



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

24 November 2009, 0901H

Trial Day 74

Before the Judges:

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Language used unless specified otherwise in the transcript

Speaker	Language
MS. CHEA LEANG	Khmer
MR. SMITH	English
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 [09.01.34]

4 MR. PRESIDENT:

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

6 During this morning's session, the Chamber is going to hear the
7 oral closing statement of the prosecutors. First, we would like
8 to instruct the Greffier to report the attendance of the parties
9 to the proceedings today.

10 THE GREFFIER:

11 Mr. President, the parties to the proceedings today are all
12 present.

13 MR. PRESIDENT:

14 The security personnel are now instructed to bring the accused to
15 the dock.

16 We would like now to give the floor to the Co-Prosecutors to make
17 their closing statement and please be informed that the
18 Co-Prosecutors have five hours, which is equivalent to the full
19 day's session to make their final oral statement.

20 You may now proceed.

21 MS. CHEA LEANG:

22 Thank you, Mr. President. Your Honours, the Co-Prosecutors will
23 divide this verbal submission into two parts: the first for me
24 and the second part for Mr. William Smith.

25 Yesterday you heard the voices from the victims again in this

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1 case, through their lawyers, who reminded us of the never-ending
2 impact of the accused's actions on the families and friends of
3 those tortured and killed at S-21. Listening to their tragic
4 losses, we can feel a knife that continues to turn inside each
5 and every one of them throughout their lives. Aching hearts that
6 never rest.

7 [9.05.00]

8 As prosecutors, our job is to represent the victims, over 12,000
9 of them, their families, their friends, the Cambodian public and
10 the world public. Our responsibility is to present the victims
11 and the public interest firmly and fairly while fully respecting
12 the rights of the accused. We are not to be moved by calls for
13 revenge or pleas of forgive and forget. Our role is a legal one:
14 to prove the facts in the indictment beyond reasonable doubt, and
15 then ask that the law be applied fairly in sentencing, based on
16 international standards of justice.

17 Your Honours, over the course of this trial you have heard now
18 more than 12,000 men, women and children were systematically
19 tortured and murdered at a Khmer Rouge prison in Phnom Penh known
20 as S-21. These victims had been arrested from all over Cambodia
21 because they were deemed to be enemies of the Khmer Rouge. They
22 were brought in chains to Phnom Penh, detained in appalling
23 conditions without adequate food, hygiene or medical care.

24 Almost all were then treated to a selection of mistreatments that
25 included threats, intimidation, beatings, electrocution,

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1 simulated drowning, forcible blood extraction, medical
2 experiments, force feeding excrement and other unspeakable
3 cruelties.

4 And ultimately, all were then forced to submit to the final
5 indignity - - an anonymous death in the darkness of the killing
6 fields at Choeung Ek, their bodies stripped of their clothing,
7 before the corpses were kicked into mass grave pits. The vast
8 majority of the victims were Cambodian, killed by fellow
9 Cambodians. If they were alive today, the victims of the Khmer
10 Rouge security office S-21 would fill this auditorium 24 times
11 over.

12 Between August 1975 and early January 1979, the accused was first
13 the deputy, and then the chairman of S-21 for the entirety of its
14 41 months of operation. In general terms, he has admitted his
15 general responsibility for these crimes. He has been personally
16 cooperative with these Chambers throughout the proceedings. He
17 has expressed his remorse, and respect for the victims.

18 [9.09.15]

19 However, the guilty plea of the accused is partly reliable, but
20 the others still denied as against the clear evidence raised by
21 the civil party yesterday. He has called character witness' to
22 speak of his life both before and after his involvement with the
23 Communist Party of Kampuchea, or CPK, as we shall call it. But
24 the crimes on which he will stand convicted are of such an
25 extreme seriousness, and were committed against so many people,

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1 that it is simply inconceivable that anything other than a
2 lengthy sentence of imprisonment should be imposed upon him.
3 The regime your Chamber has been established to examine was known
4 as Democratic Kampuchea, but there was nothing remotely
5 "democratic" about the 3 years, 8 months and 20 days in which the
6 country was torn apart, and more than 1.7 million of its citizens
7 massacred. It has been outside the scope of this particular
8 trial to conduct a detailed examination of why the cities were
9 evacuated, of why people were forced to work in vast cooperatives
10 in the countryside, of why families were broken apart, of how and
11 why people died in vast numbers through starvation, disease and
12 overwork. Rather, this trial has focused on just one aspect of
13 the regime: the enforcement of radical ideology that involved
14 ruthless political violence.
15 Similar to other extremist regimes, such as in Stalinist Russia
16 and Nazi Germany, the target for such violence was anyone who did
17 not conform, or who did not submit. And similar to Stalin's NKVD
18 or Hitler's Gestapo, the security police of Democratic Kampuchea,
19 or the "Santebal" as it was known, mercilessly pursued all those
20 they deemed to be "enemies" of the regime.
21 In the revolutionary language of Democratic Kampuchea, the CPK
22 used the verb "to smash" to describe the physical act of killing
23 someone suspected of being an enemy. This particularly violent
24 expression denotes not simply that someone would be executed but
25 that they would be crushed to bits, obliterated, removed from the

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1 face of the Earth. Mass atrocity was accomplished, as at other
2 times in history, by the systematic dehumanisation of the victims
3 and the comprehensive indoctrination of the perpetrators.

4 [9.13.10]

5 This trial has focused on the crimes committed only at one
6 prison, Santebal security office S-21, here in Phnom Penh. But
7 S-21 was no ordinary jail. It was Democratic Kampuchea's model
8 political prison. It was the principle tool created by the
9 central committee of the CPK for identifying the enemies of the
10 regime, detaining them, extracting their confessions through
11 torture, then executing them when sufficient information had been
12 obtained.

13 This trial has focused on the criminal responsibility of only one
14 man: Kaing Guek Eav alias Duch, selected by the CPK to work as
15 deputy and then chairman of the prison. The accused was
16 committed to the Communist ideology, loyal to the leaders, and
17 was already well trained in security work, having previously run
18 a similar prison before the Khmer Rouge took power. He was the
19 CPK's trusted man to identify the supposed plots against the
20 revolution, and to root out those deemed to be traitors and
21 enemies. He was the personification of ruthless efficiency; he
22 was totally indifferent to the suffering of the victims. He was
23 the perfect candidate to run S-21.

24 Throughout the hearings Your Honours have gone to great length to
25 give the accused every opportunity to comment on the witnesses

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1 and the evidence put before the Chamber. He has always been
2 treated fairly, with dignity and with humanity. And he has been
3 very ably defended by experienced counsel. No doubt his counsel
4 recognised the wave of evidence against their client; no doubt
5 there are crimes that are so serious, which involve the suffering
6 of so many victims, which shock the conscience so profoundly,
7 that the only response can be a lengthy prison sentence.

8 [9.16.15]

9 It does not matter that there were people in superior positions.
10 It does not matter that there were people within the regime who
11 may bear responsibility for crimes committed on an even wider
12 scale. It does not matter that others may not admit their guilt,
13 or that they failed to cooperate with the authorities. Justice
14 demands that once a level of seriousness has been passed, the
15 ultimate sanction must be imposed for crimes that have shaken the
16 very foundation of society.

17 Your Honours, in this case you have heard the evidence of such
18 crimes. Our closing statement today is required by ECCC Rule
19 94(b), which states that the Co-Prosecutors shall be called upon
20 by the President to make such oral submissions as they consider
21 necessary for justice to be done. So to seek justice, we will
22 use the full 5 hours, Mr. President, you have given us. However,
23 keeping in mind the rule, and the fact the defence have been
24 given 7 hours in which to give their statement, if necessary, we
25 will ask for your permission for a small amount of extra time.

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1 First, the jurisdictional basis, the legal basis this Chamber has
2 to try the accused for the crimes charged. Second, the evidence
3 that supports these crimes, and how this evidence should be
4 legally qualified as crimes under the law. Third, the evidence
5 of the precise role the accused played, and the intent he had
6 when committing these crimes, and how this evidence should be
7 legally qualified in terms of his criminal responsibility under
8 the law. And finally, the fourth area, the factors that we
9 submit should be considered in determining your sentence.

10 Together as the Co-Prosecutors for this Court, my colleague
11 William Smith and I will direct you in our final statement to
12 four central areas we say should be examined fully in your
13 judgment.

14 [9.19.40]

15 I will address you, and as the precedents already been familiar,
16 although the public has not been informed, on the 11th of
17 November 2009 we submit the final submission, including the
18 confidential submission and the written submission that has been
19 (indistinct) in three languages -- Khmer, English and French --
20 along with the other civil parties and the defence. This written
21 submission is under 160 pages, 1000 footnotes and 200 legal
22 authorities; we hope will assist you in a concrete way in
23 arriving at your judgement.

24 Our statement today, therefore, should be seen as a complement to
25 the one filed, by re-emphasizing matters in a way which we hope

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1 will provide a further understanding of our position in this
2 case.

3 Time will not allow us to quote every page reference supporting
4 our submissions today; however, you will be able to find them in
5 the written version. Therefore, our closing statement can only
6 hope to be the briefest of summaries of the stories of the
7 victims and witnesses you have heard and of the documents you
8 have read.

9 It is unfortunate the defence, other than submitting a 16-page
10 brief raising some legal points, did not take the opportunity to
11 provide in advance the evidentiary basis of their plea of
12 mitigation. This, therefore, has only allowed us and the civil
13 parties to directly respond to their final statement in our
14 rebuttal. Be that as it may, we have attempted to address the
15 issues we believe the defence may raise in advance.

16 [9.23.15]

17 A criminal trial such as this, limited in its scope to only one
18 crime location and one man, will not provide all the answers for
19 everything that happened during Democratic Kampuchea, but we hope
20 that this trial will illustrate that justice and accountability
21 are the most important responses to atrocity.

22 Jurisdiction. Turning now to the evidence which establishes the
23 Chamber's jurisdictional basis to try the accused for the crimes
24 charged.

25 Your jurisdiction over this accused stems from the law on the

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1 establishment of the ECCC. This law empowers you to bring to
2 trial the senior leaders of Democratic Kampuchea and those who
3 were most responsible for specific crimes committed between the
4 17th of April 1975 and the 6th of January 1979. These crimes
5 consist of violations of both Cambodian and international laws.
6 The government of the Democratic Kampuchea, consisting of a
7 supposedly democratically elected peoples representative
8 assembly, was a complete sham. The real power lay with the
9 Communist Party of Kampuchea, the CPK, or often simply called
10 "The Party".
11 Within the party, the most powerful organ was the Central
12 Committee, the executive body within which was the Standing
13 Committee which determined the policies of the regime. However,
14 people were encouraged to refer to the guiding force of the
15 country as Angkar, or the organization, a deliberately anonymous
16 term which contributed to the overall climate of secrecy, absence
17 of accountability; unlike a real democracy.
18 [9.24.50]
19 There is no specific guidance from the law applicable to the ECCC
20 as to who might in law be considered a senior leader. The Trial
21 Chamber is, therefore, permitted to examine international
22 precedent at the ICTY, a similar concept of "most senior leaders
23 suspected of being most responsible" was defined by the tribunal
24 as requiring an examination of the gravity of the crimes charged
25 and the level of responsibility of the accused. When analyzing

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1 the gravity of the crimes, the ICTY highlighted factors such as
2 the temporal scope, geographical scope, number of victims
3 affected, the number of separate incidents an accused is charged
4 with, and the manner in which the criminal conduct was committed.
5 As for the level of responsibility, the tribunal considered that
6 the term "most senior leader" was not limited solely to policy
7 leaders. Rather, a court must examine a number of factors such
8 as the permanency opposition, temporal scope, number of
9 subordinates, rank of the accused within the hierarchical
10 structure, and the actual criminal role of the accused.
11 The Co-Investigating Judges ruled that the accused "fall within
12 the personal jurisdiction of the ECCC as one who was most
13 responsible" for the crimes on account of his formal and
14 affective hierarchical authority, as well as his personal
15 participation as Deputy Secretary and then Secretary of S-21,
16 which was directly controlled by the Central Committee.
17 The Co-Prosecutors invite the Trial Chamber to apply the guidance
18 given at the ICTY and to determine that the ECCC has personal
19 jurisdiction over this accused, as both a senior leader and as
20 one who was most responsible.
21 [9.28.35]
22 The accused was the head of S-21, the most important security
23 office in Democratic Kampuchea. Under his authority, the staff
24 of S-21 systematically tortured prisoners to extract confessions
25 and executed them once their confessions were complete. His

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1 participation in the crimes at S-21 was comprehensive from the
2 establishing and implementing prison policies to personally
3 overseeing and participating in execution.

4 In terms of his responsibility, he was the permanent Secretary of
5 S-21 for almost its entire three years existence. He interacted
6 daily with the Standing Committee. He employed thousands of
7 subordinates and he was responsible for S-21 crimes on multiple
8 levels.

9 In terms of seriousness, the crimes at S-21 were some of the
10 gravest in the history of international criminal jurisprudence;
11 more than three years of systematic tortures, mass violations of
12 human rights, and execution committed upon more than 12,000
13 prisoners. Although the defence has not sought to challenge the
14 Co-Investigating Judges' ruling that the accused is to be
15 considered in the category of most responsibility, they have
16 suggested that he is unfairly being made a scapegoat.

17 They suggest that there were many other security chiefs of
18 prisoners all over the country in which greater numbers of
19 victims were killed who could and should have been brought to
20 justice. The Co-Prosecutors urge the Trial Chamber to reject the
21 claim that the accused is being made a scapegoat.

22 [9.31.05]

23 Let there be no misunderstanding. S-21 was at the apex of the
24 country-wide network of security offices that operated as prisons
25 within Democratic Kampuchea. S-21 was unique amongst all these

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1 prisons and, as we shall discuss, this accused had a unique
2 access to a unique relationship with senior leaders of the
3 regime.
4 S-21 was unique because it received prisoners from all over the
5 country, from every ministry, every army division, and every
6 provincial unit of administration. S-21 was also unique because
7 the victims included the highest ranking cadre of the CPK, even
8 members of Standing Committee. Uniquely, as the accused himself
9 has admitted, S-21 detained, tortured and executed the purges of
10 other security offices and prisons from across the entire
11 country.
12 But it is, perhaps, the tens of thousands of pages of prisoners'
13 confessions extracted under torture upon this accused's
14 authority, which shows the real importance and value of S-21 to
15 the regime. The accused sent S-21 confessions to the senior
16 leaders of the CPK. Through his analysis of these confessions,
17 he was instrumental in advising the senior leaders who to arrest.
18 The Co-Prosecutors know of no comparable archives of confessions
19 from any other prisons. It is inconceivable that any other
20 prison or any other prison chief had the same influence over the
21 CPK campaign in order to smash the supposed enemy of Democratic
22 Kampuchea. So it is that this accused is properly before these
23 Chambers for the crimes he committed between 17 April 1975 and 6
24 January 1979.
25 [9.34.10]

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1 Crimes. I now turn to crimes charges. In the indictment and the
2 evidence that supports these crimes beyond a reasonable doubt,
3 before doing so, I will address his use of the greater facts in
4 this case.

5 At the beginning of the Trial, the Co-Prosecutor read out a list
6 of facts that were either agreed or not contested by the accused.
7 These agreed facts are helpful to this Chamber in determining
8 which issues remain in dispute, but they do not remove the
9 prosecutor's obligation to prove the case against the accused
10 beyond reasonable doubt. Notably, as the case has progressed,
11 the accused has admitted more and more of the facts presented
12 before him, yet there remain inconsistencies and gaps in his
13 admission.

14 Significantly, it is as important to note that the accused has
15 not agreed to in this case. He has not agreed that he committed
16 these crimes willingly; he's not agreed to this case. He has not
17 agreed he committed these crimes willingly, but rather superior
18 orders and duress that caused him to commit such crimes. So
19 although he has admitted to many facts in the indictment relating
20 to his criminal actions at S-21, he has admitted very little in
21 relation to his criminal intent. In short, he has claimed that
22 although he passed on the criminal orders, he did so only on the
23 threat of death by his superiors.

24 As the President and Your Honours are well aware, criminal intent
25 is as significant in determining responsibility for a crime as

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1 much as the act of crime itself. In this case, the omission of
2 his agreement to full criminal intent based on the evidence
3 limits the effect of his agreement of the facts. Bearing in
4 mind, therefore, this significant lag of agreement on the intent
5 to commit the crimes and the accused changing position in his
6 agreement on his criminal acts from judicial investigation to
7 trial, we submit that the Trial Chambers have carried out
8 examination of the entirety of the evidence when considering its
9 judgment and not simply to refer to the agreed facts.

10 [9.37.43]

11 As the accused has accepted, there were no proper legal structure
12 in place in the Democratic Kampuchea. There was no proper
13 justice system. There were no courts, no police force and no
14 published law to which people of Cambodia could go to for
15 guidance. Instead, security offices were established throughout
16 the country in which the CPK detained and interrogated, tortured
17 and executed those linked to the former Khmer Republic regime or
18 those who were suspected of offences against the new DK regime.
19 At no time were there any legal safeguards, fair trials arise, or
20 representation for any of those so arrested.

21 The accused stated during the Trial that it would be more
22 accurate to describe these security offices as the "death
23 chambers" rather than prisons, as there was no prospect of being
24 released. Why were people treated with such cruelty? Why were
25 so many people killed? The evidence has shown that the CPK

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1 conducted political persecution on a national scale. The
2 killings were driven by a strict and discriminatory party policy
3 to smash all "enemies" of the regime, the definition of who was
4 to be so considered evolving as the years went by.
5 In the early days of the Democratic Kampuchea, the victims of the
6 policy were the officials and the military of the former Khmer
7 Republic. By 1976, all system of private ownership of land and
8 property had been dismantled, the cities forcibly evacuated, and
9 the entire citizenry of Cambodia compelled to live and work in
10 agricultural co-operatives or other worksite. Those people who
11 previously worked as anything other than peasants were
12 susceptible to arrest for possessing capitalist, feudalist or
13 other so-called exploiting tendencies.
14 And, finally, the CPK began to target their own kind. As people
15 were purged in huge numbers from the revolutionary ranks, the
16 much-quoted document of March 1976 from the CPK Central Committee
17 set out the authority to smash enemies located as described, both
18 inside and outside of the ranks. From this point onwards, the
19 vast majority of victims were persons purged from within the
20 Party and the military.
21 [9.41.05]
22 From the earliest day of the regime, Vietnam and Vietnamese were
23 specifically targeted as sworn enemies of Democratic Kampuchea.
24 Within Cambodia, the CPK conducted purges against all ethnic
25 Vietnamese or those suspected of harbouring Vietnamese

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1 sympathies. Along its land and maritime borders, DK forces
2 conducted repeated armed incursion into Vietnamese territory from
3 the moment they seized the power in April 1979. Initially a
4 covert war, the CPK openly declared hostility at the end of 1977
5 but, by that stage, many Vietnamese soldiers and civilians had
6 already been captured and executed at S-21.

7 The CPK conducted merciless purges against its own cadre who the
8 senior leaders suspected of treason. S-21 directly implemented
9 and facilitated these purges, receiving many thousands of
10 prisoners from the targeted region; ministry and military units
11 throughout the period in which the prison was operational.

12 From the Northwest Zone, at least 1,211 people were arrested and
13 sent to S-21. At least 1,165 people were arrested from the East
14 Zone and sent to S-21. When the ministries were targeted, more
15 than 4,000 prisoners were arrested and sent to S-21; both from
16 central DK ministry situated and around Phnom Penh, as well as
17 ministry attached to the zone. S-21 was also instrumental in the
18 purges within the entire DK military including, the general staff
19 in the Centre Division, the Zone Division, the Regiment, the
20 militia. Many thousands of DK military personnel were arrested
21 and executed at S-21 from as early as 1976 onward. Such purges
22 typically paved the way for further purging of civilian cadre.

23 [9.44.05]

24 The accused has agreed the essential details of the establishment
25 location, configuration and the operation of S-21. He accepts

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1 that it was established in a meeting convened by the Chief of the
2 General Staff, Son Sen, on 15 August 1975 and became fully
3 operational from October that year. He agrees that S-21 complex
4 moved location too several times during its initial eight months
5 of operations, eventually settling in April 1976 on the premises
6 of Ponhea Yat High School; a high school located in Phnom Penh
7 between Streets 113, 131, 120 and 350.

8 The layout of the prison and configuration of a detention cell,
9 interrogation rooms and administration block are not disputed by
10 the defence nor are the principal functions of each of the
11 staffed units which worked there. As we have seen, the central
12 compound of the school premises, and the five main buildings
13 within it, was the heart of S-21's operation.

14 At any one time, approximately 1,500 prisoners could be detained
15 in the main detention blocks. A high fence topped with barbed
16 wire surrounded the central compound. Multiple cordons of armed
17 guards patrolled both inside and outside of the buildings as the
18 facility was situated in the neighbourhood immediately
19 surrounding the central compound, including interrogation offices
20 for both regular and special; a high-ranking prisoner medical
21 centre to which prisoners were taken to have their blood forcibly
22 extracted; storage facility for medical and other supplies; S-21
23 staff living quarters; a communal cooking and dining hall for
24 S-21 staff; rooms in which staff political education was taught;
25 and a room for typographical support; and external perimeter

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1 around this centralized facility as also maintained.
2 [9.46.52]
3 S-21 was a systematic torture-killing centre. It was highly
4 efficient. Discipline was very strict. Secrecy was paramount.
5 Staff were organized along military lines. Units performing
6 different functions were kept separate and the prison population
7 was closely targeted, kept in such condition and would completely
8 destroy their dignity and any inclination to resist. Because S-21
9 existed not simply to detain prisoners before execution, but also
10 to extract written confessions from them, the two largest staff
11 units were the defence section and the interrogation section.
12 The defence section was responsible for all functions relating to
13 the transport, guarding and execution of the prisoners. The
14 interrogation section was divided into two; those who
15 interrogated important prisoners and those who interrogated
16 ordinary prisoners.
17 As the Trial Chamber has already heard, there were further
18 divisions into these teams which used torture; the hot group,
19 those which did not do the -- did not -- the cool group, and
20 those who employ a technique known as "chewing", alternating
21 torture and repetitive questioning to break the will of the
22 prisoners who did not easily confess.
23 The Trial Chamber has heard testimony from various former staff
24 members of S-21. The majority came from simple peasant
25 backgrounds without much formal education. Some were extremely

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1 young, making it even easier for the senior revolutionaries to
2 indoctrinate them. Many of these former staff members were not
3 particularly keen to talk about the work that they performed at
4 S-21.
5 Undoubtedly, they had been involved in the crimes at S-21; crimes
6 that sometimes they could not even bring themselves to admit.
7 Perhaps they were in fear of being accused of being arrested and
8 put on trial, but these subordinate staff members were not in
9 position of influence or power. They did not devise or develop
10 the policies on searching for and smashing enemies. Perhaps,
11 with the exception of former interrogator, Mam Nai, a
12 highly-educated man and still an un-reconstructed Communist to
13 this day, they had little understanding of, and no firmly held
14 belief, in the philosophy of the CPK. The ordinary staff members
15 of S-21 were tools used by the senior cadre, shaped and
16 manipulated by the accused and the S-21 Committee.
17 [9.50.15]
18 At every level and at every opportunity, CPK policy on the
19 smashing of enemies was continually reinforced. S-21 staff
20 constantly attended meetings and "political education" sessions.
21 They were required to read the CPK journals, "Revolutionary Flag"
22 and "Revolutionary Youth". DK radio was regularly broadcast on
23 loudspeakers in the prison. Staff were entirely immersed in
24 revolutionary culture through the very language they were
25 required to use and through the unquestioning adherence to the

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1 political line that was demanded of them. It has been said that
2 the degree of civilization in a society can be judged by entering
3 its prisons.

4 The Trial Chamber is not required to judge the morality of an
5 entire society but to determine the responsibility of one
6 individual for the specific crimes that took place at S-21. And
7 perhaps the clearest way to illustrate these crimes is to retrace
8 the prisoner's horrible journey from arrest to execution.

9 [9.51.55]

10 S-21 was known as the place from which there was no escape. It
11 is only by sheer chance that this Chamber has heard evidence
12 directly from three men who had been prisoners there. Their
13 talents as artists were what spared them from immediate execution
14 once they arrived as prisoners of S-21. The collapse of the DK
15 regime in early January 1979 and the chaos that followed gave
16 them the chance to escape their otherwise certain death sentence.
17 The vast majority of prisoners would have been arrested without
18 warning from their civilian or military units. They may have
19 been duped into believing that they were being taken elsewhere
20 for education, for a medical examination or to perform duties for
21 Angkar at a different work site. They would have been arrested
22 swiftly, stealthily and often at night.

23 Former prisoner and S-21 survivor Vann Nath described how he was
24 first taken to district and regional security offices and
25 interrogated under torture. He described his terrifying journey

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1 to S-21 by truck at night. He was shackled with 20 or 30 others.
2 He and the other prisoners were led stumbling into the prison,
3 blindfolded and roped by the neck, taunted and jeered at by the
4 guards.

5 Once through the main gates, most prisoners were processed in the
6 central courtyard, Building E. Staff from the documentation unit
7 recorded their brief personal details. They were then
8 photographed and thousands of these black and white prints have
9 survived, long after their subjects had been killed. These
10 images stand as a powerful reminder of the fear, bewilderment,
11 anger and resentment the prisoners must have felt at the moment
12 they arrived at S-21.

13 [9.55.30]

14 All prisoners were photographed and classified, then escorted to
15 detention blocks based upon their supposed importance or
16 perceived dangerousness. The vast majority were detained in
17 communal detention rooms, many dozens being chained together.
18 Former guard Chhun Phal described the appalling conditions in
19 which the prisoners were detained: shackled in long rows,
20 clothed in nothing but rags, given a few spoonfuls of gruel to
21 eat and washed by being hosed down where they lay.

22 Vann Nath described how he lost his dignity in such conditions.

23 In his words, they were treated more as animals than as humans.

24 Prisoners were not permitted to move, to sit up or to talk.

25 There was no proper sanitation or hygiene and they were required

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1 to relieve themselves in metal boxes passed around the room.
2 Disease and illness was rife. Some succumbed where they lay, yet
3 the corpses remained shackled to the other prisoners for some
4 time.
5 The prisoners were reduced to a pitiful state. Emaciated and
6 starving, they attempted to eat insects, which fell from the
7 fluorescent ceiling lights, to alleviate their hunger, knowing
8 that they would be severely punished if discovered. They lost
9 all will to live. Some attempted suicide, although the strict
10 conditions and heavily-guarded cells provided little opportunity.
11 Most prisoners were interrogated. They would be removed from
12 their detention rooms and escorted under armed guard to
13 individual interrogation cells where they would be subjected to a
14 variety of threats, intimidation, violence and torture. Former
15 prisoner and survivor Chum Mey was treated particularly badly.
16 His experiences have deeply traumatized him. The Trial Chamber
17 witnessed at first hand, actually, how even now, more than 30
18 years on, it is agony for him to recount what happened.
19 [9.59.15]
20 He described how he was taken from his detention room,
21 blindfolded and ordered to sit in a room spattered with fresh
22 blood. He was interrogated about his involvement in CIA and KGB
23 plots. When he told his interrogators that he had no knowledge
24 of such matters he was viciously beaten. Days and weeks of
25 torture followed, the methods becoming increasingly violent. He

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1 was electrocuted and his toenails were ripped out. Eventually,
2 broken and bewildered, he falsely confessed to imaginary plots
3 involving people he knew, simply so his tormentors would stop.
4 Bou Meng, the third surviving victim heard by the Trial Chamber,
5 described how he was taken to a room and invited to choose which
6 implement his interrogators should use to beat him. He was
7 beaten and whipped bloodily while being urged to confess to CIA
8 and KGB plots.

9 He was taunted, tormented and humiliated by S-21 staff. On one
10 occasion the accused forced him to fight with another detainee,
11 it would seem for his own cynical amusement.

12 The screams of the prisoners echoed around S-21. They returned
13 to their cells mutilated and covered in blood and bruises from
14 their torture. But from surviving S-21 documents and from prison
15 staff who gave testimony or statements before these Chambers, we
16 know that there were even worse torments. Particularly heinous
17 practices at S-21 included the forcible extraction of blood and
18 the practising of live anatomical surgery.

19 [10.02.30]

20 The former interrogator Prak Khan described how blood was
21 extracted from living prisoners until they lay gasping and dying.
22 This practice was confirmed by the medics Makk Sithim and Sek
23 Dan. Chief of the document section, Suos Thy, confirmed that
24 lists of prisoners were drawn up, indicating who had been killed
25 by having their blood drained. To the accused himself this

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1 practice apparently meant nothing. The Trial Chamber has seen
2 his handwriting in red ink next to the name of one victim with
3 the simple phrase, "Smashed. Blood." Similarly, the accused has
4 coldly admitted how, in his own words, "A couple of prisoners
5 were taken for medical experiments for anatomy purposes."
6 The cruelty towards the prisoners knew no limits. The squalid
7 bestial conditions in which the prisoners were detained and the
8 instructions given by the accused to ensure that the confessions
9 were not prematurely terminated by death during torture gave the
10 interrogators virtually free rein to use their imagination. Some
11 prisoners were force-fed excrement. The Trial Chamber has been
12 shown the now infamous document summarizing how this method has
13 been practised upon the accused's former tutor, Kae Kim Huot.
14 It is almost beyond comprehension that the accused and his staff
15 had been so totally desensitized to the suffering of their fellow
16 human beings that they were capable of practising such cruelties,
17 yet this was the intended result of unquestioning loyalty to the
18 Party. Psychological as well as physical torture was regularly
19 employed in order to extract the most complete and useful
20 confessions from the prisoners. Even the senior prisoners,
21 although detained in separate cells rather than communal rooms,
22 were tormented and intimidated.

23 [10.05.45]

24 High-ranking detainees such as Ney Saran, alias Ya, were
25 callously threatened that if they did not confess, Angkar knew

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1 where their families lived. Any weakness was seized upon by the
2 interrogators. Siet Chhae, alias Tum, himself an important
3 senior military cadre, protested his innocence, proclaiming his
4 loyalty to the Party. His close relationship with his family was
5 cynically twisted against him and he was tortured to falsely
6 confess that he had committed incest with his own daughter.
7 Further mention must be made of the interrogations and the use to
8 which the resulting confessions were put. In the perverted
9 political society of Democratic Kampuchea, when someone was
10 arrested they had already been condemned. "Angkar never makes a
11 wrongful arrest" was the universal theory. The purpose of
12 torturing prisoners into making confessions was not simply to
13 extract evidence of their own supposed traitorous plots but also
14 to uncover other traitors who it was believed were also plotting
15 against the regime.
16 Hundreds of thousands of pages of hand and typewritten
17 confessions resulted from the interrogations of S-21 prisoners.
18 The Trial Chamber has seen only a tiny fraction of these. The
19 importance of the confessions to the case against this accused is
20 not so much their content as the manner in which they were
21 transmitted to their senior leaders.
22 As we shall discuss, the accused was the only person with the
23 authority to report to the senior leaders. He was almost
24 exclusively responsible for annotating the confessions and for
25 summarizing their contents to enable the senior leaders to grasp

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1 the myriad of enemy plots that were supposedly being hatched
2 throughout the country. It was this analysis that influenced the
3 direction of the future purges and it was this analysis that kept
4 the vicious cycle of arrests, interrogation, torture and
5 execution turning.

6 [10.09.20]

7 The inhumanity was practised on such a huge scale at S-21. The
8 overwhelming majority of the prisoners were Cambodians. They
9 spent anywhere from a few days to over a year at S-21, although
10 the average was about two months. Babies were taken from their
11 parents and killed without hesitation. Women and young children
12 were not spared. Vietnamese prisoners, both military and
13 civilian, were forced to make confessions and their answers
14 either filmed or broadcast on the radio as part of DK propaganda
15 before they were killed. Western prisoners, too, were forced to
16 confess to supposed enemy activities in exactly the same terms as
17 the Cambodian prisoners before being murdered and their bodies
18 "burned to ashes".

19 The accused has accepted that he had "absolute" authority over
20 the linked work site at Prey Sar, also known as S-24, located in
21 the Dangkao district south of Phnom Penh.

22 Prey Sar was where those arrested from within the Party,
23 particularly the military, were detained before a final decision
24 was taken on their torture and execution.

25 As the accused has admitted, the detainees at Prey Sar, known as

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1 "elements", were forced to work extremely long hours in the rice
2 fields under close supervision. Although it appears that they
3 were not as closely shackled as the prisoners at S-21, the
4 elements at Prey Sar were constantly guarded. At any stage they
5 could be sent straight to Choeung Ek for execution or via S-21
6 for torture and interrogation.

7 No prisoner was ever released from Prey Sar. In the accused's
8 own words, the detainees had already lost their rights and a
9 decision to smash them was "halfway taken" once they had arrived
10 at Prey Sar. In fact, the only real reason they were kept at all
11 was so they could perform forced labour to supply the Party
12 Centre with rice and other crops.

13 Given that the rations were poor, medical supplies non-existent,
14 and working conditions adverse, most were worked to exhaustion
15 before being sent to their death and replaced by others.

16 [10.13.00]

17 As the accused has also accepted, prisoners were initially
18 executed, buried in and around the S-21 complex. The cries of
19 the victims and the stench of death from the rotting corpses
20 buried in shallow graves must have been ever present in those
21 early days. But soon after he became secretary in 1976 the
22 accused relocated the main execution and burial site some 15
23 kilometres away from Phnom Penh -- Choeung Ek -- partly in order
24 to avoid the risk of epidemic, but no doubt also because the
25 grave diggers were running out of the space in the immediate

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1 vicinity of S-21.

2 The majority of prisoners survived their terrifying ordeals at
3 S-21 but this was only a temporary reprieve. Execution was a
4 certainty for every one of them but we can only imagine how they
5 must have imagined their death a thousand times over during the
6 miserable incarceration and brutal torture.

7 None of the prisoners taken by truck at night to the killing
8 fields of Choeung Ek survived to speak of their final moments.
9 Only the prison guards and the accused himself are able to
10 describe the fate that awaited the victims. Yet, how poorly
11 their shamed description can convey the true extent of the fear
12 and anguish the prisoners felt.

13 At what point did the victims know they were about to be
14 executed? Was it when they were sitting on the trucks en route
15 to the killing fields? Was it as they were taken down from the
16 vehicle and led out into the darkness? Or when they were kept
17 waiting in the small hut, the noise of the generator attempting
18 to drown out the screams of those ahead of them?

19 [10.16.10]

20 Surely they must have known, as they were led out one by one and
21 forced to kneel beside the execution pits that their lives were
22 at an end. No-one escaped from Choeung Ek. Every corpse was
23 checked for signs of life. Those not killed instantly by the
24 blow to the base of the neck had their throat and stomach split
25 open with a sugar palm knife.

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1 Choeung Ek, an otherwise peaceful rural location, has become
2 synonymous with the killing fields that have symbolized the
3 inhuman cruelty of a regime that killed so many of its own
4 citizens.

5 For the purposes of this trial, however, this one site is no mere
6 symbol. Under the authority of this accused, Choeung Ek was the
7 final destination for a vast majority of S-21 prisoners. Certain
8 categories of prisoners, such as high-ranking CPK officials,
9 Vietnamese and Western prisoners were still executed in and
10 around the central S-21 compound.

11 Skeletons of long-murdered prisoners, old army uniforms and
12 shackles have all been found in the neighbourhood surrounding
13 S-21. Householders from the Tuol Sleng district have given
14 statements to describe their grim discoveries as they were
15 returning to their houses once the Khmer Rouge had been driven
16 from power.

17 The evidence heard by this Trial Chamber has established beyond
18 any reasonable doubt the facts we have just described. We now
19 turn to the legal qualification of these facts. In other words,
20 what crimes do these facts prove?

21 The Co-Prosecutors have already submitted an extensive written
22 brief that deals in detail with this. So our oral presentation
23 today will summarize these arguments rather than rehear them in
24 full.

25 [10.19.15]

30

1 All the facts so far described can be properly qualified as
2 criminal offences under the ECCC Law. The indictment against the
3 accused as amended by the Pre-Trial Chamber's appeal decision of
4 5 December 2008 found that crimes against humanity, grave
5 breaches of the Geneva Conventions and the national crimes of
6 torture and homicide, contrary to the Cambodian Penal Code of
7 1956 had been committed.

8 The Co-Prosecutors invite the Trial Chamber to confirm these
9 crimes in its judgment. I now turn to each criminal
10 classification in turn.

11 Crimes against humanity. While it is legally and morally
12 improper to discuss a hierarchy of international crimes, it
13 cannot be denied that 13 crimes carried out carry a particular
14 stigma in light of the gravity in which they are committed.

15 These crimes are so serious that the impact is felt not simply by
16 the individual victims and their direct family and friends, but
17 by humanity as a whole. Such crimes which involve an attack on
18 the dignity of all human beings and on the very notion of the
19 community of mankind, and known as crimes against humanity. The
20 barbaric acts committed at S-21 fall squarely within this
21 category of crimes. Article 5 of the Law on the Establishment of
22 the Extraordinary Chamber in the Court of Cambodia empowers this
23 Chamber to try suspects for the commission of nine different
24 specified crimes against humanity.

25 The evidence proves beyond a reasonable doubt that seven out of

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1 these nine crimes were committed at S-21, namely imprisonment,
2 other inhuman acts, enslavement, torture, murder, extermination,
3 and persecution. In order for these seven separate enumerated
4 offences to qualify as crimes against humanity, certain
5 additional jurisdiction elements must be also proven. The
6 enumerated offences must be committed as a part of widespread or
7 systematic attacks directed against a civilian population on
8 national, political, ethnical, racial or religious grounds. We
9 will briefly deal with these in turn.

10 [10.22.45]

11 The crimes committed at S-21 itself were undoubtedly part of a
12 much larger set of crimes committed across the whole country and
13 throughout the entire period of the DK regime. The so-called
14 "political line" of the CPK was universally enforced throughout
15 Cambodia and consisted not simply of smashing of "enemy" using
16 security forces and a network of security centres, but also
17 included amongst other matters, forced movement, unlawful
18 confinement of the population to rural cooperatives and
19 worksites, enslavement and starvation.

20 The geographical scope of these crimes was undeniably vast. The
21 total number of victims was similarly huge to the extent that the
22 crime at S-21 must be considered as part of the wider crimes
23 across the entire country. They must be considered as
24 widespread. Even that the crimes at S-21 are viewed in
25 isolation, they can also be properly be described as widespread.

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1 The victims of S-21 came from every geographical region of the DK
2 and virtually every military and civilian unit of administration.
3 From the surviving documents, the death toll was at least 12,273
4 people.

5 Taking these facts into account, whether the crimes committed at
6 S-21 are viewed as thousands of cumulative inhumane acts or as
7 one single inhumane act of the extraordinary magnitude, the
8 crimes were widespread. The enumerated offenses alternatively
9 required to be considered as systematic in order to qualify as
10 crimes against humanity. Whether seen as the wider enforcement
11 of the "political line," across the entire country or simply seen
12 as the violence and mistreatment of a single security office, the
13 crimes at S-21 must undoubtedly be described as systematic.

14 [10.25.50]

15 The violence, mistreatment, forced movement, enslavement and
16 other acts were organized and orchestrated by the Party Centre.
17 Within S-21, as a separate security office in itself, the accused
18 as security and his senior subordinates ensure that the
19 instructions of the party were implemented methodically and
20 faithfully. The violence and mistreatment were both carefully
21 organized and repetitive.

22 The accused has confirmed that, to his knowledge, all security
23 offices functioned in the same way as they were all required to
24 implement the party line. The process of arrest, detention,
25 interrogation, torture, confession and execution cannot

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1 reasonably characterized as either random or accidental. Within
2 S-21 in particular, the meticulous record keeping and
3 documentation clearly illustrates the systematic nature of the
4 crimes.

5 The enumerated offences must also be committed as part of an
6 attack to be considered as a crime against humanity. Under
7 international criminal law, an attack has been defined as, "a
8 cause of conduct involving the commission of acts of violence."
9 An attack is not limited to the use of armed force nor is it
10 required to be a military attack or part of an armed conflict.

11 [10.28.05]

12 On the contrary, it encompasses any mistreatment of the civilian
13 population. The undisputed evidence before the Trial Chamber
14 clearly establishes that there was such an attack. Across
15 Democratic Kampuchea as a whole, forced labour, forced movement,
16 violence and mistreatment of civilians was the standard operating
17 practice of the CPK. Additionally, the creation, management and
18 operation offices throughout the country amounted the
19 orchestrated suppression on a massive scale.

20 Within S-21 itself, the attack was characterized by perhaps tens
21 or even hundreds of thousands of individual acts of violence
22 including beatings, torture, killings and other inhumane acts
23 implemented systematically. Such repression in itself
24 constituted an attack for the purposes of Article 5 of the ECCC
25 law. A crime against humanity must be "directed against" a

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1 civilian population. This requires the civilian population be
2 the primary object of the attack.
3 The agreed facts together with evidence of Dr. Craig Etcheson
4 clearly established that the CPK attack in cooperatives,
5 worksites, security offices and S-21 itself was directed against
6 the entire population of Cambodia which was predominantly
7 civilian. This attack began with the forced evacuation of the
8 entire civilian population of Phnom Penh and other cities, the
9 enslavement of the country's population in cooperatives and
10 worksites and the elimination of all intellectuals, capitalists,
11 and persons associated with the former government. Once this was
12 achieved, and as we have already discussed, the attack focused on
13 individuals within cooperatives, worksites and the CPK itself,
14 who were deemed to be potential enemies of the states. The
15 notion of "civil population" for the purposes of this
16 jurisdictional element of crimes against humanity refers to all
17 persons who are not members of the armed force. The population
18 under attack may include non-civilian without forfeiting the
19 civilian character, as long as the population is predominantly
20 civilian. The S-21 list showed that the single largest group of
21 detainees were those cadre from the DK's civilian government,
22 even within S-21. Then the targets of the attack were
23 predominantly civilian.
24 [10.32.12]
25 A further qualifying jurisdictional requirement is that the

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1 attack be committed on a discriminatory basis. This
2 discrimination must be based on national, political, ethnical,
3 racial or religious grounds.

4 The President, should we take an adjournment now or should I
5 continue?

6 MR. PRESIDENT:

7 I think it is an appropriate time to take the adjournment, so we
8 may now take the adjournment for 20 minutes. The session will be
9 resumed accordingly.

10 (Judges exit courtroom)

11 (Court recesses from 1033H to 1106H)

12 (Judges enter courtroom)

13 MR. PRESIDENT:

14 We shall now resume our session. We would like to give the floor
15 to the national Co-Prosecutor to proceed with the remaining of
16 her oral closing statement.

17 MS. CHEA LEANG:

18 Thank you, Mr. President. I may now proceed.

19 The evidence before the Chamber clearly establishes that the CPK
20 attacked the civilian population on political, religious and
21 ethnic grounds, in cooperatives, worksites and security offices
22 throughout the whole of Cambodia, including S-21 and Prey Sar.

23 This attack was driven by political ideology. The CPK
24 systematically engaged in political persecution by actively
25 searching for, imprisoning and executing all those considered to

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1 be enemies or otherwise undesirable elements.

2 This included former Khmer Republic soldiers and officials as

3 well as CPK cadres, combatants and workers who were purged for

4 supposedly traitorous tendencies. The CPK also pursued a policy

5 of ethnic discrimination against the Vietnamese, attempting to

6 purge the country of those believed to support Vietnam.

7 It can be reasonably inferred that the CPK also engaged in

8 religious persecution. The constitution of Democratic Kampuchea

9 prohibited all "reactionary religions", which the accused stated

10 must be read as including Islam and Christianity, but in reality

11 there was no tolerance for any religion, including Buddhism.

12 The accused stated during the course of the hearings before the

13 Co-Investigating Judges that no one dared to practice religion

14 openly during the regime, and that Pol Pot had "abolished"

15 religions, and was planning to demolish the stupa on top of Wat

16 Phnom, to replace it with a Communist statue.

17 In order for the numerated offences to be considered crimes

18 against humanity under international criminal law, the accused

19 was in regular communication with his superior in the CPK

20 hierarchy, and participated in meetings with the units of the DK

21 government and the military. These meetings and connections

22 informed him about the conditions in the rest of Cambodia.

23 Furthermore, the accused had an unprecedented and uniquely

24 detailed knowledge of the situation across the entire country

25 through his extensive reading of the prisoners' confessions. His

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1 entire testimony confirms that he was fully aware of the context
2 of the attacks on the civilian population.

3 [11.11.40]

4 The accused also knew that his acts were part of that attack. He
5 knew, and has admitted in evidence before the Trial Chamber, that
6 S-21 helped to facilitate the purges by identifying alleged
7 "enemies" on the basis of confessions extracted specifically for
8 that purpose at S-21.

9 We now turn to the seven separate enumerated offences within the
10 legal category of crimes against humanity that have been clearly
11 established by the evidence in this case.

12 Imprisonment. Surviving prisoner records are incomplete, and we
13 know that the names of certain detainees were never recorded.
14 The figure of 12,273 detainees compiled from the documents is
15 most likely a significant underestimate. There can be no doubt
16 whatsoever that all deprivation of liberty at S-21 was arbitrary.
17 Prisoners were arrested because they were considered enemies;
18 such a putative offence was never described by any legal decree,
19 law or statute.

20 Prisoners at S-21 could never challenge their imprisonment
21 because there was never a functioning legal system in Democratic
22 Kampuchea. As commander of S-21, the accused arbitrarily
23 deprived prisoners of their liberty. The accused has accepted
24 that he knew at the time there was no legal basis for their
25 detention, nor any means by which prisoners at S-21 could

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1 challenge their imprisonment.

2 [11.14.15]

3 Other inhumane acts. Before we turn to the more recognised
4 crimes of violence that were committed at S-21, the category of
5 "Other inhuman acts" is a residual category of crimes against
6 humanity which criminalises acts of similar gravity to those that
7 are specifically enumerated. This category of crimes is
8 especially appropriate to reflect the plethora of barbaric acts
9 practiced at S-21 under the authority of the Accused, all manner
10 of serious bodily and mental harm was inflicted upon the
11 prisoners, both from overt acts of violence and intimidation, and
12 also from the creation of conditions of detention so traumatizing
13 that they were most certainly inhumane. This harm was not
14 accidental. It was deliberately calculated to, and it in fact,
15 caused the maximum pain and distress. The inhumane acts
16 committed at S-21 are individually shocking but, taken together
17 they leave us truly astonished at the depth of depravity and
18 cruelty. It was little wonder that some prisoners attempted
19 suicide rather than continue to suffer such incessant cumulative
20 and extreme torments.

21 [11.17.00]

22 We will briefly list several such instances as established by the
23 evidence: The creation of inhumane conditions of detention, in
24 particular through overcrowding and a lack of adequate food,
25 sanitation and medical treatment; the forcible invasive and

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1 collective restraint during detention; the arbitrary and
2 unnecessary physical violence during and outside interrogation;
3 the forcible blood extraction and live anatomical experiments;
4 the creation of a climate of fear at S-21 by imposing a harsh
5 system of discipline and by intimidating and threatening the
6 prisoners; the psychological abuse by detaining prisoners in the
7 same or adjacent cells as persons who were being tortured, who
8 had been tortured or who had died from torture, disease or
9 malnutrition, or a combination of all three.

10 All such inhumane acts, whether viewed individually or
11 cumulatively, are properly characterized as severe. These acts
12 were committed by the accused as the Secretary of S-21 and by his
13 subordinates under his direct authority. He gave direct orders
14 to his subordinates to intimidate, threaten, and to use violence.
15 He was fully aware of the conditions in which the prisoners were
16 being detained and interrogated. As Secretary of S-21, he had
17 intentionally created and managed a system of ill treatment. The
18 evidence has shown that whether specifically authorized or
19 implicitly condoned or tolerated, these specific inhumane acts
20 were indeed part of the horrors of S-21.

21 Enslavement. The evidence before the Trial Chamber establishes
22 that the crime against humanity of enslavement was committed at
23 S-21. Enslavement is defined as the intentional exercise of
24 powers of ownership over a person and describes only too well the
25 conditions in which the prisoners at S-21 lived. Every aspect of

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1 the lives of the prisoners of S-21 was controlled. Prisoners
2 were kept in cells and constantly guarded. They were restrained
3 with handcuffs and shackles. Discipline was extremely strict.
4 Prisoners were not permitted to speak, make any noise or move
5 without permission.
6 [11.20.50]
7 Prisoners lived in squalid, unsanitary conditions. Bathing
8 consisted of prison guards hosing down inmates in their cells
9 while they remained shackled. Prisoners had to ask for
10 permission to urinate or defecate, which they would do while
11 chained in their cells. Drinking water was given at the
12 discretion of the guards. Food was woefully inadequate. Such
13 detention conditions go far beyond what is reasonable or
14 necessary at a prison. This level of control over the prisoners
15 deprived them entirely of their free will.
16 Similarly, at Prey Sar, prisoners were forced to work in
17 gruelling conditions under the constant threat of execution. The
18 prisoners planted rice and farmed the land to fulfil the
19 production quotas of S-21, although they never benefited from
20 their labour. Non-compliance with the work quota by any prisoner
21 led to severe physical punishment, even for women and children.
22 The prisoners were subjected to cruel treatment and a lack of
23 sufficient food and rest. Their condition can truly be described
24 as one of enslavement.
25 The accused personally, and through his subordinates, intended to

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1 exercise such ownership and total control over the prisoners. He
2 enforced the rules that deprived the prisoners of S-21 of any
3 freedom or control over their own lives. He was fully aware that
4 detainees who were forced to work within the prison, especially
5 at Prey Sar, worked simply to fulfil production quotas.
6 Sexual violence. As discussed by the civil party group 2
7 yesterday, the crime of rape also occurred at S-21. Contrary to
8 the civil party group 2 submission, we discussed evidence of rape
9 in our final submission and concluded that a rape occurred.
10 Specifically, there is consistent and credible evidence elicited
11 during the judicial investigation and at trial that the rape went
12 unpunished by the accused at S-21. Accordingly, it is beyond a
13 reasonable doubt that rape is a crime against humanity that the
14 accused is criminally liable for under superior or command mode
15 of responsibility.

16 [11.24.30]

17 Torture. Turning to one of the two most obvious crimes committed
18 at S-21, torture as a crime against humanity requires proof of
19 three elements. First, an act or omission must inflict severe
20 pain or suffering, whether physical or mental. Second, the act
21 or omission must be intentional. And, third, the act or omission
22 must have been carried out with a specific purpose, such as to
23 obtain information or a confession, "to punish, intimidate or
24 coerce the victim or a third person or to discriminate on any
25 ground against the victim or a third person".

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1 It is indisputable that torture so defined was practised on a
2 deliberate and systematic basis at S-21. Torture was a routine
3 and part of the culture of S-21.
4 It was the principal tool compelling the prisoners to confess as
5 we will later elaborate when discussing this individual's
6 criminal responsibility. The accused was central to all torture
7 practised at S-21. He taught methods of torture to his staff and
8 how to best utilize torture techniques to efficiently extract
9 "reliable" confessions.
10 He even personally mistreated prisoners himself, thereby
11 contributing to the environment of impunity. Throughout the
12 proceedings, the accused has gradually admitted that virtually
13 all forms of torture described by the witnesses were practised
14 under his authority at S-21.
15 Under international law, prison commanders have a responsibility
16 to protect prisoners from unlawful abuse and to ensure that
17 living conditions are humane. There was clearly never any
18 intention to treat S-21 prisoners humanely. On the contrary,
19 everything was calculated to contribute to their systematic
20 abuse.
21 [11.27.45]
22 Murder. The main crime of murder was the killing of the
23 prisoners, those who were detained at the vicinity including
24 women, children and men. We will never know exactly how many
25 individual lives were destroyed. At least 12,273 people are

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1 recorded in the existent prisoner list. Their deaths were a
2 meaningless statistic for the accused and the senior leaders of
3 the CPK.

4 Their sole concern was to ensure that adequate confessions were
5 extracted from those prisoners. Once this had been achieved,
6 execution followed -- systematic, deliberate, intentional and
7 without mercy.

8 The evidence demonstrates that the accused and his subordinates
9 clearly intended to kill the victims at S-21 knowing that as a
10 matter of CPK policy everyone detained had to be executed. It
11 was the accused's job to ensure that this policy was carried out
12 and he performed his grim task thoroughly and with commitment.
13 The majority of deaths resulted from violent acts inflicted by
14 S-21 staff members under the accused's command with the specific
15 intention to kill.

16 Most of the prisoners were executed by being clubbed or knifed to
17 death at Choeung Ek. Higher ranking prisoners were killed in or
18 near the S-21 compound and were also usually clubbed to death.

19 This Trial Chamber has heard evidence of how westerners were set
20 on fire with burning tires. The Trial Chamber heard the evidence
21 of how westerners were set on fire with burning tires, although
22 it is not entirely clear whether they had been killed.

23 The forcible extraction of blood surgery on living prisoners and
24 other pseudo-medical experiments leading to death were
25 pre-meditated. Intentional inflicting of torture often resulted

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1 in the death of the prisoner particularly during electrocution in
2 interrogation.

3 This fulfils the definition of murder and deliberate act
4 intending to inflict grievous bodily harm or serious injury.

5 Similarly, the inhuman condition, lack of proper food, hygiene
6 and medical care, caused the deaths of a large number of

7 prisoners which must also be seen as acts or omissions

8 deliberately intended to inflict such a level of harm or injury.

9 [11.31.45]

10 Extermination. The penultimate crime against humanity disclosed
11 by the evidence is that of extermination. This requires proof of
12 an act or omission resulting in the death of persons on a massive
13 scale and an intention on the part of the accused to kill on such
14 a massive scale or to create condition of life that leads to the
15 death of a large number of people.

16 The accused has accepted that this was the result of a deliberate
17 policy to kill all the prisoners which he and his subordinates
18 implemented. Considering the total number killed, such
19 deliberate destruction of human life clearly must be described as
20 extermination.

21 Persecution. The final crimes against humanity to be established
22 by the evidence is that of persecution, an offence in its own
23 right, defined by specific discrimination on political, racial,
24 and religious grounds. Persecution was the very essence of S-21.

25 The discriminations against prisoners and underpinned virtually

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1 every violent act or coerced admission against them throughout
2 their detention.

3 All of other enumerated offences we have so far described are
4 capable of being considered as persecutory acts and the
5 Co-Prosecutors invite the Trial Chamber to find this so.

6 As we have explained, the smashing of political enemies and the
7 eradication of the Vietnamese and all Vietnamese influences was
8 the strict political line of the CPK vigorously enforced by the
9 accused and his subordinates at S-21. In these circumstances,
10 there can be no doubt that the accused and his subordinates
11 carried out the persecutory acts with the intention to
12 discriminate on political and/or racial grounds.

13 [11.34.50]

14 Grave breaches of the Geneva Conventions. I now move on to how
15 these facts also prove that the accused's actions at S-21
16 constitute war crimes. The public may ask why is it necessary to
17 address these crimes which are based on generally the same facts.
18 Are not convictions under one class of international crimes such
19 as crimes against humanity enough? These are reasonable
20 questions which require answers.

21 First, the rule of law requires it and this Court and our office
22 in particular are bound to enforce the law. Second, it is
23 important that the Cambodian and the world community see that
24 grave breaches of Geneva Convention are punished in order for it
25 to continue in its ability to have a deterrent effect in the

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1 future on armed conflict all over the world. These conventions
2 should not be seen just as words on paper, but rights and
3 principles that civilized nations believe in and uphold
4 regardless of politics or convenience.

5 Third, war crimes in combination with other charges found in the
6 indictment accurately reflect the criminality of the accused and
7 the absence of war crimes would not tell the entire story of
8 S-21; in particular, the death of innocent Vietnamese civilians
9 and soldiers who deserved much more than what they got.

10 [11.37.10]

11 By way of background to these crimes, after World War II, the
12 international community came together at Geneva and established a
13 set of rules with the principal aim of reducing or removing
14 wartime atrocities against civilians and prisoners of war. The
15 criminalization and punishment of war crimes, the colloquial
16 expression for serious violation of the rules codified in the
17 Geneva Convention, has unquestionably been part of established
18 international criminal law throughout the whole of the second
19 half of the 20th century, but in the 50 years since the Geneva
20 Conventions were signed, they have been recognized more in their
21 breach than in their observance. So it proved in Democratic
22 Kampuchea's armed conflict with Vietnam between 1975 and 1979.
23 Vietnamese prisoners of war detained at S-21, both military and
24 civilian, were legally entitled to be treated fairly and with
25 humanity. This accused and the subordinates acting under his

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1 authority denied them any such humanity; in so doing, seriously
2 and systematically violating the terms of the Geneva Convention.
3 Article 6 of the Law on the Establishment of the ECCC empowers
4 these chambers to try suspects for committing or ordering eight
5 different specified grave breaches of the Geneva Conventions.
6 The evidence proved beyond a reasonable doubt that five out of
7 these eight crimes were committed and ordered at S-21; namely,
8 the unlawful confinement of a civilian, deprivation of a fair and
9 regular trial, wilfully causing great suffering or serious injury
10 to body or health, torture or inhumane treatment and wilful
11 killing.

12 [11.40.10]

13 In order for these five separate enumerated offences to qualify
14 as grave breaches, certain additional jurisdictional elements
15 must also be proved. The enumerated offence must be committed in
16 the context of and be associated with an international armed
17 conflict. The perpetrator must have been aware of the factual
18 circumstances that established the existence of an armed
19 conflict. The acts must have been committed against persons who
20 were protected under one or more of Geneva Conventions of 1949.
21 And the perpetrator must have been aware of the factual
22 circumstances that established his protected status. We will
23 briefly deal with these in turn.

24 In response to the issue of armed conflict, the defence argued
25 that the prosecution has failed to prove beyond a reasonable

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1 doubt that an armed conflict existed throughout the accused's
2 criminal conduct. Specifically, the defence believes that an
3 armed conflict did not begin until the 31 December 1977 when
4 diplomatic relations were cut off between Cambodia and Vietnam.
5 The facts, however, do not support this position.
6 As we will discuss further, it is beyond any doubt that evidence
7 proves an international armed conflict between the DK and the
8 Socialist Republic of Vietnam began in April 1975 and continued
9 at various levels of intensity until January 1979. While S-21
10 did not become operational and commence its criminal activity
11 until after 1975, it remains important that this Court find that
12 the armed conflict started in early 1975 as part of its role in
13 determining the truth of the facts alleged in the indictment.
14 This is what the prosecution are charged with proving and this
15 Court is required to find what the facts proved.

16 [11.43.25]

17 In review of the facts, we submit the existence of an
18 international armed conflict between Democratic Kampuchea and the
19 Socialist Republic of Vietnam has been proved beyond reasonable
20 doubt. The Co-Investigating Judges' Closing Order stated with
21 the exception of several respites, there was escalating and
22 increasingly frequent armed conflict violence beginning in April
23 1975.
24 During the trial, the expert witness Nayan Chanda expressed a
25 view that the two countries were at war from the moment

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1 Democratic Kampuchea came into existence. You will remember the
2 response to the defence question that there was no war with
3 Vietnam in 1975. Nayan Chanda answered, "A war can occur without
4 a declaration. Cambodia and Vietnam were at war right from
5 1975."

6 As Your Honours are aware, on international humanitarian law and
7 commonsense ground, a declaration of war is not required to prove
8 the existence of an armed conflict. Nayan Chanda's opinion was
9 based on his observation of the extent and the nature of
10 hostilities conducted by both sides. Nonetheless, Nayan Chanda's
11 testimony is a critical piece of evidence. It is by far from the
12 only evidence presented at trial proving beyond doubt an armed
13 conflict from 1975 and 1979 between the two countries.

14 Contemporary media reports and DK political and military reports,
15 as well as other expert analysis, confirm Nayan Chanda's opinion.
16 The particulars are detailed in our written statement and armed
17 conflict chronology filed with corresponding 430 attached reports
18 and analyses during the case. Accordingly, the expert evidence
19 and the numerous contemporaneous documents presented at the trial
20 will leave little doubt as to the existence of the armed conflict
21 from 1975, albeit that the two governments in the early period
22 preferred to keep it as a secret war.

23 [11.46.37]

24 To summarize, the overall intensity of the conflict increased
25 over time and border clashes, skirmishes and outright invasions

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1 occurred between the two states armed forces from April 1975
2 onward.

3 This culminated in the full scale invasion of Cambodia by
4 Vietnamese forces resulting in the collapse of the DK government
5 in January 1979. In order to prove a grave breach of the Geneva
6 Convention, it must also be demonstrated that the accused was
7 aware of the conflict and the crimes were committed in
8 association with and in the context of the armed conflict.

9 On this point, the defence argues in addition to their claim that
10 the armed conflict did not exist until the 31st of December 1977,
11 that the accused was not aware of the armed conflict until after
12 this date. Therefore, on this basis, they say grave breach
13 offences cannot be proven to have occurred before this date.

14 Specifically, the defence state that because of the specific case
15 secrecy on the armed conflict issues and the relative absence of
16 Vietnamese prisoners at S-21 prior to late 1977, no grave breach
17 offences could be found before 31 December 1977.

18 [11.48.40]

19 With respect to this argument, it is at complete odds to the
20 evidence. The accused was one of the most significant, if not
21 the most significant, individual in the CPK's intelligence and
22 security operation. As my colleague will discuss further, it is
23 clear secrets were not kept from him. But he was a part of them
24 due to the nature of his intelligence gathering work. As a
25 result, the accused was in one of the best positions to know of

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1 the conflicts and the CPK's attention and concern on this matter.
2 Whether or not Cambodia and Vietnam were willing to discuss the
3 armed conflict publicly, this had no bearing on whether or not
4 the accused knew of such a conflict.

5 As for the relative absence of Vietnamese at S-21 as they claim
6 from 1975 to late 1977, a brief look at the evidence failed to
7 support this position. As long as the accused was aware that
8 there were Vietnamese prisoners at S-21, it does not matter what
9 the relative number was as the knowledge of one of them would
10 support the finding the accused was aware of the armed conflict
11 by that fact amongst other possible methods.

12 On the contrary, the evidence shows that the accused was fully
13 aware of the circumstances of the armed conflict by at least when
14 the first Vietnamese prisoner arrived. The accused had a close
15 working relationship with the DK military Chief of Staff, Son
16 Sen, and he attended meetings of military units. Speeches by the
17 senior leaders of the CPK, party magazines and other CPK
18 propaganda constantly referred to Vietnam and Vietnamese as the
19 enemy of DK.

20 As part of the agreed facts, the accused has acknowledged his
21 awareness of the locations in which the conflict originally took
22 place, namely around the island of Koh Tral Phu Quoc in a brawl
23 in May 1975 in south-eastern Mondulkiri province and along the
24 Preah Vihear line in early 1976.

25 [11.52.05]

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1 The accused also accepts that he appointed his subordinate, Mam
2 Nai, to interrogate Vietnamese prisoners nor does he dispute that
3 the first recorded arrest of an individual identified as being of
4 Vietnamese nationality occurred on the 7th of February 1976.
5 This is because such documentation of these Vietnamese arriving
6 in early 1976 was documented by the accused in his own
7 handwriting. Vietnamese soldiers and civilians who were
8 interrogated and executed at S-21 were clearly protected by the
9 provisions of the Geneva Conventions.
10 The surviving prisoner list disclosed that between 150 and
11 several hundred members of the regular Vietnamese military who
12 were captured near the border with DK during the course of
13 hostilities were imprisoned at S-21. Having fallen into the
14 power of Democratic Kampuchea, these Vietnamese soldiers were
15 entitled to Prisoner of War status under the 3rd Geneva
16 Convention.
17 Similarly, at least 100 Vietnamese civilians were imprisoned at
18 S-21. Finding themselves in the hands of a party to the conflict
19 of which they were not nationals, they enjoyed protected status
20 under the 4th Geneva Convention. The accused does not dispute
21 that, in total, at least 400 Vietnamese citizens were imprisoned
22 at S-21, that they arrived in greater numbers as the conflict
23 with Vietnam escalated and that every last one was killed.
24 Awareness of armed conflict is only one level of awareness that
25 the accused must have had and must be proven.

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1 The accused must also be aware of the protected status of the
2 Vietnamese civilians and military personnel that were detained at
3 S-21. The evidence before the Chamber establishes that the
4 accused was aware of the protected status of the captured
5 Vietnamese soldiers and civilians. The accused has admitted that
6 he knew that the Vietnamese captives were soldiers in the
7 Vietnamese Army who had been captured on the battlefield or
8 Vietnamese civilians who were captured on Vietnamese territory by
9 the Revolutionary Army of Kampuchea.

10 [11.55.15]

11 The evidence shows that the accused had also read, analyzed and
12 summarized the biographies and previous activities of some of
13 these Vietnamese prisoners. He was thus fully aware of all
14 circumstances required to be charged with grave breaches of the
15 Geneva Conventions.

16 Finally, it is also clear that the enumerated offences were
17 committed at S-21 and in the context associated with the
18 international armed conflict.

19 The Vietnamese soldiers and civilians were detained at S-21
20 because of the conflict, most of them having been captured during
21 combat or the incursions into Vietnamese territory by the DK
22 forces. The accused has accepted that Vietnamese prisoners were
23 interrogated to obtain confessions showing that Vietnam invaded
24 Cambodia intent on annexation. He also accepts that the
25 confessions were broadcast and used for propaganda purposes

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1 related to the conflict.

2 I will now turn to the five separate enumerated offences clearly
3 established by the evidence as grave breaches of the Geneva
4 Conventions. The surviving prisoner lists recorded that between
5 150 and several hundred Vietnamese prisoners of war and at least
6 100 Vietnamese civilians were the victims of these offences.

7 Unlawful confinement of civilians. The legal elements required
8 to prove unlawful confinement of a civilian are identical to the
9 elements of imprisonment as a crime against humanity. At least
10 100 Vietnamese civilians were unlawfully detained at S-21 because
11 of their nationality. Their detention was deliberate and the
12 result of orders issued and carried out by the accused and his
13 subordinates.

14 [11.57.55]

15 Deprivation of fair and regular trial. All the Vietnamese
16 detainees at S-21, whether civilian or military, were entitled to
17 the legal guarantees of due process and a fair and regular trial.
18 They received no such dispensation and were all executed without
19 trial. As we have already discussed, there was no functioning
20 legal system in existence throughout Cambodia during the DK
21 period, nor was there any such system within S-21. Thus there
22 was no effective process through which Vietnamese prisoners at
23 S-21 could have challenged their imprisonment or status as they
24 were entitled under the Geneva Conventions.

25 As commanding officer of a prison camp, the accused was obliged

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1 under international law to uphold the terms of the Geneva
2 Convention for prisoners of any enemy power. He has admitted,
3 however, that he knew at the time there were no judicial
4 guarantees or due process for any of the prisoners at S-21.
5 Further proof of the gross violation of the fair trial rights of
6 Vietnamese prisoners came from the practice of the filming and
7 radio broadcasting their confessions for propaganda purposes. At
8 no stage were they afforded the dignity and humanity their
9 protected status required.

10 Wilfully causing great suffering or serious injury to body or
11 health.

12 Mr. President, should I proceed to finish my oral statement?

13 MR. PRESIDENT:

14 Do you think you need to take longer than like 30 minutes?

15 Since it is now an appropriate time to take an adjournment for
16 lunch, the Trial Chamber will take the adjournment now and the
17 session will be resumed in the afternoon by 1.30 p.m.

18 The security personnel are now instructed to take the accused to
19 the waiting room and return him to the courtroom by 1.30 p.m.

20 (Judges exit courtroom)

21 (Court recesses from 1201H to 1330H)

22 (Judges enter courtroom)

23 MR. PRESIDENT:

24 Please be seated. The Court is now in session.

25 We would like now to give the floor to the national Co-Prosecutor

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1 to finish making her oral closing statement. You may now
2 proceed.

3 MS. CHEA LEANG:

4 Thank you, Mr. President, Your Honours. I will need 10 more
5 minutes to finish reading my oral closing statement and then my
6 colleague will take the floor.

7 [13.32.40]

8 The Vietnamese prisoners suffered no less than their Cambodian
9 counterparts at S-21. This Chamber has heard in great detail the
10 physical pain and discomfort caused by the inhumane conditions of
11 detention within S-21: the lack of adequate food, medical care,
12 and sanitation and the inhumane methods of execution.

13 Similarly, prisoners' mental suffering including the anguish
14 caused by seeing fellow prisoners' wounds from physical abuse and
15 torture; seeing fellow prisoners die from wounds, illness and
16 malnutrition; hearing the screams of other prisoners being
17 tortured and killed; and living in constant fear of beatings,
18 torture and execution.

19 We have already discussed the extensive evidence of the intent to
20 cause such great suffering or serious injury. Such criminal
21 intent consistent for the accused and for those under the
22 accused's authority was no different with respect to the
23 Vietnamese prisoners. If anything, the hatred preached by the
24 CPK against Vietnam may well have encouraged those who beat the
25 prisoners to be even more cruel and inhumane towards Vietnamese

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1 detainees.

2 Torture. The legal elements required to prove torture as a grave
3 breach of the Geneva Conventions are identical to the elements of
4 torture as a crime against humanity. There is no specific
5 evidence that Vietnamese prisoners were tortured but it can be
6 reasonably inferred that they received the same treatment as the
7 vast majority of all the other S-21 prisoners. In general,
8 torture was specifically used by interrogators to extract
9 confessions. Recalcitrant prisoners would receive more torture
10 than those who willingly confessed.

11 The confessions and treatment of Vietnamese prisoners of war
12 filmed and broadcast on the radio would have been intensely
13 humiliating. It is reasonable to conclude that S-21
14 interrogators had been required to torture at least some of these
15 Vietnamese prisoners of war before they submitted to such
16 humiliations. In the violent and depraved environment of S-21 it
17 is difficult to imagine that the interrogators would have
18 restrained themselves from physically abusing prisoners from the
19 very country they had been taught to despise.

20 [13.36.30]

21 Inhumane treatment. All the evidence of S-21 functions of the
22 appalling conditions of detention and of the behaviour of the
23 staff towards the detainees suggests that the Vietnamese
24 prisoners were no less inhumanely treated than their Cambodian
25 counterparts. Inhumane treatment as a grave breach of the Geneva

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1 Conventions extends not only to acts of torture or the causing of
2 wilful suffering but also to other acts that violate the basic
3 principle of human treatment, particularly the aspect for human
4 dignity.

5 To the extent that individual acts committed against Vietnamese
6 prisoners may not be considered by the Trial Chamber as acts of
7 torture or acts causing wilful suffering, they were most
8 certainly inconsistent with the human treatment and human
9 dignity.

10 All Vietnamese prisoners at S-21 were killed. Witness testimony,
11 photographs, information obtained from S-21 prisoners lists,
12 surviving confessions and documented radio broadcasts all prove
13 the deliberate execution of the Vietnamese prisoners. The
14 accused has admitted that none of the Vietnamese were spared.
15 Crimes contrary to the Cambodian Penal Code of 1956. I will now
16 move to the third and last category of crimes charged in the
17 indictment, the crimes of murder and torture which are in
18 contravention to Cambodia's national criminal law, the Cambodian
19 Penal Code of 1956.

20 Although the international criminal laws of crimes against
21 humanity and grave breaches of the Geneva Conventions may
22 prohibit criminal behaviour of different levels of seriousness,
23 our national criminal law is no less worthy of enforcement.

24 As this is the Court for the Cambodian people first and foremost,
25 it is important that the public perceives that its national laws

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1 are being respected. Charging offences under the national law
2 demonstrates that Cambodians' own national laws can protect them
3 as a community. As this is an internationalized Cambodian Court,
4 charging national crimes fosters a sense of ownership of the
5 judicial proceedings for the population as a whole and the
6 Cambodian judiciary. Jurisprudence in these and other cases of
7 national laws will likely assist the practice of law in the
8 national courts.

9 Although there were no courts in Democratic Kampuchea to enforce
10 it, the 1956 Penal Code was the prevailing domestic criminal law
11 at the time the Khmer Rouge came to power. The dismantling of
12 the criminal justice system, the evacuation of cities and the
13 murder of judges and lawyers did not, however, remove Democratic
14 Kampuchea's underlying international obligations to ensure that
15 those who committed serious crimes would be brought to justice
16 under national legislation.

17 [13.40.05]

18 Whatever motivation the accused and his subordinates acted upon
19 at S-21, the 1956 Penal Code clearly defined their acts as
20 criminal. Article 3 of the Law on the Establishment of the ECCC
21 empowers these Chambers to try suspects for committing specific
22 crimes contrary to the Cambodian Penal Code of 1956. The
23 evidence proves beyond a reasonable doubt that two of these
24 crimes, namely homicide and torture, were committed at S-21.
25 Murder. There are two forms of murder that were included and

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1 that were committed at S-21: the premeditated murder derived
2 from the deliberate intention to cause the death for the vast
3 majority of S-21 prisoners; deaths from deliberate acts of
4 torture, inhumane treatment, lack of adequate food, sanitation
5 and medical care accounted for those who did not survive long
6 enough to be executed.

7 Torture. Similarly, two distinct forms of torture as
8 criminalized by the 1956 Penal Code were committed at S-21; acts
9 of torture committed with the intent to obtain information useful
10 for the commission of the felony or misdemeanour by causing pain
11 and acts of torture committed in a spirit of repression or
12 barbarity. Torture was deliberately inflicted upon the prisoners
13 at S-21 with the intent to obtain confessions. The information
14 extracted in these confessions resulted in the arrest of those
15 implicated as enemies and who were then themselves tortured and
16 executed. Additionally, there can be no doubt that throughout
17 the entire period of S-21's operations, torture was used as a
18 tool of repression against the prisoners. The spirit of
19 barbarity ran through the entire prison and found its expression
20 most horribly in the cruel forms of torture ordered by the
21 accused and performed by his subordinates.

22 Your Honours, next I would like to share the floor with my
23 colleague to finish the oral closing statement. I'm very
24 grateful, Your Honours.

25 MR. PRESIDENT:

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1 The international Co-Prosecutor, you may now proceed.

2 [13.44.00]

3 MR. SMITH:

4 Thank you, Mr. President.

5 Mr. President, Your Honours, learned counsel, civil parties, the
6 accused, members of the public and the people of Cambodia, I am
7 humbled to stand here today alongside my national colleague to
8 assist this Trial Chamber to ensure -- I believe we have no
9 translation.

10 JUDGE LAVERGNE:

11 Yes, Mr. President, I'm sorry to interrupt but we do not have the
12 French channel, so I do not know on which channel the translation
13 is coming through.

14 MR. SMITH:

15 I am humbled to stand here with my national colleague to assist
16 this Trial Chamber to ensure that justice is done for the victims
17 of the S-21 Security Centre.

18 The people of Cambodia might rightly ask what is justice for the
19 12,000 men, women and children killed so cruelly, and what is
20 justice for their grieving families and friends that have to put
21 up with that pain for so long?

22 Your judgment will not bring them back to life. Your judgment
23 will not allow those infants to wonder at every new thing. Your
24 judgment will not allow those children to play in the street,
25 those teenagers to dance, those young adults to fall in love,

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1 those parents to hug their children, and their parents to look
2 proudly at what they've left behind.

3 For the victims of S-21, those experiences were cut. Our job as
4 prosecutors is to assist Your Honours in achieving a sense of
5 justice that separates your judgement from the judgement -- the
6 12,000 judgments that the accused gave at S-21. Justice is done
7 by applying the ECCC Law, a law that demands a fair trial, a law
8 that demands convictions based on facts only proved beyond
9 reasonable doubt, and a law that demands that your sentence is in
10 accordance with international standards of fairness.

11 A just sentence in law is not based on revenge but on retribution
12 and deterrence. It's society's way of demonstrating that its
13 people are worth protecting and their lives are worthy of
14 respect. It's a way of sending a message to others who may be
15 tempted to commit crimes like this against their fellow human
16 beings. In this case, it's the Cambodian and international
17 community's way of saying S-21 should never have happened and it
18 should never happen again.

19 So what is a just sentence for this accused? It will depend on
20 the gravity of the crimes, the impact on the victims and his
21 role, the accused's role, in them. Do you believe him when he
22 says he was a hostage and a prisoner of the regime from 1971
23 until the mid-1990s? A prisoner and a hostage forced to kill and
24 torture human beings on a daily basis against his will and under
25 the threat of death, with no choice or no chance to escape? Was

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1 the author of the crimes in reality a victim of the system?
2 Your Honours, we have stated in our written submissions, and we
3 will do so again today, that the accused was neither a prisoner
4 nor a hostage nor a victim. The evidence proves the contrary.
5 It clearly demonstrates that he was an idealist, a CPK
6 revolutionary, a crusader who was prepared to sacrifice
7 everything for his cause; prepared to torture and kill willingly
8 for the good of the revolution, no matter how grotesquely
9 misguided it was.

10 [13.50.30]

11 Your Honours, this is the significant difference between the
12 prosecution and the defence. Your resolution of this issue will
13 be essential to the establishment of the accused's liability and,
14 consequently, the determination of the appropriate sentence.

15 With this in mind, in this part of our submission we will first
16 point Your Honours to the evidence of the extent and the nature
17 of the accused's participation; and then, second, submit how his
18 participation should be legally qualified under the law, and
19 address you on relevant factors we believe you should take into
20 account when determining your sentence.

21 But first, I would like to put the actions of the accused in a
22 wider context. During the Democratic Kampuchea regime, the
23 accused was promoted to a very senior and important position,
24 living a comfortable family life whilst other members of the
25 regime and, in fact, many senior cadre were purged. This was no

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1 coincidence.

2 Far from being an ordinary person or an ordinary Party member and
3 an accidental security chief, as he has claimed, he manoeuvred
4 himself into the privileged position of S-21 Chairman by hard
5 work and meticulous attention to detail. The evidence shows he
6 was a true believer in the Communist cause who wanted to
7 eliminate its enemies.

8 As such, he developed a strong, direct, one-on-one connection
9 with the senior leaders of the CPK. Having known them for some
10 years before, having committed crimes, horrendous crimes at S-21,
11 under their supervision, he continued to work with them and for
12 them for almost 15 years after the regime's collapse.

13 After the 17th of April 1975, he held a privileged and trusted
14 position with the CPK; senior leaders, who also lived, worked and
15 met with him at the railway station in Phnom Penh from the end of
16 June 1975. During this time, he was directly involved in the
17 establishment of S-21.

18 [13.53.20]

19 He was one of only two people invited by Son Sen to the meeting
20 at the railway station on the 15th of August 1975 when the
21 creation of S-21 was announced. In the accused's own words, he
22 was their ears and nose at S-21. He influenced its very name.
23 Number 21 was this accused's own communication number. As the
24 evidence shows, S-21 was his professional pride. It was his
25 prison in name and in reality, his S-21.

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1 To staff the prison, the accused handpicked his most trusted
2 interrogators and torturers from M-13 to follow him there.
3 Having committed crimes with them before, he could rely on them
4 to perform this gruesome work he was about to embark on. He
5 wanted to organize and supervise the S-21 machinery, but did not
6 want to do the dirty work himself.
7 He prepared for this new role thoroughly. He collected
8 specialist books on the subject of torture, intelligence and
9 espionage. Amazingly, 34 years later, he was able to quote from
10 these books to the Trial Chamber. This is quite astounding for
11 someone who claims that he didn't have enough time to read them.
12 He also collected documents from ministries, public buildings and
13 Lon Nol's former house in Phnom Penh. Under examination, he said
14 he did this in order to arrest the officials of the former
15 regime.
16 In the beginning, as Deputy of S-21, he worked hard to make the
17 prison operational. He taught interrogation techniques and held
18 political training classes. As head of the interrogation
19 section, he vigorously pursued enemies by ordering interrogations
20 and torture. Within six months of the establishment of S-21, the
21 accused was promoted to the position of Chairman. It was clear
22 from his own evidence that he had far superior intelligence and
23 interrogation skills and inspired greater trust with the senior
24 leaders than the former Chairman, Nath, who later ended up a
25 prisoner at S-21.

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1 [13.56.05]

2 After his appointment as Chairman, for close to three years, the
3 accused went on to fully repay and justify the trust placed in
4 him by his superiors. Through his leadership from March 1976,
5 S-21 became efficient at identifying and killing its enemies and
6 the accused became the essential link between the regime's
7 criminal policies and their execution.

8 Outside S-21, he worked closely with CPK senior leaders
9 continually advising them and reporting to them the content of
10 the important prisoner confessions; thereby, facilitating the
11 identification and destruction of enemies and crucially fuelling
12 the regime's paranoia.

13 As we have heard from the expert psychiatrist and psychologist,
14 these close relationships with these senior leaders suited the
15 accused, not simply because they were a part of his duties but
16 because of his constant need to be mentored and of his desire to
17 please and be praised for his work.

18 During the first 18 months as Chairman, the accused reported
19 directly to Son Sen, Minister of Defence and Chief of the General
20 Staff of the Revolutionary Army of Kampuchea, one of the most
21 senior people in the regime. During this trial, the accused has
22 spoken fondly of Son Sen calling him his "respected teacher,
23 professor and leader." The two men shared a similar approach, a
24 Communist ideology and it was Son Sen that introduced the accused
25 to the Party as a full-rights member in 1969. The accused

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1 described Son Sen as his biggest influence and Son Sen would
2 have, in turn, considered him a gifted protégé indeed.
3 As we've heard from the accused, Son Sen was replaced by Nuon
4 Chea in August 1977 when the war with Vietnam began to escalate.
5 Despite this change, the accused retained his position as
6 Chairman throughout the intensified purges towards the end of the
7 regime.

8 [13.58.45]

9 I will now discuss the extent of his authority at S-21. In the
10 judicial investigation, he originally claimed that his authority
11 within S-21 was only theoretical and that he was a Chairman in
12 name only; however, at trial, he became more truthful. He
13 explained his total authority at S-21 in these words:

14 "If I wanted to know anything, I can do that. I can ask anyone
15 to report. I can stop anything. I want to direct anything, I
16 can do that."

17 In other words, nothing happened within S-21 without his
18 knowledge or approval.

19 We've all seen first-hand during this trial that the accused is
20 meticulous, a logical man bordering on the obsessive, a master of
21 detail with a brilliant memory albeit selective. There is no
22 doubt that under his authority, rules were always obeyed and
23 order was always maintained. This is remarkable bearing in mind
24 the staff under his control at S-21 numbered more than 2,000.
25 The evidence has shown that staff obedience at S-21 was a result

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1 of the accused's careful selection and training of personnel, his
2 enforcement of military-style discipline and his policy of
3 immediate arrest and execution for those that did not follow the
4 political line or perform their duties precisely. Simple
5 mistakes such as falling asleep on the job or releasing
6 prisoners' names invoked such punishment.

7 [14.00.50]

8 We have heard former S-21 guards such as Saom Met, Kok Sros,
9 Cheam Sour, Sek Dan and Prak Khan testify to this ruthless
10 enforcement of rules which instilled fear in all his staff.
11 These rules were designed, above all, to prevent the escape of
12 prisoners. This was a difficult task considering the accused
13 was responsible for over 1,500 prisoners at any one time at the
14 main compound at S-21 and many more at Prey Sar.
15 He ensured that breach of security protocol was considered grave
16 and was dealt with immediately and severely. Huy Sre, the head
17 of Prey Sar, and one of the accused's closest advisors was
18 arrested following an escape of his radio-telephone operator.
19 The accused condemned Huy Sre to death and even 30 years later
20 has testified that Huy Sre's lapse was not reasonable. By
21 contrast, the rape of a prisoner went unpunished.
22 However, as strict as these rules were, the accused applied them
23 selectively. Initially, S-21 staff included Nath's men from
24 Division 703 and the accused's own from M-13.
25 Over time a disproportionate number of Nath's men were purged and

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1 executed. In contrast, the accused's most trusted men survived.
2 [14.02.40]
3 We know from the combined prisoner lists and reports concerning
4 the enemy situation within S-21 that at least 155 executed
5 detainees were former S-21 staff members. Though the accused has
6 claimed that that the arrest and execution of staff required his
7 superior's approval, it is clear that at the very least he
8 initiated or approved those arrests and executions. He testified
9 that no request was ever denied.
10 In practice, therefore, it was his decision that was the primary
11 cause of the execution of his staff. Even in this respect, where
12 he had ample options to avoid such an extreme form of punishment
13 against those who breached his rules, he chose not to take them.
14 I will now turn to the evidence which proves the obsessive
15 disciplined and merciless way in which this accused implemented
16 the extremist ideology of the CPK at S-21.
17 As Chairman, with absolute authority over his staff and
18 operations, the accused was able to implement the CPK political
19 line without obstruction. This required him, through his staff,
20 to interrogate, torture, investigate and smash all those who were
21 deemed to be enemies of the revolution. His principal role at
22 S-21 was to ensure that the criminal line of the Party was
23 rigorously enforced.
24 During the trial the accused admitted that he alone was
25 responsible both for the political training and the guided

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1 selection of enemies and training on the techniques of
2 interrogation. As a trained teacher, meticulous interrogator and
3 a true believer in the CPK's ideology, the accused was perfectly
4 suited to the role. He also realized that his time was best
5 spent on passing on his expertise to others; mostly young, naive
6 recruits who would inflict pain on his and his superiors' behalf.
7 He has admitted that his duty was to, and I quote, "indoctrinate
8 to make them absolute".

9 Your Honours have examined the notebooks of S-21 cadres who
10 describe this training in detail. One jotting from a training
11 session identifies the prevalence of cruel practices. Torture
12 cannot be avoided. It only differs as to whether it's a little
13 or a lot. That's all.

14 [14.05.40]

15 Interrogator Prak Khan testified that political education and
16 interrogation training were combined so that staff would take an
17 absolute stance against the enemy to the point that they were
18 considered animals. As testified by the accused, this made it
19 easier to be ruthless in inflicting torture and enforcing
20 confessions. The accused clearly understood that dehumanization
21 of victims was a necessary component of the training. He
22 perverted and abused his previous skills as a teacher, enabling
23 hundreds of young recruits to perform acts of brutality on
24 thousands of victims.

25 The accused has confessed to a particularly cynical practice of

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1 recruiting teenage children from poor peasant communities. He
2 and the Party believed these adolescents had the perfect class
3 background, uninfluenced by foreign urban capitalist or
4 feudalistic tendencies. They were easy to manipulate and in the
5 accused's own words, I quote, "like blank sheets of paper on
6 which one could write what one wanted".

7 Your Honours, more than brainwashing his own staff to commit
8 crimes at S-21, the evidence shows that the accused was an
9 excellent manager of the torture and killing centre. He knew
10 that it could not be run to the level of the success that it was
11 unless he took a hands-on role on the day-to-day operations of
12 every aspect of this horrific work. For someone that now claims
13 he hated his work so much, it's impossible to see how he could
14 have made that work any more effective.

15 [14.07.40]

16 Initially, during the investigation, the accused feigned
17 ignorance of the day-to-day functioning of S-21, dismissing the
18 prison's daily operations as mere technical issues of which he
19 knew little. He even claimed that his deputy, Hor, effectively
20 controlled everything at the prison. However, as the trial has
21 progressed, as the evidence and witnesses have mounted, the
22 accused admitted to having a much more hands-on role. And such a
23 role is fully consistent with the meticulous attention to detail,
24 his strict management style, and S-21's horrific efficiency.

25 Whenever an important decision was needed at S-21, the accused

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1 was the one to take it. As we've illustrated in our written
2 submissions, the numerous examples of initiative in managing S-21
3 include his orders in relation to interrogations, torture, and
4 executions; the decision to create a team of female interrogators
5 and bring in and select young teenagers who could be trained as
6 guards; the decision to construct a training centre; the
7 accused's concern to exhume bodies and conceal evidence of crimes
8 at Ta Khmau prior to it being handed over to the Ministry of
9 Social Affairs; his insistence on retaining the Choeung Ek site
10 when requested by Nuon Chea to move S-21 to Kap Srau in 1978 out
11 of fear that Choeung Ek would be discovered; the fierce
12 discipline with which he managed his staff and taking charge of
13 food production at Prey Sar.

14 I now turn to the accused's participation in the core criminal
15 activities of S-21. As we've heard, these activities involve the
16 arrest, detention, interrogation, torture, analysis of
17 confessions, and executions of prisoners. The extensive nature
18 of his involvement in each activity amply demonstrates his
19 absolute determination and enthusiasm for the crimes.

20 [14.40.05]

21 First I will move to arrests, another aspect of S-21 operations
22 he's tried to downplay. He has attempted to convey that S-21's
23 role was only to accept prisoners but to not initiate or
24 participate in arrests. In brief, the accused states S-21's role
25 was a reactive one, responding to arrests by others and accepting

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1 prisoners who then had to be killed.

2 However, testimony from S-21 staff and S-21 documentation

3 admitted at trial proved that the roles of S-21 and the accused

4 personally were far more proactive than he was willing to admit.

5 The totality of the evidence proves that his own actions caused

6 the arrests of many individuals. He was not just a jailer but an

7 active investigator.

8 Whether or not the accused was able to order the arrest of

9 prisoners or only proposed their arrest is irrelevant. The fact

10 of the matter is the accused personally initiated hundreds if not

11 thousands of arrests through his interrogation and torture

12 process. He instituted and used torture to unlawfully gather the

13 information which he used to develop the so-called strings of

14 traitors and propose, if not order, arrests of additional

15 suspects.

16 Just as he initiated arrests and killings of at least 155 of his

17 own staff, it was he who brought the names of supposed traitors

18 to his superiors' attention and requested or recommended, and in

19 many cases co-ordinated their arrests.

20 And of course, as you have heard, he was a direct participant in

21 the arrests of important targets who were usually arrested with

22 the use of subterfuge. For example, under the pretext of a

23 medical check-up, Northeast Zone Secretary Mem San alias Ya, was

24 lured to the accused's home and was arrested. Party Central

25 Office Secretary Pang was arrested on one of his frequent visits

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1 to S-21 on official business. Other arrests required
2 considerable logistical planning. The accused said many people
3 were involved in the North Zone Secretary Koy Thuon's arrest.
4 [14.12.50]
5 Your Honours, you've also seen the evidence showing that the
6 accused's role was not limited to planning individual arrests.
7 His guidance was sought and given in planning and implementing
8 large-scale purges. The minutes of a meeting on the 16th of
9 September 1976, attended by Son Sen and other senior military
10 figures, show how the accused had already designed the
11 methodology for arresting large numbers of cadre from within
12 specific divisions of the army. In fact, the minutes record his
13 advice that an additional 29 victims be arrested, on top of those
14 who had been identified.
15 The proactive role the accused played in internal purges is
16 clearly demonstrated in nine letters addressed to him that had
17 been written or signed by Sou Met, the commander of Division 502.
18 These letters show that the accused had sent S-21 confessions and
19 lists of purported traitors revealed in them to Sou Met. On the
20 strength of these documents, Sou Met investigated his own staff
21 within Division 502 and sent additional personnel to S-21 for
22 interrogation. At least 300 people were purged from Division 502
23 and sent for interrogation and execution at S-21.
24 The accused tried to downplay the significance of these
25 documents. He claims that all these letters were sent through

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1 Son Sen and each and every request required his approval. The
2 accused insists that Son Sen did not countersign any of Sou Met's
3 letters because of the tactics he and Nuon Chea used to conceal
4 their names. This explanation is ridiculous, considering the
5 other numerous documents which clearly show Son Sen's role in the
6 purges.

7 We submit that this series of Sou Met letters shows the accused
8 actively participating in and co-ordinating a massive purge
9 together with the division commander. While Son Sen would have
10 given his consent for a purge most likely for something of that
11 scale, he clearly would not have done -- had the time or the
12 inclination to investigate individual rank-and-file soldiers of
13 little importance.

14 [14.15.40]

15 Other documents from the case file show that the leaders of
16 military and administrative units corresponded directly with the
17 accused. For example, Comrade Krin from the Kampong Som Port
18 Authority signed a report addressed directly to the accused in
19 1977. The accused admitted that Comrade San from Division 310
20 penned him a letter accompanied by a list of prisoners arrested
21 from within that unit.

22 The accused's advice was similarly sought on more specific
23 security-related incidents, such as the investigation of
24 seditious leaflets criticizing Angkar which had been distributed
25 in Phnom Penh. The accused participated in this meeting on the

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1 9th of September 1976 with Pan and Son Sen attending.
2 Your Honours, in summary, it's abundantly obvious that the
3 accused played a central role in identifying, locating and
4 arresting enemies and that in doing so he maintained substantial
5 communication with both senior leaders of the CPK and with chiefs
6 of various units throughout the country.
7 As for the accused's participation in the detention of prisoners
8 at S-21, Your Honours heard the witness Suos Thy, who explained
9 that the accused received and signed the new list of prisoners
10 that had been prepared by his staff. This enabled the accused to
11 keep track of the movement and the number of the prisoners within
12 S-21. When the prison became overcrowded, he ordered Hor, his
13 deputy, to kill excess prisoners to create space for new
14 arrivals. In this very courtroom the accused testified that this
15 was done so they did not, and I quote, "waste any more food on
16 them".
17 [14.18.00]
18 The accused was fully aware of the deplorable, squalid and truly
19 inhumane conditions in which the prisoners were kept. He visited
20 the main compound frequently, particularly the interrogation
21 rooms. He admits seeing the injuries of tortured prisoners. He
22 would have seen how sick and emaciated they had become due to the
23 appalling conditions in which they were kept.
24 Witnesses, as well as the accused, have confirmed that he set and
25 implemented all the rules for detaining prisoners. This included

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1 ensuring that prisoners had no freedom of movement, were denied
2 adequate food, clothing, sanitation and medical care. Although
3 he paid close attention to particular prisoners, he ignored the
4 majority because, as he has told this Court, he could not do his
5 job so effectively if he recognized their humanity. Whether
6 infant or elderly, he testified that he treated them all like
7 animals.

8 The arrest and detention of prisoners at S-21 was just the
9 beginning of the accused's involvement. As we've already stated,
10 for the accused and the CPK the interrogation of enemies, the
11 prisoners, with the object of extracting their confessions was
12 the most important part of the process. It required a specialist
13 like the accused, a specialist in interrogation with both
14 extensive experience and strong conviction. He trained his
15 subordinate interrogators and supervised their work. He knew
16 what specific orders to give to individual interrogators as they
17 and he, and only he, knew and confirmed when their interrogation
18 was complete.

19 [14.20.10]

20 In particular, the accused relished the interrogation of
21 high-level prisoners, which he either directed personally or
22 closely supervised. At first he only admitted to interrogating
23 one prisoner, North Zone Secretary Koy Thuon. At trial he
24 admitted to interrogating two more, Ma Mengkheang and Chhit Iv.
25 There may well be more. For high-level prisoners whom he did not

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1 personally interrogate, the evidence shows that the accused
2 diligently monitored their interrogations on a daily basis,
3 issuing specific instructions at various junctures.
4 His willingness to interrogate prisoners himself and his
5 obsessive attention to the details of the interrogation process
6 portray a chairman heavily invested in the work of S-21. Yet his
7 ownership of the process was not the only revealing sign. His
8 indifference to the suffering of the victims shows a man who has
9 surrounded himself so much to the purpose of S-21 that he could
10 not ignore one of the most human of impulses, to alleviate the
11 pain of others.

12 A number of high-ranking prisoners, including Hu Nim, Seat Chhae
13 and Meak Touch, wrote to the accused to beg for mercy and to beg
14 him to spare the lives of their family members. Not only was he
15 unmoved; the evidence shows that he wrote back to the prisoners
16 and rebuked them. When Seat Chhae pleaded that he'd been wrongly
17 arrested the accused responded that in all the days of working in
18 security he had never known a case where an individual had been
19 wrongly accused.

20 [14.22.15]

21 So hardened and absolute, the accused found no place for mercy
22 for even his closest friends and associates. His earliest mentor
23 and Professor Ke Kim Huot and Huot's wife, Dim Sarouen, were
24 arrested and brought to S-21. Both were horribly tortured. Huot
25 was beaten and forced to eat excrement. Sarouen was raped with a

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1 stick. The accused had no real response to these outrages apart
2 from denials that he knew anything about them.
3 Those denials lack all credibility in view of his own annotations
4 on the very pages describing the torture of Ke Kim Huot. The
5 accused's annotations ordering torture and directing questions to
6 interrogators are seen on hundreds of confessions left behind at
7 S-21.

8 In this case, Your Honours, you've only seen a small portion of
9 them. However, these representative samples amply demonstrate
10 his complete lack of mercy for the prisoners. Your Honours will
11 remember his cruel annotation to the interrogator questioning a
12 Vietnamese woman. And I quote:

13 "Interrogate meticulously, serious but moderate torture in order
14 to find the networks. Hit until she stops saying she went to
15 Vietnam with her grandfather to cure his cancer and the problem
16 of menstruation."

17 Your Honours, we'll remember the annotations of the accused which
18 directed and ordered the method of interrogation of Mem San,
19 alias Ya. After ordering that Ya be tortured, throughout the
20 interrogation the accused taunted him for trying to inform the
21 upper echelon that his prior confessions were the product of
22 torture. After losing patience with Ya, the accused ordered Pon,
23 his interrogator, to use hot methods. Reassuring him that if he
24 slipped and Ya died, it would not be a violation of revolutionary
25 discipline.

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1 [14.24.55]

2 As counsel for civil party, Group 1 said yesterday, the accused's
3 assertion that the purpose of these annotations was to bluff the
4 prisoner lack any credibility. Although the charges do not
5 include the crimes committed at M-13, Your Honours have heard and
6 read the evidence that proves that the accused personally
7 tortured prisoners at this security centre before starting work
8 at S-21.

9 Your Honours will remember the accused's testimony relating to
10 his extensive interrogation and torture of Nabson Bond, a
11 prisoner at M-13. He said, and I quote the accused:

12 "It took me nearly one month to complete, therefore the torture,
13 the beating and the interrogation. I did strive my best to do
14 it."

15 Your Honours will also recall the testimony of the French
16 prisoner, Francois Bizot who was detained at M-13 within its
17 first year of operation in 1971. After forming a special
18 relationship with the accused, on Christmas Eve that year, the
19 accused confided in Bizot on his practice of personally torturing
20 prisoners. Bizot recollects the conversation in his book where
21 the accused says to him, and I quote:

22 "Most of the people who arrive here -- it's my responsibility to
23 interrogate them, to find out who their contacts are, what type
24 of information they're looking for and who's paying them. Just
25 one of those traitors could jeopardize our whole struggle. Do

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1 you think they're going to reveal what they know of their own
2 free will?"

3 Bizot then said, "But who does the beating?"

4 [14.27.10]

5 To which the accused responded,

6 "I can't stand their duplicity. The only way is to terrorize
7 them, isolate them and starve them. It's very tough. I have to
8 force myself. You cannot imagine how much their lying infuriates
9 me. When I cross-examine them and they resort to every ruse to
10 avoid talking, denying our senior officer's potentially vital
11 information, then I beat them. I beat until I'm out of breath."
12 All of the other witnesses, one detainee and two prison guards
13 from M-13, who testified in this case, corroborate the basic fact
14 which the accused confirms that he personally participated in
15 torture at M-13. It can be reasonably inferred that this
16 practice occurred throughout M-13's four years of operation.
17 Further, at S-21, the accused himself has admitted that in the
18 early days he would hit - or as he puts it, slap - prisoners
19 during investigations, Chhit Iv being one of them. Yet the
20 evidence you have heard has shown that this practice of physical
21 abuse continued on. We have heard the testimony of Lach Mean,
22 Chhun Phal and read the evidence of Nhem En, S-21 staffers who
23 all witnessed the accused beating detainees with sticks in 1977.
24 About two years into the prison's operation, another former S-21
25 guard, Saom Met testified before you that in 1978 the accused

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1 kicked and beat prisoners with rattan sticks if he felt that
2 they'd not revealed enough information. The accused did not
3 refute any of these statements.

4 [14.29.35]

5 At other times the accused obviously just enjoyed abusing his
6 power. You will remember the testimony of Bou Meng who testified
7 that:

8 "One day I didn't know what I did wrong. He asked me [that's
9 Duch, the accused] and Im Chan to beat each other up. So we were
10 given a piece of black plastic tube to hit, to beat each other
11 and he sat there watching us beating each other up. After a
12 while, he ordered us to stop."

13 The accused confirmed giving this order but couldn't even
14 remember why he did it.

15 Your Honours, what should we make of this personal involvement in
16 beating and torturing over a period of seven and a half years?

17 It provides clear proof that his argument that he was forced and
18 unwilling to carry out his work at S-21 is simply untrue.

19 Why would he personally involve himself in torture and beating
20 when it was not ordered or required of him? The answer is that
21 his ardent beliefs in furthering the goals of the CPK spilled
22 over into gratuitous violence against prisoners unorderd and
23 unnecessary, even at a stage when, due to his seniority, he was
24 not participating in torture on a daily basis. We submit that
25 infliction of pain was not something he hated. It was something

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1 he found both necessary and perversely gratifying.

2 [14.31.35]

3 I will now discuss the accused's involvement in the analysis of
4 the information that resulted from the torture and interrogation
5 sessions - the infamous confessions.

6 These so-called confessions were the lifeblood of S-21's criminal
7 machinery. The accused had the authority alone to analyze and
8 annotate thousands of pages of these documents and to synthesize
9 their content into a coherent report for his superiors. Only a
10 portion of this meticulous work remains, but from what we have,
11 the attention to detail he lavished upon this hideous endeavour
12 is astonishing.

13 The result of his work, the accused admits, was that suspects
14 whose names he extracted from the confessions ended up waiting
15 their turn to be tortured and killed at S-21 and all this while
16 he knew that 90 percent of these victims presented no danger to
17 the Party.

18 In the beginning, the accused regularly reported his information
19 to his superior, Son Sen. When Nuon Chea took over from Son Sen,
20 the accused reported to him in person rather than on the
21 telephone. Such briefings apparently took place every day. The
22 accused has claimed by 1978, Nuon Chea paid little attention
23 either to the confessions the accused was sending or to his
24 annotations upon them.

25 Yet the Court has seen annotations that prove that even in the

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1 period the accused continued to work in the confessions, in fact
2 as late as December 1978, a period when the confusion of the
3 regime and the paranoia had set in, his commitment was not
4 fading. The picture the accused has attempted to paint is that
5 he was mutually relaying the information contained in the
6 confessions and that the information was obtained from questions
7 specifically posed by his superiors. Given the thousands of
8 prisoners who passed through S-21 every year, this degree of
9 micro-management from Son Sen and Nuon Chea is simply
10 implausible.

11 [14.34.15]

12 For the most important prisoners, the accused may well have
13 received specific guidance, but for the majority of prisoners he
14 applied his own initiative and techniques, and exercised his
15 discretion on the modes of interrogation and torture.

16 The accused has claimed that the sole purpose of his annotations
17 was to enable his superiors to grasp the content of the
18 confessions quickly and thus his annotations were devoid of
19 subject of content. His claim is absurd. The accused's role at
20 S-21 was to investigate the prisoners and to provide analysis of
21 their responses to his superiors. After all, as we've stated, he
22 was a highly trusted and reliable security expert and specialist
23 in interrogations.

24 This Court has seen numerous examples of him synthesizing the
25 content of the confessions into summary reports, presenting his

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1 own analyses and conclusions and requesting authorization for
2 further arrests. The accused has an almost photographic memory.
3 Even now, 30 years on from the crimes, he can discuss in minute
4 detail the relationships between various party members and
5 various traitorous plots.
6 His connections to the party centre gave him additional resources
7 to understand the supposedly traitorous networks. These skills
8 and knowledge all finally came together in another illustration
9 of the conspiracy theories he had developed and which underpinned
10 the crimes at S-21, a document entitled "The Last Joint Plan".
11 This plan, written by the accused's trusted chief interrogator
12 Pon, weaves a multitude of incoherent, torture-induced
13 confessions together into one massive interconnected network of
14 plots. This plan, dated in 1978, confirms that the accused was
15 deeply invested in his work and was maximizing his
16 intelligence-gathering by his interrogation teams to assist the
17 CPK leaders in pursuing and killing more perceived enemies of the
18 regime. This was at a time when he said he was the most
19 disillusioned with the Party and his fear was at its greatest.
20 [14.37.00]
21 I will now turn to the accused's role in the execution of the
22 over 12,000 victims at S-21. The ultimate crime of S-21, of
23 course, was the murder of all but a handful of prisoners. The
24 accused admitted that he knew every prisoner at S-21 was destined
25 for execution regardless of sex, age, background or actual guilt

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1 or innocence. You have seen the evidence of the documents
2 containing the accused's direct written orders to kill. They are
3 chilling in their unemotional, unapologetic, ruthless efficiency.
4 On a list of 17 prisoners, including nine children, he simply
5 wrote, "Uncle Peng, kill them all". On another he wrote,
6 "Interrogate four; kill the rest". Sometimes he simply ticked
7 off names with the annotation "Smash".

8 Of course, given his workload and having to manage the arrest,
9 detention, interrogation, torture, and killing of an average of
10 at least 300 prisoners a month, personal participation in the
11 killing would not have been the best use of his time. As we
12 noted earlier, the accused taught and directed his staff in the
13 art of interrogation, torture and killing, so he could achieve
14 what business operators call "economies of scale". He basically
15 managed his staff and facilities to the best of his ability to
16 ensure that the CPK would capture and kill as many enemies as
17 possible.

18 There has been much debate concerning the accused's claim that
19 the consent of his superiors was required before every torture
20 and every execution. In one sense, this is immaterial given that
21 the accused was responsible for the entire operation at S-21. In
22 any event, whether the orders of the senior leaders were required
23 or not, it was the accused who transmitted them and ensured their
24 implementation. As he has admitted after an incident when Hor,
25 his deputy, sent a prisoner for execution without a complete

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1 confession, Son Sen subsequently required all executions to be
2 pre-approved by the accused.
3 [14.39.45]
4 But, regardless of this, while fully aware and approving of S-21,
5 the senior leaders would have been too busy or too aloof to
6 examine the cases of anyone apart from the most important
7 prisoners. For the vast majority of prisoners, they trusted the
8 accused to exercise his judgment without individual
9 consultations. The senior leaders trusted the accused to kill
10 everyone at the right time.
11 Your Honours, when you review the evidence of the accused's
12 efficiency, initiative, dedication, drive, enthusiasm and zeal,
13 there is absolutely no doubt that as misguided as he was, he was
14 a fully willing participant in these crimes. The defence would
15 like you to hypothesize that the accused did all of this, hating
16 it at every step of the way, and only acted in fear.
17 The defence are asking you to move away from the evidence and
18 accept a theory that has little basis in it and even in the
19 accused's own admissions. Far from being unwittingly entangled
20 in the criminal policies of the Khmer Rouge, the accused was a
21 strong believer in the regime's Communist ideals and its
22 ill-conceived revolution. It's this firm political belief and
23 philosophical grounding that gave him the resolve to develop and
24 prove himself personally and professionally in the spirit of the
25 revolution and to become an intelligence and security expert on

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1 whom the regime relied to such a significant extent.

2 [14.41.52]

3 Although he claims that he believed in the revolution early on
4 but felt trapped after 1971, all of the evidence in this case
5 clearly disproves it. As the defence rightly point out, no one
6 dreams of becoming a mass murderer. However, in this case the
7 accused developed such an obsession with CPK's ideology that he
8 was prepared to do anything at all to further it. Of course the
9 nature and the extent of the crimes at S-21 could not be
10 justified, no matter how laudable the accused believed the goal
11 to be. Evidence of his level of participation in the crimes,
12 both at M-13 and S-21, leaves no doubt this accused was a leading
13 crusader for the CPK and not a fearful reluctant actor, a
14 prisoner, a hostage of the regime.

15 As I mentioned earlier, François Bizot had the opportunity to
16 observe the accused's belief systems, based on many conversations
17 the two men had during his detention at M-13 in 1971. When he
18 was released, he recorded the beliefs of the man he left behind.

19 I quote:

20 "I realized that in front of me there was a man who looked very
21 much like many friends of mine, a Marxist, a human being who was
22 a Marxist, who was prepared to surrender his life for his country
23 and for the revolution."

24 At the time Bizot formed his opinion it was six months after the
25 accused had started at M-13, at a time when he'd already

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1 committed many violent beatings against detainees, of which Bizot
2 has told us. His belief in the CPK ---

3 MR. PRESIDENT:

4 Since it is an appropriate time to take an adjournment, the
5 Chamber will take the adjournment for 15 minutes. We resume at
6 five past three.

7 (Judges exit courtroom)

8 (Court recesses from 1444H to 1506H)

9 (Judges enter courtroom)

10 MR. PRESIDENT:

11 Please be seated. The Court is now in session.

12 We would like to now give the floor to the international
13 Co-Prosecutor to finish his oral closing statement.

14 MR. SMITH:

15 Thank you, Mr. President.

16 We left our submission, before the break, discussing the
17 particular evidence that was confirming the belief that the
18 accused had in the policies of the CPK at M-13. We discussed
19 François Bizot's opinion of his beliefs. This belief in the CPK,
20 Your Honours, continued after M-13, throughout S-21 and well
21 beyond. I mentioned earlier his close relationship with Son Sen.
22 Let's recall this man was the accused's direct supervisor and a
23 direct participant at the highest levels in crimes taking place
24 throughout this country. In the last days of the trial, when
25 asked about him, the accused responded:

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1 "It is the moment I really am waiting to reveal the truth to the
2 world and Cambodia. I was very shocked when enemies implicated
3 him. I was very worried for him. After the 25th of June 1986, I
4 still had very great respect and faithfulness to him."
5 Son Sen, together with other senior leaders in the CPK, was the
6 embodiment of the criminal policies of the revolution. He
7 initiated the establishment of S-21 and supervised its operation.
8 According to the accused, this is the man that threatened him
9 with his life if he did not perform his duties diligently; the
10 man that gave him no choice and no opportunity to escape from the
11 horrors of M-13 and S-21. And yet, years after the collapse of
12 the regime, the accused holds him in the highest regard and fears
13 for his safety.

14 What logic allows us to accept that you could have great
15 respectfulness and faithfulness to a man that forced you to
16 commit such horrendous crimes under the threat of death? A man
17 who forced you to bring so much pain, agony and tragedy to so
18 many people. Of course there was no such reluctance and no such
19 threats. The accused and Son Sen were brothers in arms in a
20 misguided and idealistic crusade for which they were prepared to
21 sell their souls, their hearts and their humanity.

22 [15.10.25]

23 Your Honours, as much as the accused has talked at length in this
24 trial and often evaded to answer questions directly, the length
25 of the trial has been beneficial at times as it's allowed him to

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1 talk freely and it's allowed the truth to slip out from under the
2 lie that he was an unwilling and fearful executioner at S-21.
3 For example, when testifying about his attendance at a two-week
4 Communist Party of Kampuchea conference political education
5 session in late 1978, he explained how he felt when he met Pol
6 Pot. This is what transpired.

7 Question:

8 "You mentioned earlier that some Party members would be jealous
9 if other Party members met Pol Pot. Did you consider it a
10 privilege to be in Pol Pot's presence at these meetings or these
11 education sessions?"

12 He responded:

13 "I would like to frankly state that at the time I had a very
14 strange feeling, that I studied with the seven people in the
15 Party for three years and now I meet the first person in the
16 Party for the first time, and I had a very strange feeling. But
17 it's hard to describe the feeling at the time."

18 Question:

19 "Did it make you feel good to be in his presence?"

20 Answer:

21 "The strange feelings mean, you know, the good feeling."
22 Your Honours, this good feeling is about Pol Pot. If anyone
23 deserved the resentment of the accused for making him commit
24 crimes against his will, as he claims, it was Pol Pot, Brother
25 Number One, the leader of the CPK movement, who with others

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1 devised the plan of which the crimes at S-21 formed an integral
2 part. Yet the accused felt proud to have been able to met Pol
3 Pot, just as he felt devoted and had great respect for Son Sen.
4 This honest expression gives us a great insight into the beliefs
5 that gave him the will and the ability to commit horrible acts.

6 [15.13.05]

7 Allow me to remind you that this meeting occurred in the last
8 half of 1978, at the same time when the accused wants you to
9 believe that he was completely disillusioned with the CPK
10 policies. His latest statement at the end of the trial that he
11 was happy to be with Pol Pot because he said Pol Pot said there
12 would be fewer killings at S-21 was clearly a calculated attempt
13 to change an earlier statement which he realized was particularly
14 damaging to him.

15 His admiration for the Party could also be seen in the pride he
16 gained from representing S-21 as the chief ideologue. Again in
17 the long responses he has given in this case, small windows are
18 found with which we can connect a bigger truth. When he
19 reflected on the photograph of him at S-21 -- the accused in
20 uniform behind a microphone educating his staff in CPK policies
21 -- he remarked:

22 "If you look now to the picture, it seems like I was rather proud
23 at the time for maintaining the class stand firmly."

24 He further testified:

25 "I was the only one allowed to take the mike."

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1 The only one at S-21 that had the authority to educate his staff
2 in the CPK ideology.
3 [15.14.42]
4 It was clear the accused was proud to receive instructions and
5 proud to pass them on. He has told Your Honours he was proud
6 when Son Sen accepted his proposal to move S-21 to the Lycee
7 Ponhea Yat Compound. He could be seen to be proud of his work at
8 S-21 and S-24 during 1978; again, at a time he says he was most
9 disillusioned at the Party.
10 He testified how he wanted to promote the reputations of Prey Sar
11 and S-21 within the CPK hierarchy by providing excess rice from
12 Prey Sar to the Party Centre. At the same time, his S-21 and
13 S-24 prisoners were dying of starvation.
14 How could someone be so proud of his superiors? How could
15 someone be so proud about helping create and running an
16 extermination centre? How could someone be so proud as to
17 indoctrinate his staff to torture and kill? How could someone be
18 so proud in the reputation of such an evil place? It was because
19 he believed in the Party; believed in its ideals and was in fact
20 so content in his work that the Party believed in him.
21 This belief in the CPK ideology is clearly evident in the
22 decisions he made in his personal life at the relevant times;
23 decisions which illustrate his confidence and investment in the
24 revolution. After completing his assignment in M-13 in the
25 middle of 1975, he was fully aware that his next task would

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1 require him to further torture and kill perceived enemies of the
2 CPK.

3 He was a young man and single. He married the woman of his
4 choice at the end of 1975, clearly not fazed by the prospect of
5 his future assignment. By the time he was married he had already
6 taken part in the torture and killing of the first group of
7 prisoners who had been taken from Ta Khmau to S-21's temporary
8 location in Phnom Penh.

9 [15.17.35]

10 The rapidly rising death toll at S-21 did not deter the accused
11 from starting a family. In 1976 his wife gave birth to his first
12 child and in 1978 his second. He fathered two children while
13 children were being arrested and killed with their parents at
14 S-21. Further, he testified that he did not simply raise
15 children, but wanted them to join the CPK Revolution. In his
16 words, he wanted them to "love the revolution and to join the
17 revolution".

18 What a horrid disconnect to humanity surrounding him. While he
19 was feeding and nurturing his own children, he was starving and
20 ordering the brutal slaughter of others. And of course, Your
21 Honours, it's a complete contradiction that on the one hand the
22 accused asked this Court to believe that he hated what the CPK
23 stood for and yet wanted to have a family and raise his children
24 to believe in its very policies.

25 Your Honours, the accused's absolute and genuine commitment to

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1 the CPK during his time at S-21 has been further confirmed by the
2 expert witnesses in this case. In their joint report Dr. Ka
3 Sunbaunat and Dr. Françoise Sironi-Guilbaud were of the expert
4 opinion that the accused was a committed CPK revolutionary during
5 his time at S-21. When discussing the issues of why the accused
6 followed the orders to torture and kill -- and I quote their
7 report:

8 "The motivation for his acts were not the need to obey orders.
9 Obeying orders was a consequence of his acts; the consequence of
10 the need for something to believe in."

11 [15.19.55]

12 Although at one point they accepted fear was a relevant factor to
13 be taken into account, they held that the accused's belief in the
14 CPK, not fear, was his prime motivator. They concluded that the
15 accused saw himself as the protector of the Party Centre and that
16 his role gave him meaning. Moreover, the accused indicated to
17 the experts that he still maintained his belief in the CPK ideals
18 well after S-21. When the experts asked him about the death of
19 his father in 1991, he responded that he refused to have emotions
20 because he could not be a "revolutionary and have feelings."

21 As to the reliability of this opinion, we ask Your Honours to
22 take into account that these two experts spent a total of 30
23 hours with the accused. This was an environment that was
24 private, far more intimate than this courtroom and for that
25 matter more intimate than when he was questioned by the

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1 Investigative Judges.

2 It's our observation that in this trial the more the accused
3 speaks, the more likely he appears to reveal the truth; often
4 unwittingly. This fact, combined with the length of time and the
5 nature of the location in which the experts interviewed the
6 accused, enabled them to make some reliable findings which are
7 otherwise unavailable to this Court.

8 The Court has also heard expert testimony from David Chandler,
9 Professor Chandler, one of the foremost scholars of the inner
10 workings of S-21 and the CPK. He reviewed hundreds of its
11 confessions containing the accused's annotations. It was his
12 firm opinion that the accused believed in the purpose of the work
13 at S-21 as opposed to hating it. When asked by the defence
14 whether the enthusiasm for his work at S-21 was to be expected as
15 it was part of the Party line, Professor Chandler responded, and
16 I quote:

17 "It wasn't just that it was part of the Party line, it was a part
18 of the Party line that the defendant had absolutely no trouble
19 accepting. It suited his own inclinations and his own abilities
20 and he was a revolutionary Party person."

21 [15.22.50]

22 Professor Chandler further gave a compelling account of the
23 professionalism with which the accused performed his work as well
24 as his zeal, enthusiasm and initiative. He told Your Honours
25 that the accused wanted S-21 to be seen by his superiors and by

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1 the international community as a highly professional and
2 efficient organization of which he, as its administrator, could
3 be justly proud.
4 We ask that Your Honours place significant weight on Professor
5 Chandler's testimony based on his unmatched research on the
6 documentation discovered at S-21. Professor Chandler has been in
7 a unique position to provide this Court with a highly reliable
8 analysis of S-21's operation including how it implemented CPK
9 policies and how the accused participated in that process.
10 Finally, Your Honours, in the last day of questioning the accused
11 appeared to admit that whilst at S-21 he did believe in CPK
12 policies. When asked by the defence,
13 "Do you admit that in reality you were the man who enjoying the
14 trust of your superiors implemented in a devoted and merciless
15 fashion the persecutions by the CPK the Cambodia people in S-21?
16 Do you admit this -- yes or no?"
17 To which the accused answered, "Yes, I completely admit it."
18 Your Honours, if his words mean anything, finally it appears it
19 is that the accused decided to admit the truth. If the accused
20 now says that he implemented the criminal policies of the CPK by
21 willingly and not reluctantly carrying them out -- if he means
22 that he believed in the smashing policy as a means to a
23 legitimate end, then this is a change.
24 [15.25.00]
25 Your Honours, in fact it's a complete turnaround to what he has

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1 pleaded during the judicial investigation and at trial. As Your
2 Honours are well aware, he has repeatedly told this Court he
3 hated his work, he lived in fear, he was forced to order torture
4 and killing with no choice or no chance of escape. If this is
5 what he means by the word devotion, then the word has lost all of
6 its definition.

7 If, however, he did on the last day change his plea to his motive
8 and intent in committing the crimes, then this is finally
9 welcome, though, Your Honours, it's very very very late. The
10 anguish the civil parties will have suffered by sitting through
11 the lies cannot be undone but at least the accused will have set
12 the record straight. Unfortunately, Your Honours, unless the
13 accused tells us he's changed his plea on his motive in his
14 closing statement, and we invite him to do so for the sake of the
15 victims, we will never know what he really meant.

16 As it stands, this ambiguous leading question with its short
17 answer has left this Court and the public with little chance to
18 determine what he meant. Regardless of the doubt as to whether
19 or not the accused fully accepts his role at S-21, the evidence
20 of that role is not doubtful, ambiguous or unclear. The
21 testimony and documents you have heard and read clearly prove
22 that he was a willing participant, committing the crimes not
23 because he was ordered to but because he believed in their
24 legitimacy.

25 To conclude, the accused was a perfectionist and a workaholic who

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1 remained thoroughly aware of everything going on around him
2 through a system of strict discipline and constant reporting. He
3 was extremely efficient in carrying out the crimes.

4 [15.27.30]

5 We do not suggest that the accused is a monster nor do we say he
6 is pathologically inhumane. However, we reject any suggestion he
7 was a prisoner of the regime and a less than willing participant
8 in the crimes. Based on the evidence, this claim is completely
9 unfounded.

10 Your Honours, I now wish to turn to the legal qualification the
11 prosecution believe you should apply to the evidence that's been
12 proved.

13 Your Honours, this indictment charges the accused in accordance

14 --

15 (Technical malfunction)

16 (Judges exit courtroom)

17 (Court recesses from 1528H to 1601H)

18 (Judges enter courtroom)

19 (Judges exit courtroom)

20 (Court adjourns at 1603H)

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