



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

26 November 2009, 0900H

Trial Day 76

Before the Judges:

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KAING Guek Eav

Lawyers for the Accused:

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Francois ROUX  
Helene UÑAC  
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**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
MR. CANNONE	French
MR. HONG KIMSUON	Khmer
MS. JACQUIN	French
MR. KHAN	English
MR. ROUX	French
MS. STUDZINSKY	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer

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

2 (Judges enter courtroom)

3 [09.00.24]

4 MR. PRESIDENT:

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

6 Mrs. Se Kolvuthy is now instructed to report on the attendance of

7 the parties to the proceedings during today's session.

8 THE GREFFIER:

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

11 MR. PRESIDENT:

12 Security personnel are now instructed to bring the accused to the  
13 dock.

14 We would like now to give the floor to the defence counsel to  
15 make his closing statement. You may now proceed.

16 [09.02.30]

17 MR. ROUX:

18 Thank you, Mr. President. Good morning, Your Honours.

19 Before I start, I would like to inform the Chamber that in the  
20 course of my pleadings I would like to broadcast the video of  
21 which you received a copy, so I am seeking the Chamber's leave to  
22 be able to do so now.

23 MR. PRESIDENT:

24 Your request is granted and the Chamber would like to instruct to  
25 the AV Unit to facilitate the projection of this video footage.

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1 MR. ROUX:

2 Thank you, Mr. President. I shall inform the Audio-Visual Unit  
3 accordingly and I will tell them when I wish the video to be  
4 shown.

5 Mr. President, Your Honours, first of all I would like to  
6 apologize to the interpreters. For reasons that will be clear to  
7 legal practitioners, we have had to review the entire plan of our  
8 pleadings after Mr. Kar Savuth's pleadings yesterday afternoon.

9 So I have a series of notes, some of which I have passed on to  
10 the interpreters. So I shall speak as slowly as possible.

11 Mr. President, if I go beyond my allotted time, I would crave  
12 your indulgence for a slight extension.

13 [09.04.55]

14 As I start my presentation, first of all I would like to extend  
15 my thanks to the entire team that has worked tirelessly with us  
16 for months now in order to prepare for this trial and the  
17 presentation -- or the pleadings that I will make before this  
18 Court. These people include our assistants and interns. All  
19 these legal practitioners have participated in drafting the  
20 pleadings that I will make before this Court and I wish to extend  
21 my sincere and hearty thanks to them.

22 I would also like to present to the Chamber the apologies of Ms.  
23 Marie-Paule Canizares who, for serious health reasons, is unable  
24 to be present today. We hope she gets well soon.

25 Mr. President, ladies and gentlemen, I would like to say

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1 something on my own behalf. These will be my last pleadings as a  
2 lawyer. In a few days, I will have worked for 37 years. It is  
3 37 years since I took the oath. After these pleadings, I shall  
4 take off my gown. This is an important stage in the life of a  
5 human being and in my profession. As you know, I will be joining  
6 the Special Tribunal for Lebanon where the Secretary General of  
7 the United Nations has kindly asked me to act as the head of the  
8 defence office. This means that I shall continue, albeit in  
9 another form, my commitment to the service of international  
10 criminal justice.

11 [09.08.00]

12 Sir, with your leave, in view of these special circumstances --  
13 the personal circumstances, at this last pleading, after a long  
14 career, I would like to dedicate the words I shall speak today to  
15 my grandchildren and, through them, I would like to dedicate my  
16 words to the young generations that we see growing, to these  
17 young lawyers that we have seen on the civil party benches;  
18 especially the young female lawyers.

19 My dear colleagues, your bar may be justly proud of you. I am  
20 certain that the experience that you have garnered in this  
21 courtroom will inform the rest of your professional life. To  
22 stand up and speak in defence is what makes our job noble. To  
23 stand up and stand beside the one who is the subject of all  
24 accusations, to stand beside the one who is here because he's  
25 accused of one of the most serious crimes that can be imagined,

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1 the crime against humanity; imagine that. When I hear such of a  
2 plethora of untruths in the words of the Co-Prosecutors, when I  
3 hear nothing that speaks to our humanity at all amongst the words  
4 directed at an accused who has provided the Office of the  
5 Co-Prosecutors the bulk of the charges that they are making  
6 against him, then I stand tall as a defender.

7 But beneath the gown, beneath the outer covering, there is a  
8 human being; a man who has been so perturbed by what the victims  
9 have experienced. My compassion and my respect as a human being  
10 drive me to tell them this morning that I was pleased to hear all  
11 the groups -- all the civil party groups say that this trial, for  
12 our clients, has been a first step on the road to catharsis. Let  
13 us celebrate, at this stage, the fact that this little drop of  
14 water will come to cool the suffering -- the great suffering that  
15 has been endured.

16 [09.13.14]

17 Even though there have been discussions between us, I was  
18 grateful to see that civil party groups are defending the  
19 presence of victims in our proceedings. My dear learned  
20 colleagues, as you rightly said, "This is the beginning". We do  
21 not know as yet how to proceed. Perhaps your presence, perhaps  
22 your excesses and indeed mine, through all that together, we have  
23 tried to make sure that this happens for the first time in an  
24 international criminal court. The victims were civil parties.  
25 At least let us celebrate this achievement together as we should,

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1 together, celebrate the fact that we have come to the end of  
2 these proceedings.  
3 How many people, how many cynics, said that it would never take  
4 place? They said there are so many difficulties in this  
5 Tribunal, you'll never, never get to it. And then the trial took  
6 place thanks to the commitment of all concerned, with all the  
7 complexities that we had to deal with together, with all the  
8 complexities that we had to transcend and we're not yet at the  
9 end. But here we are; we've done it.  
10 Today, we can safely say that this trial will henceforth be  
11 inscribed in the annals of this international criminal justice  
12 that is being developed in our time. Prosecutor Roston  
13 (phonetic) said "In regard to this justice that it is still a  
14 child", and so it is. And as best we can, we all are trying to  
15 find the best way forward and, as we know, the best way forward  
16 for a tribunal is that at the end of the day justice is rendered.  
17 You are not in charge of effecting reconciliation. It is not  
18 your obligation to impose upon the victims a duty of forgiveness.  
19 That is not your work. Nobody can force the victims to forgive.  
20 This is a matter for them alone, but you must and you should  
21 render justice.  
22 It should be patently clear that you are not here to fight  
23 impunity. The prosecutor is responsible for the fight against  
24 impunity. You are here to render justice. This is the strength  
25 of justice, that is, to allow for adversarial proceedings. As I

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1 stated during my preliminary statements, we all became involved  
2 in this Trial with certain preconceptions of what the tragedy of  
3 Cambodia is; with certain preconceptions, with certain images of  
4 what exactly S-21 was.  
5 [09.18.14]  
6 However, there was one fundamental element that was missing. It  
7 was the voice of the accused and we have acted in such way that  
8 his voice could be heard. And having heard of the suffering of  
9 the victims, on the one hand, and having heard the accusations  
10 and the pleadings of the prosecution and the voice of the  
11 accused, it is your responsibility to rule and to serve justice.  
12 Many things have been written with respect to these crimes. I am  
13 referring to the book of Antoine Garapon, who is a French judge.  
14 His book is entitled "Crimes That Are Unpunishable and  
15 Unforgivable". Crimes that are unpunishable and unforgivable.  
16 As you are fully aware, other countries have decided upon other  
17 forms of justice -- be it through the Truth and Reconciliation  
18 Commissions.  
19 At the very onset, I wish to provide to you a few passages from  
20 the book of Desmond Tutu; words that he wrote when the Truth and  
21 Reconciliation Commission hearings in South Africa took place.  
22 Listen to the voice of Desmond Tutu:  
23 "That report represented the conclusion of remarkable efforts  
24 deployed by remarkable people whom I wish to thank for having  
25 been able to summarize the expressions and the representations of

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1 the some 20,000 people who were victims of major violations to  
2 their human rights between 1960 and the first democratic election  
3 that was held.

4 We are also grateful to the thousands of people who testified  
5 before the Commission. They allowed for a peaceful transition  
6 towards democracy, an exceptional and unique event in the annals  
7 of its history. They have allowed for the rebirth of a new way  
8 of living for the human race.

9 [09.22.44]

10 They also must be commended for having the vision to institute a  
11 Truth and Reconciliation Commission and, thereby, bypassing  
12 judicial hearings and proceedings that were the source of great  
13 frustration and it made it all the more difficult to identify  
14 witnesses after so much time had lapsed.

15 Surprisingly, we South Africans represent a light of hope for  
16 those who find themselves drowning in a murderous regime and who  
17 seek a peaceful solution."

18 At certain times, Mr. President, Your Honours, at certain moments  
19 in the course of these trials as we listened to testimony and  
20 statements, we had the impression of being slightly in -- as  
21 though we ourselves were participating in a Truth and  
22 Reconciliation Commission. It is to the honour of Cambodia that  
23 this country has been able to allow so many people to follow and  
24 observe these proceedings through the television and to witness  
25 what is being said in this trial. In that respect we can say

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1 that this trial serves as a model.  
2 Let us now turn to substantive matters and the substantive matter  
3 at hand. As you can well imagine, I shall not evade the question  
4 that was put to us yesterday during the pleadings of my esteemed  
5 colleague, Kar Savuth. You have clearly understood that our team  
6 has not laboured without disagreements; there have been  
7 disagreements. The role of a lawyer is to foresee things and I  
8 can only assume that my esteemed opponent, the prosecutors, are  
9 currently preparing their rebuttal and that they will be  
10 addressing some of the issues that we raised yesterday, and that  
11 some of those issues are exceptional objections that are not  
12 admissible. Therefore, I will defer to my esteemed colleague,  
13 Mr. Kar Savuth to address the rebuttal.  
14 I can assume that my esteemed colleague has already begun  
15 preparing his rebuttal to the pleadings of the national  
16 prosecutor. There is case law emanating from the International  
17 Criminal Tribunal of the Former Yugoslavia, particularly as it  
18 concerns the issue of those most responsible. As I can  
19 appreciate what my esteemed colleague said last night, national  
20 laws are not applicable and, therefore, international law must  
21 prevail. This is a given. In this trial, international law has  
22 made its introduction into Cambodian national law through our  
23 national prosecutor and through my esteemed colleague, Mr. Kar  
24 Savuth.  
25 [09.28.46]

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1 The duty I have towards my client is to address the matter at  
2 hand and I shall do so with conviction. This is a given. The  
3 fact that I have explained at length to the team that these are  
4 two contradictory things. We cannot, on the one hand, ask for  
5 the acquittal of the accused which would mean that he is not  
6 guilty, as well as enter a guilty plea. This has been expressed  
7 publicly. The accused will not plead guilty.

8 However, who is in a position to dispute and challenge the tears  
9 that have been wept by the accused? Who is in a position to  
10 contest the apologies that have been made by the accused person  
11 during the re-enactment at S-21? Who is in a position to contest  
12 those moments of truth? Moments of truth that were experienced  
13 by an accused person who wept before the victims and wept before  
14 the Co-Investigating Judges and who proclaims, "These are the  
15 words that I have been waiting to utter for the last 30 years".  
16 Who is in a position to contest those moments that we all  
17 experienced? Who is in a position to dispute that, whereas  
18 everyone was experiencing the utmost sincerity; was utterly  
19 moved?

20 Counsel Studzinsky, I have objected to some of your words very  
21 frequently, but I must praise the moments when you were on your  
22 feet and you questioned Mam Nai and you pushed that witness and  
23 such a strong man of the communist regime collapsed. We have  
24 witnessed Duch's tears when at the very start, we introduced  
25 Professor Phung Ton. We all lived through this together.

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1 [09.32.53]

2 Based on all of this, I say that, yes, we sought to maintain  
3 dialogue with the Office of the Prosecution; that must be stated.  
4 Those who come from a common-law background, I need not make  
5 things more obvious when a document that is entitled "Admission  
6 of Facts", you know very well what that means and what that  
7 entails -- yes, we sustained dialogue with the Office of the  
8 Prosecution. We said this is the trial. We have before us an  
9 accused who recognizes his guilt. This is an historic moment for  
10 this country. Together, united, we must build. We must not be  
11 working against each other. Together we must build the truth.  
12 Yesterday in this courtroom, we heard a man apologize on his  
13 knees and heard words that were extremely hard to hear. Before  
14 you, Mr. President, Your Honours, I have already impressed upon  
15 you and upon the prosecution the Obrenovic case, but I must have  
16 been dreaming -- I must have been dreaming about what we in this  
17 trial could recall what happened in the Obrenovic trial.  
18 At this point-in-time, I would like to ask that the Audio/Visual  
19 Unit to now broadcast the proceedings of the case -- the  
20 Prosecution vs. Obrenovic -- so that each and every one of us can  
21 be well informed of exactly what we can legitimately expect  
22 following the admission of guilt made by the accused person.

23 (Video recording played)

24 MR. PRESIDENT:

25 Well, Mr. McCloskey, any closing arguments?

11

1 MR. McCLOSKEY:

2 Yes, Mr. President. Mr. President, Your Honours, Mr. Obrenovic  
3 as the Deputy Commander of a brigade in war time and as the man  
4 in command of this Zvornik brigade at the time, there is one of  
5 the most awesome responsibilities in human endeavours. A military  
6 commander has the power of life and death in his hands. He has  
7 the power of protecting his own village, his town, his women and  
8 children. And, of course, as we know, he has the power and  
9 responsibility over those in his custody. This is an awesome  
10 power and an even more awesome responsibility.

11 [09.36.59]

12 Mr. Obrenovic has stood in this Court and looked us in the eye  
13 and taken responsibility for the murder of thousands of  
14 individuals. What possible sentence can there be for such a  
15 crime? But the value to the prosecution in this case is immense  
16 and it's immense because this man was able to stand up and take  
17 that responsibility as a commander, the first commander in this  
18 war that I'm aware that was able to do this.

19 And I'll explain to you why that is so valuable, why that is so  
20 important, both historically to the former Yugoslavia and to this  
21 Tribunal.

22 In 1998, I was part of a team that searched the Zvornik Brigade.  
23 I met with Mr. Obrenovic in his office. He waited for the orders  
24 of his commanders and when he got them, he co-operated with us  
25 fully. I saw him brief his troops and his staff, and for the

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1 next eight to 10 hours we had full co-operation and were able to  
2 do our job and do our duty without fear, without any problem at  
3 all, though all we had with us was one major from the United  
4 States Army with a sidearm. At that time, I naively saw  
5 something in the character of Mr. Obrenovic that I hoped that may  
6 some day do the right thing. And today we know he has and that  
7 was much appreciated. But I think it's on a larger scale Mr.  
8 Obrenovic has provided the truth regarding Srebrenica in a  
9 simple, clear, articulate fashion as the commander in charge of  
10 one of the most gruesome days in this war.

11 Now, as I've stated before, bringing the truth to the former  
12 Yugoslavia, bringing it to the Muslim community and to the Serb  
13 community, has historical repercussions and helps us in our duty  
14 for peace and reconciliation. We know that from the responses of  
15 Muslim leaders and Muslim individuals, many of whom I know that  
16 feel this incredible sense of relief that the truth has finally  
17 been told by someone of unquestionable military responsibility  
18 and character, character in a military sense but not,  
19 unfortunately, in the sense of honour that it took at the time to  
20 walk away from this.

21 [09.39.58]

22 He obviously did not do that. He did not do the right thing. He  
23 chose instead to do what his superiors had ordered him to do in  
24 what, unfortunately, had been a part of this war ever since 1992.  
25 But he brings to us today, into the former Yugoslavia and to this

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1 Tribunal, some hope that reconciliation can happen, that soldiers  
2 of his rank can tell the truth and will come forward and will  
3 provide some basis for reconciliation. We've some of the  
4 character of the individuals from the former Yugoslavia in this  
5 Court today and that gives us hope that they will take what he  
6 has started and take that home with them.

7 And, importantly, what does he bring this Tribunal in this  
8 particular case? Well, you saw his recounting of the events.  
9 You saw the way he answered my questions, the way he answered Mr.  
10 Karnavas' questions, Ms. Sinatra's questions -- clearly,  
11 concisely, without hesitation and most importantly without  
12 excuse. And I've not heard any excuses today or anything that  
13 would lead me to believe that he has not accepted his  
14 responsibility.

15 This came across in Court clear and it came across with the kind  
16 of strength and the kind of value that a prosecutor rarely sees  
17 in the situation with a co-operating witness. It's the kind of  
18 evidence that you will be able to take back to you in your  
19 Chambers and review, word by word. Unless I'm mistaken, you'll  
20 be able to count on it. You'll see the rest of the evidence in  
21 this case and you'll be able to compare it, and that will be of  
22 incredible value to you as the trier's of the fact.

23 [09.42.22]

24 And I have no doubt that Mr. Obrenovic will testify the same way  
25 in the upcoming Srebrenica trials and I'm confident there will be

14

1 some. Serbia must now look to what is going on in this Tribunal  
2 and they will see the truth; they will see fellow Serbs standing  
3 up like Mr. Nikolic and Mr. Obrenovic, and I have again naive  
4 hopes that that will in some way help them, the officials there  
5 in that country that I believe are harbouring most of the most  
6 serious accused in this case.

7 And I know Mr. Obrenovic will stand by his word and testify in  
8 those matters like he did in the case before us. And, in  
9 particular, you have had the benefit of hearing from a VRS  
10 commander, brigade commander, on military issues of command, and  
11 command and control responsibility. This is an incredibly unique  
12 perspective you're getting. The brigade in any army, and I think  
13 especially in the VRS, commanded the men that were in the  
14 trenches. This was the vast majority of the men. These are the  
15 men that on both sides fought and died.

16 And the commander of the brigade is the one that has the  
17 responsibility for those men and for the men under his custody,  
18 and we were able to hear from such a commander, and hear about  
19 his responsibility as a commander. And despite a rigorous and  
20 difficult cross-examination, he never waived from his  
21 responsibility as commander and was able to show you what that  
22 meant much more than could possibly be told from the regulations  
23 or from even the experts of the prosecution. This is a  
24 tremendous value and it will be so in the future.

25 [09.44.56]

15

1 He was especially able to tell us -- and I'm not going to go into  
2 the detail on this, it's not appropriate at this time -- but he  
3 was able to tell us about the security branch and how the  
4 security branch worked in the command, and dispel some myths in  
5 that regard.

6 As Your Honours know, he also brought to this case, materials;  
7 original materials and I have explained in detail to this Court  
8 the value of those materials. So when we look at this awful,  
9 awful crime, you will ask yourselves -- I know you will and I  
10 know you probably already have -- what possible sentence can  
11 there be? But I ask you to look into this recommendation of the  
12 prosecutor -- 15 to 20 years -- and see that it's reasonable  
13 because of the value that this man has provided this prosecution.  
14 There was a day when we stood at the base of the dam at Petkovci  
15 with four survivors and huge mass graves and forensic reports,  
16 and that was it.

17 We are no longer at that stage and that is to the benefit to this  
18 Tribunal, the benefit of the former Yugoslavia, and I know to the  
19 benefit of many Muslims that find great relief in seeing the  
20 truth so clearly said.

21 Now, my words today and Mr. Obrenovic's words and your judgement  
22 cannot bring back the dead and it cannot assuage the grief and  
23 the misery of the women and surviving men in Srebrenica. But I  
24 still have some of the naive hopes I had that day in 1998 when we  
25 searched the Zvornik Brigade, and I think this process that we

16

1 have entered into and this plea agreement that you have accepted  
2 as a review, is a very important part of this process.

3 [09.47.49]

4 And I trust and I know you will give it your most valued  
5 consideration. Thank you very much.

6 (Video recording ends)

7 MR. ROUX:

8 So there you have it. In my view, this is what this trial should  
9 have been. This, in my view, might have prevented what happened  
10 yesterday afternoon, Mr. Prosecutor. I would also like to  
11 explain to those who are not part of the common-law system.

12 I imagine that the Office of the Prosecutor in its rebuttal will  
13 try to tell you that, of course, you see, Obrenovic, he accepted  
14 everything. This is not true. It is not. Mr. Obrenovic was  
15 charged on five counts. For two years he pleaded not guilty.

16 When his trial began, when the first witness came to testify, he  
17 came to the prosecutor and only at that time did he say, "I want  
18 to enter a plea of Guilty, but I do not wish to acknowledge or  
19 admit all the facts that you charge against me".

20 [09.50.06]

21 This was followed by a discussion with the prosecution. Some  
22 people call that "deals", it is not a word I am fond of. This is  
23 a dialogue. It is a discussion. We legal practitioners are well  
24 aware that prosecutors at the outset proffer many counts in their  
25 indictments, even if they do not entirely believe in them.

17

1 And what would be the discussion between a prosecution and a  
2 defence? It would entail telling the prosecutor, you know, these  
3 charges in the indictment won't hold water and you know that my  
4 client will never admit to what he did not do. And this is the  
5 kind of back-and-forth that you have.

6 Mr. Obrenovic had five counts against him. Complicity in  
7 genocide 1, which was abandoned by the prosecutor; crimes against  
8 humanity/extermination 2, abandoned by the prosecution; crimes  
9 against humanity/murder 3, abandoned by the prosecution; 4th  
10 count, crimes against humanity/murder, abandoned by the  
11 prosecution. And enter the plea of Guilty on the fifth count  
12 was, guilt in relation to persecution.

13 This means that the prosecutor and the judges, I emphasize, who  
14 accepted this guilty plea and which you can find, Your Honours,  
15 on the internet; the agreements between the parties that were  
16 submitted to the judges. And the judges said, "Yes, this is  
17 appropriate because this man has admitted to the most important  
18 things. There are things he denies, but what is important is  
19 that he has admitted to the essential parts and this will aid in  
20 reconciliation." This is what the Judges of the International  
21 Criminal Tribunal for the Former Yugoslavia said.

22 [09.53.00]

23 So it is true that before this Court we have a civil law system.  
24 The guilty plea does not exist as such, but I should like to know  
25 what could have prevented any attempts to promote such a plea

18

1 because it is stated in our Internal Rules that what is not  
2 provided for in national law can be sourced from international  
3 law.  
4 So what was the obstacle? Well, the obstacle was a missed  
5 opportunity on the part of the Office of the Co-Prosecutors which  
6 missed its date with history; I stated it here. It led to  
7 frustrations as expressed in public opinion amongst the victims  
8 who were told incessantly, he is not telling all.  
9 This was the approach that was used even as late as yesterday in  
10 this courtroom. They said he is not saying everything. What he  
11 is saying will aid reconciliation but little. This is what I  
12 heard. What a waste. When you have an accused who from the very  
13 outset, from the very first day, told the Investigating Judges,  
14 "I am guilty. I am responsible for all the crimes" -- but no.  
15 The prosecutor decided to submit a conventional, traditional  
16 argument whose underlying philosophy is as follows.  
17 This man is a monster, even though they said "I am not saying  
18 this man is a monster". In fact, the attempt was made to portray  
19 him as such. And they said "Lock him up for 40 years and society  
20 will be the better for it", but when will the prosecution admit  
21 that these are words that have been heard before. These are  
22 clichés and that we must go further, we must try to understand  
23 the mechanisms that lead a man, who is a decent man by all  
24 accounts, becomes a torturer.  
25 Mr. Prosecutor that is what I would have liked to hear you say

19

1 because the same thing was said in Nuremberg. They said, "These  
2 people are monsters, we're going to condemn them to death and  
3 this will set an example". But after Nuremberg there was  
4 Cambodia, wasn't there? And then there was Rwanda.

5 So what is the example that you wish to show? What use is it in  
6 your conventional arguments? You do not deal with the problems.  
7 Well, we shall deal with them. We of the defence shall deal with  
8 the problems.

9 [09.57.08]

10 What Chandler dared to dwell on? After several months of  
11 thinking about it, in his book he talked about the crime of  
12 obedience. That is to say, how do you become a criminal because  
13 you have been obedient? I shall come to this in another part of  
14 my pleadings. This question, even more than obedience, refers to  
15 submissiveness.

16 Mr. Prosecutor, we said that we did not wish our client to be the  
17 scapegoat. I would like it to be clearly understood what is  
18 meant when I use the expression "scapegoat". As you well know,  
19 scapegoats in societies, including societies of old, was loaded  
20 with all the evils, with all the suffering of a society. All of  
21 this was loaded onto the head of a goat. Amongst the Hebrews,  
22 the goat was sent into the desert so that the social group could  
23 be reformed because they would say, "This goat bears all our  
24 wrongdoings". That is the scapegoat.

25 As long as the prosecutor's submissions will focus on this man as

20

1 a scapegoat, you will not advance by so much as a millimetre in  
2 the development of humanity. No, Duch does not have to bear on  
3 his head all the horrors of the Cambodian tragedy. No, Duch is  
4 not the person you described, Mr. Co-Prosecutors -- or Mr. and  
5 Ms. Co-Prosecutor.

6 From the civil parties I heard words that were farcical,  
7 crocodile tears or words describing the accused as involved in a  
8 farce and in crocodile tears, and they referred to the remorse  
9 evinced by the accused. I heard from the Co-Prosecutors  
10 statements to the effect that he manoeuvred to be promoted, he  
11 liked power, he developed strong relationships with the senior  
12 leaders, he provided advice to the leaders. Without fear of  
13 contradiction the prosecutor added, "The accused was a fervent  
14 disciple of the CPK ideology". I did not know that in Cambodia  
15 disciples taught the teacher.

16 [10.00.51]

17 I heard that the accused enjoyed converting human beings into  
18 torturers. From what material on the case file are such  
19 gratuitous statements drawn? I heard that the accused had played  
20 a major role in the large-scale purges that he organized with Sou  
21 Met, but I was not aware that the prosecution requested that the  
22 Courts called Mr. Sou Met to support this claim. I am not aware  
23 of it. But what I know is that such a statement is completely at  
24 odds with the statements made by Mr. Etcheson, who is an employee  
25 of the Office of the Prosecutor.

21

1 I shall make much of Mr. Etcheson in my pleadings. The Chamber  
2 will recall that I challenged his characterization as an expert.  
3 I am not aware -- I do not know whether the Chamber is aware, but  
4 it should know that in a recent decision the Co-Investigating  
5 Judges said that Mr. Etcheson was not an expert because he works  
6 in the Office of the Co-Prosecutors. So I shall draw on the  
7 statements of Mr. Etcheson as a member of the prosecution and not  
8 as an expert.

9 I heard that Son Sen and the accused were brothers-in-arms. We  
10 shall see about that later. I heard words such as "the accused  
11 was at the origin of the network of terror that bathed Cambodia  
12 in blood". And you are going to foster reconciliation with  
13 untruths like that, my dear friends on the prosecution? Did Duch  
14 become Pol Pot? Has Duch become Pol Pot?

15 I apologize in advance to the victims for what I am about to say,  
16 but how many people died in S-21? 12,380? We know it's 12,380  
17 too many; that's all right. How many in Cambodia? 1.7 million,  
18 we're told. That means that S-21 is responsible for less than  
19 one percent of the deaths in Cambodia, and you're telling the  
20 Chamber that Duch was the start -- or started the network of  
21 terror that bathed Cambodia in blood. How dare you?

22 [10.05.00]

23 And you said he was one of the most effective instruments of the  
24 CPK policy. These are your very words, "He was one of the most  
25 effective instruments of the policy of Democratic Kampuchea".

22

1 You quoted Ms. Becker, whom you did not dare call as a witness,  
2 who said before the trial, "Was he the man who spread terror all  
3 through the country? Was he Duch?"  
4 And so, Mr. President, Your Honours, even if you have already  
5 heard a great deal, we've still got a lot of work to do together.  
6 For my part, I will not use suppositions, not untruths, not  
7 exaggerations, not truncated quotations. I will offer to do the  
8 work by reviewing with you the high points in the trial that we  
9 have gone through together. That is to say all I will do is to  
10 highlight relevant quotations to defend the accused.  
11 And for the interpreters, I am moving to Point 2 of the documents  
12 I provided. That is the Admission of Facts. You will forgive me  
13 if I depart somewhat from the script from time to time.  
14 I'd like to recall for the Chairman's benefit the excerpt of  
15 Duch's statement on the first day of trial. And obviously, you  
16 will weigh it against what you have heard in this magnificent  
17 statement of the prosecution in the Obrenovic case.  
18 [10.07.40]  
19 Excerpt of Duch's statement on the 31st of March 2009:  
20 "The crimes committed during this time were huge. Furthermore,  
21 the loss of human life stands at 1.7 million people and as a  
22 member of the CPK, I recognize or acknowledge that I am  
23 responsible for these crimes committed by the CPK during that  
24 period. Secondly, I would also like to return to the crimes  
25 committed in S-21 and here acknowledge my legal responsibility.

23

1 I would like to emphasize that I am responsible for the crimes  
2 committed in S-21, in particular with regard to torture and the  
3 executions that were carried out."

4 And you well know all through the trial, he never waived.

5 "M-13, yes. I was the head of M-13 and after that I was the head  
6 of S-21. And all the crimes including detention, inhumane  
7 conditions involving men, women and children, and even the  
8 executions of women and children are acts for which I am  
9 responsible."

10 This was on the 8th of April 2009. Judge Lavergne, on the 15th  
11 of June 2009, you put a question to him as follows:

12 "So generally speaking, do you acknowledge that S-21 prisoners  
13 suffered from a serious violation of their physical and mental  
14 integrity as a result of the inhumane acts that were visited upon  
15 them, including the intentional deprivation of food, prevention  
16 of hygiene and sanitation, medical care of an appropriate nature?

17 [10.10.20]

18 "Do you acknowledge that during their detention the prisoners  
19 were subjected to severe violence and restrictions? Do you admit  
20 that the difficult conditions that were imposed on them both  
21 individually and collectively were designed to demoralize them,  
22 to degrade them, to dehumanize them so that they would be  
23 maintained in a constant state of fear?"

24 And the accused answered:

25 "Your Honour, all the crimes you have listed I accept; I admit

24

1 them. I do not deny any one."

2 And to call into question the admission of responsibility on the  
3 part of the accused, the Office of the Co-Prosecutors yesterday  
4 complained that the defence had tried to impede the flow - I love  
5 the word -- "the flow" of documents but here you have a  
6 confession which I will return to this when we shall deal with  
7 matters of law.

8 "These children who were killed at Choeung Ek and these horrible  
9 images of the children whose skulls were smashed against the  
10 trunks of trees -- yes, for this I'm criminally responsible.  
11 I'm criminally responsible for these acts as they were committed  
12 under my watch."

13 Crocodile tears? A farce? Judge Cartwright, on June 16th, you  
14 asked the following question to the accused person, and I quote:  
15 [10.12.59]

16 "Today you appear to me as being gnawed by remorse and extremely  
17 ashamed of the role that you played in extracting confessions  
18 through torture. Is this correct?"

19 Answer:

20 "Yes. That is correct, Your Honour."

21 And again, Judge Cartwright, you asked the following:

22 "How did you attempt to save three children which ultimately  
23 ended in vain, yet when you spoke during your testimony before  
24 the Co-Investigating Judges you once again expressed your regrets  
25 for having not done more; for not having endeavoured more?"

25

1 Answer:

2 "Your Honour, that is correct. I did not find any reason. I do  
3 not use any reason."

4 Recall the Obrenovic case. He did not try to come up with any  
5 excuse. And Your Honour, Judge Cartwright, you asked again just  
6 for clarification purposes,

7 "When referring to the document that you cited, you spoke about  
8 other Khmer Rouge cadres who succeeded in allowing other children  
9 to survive, but you didn't do this and you regretted it  
10 afterwards."

11 The accused person's answer:

12 "Your Honour, the shame that I feel remains with me and it is  
13 shame that I carry during each and every moment of my life."

14 [10.14.57]

15 With respect to cowardice now, on June 15, 2009:

16 "Personally, I tried to avoid all contact with the prisoners and  
17 I was able to do so. I don't know how to describe this, but I  
18 can tell you this. I closed my eyes; I closed my ears. I did  
19 not want to see the situation as it was because the reality did  
20 not suit my feelings and, accordingly, I do not allow myself to  
21 see or hear anything.

22 And the following question was put to him, "Can you call that  
23 cowardness?" and Judge Lavergne, this was a question to you put  
24 to the accused person's answer:

25 "I think this is above and beyond cowardness. I accept

26

1 cowardness but this is well above and beyond cowardness. You can  
2 even say that I betrayed my friends, but this transcends  
3 cowardness."

4 Mr. Prosecutor, yesterday you vehemently spoke out against a man  
5 who was on his knees, on his knees begging for forgiveness. I do  
6 not agree with this. I do not accept the tone of your  
7 statements, of your arguments.

8 [10.17.03]

9 With respect to meticulous work, it's quite interesting. On  
10 September 2nd 2009, he said before this Trial:

11 "We have also used the term "meticulous worker" to describe my  
12 personality. If we were to situate this in the context of a good  
13 government, this would be seen as a virtue. However, at the time  
14 the government in power was a criminal and cruel government and  
15 those terms that were used to qualify my personality are  
16 painfully resonant in that context."

17 I would like to recite to you further passages that you have in  
18 the case file. First and foremost, I will be quoting transcripts  
19 from our proceedings, particularly during the re-enactment at  
20 S-21 and Choeung Ek:

21 "It is stated that when I arrived at S-21, I was also shocked to  
22 see everything that happened at S-21. I came face-to-face with  
23 three survivors who were before me and who represented the past.  
24 I became face-to-face with the photos of formerly detained women  
25 with children in their arms. This also moved me and I was

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1 troubled and unsettled before the victims, troubled with what had  
2 happened in the past. I made a statement requesting forgiveness  
3 from the spirits of the souls who perished. This is something  
4 that I will never forget from my visit at S-21 and Choeung Ek."  
5 Once again, I would like to make a statement at this  
6 point-in-time, Mr. President, Your Honours.

7 [10.19.56]

8 Who can possibly presume that Duch would have agreed to return to  
9 S-21 and Choeung Ek accompanied by two security guards,  
10 accompanied by two Co-Investigating Judges? Can you possibly  
11 imagine what that could have represented to him in terms of the  
12 journey that he has personally led within himself?

13 When I said earlier that nothing can erase the crimes, it remains  
14 nonetheless that this man who admits his guilt agreed to  
15 co-operate during the investigative proceedings, had agreed to  
16 return to the site of the crime, had agreed to co-operate in the  
17 re-enactment before this Trial, before the Cambodian people.  
18 This takes nothing away from the seriousness of the crimes. Let  
19 us be abundantly clear on that fact.

20 But we must say the following. He is full of remorse. Without  
21 Duch, this Trial could not have unfolded if he, like others, had  
22 decided to remain silent. At the very worst, had he decided that  
23 it was enough for him as some have suggested?

24 Once again, on September 16th, he said:

25 "When I went to Choeung Ek accompanied by the Co-Investigating

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1 Judges, I thought about the memory of the children who were  
2 executed and who were killed in the most atrocious manner when  
3 they were smashed against tree trunks and, at that point, I was  
4 determined to return to that place so that I could go fall on my  
5 knees and to honour the souls of those who perished."

6 [10.22.40]

7 The task of the lawyer, particularly of a defence lawyer, who is  
8 being charged with such serious crimes is not easy, however, we  
9 always hold one major advantage over the Co-Prosecutors. They  
10 have all of the means possible at their disposal. They have a  
11 full team. They have experts. They have assistants. They have  
12 everything that they could possibly ask for, but they lack one  
13 thing. That is contact. They lack contact with the accused  
14 person.

15 We the defence, we meet with the accused person in his prison  
16 cell in private moments where he is able to speak openly, where  
17 he is able to speak freely from the heart. We see what you, Mr.  
18 And Ms. Prosecutor, are unable to see. We see an accused person  
19 who tries to hide himself discreetly and when he collapses in  
20 tears there is no one other than his own lawyers who are able to  
21 witness the tears that he sheds on the graves of the children who  
22 died. That is what we bear witness to. And that is what I  
23 testify to today.

24 Despite the arguments of the prosecution who, in their final  
25 submissions, did not acknowledge after one full year of

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1 proceedings, did not in any way account for in their final  
2 written submission account or acknowledge the admission of guilt  
3 by the accused of his remorse. I do not see any indication, any  
4 half-sentence of acknowledgement of the accused person's guilt in  
5 their final written submission. They do not acknowledge it, not  
6 one single time. There is not one iota of indication. Not once  
7 have they said. And this was supposed to be corrected, and these  
8 words were said during a press conference and yet it is not at  
9 all reflected in their final submission.

10 The prosecutors have been mistaken. They are mistaken in this  
11 trial, but the defence is not mistaken and despite the arguments  
12 and the denials made by the prosecution, it was said in paragraph  
13 167:

14 "Duch has acknowledged his responsibility in his capacity as  
15 Chairperson of S-21 for the crimes committed there. He explains  
16 that he was led to break his silence in 1999 on the belief that  
17 he was not able to hide the truth about S-21 and after having  
18 heard the words of Pol Pot who denied the existence of S-21 and  
19 who claimed that it was the invention of the Vietnamese. Duch  
20 has regularly and consistently expressed his remorse to the  
21 victims and to the families of victims, but he has also asked for  
22 forgiveness from his subordinates."

23 [10.27.00]

24 These are the words of two judges, and he continues:

25 "He has confirmed that none of his subordinates of their volition

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1 carried out their acts, but that they were all labouring within  
2 an environment of terror each and every day of their lives; that  
3 nobody had any other choice but to execute the orders."

4 Paragraph 168:

5 "Furthermore, Duch has co-operated throughout the investigation  
6 by refusing to implicate any of his subordinates and carries  
7 exclusive responsibility so that he may exonerate himself.

8 Confronted with certain inconsistencies that were revealed to  
9 him, he said that he acted out of fear and shame; shame that he  
10 felt when he was confronted with the pain of these crimes."

11 This is what the Co-Investigating Judges have found after  
12 one-and-a-half years of investigation; something that the  
13 prosecution has refused to acknowledge.

14 Mr. President, Your Honours, perhaps it is time to break for  
15 adjournment.

16 MR. PRESIDENT:

17 For it is an appropriate time to take an adjournment, we will  
18 break for the adjournment for 20 minutes. The session will be  
19 resumed at ten to eleven.

20 (Judges exit courtroom)

21 (Court recesses from 1029H to 1052H)

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 defence counsel to

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1 proceed with his oral closing statement.

2 MR. ROUX:

3 Thank you, Mr. President.

4 In a manner of speaking, to wrap up all I have said before with  
5 regard to the admission of the facts by Duch, as the prosecution  
6 seems to doubt -- to continue to doubt the sincerity of the  
7 accused and the description of his character, on the day before  
8 the last day of hearing on the 16th of September 2009, I put a  
9 question as a submission to conclude to Duch, which question I  
10 repeated as coming from the statements made by Prosecutor Robert  
11 Petit.

12 [10.54.30]

13 You know that we say that the best arguments are drawn from the  
14 documents of the opposing party. In his opening statement,  
15 Prosecutor Robert Petit had, I might say, finally dwelt on the  
16 accused's admission, but he threw down the gauntlet in front of  
17 the accused and, if you remember, he said this:

18 "So at the end of this trial, if we were to establish the truth  
19 regarding what occurred in S-21, then I respectfully submit that  
20 you must confront the accused with the facts of the case and with  
21 the only logical conclusion that may be drawn, rather than the  
22 image of somebody who was acting against his will and this is the  
23 impression he tried to give during the investigation. He claimed  
24 that he was mostly unaware of the horrors that were being  
25 perpetrated around him by his subordinates whilst he was busy in

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1 his office, busy taking notes. In fact, this was a man who  
2 enjoyed the trust of his superiors implemented in a devoted and  
3 merciless manner, the CPK persecution of the people of Cambodia  
4 in S-21. If he acknowledges this, then and only then, the  
5 accused can actually claim that he has admitted his crimes and  
6 receive the benefits that derive from such an admission."  
7 I have always said that Duch has largely admitted his crimes, and  
8 this goes well beyond this statement. But, as the prosecutor had  
9 said that, as the prosecution had made this submission and since  
10 the prosecution had very clearly delimited the framework within  
11 which, in its view, there would be a clear and actual admission  
12 of responsibility, I placed -- I put the question word for word  
13 to the accused before you and during that hearing of the 16th of  
14 September, I said this to the accused:  
15 [10.57.49]  
16 "Duch, we have come to the end of the proceedings. I have one  
17 question to put to you."  
18 And repeating word for word Prosecutor Robert Petit, I said to  
19 him:  
20 "Do you admit that, in fact, you were one who enjoying the trust  
21 of his superiors implemented in a devoted and merciless manner,  
22 the persecution of the CPK, of the Cambodian people in S-21. Do  
23 you admit it; yes or no?"  
24 And the accused responded:  
25 "Yes, I admit it completely."

33

1 So how can there still be a shadow of a doubt in the minds of the  
2 prosecution? The prosecution had two months to draft 160 pages  
3 of a brief, with the well-known footnotes without which we  
4 wouldn't exist in this Court, it would seem. And I found no  
5 confirmation of what the Office of the Co-Prosecutors conveyed  
6 with regard to their satisfaction with the answer given.

7 As these are learned people, the prosecution obviously perceived  
8 the difficulty and, ladies and gentlemen, you will have observed  
9 in the statements yesterday that there were two new words which  
10 were oft repeated in a repeated attempt to accuse, to drag down  
11 the accused; two words -- he acted with zeal and enthusiasm and  
12 until he recognizes this, his admissions would not be sincere.

13 [11.00.29]

14 That is not what Mr. Petit said. This is entirely new, and yet  
15 we will see further statements by Duch later on and he says in  
16 his statements, "Yes, I was zealous. Yes, I was enthusiastic."

17 So you have your key words don't you, the words that seem to be  
18 so important to you?

19 Instead of acknowledging what was actually said, I'm going to now  
20 dwell on what was said. You have truncated quotations. The  
21 prosecutor read out a quote by Duch who said when he was shown a  
22 photograph of himself taken at the time, he said -- and this is  
23 the hearing of the 17th of April -- and he said:

24 "If you look at the photographs of me at the time, it seems to me  
25 that I was rather proud of the work I was doing which was to

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1 maintain the class position firmly."

2 That was a quotation that you heard yesterday. It's truncated.

3 This is what the accused said subsequently in regard to that same

4 photograph:

5 "But looking back, when I analyze things, I would say that I am

6 ashamed. It is shocking and one can only feel shame to be

7 depicted as such in a photograph when one is responsible for the

8 deaths of more than 10,000 people."

9 I do not like truncated quotations. So it seems to me that this

10 Chamber has all the material supporting the view that the accused

11 fully recognized his responsibility for the crimes committed in

12 S-21. He recognizes that he ordered them, that he instigated

13 them, and he supervised them.

14 [11.03.13]

15 If I may, I should like to say a few words regarding what appears

16 to be, in our view, the positive impact of such an admission. I

17 refer in particular to the expert, David Chandler, to whom I put

18 the question:

19 "Do you consider that the fact that the accused has acknowledged

20 his responsibility is of service to history?"

21 And Mr. Chandler answered:

22 "Yes. It's an easy answer. I do believe this. I was very moved

23 and very impressed by the accused's acknowledgment of guilt."

24 This is Mr. Chandler speaking. This is one of the major experts

25 of S-21, and he added:

35

1 "It is unique amongst the survivors of this Khmer Rouge  
2 government. I am not referring to survival victims, I'm  
3 referring to the surviving actors of the Khmer Rouge regime."  
4 I heard Dr. Chhim Sotheara, who is a psychologist for some civil  
5 parties, he was speaking on the 25th of August, 2009. He said:  
6 "It's a good thing for the accused to apologize. It lays open  
7 the road to healing."  
8 [11.05.15]  
9 This expert also talked of a road for the victims.  
10 I am also thinking of the statement, if you will recall, the very  
11 impressive statement of Mr. Robert Hamill on the 17th of August  
12 2009. He said:  
13 "I recognize, therefore, the fact that Duch is pleading guilty.  
14 I am angry beyond words but I respect and recognize the plea of  
15 guilty entered by the accused. I hope that in its wisdom the  
16 Chamber will take all this material into account."  
17 I shall now move to another topic which seems to me to be equally  
18 important as it was presented from a curious standpoint by the  
19 Office of the Co-Prosecutors yesterday. I had scribbled on a bit  
20 of paper as I left the courtroom the following:  
21 "The Office of the Co-Prosecutors has just reinvented the history  
22 of Democratic Kampuchea and has in fact just explained to us that  
23 this was not a dictatorship."  
24 Because if S-21, which you were told was the largest in the  
25 country -- and I'd like to express my reservations in that regard

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1 -- but if S-21 occupied the position that you say it occupied,  
2 Mr. and Ms. Co-Prosecutors; if, as you say, its leader or its  
3 head had such autonomy in decision-making which meant that he  
4 himself decided on things, that he advised his superiors and, as  
5 I believed Chea Leang said, "frightened his superiors", it is not  
6 a dictatorship anymore. It is participatory democracy.

7 [11.08.08]

8 S-21 would be an extraordinary place. Its boss decides, he  
9 chooses, he has no superiors. That is what was explained to us  
10 yesterday. In the words you used, which I have quoted back to  
11 you word for word, we asked the expert Mr. Raoul Marc Jennar to  
12 come before this Chamber to explain the chain of command, as we  
13 describe it, and we are particularly grateful to Mr. Raoul Jennar  
14 for his very clear statement.

15 And even there I read in the Co-Prosecutors' report that this  
16 statement of his, his presentation, not having footnotes, should  
17 not be admissible. What is this dictatorship of footnotes then?  
18 You cannot accept that someone can speak for himself? Can you  
19 not accept that an expert can speak based on his own knowledge?  
20 Judge Cartwright will know what I refer to when I refer to the  
21 peoples of the Pacific where it is said, "When you speak you must  
22 clothe your words."

23 In my view, when Raoul Jennar came here to give testimony, he  
24 clothed his words, embodied his words. If you want to challenge  
25 him, go ahead. I wish you good luck. He explained to us how the

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1 chain of command in Democratic Kampuchea operated and  
2 specifically he explained the analysis that can be made of this  
3 chain of command which is known.  
4 [11.10.48]  
5 Still from the files of the opposing party, in your final  
6 submission illustrating the regular contact between Duch and his  
7 superiors -- I refer to paragraph 141 of the final submission of  
8 the Co-Prosecutors before the closing order -- what are we told,  
9 which is the exact opposite of what we heard yesterday? What are  
10 we told? The working relationship between Duch and Son Sen was  
11 particularly close. They spoke every day on a secure telephone  
12 line. These are the prosecutors writing and now they challenge  
13 it.  
14 "Duch reported to Son Sen on the details of confession, discussed  
15 the strategies and targets for arrests and received the orders of  
16 Son Sen. Son Sen visited S-21 just as frequently to provide  
17 training, in particular to provide intelligence to S-21 officials  
18 in regard to enemy agents from the 'CIA and the Yuon'.  
19 Son Sen also went to Duch's residence. After Son Sen left Phnom  
20 Penh to go to the war front, Duch reported to his new superior  
21 Nuon Chea at least every three days; every three days either in  
22 person or through a messenger. Duch corresponded with Nuon Chea  
23 through written instructions and sometimes went to his office."  
24 Duch was the subordinate of Son Sen and you cannot avoid that;  
25 nor can you avoid what it means in concrete terms.

38

1 I asked David Chandler the following question:

2 "Can you please confirm if Duch was indeed the subordinate of Son  
3 Sen and that Son Sen had the upper hand in Santebal?"

4 [11.13.38]

5 His answer :

6 "Yes, yes, that is entirely correct and I never meant that Duch,  
7 the accused person, enjoyed full autonomy in his activity. He  
8 followed the orders of Son Sen."

9 And he adds:

10 "However, to answer to your question, yes, of course. This was  
11 not an operation that could function on its own..."

12 And he's talking about S-21:

13 "This was an operation that was closely monitored from the very  
14 top."

15 I raised these points during the proceedings. S-21 was run by  
16 Son Sen. S-21 was within the grasp and controlled by the  
17 Standing Committee. If there is any particular characteristic of  
18 S-21 it's the characteristic that we're all aware of, that it was  
19 where all of the Khmer Rouge cadres were sent from across the  
20 country. And this is only part and parcel of the level of  
21 complexity of this entire case file.

22 The Co-Prosecutors have recognized that 78 percent of those who  
23 were killed at S-21 were members of the regime, many of whom had  
24 much more blood on their own hands than Duch did. This we know  
25 adds to the level of complexity of this issue. And this -- in

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1 all families there were victims. Everybody knows this. S-21  
2 specifically was where former security guards also had to go  
3 through. We cannot escape this fact. We cannot avoid it. It is  
4 before us. But at the same time it does not in any way justify  
5 the outcome that befell all these people. All of these people  
6 had no doubt they all were part of this machinery, S-21, which  
7 was directly controlled by the Centre.

8 Yesterday the prosecutors attempted to say that Duch was very  
9 powerful. The underlying idea of that statement is that there is  
10 a witness that was not able to testify and who claimed that at  
11 the marriage ceremony of Duch, there were many powerful figures,  
12 and the Co-Prosecutors have never acknowledged that fact even  
13 though it is contrary to everything that we know about the case  
14 file. And yesterday the Co-Prosecutors said that Duch was a  
15 brother in arms with Son Sen and that he sought to climb the  
16 ranks and that he tried to align himself with the most powerful.

17 [11.18.07]

18 I have asked to admit into evidence this book that we cannot  
19 overlook. It is written by Philip Short, "Anatomy of a  
20 Nightmare" is the title. As you know, when seeking to understand  
21 the position of a person within a hierarchy, one of the ways of  
22 determining rank is understanding how the authorities treat  
23 people during a time of crisis. Let us talk about the crisis  
24 when Phnom Penh was emptied out. Let us listen to what was the  
25 demise of apparently somebody who was very close to the powerful

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1 when Phnom Penh was evacuated. Allow me to quote a few passages  
2 from Philip Short's book.  
3 "It was the 6th of January. Son Sen left Phnom Penh that very  
4 evening on the 6th. He crossed Vietnamese lines to reach Kampong  
5 Chnag and to reach the Khmer Rouge who were working in the  
6 Eastern Zone. Pol, Nuon Chea, Khieu Samphan, accompanied with  
7 several jeeps who were surrounded in security details, arrived on  
8 the 7th of January in Pursat. Pol was driving in a Chevrolet and  
9 was able to cross the lines much more easily than those who were  
10 travelling in the Mercedes. Ieng Sary, who had left for  
11 Battambang on a special train that was carrying several hundreds  
12 of officials from the Department of Foreign Affairs, had left in  
13 a rush the evening prior.  
14 Barely after 8 a.m. in the morning we saw Mok at the wheel of a  
15 jeep driving close to the Department of Foreign Affairs but a few  
16 hours later his presence, as it was acknowledged, was completely  
17 useless. So it was only by the middle of Sunday morning that all  
18 of the rulers of Democratic Kampuchea had stolen furtively away,  
19 abandoning the capital to its own devices. The population of  
20 workers and soldiers, plus the military units based in the  
21 immediate vicinity, was left leaderless to fend for itself."  
22 [11.21.29]  
23 Where was Duch? This is on page 398:  
24 "The priority placed on the security of Sihanouk was only the  
25 implementation of the principle that was expounded by Nuon Chea

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1 months before. That is, if we lose members but retain the  
2 leadership we can continue to win."

3 Where was Duch? At the end of page 399:

4 "Outside the inner circle formed by Pol Pot, Nuon Chea, Mok, Ieng  
5 Sary and Son Sen, no-one was adequately informed."

6 And lastly:

7 "Even the most secret of units of centres at Tuol Sleng continued  
8 to evil work, oblivious of the danger until it was almost too  
9 late. Nobody thought to notify Duch. Prisoners were still being  
10 interrogated on January 5th when Duch received an urgent order  
11 from Nuon Chea to kill the remaining inmates. He complied but  
12 there was no time to destroy the prison archives and most were  
13 recovered intact by the occupation forces."

14 Mr. President, Your Honours, if you seek to understand Duch's  
15 position within the hierarchy of Democratic Kampuchea, please  
16 refer to these historical facts and you will remember that Duch  
17 left that day by foot with nothing but the shirt on his back.

18 [11.23.45]

19 In this regime Duch was given a task handed down to him by his  
20 superiors. During the proceedings you have heard an entirely new  
21 version as expressed by Mr. Craig Etcheson. This is a new  
22 version because it has never been referenced in documentation in  
23 any book, in any of his own work, and following the submission of  
24 his report Mr. Etcheson worked effortlessly with the Office of  
25 the Co-Prosecutors, and here we are, we find ourselves before an

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1 absolutely astounding and new version that you have already heard  
2 yesterday; a version according to which that Duch, through his  
3 meticulous, through his zealous enthusiasm, had indeed fuelled  
4 the paranoia of the leaders of the regime. It's almost as though  
5 his superiors had expected him to become paranoid.  
6 Therefore, I will refer you to the testimony given by David  
7 Chandler on page 136 from this point of view:  
8 "The confessions were like mantras that were serving to protect  
9 the centre of the Party against its enemies but so to bar any  
10 real and true understanding of the actual situation, Duch, Pon,  
11 Chan and all of their collaborators were therapists, priests,  
12 miners, vivisectionists."  
13 By concocting and devising a story based on a fantasy of their  
14 leaders which were most likely their own fantasies as well was a  
15 way of appropriately serving their masters and we will readdress  
16 this point. And I'm sure that you will recall that Duch said,  
17 "My masters considered me as a loyal dog."  
18 During the regime of Democratic Kampuchea, once again, Craig  
19 Etcheson, in his report -- that is before he posits this entirely  
20 new thesis -- in his report he says that the Standing Committee  
21 controlled all communication networks of the regime of Democratic  
22 Kampuchea and all communication was controlled by a top-down  
23 vertical hierarchy. And in the material, there are several  
24 telegrams that come from the regions and that are addressed  
25 directly to the Standing Committee and that contain confessions.

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1 [11.28.08]

2 And Duch said before this Chamber that he was not held to the  
3 principle of confidentiality; that they continued to interrogate  
4 him on the existence of other telegrams that came from other  
5 regions. It was an entire system that was operating throughout  
6 the country -- operating in all of the zones -- and that went  
7 directly to the Centre because that was where everything was  
8 controlled. And the prosecution is trying to make you believe  
9 that within that system, Duch enjoyed any degree of autonomous  
10 decision making.

11 I will now come back to that farcical element that I had referred  
12 to earlier with respect to Sou Met. Given everything that has  
13 been said, he is trying to say that at least in one of the zones,  
14 in one of the divisions, Duch may have sustained horizontal  
15 relations; yet Craig Etcheson, in his report, said that  
16 horizontal contact was considered as an act of betrayal. He's  
17 not afraid of contradicting himself as he said that he was able  
18 to carry out horizontal communications with Sou Met.

19 My esteemed colleague yesterday spoke to you extensively about  
20 the decision of March 1976. I will not re-address that. I will,  
21 however, say that by virtue of that fundamental ruling which was  
22 a secret because everything was a secret -- that by virtue of  
23 that ruling, this revolution like many that preceded it -- our  
24 expert witness, Jennar, talked about the situation in the Soviet  
25 Union and that the revolution there served as an inspiration.

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1 Like all revolutions, it is fuelled by this fantasy that there  
2 are enemies and counter-revolutionaries, as here, like elsewhere,  
3 a policy of systematic elimination of enemies was implemented and  
4 once those enemies were identified, they were sent to S-21 as  
5 they were sent to other security centres and they were  
6 interrogated so that their arrest could be justified and then  
7 they were eliminated. This was the sinister task of Duch as  
8 David Chandler reminded us.

9 [11.32.14]

10 I believe that the accused person's role at S-21 was to oversee  
11 operations and make sure that anyone who entered the prison would  
12 be executed. This was his mission. This mandate was never  
13 withdrawn by any immediate superior or any authority. As such,  
14 he did not have to seek the approval of a superior in order to  
15 carry out orders and to supervise a system in which there was but  
16 no choice to make a distinction between who should and should not  
17 be killed.

18 Anyone who entered S-21 -- everyone who entered S-21 was to be  
19 executed regardless of their own situation. This is the  
20 terrible, sinister task that Duch was given. This task was part  
21 and parcel of a policy that Duch was much larger than him. This,  
22 I think, is a rewriting of history to avoid using a less  
23 flattering word; that is, to claim that Duch, within this chain  
24 of command, had any inkling of a possibility to choose  
25 independently those who would be killed or to order arrests, but

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1 we'll come back to this point later on. We'll come back to some  
2 of the untruths that have been uttered with regard to Duch.

3 I will continue to quote Craig Etcheson:

4 "There was a constant purge within the ranks. Over time, this  
5 purge would be carried out throughout the country and in many  
6 places. [This is on page 21.] The purges happened time and time  
7 again in the same security centres within the same ranks."

8 [11.34.50]

9 And I repeat, 12,380 deaths at S-21 is 12,381 deaths too many,  
10 but they are not the 1.7 million deaths that must be accounted  
11 for -- that the senior leaders of this regime must take account  
12 for.

13 Allow me to quote from a passage of "Revolutionary Flag".

14 "By mid-1980s, the centre of the Party had described the Standing  
15 Committee's policy."

16 These are the words of Craig Etcheson.

17 "We placed particular emphasis to find enemies and to identify  
18 them. We've been able to eliminate them. More than 89 percent  
19 of despicable enemies who have been hidden. Things must be  
20 reviewed throughout the country. Each sector must be thoroughly  
21 examined. Each district must be thoroughly combed. Each  
22 co-operative must be thoroughly reviewed in the same manner. The  
23 armies, departments and offices must be reviewed in this manner."  
24 This is a direct quote from the newsletter "Revolutionary Flag"  
25 which, as we all know, was the work of Pol Pot.

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1 And then we have this.

2 [11.37.01]

3 "We must consider essential the task of fighting the internal  
4 enemy which is linked to each of our other tasks. So each level  
5 of the Party should play a role that would help to direct the  
6 army and the people to attack the enemy and eliminate them  
7 properly. Eliminate, eliminate, eliminate again and again  
8 without fail so that our forces in the Party will be few\* so that  
9 our leading forces at all levels and in all spheres would be  
10 pure."

11 Based on that, what was the actual work of Duch in S-21 to elicit  
12 confessions? You may very well build cases that are completely  
13 at odds with the system that you have described yourself, but  
14 there is material in the case file that speak very clearly for  
15 themselves.

16 You know that the witnesses and the documents are there so these  
17 so-called notable interrogators which was called, quite oddly,  
18 "List of statistics of the Special Branch S-21, Policies,  
19 Ideology and Organization" -- and I'll give the ERN number  
20 exceptionally, which is 00007445 to 00007513. The prosecutors  
21 call this fundamental document, "the torture manual". Please  
22 call to mind that I questioned witness Prak Khan in whom, as you  
23 will recall, I have no particular trust with regard to his own  
24 statements. And I talked to him about something that was written  
25 down about a document. And I put the question to him as follows:

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1 "Witness, I would like to put to you a number of questions based  
2 on a document which is in the record of the case and which is  
3 considered to be an interrogator's notebook."  
4 And I said to the Chamber, "This was allegedly prepared, this  
5 book, during the training sessions organized by Duch."  
6 So this is the centre looking for enemies which it sends to Duch.  
7 They confess. Duch trains interrogators and based on this  
8 notebook we are able to find out what he says to interrogators.  
9 This is not testimony. This is a written document.  
10 [11.40.48]  
11 So I put the question to Prak Khan.  
12 "There is a chapter whose title is 'Duch's instructions during  
13 training sessions'.  
14 This is our title, not the title of the original. In the French  
15 version on page 9 of the document "List of Statistics". I said  
16 to the witness Prak Khan:  
17 "This is what I read. Listen carefully, Witness.  
18 'Angkar instructs us to interrogate well and intensely. We have  
19 closely followed the instruction but we give more weight to  
20 torture than to politics. This is counter to the instruction  
21 that we should use politics'.  
22 "Further down in the same document, another title 'Objectives for  
23 improving work.' We have three points. First, use politics as a  
24 basis. Second, follow the comparative answers in a detailed  
25 fashion before having recourse to torture. Three, strictly

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1 follow Angkar discipline during the interrogation. [And I add] I  
2 am going to put other questions to you but I continue with my  
3 questions.  
4 "I will move now to page 13 in the French, paragraph 3,  
5 'Viewpoints on position on methods of interrogation' and the  
6 document also indicates as follows:  
7 [11.43.00]  
8 'First, measures for each of us during the interrogation are of  
9 two kinds: a) politics. We must provide this as much as possible  
10 and at all times; b) torture is only a secondary measure.'  
11 "Secondly it is indicated as follows.  
12 'Experience from the past, from our fellow interrogators, were  
13 generally focused on torture. This means that more importance  
14 was granted to torture than to propaganda. This is the wrong  
15 approach and we must be very clear in our determination to avoid  
16 this.'  
17 And so I said to Prak Khan:  
18 "Mr. Witness, do you recall -- does this bring to mind what you  
19 heard during the training sessions?"  
20 And Mr. Prak Khan answers:  
21 "Yes. I heard what Duch said during the training sessions. Yes,  
22 I did hear this theory.  
23 Is this the cruel person who was depicted to you yesterday? Is  
24 this the person who says, "We try to act first by using political  
25 pressure and we use torture only as a last resort"?

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1 And I continued my questions for witness Prak Khan, still in the  
2 same document, "Viewpoint and position in regard to enemy  
3 confessions." The following is written.

4 [11.45.05]

5 "Let them write or speak. You mustn't interrupt them. We  
6 mustn't rectify what we hear or see immediately according to our  
7 intentions except for the points suggested by the Party which we  
8 ask them because the Party understands the situation clearly.

9 But if we emphasize names and activities, they will invent things  
10 based on what we intend. And if we do so, we are going to use  
11 revolutionary forces. They're going to confuse the revolutionary  
12 situation and make the contents of the confessions vague and  
13 valueless."

14 And further down again in the same document:

15 "The important thing is that we shouldn't point to names. We  
16 shouldn't make them speak or force them to speak based on our  
17 intentions."

18 And I asked Prak Khan at this point:

19 "Does this bring anything to mind?"

20 [11.46.25]

21 He said:

22 "Yes, this was taught to us because if we forced the prisoners to  
23 talk and write too much about the activities, the confession was  
24 useless. So we had to explain to them how to write a clear and  
25 easy to understand confession, and this was the instruction that

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1 Duch gave us systematically."

2 So you may well tell stories before an international court, an  
3 international criminal court, but they are documents, they are in  
4 the case file, so you take the documents, you look at the  
5 documents and based on these documents we try to elicit the  
6 truth, not what you would like to believe. We mean the truth.  
7 The truth also requires us to talk about the reign of terror.  
8 How can we extricate Duch and S-21 from the regime of terror? I  
9 would just like to bring a few things to mind. Raoul Jennar --  
10 we return to him -- quotes a slogan that was in use at the time,  
11 "Whoever protests is an enemy; whoever opposes us is a dead  
12 body." Do we need to develop this at length when we have such a  
13 slogan?

14 Now we move back to Mr. Craig Etcheson, his testimony of the 28th  
15 of May:

16 "I think personally that the leaders of Democratic Kampuchea  
17 explicitly used terror as a means of control."  
18 He is not part of it. I move now to Dr. David Chandler in his  
19 book, page 66 of the French in which he says:

20 "This change was the harbinger of the absolute reign of terror  
21 which obtained until the end."  
22 [11.49.19]

23 So you will recall I questioned Mr. David Chandler during his  
24 appearance here with regard to paranoia:

25 "Yes, the paranoia began at the Centre, not in S-21. Paranoia

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1 began at the Centre and spread to the ranks. The paranoia of the  
2 leaders continued and if the most dangerous enemy was the  
3 invisible enemy then there would be no end to the terror because  
4 the enemy could not be seen."

5 Let me also recall Mrs. Sironi-Gilbaud, who was speaking on the  
6 1st of September 2009. This is the psychologist:

7 "And paranoia gallops. It doesn't stop. Nothing assuages the  
8 person who is paranoid."

9 She said:

10 "Yesterday we talked about a psycho-political diagnosis of the  
11 accused but also one might say of an entire country. That means  
12 that little by little the entire country, all the cogs in the  
13 wheel, moved in the same direction. They worked like the same  
14 individual. The psychological change that is required by the  
15 adaptation of a person's psychology to the changes of the regime  
16 means that at some point the two function as one, except that all  
17 the individuals who make up the people are not paranoid but they  
18 must adapt. They must develop psychological mechanisms for  
19 adaptation in order to adapt to and survive this regime.

20 [11.51.41]

21 This includes dissimulation, splitting, possibly also  
22 overzealousness, over-adaptation for survival in order to fight  
23 the terror and this climate of terror."

24 Many witnesses came to you before this Court and they talked  
25 about it in S-21, so I now move on to a number of quotes or

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1 quotations. This is Duch speaking on the 22nd of September 2009:

2 "In fact I was very much afraid, in any event. My hair was on  
3 end, as one might say in Khmer."

4 Remember the psychiatrist Dr. Ka Sunbaunat recalled this time  
5 when he said:

6 "In the case of Vorn Vet, who was to be killed, the accused had  
7 no choice but to kill or be killed."

8 And in order to survive he decided to kill, or more precisely to  
9 cause to be killed. This is my addition, mind you, and the  
10 doctor continues:

11 "The accused was a member of the Party. As it happens, the other  
12 person was a member of the Centre of the Party and was in  
13 principle a model but the accused was himself an absolute  
14 instrument in the hands of the Party and as such he had to  
15 operate like a machine, an obedient machine that respected orders  
16 and instructions. He received instructions that he could not  
17 challenge and therefore he found himself in a situation where he  
18 had to choose to kill or be killed."

19 [11.54.19]

20 We return to David Chandler and this was on the 6th of August  
21 2009, referring to Duch. He says:

22 "He was frightened indeed because in some way the regime was  
23 becoming completely arbitrary. There are many indications that  
24 if the Vietnamese had not entered Cambodia, Son Sen himself would  
25 have faced the final moment. We know that it happened to him a

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1 few years later."

2 And Mr. Chandler continues, "There was widespread fear at the  
3 time." And Chandler adds:

4 "In the last months, the last six months of the regime perhaps,  
5 it is true that there are documents which mention the accused's  
6 regret. So of course, yes, he was afraid. This is consistent  
7 with what happened at the time."

8 Before we break, I would like to talk about the secrecy that is  
9 consistent or that goes with terror. Once more we have Mr.  
10 Chandler:

11 "Secrecy was naturally central to the ideology and the conduct of  
12 Democratic Kampuchea."

13 Nuon Chea said this very clearly when he was visited by a Danish  
14 delegation in 1978. He said -- I do not remember the exact  
15 terms. He said that secrecy was at the very heart of Democratic  
16 Kampuchea. And now people are still trying to tell us that this  
17 Standing Committee did not operate in secrecy in relation to S-21  
18 and people are still contending that Duch had access to the  
19 secrecy or the secret deliberations of the Standing Committee.

20 [11.57.10]

21 You will find in the CPK statutes Article 2, duties of Party  
22 members. And if you can charge Duch with many things, you cannot  
23 charge him with having followed to the letter the obligations  
24 that were incumbent upon every Party member. These obligations  
25 included maintaining Party secrecy absolutely with high and

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1 constant revolutionary zeal.

2 Does anybody believe here and now that Duch would have disobeyed  
3 that? Do you think that Son Sen could have disobeyed that?

4 And we return to Raoul Jennar, who says:

5 "The Communist Party of Kampuchea as from 1963 worked behind the  
6 scenes. It implemented a practice of secrecy and a method of  
7 compartmentalization that was the way in which the Party was  
8 governed. And as from 1975 this method was used to govern the  
9 country."

10 It was this culture of secrecy that reigned at S-21, this culture  
11 of secrecy that S-21 was steeped in so that S-21 was unknown to  
12 anyone from the outside except for members of the Standing  
13 Committee and his superiors, and this is exactly why, yes, even  
14 if somebody was mistakenly sent to S-21 that person was executed  
15 because nobody beyond the Standing Committee was to know what  
16 happened at S-21, and these were based on the orders that Duch  
17 received.

18 He was told, "You will maintain absolute silence and secrecy in  
19 application of Article 2 of the Party's constitution and that you  
20 will practise revolutionary vigilance at all times."

21 [11.59.47]

22 Mr. President, I think that we have now reached a time to adjourn  
23 the proceedings.

24 MR. PRESIDENT:

25 Since it is an appropriate time to take an adjournment for lunch,

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1 we shall now take the adjournment. And the session will be  
2 resumed by 1.30 p.m.

3 The security personnel are now instructed to take the accused to  
4 the waiting room or to the detention facility and bring him back  
5 to the courtroom before 1.30 p.m.

6 (Judges exit courtroom)

7 (Court adjourns from 1200H to 1331H)

8 (Judges enter courtroom)

9 MR. PRESIDENT:

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

11 The defence counsel may now proceed with the rest of his oral  
12 closing statement.

13 MR. ROUX:

14 Thank you very much, Mr. President.

15 I will indeed continue where I had left off and talk about the  
16 general context of Democratic Kampuchea. We talked about terror,  
17 we talked about secrecy. We obviously must talk about the  
18 following and how could we possibly overlook the issue of  
19 obedience and discipline as defined in the CPK's statutes.

20 [13.32.33]

21 Article 2 of the statutes provides for members of the Party to  
22 comply with the discipline of Angkar unconditionally --  
23 unconditionally -- and with the clearest conscience. As you will  
24 recall, we talked about this issue at length with experts. You  
25 will bear in mind what David Chandler said before the Court, but

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1 also what is published and written in his book on page 171,  
2 beginning of the second paragraph on page 17(sic):  
3 "It was also just as easy to judge interrogators, security guards  
4 or torturers far too severely. If they did not obey to the  
5 orders they were certain of death."  
6 These are the words of Chandler. These are not the words of  
7 Duch. And he adds, and he continues:  
8 "Without having gone through such an experience, no one amongst  
9 us can possibly say how he or she would have behaved if they were  
10 themselves an interrogator."  
11 We shall come back to this. I would also like to quote Mr. Craig  
12 Etcheson, who I had cross-examined on this matter. My question  
13 was the following:  
14 "Since we are on the topic, that is, the topic of choice and  
15 obedience, am I mistaken in stating that in Democratic Kampuchea  
16 if one did not obey that one could risk death?"  
17 [13.35.11]  
18 Answer:  
19 "Absolutely, without a doubt, Counsel."  
20 Obedience was also raised in another question of Duch, "Why did  
21 you not escape?"  
22 Of course the Co-Investigating Judges had put the question to  
23 him. Of course lawyers had put the question to Duch; that is,  
24 why did he not escape?  
25 His initial answer was one based on common sense. He stated to

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1 us, "Kuy Thuon had more power than I had and he was unable to  
2 flee. Vorn Vet had more power than I had and he was unable to  
3 escape." And we can go on and on and cite all of the senior  
4 leaders who entered the gates of S-21 as prisoners. They were  
5 unable to escape.

6 We all know that some were able to disobey. History shows that  
7 the person I am thinking about was close to the Vietnamese border  
8 when he had decided to disobey orders and ally himself with the  
9 enemy and then return to fight the Khmer Rouge. Duch was not at  
10 the border when Vet was not close to the border. Duch has always  
11 maintained that he would have required a pass.

12 [13.37.45]

13 We're talking about Duch, the Chairman of S-21, who would have  
14 required a pass to move freely about Phnom Penh. There once  
15 again bear in mind what Philip Short said on page 430:

16 "Only a government official could receive a special authorization  
17 to enter another department. A special pass was required to move  
18 between one district in Phnom Penh to another. Members of the  
19 Standing Committee and even Pol Pot himself had to go through the  
20 military post."

21 This was a system of paranoia, of madness. Even if members of  
22 the Standing Committee were required to circulate with a special  
23 pass, what about Duch? Please recall the declarations and  
24 statements made by the Co-Investigating Judges. Kar Savuth had  
25 asked a question that was put to a former security guard of S-21.

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1 Their answer was deeply troubling and confronts us once again  
2 with the issue of hierarchy.  
3 "We did not have the freedom to move freely about and we had to  
4 be very careful because any transgression could be entailed with  
5 a punishment. Therefore we worked very hard and we lived in a  
6 state of fear. And we thought that at any time that we would end  
7 up dead like the others.

8 But this was our mission. This was the mission that was handed  
9 down to us by our immediate superiors and accordingly we had to  
10 comply and obey to these orders."

11 [13.40.29]

12 Who would have dared to say that at every point there was a  
13 superior who was handing down an order? Him Huy said:  
14 "Even if I had tried to flee S-21 I would have been arrested. I  
15 was certain of that. Where would I have gone? Moved to the  
16 enemy's camp? I would have been arrested at that point. And had  
17 I been arrested or had I escaped, what would have happened to my  
18 family and my loved ones?"

19 And you will identify in the response that is found in the  
20 transcript, "Had I tried to escape, my family would have been  
21 annihilated." Who amongst us can say what we would have done?  
22 You are fully aware that at S-21 when a person was identified as  
23 a traitor that that person's family was also arrested. Duch knew  
24 this.

25 Another point that I shall address directly is the issue of

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1 enthusiasm and zealousness with which Duch acted. I will recall  
2 to mind once again the statutes that Duch told us he was forced  
3 to read each and every single day. And I can only imagine that  
4 during the self-criticism sessions that these statutes were  
5 repeated.

6 Under Article 5 one had to exercise initiative as well as  
7 autonomous creativity, a dynamic work ethic and consistent  
8 intensive work methods. That means that it was incumbent upon  
9 each and every member to display enthusiasm, the same enthusiasm  
10 that the persecutors have charged Duch for.

11 [13.43.10]

12 Mr. President, Your Honours, you have seen, as I have seen, the  
13 propaganda films where we have seen the people work in dams and  
14 in fields, working relentlessly, forced into labour. And you are  
15 reproaching Duch for doing something that was demanded of  
16 everyone.

17 During David Chandler's testimony he said, "In fact what was  
18 encouraged was to work with the highest degree of enthusiasm  
19 possible."

20 Etcheson says, in his words, on May 27th:

21 "All of that being said, the CPK had placed as the first priority  
22 obedience, discipline, as well as full and strict implementation  
23 of the Party line as defined by the supreme organ of the Party."

24 I would submit that in all regions and at almost all times Khmer  
25 Rouge cadres did their utmost to implement the Party line. Duch

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1 was no exception. He was another cadre to implement the Party  
2 line. And nothing could compel the prosecutors to presume that  
3 the accused could have acted in an illegal way that he could have  
4 diverted from the Party line. And this is the problem. He was  
5 the perfect student. He was the perfect disciple of the Party  
6 line as had been defined and perfected by his superiors.  
7 Your Honours, I would like to come back to an answer that was  
8 given with respect to M-13 on April 21st 2009.  
9 "When I arrived in Amleang I was told the party is calling upon  
10 its children to fulfil their duties."  
11 We're talking about a young revolutionary who still believes in  
12 these ideals. You must  
13 fulfil your duty and he adds,  
14 "This was a duty and they were the ones who were carrying out the  
15 arrests. They were the ones who were responsible and I had no  
16 reason to be worried. And I replied, I do not want to kill  
17 these people because the children of peasants are good people.  
18 And I was told that people must obey the orders that they are  
19 given."  
20 What were they told -- that there would be some collateral damage  
21 in this revolution? This isn't a big deal. You have to kill a  
22 few people, but they are our enemies. What matters, what is at  
23 stake is the revolution.  
24 [13.46.52]  
25 Francois Bizot testified and talked about the inner suffering of

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1 Duch when he came to the realization of what was being asked of  
2 him in the name of these ideas, but I remind you of what happened  
3 at M-13. He did not have direct access to the Party Centre. At  
4 M-13, he was able to release seven people. It is very few,  
5 indeed.

6 But to ask the children of those seven people; ask Helene Bizot  
7 if today she is unable to acknowledge the fact that she now has a  
8 father. It is far too few.

9 Once again, I would like to draw your attention and place  
10 emphasis on what was expected of these cadres. Experts talked to  
11 Your Honours about the destruction of personalities. I ask you  
12 to hear the words of Philip Short.

13 "The ultimate objective was to destroy individuals. This hard  
14 shell was -- the preferred method was a surgical shock  
15 administered on the person who considered himself to be the  
16 embodiment of good, but who actually embodied all of the  
17 imaginable evils. Personality was a property of the bourgeoisie  
18 whereby they crushed the masses. It is what enables them to  
19 throw out their chests and hold their heads high. It is the  
20 stuff of which Imperialists and Colonialists are made."

21 The ultimate goal for the Khmer Rouge was to have no personality  
22 at all and Duch followed the model. Here again, I find his  
23 statement of 28 April perfectly the image of the man that I know  
24 because I have been meeting him for the past two and a half  
25 years.

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1 [13.50.35]

2 When he told you, therefore, you had to -- you as a person -- you  
3 had to belong to the proletarian class, do not think about your  
4 own furthering; do not concern yourself with your own person by  
5 ignoring the difficulties of the masses. No matter your class,  
6 you have to learn how to belong to the proletarian class. This  
7 is what he learned. This is what he implemented. This is why I  
8 cannot accept that we say that this man was only thinking about  
9 his own furthering. He was too disciplined for that.

10 I can only believe him when he says to me, "I did not want to be  
11 the head of S-21." And by the way, did you ever ask yourselves,  
12 Mr. Co-Prosecutors, gentlemen, if he was the man that you are  
13 describing? Three years -- three years at S-21 without any  
14 promotion, a simple commander who was never promoted to a higher  
15 rank; how can you explain that?

16 If it's only because specifically his superiors -- his masters --  
17 had understood that this man was a slavish servant and that he  
18 served in that way and he had understood that everything --  
19 anybody that disobeyed to this order from the Party -- that is to  
20 say, anybody who tried to go ahead -- such as Nath, for example  
21 -- would end up on the other side of the S-21 wall. No, no, Duch  
22 did not try to further himself. Duch did not try to be part of  
23 the powerful ones of this regime. Duch tried only to stay alive.  
24 One day, somebody asked the question to one of the -- to one of  
25 my compatriots in 1799 -- his name was Mr. Sieyès -- and he was

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1 told, "What have you done Mr. Sieyès during the 10 past years?"  
2 and he answered, "I survived." I believe that if we want to  
3 understand today -- if we want to understand Duch today and if we  
4 want to judge him -- and judging is above all understanding -- if  
5 we want to understand Duch, we have to understand all of these  
6 elements.

7 [13.54.00]

8 The psychiatrists told us dis-empathy is the inability to think  
9 that another person is different from whom we are. This is  
10 Sironi-Guilbaud that I'm referring to here. This happens when  
11 the subject himself is no longer aware of having his own identity  
12 due, for example, to the fabrication by the collectivist ideology  
13 which prevailed in the Khmer Rouge period.

14 Dis-empathy is present in Duch who killed in himself any identity  
15 -- any personal identify -- to the benefit of an identification  
16 with a common collective identity. Yesterday, Communism; today,  
17 Christianity; but at the same time she adds the following:

18 "But we should note that this dis-empathy is not absolute in  
19 the end."

20 Here again, we have noticed development which was very much  
21 present, in particular, at the beginning of the expert reports  
22 that we drafted.

23 By having finished with these considerations, I would like now at  
24 this moment in my explanations to bring up, to share with you a  
25 thought that I already somewhat brought up. Isn't it easy, or

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1 isn't too comfortable maybe even, to wish to consider Duch as a  
2 monster, as someone who is perverse, someone that we're going to  
3 alienate from society on a definite basis because claiming 40  
4 years of prison means that we do not even have the courage to say  
5 that it is a life sentence, because 40 years of imprisonment when  
6 you're 66 years old, this means a life sentence. We have to call  
7 a coin a coin. So isn't this a bit too comfortable?

8 I brought this up this morning. Are we going to, before this  
9 Chamber, just stop at the same claims? He committed crimes, yes,  
10 he must be convicted. And society won't be much better and even  
11 worse so, "This will not happen again," they say. Well, let me  
12 tell you it will happen as long as we haven't brought up with  
13 lucidity the phenomena that lead a normal man to become one day  
14 an executioner. This phenomenon is indeed what Chandler brought  
15 up with courage, this crime of obedience.

16 [13.58.05]

17 A great philosopher of the 16th century, Étienne de La Boétie,  
18 wrote a small work called "Discourse of Voluntary Servitude",  
19 already back then in the 16th century regarding tyrants and  
20 already he was telling us be resolute. "Be resolute to no longer  
21 serve and then you will be free". I wish or I hope that in your  
22 decision that you will bring up these thoughts. You must  
23 understand I must shed a bit of light on all of this. I owe this  
24 to you.

25 It's been now 35 years that before tribunals I have been

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1 defending the issue of civil disobedience and I am defending  
2 citizens who deliberately disobey laws, and always in a  
3 non-violent manner in order to oblige the laws to change. It is  
4 a practice that you know very well in Cambodia because you're not  
5 so far from India. It is the practice, or let's say the strategy  
6 even, that has been perfected by Mahatma Gandhi. It is the  
7 practice that is so well described by Hannah Arendt. Yes,  
8 indeed, Hannah Arendt. She didn't only write about Eichmann, she  
9 also asked herself the right questions by stating that when  
10 situations are blocked, well then the citizens must rise and must  
11 revolt in a non-violent way and disobey the laws. Then we have  
12 to learn how to disobey.  
13 Ah, it's not so easy. How can I plead in such a Court that we  
14 have to learn how to disobey? Well, I have been pleading this  
15 for the past 35 years, and for 35 years -- isn't this ironical --  
16 I am pleading by inspiring myself from the Milgram experiment  
17 that was undertaken in the USA, which David Chandler spoke to you  
18 about. 35 years that I have heard about this experiment, this  
19 terrible experiment where we took American citizens, just like  
20 you, just like I, and we put them in a room where you said, "You  
21 see hear behind the glass pane, the person sitting there in the  
22 chair? He's lying. He has electrodes on him and you have a  
23 button. So each time that you're going to ask him a question  
24 that he's going to lie, well then you're going to send him a bit  
25 of electricity. And then you'll have next to you a trainer

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1 wearing a white smock who will tell you, "Okay, go ahead".  
2 [14.01.54]  
3 Sixty percent of the people, just like you, just like me -- sixty  
4 percent, because they obeyed the orders of the person wearing the  
5 white smock, pressed the button all the way down to the mortal  
6 dose. And on the other side of the glass pane it was only an  
7 actor playing the role of the victim. What a terrifying  
8 experiment indeed.  
9 35 years that I'm saying before the Judges in France: "This  
10 here, Your Honours, there are times where sometimes you have to  
11 know how to disobey". And when I say so in France I am speaking  
12 about our former president, General de Gaulle, who disobeyed, who  
13 left for England to organize the Resistance and who was sentenced  
14 to death by the French courts.  
15 You have here in this country a man today who is the prime  
16 minister, who disobeyed because he knew that it was necessary to  
17 disobey this criminal regime of the Khmer Rouge and, however, how  
18 much time will be necessary for this necessity of disobeying to  
19 be understood and inhabit our conscience. I heard President  
20 Obama recently -- and with great sadness, I must say, I heard  
21 President Obama speak about the American soldiers who had obeyed  
22 the orders in Iraq, who had obeyed the orders to torture, and  
23 Obama said those who were fulfilling their task in good faith,  
24 following the legal advice of the Department of Justice, will not  
25 be the object of legal investigations.

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1 [14.04.17]  
2 The way is very long indeed, isn't it, ladies and gentlemen? The  
3 way is very long indeed for Antigone's cry to come to you, who  
4 answered Creon, "I did not believe that your orders were strong  
5 enough to allow a mortal human being to go beyond the laws and to  
6 move on -- go beyond the non-written laws of the gods."  
7 The voice of Albert Einstein echoes this: "Do nothing against  
8 your conscience, even if the state requires it." And I'm  
9 thinking again what Vann Nath said in the wonderful film by Rithy  
10 Panh, "S-21: The Khmer Rouge Killing Machine"; Vann Nath who  
11 asks the guards, "Where did you put your conscience?" Except,  
12 however, if we do not learn how to disobey in a democratic  
13 system, what will we do in a dictatorship?  
14 However, speaking about disobedience, that sends us so much back  
15 to ourselves, sends us back to what we live through every day.  
16 How -- how in any democratic state, how do all the armies  
17 operate? Or more simply, all of the administrations, how do they  
18 function? And even more simply, all of our societies? At all  
19 levels you have a boss receiving orders and a boss giving orders  
20 to his subordinates. You know this very well. I even heard that  
21 in this courtroom, people saying to the Chamber, "I cannot answer  
22 you. I must ask my superior for his permission." Yes, indeed.  
23 That's how we all operate; all of us. We all operate in this  
24 way.  
25 I hope that you will bring up these questions in your decision;

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1 crimes of obedience. Do you understand? The crime that Duch  
2 committed and is according to me, and above all, a crime of  
3 obedience. I should, by the way, say a crime of submission even  
4 but this would be a whole other discussion.  
5 [14.07.23]  
6 It might interest you also to know that obedience comes from the  
7 Latin verb meaning "to listen" and "to personally adhere to".  
8 That is to say that obedience normally implies in itself the  
9 possibility of disobeying if I do not adhere. But the crime here  
10 committed is rather a crime of submission. Yes, indeed. And,  
11 therefore, after having been for 35 years the counsel of people  
12 who were disobeying the law I, therefore, I was finally appointed  
13 to defend somebody who had slavishly served.  
14 But this forces us to confront another question that arises, a  
15 question that was also raised by David Chandler. I never found  
16 myself in such a situation, however, what would I have done? And  
17 I know that you yourselves invariably must ask yourself that  
18 question. Even Craig Etcheson had tried to evade an answer, but  
19 he should have acknowledged that it's quite straightforward given  
20 the fact that one always had the choice to die.  
21 Remember the words of David Chandler who walked us through this  
22 reasoning and who quoted Sigmund Bowman:  
23 "The most terrifying information that emerged from the Holocaust  
24 and what we learned from its perpetrators does not prove that  
25 this is improbable, but that we were actually capable of

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1 committing those crimes."

2 This is the thesis of Bizot, "I saw the man behind the torturer",  
3 and it is that phrase that is written in Chandler's book, which  
4 for me is the central and underlying idea and the concept on  
5 which I would like to work with the prosecutors in the name of  
6 this country and for the well-being of this country.

7 [14.10.41]

8 To find the source of evil that was implemented each and every  
9 single day in S-21, we didn't have to look any further than  
10 ourselves. This is terrifying, but this is far removed from the  
11 very easy explanation of identifying a scapegoat.

12 After such thoughts, one could be permitted to philosophize on  
13 legal precepts. I would like to share a few thoughts on the law,  
14 knowing that in our very short, final submission that was only 16  
15 pages long made reference to other submissions and we have deemed  
16 it unnecessary to belabour the proceedings by continuously  
17 repeating the same thing. Therefore, I would ask you to refer to  
18 our submission with respect to Joint Criminal Enterprise. Much  
19 has been said, but I simply want to state once again the  
20 following. I do not imagine for one single second that this  
21 Trial Chamber can determine that Duch had committed these acts in  
22 a Joint Criminal Enterprise with people that you have heard  
23 testify here before the Court and whom you did not give the  
24 rights to defend themselves.

25 I believe that you have understood I have absolutely no sympathy

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1 for those who continue today to deny the crimes that happened,  
2 like Mr. Mam Nai. I simply cannot accept that somebody who sees  
3 his name in a judgement, who has been convicted for being part of  
4 a Joint Criminal Enterprise, and he was given absolutely no  
5 possibility to defend himself. This is not possible and I would  
6 ask you to bring to mind that, if this was the case, it was the  
7 responsibility of the Co-Prosecutors to call for a closed session  
8 so that those people could defend themselves and speak to the  
9 charges that were put against them. This was not done and,  
10 therefore, I hope that this Chamber will dismiss the charges of  
11 Joint Criminal Enterprise.

12 [14.13.59]

13 I wish to draw your attention to the ruling that was handed down  
14 by the Pre-Trial Chamber on December 5th. As I indicated in my  
15 submission, it states that Duch cannot be prosecuted for having  
16 himself committed torture. I am extremely surprised that  
17 yesterday afternoon, once again, the prosecutor asked for Duch to  
18 be convicted for a crime for which he is not being charged. He's  
19 being charged for having instigated and ordered torture, but the  
20 Pre-Trial Chamber said that he must not be charged for commission  
21 of torture.

22 And the last legal argument that I wish to raise before you is of  
23 great concern to me. This is, above all else, a problem of  
24 translation but that is very illustrative with respect to Rule 87  
25 of the Internal Rules. The first paragraph of Rule 87 reads as

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1 follows. I would ask the interpreters to --  
2 "The Chamber must be convinced of the guilt of the accused beyond  
3 reasonable doubt. In order to convict the accused person, his  
4 guilt must be established beyond all reasonable doubt."  
5 This is a very poor translation. We are talking about two legal  
6 systems that are completely different. Even if in the final  
7 analysis I presume that a Judge of a common-law tradition may  
8 appreciate that "beyond reasonable doubt" means intimate  
9 conviction, however, our legal systems and our notion of proof  
10 are not the same.  
11 And yet the prosecutor keeps on repeating "must prove beyond all  
12 reasonable doubt" but I say to you, no. This is a poor  
13 translation from the original English to French and I will remind  
14 you that in the Cambodian Penal Code, Article 301 second  
15 paragraph says the following:  
16 [14.17.39]  
17 "The Court has sovereignty to assess the value of evidence that  
18 is put before it according to its intimate conviction."  
19 There the English version is properly drafted because it speaks  
20 of the Judge's intimate conviction. This is a correct and  
21 accurate translation of the criminal code and procedure. This  
22 will invariably have consequences for you when you render your  
23 judgment. Again, under Article 88, a confession constitutes as  
24 an element of evidence. I hope, Your Honours, that you will be  
25 guided by your intimate conviction.

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1 Judge Lavergne, allow me to cite a passage that I'm sure that you  
2 are very familiar with. It's in the French Penal Code. This is  
3 a very strange text that is found in this legal reference and it  
4 even enters the spiritual realm. This is Article 353 of the  
5 French Penal Code. It reads as follows:

6 "The President will read the following instruction, which is  
7 clearly indicated in the Chamber of Deliberations:

8 'The Law does not ask Judges to be accountable for the means by  
9 which they have been persuaded. It does not prescribe any rules  
10 according to which it must rely to put sufficient value on a  
11 piece of evidence. It is incumbent upon them in their private  
12 contemplation to seek in all sincerity and clear consciousness  
13 the reasonable nature of the evidence that was put before them  
14 and the means to defend them. This matter fully accounts for  
15 their duty.'

16 Do you have the intimate conviction?

17 [14.21.32]

18 I have two further points to raise, Mr. President. I would ask  
19 for a very brief extension. I only have two further points to  
20 raise, a few comments on Duch's personality.

21 MR. PRESIDENT:

22 You may proceed.

23 MR. ROUX:

24 Thank you very much, Mr. President.

25 With respect to Duch's personality, much has already been said.

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1 I would like to now refer you to the book of François Bizot but I  
2 would like to refer you to excerpts that were not referred to by  
3 the prosecution. I quote:  
4 "Setting off with a flower in his rifle and a heart filled with  
5 hope, he had thrown himself into a primitive world filled with  
6 horror. He was a child venturing among wolves to survive. He  
7 had to drink their milk and learn to howl like them and let  
8 instinct take over. Terror from that moment became all powerful.  
9 It seduced him by putting on the face of morality and order."  
10 We wanted to refer you to certain testimonies, testimonies given  
11 by witnesses who appeared before this Court and who said that  
12 before the period of Democratic Kampuchea, Duch was a humble man,  
13 a simple man, a generous man, a respectful man. He was an honest  
14 man. He was a calm man. He was a sweet man. He was a nice man.  
15 Words that can be found in their testimony.  
16 [14.24.32]  
17 During the 1990s we heard the same thing and I will refer you to  
18 Nic Dunlop's book on page 256. According to a member of the  
19 Revolutionary Army of Kampuchea it is stated:  
20 "Duch played a key role by averting an outbreak of typhoid in the  
21 camp and was able to save countless numbers of lives. This was  
22 the torturer of S-21, the person who a few years prior to that  
23 had saved countless lives."  
24 I wish to submit with emphasis on the journey on which the  
25 accused person finds himself, there is an acknowledgement but

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1 there is also the fact that the following question has been  
2 asked, "What can he do to offer redress, reparations?" And we  
3 have concluded, in collaboration with my colleagues, that this is  
4 not a circumstantial question. This is not a matter of strategy.  
5 This is a real question. Like you, I had cross-examined Ms.  
6 Sironi on this process of acknowledgment and she said:  
7 "Initially there can be denial and there can be  
8 non-acknowledgment of the facts. These are psychological  
9 mechanisms. However, I want to emphasize that it is just as easy  
10 to automatically fall into self-accusation. As a criminal he has  
11 stated, 'I feel guilty. What can I do?'"  
12 I asked the following question to Ms. Sironi:  
13 "But is it not difficult to recognize that there are things that  
14 he refuses to acknowledge?"  
15 [14.27.12]  
16 And she answered:  
17 "Yes, of course. All of this is a process."  
18 And I would impress upon you, Your Honours, and perhaps even more  
19 so upon the victims, something that is recognized in the field of  
20 psychiatry. That is post-traumatic stress disorder. This is  
21 particularly frequent among soldiers who have worked in a war  
22 conflict. Evading reality is one of the symptoms. An individual  
23 will try and avoid situations that may trigger a recollection of  
24 a traumatic event. There is a tendency to avoid to talk about a  
25 situation in order to avoid being confronted with the event.

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1 This may lead to partial amnesia or even total amnesia of a given  
2 event. Another aspect of avoidance is the lessening of emotions  
3 that may go as far as total emotional insensitivity.

4 I would like -- and you're not of course obliged to believe me,  
5 civil parties, but I would like to say that I am convinced that  
6 if Duch has said the essence of -- well, there are still certain  
7 things that he did not tell us and that for some of you might be  
8 essential, and I perfectly understand this. He said the essence  
9 regarding most of the crimes but there are still certain  
10 questions remaining. Counsel Studzinsky tried to learn more and  
11 we were not able to do so.

12 Are we here in a process of avoidance? I can very well imagine  
13 so. You saw the emotions that this set off in Mam Nai as well as  
14 in Duch when we were speaking about Professor Phung Ton. What is  
15 at hand? I do not know more than you. I am only noticing.

16 [14.30.00]

17 So yes, indeed, there is doubtlessly dark areas, and when I say  
18 that most -- the essence of everything has been acknowledged, I'm  
19 saying that his crimes he has acknowledged but there might still  
20 be certain things that are hard to admit, and this is the way.

21 And the experts will tell you we tried to know if there was  
22 manipulation on Duch's part and we can answer no. At no moment  
23 do we get the impression even that he was using manipulation.

24 So now the sentence. The sentence will be issued on the basis of  
25 everything that you would have heard and will be determined on

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1 the basis of the mitigating circumstances. We know the orders of  
2 the superiors is in no way a relief from guilt but since  
3 Nuremberg, since what has been written -- engraved in the text of  
4 our international criminal courts -- obeying superiors is  
5 doubtlessly a mitigating circumstance which can -- who can deny  
6 that in the hierarchy of Democratic Kampuchea that Duch was in  
7 this chain of command which made him say, "I was the servant and  
8 the hostage of this regime at the same time and I can assume my  
9 responsibility for this." This is a mitigating circumstance.  
10 The other mitigating circumstance that you might retain is of  
11 course the contrition that he expressed. You have heard them and  
12 I recall them. I do not need to return to this. And  
13 co-operation; co-operation, yes. Do you know, Mr. President,  
14 Your Honours, ladies and gentlemen, that as we are speaking now  
15 that Duch is continuing in his co-operation with the  
16 Co-Prosecutors Office in the context of Case Number 2? Do you  
17 know that?  
18 Do you know that even two weeks ago we were together with the  
19 Co-Investigating Judges and that he continued co-operating and  
20 that he answered all of the questions of the Judges as well as of  
21 the prosecutors? Do you know that next week he will be there  
22 again?  
23 [14.33.23]  
24 I regret I was -- that we hadn't stressed this co-operation that  
25 was so useful, that the Co-Prosecutors have not brought up this

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1 point which was so useful for justice.

2 Amendment, amendment, amends, amends. We asked the experts if he  
3 could be rehabilitated and you will remember that they said Duch  
4 can be rehabilitated. So then what is the object of the  
5 sentence? What is its aim? To punish? To punish the crimes  
6 that were committed? Of course. But, unless I'm mistaken,  
7 jurists across the world for quite a while now have decided that  
8 the vocation of sentencing is also rehabilitation.

9 So in the context of a crime against humanity would  
10 rehabilitation be something that is banished? I remember Mrs.  
11 Lefebvre, who came to express her suffering here and her pain,  
12 and she presented a suggestion. She made an interesting  
13 suggestion and she said, "I can very well imagine" -- and she  
14 said it in the transcript of Case Number 1. She said:

15 "I can very well imagine Duch working as a gardener on the site  
16 of Choeung Ek and of S-21 in order to turn these places into  
17 dignified places. I saw cans and garbage and I find it not very  
18 clean and I'm therefore expecting from the Court a pedagogical  
19 impact on the young generation so that the young generation may  
20 understand that it was Khmer who killed Khmer and that there is  
21 no room for negationism."

22 Yes, indeed, Mrs. Lefebvre. What a beautiful idea. And I would  
23 add that rather than turning Duch into a simple gardener, yes, I  
24 would see him at Choeung Ek -- I can see him explaining to the  
25 young generations what should not be done; explaining to the

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1 young ones that, yes, indeed, we can take the decision one day  
2 and that you might have the rest of your life to regret this  
3 decision.

4 And I said it this morning; we are no longer in the guilty plea  
5 since yesterday. We are, rather, in the context of the Albert  
6 Speer jurisprudence. Albert Speer, who was a former Minister of  
7 Defence who was of a much higher rank than Duch -- a former  
8 Minister of Defence under Hitler -- did not plead guilty at  
9 Nuremberg, but he acknowledged his responsibility. He did not  
10 plead guilty, but he said, "Yes, I am responsible."

11 [14.37.18]

12 This was the reason why we asked that the former prosecutor, Mr.  
13 Henry King, whom I met in his office and we asked him to come to  
14 testify here about the Albert Speer jurisprudence and,  
15 unfortunately, he died before he could come. He said in a letter  
16 that he addressed to us:

17 "I believe that Albert Speer's acknowledgement of guilt has  
18 played a role in the determination of a sentence which was a  
19 prison sentence and not hanging, but I can produce no document  
20 supporting this opinion. Back then, rumours were circulating  
21 according to which the American head prosecutor, Robert Jackson,  
22 gave value to Albert Speer's acknowledgment of guilt and I,  
23 myself, heard that he believed that Albert Speer was the best  
24 among the worst."

25 Albert Speer was sentenced to 20 years in prison. Obrenovic was

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1 sentenced to 17 years of prison and we are not here dealing with  
2 ordinary crimes. We're not here dealing with crimes in which the  
3 accused is creating -- is committing mass serial crimes for his  
4 own interest. We're not dealing with this issue. So can Duch  
5 still be useful to humanity? That is the question that you will  
6 ask yourselves.

7 We will consider, here, in the defence counsel that not only Duch  
8 spent 10 years already in prison, but that as the prosecutor  
9 reminded us yesterday, he also was an escapee for 20 years -- a  
10 fugitive for 20 years -- between 1979 and 1999. It's been there  
11 for 30 years. 30 years already that this man is not a free man  
12 and again and again; even more if we add the years before the  
13 crime and the years of the crime itself. But I will just speak  
14 about the post-crime, 30 years that this man has not been free.  
15 Please take this into account as the judges would take into  
16 consideration.

17 [14.40.22]

18 But, Your Honours, I have 10 minutes left and if I could finish  
19 before the break, I would please ask you for leave to do this.

20 MR. PRESIDENT:

21 You may proceed, please.

22 MR. ROUX:

23 Thank you, Mr. President, and now I reach the end of my  
24 explanations.

25 I was discussing with a Cambodian the other day who was telling

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1 me that here Buddhists say that the evil that you do, you'll  
2 receive it in return and he said, "Duch has already paid for the  
3 evil that he committed. Send him back home. Send him home."  
4 That's what I heard. He paid. He paid for the evil that he  
5 committed. Please send him home.

6 And now we arrive at the end of this plea and it's always a  
7 difficult moment for the lawyer. It is the moment -- It is  
8 always a difficult moment for a lawyer because he knows he will  
9 have to remain silent because he wonders, "Have I said quite  
10 everything? Have I done enough?" Our words end at the door to  
11 the deliberation room. We wonder what impression our case for  
12 the defence has on the judges. And, therefore, permit me to  
13 speak a few more words as a last message for you.

14 [14.42.57]

15 In the novel by Somands Sar entitled, "The Shadow of a Doubt", I  
16 have lifted this passage that contains the words of Nora who says  
17 to her cousin, Karen, the following:

18 "Thanks to you a part of Sophana continues to live in you -- in  
19 us -- and until we draw our last breath, there it shall remain in  
20 our most beautiful memories. No amount of cruelty can destroy."

21 And this is another book that I wish to read with you and for me,  
22 it represents the introduction, epilogue, to this trial. It is  
23 called, "The Keys to the Kingdom".

24 "Through these extraordinary images, we see images of a  
25 magnificent country, of a wounded country that was wounded by a

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1 dark period or rather a red period -- a blood red period, but it  
2 depicts a Cambodia that cannot be reduced to this terrible  
3 period. This is a Cambodia that also regains its marvellous  
4 colours, its smiles and its legendary dancing; a country where  
5 life has the last word."  
6 I would like this to be the conclusion when it will have finished  
7 dealing with this trial and I would hope that like in this  
8 beautiful book, Cambodia is not reduced --it is not trapped in  
9 this dark and sinister period. No one will forget. Memory will  
10 stay alive. However, as said by the Vice-President of the  
11 Lebanon Tribunal and as said by the Lebanese poet, Khalil Gibran,  
12 and I quote:  
13 "Your children are not your children; they are the sons and  
14 daughters of life's longing for itself. They come through you,  
15 but not from you. You can give them your love but not your  
16 thoughts. You can strive to be like them, but seek not to make  
17 them like you, for their souls dwell in the house of tomorrow  
18 which you cannot visit, not even in your dreams. You may strive  
19 to be like them, but seek not to make them like you, for life  
20 goes not backward nor carries with yesterday."  
21 A few more words before we commend Duch's fate into your hands.  
22 Here is a story -- a story that is told by Cambodians, but a  
23 story that is universal. It is the story of a wise man. It  
24 could be the story of an old imam, an old rabbi, a philosopher, a  
25 priest or a pastor or -- in this country -- a Buddhist monk. He

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1 teaches his disciples and asks them, "How do we know that we are  
2 moving from night to day, from the shadows to the light?" So one  
3 disciple says, "When we begin to distinguish the colour of the  
4 mango leaves." Another one says, "When you begin to see the  
5 cardamoms in the distance." No. And yet another one says, "When  
6 you can recognize your brother in another's eyes."

7 [14.47.59]

8 Duch, all your victims were your brothers and sisters in  
9 humanity. You said that you had been cowardly and that you did  
10 not go to see them while they were in detention. In human eyes,  
11 you will never be absolved of these crimes and the eyes of those  
12 you did not wish to meet will remain on you forever.

13 But what about us, Your Honours? Are we prepared to look Duch in  
14 the eye and see him for the fellow human that he is? And the  
15 final question; through your ruling will you bring back Duch into  
16 the fold of humanity? One last word, one final word: Duch is  
17 dead. Today his name is Kaing Guek Eav. He is no longer the  
18 Duch of the revolution.

19 Thank you, Your Honours.

20 MR. PRESIDENT:

21 Since it is now an appropriate time to take the adjournment then  
22 we will take the adjournment for 20 minutes. The session will be  
23 resumed by ten past three.

24 (Judges exit courtroom)

25 (Court recesses from 1450H to 1511H)

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1 (Judges enter courtroom)

2 MR. PRESIDENT:

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

4 The following proceedings are reserved for the rebuttal session.

5 If the parties would wish to make their rebuttal statement then

6 they could do that in the following session. And to make sure

7 that the proceeding moves more smoothly, the Chamber would like

8 to remind the parties that during their rebuttal statement, their

9 statement shall be focused on the object of the judgment.

10 Parties shall respect the rights of the others, including that of

11 the accused. Parties have to be mindful of their attitude and

12 behaviour while making such a statement. Parties are reminded to

13 uphold their ethical code of conduct and be professional and that

14 only the matter of the facts and the legal matters are to be made

15 in such statement.

16 [15.13.20]

17 Parties are to be mindful of their allotted times also and to be

18 more effective and efficient so that these directions can be well

19 implemented. The Chamber reserves its right to interrupt or to

20 cut any rebuttal statement that the Chamber finds inappropriate.

21 Do the civil party lawyers wish to make any rebuttal statement in

22 response to the oral closing statement made by the defence

23 counsel? The civil party lawyers of the four groups have one

24 hour altogether to make such statement.

25 MR. KHAN:

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1 Mr. President, I'm grateful. All four civil parties intend to  
2 make submissions in rebuttal within the one hour that's been  
3 allotted. With, Mr. President, your leave, I will start first.  
4 I have been allotted 20 minutes. Five minutes have been given by  
5 civil party group number 4. Mr. President, with your leave I  
6 would ask to proceed.

7 MR. PRESIDENT:

8 You may now proceed.

9 MR. KHAN:

10 I'm most grateful, Mr. President, Your Honours, respected counsel  
11 for the defence, learned prosecutors and my fellow lawyers for  
12 the civil parties as well, of course, the members of the public  
13 and the people of Cambodia that have taken the time out of their  
14 busy schedule to listen to these final remarks.

15 [15.15.45]

16 It is a long path that has been walked since any survivor left  
17 S-21 and it is at the end of this road that it is hoped that  
18 justice will be obtained.

19 But, Your Honours, before I go into the substance of my rebuttal  
20 I think it's only fair, with your leave, to acknowledge, as it is  
21 my learned friend Mr. Roux's last occasion in robes, the elegant  
22 and useful submissions that he has made throughout this  
23 proceedings. He has, if I may so, and I believe it's a sentiment  
24 shared by all civil parties, brought a great deal of wealth of  
25 experience, charm, as well as ability, to the conduct of his

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1 difficult task.

2 Your Honours, there will not be any philosophy from me and nor  
3 will my submissions be anywhere near as erudite as the  
4 submissions put forward by Mr. Roux. My task, Your Honours, is  
5 to seek to focus on some evidence that may assist Your Honours in  
6 determining the truth so that the claims of my civil parties can  
7 be once and for all, finally, fully and properly determined.

8 [15.17.33]

9 Your Honour, it is of course a singular honour and a right, of  
10 course, of the accused to be represented by the most able of  
11 counsel. That right has been granted him. But the focus of  
12 these proceedings is on the conduct, the character, the evidence  
13 and the guilt or otherwise of the gentleman that sits in the dock  
14 at the moment.

15 Now, Your Honours, there's no soft way to put this, but it is my  
16 respectful submission that the accused in this case has sought to  
17 ride two horses. The events of yesterday cannot be easily swept  
18 under the carpet.

19 At the last possible moment, as Mr. Roux said, yesterday things  
20 changed. They did indeed because in place of what was viewed as  
21 a guilty plea in material respects we heard that, in fact, the  
22 accused is seeking to be let free. He is complaining about the  
23 very fact of prosecution against him. Your Honour, there are two  
24 completely different positions being put forward by the defence  
25 that sit opposite. This is unfair. This is unfair to the people

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1 of Cambodia, it is unfair to the victims, and it is unfair to  
2 Your Honours' search for the truth.  
3 Your Honours, there is no provision similar to Rule 71 dealing  
4 with notice of disagreements between defence counsel. Your  
5 Honours, that may be for a number of reasons but perhaps one of  
6 them is this: that as opposed to the Co-Prosecutors, the  
7 co-defence counsel have a client and the client can give  
8 instructions, and it is by that mechanism that inconsistencies  
9 and friction and completely contradictory accounts can be  
10 reconciled should the accused wish such reconciliation to take  
11 place.

12 [15.20.09]

13 Now, my learned friend stated that he didn't wish to belabour the  
14 bench with a detailed final brief. It was indeed scant, in my  
15 respectful submission; 16 pages after a trial of 19 (sic) months  
16 perhaps did not help focus the minds of the defence.

17 But, Your Honours, be that as it may, the result of all of this  
18 is that for the first time the civil party that I represent is  
19 being faced with a fundamentally different position and has 15 or  
20 20 minutes to respond to it. That is unnecessary and, indeed,  
21 however unfortunate it may be, whatever the reasons behind it  
22 that may emerge, it also has an aspect that could well amount to  
23 an abuse of process.

24 Now, Your Honours, my learned friend, Mr. Roux, with his usual  
25 charm and verve mentioned that the prosecutor -- the

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1 Co-Prosecutors -- had lost their date with history. The  
2 Co-Prosecutors, of course, will speak for themselves but -- and I  
3 say this in sorrow more than anger -- it is my respectful  
4 submission that the accused has missed an important opportunity  
5 to actually speak clearly, unequivocally, spontaneously, candidly  
6 to the Court.

7 Your Honours, disregarding it seems invitation that was put  
8 forward by the prosecution to freely and openly accept that not  
9 only was he the "de jure" -- the legal head, of S-21, but also  
10 that he freely or voluntarily participated in that mean regime.  
11 The accused you may have noticed physically turned away during  
12 important part of the submission of the Co-Prosecutor and turned  
13 and intently looked to the right. Instead of responding to the  
14 views, the concerns, the pain and the plight of the civil  
15 parties, the accused embarked upon what I call a carefully  
16 scripted, carefully constructed, paragraph by paragraph, footnote  
17 by footnote statement, perhaps choreographed; carefully  
18 constructed in any event.

19 The accused himself said yesterday -- and, of course, I haven't  
20 had the benefit of a transcript and I stand to be corrected --  
21 but, Your Honours, I believe he was describing an incident when  
22 he was investigating an alleged shooting and he looked at a  
23 mosquito net that had a bullet hole in it. In the course of this  
24 inquiry, he had cause to speak to the suspect and the accused  
25 stated, "Well, in the course of that, from the demeanour and the

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1 face of the suspect, I could make certain assumptions as to  
2 whether or not the truth was being told".  
3 [15.23.48]  
4 Well, Your Honours, if that is correct and the accused has that  
5 ability, it is certainly, in my respectful submission, well  
6 within the province of Your Honours' experience. after having  
7 gauged the demeanour of this witness these last several months  
8 and after reviewing all the evidence, to make an objective and  
9 dispassionate assessment as to his genuineness of remorse and his  
10 sincerity or otherwise.  
11 Your Honour, contrition is valuable for the civil parties I  
12 represent. Sincerity is valuable and a full and frank account of  
13 the truth is priceless. Indeed, it is the only thing that the  
14 gentleman in the dock can offer those civil parties; those civil  
15 parties whose lives have been torn, shattered and smashed because  
16 of the regime that he operated in S-21 all those years ago.  
17 Now, my learned friend, Mr. Roux, in an impassioned statement  
18 stated, "Well, who can dispute tears?" But, Your Honours, tears  
19 perhaps are not determinative on the issue of contrition or the  
20 genuineness of remorse, and I pause there for a moment. My  
21 learned friend lifted the veil of legal privilege and sought to  
22 give an account of the accused's demeanour in private  
23 consultations. Your Honour, it is my respectful submission that  
24 the only evidence that you must consider -- and my learned friend  
25 himself referred to Rule 87; 87(2) speaks to the issue -- the

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1 only evidence that is probative and admissible is the evidence  
2 that has been tested and put before the Chamber. So in this  
3 regard it is my submission that the account of my learned friend  
4 was eloquent, was riveting, is legally irrelevant, and the same  
5 applies to his hypothesis of post-traumatic stress disorder.  
6 There's been no evidence that I've seen on the issue of  
7 post-traumatic stress disorder. This is a Court of law, not a  
8 forum for unsupported hypotheses to be brought like the  
9 conjurer's rabbit out of the hat at the last moment and, Your  
10 Honours, I'm sure that Your Honours will be alive to that issue  
11 at the end of the day.  
12 But Your Honour, to the extent that these tears are relevant to  
13 the overall assessment, I believe in the brief closing  
14 submissions of the defence it is said that the accused spoke and  
15 cried three times. Your Honours have heard an awful lot of  
16 testimony. And Your Honours, even from reading the transcripts  
17 on the many occasions when I was not present in Court, reading  
18 the transcripts in the sterile environment of The Hague, it was  
19 difficult not to be moved. Your Honours, we referred in our  
20 opening speech to the statement of Mr. Hamill, but there are many  
21 examples.  
22 [15.27.27]  
23 One is the example of Lay Chan, who gave evidence on the 7th of  
24 July. And Mr. President, you will remember because you very  
25 correctly, very compassionately, very appropriately asked the

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1 witness, "Would you care to have a moment to compose yourself?"  
2 And why was the witness, why was the civil party so distraught?  
3 It was something that appears to be quite small at first  
4 instance. It was a question as to whether or not he'd had a  
5 drink of water and the reason the witness broke down was his  
6 pitiful response that he tried as far as possible to desist from  
7 taking water because he knew full well that he would be made to  
8 drink the urine once it had been digested.  
9 Now, Your Honours, in my respectful submission, the number of  
10 tears, the number of - how many times the accused's eyes welled  
11 up can take us only so far. At the end of the day it is not a  
12 matter susceptible to the minds of man to peer into the heart of  
13 another individual, to peer into his soul. It is simply not  
14 possible. We have heard much of the accused's conversion to  
15 Christianity and in that regard the well-known Old Testament  
16 phrase comes to mind, "Punishment is mine, sayeth the Lord."  
17 Well, as all of us and any that believe in a God of that  
18 philosophy have a belief in a final day of reckoning -- but, Your  
19 Honour, that final day of reckoning is not today.  
20 This case calls for a judgment in this world for these crimes and  
21 it's in relation to those matters that Your Honours must seek to  
22 discharge your heavy and onerous responsibility. Not from some  
23 flight of fancy but by reviewing the evidence and bringing your  
24 collective and individual experience to bear.  
25 [15.29.51]

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1 Your Honours, an awful lot of issues to cover and I will move as  
2 quickly as I can through them. Your Honour, the accused stated  
3 yesterday that a decision as to which path to walk is made in a  
4 moment but the repercussions last a long time. Your Honour, it's  
5 important to remember that this is not a momentary lapse that's  
6 being alleged in this case that had tragic consequences. It is  
7 not the case of an individual falling asleep at the wheel and  
8 tragically killing a family of young children.

9 The accused, we say, in the three years and five months of S-21's  
10 existence had the opportunity every day to make a decision. In  
11 relation to each of the 12,380 victims there were 12,380 moments  
12 when the accused could have done the right thing and, Your  
13 Honours, confronted with the massive evidence that are the  
14 archives of S-21, we say that the accused, as in evidence  
15 yesterday, has been content to leave matters opaque,  
16 contradictory and ambiguous.

17 Your Honours, the issues of yesterday and the submissions of my  
18 learned friend Kar Savuth can be dealt with quite briefly, I  
19 hope. On the statute of limitation point, I don't have time to  
20 address you but we will let it rest on the submissions we filed  
21 on the 18th of May 2009. For the reasons detailed therein, we  
22 say that the position of the defence is fundamentally  
23 misconceived.

24 In relation to the plea *ratia materia* -- the lack of personal  
25 jurisdiction because the accused is said not to bear the greatest

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1 responsibility; to not be one of those most responsible -- I  
2 can't help but elude to Rule 89, the preliminary objections,  
3 should all ordinarily be made 30 days after the closing order.  
4 But your Honour, be that as it may, there's an awful lot of case  
5 law showing that the accused cannot avail himself of any plea in  
6 that regard.

7 [15.32.12]

8 Your Honour, the accused has stated through his counsel yesterday  
9 that he's a victim of the Court, as merely he's a loyal servant.  
10 Your Honour, it's very difficult to reconcile that with the  
11 requirement of the victims to get justice. But Your Honours,  
12 there are many, many examples one can refer to but I don't have  
13 time.

14 Your Honour, Milosevic was referred to. On that regard I'll  
15 simply note that this is the first trial here. The first trial  
16 in the ICTY was Tadi?, who was simply a camp guard and the ICTY,  
17 a forum that the national co-lawyer for the accused seems to  
18 support, claimed that they had jurisdiction in relation to that  
19 case for an accused lacking far more -- having far less  
20 responsibility.

21 My learned friend Mr. Roux stated that the accused never sought  
22 to blame his subordinates. Well, yesterday his co-national lawyer  
23 stated that Hor and the guards were responsible but not the  
24 accused. Your Honour, nothing could be more in conflict than  
25 that. It's said that the accused has no autonomy and I would

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1 refer simply to the 6th of August 2009 transcript where Mr. Roux  
2 talked about Mr. Chandler being a capital witness and, Your  
3 Honour, Mr. Chandler himself stated he didn't believe the accused  
4 in relation to lack of autonomy. He simply didn't believe him.  
5 Your Honour, a lot has been said on JCE. Now, I would simply  
6 make the observation in the time I've got left that one case that  
7 hasn't been cited by the prosecution at all, and in part this  
8 underpinned my own position, is the ICTR case of Seromba, the  
9 12th of March, 2008. The spelling has been given to the  
10 stenographers. And there the Appeals Chamber stated that it is  
11 irrelevant that the accused did not personally drive the  
12 bulldozer that destroyed the church. What is important is that  
13 he fully exercised his influence over the bulldozer driver who,  
14 as the Trial Chambers findings demonstrate, accepted him as the  
15 only authority and in that case the Appeals Chamber of the ICTR  
16 found the accused guilty of committing.

17 [15.34.31]

18 Your Honours, the defence has sought to make a lot of play about  
19 the fact that the accused didn't actually have blood on his hands  
20 and could not be found guilty of commission. This authority, in  
21 my submission, makes it clear that one can be found guilty under  
22 the jurisprudence of the ICTR for committing in materially  
23 identical circumstances as that alleged in relation to the  
24 accused.

25 Your Honours, 30 years after the events, our civil parties want

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1 the truth, they want their lives back, they want some kind of  
2 closure and it is simply unacceptable from every angle that we  
3 are left in this chaotic state of affairs where we do not know  
4 actually what has been said. Mr. Roux states that the accused is  
5 not pleading guilty but he's accepting contrition. His  
6 co-national lawyer says release him, he's absolutely not guilty.  
7 This is not an Albert Speer case. This is a unique case that can  
8 be described by many adjectives, but I'll simply say highly  
9 unacceptable and absolutely avoidable.  
10 Your Honour, truth and justice are beyond value. It's the  
11 minimum the people of Cambodia deserve. It's the minimum my  
12 civil parties deserve. And Your Honours, we have every  
13 confidence that you will be alive to your task, you'll approach  
14 it with diligence and care and attention.

15 [15.36.00]

16 And Your Honours, I'm most grateful for the time, it's the  
17 minimum the people of Cambodia deserve, it's the minimum my civil  
18 parties deserve and, Your Honours, we have every confidence that  
19 you will be alive to your task, you will approach it with  
20 diligence and care and attention. And, Your Honours, I'm most  
21 grateful for the time.

22 MR. PRESIDENT:

23 Next the civil party lawyer, group 2, you may proceed.

24 MS. STUDZINSKY:

25 Thank you. Good afternoon, Mr. President. Good afternoon, Your

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1 Honours. I will speak on behalf of group 2. Unfortunately, my  
2 Cambodian colleague had to leave earlier -- Mr. Kong Pisey -- so  
3 that I will speak alone for group 2 today.

4 [15.37.03]

5 The closing statement of the national defence lawyer with his  
6 non-guilty pleading and which represents the absolute belief of  
7 the accused was a slap in the face of the civil parties and, I  
8 dare to say, all victims of the regime. The civil parties were  
9 shocked when they heard that Mr. Kar Savuth pleaded not guilty  
10 and stunned when they then heard a request for the acquittal --  
11 which it means -- of the accused and his immediate release.  
12 After the accused and his defence tried to convince the civil  
13 parties that his partial admission amounts to a truthful, sincere  
14 and genuine confession, civil parties now became even more  
15 convinced beyond any doubt that the accused was and is playing a  
16 game and that -- at the very least -- the time has come to shed  
17 the sheep's clothing.

18 I would like to go now to the arguments brought by the national  
19 defence counsel yesterday, why should -- or why he pleaded  
20 non-guilty. The national counsel challenges the personal  
21 jurisdiction of this Court for the accused and arguing that the  
22 agreement between the United Nations and the ECCC Law is not  
23 applicable after the law on outlawing the Democratic Kampuchea  
24 group from 1994 and, further, that the accused does not fall  
25 under the terms of "senior leaders" or "most responsible."

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1 By arguing this, the national defence counsel raises an objection  
2 against personal jurisdiction. According to Rule 89(1)(a) of the  
3 Internal Rules, such kind of defence can be raised only in the  
4 initial hearing. On 1st of April 2009, I would like to recall --  
5 this can be found in the English transcript on page 18 and 19 --  
6 the national defence counsel clarified that he did not intend to  
7 object the personal jurisdiction. I quote:  
8 [15.39.59]  
9 "When the Co-Prosecutors asked whether I challenged the  
10 jurisdiction, I'm not intending to challenge it because I'm quite  
11 aware already and I could have raised it in the initial hearing  
12 already if I wished to do so. So I what I raised was not to  
13 challenge the jurisdiction. I only wanted the Court to follow  
14 the Rule 98(7) regarding the jurisdiction of the Court over my  
15 client because if he is not the most senior person or most  
16 responsible person to be prosecuted then he should not be  
17 prosecuted. I just want to confirm that position and I think  
18 they are just my comments for the Court's consideration."  
19 Subsequently, we could simply respond by requesting to reject  
20 this objection as it is not admissible at this stage of the  
21 proceedings. However, if it is meant as a submission then in  
22 order to get a Rule 98.7 decision, it needs to be addressed.  
23 First, we note that the agreement between the UN and Cambodia  
24 ratified by the royal government and implementing ECCC Law were  
25 duly adopted and set in motion. The law on outlawing the

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1 Democratic Kampuchea group does not question the existence of the  
2 ECCC Law as it aims, according to the preamble, to prosecute the  
3 Khmer Rouge who continued fighting after the elections in 1993.  
4 It was an attempt to reintegrate them and to offer an amnesty.  
5 Never ever were the most serious crimes -- like crimes against  
6 humanity and war crimes -- contemplated by this law.  
7 Therefore, the ECCC Law has its proper jurisdiction and it's  
8 neither superfluous nor invalid because of the existence of the  
9 outlawing law. The ECCC Law targets senior leaders and most  
10 responsible and covers only the most serious international  
11 crimes.  
12 [15.42.25]  
13 Second, the personal jurisdiction of the ECCC Law encompasses  
14 senior leaders and most responsible. The accused is, according  
15 to the closing order, considered as one of the most responsible.  
16 This term is an indefinite legal concept that has to be  
17 determined by the Office of the Co-Prosecutors and lies at their  
18 discretion. Their determination is not appealable. Criteria for  
19 the determination of such a concept are, among others, the number  
20 of crimes, the brutality of the acts, the length of the criminal  
21 activities and the extent of power that a person has. The  
22 discretion is broad.  
23 The accused was under the order and supervision of the Standing  
24 Committee which was the highest body of the Communist Party in  
25 Democratic Kampuchea. He allegedly ordered the torture and

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1 killing of at least 12,273 registered women and men, being in  
2 daily contact with the Standing Committee. Alone, these facts  
3 easily allow considering him as somebody who belongs to the most  
4 responsible, not being a mere instrument.

5 Thirdly, the defence counsel claimed that all other prison chiefs  
6 were not prosecuted and, therefore, the accused does not fall  
7 under the personal jurisdiction of the Court. The counsel refers  
8 to Article 31 of the Constitution of Cambodia, according to which  
9 Cambodian people have equal rights. Counsel obviously  
10 misunderstands this article which grants equality in having and  
11 getting rights. It does not guarantee a right to "equality in  
12 injustice." This right does simply not exist. In contrary,  
13 being in an unjust position -- and I add like the accused is --  
14 does not allow to claim equal treatment. And as the Human Rights  
15 Committee established under Article 28 of the International  
16 Covenant on Civil and Political Rights has adopted on 23rd of  
17 August 2004 in the case *Deisel v Austria*, the following:  
18 "Article 26 of the Covenant would be unfounded even if the  
19 situations were comparable in the absence of a right to "equality  
20 and injustice.'"

21 "According to the Constitutional Court's jurisprudence, the  
22 legality of an authority's decision cannot be challenged on the  
23 basis of that authority's failure to sanction similar misconduct  
24 in comparable cases. Other words, any law would invariably be  
25 inapplicable and the principles of the rule of law jeopardized.

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1 "This could not have been the intention of the equality principle  
2 in Article 26 of the covenant."

3 To put it simply, the accused cannot claim that he should not be  
4 prosecuted because others are not; as a right to equality, an  
5 injustice does not exist.

6 [15.46.50]

7 Fourth, the demand of the national defence counsel to rank the  
8 prisons and security centres of Democratic Kampuchea according to  
9 the numbers of prisoners and/or killed persons in it is  
10 critically flawed as it ignores the individual value of every  
11 single victim and his or her relatives. Weighing human lives is  
12 out of the question.

13 S-21 was unique and as the accused admitted yesterday for the  
14 first time, this prison was unique because it was the only prison  
15 in which high-level cadres and members of the Standing Committee  
16 were delivered. But there are more reasons why S-21 was unique.

17 Its additional name was "Special Branch." Its Chairman worked  
18 closely together with the highest leaders of the regime, the  
19 Standing Committee, and under its direct supervision.

20 Last, but not least, it functioned most effectively on the  
21 highest level operating with a high number of staff members with  
22 focused efficiency under the iron hand of the accused.

23 Fifth, the national defence counsel is further completely misled  
24 if he believes that the accused cannot be prosecuted because he  
25 only obeyed orders. The applicable ECCC law clearly states in

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1 Article 29(4) the following:

2 "The fact that a suspect at a prison to an order of the  
3 government of Democratic Kampuchea or of a superior shall not  
4 relieve the suspect of individual criminal responsibility."

5 Thus the defence statement that the accused is not guilty because  
6 he was only following the orders of his superiors does not  
7 exclude his guilt. This could be a mere mitigating factor but  
8 never ever an exclusion of his guilt. As we have submitted in our  
9 closing statement and the prosecution further elaborated on and  
10 which we included by reference, the accused was a willing and  
11 enthusiastic participant and not merely a victim of orders.

12 [15.49.14]

13 Again, claiming that he was a victim of the regime is  
14 contemptuous and insults civil parties and the victims and as  
15 whole. Also as the prosecution has properly demonstrated and  
16 proved in their submission which we include by reference the  
17 argument that the accused was under the threat of death and had  
18 no choice in his action, that he was under duress is not a  
19 successful one.

20 The accused must be asked how he can now claim he is not guilty  
21 when he previously admits crimes were committed in S-21 under his  
22 responsibility. The answer is that he wants to keep all doors  
23 open, using this two-track policy could allow him to play the  
24 game to receive mitigating circumstances for his sentence in the  
25 case that the Court would convict him, and at the same time, he

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1 follows his truthful and real belief like he has always done in  
2 order to escape from criminal responsibility that only Angkar is  
3 liable.

4 Going the easy way and shifting responsibility on the deaths and  
5 the faceless organization Angkar clearly shows that he is farther  
6 than ever from carrying the heavy burden of the enormous and  
7 horrendous crimes that he has committed.

8 The use of his defence strategy confers an extremely bad example  
9 for other perpetrators and all Cambodians to escape from  
10 responsibility and does not contribute at all to the  
11 reconciliation process. On the contrary, civil parties who are  
12 seeking justice and truth are further alienated and more offended  
13 as the credibility of the accused is once again more corroded.

14 [15.51.35]

15 To conclude, this defence strategy completely contradicts the  
16 accused's repeated assertion of having genuine remorse and it  
17 leads to serious additional traumatizations for civil parties who  
18 listened for a long time to the accused's apologies and remorse  
19 and requests for forgiveness.

20 Again, as we submitted yesterday, his wish and demand to return  
21 to Cambodian society must be rejected.

22 I thank you for your attention and given now the floor to my  
23 colleagues from group 3.

24 MR. PRESIDENT:

25 Civil party lawyers group 3 you may now proceed.

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1 MS. JACQUIN:

2 Good afternoon, Mr. President. Good afternoon, Your Honours. I  
3 will speak first for a few minutes and then my colleague Philippe  
4 Canonne will follow.

5 Mr. Duch, you spoke before your defence counsel spoke. You took  
6 advantage of this time to express yourself directly during this  
7 trial, during the attention that this trial is getting to  
8 transmit technical and historical information on how the CPK  
9 operated. But, but Mr. Duch, you were not able -- and we have  
10 not heard words of deep contrition, of apology, of forgiveness,  
11 and of humanity, vis-a-vis the victims.

12 [15.53.30]

13 We have not heard because you did not pronounce these words, did  
14 not pronounce words expressing a complete questioning of the  
15 extermination policy of imaginary enemies, of the political  
16 regime to which you adhered with enthusiasm and without  
17 questioning.

18 Mr. Duch, you are not a scapegoat because the facts that are held  
19 against you are unfortunately a reality. But you are a symbol  
20 and it is as a symbol that these civil parties and the victims of  
21 the Khmer Rouge regime all throughout Cambodia were expecting  
22 something else from you than this denegation of responsibility,  
23 leading you to plead not guilty and to ask the Court for your  
24 acquittal.

25 You have lacked courage under the Khmer Rouge. You were not able

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1 to preserve the fundamental humanitarian values such as  
2 everyone's right to life, and here before this Court you have  
3 lacked courage as well. You have lacked courage before justice,  
4 before your people and before your country. Your only counsel  
5 expressed deep emotion, reminded your confessions, your peers  
6 during the re-enactments, and quoting this as a great moment of  
7 humanity, but you did not reiterate these confessions. You did  
8 not fundamentally ask for forgiveness.

9 This is what the civil parties and the victims were asking. You  
10 were not able to touch the hearts of the civil parties and the  
11 victims who are there in front of you with their complete  
12 disarray. So I think, Mr. Duch, that you missed an appointment  
13 that you had with the history of your country.

14 As you said, we cannot accept justification of what happened at  
15 S-21 of the torture and crime that was committed there. And when  
16 you yourself said that 97 percent of the detainees did not  
17 present any risk for the political power -- and I was saying on  
18 Monday that I was hoping that after having heard the civil  
19 parties, that you might understand them but I see today that this  
20 is not all of the case. You are already trying to excuse  
21 yourself for the 16,000 people who died at S-21. You were not  
22 able to take distance with a regime that we justly called a  
23 murderous utopia. And today, Mr. Duch, you are before the Court,  
24 you are alone, you are already old and you are inspiring pity.  
25 You are also inspiring enough pity that you'd never had for your

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1 victims. So consequently today, the only hope that the civil  
2 parties have and the victims have resides in the decision that  
3 the Court will hand down, and it is indeed the nature of the  
4 sentence that will determine the scope of your responsibility.  
5 I will give the floor now to my colleague.

6 MR. CANONNE:

7 Mr. President, Your Honours, I only have 10 minutes remaining. I  
8 will therefore be very concise.

9 [15.56.56]

10 I heard with great interest the pleadings of Mr. Roux. We have  
11 understood to what extent he has tried to place these proceedings  
12 into a specific context. We have understood the level of  
13 humanism that drives his arguments. I would say today to my  
14 esteemed colleague that this is your last appearance in your  
15 robes. You know, as I know, that when we wear our lawyers robes  
16 we can never actually be removed from them.

17 Mr. President, Your Honours, we wish to state to our opponents  
18 how much we would have appreciated a true entering of a guilty  
19 plea. That would have allowed us to seek the truth, whatever it  
20 may be, and to come closer to a fair sentence. This stance would  
21 have served as the bridge -- the bridge and whose basis I had  
22 tried to build last Monday as I made representations on behalf of  
23 the civil parties.

24 Mr. Kaing Guek Eav only for a very fleeting moment conferred upon  
25 them the status of a human being so that victims could transcend

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1 hatred and turn towards the future. Since then the final  
2 submissions of the defence have allowed us to truly understand  
3 the scope of the accused person's implication during the time of  
4 the regime.  
5 We have heard the highly nuanced discourse given by Mr. Roux on  
6 culpability. Not everything has been stated and I will reiterate  
7 the words of my esteemed colleague. We expected from Duch words  
8 of sincerity, not convenient apologies but true contrition. What  
9 we heard was a litany of administrative details. What we heard  
10 was a piling up of events. We heard case numbers, document  
11 numbers.  
12 [16.00.21]  
13 He talked to us about mistakes or bad or good legal bases for the  
14 crimes that had been charged but before this Trial Chamber at the  
15 conclusion of these proceedings, when everyone leaves and returns  
16 to their daily lives, and when a possible sentence of 40 years  
17 may be handed down, that he wants to open his heart because he is  
18 overwhelmed by emotion and yet we hear nothing.  
19 This is most troubling. This is most troubling because perhaps  
20 this gentleman has not understood a single thing. Perhaps he is  
21 still in his methodical mind set. He is still lost in his  
22 footnotes. He is still ensconced in the most absurd bureaucracy  
23 where reasoning, contemplation and sensitivity were completely  
24 absent. And the defence has asked for acquittal as a natural  
25 consequence. This is irresponsible. They had to dare to do so,

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1 and yet they did, and I'm sure Your Honours can grasp the full  
2 extent of this.

3 International case law says all -- there is the juxtaposition and  
4 the cohabitation of various legal systems. Allow me, Mr.  
5 President, to very quickly describe a theory in French criminal  
6 law, or more specifically three specific laws. That is the  
7 theory of passive obedience, something that Mr. Roux is very  
8 familiar with. That means that the consequence of all obedience  
9 to a command is a justification, as well as the theory according  
10 to which systematically a false order must be disobeyed and the  
11 theory that an illegal order must be disobeyed if it is cruel,  
12 and any reasonable subordinate must refuse. Those elements must  
13 be considered because every man has the right to say no and in  
14 these particular circumstances the accused person had the leeway  
15 to say no.

16 Lastly, and I will conclude on these words, let us not forget  
17 that this trial -- our opponent this morning said that together  
18 we are supposedly building a model; a model that is being  
19 observed by the international community.

20 [16.04.15]

21 In other jurisdictions we have moved on to other matters and that  
22 the lesson to be drawn from the Obrenovic case is absolutely  
23 admirable but there are a few marked differences. There are  
24 differences that distinguish the two cases. There were no civil  
25 parties in the Obrenovic case.

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1 Thirdly, Obrenovic had led the investigators to the mass graves  
2 and he had not attempted to flee. The families were compensated  
3 and the process of reparations had been fully developed. Did I  
4 hear in this very Court one single time any discussion about  
5 reparations? If I rely solely on the accused's words, I don't  
6 think I heard anything. Mr. Roux, you will recall a suggestion  
7 that was made by one of the civil parties, Martine Lefebvre, a  
8 suggestion according to which Duch would -- through S-21 would be  
9 able to serve society.  
10 This honour belongs to the three survivors, not to Duch. It is a  
11 matter of rebuilding history and to allow the civil parties to  
12 regain ownership of that history. It's not a matter of rewriting  
13 history as one pleases.  
14 How, Mr. President, Your Honours, ladies and gentlemen, can the  
15 civil parties hear these words without having a reaction? 12,383  
16 people died in S-21 and that it represents only -- only 1 percent  
17 of all of the deaths? Since the defence had evoked the memory of  
18 the children of the seven survivors of S-21, do you want to evoke  
19 the memory of the children of all those who perished?  
20 My esteemed colleagues, these are very heavy figures and  
21 statistics that weigh on the hearts and souls of survivors and  
22 this will be the case forevermore.  
23 Thank you, Mr. President.  
24 [16.07.27]  
25 MR. PRESIDENT:

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1 Civil party lawyer, Group 4, you may now proceed.

2 MR. HONG KIMSUON:

3 I'm most grateful, Mr. President.

4 Due to time constraints and on behalf of the civil party lawyers  
5 and as a national lawyer, it is very heartbreaking to hear what  
6 has already been put by the defence. Those who have never gone  
7 through the Khmer Rouge regime would never, ever experience such  
8 tremendous pain.

9 And the comment made by Mr. Kar Savuth is very contradictory to  
10 what Duch has already indicated. He has the right to talk in the  
11 legal context allowed and I would like here to take this  
12 opportunity to express our pain, the suffering. Mr. President,  
13 is it convincing that Duch was not the most responsible person or  
14 the person who was classified in the senior leader position?

15 I am a victim and it is so hard for me to compose myself, having  
16 talked about this. I am quite aware that I only have very little  
17 time and I would like to apologize for not being able to control  
18 my emotion and I would wish to state that I am still convinced  
19 that it was Duch who was the most responsible person at S-21 who  
20 oversaw the execution of more than 12,000 people. Duch was the  
21 most trusted person by the Party and trusted by Son Sen, who was  
22 the head or the commander of the army and the police who had the  
23 authority to smash anyone during that time.

24 [16.11.39]

25 So having compared S-21 to M-13, these two institutions shared

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1 many things in common. And Duch made it clear already that the  
2 execution was conducted even long before 1975, so the experience  
3 Duch learned so far made the Party trust him and promote him to  
4 be the Chairman of S-21 to make sure that it would be very easy  
5 for the Party to get or extract confessions from the detainees at  
6 the detention facility.

7 At M-13, at Amleang, and the location where the dead bodies were  
8 buried and where Duch said that there was a location next to  
9 M-13 where people would be put to hard labour and also there were  
10 other sites next to Boeung Choeung Ek and Prey Sar, the same  
11 locations that were once used as the tempered locations and that  
12 people would be detained and tortured. And Duch was quite  
13 familiar and he said he could not escape. He said that he was  
14 just like a cog in a running machine.

15 It was just like -- it is a false argument. It's a lie, a  
16 complete lie. He did not make any decision to kill people but he  
17 was the one who annotated on the death paper, the paper upon  
18 which more people would be arrested or executed. There is ample  
19 evidence to prove that Duch already -- under document D22/9,  
20 which is about the annotation of Duch to kill 125 people and  
21 leave some, and Duch already made a request to Angkar who also  
22 approved of such request. So when Duch's in-laws were accused --  
23 suspected and arrested, but Duch did not arrest them, why was  
24 Duch still free or at large and why was not Duch prosecuted or  
25 punished by the Party? He could enjoy freedom.

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1 [16.14.22]

2 And other victims including Chum Mey, Bou Meng and their  
3 relatives who were detained at S-21 and who could not escape, and  
4 later Chum Mey already made it clear that she could not escape  
5 because she was trapped in the system and, as I may reiterate  
6 again, that only the victims of the regime of the Khmer Rouge who  
7 would know clearly the suffering and the pain.

8 And I would wish that the Chamber maintain the motion made by the  
9 prosecution to even put a harsh sentence onto Duch and that we  
10 would like the Trial Chamber to publish or to have the apologies  
11 of Kaing Guek Eav, alias Duch, broadcast on the radio.

12 MR. PRESIDENT:

13 Mr. Hong Kimsuon, you may add some more if you would prefer, but  
14 you were rather fast. It was not good for the record but you  
15 will be granted five more minutes in a more slower pace so that  
16 the interpreters could fully render your message.

17 MR. HONG KIMSUON:

18 Thank you, Mr. President. I would like to add the last point.  
19 This Tribunal is the internationalized Tribunal. We are not  
20 violating human rights. If we are not maintaining this justified  
21 position then there would be more victims affected by the  
22 proceedings, but I think that even in the future, even 100 years  
23 in the future and in order not to make the new generation forget  
24 what happened in the past, it would be the best idea that Duch's  
25 statue is erected in his Khmer Rouge uniform and installed right

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1 within the S-21 vicinity so that people could see him as a  
2 criminal.

3 [16.17.13]

4 MR. PRESIDENT:

5 The rebuttal statements of the civil party lawyers have already  
6 been concluded and the one hour allotted to them has been well  
7 used. So it is an appropriate time to take the afternoon  
8 adjournment. The Trial Chamber will adjourn now. The session  
9 will be resumed tomorrow at 9 a.m.

10 The Chamber would like to inform the parties and the public that  
11 tomorrow's session, early in the morning session, will be  
12 reserved for the Co-Prosecutors to make their rebuttal  
13 statements, followed by the accused and the defence counsel.

14 The security personnel are now instructed to take the accused to  
15 the detention facility and bring him back to the courtroom by 9  
16 a.m. The Court is adjourned.

17 (Judges exit courtroom)

18 (Court adjourns at 1618H)

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