documents which appear on the
20 list -- yesterday morning's list, that is -- that is 39, number
21 39 and number 30, did in fact refer to Annex C, which was never
22 transmitted to the defence in the French. This is, therefore,
23 the reason why we were unable to find the document or the
24 reference numbers.

25 Apparently, this is not even classified in ZyLAB, but the expert

14

1 is confirming that there is an Annex C to his report, and the
2 defence regrets -- finds that it is a pity that it was not
3 provided with a translation of Annexes B and C in the French.

4 This would have saved us time.

5 Thank you.

6 [14.24.29]

7 MR. PRESIDENT:

8 Judge Lavergne, you take the floor.

9 BY JUDGE LAVERGNE:

10 Q. Specifically with regard to these documents, I note that with
11 regard to Document Number 30, it is a Khmer original, and there
12 is, it would appear, only a summary in English. There is no
13 French version of this document. Would that be correct?

14 Further, do you intend to have your report rely only on the
15 summary, and could you tell us who prepared the summary?

16 A. Yes, Your Honour, there are some documents for which I do rely
17 on an analytical summary of the document insofar as a full
18 translation is not yet available.

19 In the case of document number 30 to which you refer, the S-21
20 confession of Khom Chum. If I am not mistaken, that summary was
21 prepared by Dr. Stephen Heder who was an investigator with the
22 Office of Co-Investigating Judges.

23 MR. ROUX:

24 You have just referred to confessions in document number 30, Your
25 Honour. If we are referring to -- this document number 30 is a

15

1 telegram. It is not a confession, is it?

2 Perhaps, you are referring to document number 30 which is
3 appended to another document or to another bundle. I'd like to
4 be sure that we are talking about the same thing.

5 [14.27.30]

6 JUDGE LAVERGNE:

7 I should now like to put a question to the Office of the
8 Co-Prosecutors.

9 The list that they provided to the Chamber and the parties, does
10 this list follow the same order as the documents set out in Annex
11 C or not? Is it the same thing or is it different in some way?

12 MR. BATES:

13 Thank you, Your Honour, for your question.

14 This matter is slightly complicated by the fact that there are
15 two lists entitled "Annex C". In the introductory submission,
16 Annex C contained a large number of documents relating to a wide
17 variety of topics.

18 The Annex C that is attached to the end of Dr. Etcheson's report
19 is a totally different list of documents, and rather
20 unfortunately for us, confusingly with the same name. The Annex
21 C to Dr. Etcheson's report contains a list of 60 documents, and
22 those documents are described in the table that we have provided
23 to the Court; the table which contains, in total, 148 documents.
24 The Craig Etcheson -- I'm sorry, I'll give the document number of
25 that table, it's E55/1.

16

1 The 60 documents from Craig Etcheson's Annex C can be located if
2 one looks at the second column of E55/1, and if Your Honours will
3 follow me down the page, from document 1, that is listed as case
4 file document IS Annex C, the next column is document 2.1. That
5 is an introductory submission document. Moving down to number 2,
6 the same again. Number 3, the same again; an introductory
7 submission document.

8 The documents 4, 5, 6 and 7 bear the description under case file
9 number D2/15 Annex C Number 37, and that reference or the first
10 part of that reference, D2/15 Annex C, refers to Dr. Etcheson's
11 Annex C.

12 [14.31.39]

13 It's, I'm afraid, rather convoluted and a little complicated. It
14 has been further complicated by the process in which those
15 documents were put on to the electronic case file in ZyLAB, and
16 I'll do my best to explain this as carefully as I can because it
17 may go some way to -- for the Court's understanding.

18 My understanding is that although the court management system had
19 in hard copy the 60 documents of Dr. Etcheson's Annex C, they
20 were not given individual Etcheson Annex C evidence reference
21 numbers, and unfortunately, the only way in which they can be
22 found in ZyLAB, in the electronic case file system, is by going
23 to introductory submission Annex C, then under witness
24 interviews. Then under the sub-folder witness interviews, they
25 are located at Document 18 to 83.

17

1 Now the Co-Prosecutors don't know why the Court Management
2 Service adopted that approach. We are seeking to rectify it
3 because as I've sought to explain, it is rather confusing for all
4 parties. It's certainly not of the Co-Prosecutors' making that
5 we've had this rather complicated numerology -- I'm sorry,
6 numerics -- but the very short answer to Your Honour's question
7 is that Document E55/1, the supporting documents to Dr.
8 Etcheson's written record of analysis, do contain his Annex C 60
9 documents, but in order to locate them, one must look at the
10 second column and find the references D2/15 Annex C Document
11 Number 1, Number 2, Number 3 et cetera. ...
12 I hope that assists in a rather complicated process as to why
13 these documents have been a little difficult for all parties to
14 find.

15 MR. PRESIDENT:

16 Judge Lavergne, the floor is yours.

17 JUDGE LAVERGNE:

18 I have a little concern here and I think that this is shared by
19 all of the parties. When a document is referred to during the
20 hearing, when this document is summarized, we can consider that
21 it is included in the hearing. So therefore it is important that
22 we can have an exact idea of which document we are speaking
23 about.

24 [14.35.23]

25 We must also have an idea of the nature of the document, of its

18

1 status -- translation status in order to eventually provide
2 observations and ask for clarifications in terms if its
3 admissibility.

4 So I understood that it was quite complicated to do so but what I
5 would like would be that when one of the parties wishes to put
6 forth a document, I would like, therefore, to have references and
7 then you provided it, indeed, with a table that's very useful in
8 which we have a certain amount of elements.

9 So therefore, I would like to have the reference in relation to
10 this table that contains elements that are so precise. So this,
11 indeed, is conceived to facilitate everyone's work and to be sure
12 that we may have a real adversarial hearing here.

13 So I do not -- I must confess, I'm a bit confused here in
14 relation to the document that was produced by -- that was
15 referred to by the defence. Could you tell us which number this
16 corresponds to in your list? In the list that you mention here,
17 can you tell us which document this is, the document that was
18 brought forth by the defence?

19 MR. BATES:

20 I share Your Honour's confusion. I don't know whether the
21 defence are referring to document number 30 in Table D/55.1 which
22 the witness has identified as a confession, or whether document
23 30 refers to number 30 of another list.

24 I must confess I was rather confused.

25 MR. ROUX:

19

1 Yesterday the Chamber requested the defence to provide its
2 observations concerning the two last documents from the list that
3 the Co-Prosecutors' office had distributed to all of the parties
4 yesterday.

5 [14.37.55]

6 And at the end of this list the two last documents -- the two
7 last documents, well, it is mentioned there, IS Annex C, D2/15,
8 Annex C, number 39. Do you have it? And the second document is
9 D2/15 Annex C, number 30 and yesterday Dr. Cartwright asked me
10 which were our observations concerning these documents. And what
11 I understand now is that you are asking to specify where these
12 two documents are in your E55 table -- E55/1 table.

13 Does that make things clearer?

14 JUDGE LAVERGNE:

15 I believe I found one of them. I believe I found one of them,
16 indeed.

17 So, concerning Document D2/15, Annexes C number 30, it seems that
18 it is number 111 from your list.

19 [14.39.40]

20 MR. BATES:

21 Yes, indeed, Your Honour.

22 JUDGE LAVERGNE:

23 Well, then I don't know however what is the reference for a
24 document at Annex C, number 39, however.

25 MR. PRESIDENT:

20

1 Doctor Craig Etcheson, the floor is yours if you have any
2 observations to make.

3 THE WITNESS:

4 Yes, Your Honour. I believe I can provide some clarification on
5 this issue.

6 The document that counsel for the defence refers to as Number 39
7 is an S-21 confession of Chan Sam, alias Kâng Chap alias Sae.

8 In the list of documents provided by the Office of Co-Prosecutors
9 there is also a reference to an S-21 confession of Chan Sam alias
10 Kâng Chap alias Sae but if -- I think those are the same
11 documents. That is number 31 in the list provided by the Office
12 of Co-Prosecutors.

13 MR. ROUX:

14 Yes, indeed, but if this is the case it does not correspond to
15 what my esteemed colleague said to us and who told us earlier on
16 that in principle the 60 documents of Annexes C from Etcheson's
17 report were included in the table with mention, D2/15, for
18 example, number X, because under number 31 I see no reference to
19 Mr. Etcheson's document. And even worse, what bothers me even
20 more is that if you go into ZyLAB now, for example, and if you
21 look at the ERN number that corresponds to Number 31 in the table
22 you indicate in the table that it is a confession dated October
23 25, 1978 but in ZyLAB, however, with the same reference numbers
24 it is indicated that it is a confession dated September 10, 1978,
25 so therefore it is not the same document.

21

1 MR. PRESIDENT:

2 Doctor Craig Etcheson, the floor is yours.

3 [14.44.45]

4 THE WITNESS:

5 Your Honour, I cannot be certain what the source of the
6 discrepancy mentioned by counsel for the defence is, but I would
7 like to make a general observation having to do with S-21
8 confessions that could potentially shed light on this issue.

9 In many of the confessions, I have observed that there are
10 multiple dates. There may be a date on the cover sheet of the
11 confession. There may be several dates on the cover sheet of the
12 confession. The confession may include sections that were
13 written over the course of numerous days that are different.
14 There may be a date at the end of the confession that is
15 different from the date on the cover of the confession. When
16 people are cataloguing these documents sometimes it's difficult
17 to predict which date they will pick up. Thus, it is not
18 necessarily a different document simply because it has been cited
19 as bearing different dates.

20 MR. PRESIDENT:

21 Judge Lavergne, the floor is yours.

22 JUDGE LAVERGNE:

23 Again, for the sake of clarification, I would like to know what
24 is considered as being requested to be included in the hearings.
25 If I refer to the ERN number of the original document, it is a

22

1 document that I believe includes 153 pages. And we have a
2 summary of this document which includes, I believe, 12 pages.
3 But we do not have a French version.
4 So what is the document that must be considered as being included
5 in these hearings, the summary; the entire confession? I must
6 confess that I like to have some clarifications about this.
7 Maybe Mr. Etcheson could tell us on what all this is based on.
8 Is it based on the totality of the document, of the confessions,
9 or did you base yourself on a summary?

10 THE WITNESS:

11 Thank you, Your Honour.

12 In many cases I worked with one of our language specialists to go
13 through the original Khmer language version of the confessions to
14 identify passages that were of particular interest for analytical
15 purposes. In other instances we found that the analytical
16 summary in English contained all of the necessary information for
17 me to proceed with my own analysis. So I would suggest that both
18 the summary and the full Khmer language original should be
19 considered.

20 (Deliberation between Judges)

21 [14.52.11]

22 MR. PRESIDENT:

23 The floor is yours for you, Judge Cartwright.

24 JUDGE CARTWRIGHT:

25 Thank you, Mr. President.

23

1 The President has asked me to invite the Co-Prosecutors to begin
2 their questioning of the expert, Dr. Etcheson. The President
3 thanks the parties for these observations and attempts to assist
4 it in understanding the document references, and reminds the
5 parties that if any of them have concerns over any document which
6 the prosecutors or any other party wishes to put before the
7 Court, then that concern can be raised immediately so that the
8 Court can make a ruling.

9 Is there anything you wish to add to that, Mr. President?

10 [14.53.26]

11 MR. PRESIDENT:

12 I do not have anything to add.

13 The Co-Prosecutor, the floor is yours.

14 MR. BATES:

15 Thank you, Mr. President, Your Honours.

16 MR. PRESIDENT:

17 Mr. François Roux, you take the floor.

18 MR. ROUX:

19 Thank you, Mr. President.

20 May I please take the leave to ask you -- to make a suggestion so
21 that we can move forward? We are here in a trial in which the
22 accused has acknowledged and accepted most of the facts that are
23 being held against him. Couldn't we then ask the Co-Prosecutor's
24 office to focus mainly on the facts that are still being
25 discussed and to present three or four documents relating to

24

1 these facts. In international criminal courts generally it is
2 required that a statement or a document be corroborated by at
3 least another statement or another document.

4 So, therefore, it seems to me that if the Co-Prosecutor's office
5 would focus on providing us three or four relevant documents
6 relating to the facts that are being disputed by the accused,
7 well then I think that we could gain an enormous amount of time.
8 And concerning the facts that are not being challenged, well then
9 if you could just please bring one or two relevant documents well
10 then I think everybody would benefit from this, and as I said
11 yesterday afternoon, especially the victims who are impatiently
12 waiting to be heard. This is what I would like to suggest to the
13 Chamber.

14 Thank you.

15 [14.55.59]

16 MR. PRESIDENT:

17 The floor is yours.

18 JUDGE CARTWRIGHT:

19 Thank you, Mr. President.

20 May I just inquire of Maître Roux if he sees any difference
21 between the testimony of an expert and that of a witness to the
22 direct facts acknowledged by the accused?

23 It seems to me that the difficulty is that the accused is not
24 always in a position to accept certain technical facts enunciated
25 by an expert and therefore an expert's testimony may seem on

25

1 occasions repetitive but on other occasions may illuminate and
2 explain a much broader picture for the benefit of the Court.

3 [14.57.02]

4 For that reason, although we have not deliberated on this, I can
5 see a difference in the approach to the questioning of an expert
6 when it comes to the agreed facts that you have raised.

7 Do you have any comment on that?

8 MR. ROUX:

9 Thank you, Your Honour.

10 Thank you for allowing me to remind you, and given all of the
11 respect that I have for Mr. Craig Etcheson's work, well despite
12 that, he is not really an expert, he is attached to the
13 Co-Prosecutor's office, so therefore we should not forget this.
14 He is here the voice of the prosecution, so let's not lose sight
15 of this.

16 JUDGE CARTWRIGHT:

17 But you haven't answered my question, which is a general one at
18 this point. Do you accept my proposition that there may be a
19 need to examine an expert more extensively than a witness who
20 simply repeats what the accused has already acknowledged in the
21 agreed facts?

22 MR. ROUX:

23 Yes, Your Honour, I believe that we are going to -- that
24 excellent experts are going to be coming to this Court, and, as
25 you've said, they will be able to give us an extremely useful

26

1 overview, including Mr. Etcheson, by the way. So for what I -- I
2 have reservations about the necessity to include tens or even
3 hundreds of documents to support the expert's statement a
4 priori.

5 I trust the expert, of course, but if I have a problem of course
6 I'm going to ask him on which document he is relying, but I do
7 not need, as of the start, for him to present me with hundreds
8 and hundreds of documents. But I do consider that we will have
9 very good experts coming to this trial and I am impatient to hear
10 what they have to say.

11 Thank you.

12 [15.00.03]

13 JUDGE CARTWRIGHT:

14 As we all are, Maître Roux. However, I don't think it's the role
15 of the Chamber to tell the prosecutors or any party what
16 documents they should put before the Chamber until we have had
17 the opportunity to assess those, and of course you will have that
18 opportunity to comment if you are -- you consider them
19 irrelevant, repetitious, or any of the other criteria that we
20 must abide by.

21 Thank you.

22 MR. PRESIDENT:

23 The lawyer of the civil party, you take the floor.

24 MR. KONG PISEY:

25 I am Kong Pisey, the civil party lawyer. I would like to share

27

1 my comments concerning the evidence as filed.
2 According to the Constitution of the Kingdom of Cambodia the
3 prosecutions office has been used to bring forward the criminal
4 action to them. So the prosecution office has the role to find
5 evidence, and evidence must be proved beyond the reasonable doubt
6 and to do so there is no way to measure how the Court is
7 convinced whether those evidence are presumed to be beyond the
8 reasonable doubt.

9 [15.02.06]

10 So the prosecutors are not bound to any certain amount of
11 documents to be put before the Court to make sure that the
12 documents are proved beyond a reasonable doubt. And I really
13 appreciate them for their great effort in putting forward those
14 ample evidence before the Court.
15 And according to rule -- the Internal Rule, Rule 87, I would like
16 the Chamber to please implement the rule strictly.
17 Thank you.

18 MR. PRESIDENT:

19 The Court would like to take an adjournment for 15 minutes.
20 The Court official, could you please make sure that the expert
21 can be brought to his waiting room?

22 (Judges exit the courtroom)

23 (Court recesses from 1503H to 1522H)

24 (Judges enter the courtroom)

25 THE PRESIDENT:

28

1 Please be seated. The Court is now back in session.
2 Before I give the floor to the Co-Prosecutors for them to put
3 forward questions to the expert, Dr. Craig Etcheson, the Trial
4 Chamber would like to inform all the parties that the Trial
5 Chamber will conduct a hearing of a testimony of an expert, Nayan
6 Chanda in early next week; that is on the Monday the 25, the
7 Tuesday the 26 of May 2009.
8 This is because he will come to the Court to provide testimony in
9 relation to the facts of the armed conflict, because he has
10 various other engagements, so his ability to provide his
11 testimony is only for these two days, the 25th and the 26th of
12 May. So may all the parties be informed of the proceeding that
13 they plan to come back for early next week.
14 Now I would like to give the floor to the Co-Prosecutors to put
15 forward their questions to the fact that is being debated and
16 discussed in relation to the testimony of the expert witness,
17 Craig Etcheson. The Co-Prosecutors, the floor is yours.
18 [15.25.00]
19 MR. BATES:
20 Thank you, Mr. President.
21 QUESTIONING BY THE CO-PROSECUTORS
22 BY MR BATES:
23 Q.Dr. Etcheson, you wrote your report in July 2007. Could you
24 tell the Court when you first started work at the Office of the
25 Co-Prosecutors?

29

1 A.Yes, Mr. Prosecutor. I began work at the Office of the
2 Co-Prosecutors at the Extraordinary Chambers in the Courts of
3 Cambodia on 2 July 2006.

4 Q.And for the preparation of your written report you have
5 selected 148 documents in total, but can you estimate how many
6 documents you had read and considered during your work for the 12
7 months prior to writing that report? I don't expect a precise to
8 the letter, to the number.

9 A.I believe that we considered approximately 50,000 documents
10 and from those we selected two to three thousand for a closer
11 examination, and of those -- I would correct you -- 161 were
12 selected for use in this report.

13 Q.And in general terms can you tell the Court why you selected
14 those 161 documents from the universe of documents that you have
15 mentioned?

16 A.I selected this particular subset of documents because they
17 covered the broadest range of matters that were the subject of
18 the report, and because in my judgement they were the most
19 probative; that is to say they were the most illuminating of the
20 truth of the matters that are under examination before this
21 Court.

22 [15.28.17]

23 Q.In the table of 148 documents that we have provided to the
24 Court is a number of different types of evidence, from analytical
25 reports to biographies, to books and so on. If we take one

30

1 category, telegrams, for example, would you tell the Court why
2 you selected 16 rather than simply one telegram, in the broadest
3 sense?

4 A.Yes, Mr. Prosecutor. I selected 16 telegrams because these
5 telegrams illustrated a broad range of different types of
6 communications between different organizational units of
7 Democratic Kampuchea and the Party Centre of Democratic
8 Kampuchea. For example, some telegrams illustrate communications
9 between the Secretary of the East Zone and the Party Centre, or
10 the Secretary of the West Zone and the Party Centre, or the
11 Secretary of the Northwest Zone and the Party Centre.
12 Other telegrams illustrate communications between secretaries of
13 different military divisions of the Revolutionary Army of
14 Kampuchea and the Party Centre, and so on. Thus the selection of
15 telegrams is meant to illustrate not only the different
16 communications patterns within the organizational units of
17 Democratic Kampuchea but also the implementation of the policies
18 of Democratic Kampuchea in various areas of functional
19 responsibility.

20 [15.30.56]

21 Q.With the benefit of an additional almost two years since you
22 wrote the report, do you consider that any of the documents --
23 let's talk about the telegrams -- do you consider that any of the
24 16 telegrams are superfluous to illustrate what you have just
25 described?

31

1 A.No, Mr. Prosecutor, I do not.

2 Q.I could ask you the same question in relation to each of the
3 document types, one by one, but you may be relieved to hear that
4 I won't ask you that. Can I ask you in general terms whether
5 your answer would be any different for any of the categories of
6 evidence that you have listed in those 161 documents?

7 A.I would say, Mr. Prosecutor that with the benefit of an
8 additional two years of research since the time that report was
9 drafted I have found additional examples, some of which may have
10 been superior to examples I used in the report. But short of
11 replacing existing examples with subsequently discovered better
12 examples, no, there is no superfluous information included in
13 that report.

14 Q.Can I ask you in general terms how you, as an expert, go about
15 analyzing, for example, the communications structure of the DK
16 regime? And I'll be more specific: do you use a single
17 document, a couple of documents, multiple documents, or how?

18 A.It would be impossible to analyze communications patterns
19 based on a single document or even merely two or three or four.
20 For example, in Democratic Kampuchea there were many different
21 modes of communication used by the regime: telegrams, field
22 telephones, fixed-line telephones, messages carried by courier,
23 documents transmitted by courier, face-to-face meetings, group
24 meetings large-scale meetings, national radio, Party
25 publications. In short, there was a large multiplicity of means

32

1 of communications and in order to understand the totality of the
2 network of communications requires a wide variety of sources.

3 [15.35.12]

4 MR. BATES:

5 Mr. President, before we broke, defence counsel criticized this
6 witness as the mouthpiece of the prosecution, or rather labelled
7 this expert as the mouthpiece of the prosecution.

8 In the light of the ruling on Rule 87, the Co-Prosecutors wish to
9 submit that from the evidence that the Court has just heard from
10 Dr. Etcheson it is clear that his evidence has been based on a
11 detailed analysis of many documents and a specific analysis of
12 the subset of 161 documents. The written report has been written
13 not exclusively -- or not on personal knowledge but on an
14 assessment, a considered assessment of those documents.

15 In the submission of the Co-Prosecutors, to assess the accuracy
16 and the reliability of Dr. Etcheson's report, particularly in the
17 light of the suggestion by the defence that Dr. Etcheson is
18 merely the mouthpiece of the Co-Prosecutors, the Trial Chamber
19 must itself assess the reliability of the witness's conclusions.

20 And how does the Trial Chamber do that but by looking at the
21 reliability and at the content of the documents upon which the
22 witness has based his report. Therefore, I now propose to
23 summarize the documents that Dr. Etcheson has relied upon.

24 Document Number 1, Case File Introductory Submission Annex C,
25 Document 2/1, ERN 00087610 to 00087627. To short-circuit this

33

1 process I will just give the first ERN number. This is an
2 analytical report from an international source. It is dated the
3 6th of July 1978 and it comes from the Government of the United
4 States of America. The document is entitled, "Submission from
5 the Government of the United States of America to the United
6 Nations" and it contains the statements of Duch Khievvara at
7 pages 9 to 11; Moan Sou at 16 to 18; Sour Cheng at 14 to 15; Som
8 Bennavong at 8 to 9; and Yim Sokroathcheat at 11 to 13.
9 The document describes widespread human rights violations in
10 Democratic Kampuchea, including:
11 1. At pages 9 to 11, 16 to 18 and 14 to 15, a formal policy of
12 confining people to co-operatives;
13 2. Pages 16 to 18, spying was common in cooperatives;
14 3. Pages 8 to 18, forced labour work was mandatory and people
15 were required to work long hours;
16 4. Pages 9 to 18, inhumane living conditions: people received
17 inadequate food, inadequate medical care, and people had to work
18 even when sick;
19 5. Pages 8 to 11 and 16 to 18, unlawful killings and torture:
20 people were punished or killed for minor infractions;
21 6. Pages 8 to 11, 13 to 14 and 16 to 18, no functioning legal
22 system.
23 [15.41.32]
24 7. Pages 7 to 11, unlawful killings of doctors, lawyers,
25 teachers, students, religious leaders, business people, and other

34

1 intellectuals;

2 8. Pages 8 to 11 and 13 to 15, unlawful killings of minor Khmer
3 Republic officials, non-commissioned officers, ordinary soldiers
4 and their families in the villages and cooperatives;

5 9. Pages 11 to 13 and 18, unlawful killings at the village,
6 cooperative or commune level;

7 10. Pages 8 to 9, discriminatory intent against the Vietnamese;

8 11. Pages 8 to 9, 11 to 13 and 14 to 15 (no interpretation)

9 [15.42.42]

10 I'm sorry, I heard from the translators in Khmer but I didn't
11 understand. There was no translation in English.

12 I'm told that I must slow down; I apologize. I will go back to
13 item 10 from this document that we are summarizing.

14 10. Pages 8 to 9, discriminatory intent against the Vietnamese;

15 Item 11. Pages 8 to 9, 11 to 13 and 14 to 15, discriminatory
16 intent against new people.

17 We turn to Document Number 2 on Dr. Etcheson's list, Introductory
18 Submission Annex C, Document D2/5/66, Disclosure Number 2.3;

19 original Evidence Reference Number in Khmer, 00087537 through

20 00087571. This is the second of two analytical reports from an

21 international source, dated the 18th of August 1978 and the

22 author is the Government of Norway and the summary of the

23 document is as follows.

24 [15.43.14]

25 It is entitled, "Submission of the Government of Norway to the

35

1 United Nations Commission on Human Rights." It contains evidence
2 of widespread human rights violations in Democratic Kampuchea,
3 including:
4 1. At page 19, the destruction and expropriation of property by
5 Democratic Kampuchea;
6 2. At page 12, people were forced to leave Phnom Penh with
7 almost no belongings;
8 3. At pages 12 to 13 and 21, dead bodies were a common sight
9 during the forced evacuation;
10 4. At pages 4 to 5 and 16, the cities and towns were evacuated;
11 5. At pages 8 and 15 to 16, a second wave of forced movements;
12 6. At page 3, formal policy of confining people to cooperatives;
13 7. Pages 3, 8 to 10, and Annex 4, spying was common in
14 cooperatives;
15 8. At pages 9 and 18, food was inadequate;
16 9. At pages 3, 9, 19, and Annex 4, medical care was inadequate
17 and people had to work even when sick;
18 10. At pages 18 to 19, people died of starvation and exhaustion;
19 11. At page 2 and Annex 4, people were punished or killed for
20 minor infractions;
21 12. At page 13, no functioning legal system;
22 13. At page 17, party loyalty and ideology was more important
23 than technical expertise;
24 14. At page 21, killing during forced evacuation of Phnom Penh;
25 15. At pages 5 to 7, 13 and 21, killings of high-ranking Khmer

36

1 Republic officials and military personnel during April and May
2 1975;

3 16. At page 8, many people died during forced movement to the
4 countryside;

5 17. At pages 1 and 8 to 9, killings of doctors, lawyers,
6 teachers, students, religious leaders, business people and other
7 intellectuals;

8 18. At pages 4 to 5, 13 through 15, and Annex 4, killings of
9 minor Khmer Republic officials, non-commissioned officers,
10 ordinary soldiers and their families in the villages and
11 cooperatives;

12 19. At pages 4 through 5, killing at the village, cooperative,
13 and commune level;

14 20. At pages 6 through 7, killings associated with the purge of
15 the North Zone;

16 21. At page 19, expropriation of property in villages and
17 cooperatives;

18 22. --

19 [15.42.56]

20 MR. ROUX:

21 Mr. President, may I please interrupt?

22 I apologize, but right now I am hearing about expropriation and
23 about the gathering of people in co-operatives but I do not see
24 any connection here with the Closing Order that was presented by
25 the Investigating Judges.

37

1 So Mr. Duch is being prosecuted here after one year of
2 investigation by an indictment for facts that were committed at
3 S-21. And I have just been hearing about cooperatives. I have
4 just been hearing about people who were chased out of Phnom Penh
5 and who have been evacuated from Phnom Penh. I have just been
6 hearing about a legal system that did not function. All of this
7 is completely outside of the point.

8 So, therefore, Mr. President, I would like us to get back to the
9 issue at hand. Duch is being prosecuted for the facts that are
10 very specifically described in the indictment. So, please, I
11 would like the Co-Prosecutors to focus on the facts that Duch is
12 being prosecuted for which are included in the indictment.

13 You cannot challenge Duch for the entire criminal system of
14 Democratic Kampuchea, for cooperatives, for the absence of a
15 legal system, for the people who were evacuated from Phnom Penh,
16 et cetera, et cetera, such as has been the case right now.

17 Thank you, Mr. President.

18 MR. PRESIDENT:

19 Now the Co-Prosecutors, you take the floor and respond to the
20 defence counsel, or would you like to make other observations?

21 I think the defence observations, some of the observations are
22 appropriate and other issues raised by the Co-Prosecutor are not
23 related to the charges. So your summary from the documents must
24 be relevant to the issue at hand and you can now make a response.

25 MR. BATES:

38

1 Thank you, Mr. President.

2 [15.52.46]

3 I had hoped that I had established the reason and necessity for
4 documents upon which Dr. Etcheson had relied to be read out in
5 court. Can I perhaps spell it out even more clearly? These are
6 documents that this expert witness has deemed important upon
7 which to base his testimony, his report.

8 The defence are challenging or are describing this witness as the
9 mouthpiece of the prosecution. It is the Chamber's
10 responsibility to evaluate the evidence upon which Dr. Etcheson
11 relies. These summaries are intended to provide the Court a
12 basis for assessing Dr. Etcheson's conclusions.

13 And I might add, for it seems the defence has forgotten, that for
14 crimes against humanity, which is in the indictment against the
15 accused, the Co-Prosecutors have to establish, beyond a
16 reasonable doubt that crimes occurred in a widespread and
17 systematic manner across the country. This is not the same as
18 saying that this accused was responsible for all those crimes
19 around the country.

20 It has to be established that the crimes that we say were
21 committed by this accused at S-21 were part of that widespread
22 and systematic attack on the civilian population as a whole.

23 [15.53.20]

24 That is the basis for including those documents in the summary --
25 I'm sorry -- reading out the summary as we have and I feel the

39

1 time has come to make another observation in response to the
2 constant interruptions and objections from the defence.
3 The Co-Prosecutors clearly understand that the defence wished to
4 limit the Trial Chamber's consideration of the evidence to a very
5 small number of documents. Of course it is in the accused's
6 advantage that incriminating documents are left untouched, that
7 background documents are left untouched, but surely, Mr.
8 President, one of the functions of this Tribunal, of your Trial
9 Chamber, is to educate and to demonstrate that an
10 internationalized Tribunal, based in Cambodia, with Cambodian and
11 international personnel, examines a trial fairly and according to
12 the evidence but, more importantly, that that is done in public
13 and that judgements are based on evidence that the public has
14 heard.
15 There are numerous reports swirling around Cambodia that the
16 Courts in this country lack transparency and that there is little
17 public discussion of the evidence. There are swirling reports
18 even in this Tribunal relating to corruption.
19 What do we want to achieve in this process? When experts look
20 back and they see how the trial was conducted do they want to see
21 a judgement that was based on one or two documents, the case file
22 not properly examined, that there was not a complete examination
23 of the evidence or do we want experts to look back on these
24 proceedings and to say that the judgement was based on solid
25 evidence, based on independent and corroborated sources?

40

1 [15.56.45]

2 Mr. President, the Co-Prosecutors wish a speedy trial and an
3 expeditious one and a fair one but they also consider that the
4 public have a right to hear the evidence that will found the
5 judgement.

6 Not only a right, I submit, but this Chamber has a duty, as I
7 said, to educate and to demonstrate the process that this Court
8 is following and that the Co-Prosecutors are inviting you, Mr.
9 President, to apply today.

10 For that reason I make no apology to read the summaries of
11 documents that this expert has relied upon and with the Court's
12 leave I will continue to read from the summary.

13 (Deliberation between Judges)

14 [16.09.59]

15 MR. PRESIDENT:

16 I note that two of you are on their feet at the same time, so
17 what would you like to make any observation of?

18 MR. KONG PISEY:

19 Thank you, Mr. President and Your Honours.

20 I have observed that the Co-Prosecutor has cited the document but
21 I have not located the Khmer version of the document, so I think
22 it would be very helpful if the civil parties are also provided
23 with the Khmer version of the document. Otherwise it would be
24 contradictory to the Rules of the ECCC and the ruling of the
25 Trial Chamber regarding the language used at the Court.

41

1 In the rulings, if I'm not wrong, all the documents must be
2 available in Khmer language, the language of the accused.
3 However, the civil parties have not received that version in
4 Khmer. So we will be very grateful if we are offered the Khmer
5 version of the document. Thank you.

6 MR. WERNER:

7 It is my understanding that you are about to rule on an issue
8 which is very important for everybody here, and before you do
9 that we would request to be able to say something briefly, and I
10 know that other of my colleagues would like to say something and
11 I believe that probably Maître Roux would like to respond. So if
12 you are about to rule then we would request the opportunity to
13 speak. Thank you.

14 [16.12.37]

15 MR. PRESIDENT:

16 The Co-Prosecutor, as the national co-lawyer of the civil parties
17 for group 2 cited regarding the language used, which he prefers
18 the Khmer version of that document, do you think the Khmer
19 version is available for the civil parties?

20 MR. BATES:

21 Yes, it is indeed, Your Honour. I can give the evidence
22 reference number. It is 00224335 through 00224356. That is
23 document number 1 on the index. And document number 2, which I
24 had almost come to the end of summarizing, in Khmer ERN 00228717
25 through 00228765.

42

1 And, Mr. President, I should add that all the ERN references are
2 contained in the index to Dr. Etcheson's written record at E55/1.
3 If the original language is English, the additional ERN describes
4 the Khmer or the French or both, and if the original language is
5 Khmer, the additional ERN references are either in English or
6 French or both.

7 MR. ROUX:

8 Mr. President, can the Co-Prosecutor indicate whether the summary
9 that my learned colleague was reading exists in Khmer and French?
10 Obviously, we are not going to look at the full versions of the
11 documents and delve into pages 9 to 18, 8 to 11, 13 and 14, and
12 so on and so forth. So this summary that is E55/1, is it
13 available in Khmer for my co-lawyer, and in French for me? I am
14 referring to the summaries, of course.

15 [16.16.15]

16 MR. PRESIDENT:

17 The Co-Prosecutor, you take the floor.

18 MR. BATES:

19 The English summaries on the index, E55/1, are only in English,
20 but the full document is translated into Khmer in full and in
21 French in full, and given the integral translation that we have
22 of everything in these proceedings, the summary of what I read
23 out in English would be available, I presume, tomorrow for all
24 parties to examine. Excuse me. And I should confirm that the
25 summary in English that I read out would be available in the

43

1 transcript of the proceedings, and so having provided a full
2 translation of the document, together with the transcripts that
3 are available, the Co-Prosecutors consider and submit that they
4 have fulfilled their translation requirements.

5 (Deliberation between Judges)

6 MR. PRESIDENT:

7 We have observed that Mr. Alain Werner attempted to submit
8 something in relation to the matter, so the Trial Chamber would
9 like to know whether Mr. Alain Werner still would like to make
10 his observations before the Chamber.

11 [16.25.01]

12 So if you wish to do so, the floor is yours.

13 MR. WERNER:

14 I'm grateful, Your Honours, and I will be very brief.
15 Quickly, two points. You gave a decision on the 23rd of April,
16 2009 concerning this assignment of experts and the number four --
17 the fourth expert was Dr. Craig Etcheson. So the first thing I
18 would like to say, that in our submission it is ingenious for the
19 defence to come and say that Dr. Etcheson is not an expert
20 because you are the ones who said on the 23rd of April, 2009 that
21 Dr. Etcheson is an expert and you call him to come and testify.
22 Now, about the scope of his testimony, you are the ones on page 3
23 -- or 4 -- you are the one who said that Dr. Etcheson should come
24 and testify about the political governmental structure of the
25 Khmer Rouge, among other things policy, ideology of the Khmer

44

1 Rouge. Well, policy, ideology of the Khmer Rouge are, as we all
2 know now, is to smash people throughout Cambodia, to stuff people
3 throughout Cambodia possibly to touch people throughout Cambodia.
4 Now, if the Co-Prosecutor decides to summarize exhibits upon
5 which Dr. Etcheson will rely on, and they believe they have to do
6 that as they explain, because this is the whole material Dr.
7 Etcheson relied upon. And because, Your Honours, of your ruling
8 of this afternoon, earlier on, and I have to say that this ruling
9 may have immense consequences on the length of this trial but
10 that is your ruling.

11 [16.27.06]

12 If the Co-Prosecutors think that they have to do that, then of
13 course they have to summarize exhibits which not only talk about
14 S-21 but talk about the whole Cambodia because precisely you
15 have called this expert to come and talk about things which are
16 outside, much broader than S-21.

17 So in our respectful submission, the objection by the defence is
18 without merit and we do strongly support the Co-Prosecutors. I'm
19 grateful.

20 MR. PRESIDENT:

21 The lawyer can take the floor.

22 MS. RABESANDRATANA:

23 Mr. President, I would like to make submissions in support of
24 what my learned colleague has said. In your Order of the 23rd of
25 April, 2009 -- this is document number E-51 -- the Chamber

45

1 invited Mr. Craig Etcheson to give testimony on the military,
2 political, and government structure of the Khmer Rouge, the
3 communication network of the regime, as well as its policy and
4 ideology. Further down, as you said earlier, it was intended
5 that Mr. David Chandler would come to give testimony on his
6 research into S-21.

7 [16.29.14]

8 I find it wholly inappropriate for the defence to say that the
9 expert witness's examination be limited to only the crimes
10 charges on the accused and S-21, especially as during the hearing
11 yesterday; that is, the 19th of May 2009, the defence interrupted
12 the testimony of the expert witness and said that the expert
13 witness had exceeded the boundaries of his report and had
14 conducted an analysis that was not consistent with his report
15 because he was referring to S-21.

16 [16.30.29]

17 And the defence said that it was a general policy report prepared
18 in 2007 and that no allusion or reference should be made to S-21
19 because S-21 came later. Now, the defence submits an opinion
20 that is completely at odds with its previous one in seeking to
21 limit the rights of the Co-Prosecutors by trying to restrict them
22 to S-21, whereas the proceedings today are not on S-21 and its
23 operation but on the general policy of Kampuchea as defined in
24 the decision and for which reason you invited Mr. Etcheson to
25 come and give testimony before the Court.

46

1 It is my submission that the defence does not have to dictate the
2 admissible evidence or the form of evidence that is admissible
3 when it is not agreeable to it. And it cannot consider that the
4 Co-Prosecutors cannot base their case on a number of documents.
5 Under Article 87 all evidence must and should be put before the
6 Court, and it is your Court which will determine the relevance or
7 weight of such evidence. And all witnesses give testimony before
8 this Court with an equal status and it is for the Court to
9 determine the value, the probative value of the cases put before
10 you through the witnesses.

11 Expert witnesses of the prosecution should not be considered to
12 be of lesser value than expert witnesses called by the defence
13 and it is suggested that the defence witnesses would be of great
14 value.

15 [16.32.59]

16 For the fairness of proceedings, accordingly, and for the
17 ascertainment of the truth, the presentation of evidence is
18 essential and I support the approach of the Co-Prosecutors on
19 this point.

20 MR. ROUX:

21 Mr. President?

22 MR. PRESIDENT:

23 Is there any other civil party lawyer representing other groups
24 who would like to make further comments? We try to avoid going
25 to the defence and then going back to the civil party lawyers.

47

1 We would like to hear all the comments and responses all in once
2 from the civil party groups so that we can really have the
3 background for further rulings.

4 Mr. Hong Kimsuon, you take the floor.

5 MR. HONG KIMSUON:

6 Thank you very much, Mr. President, and Your Honours, on behalf
7 of civil party group 1. I will be briefer, and I strongly
8 support the submissions by our colleagues.

9 Thank you.

10 MR. PRESIDENT:

11 The defence counsel, you take the floor.

12 [16.34.35]

13 MR. ROUX:

14 Mr. President, thank you. I have several observations to make.
15 First of all, I would like to reassure my learned friend when I
16 said that I was speaking about eminent experts I was not only
17 speaking about experts chosen by the defence. I believe that Mr.
18 Chandler, for example, is part of these distinguished experts
19 that we will be lucky enough to have with us during these
20 proceedings.

21 I think here that we are facing, again, a problem of method and a
22 problem of juridical culture, we could even say. I have already
23 said several times that we are here following an indictment which
24 follows a year of investigations that have been carried out by
25 two distinguished Co-Investigating Judges in an investigation to

48

1 which participated, on a regular and a systematic basis, the
2 Co-Prosecutors. And I wish to thank them for this. This was a
3 great contribution to the civil law proceedings because during
4 one full year we were able to have adversarial hearings before
5 the Co-Investigating Judges, Co-Prosecutors as well as defence.
6 Following this investigation phase, the Co-Investigating Judges
7 rendered their indictment and to which I would like us to refer
8 to more often because it is this indictment, Mr. President, Your
9 Honours, that you are being seized of. You are seized of this
10 indictment and by the facts that are included in this indictment
11 you are linked, you are bound, to this indictment except for
12 certain qualifications that you could review.

13 But concerning the facts, it is only these facts that have been
14 heard adversarially and that have been the object of this
15 indictment, and I would like to refer you to the end of this
16 indictment where it is indicated that consequently it is the
17 result of the investigation -- sufficient charges result from
18 this investigation against Kaing Guek Eav, charges based on the
19 fact that in Phnom Penh and in Cambodia between the 17th of April
20 1975 and the 6th of January 1979, as the Deputy Secretary or as
21 the Secretary of S-21 and through his acts and omissions, it is
22 clear that he planned, instigated, ordered, committed the
23 following crimes to have aided and abetted their authors or to be
24 responsible for them as their hierarchical superior.

25 [16.38.51]

49

1 And here are listed two categories of crimes: one, crimes
2 against humanity; two, serious violations of the Geneva
3 Convention. And in order to reach this conclusion I would like
4 to refer you to the paragraph 131 and the following ones of this
5 indictment which specifies in a precise way the crimes that are
6 held against the accused.

7 So if the fact of interviewing Mr. Craig Etcheson is in order to
8 give us a panorama of what Democratic Kampuchea was during this
9 period, of course that is important; of course. And I have
10 already said on several occasions that Craig Etcheson's report --
11 I'm speaking about his written report -- is an extremely
12 interesting element for everyone, and I wish that this report be
13 published as soon as possible on the Tribunal's website once this
14 report has been heard adversarially during these proceedings. It
15 is good that the content of this report is known publicly. This
16 I support.

17 But, however, do we need -- do we need to become aware, even
18 through summaries, of all of the documents which Mr. Etcheson
19 relied upon to write this report? In common law, certainly, yes;
20 in common law, indeed. But in civil law, this is not necessary
21 and I am stating this very clearly. In civil law this is not
22 necessary. In civil law, in order to establish the Judges' deep
23 conviction, it is not necessary to provide the references and to
24 read out, even through summaries, all of the documents that an
25 expert relied upon. This is not necessary.

50

1 [16.41.44]

2 So therefore I am saying that proceeding today with the
3 exhaustive reading of the summaries of all of the documents that
4 Mr. Craig Etcheson used is a waste of time for this Tribunal. It
5 is, I'm sorry to say, but money thrown out of the window and it
6 is a waste of time -- again, I'd like to repeat this -- for the
7 victims as well. So I am indeed impatient to hear what Mr. Craig
8 Etcheson has to say in substance, and I will have questions to
9 put to him. And if indeed upon -- if I challenge at times his
10 report and he wishes -- during this eventual discussion he wishes
11 to refer to one or several documents on which he based himself,
12 he may do this.

13 But this exercise that consists in re-reading systematically the
14 summaries of all of the documents that he based himself on, this
15 I say again is completely useless in a civil law context, and I'd
16 like to remind you that the Internal Regulations state that the
17 Judges will make -- will render their decision on the basis of
18 their intimate conviction.

19 So this is what I want to say and I'd like to refer you once
20 again to this indictment that was rendered by the Investigating
21 Judges and I request that we do not -- that this year and a half
22 that we have worked on this case is not wasted. This was
23 in-depth work that was done, at the end of which two High Court
24 officials believed that there were sufficient charges against the
25 accused and, concerning most of these charges, he accepted them.

51

1 [16.44.15]

2 So, therefore, what shall we do here? Whether we want to give
3 the public opinion, listening to us, an overview of what this
4 criminal regime was, of course that is important, but whether we
5 want to engage in completely pointless discussions, that is
6 absolutely not what we should be doing.

7 These are the observations that I wanted to provide to the
8 Chamber.

9 Thank you, Mr. President.

10 [16.46.37]

11 MR. PRESIDENT:

12 It is now time for the afternoon session adjournment and it has
13 been intense in the debates during the hearing so the Trial
14 Chamber takes the adjournment now and the session is resumed
15 tomorrow at 9 a.m.

16 The security personnel, please take the accused back to the
17 detention facility.

18 Thank you very much, Dr. Craig Etcheson, for your time. The
19 Trial Chamber would like to invite you to come back tomorrow to
20 give testimony by 9 a.m.

21 And the parties to the proceedings are also advised to come to
22 the courtroom by 9 a.m.

23 The Court is adjourned.

24 (Judges exit courtroom)

25 (Court adjourns at 1647H)