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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

27 November 2009, 0902H

Trial Day 77

Before the Judges:

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. KAR SAVUTH	Khmer
MS. CHEA LEANG	Khmer
MR. KHAN	English
MR. ROUX	French
MR. SMITH	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer

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

2 (Judges enter courtroom)

3 [09.02.24]

4 MR. PRESIDENT:

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

8 THE GREFFIER:

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

11 MR. PRESIDENT:

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

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

18 MR. SMITH:

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

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

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

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1 If Your Honours look to page 6 of our final brief, and I will
2 read:

3 "The accused has agreed to the facts of most of the underlying
4 crimes, accepted his overall responsibility and generally
5 co-operated with the authorities and offered his apologies to the
6 victims and their families. These are important concessions
7 which should have a mitigating factor on his sentence if he is
8 convicted."

9 [09.07.30]

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

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

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

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

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

16 [09.09.59]

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

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

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

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

17 [09.12.12]

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

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

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

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

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

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

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

4 [09.16.57]

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

16 MR. PRESIDENT:

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

19 MS. CHEA LEANG:

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

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

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

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

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

7 [09.25.13]

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

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

10 [09.28.46]

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

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

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

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

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

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

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

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

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1 person.

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

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

18 [09.41.50]

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

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1 allocated or designated area for guards.

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

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

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

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

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

7 liable or responsible for the crimes which have been committed

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

9 responsible person, because he said his client only received

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

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

12 an excuse.

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

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

15 oversaw all the administration, the management of the whole

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

17 senior person among the other people who were most responsible

18 for the crimes during the jurisdiction of the ECCC.

19 [09.44.56]

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

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

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

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

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

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

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

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

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

19

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

2 [09.49.06]

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

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

8 MR. SMITH:

9 Thank you, Your Honours.

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

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

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

8 [09.52.10]

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

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

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1 sentence that Obrenovic got.

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

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

4 this accused was a loyal, enthusiastic implementer of the

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

6 someone quite different. The defence keeps stating that these

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

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

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

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

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

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

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

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

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

16 steps to prevent the senseless destruction of production

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

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

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

20 sabotaging it at considerable personal risk."

21 [09.54.56]

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

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

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

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

22

1 90 percent were innocent.

2 Stéphane Hessel was called by the defence to show how

3 reconciliation should influence your sentencing considerations.

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

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

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

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

8 something close to my heart because of his positive action

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

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

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

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

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

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

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

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

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

18 instructions that he received when he committed his deadly

19 crimes."

20 [09.56.50]

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

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

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

24 we know from yesterday subject to your clarification with the

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

23

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

24

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

25

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

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1 superior/subordinate authority and that was it.

2 And he said -- and I ask Your Honours to look at the transcript:

3 "This is the question I've been waiting for. I've been waiting

4 to tell the world that I had the utmost respect and faithfulness

5 for Son Sen."

6 Now, Son Sen is what the national defence counsel said was in his

7 top 13 list of the most responsible people for the killings in

8 the country. Son Sen was the one that taught the accused, that

9 brought him up through M-13, brought him up through S-21, who

10 stayed with him for 15 years after S-21, and the accused has the

11 utmost respect and faithfulness to him? I mean, he's got to be

12 joking because if he's not joking, and I'm sure he's not, that

13 proves with all of the other evidence, this is just a complete

14 lie. And for some reason or another, he's coming to Court to try

15 and accept political or general responsibility, but he's not

16 facing up to who he was back in 1975 to 1979.

17 [10.04.48]

18 Your Honours, maybe in his final statement he might turn towards

19 the civil parties. Maybe in his final statement he might turn

20 towards them and say, "Yes, I did believe in the CPK. It was

21 madness. I did terrible things but I believed in it. I believed

22 it was a means to an end." That's what the evidence says.

23 That's what the hundreds and hundreds of annotations say. I ask

24 Your Honours to look at them. That's the truth.

25 How can you be proud of your boss that's told you to torture and

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

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

20 [10.07.16]

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

28

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

6 Thank you, Your Honours.

7 MR. PRESIDENT:

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

13 (Judges exit courtroom)

14 (Court recesses from 1009H to 1037H)

15 (Judges enter courtroom)

16 MR. PRESIDENT:

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

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

25 [10.38.57]

29

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

6 MR. KAR SAVUTH:

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

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

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

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

25 [10.46.21]

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

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

8 [10.50.47]

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

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

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

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

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

19 [10.55.07]

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

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

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

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

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

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

6 [11.01.15]

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

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

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

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

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1 applied.

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

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

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

17 MR. PRESIDENT:

18 Mr. François Roux, you may now proceed.

19 [11.07.47]

20 MR. ROUX:

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

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

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1 the words I spoke yesterday and you used as an example the
2 alleged error that I committed when I said that your final
3 submission -- the final submission it is, isn't it -- only had
4 half a sentence on the admission of responsibility. And this
5 morning you say, "Look at page 6". What page 6 are you referring
6 to? On page 6 of your final submission, which was filed 15 days
7 ago, there is a paragraph 8 in which the Co-Prosecutors, in one
8 paragraph, acknowledge that the accused admitted the fact -- the
9 facts pertaining to the majority of the underlying crimes -- has
10 accepted his general responsibility, has collaborated in general
11 with the authorities, and has asked for forgiveness from the
12 victims and their families.

13 You say these are important concessions which should be taken
14 into account as mitigating circumstances in calculating the
15 sentence if he is found guilty. Mr. Co-Prosecutor, I agree that
16 this paragraph appears in what you describe as your final
17 submission. Be so kind as to acknowledge in turn that this
18 paragraph does not exist, as I said yesterday, in your final
19 submission which is the one that you sent to the Co-Investigating
20 Judges after one year of investigations. For one year of
21 investigations, the accused admitted the facts, he asked for
22 forgiveness, he took part in the re-enactment and, in spite of
23 all that, in your final brief you only had one half of a sentence
24 which, to tell the truth, I am unable to locate today. My words
25 were buttressed by evidence when I said that you said little or

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1 nothing in your final brief.

2 [11.11.40]

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

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

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

6 [11.15.10]

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

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

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

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

10 [11.18.50]

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

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

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

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

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

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

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

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1 harsh leader towards his subordinates.

2 [11.25.08]

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

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

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

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

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

24 [11.27.00]

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

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

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

7 [11.30.40]

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

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

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

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1 five-year period.

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

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

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

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

3 [11.38.20]

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

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

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

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

21 MR. PRESIDENT:

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

24 [11.40.33]

25 MR. SMITH:

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

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

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

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

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

5 [11.43.02]

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

8 MR. PRESIDENT:

9 Mr. Francois Roux, you may now proceed.

10 MR. ROUX:

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

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

22 [11.44.23]

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

25 There is no change.

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1 MR. KHAN:

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

3 THE PRESIDENT:

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

5 (Deliberation between Judges)

6 THE PRESIDENT:

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

22 [11.50.51]

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

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1 may now be granted the floor.

2 You may now proceed.

3 THE ACCUSED:

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

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

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

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

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

10 [11.55.07]

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

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

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

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

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

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

15 [11.59.00]

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

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

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

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

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

17 [12.02.18]

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

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

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

18 [12.05.11]

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

24 THE ACCUSED (Speaking in French):

25 (no interpretation)

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1 THE ACCUSED (Speaking in Khmer):

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

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

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

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

23 [12.08.00]

24 (Deliberation between Judges)

25 MR. PRESIDENT:

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

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

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

11 THE ACCUSED:

12 Thank you, Mr. President.

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

17 MR. PRESIDENT:

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

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

23 [12.12.15]

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

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1 national practices.

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

11 MR. KAR SAVUTH:

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

18 [12.15.00]

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

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

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

14 THE PRESIDENT:

15 Judge Silvia Cartwright, you may proceed.

16 JUDGE CARTWRIGHT:

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

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

21 [12.17.20]

22 MR. KAR SAVUTH:

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

25 THE PRESIDENT:

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

3 (Pause for AV technical reasons)

4 THE PRESIDENT:

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

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

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

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

23 [12.22.58]

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

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

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

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

21 [12.25.03]

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

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1 Case 001.

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

7 The Trial Chamber concludes hereby today's hearing.

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

12 (Judges exit courtroom)

13 (Court adjourns at 1226H)

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