



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 PROCEEDINGS - “DUCH” TRIAL

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

22 April 2009, 0909H

Trial Day 10

Before the Judges:

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

For the Trial Chamber:

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

For the Civil Parties:

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TY Srinna
YUNG Phanit
Silke STUDZINSKY
Karim KHAN
Philippe CANONNE
KIM Mengkhy
Alain WERNER
Karim KHAN

For Court Management Section:

UCH Arun

For the Office of the Co-Prosecutors:

YET Chakriya
Alexander BATES
PICH Sambath
Stuart FORD
TAN Senarong
PAK Charlino

For the Accused Person KAING GUEK EAV

François ROUX
KAR Savuth
Heleyn UÑAC

INDEX

WITNESSES

THE ACCUSED, KAING GUEK EAV

Questioning by Judge Lavergne commences..... page 43

Questioning by Mr. Bates commences page 60

Questioning by Mr. President commences page 70

Questioning by Judge Ya Sokhan commences page 86

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. BATES	English
MR. CANONNE	French
JUDGE CARTWRIGHT	English
MR. HONG KIMSUON	Khmer
MR. KHAN	English
MR. KIM MENGHKY	Khmer
JUDGE LAVERGNE	French
MR. ROUX	French
MS. STUDZINSKY	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
JUDGE YA SOKHAN	Khmer
MR. YET CHAKRIYA	Khmer

1

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

2 (Judges enter courtroom)

3 [09.09.47]

4 MR. PRESIDENT:

5 The Chamber would like to declare the continuity of the session.

6 The discussion on the facts of M 13 and all witnesses have
7 already been heard.

8 The next proceeding, the Chamber would like to ask the parties
9 whether you would like to have any further questions to ask to
10 the accused or would you like to bring in any references or
11 documents for further discussion.

12 So if you would wish to do so, we would like to give the floor
13 first to the prosecution followed by the civil party lawyers.

14 The floor is yours, to the prosecution.

15 MR. BATES:

16 Thank you, Mr. President.

17 It was understood by the parties that we should be invited to
18 make submissions this morning on the use to which the document
19 from Chhuen Sothy should be put.

20 Can I invite Mr. President to rule that we can make submissions
21 on that document?

22 [9.11.31]

23 MR. PRESIDENT:

24 The first question the Trial Chamber would like to raise is more
25 about your remaining questions or documents regarding M-13, and

2

1 yesterday the Chamber made a decision that this morning we would
2 listen or hear the comments from the parties before making a
3 final ruling.

4 MR. BATES:

5 So the document that the Co-Prosecutors wish to confront the
6 accused with is the Chhuen Sothy Report, but I anticipate that,
7 Mr. President, you had wished to discuss the use to which that
8 can be put before we put the questions to the accused or have I
9 misunderstood the situation? I wonder whether Judge Lavergne has
10 anything to add.

11 I'm sorry, Mr. President, I should add that the Chhuen Sothy
12 Report is about M-13; it's clearly about the subject that we are
13 discussing.

14 MR. PRESIDENT:

15 Judge Lavergne should take the floor.

16 JUDGE LAVERGNE:

17 The parties will be afforded the opportunity to make comments and
18 submissions regarding the production of the document referred to
19 on which the Court has delayed in making a ruling but I think
20 that, first of all, the President would like you to indicate to
21 us whether you have other questions to put to the accused or
22 whether you have other documents that you intend to rely on. The
23 Chhuen Sothy document issue will be examined later.

24 [9.13.57]

25 MR. BATES:

3

1 Thank you, Your Honour, for that clarification.

2 The only other documents that the Co-Prosecutors would wish to
3 put before the Chamber are those that have already been referred
4 to; the DC-Cam statements of Ham In and In Horn and this,
5 together with the Chhuen Sothy Report, are the only three
6 documents the Co-Prosecutors wish to put before the Court.

7 MR. PRESIDENT:

8 The civil party lawyers, would you like to ask further questions
9 to the accused?

10 MR. KHAN:

11 Good morning, Mr. President, Your Honours.

12 On behalf of civil party 1, we have no additional questions to
13 put to the accused. I'm grateful.

14 MS. STUDZINSKY:

15 Good morning, Mr. President, Your Honours.

16 The same for our group; we have no further questions at the
17 moment.

18 MR. KIM MENGKHY:

19 Your Honour, the President, on behalf of civil party group 3, we
20 do not have any questions at this moment to the accused, and we
21 would like the Chamber to proceed to the questioning regarding
22 S-21.

23 [09.16.01]

24 MR. HONG KIMSUON:

25 Yours Honours, I am on behalf of civil party group 4. We have no

4

1 further questions at this moment, and we support the position of
2 the prosecution.

3 MR. PRESIDENT:

4 Mr. François Roux, would you like to make any further
5 observations regarding the matter?

6 MR. ROUX:

7 Thank you, Mr. President.

8 Firstly, as concerns the report of Chhuen Sothy of which the
9 defence received a copy in French only on the 3rd of April 2009,
10 the defence would like to indicate to the Chamber that Mr. Duch
11 is in agreement with regard to the provision of explanations
12 concerning this document, which explanations will shed light on
13 our proceedings.

14 This is what Mr. Duch has done before the Co-Investigating Judges
15 when documents were put before the Judges. The defence, however,
16 regrets that the Co-Prosecutors neglected to present these or put
17 these documents before the Co-Investigating Judges.

18 With regard to the two interviews conducted by DC-Cam which my
19 colleague wishes to put before the Court, the defence would like
20 to insist that they should not be part of the record of the
21 proceedings. That is, these documents prepared by DC-Cam should
22 not be part of these proceedings. I repeat that these documents
23 were obtained in conditions that cannot be described to be
24 reasonable. Possibly, they could be of some use to an NGO, but
25 they cannot be adduced as evidence.

5

1 I will give you one solitary example of this. Based on one of
2 these interviews, the NGO DC-Cam prepared a report which was
3 widely published and which is in the record. In this report,
4 without any discernment, without any verification, without any
5 objectivity, this NGO informed the public that there had been
6 30,000 deaths in M-13. You have this report at your disposal.
7 It was put to Duch at the beginning of these proceedings. I'm
8 referring to "Search for the Truth". The report says 30,000 dead
9 in M-13, and this is on the basis of interviews that the
10 prosecutor wishes to have included in the case file.
11 Having had an adversarial debate in this hearing in respect of
12 some witnesses, could we possibly continue to allow the
13 propagation of the information that there were 30,000 dead in M
14 13? We are here to do the work of justice and we are not here as
15 propaganda arms for one side or another. On behalf of the
16 defence I therefore request the Chamber to set aside these
17 documents which are not professional.
18 Lastly, Mr. President, Your Honours, as we start our third day of
19 this week the defence wishes respectfully but formally to draw
20 the attention of the Chamber to the serious problem of
21 translation that we have encountered. From what I gather, we are
22 losing at least 50 percent of what is said in Khmer. This is a
23 court of law. It is unconscionable that we could continue to
24 work as we are doing now. This means that non-Cambodians lose 50
25 percent of the message from the Khmer witnesses and the accused.

6

1 It also means that when I address the Court you lose 50 and I
2 don't know how much of percentage of what I say.
3 I respectfully request, but formally, by virtue of the powers
4 with which you are vested, to order the administration of this
5 Court immediately to take the necessary measures so that we can
6 have faithful translations and so that we can have skilled
7 personnel to revise the transcript every day and to determine
8 whether there have been interpretation errors.
9 At the end of these proceedings this Chamber will render a
10 decision on the basis of what was said in this courtroom. I do
11 not want to imagine what might happen if your decision does not
12 include statements that were made; or worse, if what was said is
13 completely distorted. I give you one example only. Yesterday
14 morning, when the witness referred to three pits, I heard the
15 translation "three prisons".
16 [09.25.02]
17 So what is to be done? So I say this again; that this country
18 has enough skilled people to ensure that we have accurate
19 translations. I say that it is not at all normal that after
20 several weeks of proceedings we do not have direct translations
21 from Khmer to French and from French to Khmer. I say that when
22 you use the relay system you increase the risk of
23 misunderstanding.
24 Mr. President, Your Honours, I am asking you to use the powers
25 vested in you to ask or to request the administration to act as

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1 appropriate. And with all due respect to the interpreters, who
2 do a very difficult job, I say that we should all make an effort
3 to speak slowly; as you have asked us on several occasions, Mr.
4 President, to ask short questions. But it is not enough. The
5 translation resources for this Court are not sufficient. Thank
6 you.

7 [09.27.27]

8 MR. PRESIDENT:

9 The Co-Prosecutor, what do you intend to raise related to the
10 translation issue or on any other matters?

11 MR. BATES:

12 Simply, Mr. President, to seek your guidance on the order in
13 which we should respond to Maître Roux's submissions. We have
14 two issues: the issue of translation and the issue of documents
15 to be admitted to the case file, and the Co-Prosecutors are
16 content to make submissions on both issues in the way in which
17 this Court finds helpful.

18 MR. PRESIDENT:

19 Please, the first remark is that the Co-Prosecutor can verify
20 about the documents that you have raised yesterday and that we
21 temporarily make a decision on it whether you can provide reasons
22 for its relevance to the facts during these proceedings. Please,
23 the floor is yours.

24 MR. BATES:

25 Thank you, Mr. President.

8

1 I have a request from Mr. Khan for Civil Party Group 1, who I
2 understand has an engagement later on this morning, and he wishes
3 to speak first on this particular matter. We have no objections
4 to him speaking first on this if the Court is content.

5 [09.29.24]

6 MR. PRESIDENT:

7 Mr. Khan, the floor is yours.

8 MR. KHAN:

9 Mr. President, Your Honours, I'm most grateful for that kindness.
10 It was a matter that I did raise with my learned friend last
11 evening. At the outset, on behalf of Civil Party 1, we would
12 support with vigour the submissions and observations by my
13 learned friend for the defence.

14 It is of the utmost importance to the integrity of these
15 proceedings and the legitimacy of the final verdict that the
16 translation is not questioned and is reliable. Your Honours, it
17 is of course -- it will be fatal to the integrity of these
18 proceedings if one party or the other at the end of the day, had
19 valuable ammunition to establish that Your Honours were not in
20 possession of the full subtleties of legal argument, and I would
21 support the very compelling submissions of my learned friend, Mr.
22 Roux.

23 It's my respectful submission that the appropriate, and indeed
24 prudent, way of proceeding would be for Your Honours to instruct
25 the Registrar to appoint an independent expert to review various

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1 samples of the translation in these proceedings since the initial
2 hearing and to compare that translation to the original. Once we
3 have those statistics as to the veracity and reliability of the
4 interview we can properly assess whether or not there is a
5 problem and, if there is, the scale of the problem and any remedy
6 that may be appropriate.

7 [09.31.35]

8 But it does, with the greatest of respect, seem to be prudent to
9 do that now, rather than to leave this to fester and become an
10 issue later on in proceedings or indeed as an appeal issue.
11 Your Honour, the second observation or submission goes to the
12 admissibility of the documents. It's my understanding now that
13 in relation to ERN Number 2214 to 2217 -- that's the Khmer -- ERN
14 Number 00172202 in English, the statement of Chhuen Sothy, that
15 there is no objection now by the defence to the admissibility of
16 this particular document. I will therefore not belabour the
17 point.

18 My submission is one of principle. If I understand matters
19 correctly, one of the points put forward by my learned friend for
20 the defence yesterday was an argument that any document on the
21 case file which was not shown by the Co-Investigating Judge to a
22 witness should be declared inadmissible. If I understood that
23 argument by my learned friend properly, it is a novel and
24 unheralded proposition and it is one that I would ask Your
25 Honours to reject.

10

1 The rules governing admissibility of documents are very squarely
2 set out in Rule 87, and Rule 87 makes it very clear that the
3 general starting point is that all evidence is admissible. This
4 of course is a civil law system, informed of course by both the
5 Cambodian legal tradition and informed by international
6 standards.

7 Your Honours, you are of course professional judges and you are
8 fully able to assess evidence and to accord whatever evidence is
9 placed before you properly at the end of the day. As a matter of
10 law it's my respectful submission that there must be of course
11 some minimum indicia of reliability before documents are
12 admitted. However, it is clear from case law -- and I pray in
13 aid the Ori? case before the Yugoslav Tribunal, Prosecutor v.
14 Ori?, case number IT-0368, the judgement of the Trial Chamber of
15 30 June 2006, where at paragraph 29 the judges made it very clear
16 that it is not necessary for a document to be authenticated by a
17 witness for it to be admitted.

18 [09.34.55]

19 While an exhibit which has not been presented to a witness has
20 less probative value than one which has, it does not affect
21 admissibility. There is of course, as Your Honours are fully
22 aware, a two-stage process; one of admissibility and then the
23 second one a determination as to what weight should be afforded
24 to a document.

25 Your Honour, ordinarily admissibility can be viewed by the -- on

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1 two aspects, both the form of document -- whether or not there
2 are stamps, whether or not there is an archive log, the date of
3 receipt and the signature -- and then the contents of the
4 document. Your Honour, I will not belabour that point because it
5 was primarily relevant to the report relating to Chhuen Sothy for
6 which objection is not being taken by the defence. But as far as
7 the contents are relevant, Your Honours may hear evidence in due
8 course which is independent and reliable, which may shed further
9 light, or you may have heard evidence already which may tend to
10 render stronger the contents of this report which the
11 Co-Prosecutors are seeking to put before you.

12 [09.36.28]

13 In relation to the interviews, of course, where interviews are
14 available and a witness is before Your Honours, it appears that
15 the starting point must be one of admissibility. And of course
16 the defence, in accordance with Rule 87, can then seek to
17 question whether or not the document should be given any weight
18 whatsoever. A difficulty in this case of course may be whether
19 or not an interview itself was put to a witness so that the
20 witness has accepted it as his interview.
21 Your Honour, I will not go, with your leave, into that issue. My
22 principal concern was the proposition which was advanced by my
23 learned friend that documents on the case file which are not
24 presented to the Co-Investigating Judge to a witness should be
25 excluded or should not be admissible. That is, as I mentioned

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1 before, a novel proposition. There is no burden, in my
2 submission, upon the Co-Investigating Judges to confront
3 witnesses with every single piece of document, every single piece
4 of paper on the case file in order for those documents to become
5 admissible. To do so would be to establish a dangerous precedent
6 for which no authority is cited in support by my learned friend
7 for the defence.

8 Your Honours, those are my submissions on this issue unless I can
9 assist further; I'm grateful.

10 MR. PRESIDENT:

11 The Co-Prosecutor.

12 [09.38.29]

13 MR. TAN SENARONG:

14 Thank you, Mr. President. On behalf of the prosecution we still
15 insist the Chambers to accept the report of Chhuen Sothy to be
16 considered, and we will provide the reasons why the prosecution
17 wishes the Chambers to reconsider their report, although the
18 report was not identified by the Co-Investigating Judges, but the
19 document is consistent with the statements of the witness who
20 recently provided their interviews, and also consistent with the
21 response from the accused during the hearing.

22 Also in that report it states during that period of time there
23 were two security offices. One is called Staff Security Office,
24 which was M 13B, which is also consistent to the responses of the
25 witness and the accused, and the M 13A located in Amleang. Also

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1 in that report there are a number of relevant people that we want
2 the accused to respond; for example, Ta Thae and also some
3 prisoners who escaped that we need to be very frightened by the
4 accused. Also in Chhuen Sothy's report, after the 18th of March
5 seventies event, there were a number of people including Vann and
6 Ouen and Pon and Huot and Chhum, that really needs to be
7 confirmed by the accused.

8 Also in that report -- in the report of Chhuen Sothy, the two
9 prisons; one was located in Barey village at Wat Trang Pagoda and
10 the other one was located at Chhous Pagoda.

11 And the report also states some reasons for the arrest of Hoeun,
12 the soldier of our national army at the time.

13 The report also states some -- the names of the chief of prison
14 of M-13B which is Ta Sum.

15 Also, in addition, the Chhuen Sothy Report states the security
16 office in Amleang and Duch, the accused, and Chan, his deputy,
17 were named in that as they were the wicked men.

18 [09.41.35]

19 Also, in that report -- in Chhuen Sothy report -- it states the
20 location of Srat prison at M-13B; it was in Sdok Srat near Wat
21 Trapeang, north of Sdok Srat, and also specified the description
22 of the prison, the shape of the prisons, the size of the prison.

23 I do not want to provide the detail at this stage, and I would
24 like the Chambers to reconsider the submission of this document.

25 Also, the report states the physical description of that person,

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1 Soun, and also food ration in the two prisons were mentioned.

2 And Chhuen Sothy, himself, was mentioned that he was detained on
3 the accusation of being a spy, and he was detained from Sdok Srat
4 prison, which was M-13B, until later he was transferred to M-13A.
5 And he also stated the number of the guards there and the number
6 of prisoners in the M-13A.

7 And in this hearing, there is no discussion yet on the details of
8 the pits in the M-13B, and whether the three pits are consistent,
9 and a physical description of the pits and the size. And in the
10 report, it states the size of the pit; its 2 metres wide, and 2
11 metres deep and also its 10 metres long. It's like in the first
12 alphabet of the Cambodian character. So it provides descriptions
13 of the three prisons, and that they are close to each other, and
14 also with a sketch of the prison. So this is useful for the
15 accused to confirm that to respond to these important facts.

16 [09.44.15]

17 Regarding the other documents -- related documents, as the
18 defence already stated, I would leave it to my colleague to
19 respond to the remarks made by Mr. François Roux.

20 Therefore the national prosecutor would like to keep insisting
21 that the Chamber regard these documents of Chhuen Sothy as
22 admissible because it is very consistent with the testimonies of
23 the witnesses and the accused when they recalled the history of
24 the prisons.

25 And I'm very grateful, and I would like to leave it to my

15

1 colleague to continue for me.

2 MR. BATES:

3 Thank you, Mr. President.

4 I'd just like to first state that the suggestion from the defence
5 that the Chhuen Sothy Report has not been placed before the
6 charged person -- as he then was -- in the investigation and,
7 therefore, should not be part of the case file is irrelevant,
8 erroneous, not based on any principle in our Internal Rules. If
9 it is in the introductory submission as a document and it is in
10 the closing order unchallenged, it is in this Trial Chamber's
11 case file.

12 That was clearly discussed in the initial hearing with all
13 parties present, and all parties are entitled to refer to any
14 document contained in this Trial Chamber's case file.

15 MR. ROUX:

16 Mr. President, I apologize for interrupting but, again, we're
17 facing a problem of translation. I said exactly the opposite, in
18 fact. It's really a problem. I said that the defence did not
19 see any problems, including the document that you are mentioning
20 in the proceedings, and I said that I only regret that you had
21 not done so before the Co-Investigating Judges.

22 [09.47.12]

23 What has been translated, therefore? So, therefore, I stuck by
24 my position; it's not worth it spending hours on this.

25 I'd like to maintain that the defence agrees to include this

16

1 document concerning Mr. Chhuen Sothy to include this document in
2 the proceedings under the reservations that you put forth the
3 original.

4 If there has been a translation problem once again, I'm sorry,
5 but here we're dealing between English and French.

6 MR. BATES:

7 Perhaps it was my misunderstanding, Mr. President. My note was
8 "The defence regrets that the Co-Prosecutors neglected to put
9 this document before the Co-Investigating Judges". Perhaps I was
10 jumping to conclusions, and I'm grateful to Mr. Roux for
11 clarifying that he is not objecting to the document.

12 There are two issues in this case that we're dealing with in
13 relation to documents. There is the issue that was raised by
14 this Trial Chamber in the direction on the scheduling of the
15 trial on the 20th of March, relating to whether the accused can
16 be confronted with statements of witnesses yet to be heard.
17 And the second issue is relating to the question of whether broad
18 categories of documents, in this case documents, statements,
19 taken by investigators from the Documentation Centre of Cambodia
20 can, without any more discussion, be ignored by this Court.

21 [09.49.30]

22 There are two issues, but there's one principle. Before I
23 discuss that principle, perhaps I can read back paragraph 9(2) of
24 the Trial Chamber's direction on the scheduling of the trial, and
25 this is Document E-26 ERN-00290321 in English.

17

1 "The accused may be confronted with documents only after they
2 have been put before the Chamber in accordance with Rule 87(2)
3 and 87(3). The accused cannot be confronted with statements of
4 witnesses yet to be heard."
5 And I pause and say we, the Co-Prosecutors, have no objection to
6 this. It's easily understandable, the reasons for this approach.
7 The best evidence comes from a live witness. A live witness can
8 be asked to confirm or deny their previous statement. I'll
9 continue reading from the paragraph:

10 [09.50.47]

11 "An exception to this --"

12 An exception to the Rule that I've just mentioned.

13 "-- is if the witness is dead or cannot be heard for another
14 reason and the parties have agreed to the reading of the
15 statement."

16 It appears to the Co-Prosecutors that the Trial Chamber is saying
17 that unless there is agreement between the parties, the accused
18 may not be confronted with witness statements from those people
19 who are dead or who cannot be heard. With the greatest of
20 respect, Mr. President, this part of the Scheduling Order is
21 inconsistent with the Internal Rules and is inconsistent with the
22 approach to evidence in civil law systems.

23 Rule 87(1) is the starting point for everything that is being
24 discussed this morning. Unless otherwise provided in these
25 Internal Rules, all evidence is admissible. That's the starting

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1 point. And the only references in the Internal Rules to the
2 exclusion of evidence are in two sub-rules: Rule 87(3):
3 "Evidence can be excluded if irrelevant, repetitious, impossible
4 to obtain within a reasonable time, unsuitable to proving the
5 facts, not allowed under the law, or intended to prolong the
6 proceedings or being frivolous."

7 And the second, and the only other rule under this Court's
8 Internal Rules, is Rule 21(2) and (3):

9 "That evidence obtained by or under the effective control of
10 ECCC authorities in which inducement, physical coercion or
11 threats are used shall not be admissible."

12 [09.53.10]

13 Mr. President, there are no other exceptions to the general rule
14 of 87(1) that all evidence is admissible; no other exceptions in
15 the law to be applied by this Chamber to this case. The
16 Co-Prosecutors are extremely concerned that the Trial Chamber
17 appears, as supported by the defence, to be moving towards a
18 ruling based on the Directions of the 20th of March. That is to
19 say, there is an additional test for witness statements made by
20 witnesses who are dead or cannot be heard, namely that additional
21 test being that the parties must agree.

22 I return to the general point. There is no distinction in our
23 Internal Rules between witness statements and any other type of
24 documents. All documents are subject to the same broad rule of
25 admissibility. A witness statement made out of court, legally

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1 speaking, is no different to any other document made outside the
2 court. And we have many hundreds of those documents, thousands
3 in fact that this Court will hear and consider during the trial:
4 military telegrams sent to the Party Centre; written reports of
5 chiefs of administrative units sending prisoners to S 21;
6 handwritten notes from interrogators.

7 Is the Trial Chamber going to say that some of these documents
8 cannot be used because we cannot bring the person who made the
9 statements to Court and there has been no agreement by the
10 defence? I hope the Court will see that the potential impact of
11 the direction in which this discussion is progressing is
12 extremely dramatic. There is no basis in our Internal Rules
13 whatsoever to say that in all cases where the author of a
14 statement is dead or not available only those documents agreed
15 between the parties are admissible.

16 [09.56.02]

17 And there is good reason for that. It would put the power of
18 controlling the admissibility of documents in the hands of the
19 opposing party, instead of in the hands of the Trial Chamber.

20 The defence could simply say, "We don't agree to any documents
21 for which the maker of the statement cannot be found or is dead."
22 And that would just simply prevent the Trial Chamber from
23 considering the evidence at all. This cannot have been the Trial
24 Chamber's intention.

25 The Co-Prosecutors would urge the Trial Chamber not to import

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1 common law rules of evidence into a system of law that is not the
2 same. As a common-law lawyer myself, paragraph 9(2) of the
3 Directions seemed familiar to me. Only admitting statements
4 where the witness is dead or is unavailable looks very similar to
5 an exception in common law to the hearsay evidence rule; evidence
6 of statements made outside the courtroom introduced as proof of
7 the contents of those statements. But there is no rule
8 prohibiting the admission of hearsay evidence in the civil law
9 system in general. More importantly, there is no rule under
10 Cambodian law nor any rule under our Internal Rules.

11 Can I perhaps correct something that Mr. Khan said? He said that
12 there is a two-stage test to admitting documents or considering
13 documents before these Chambers. He says that, first of all,
14 there is a question of admissibility and second of all it's a
15 matter of weight; there's the question of weight. With the
16 greatest of respect to him, there isn't a two-stage test. In
17 this Court, once a document is in the case file and that document
18 has not been objected to by the defence -- and I mean objected
19 to, to be struck from the record -- then that the document can be
20 considered. The only issue here is the weight of the document.
21 Once it's in, it's in.

22 [09.58.50]

23 I come briefly on to the issue of Documentation Centre of
24 Cambodia statements. Is it to be said, as the defence wish, that
25 all DC-Cam statements are inadmissible because they were not

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1 taken according to the same procedures as the "procès verbaux" of
2 Investigating Judge investigators without even examining the
3 method of questioning or the quality and clarity of the responses
4 in each individual document?

5 The defence have consistently said these are not legal documents,
6 therefore they cannot be used. I hope that Maître Roux is not
7 saying that DC-Cam documents should be struck from the record,
8 i.e. that is to say cannot be considered. I hope he is saying
9 that there should be no weight attached to that -- to these
10 documents, because Rule 76(1) of the Internal Rules states that
11 procedural defects, and in particular in this case the annulment
12 to the documents addition to the case file must be made during
13 the investigation phase.

14 A Rule 76 submission was never made by the defence to any of
15 these documents. It was never made in relation to DC-Cam
16 statements. Rule 76(7), the closing order cures any procedural
17 defects. It is not defective, therefore, that these DC-Cam
18 statements are in the case file.

19 The defence are perfectly entitled, as is any other party, to say
20 that this statement or that statement should be given little
21 weight or even no weight because there were no judicial
22 guarantees, because we don't know the training of the
23 investigators, because we don't know the quality of the
24 interpretation.

25 [10.01.23]

22

1 The Co-Prosecutors have no trouble with those arguments at all,
2 but no matter how eloquently Maître Roux pleads, he cannot get
3 over the rule applicable in this case in our Court that once the
4 document is before this court it cannot be struck from the
5 record. And I hope I've not misstated Maître Roux on this point.
6 If I have I'm sure I'll be corrected when he responds.
7 Mr. President, some DC-Cam statements may be more useful to this
8 Court than others. It won't have escaped your notice, Your
9 Honours, that some of these statements contain leading questions.
10 It won't have escaped your notice that some of the questions do
11 not appear particularly relevant. But each document must be
12 judged on its merits. Each individual document must be judged on
13 its own merits. And there is nothing within the rules of this
14 Court to say that certain categories of documents have an
15 additional test of admissibility. Even the procès verbaux taken
16 by the Co-Investigating Judges vary in quality and clarity.
17 And as I've said, the submissions of the defence that the Court
18 might give little or no weight to certain documents is perfectly
19 proper but to take a blanket approach, the whole categories of
20 documents, is not permitted by these Internal Rules, by our
21 Internal Rules.
22 [10.03.26]
23 The issue is a simple one. The documents are admissible because
24 there is nothing that makes them inadmissible under these
25 Internal Rules. There is no requirement under our Rules that all

23

1 parties must agree. This relates to both the observations in
2 relation to previous witness statements and also to the DC-Cam
3 statements.
4 To find otherwise would create an extremely dangerous precedent
5 for this Court and the prosecution of the cases before these
6 Courts. To find that this Chamber can create additional rules of
7 admissibility of evidence is not within the power of this
8 Chamber. The Co-Prosecutors cannot see any basis for rejecting
9 documents on the simple fact of the category of that document.
10 My colleague has already set out the relevance and usefulness of
11 the Chhuen Sothy report. I hope I have established the
12 Co-Prosecutors position on DC-Cam statements. And if we are to
13 discuss individual DC-Cam statements and the weight to be
14 attached to them, the Co-Prosecutors are perfectly happy to do
15 that on a statement-by-statement basis, which is the only proper
16 approach this Court can take.
17 I apologize for taking so much time up of Your Honours but this
18 is a very important issue. And those are my submissions.
19 Thank you.

20 [10.05.22]

21 MR. PRESIDENT:

22 Lawyers for civil party group 2, do you have anything to add
23 regarding this issue? If you have please, the floor is yours.

24 MS. STUDZINSKY:

25 Thank you, Mr. President.

24

1 We would like to submit the following concerning this issue:

2 First, we observed that here, and as we saw yesterday in the
3 discussion, if we can refer to a document which is on the case
4 file, a clash between common law rules and civil law rules; we
5 would like to emphasize we are here in a civil law proceeding and
6 therefore I think it is most important that the Trial Chamber
7 takes a decision which is in accordance with general civil law
8 proceedings rules and not to make a case-to-case test on every
9 document if it is, in general, admissible.

10 First, I would like to submit that we join fully the statement of
11 the Co-Prosecution and I do not want to repeat these arguments
12 that we share in total, including the inconsistency of the
13 mentioned-decision E-26 and there, paragraph 9(2) with the Rules,
14 and including the statement of Mr. Khan related to the two-step
15 test, which we do not share.

16 I want only to add another point regarding to Rule 87 which
17 should guide these proceedings and which is in accordance with
18 the Cambodian from a procedure code, that under Rule 87(2) which
19 I will read out, I quote, "Any decision of the Chamber shall be
20 based only on evidence." That this is the first element.

21 Second element, "That has been put before the Chamber." And the
22 next element, "Subjected to examination." This is the rule which
23 makes it very clear that the final decision, the judgment at the
24 end, has to be based on these elements.

25 [10.09.48]

25

1 You are looking then and making the test regarding two witness
2 statements which are on the case file. That means they can be
3 used.
4 There are pieces of evidence, of course -- this document as such
5 -- and if they are put before the Chamber and are subject to
6 examination, a decision -- final decision of the Chamber can be
7 based on these statements which are part of the case file and are
8 documents.

9 [10.11.08]

10 They can be only excluded, and I do not want to repeat this,
11 under Rule 87(3), as the prosecution already outlined. Of
12 course, such documents, like most of the DC-Cam documents where
13 witnesses were asked and we have a report on the case file on
14 this questioning, if the witness which is, I want to say, behind
15 this document then, of course, the priority should be shed on the
16 witness. The primary source should be the witness if the witness
17 is available. If not, this document is a document like other
18 documents and can and should be considered by the Chamber.

19 This general treatment of evidence should be ruled by the Chamber
20 and I think it is then only a question at the end that it is the
21 duty, and the very own duty of the Chamber, to consider the
22 evidence and to weigh if, for example, a document contains a
23 statement which seems to be credible, consistent -- and
24 consistent within itself and consistent with other evidence. It
25 is the same duty and the same work that the Chamber has in

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1 considering witness statements given orally in Court.
2 And, therefore, it is up to the Chamber at the end to determine
3 what weight should be ascribed to the evidence adduced. And only
4 if evidence is excluded under Rule 87(3), it cannot be
5 considered. This is not the case in general for all DC-Cam
6 statements. And this is in accordance -- and I repeat this
7 because I think we are here in the courtroom and in a mixed
8 composition of common law tradition officials and civil law
9 lawyers and judges -- and I really call on the Chamber to take
10 and follow the civil law approach.

11 [10.15.12]

12 And I would like to add that, of course, as we face a lot of
13 translation problems, the Chamber should take into consideration
14 here in Court the original documents and, as we saw with the
15 statement of, for example, Hâm In -- In Horn I mean -- that there
16 were so many inconsistencies between the English and French
17 version already, as I understood, and so I suggest to refer here
18 in Court primarily to the original documents which are often
19 concerning the DC-Cam statements, are recorded -- as I understood
20 -- and can be tested, of course, if the transcript is accurate.
21 So to conclude only on this issue -- I'm not covering yet the
22 translation problem -- all evidence which is on the case file can
23 be used, and this rule should guide the Chamber, which is in
24 accordance with the Cambodian law, with the Rules and with civil
25 law proceedings. Thank you.

27

1 MR. PRESIDENT:

2 Lawyers for Group 3, you can make your remarks.

3 MR. CANNONE:

4 Thank you, Mr. President. I should like to make two observations
5 on behalf of Group 3.

6 Firstly, with regard to translation, I fully support Mr. Roux's
7 motion. That goes without saying. We are officers of the Court
8 as lawyers. I have said before that we seek here to ascertain
9 the truth, whatever it is.

10 Some aspects of this trial will be determined on the basis of
11 statements or representations made in Court. It is important
12 that we have an accurate understanding. It is important that
13 there is no ambiguity; that the final judgement be based in law
14 and should be fair from a human standpoint. It is, therefore,
15 necessary for the translation to be accurate and faithful.

16 So, once more, I fully support the motion made. In civil law, we
17 say when we ask a witness to take the oath or make a solemn
18 declaration that he must promise to speak the truth, only the
19 truth and the whole truth. I am afraid that part of the truth
20 escapes us in these proceedings just because we do not understand
21 what is said. That is my first observation.

22 [10.19.39]

23 My second observation is on putting documents before the Court.
24 This proceedings or this trial is special in that it is made up
25 of investigative actions and a multitude of documents connected.

28

1 I would like to speak with regard to common sense and with regard
2 to law.

3 Now, with regard to common sense, the purpose of our proceedings
4 is to compare, to confront all the documents, all information
5 with the statements that are made here or the testimony given
6 here by the witnesses. That is the purpose of the proceedings -
7 that is to confront all the information at our disposal, which is
8 why, Mr. President, yesterday I very respectfully but firmly
9 requested that the Chamber tell us what approach was to be
10 adopted so that we would know very clearly to what use these
11 documents would be put. I respected that a decision be taken on
12 the modus operandi.

13 [10.21.27]

14 Now to turn to the law. I refer to Rule 77(2) and 77 -- or 76(2)
15 and 76(7), and I shall read:

16 "At any time in the investigation, if the parties consider that
17 any document is null and void, it shall make a reasoned motion to
18 the Co-Investigating Judges, asking them to seize the Chamber,
19 the Pre-Trial Chamber, with a view to annulment."

20 Unless I am mistaken, this was not done. I now move on to Rule
21 76(7) that the Co-Prosecutor referred to a while ago.

22 "The Closing Order shall cure any procedural defects. No issues
23 concerning such procedural defects may be raised before the Trial
24 Chamber or the Supreme Court Chamber."

25 Mr. President, Your Honours, I would like to say that this is not

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1 a rule debate. The question has been understood. I respectfully
2 request the Court to remind all the parties that this Rule which
3 I have just read out is public; we should respect it and that for
4 the smoothness of proceedings we should continue to do so. Thank
5 you, Mr. President.

6 MR. PRESIDENT:

7 Lawyers, group 4, you take the floor.

8 [10.24.00]

9 MR. HONG KIMSUON:

10 Thank you, The President and Your Honours. I am Mr. Hong
11 Kimsuon, representing civil parties group 4. Just now I already
12 stated that I support the motion of the prosecution and, like the
13 other lawyers, regarding the presentation of the documents.
14 Regarding witness Chhuen Sothy, I noted that the defence does not
15 object to content of the document but when it comes to the
16 document issued by the DC-Cam regarding the "Searching for the
17 Truth" document, other lawyers raised the issue of Rule 87 of the
18 Internal Rules regarding the rule of evidence.
19 Sub-paragraph 2 and sub-paragraph 3, as raised by lawyer
20 Studzinsky, I support her position. I note that these documents
21 are consistent with Rule 87(3) and 87(3)(a), only if the document
22 is irrelevant or that the President of the Chamber may reject.
23 And regarding the being impossible to obtain within a reasonable
24 time, which is sub-rule (3)(b), according to the application of
25 civil law system, every document placed in the case file suggests

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1 that all evidence in the case file is regarded as being examined
2 or put forward before the Chamber, the Trial Chamber.
3 In our national practices and the criminal -- sorry, the Civil
4 Court of Cambodia issued on July, Article 155 states the
5 admissibility of the document, and according to Article 112, if
6 there is any discrepancy or inconsistency in the law, then the
7 international laws would be sought. This article states that the
8 parties who request a document to be examined have to satisfy --
9 have to prove that the document has been conducted properly. And
10 if the document is admissible, that's accepted that it was
11 obtained by the official on duty and the forms of the document
12 were acceptable, that the document must be the public document
13 and obtained properly.

14 [10.28.17]

15 And if there is any suspicion regarding the validity of the
16 document, the public document, then the Court can use its
17 discretion to ask the relevant authority to clarify the position.
18 So although the DC-Cam organization, as raised by the defence
19 counsel as not regarded as the competent authority or the
20 institution that's recognized by the Court, the documents -- all
21 these documents, there are thousands of pages of documents
22 obtained from DC-Cam and now are placed in the case file of the
23 ECCC.

24 So I would like to go back a little bit to DC-Cam. DC-Cam has
25 been acknowledged by the Royal Government of Cambodia to conduct

31

1 research for the truth regarding the documents in relation to the
2 Democratic Kampuchea regime starting from 17 April 1975 to 1979
3 and beyond that. So I would like to say that this organization
4 is a very important partner for the ECCC to search for the truth.
5 So all the documents that are submitted to the Court, whether
6 there are documents before 1975 or between 1975 and '79 or after
7 that, not only DC-Cam that forwards these documents to the Court
8 and that the Court has put them in the case file.

9 So now it lies on the discussion of the Chamber to decide whether
10 the documents are consistent or not.

11 So finally, I would like to submit that I strongly support the
12 motion by lawyer Studzinsky and based on Rule 87(3) and Article
13 155 of the Civil Court of Cambodia. So I would like to submit
14 that submission; I would like the Chamber to accept those
15 documents.

16 I'm very grateful.

17 [10.31.20]

18 MR. PRESIDENT:

19 The defence counsel, would you wish to make any further
20 observations?

21 MR. ROUX:

22 Thank you, Mr. President.

23 The defence, of course, will not deprive itself of participating
24 in this very interesting proceeding by reminding you of this
25 principle announced by a law professor -- you might have heard

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1 this quote before -- "A sworn enemy of the arbitrary form" --
2 that is to say the proceedings -- "is the twin sister of freedom"
3 -- "form is the twin sister of freedom."
4 So what are we speaking about here? We are speaking about Rule
5 76 of our internal regulations concerning procedural defects,
6 applications concerning procedural defects, and we would like --
7 and we're attempting to give lessons to the defence by saying how
8 is it possible? It was up to you to request -- how is it that
9 you requested the nullity of the elements before the closing of
10 the investigation and now it's too late? Thank you, colleagues,
11 for this reminder. Thank you.
12 What are we speaking about here? What are we speaking about
13 here? Can anybody submit that an interview conducted by DC-Cam
14 is a document to include in a proceeding in the legal sense of
15 the term? Would you like me to remind you what an element to be
16 -- what a legal element is in civil law? You could use a
17 dictionary and use the definition of element in a proceeding.
18 And an element of proceeding involved in the development of the
19 proceedings and the certifying of the proof, among these elements
20 we can include introductory exploits -- exploits -- whatever --
21 requests, conclusions put forth by the parties, or in certain
22 cases, conclusions from public ministries; that is to say from
23 the prosecutor, the expert reports and finally, the written
24 records containing the interviews of the witnesses.
25 [10.34.47]

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1 So, therefore, if I had to follow Rule 76 it was to request the
2 nullity of legal written records. The defence did not believe
3 that it had to request for the nullification of judicial written
4 records; that is to say that the defence did not wish to request
5 the nullification of written records established by the
6 Co-Investigating Judges or written records established on the
7 basis of the rogatory letters from the Investigating Judges.
8 So, therefore, we can close this article, Rule 76, which in no
9 case can solve the problem that is put forth here. The documents
10 that we're speaking about are not written records, even if they
11 wished to resemble written records, but a written record is a
12 document, an official document that is produced by people who
13 have taken an oath and, in civil law, people who are under the
14 control of the Investigating Judges.
15 So thank you to the Co-Prosecutors to have finally once again
16 brought up these questions that bring me back to a point of
17 criticism that I expressed earlier on. We have had together, Mr.
18 Co-Prosecutors, a year and a half of investigation with the
19 Co-Investigating Judges, more than 30 full days of interviews and
20 you have had the possibility to provide to the Investigating
21 Judges all of the documents that you wished to put forth so that
22 the accused may be interviewed in the context of the
23 investigation. And I have asked of you many times to respect
24 this investigation proceeding and I warned you many times to be
25 careful; what you do not do during the investigation you will not

34

1 be able to do it afterwards. What you do not do during the
2 investigation you will not be able to do it afterwards. And
3 this, of course, is addressed to the accused who refused to
4 answer the Investigating Judges questions. Afterwards it's too
5 late.

6 [10.38.27]

7 So we are dealing here with which rule? Isn't it Rule 76 on
8 procedural defects? Well, our Internal Rules has indeed included
9 something else to this effect for documents which the
10 Co-Prosecutors wish to include in a considerable quantity in the
11 proceeding. And here we're facing again a very well-known
12 procedural defect with the Co-Prosecutors where tonnes and tonnes
13 of documents are provided to the case file and where we lose a
14 lot of time sorting through all of these documents.

15 And I had wished that in this Court, with the opportunity of
16 having Co-Investigating Judges, that we could prepare all of this
17 ahead of time to avoid, as of today, to spend two hours where you
18 have here many, many people, victims and other people who are
19 waiting, that we speak about S-21 finally, and we're still now
20 trying to sort out problems that should have been solved before
21 the Investigating Judges earlier.

22 So Article 87, paragraph 3, when the Chamber bases its decision
23 on an evidence included in the case file, it has to be sure that
24 this element has expressly been put forward -- evidence for the
25 case file is considered put forth before the Chamber if its

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1 content has been summarized or read out in Court. The Chamber
2 may reject a request for evidence -- I'm not speaking about
3 nullity, I'm speaking -- I'm not speaking about nullity here.
4 The text says the Chamber may request -- may reject requests for
5 evidence where it finds that it is -- first of all, that it is
6 irrelevant. Isn't this the case? And third of all, (c)
7 unsuitable to prove the facts it purports to prove.
8 [10.41.18]
9 So therefore I am requesting expressly to the Chamber, that will
10 make its decision as it deems useful, to declare non-receivable
11 the two written records -- well, so-called "procès verbaux" -- we
12 could say interviews, that would be probably more exact -- that
13 have been conducted by DC-Cam in very, very, very questionable
14 circumstances, as well as the report established by this
15 organization and entitled "Searching for the Truth". And if you
16 still wish to have evidence of the reason why I should declare
17 inadmissible the elements from DC-Cam, Mr. Prosecutor, the
18 defence accepts indeed the original documents, yes, but you wish
19 to put forth as the document that pertains to Mr. Chhuen Sothy as
20 the defence has accepted earlier to discuss the confessions that
21 have been gathered at S-21 because they are basic documents.
22 So how are you going to explain now to the Chamber Chhuen Sothy's
23 report -- which Duch will explain to you where it comes from, and
24 that can be interesting for the proceedings. This is a report
25 that was done by the CIAPA, the CIAPA that was gathering, indeed,

36

1 former prisoners from the Khmer Rouge and that would ask them
2 questions. This was an intelligence service. This is something
3 that could interest the Chamber. This is something that can
4 interest the Chamber indeed.

5 And Mr. Chhuen Sothy states, concerning M 13, this centre was
6 used -- is used to detain, and detain people condemned for light
7 offences, and there are between 250 to 300 prisoners there. And
8 now you put forth at the same time the report, the DC-Cam report
9 on page 1, its reference -- the French reference is ERN 00295151.
10 That's the French version, and it's indicated in this French
11 version, "In believed that from the creation of M 13 to its
12 relocation at S 21 that 30,000 prisoners had been killed."
13 [10.44.54]

14 So Mr. Co-Prosecutors, by trying to prove too much this is where
15 you end up. You are asking for the presentation of two documents
16 that are completely contradictory. So Mr. President, Your
17 Honours, as a conclusion I am requesting that you state that the
18 DC-Cam documents are not procedural elements in the way that
19 civil law understands it. I am requesting, therefore, to state
20 that we cannot request a nullity of these documents which are not
21 procedural documents, but I am however requesting that you state
22 that pursuant to Rule 87, paragraph 3 that you have the
23 possibility to declare non-admissible these documents, and this
24 is what I'm asking you to do; to declare these documents
25 inadmissible, and I of course am anticipating -- because we will

37

1 be again confronted with this question concerning the film that
2 DC-Cam wishes to introduce into these proceedings; the film which
3 the defence has worked on as well, and of course that is full of
4 surprises.

5 MR. PRESIDENT:

6 The Chamber would like to take a 30-minute break before resuming.

7 (Court recesses from 1047H to 1134H)

8 THE GREFFIER:

9 Please stand up.

10 (Judges enter courtroom)

11 MR. PRESIDENT:

12 The Court is now in session.

13 [11.34.42]

14 Just now, before the break, we noted the prosecutor would like to
15 raise something, so you can now take the floor but please be
16 brief.

17 MR. BATES:

18 Thank you, Mr. President. I will be brief. I won't pick up on
19 every point raised by Maître Roux. I will say, on behalf of the
20 Co-Prosecutors, the defence arguments are misleading.
21 The Co-Prosecutors have not asked the Trial Chamber to put before
22 the parties the DC-Cam report in "Searching for the Truth". In
23 fact, in checking the transcript, it was the Trial Chamber itself
24 that requested that this document be put to the accused, and
25 incidentally, the Co-Prosecutors do not take the position that

38

1 30,000 people died at M-13.

2 But, really, this has nothing to do with the question of the two

3 DC-Cam statements. All decisions of this Chamber must be made on

4 a document-by-document basis, and I can deal very quickly with

5 the submissions under Rule 76 and Rule 87.

6 Maître Roux's interpretation of Rule 76 is wrong. If the Trial

7 Chamber reads Rule 76, it relates to nullity of any part of the

8 proceedings. In this case, the part of the proceedings that he

9 should have requested for nullity is the request by the

10 Co-Prosecutors to place these two documents on the case file. It

11 is the putting of these two documents on the case file, a

12 judicial act by the Co-Investigating Judges that is the act that

13 should have been subject to nullity so it is relevant.

14 This only leaves us, or rather the defence, with their

15 interpretation of Rule 87. I'm afraid I didn't quite hear his

16 argument clearly; it was lost somewhat in the outrage. I

17 detected him referring to two of the five tests for considering a

18 document not permitted; that the document was not suitable; one,

19 and that the document may not be relevant; two.

20 But I didn't hear any argument that justifies this Court holding

21 the two DC-Cam statements are neither suitable nor relevant. It

22 cannot be correct policy for this Court to say that just because

23 a document has not been taken according to judicial principles

24 that it is, therefore, not suitable. And these two statements

25 are clearly relevant. They confirm and corroborate the

39

1 statements of witnesses that have already given evidence. They
2 confirm and corroborate the statements that the accused, himself,
3 has made before this tribunal.

4 [11.39.04]

5 The last point I make is that there is no rule that every
6 document must be confronted to a charged person during an
7 investigation in order for it to be relied upon by the Trial
8 Chamber. And I note that my learned friend for the defence made
9 no reference to any Internal Rule provision.
10 Those are my submissions. Thank you.

11 MR. PRESIDENT:

12 Mr. François Roux, the floors is yours.

13 MR. ROUX:

14 Thank you.

15 I will not go over all of my explanations. I maintain what I
16 stated concerning Rule 76 whose title is, I'd like to remind you,
17 are applications concerning procedural defects, and this is
18 applied to, as I said, to judicial written records. The
19 documents that the prosecutor wishes to put forth are not
20 judicial written records so therefore I'm not going to ask for
21 their nullity.

22 However, Rule 87 reminds us again -- and its paragraph 2 -- any
23 decision of the Chamber shall be based only on evidence that has
24 been put forth during the proceedings and has been subjected to
25 an adversarial hearing. In order to answer what my colleague was

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1 saying to me, the documents have to be the object of an
2 adversarial hearing under the reservation that they are declared
3 admissible, and this is in paragraph 3.

4 [11.41.37]

5 So therefore I propose that the Chamber looks at this paragraph
6 3, the Chamber shall give -- the Chamber may declare inadmissible
7 evidence if it transpires, first of all, (a) that it is
8 irrelevant or if it has a repetitious character, and you forgot,
9 dear colleague, irrelevant and also being repetitious -- being
10 repetitious, and again, (c) unsuitable to prove the facts it
11 purports to prove.

12 So therefore I'm going to start with this last point, unsuitable
13 to prove what it purports to prove. That is indeed the case of
14 an interview that has been conducted in disputable conditions.
15 It is, therefore, not liable to prove what it purports to prove.
16 We're not speaking here about just a simple document that would
17 be presented by DC-Cam, such as this report that has been found
18 in an official Cambodian institution. Here we're dealing with a
19 document that has been established by DC-Cam itself, not from an
20 official institution. And because this document does not
21 correspond to any form, any legal form it cannot prove what it
22 purports to prove.

23 And I would like to add to this that these documents have a
24 repetitious character as well, and the Chamber, therefore, has at
25 any moment the possibility to state that the Chamber knows enough

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1 about a specific issue.

2 [11.43.29]

3 So I would like to remind you that we have examined three
4 witnesses concerning M-13 and the accused as well, and that M-13
5 is not part of the facts that fall under this Chamber's
6 jurisdiction. And I think that now we should move ahead and
7 finally start dealing the questions for which Duch is being
8 prosecuted; that is to say the facts, the deeds that happened as
9 of April 17th, 1975.

10 Therefore, I am requesting the Chamber that -- to rule that these
11 two documents from DC-Cam are irrelevant and are not liable to
12 prove what it purports to prove, and third of all, have a
13 repetitious character, and under these characters, given Rule 87,
14 I request the Chamber to declare that these documents are
15 inadmissible as evidence.

16 Thank you.

17 [11:45:01]

18 MR. PRESIDENT:

19 We have listened to the submissions and observations by other
20 parties and the Trial Chamber will declare that those submissions
21 raised by the Co-Prosecutors and other parties regarding the
22 ability, the current ability of the translation and also the
23 issues of other documents, not only the particular documents we
24 have discussed now but we are talking about the other documents
25 too that might have the same weight, and also due to the

42

1 complication of these documents and based on the Rules 76 and 87
2 the Trial Chamber decides that these matters will be discussed
3 and a decision will be made at a later stage.

4 Next, I will provide the floor to Judge Lavergne concerning
5 certain documents that needs to be discussed, the documents of
6 the UNHCR.

7 Judge Lavergne, the floor is yours.

8 [11.46.50]

9 JUDGE LAVERGNE:

10 I shall try to put some questions to shed light on the
11 circumstances under which the interview between the accused and
12 Mr. Peschoux, Representative of the United Nations High
13 Commissioner for Human Rights, took place. That is Document
14 Number 09. And this interview took place in April or May 1999.

15 MR. ROUX:

16 For the time being we shall not challenge the admissibility of
17 this document, for the time being. We're just referring to the
18 conditions under which it was collected. As you will imagine,
19 the defence will have something to say on the matter.

20 JUDGE LAVERGNE:

21 I just want to make sure that this is properly translated before
22 your response is given.

23 (Microphone not activated)

24 INTERPRETER:

25 The Judge's microphone was off.

43

1 QUESTIONING BY THE BENCH

2 BY JUDGE LAVERGNE:

3 Q. The Chamber wishes to put questions in order to determine the
4 exact circumstances under which this interview took place. There
5 is no question of examining the content of the interview itself.
6 I hope this is clear. You were interviewed during the
7 investigation phase with regard to this interview, Mr. Duch. Do
8 you remember how long this interview lasted, where it took place
9 and when it took place.

10 [11.49.08]

11 A. Your Honours, from my memory I went to Battambang on the 29th
12 April. At the time, Ms. Hogo took me to rent a room. It's Ms.
13 Hogo took me to rent a room at the motel in Battambang province.
14 In the afternoon of the 29th I saw Mr. Christophe Peschoux who
15 arrived together with Heng Hamkheng as an interpreter. The
16 conversation and the actual interview commenced from the
17 afternoon of 29 April. Therefore, in that interview there were
18 five people altogether.

19 First is myself, Kaing Guek Eav; two, Mr. Christophe Peschoux;
20 three, Ms. Ruth Hugo, and Mademoiselle Prieto (phonetic). My
21 apology, the third is Ms. Hugo; the fourth, the interpreter Heng
22 Hamkheng; and number 5, Père Bernard, a Catholic who comforted me
23 psychologically. He's a pastor.

24 [11.52.14]

25 That is the date and the location of that interview. All of us

44

1 noticed that it's called "interview", but Peschoux still -- the
2 way Peschoux carried it out, it looks like it's an interrogation.
3 I protested it but then he said, "This is a United Nations
4 standard". He said they had a mandate, a UN mandate, and Heng
5 Hamkheng, my friend, he also emphasized on this matter. If the
6 tapes would be listened to again we could see that the interview,
7 the conduct of the interview, was not enough for me to cooperate
8 with them. I just did this out of boredom.

9 Let me emphasize that this person, Heng Hamkheng, he's also from
10 Kampong Thom. He is my one-year junior colleague from the same
11 school. He entered the revolutionary lines for one year, but he
12 boasted himself that he knew everything about the Khmer Rouge.
13 Therefore, the characteristic of this Heng Hamkheng made me
14 bored; lost my spirit of cooperation.

15 So later on, after I listened to the tapes of the interview when
16 the Co-Investigating Judges allowed the lawyers to give me the
17 tapes to listen to, I noticed that half-segment of one ...side of
18 the tape -- I noticed that one side of the tape had another
19 person's voice, therefore, I presumed it was not the original
20 tape.

21 In conclusion, I would like to inform Your Honours and the
22 Chambers that the content of what I am going to speak is about to
23 reveal the truth because I want to seek out the truth. I want to
24 report to the nation, to the country, and to the world that I
25 committed something wrong; that I committed something wrong, that

45

1 I truly committed crimes. However, at some parts I do not want
2 to answer fully because I lacked the spirit of cooperation.
3 That is all my response to Your Honours.

4 [11.57.48]

5 Q.Could you tell us how long this interview or interviews
6 lasted? Was it just the one? Were there several? Did it take
7 just a day, one afternoon? How long was it?

8 A.Your Honours, I already informed Your Honours the interview
9 started in the afternoon of the 30th of April 1999. The first
10 day, the second day, the third day; it finished on the third day
11 -- on the third night of May. So it started from 7 a.m. 'til 11
12 a.m. when I was interrogated, and in the afternoon it -- I don't
13 exactly remember the time -- it was roughly from 2 p.m. 'til 5
14 p.m., and at night from 7 p.m. 'til 9 p.m. So during that three
15 or four days, I was constantly interrogated.

16 That is my response to you.

17 Q.So during those three days you were in the company of the
18 other people whose names you have provided, that is Mr. Peschoux,
19 Ms. Hugo, the interpreter and Father Bernard; is that correct?

20 A.And also a journalist, Nate Thayer.

21 [12.01.01]

22 Q.Now, specifically with regard to the journalists, had you met
23 journalists prior to this meeting? If so, which ones and what
24 did you tell them?

25 A.Your Honours, the first person who came to see me was Nic

46

1 Dunlop and later on, on the date I appeared as Duch, there were
2 Nate Thayer and Nic Dunlop and another person he's Giroir
3 (phonetic). He was a cameraman. But these three did not present
4 themselves or not present with me altogether at the same time.
5 They did not show me the voice recorder. The person -- the
6 cameraman, the Giroir (phonetic) he didn't ask any questions he
7 only took photos and Nic Dunlop, he took photos and he asked
8 questions. Nate Thayer also asked me questions.

9 Later on I saw Peschoux, Ms. Hugo and Heng Hamkheng who came to
10 meet me and invited me to come to Battambang.

11 Q.What did you say during these interviews with the journalists?
12 What did you say to them and what did they say to you? What were
13 you told?

14 A.I forget it all. But on some events written by Nic Dunlop, I
15 believed that was what I said. I said that before I used to
16 serve human being but now I serve the God. And another point
17 that Nic Dunlop wrote and which I believe was in my speech is
18 that I said the Christian is the God who took you to meet me.

19 [12.04.54]

20 I spoke to Nic Dunlop; "it's the Christ -- the Christ who brought
21 you to meet me". I told Nic Dunlop, "the Christ brought you to
22 meet me." Nic Dunlop quoted that words and those are the words
23 that I spoke to him. And I also said that Ta Mok was extravagant
24 in the past but now he is powerless, that's why he was
25 imprisoned. That's what I said; that's another thing I said.

47

1 And another thing that I said is, I only talked thing -- about
2 the three topics that I spoke. I told Nic Dunlop that -- that I
3 was busy and the three things I said were; number one, to find a
4 school for students to study because the Khmer Rouge returned
5 from the refugee camps and there was no school; all the schools
6 had been destroyed. In my position as the chairman of an
7 education office of the District, I had to find a school for the
8 children.

9 Second, I had to find a church to pay homage to the God, and
10 third, to find rice, food, to feed myself.
11 I would like to tell Your Honours and the Cambodian people that
12 at that time I almost starved to death, I was so poor.
13 That is my response, from my recollections and what I spoke to
14 them.

15 Q.During these interviews with these journalists did you speak
16 about the -- Pol Pot's position in relation to S-21 and did you
17 express the desire to state the truth about S-21?

18 [12.08.46]

19 A.On the topic of S-21, I spoke about it. I said Pol Pot denied
20 that S-21 was a fabrication made by the UN. I objected to his --
21 Pol Pot's speech on this topic. For the S-21 I was the chairman
22 of that office. The crimes committed in S-21 were under my
23 responsibility. My superior was, initially, Professor Son Sen
24 and later was Nuon Chea.

25 So Pol Pot said it's an invention by the UN, no it's not, because

48

1 I was the chairman of that office

2 Q.In the list of agreed facts, you insisted that a paragraph be
3 added that did not exist in the working document that had been
4 presented by the Co-Prosecutors. This paragraph regards your
5 acknowledgement of guilt, and in particular, there is this
6 sentence, and I will read it, and you will tell me if you agree
7 with this sentence or not. You said, or at least it is said in
8 this paragraph, "He explained that -- it was explained that,"
9 speaking about you, "I had been brought," you'd been brought to
10 step out of your silence in 1999 believing that you could not
11 avoid saying the truth about S-21 after having listened to what
12 Pol Pot was saying, denying S-21's existence and who was
13 pretending that this was a fabrication by the Vietnamese.
14 Do you confirm what I just said? Is there a problem? Didn't
15 you -- did you hear what was said? I'm asking -- they're asking
16 the translation booth here. May you, please, repeat, Duch,
17 what you just were saying?

18 A.What you have just read out, Your Honours, it means I stepped
19 out of my silence because what Pol Pot said. I could not bear
20 with what Pol Pot said so I had to show up my (inaudible). So
21 from my recollection, that sentence was what I had said with them
22 at that time.

23 JUDGE LAVERGNE:

24 I believe that there are other questions, but it might be time
25 now to adjourn the Court, but there will be other questions to

49

1 ask when the Court convenes again.

2 [12.13.34]

3 MR. PRESIDENT:

4 Now it's time to adjourn. We will adjourn for lunch until 1.30.

5 The detention guards, bring the accused back to his waiting room

6 and bring him back before 1.30 this afternoon.

7 (Court recesses from 1214H to 1401H)

8 (Judges enter courtroom)

9 [14.01.53]

10 MR. PRESIDENT:

11 We now declare the continuation of our proceedings.

12 Next, I should give the floor to Judge Lavergne to continue his

13 questioning to the accused, related to the document of the UNHCR.

14 [14.02.06]

15 BY JUDGE LAVERGNE:

16 This morning, you explained to us that you had met with

17 journalists before you were interviewed by Mr. Peschoux. I think

18 you said it before, but it is not a bad idea to say so clearly

19 again.

20 Could you tell us whether you also met Mr Peschoux and Ms. Hugo

21 before the interview that started on the 30th of April; had you

22 met them before, and when you did meet them do you know who they

23 were?

24 A.Your Honours, after I met the two journalists and the

25 cameraman, I separate met three of them, Christophe Peschoux, Ms.

50

1 Hugo, and Heng Hamkheng. These three who arrived at my younger
2 sibling's house in Samlaut -- my younger sister. So we talked.
3 At that time, the (inaudible) took me to see the site where a
4 school was to be built and after going to visit that site, when
5 we returned home, they organized for me to go to Battambang, so I
6 met these people -- these three people separately from those
7 journalists, and I believe they gave me a name card -- each of
8 them gave me a name card. Ms. Hugo and Peschoux also gave me the
9 name cards.

10 They clearly told me that they from the UNHCR and they told me
11 their boss was Thomas Hammaberg, and they invited me to come to
12 Battambang under the term of discussion for building a school.
13 That is my reply to your questioning, Your Honour.

14 [14.06.03]

15 Q. So what you are saying is that the only reason they asked you
16 to come to Battambang was because you were going to discuss the
17 building of a school and that is all they talked about with you.
18 Is that right?

19 A.I came along with them to Battambang with a strong belief that
20 we discuss with them to find fund for building a school.

21 Q. Did you tell them what position you held; what duties you had
22 performed previously? Were they informed of your presence at
23 that place and, if so, who informed them?

24 A.They knew. They told me Nate Thayer told them. So they knew
25 I was Duch, the chairman of the S-21, and I also presented them

51

1 to the district headquarters.

2 Q.So did you discuss S-21 or not?

3 A.With these two representatives from UNHCR, I did. I told them
4 about the S-21's office at my younger sister's house, and also on
5 the way when we walked towards the location where a school was to
6 be built.

7 [14.08.34]

8 Q.Who suggested to Father Bernard that he come?

9 A.The person who invited Bernard was not the UNHCR
10 representative, it was Nate Thayer.

11 Q.Were you informed that Father Bernard would be attending the
12 meeting?

13 A.At first, Nate Thayer was about to find another person but he
14 found Bernard so he invited Bernard.

15 Q.When did you become aware that Father Bernard would be
16 present? Did you try to find out why this priest was there? Did
17 you try to get an explanation for his presence?

18 A.Nate Thayer said they would like to invite a Jesuit to stay
19 with me, and then I said okay, you could go. And then without
20 the Jesuit, came but Bernard came instead and he presented
21 himself -- introduced himself.

22 [14.10.44]

23 Q.To discuss the building of a school?

24 A.When Bernard came we knew that the issue of my testimony to
25 them, that I was interrogated was already discussed and I

52

1 expected that.

2 Q.You say that you were expecting to be interviewed or
3 interrogated? About what were you expecting to be interviewed?

4 A.It started from the evening of the 29. Sorry, no, not that.
5 Please hold on. Maybe the 30th of April and then on the 1st and
6 on the 2nd and on the 3rd of May. So I started to meet but now
7 on the 30th of April in the morning. We had a discussion but
8 then they already discussed about this even from the evening
9 before that.

10 [14.12.25]

11 Q. I'm trying to get this clear. Before the interview began,
12 before you even went to the interview you were informed of the
13 questions that put to you. Were you informed that Father Bernard
14 would be there to assist you psychologically?

15 A.When they started to ask questions, that Nate Thayer asked me
16 to find someone to support my emotional -- to give me emotional
17 support; that he decided to look for a Jesuit. So the reason
18 that the idea to find some psychiatrist or someone to support my
19 emotion was originally from Nate Thayer, not from me.

20 And I would like to say that my church was in Battambang in
21 Chamkar Samroung. But at that time I was mixed up and I could
22 not think of anything. Therefore, I let Nate Thayer to invite
23 the Jesuit but then that person did not come except Père Bernard.
24 So I was interrogated or interviewed while Père Bernard was close
25 to me and he spoke Khmer fluently.

53

1 Q. So you went to a meeting, a planned meeting with Mr.
2 Peschoux, Ms. Hugo, and during that meeting you knew that you
3 would be assisted by a priest and you knew that questions would
4 be put to you. Is that correct? Did you know whether questions
5 were going to be put to you about S-21?

6 A. Your Honour, at the beginning when Peschoux was not yet there
7 I did not expect they would ask me about S-21, but when they
8 landed from the plane and then they took that confession and then
9 I realized, wow, I was interrogated or interviewed. No, they
10 took the list of questions and then -- and I saw them and I asked
11 them -- I was surprised because I told them wow, I was
12 interviewed, and how you interview or interrogate me because the
13 court was not yet established and there has no permission --
14 there was no permission from the government yet. They said they
15 had the mandate of the United Nations to do so. They said they
16 had the United Nations mandate and I could not say anything else,
17 and then they also took pictures. They were about to take both
18 pictures and record my voice. I was -- I did not agree. I
19 allowed them to only take the record of my voice, not the
20 pictures.

21 This is what I told Your Honours earlier that I was not satisfied
22 with the conduct of that interview. I was not very happy with
23 that. So I had not been in the position to cooperate genuinely.
24 But sometimes I was even angry with Heng Hamkheng.
25 So in conclusion, the things that I have just said was the

54

1 product of my emotional painfulness from the consequences of the
2 Pol Pot regime. Whatever regretfulness or remorse I have had I
3 would like to reveal to the full capacity but in reality when I
4 could see that Heng Hamkheng was rather not well organized or
5 aggressive then I could not really hold my anger.

6 [14.19.17]

7 Q. So you said that Mr. Peschoux indicated to you that a United
8 Nations mandate which authorized him to put questions to you.
9 Did he tell you that you were obliged to answer his questions?

10 A. They told me that they had the right. I was told that they
11 said they had the right because they had the United Nations
12 mandate. So they pressed on using that word, that term, right in
13 front of me. So therefore they confirmed their rights, the
14 rights suggested that I was obliged to respond.

15 [14.20.28]

16 Q. Were you taken forcibly to this interview? Were you kept
17 there against your will? Since this interview took several days
18 were you forced, were you made to go there on several occasions
19 by force?

20 A. There had not been any police who guard along the road.
21 However, at that location there were four of us who stationed
22 there.
23 Those people included me, Christophe Peschoux, Heng Hamkheng and
24 Nate Thayer, who stayed in another separate room. I stayed in
25 another separate room. Heng Hamkheng and Peschoux stayed in

55

1 another separate room individually. Heng Hamkheng and Peschoux
2 shared the same room. Père Bernard went with his -- to his
3 church, but Hugo went to her office.

4 [14.22.44]

5 So people who were at the location were four, and the other
6 people went to their places after the interview finished.

7 Q.You were interviewed by the Co-Investigating Judges regarding
8 the conduct of this interview, and a question was put to you by
9 Mr. Alex Bates, Co-Prosecutor. But unless I'm mistaken, you
10 answered that you had concealed nothing from Christophe Peschoux
11 and that you had answered the questions put to you during the
12 interview freely. Do you confirm what you stated before the
13 Co-Investigating Judges, or is this at odds with the facts as you
14 remember them?

15 A.Regarding my free answer without any force, it stemmed from my
16 spirit that I would like to reveal the truth. However, in some
17 cases Kheng and Peschoux shouted at me. That's why some of my
18 statements were made without any much thinking. I just answered
19 without having to think that I would be responsible for such
20 answer.

21 The evidence in the form of the voice recording I think is still
22 there, which contains my communication, my discussion with Heng
23 Hamkheng and me myself, although that recording is not the
24 original version but it still tells us that in the recording that
25 was my voice of -- the voice of me and Heng Hamkheng and Peschoux

56

1 in that discussion.

2 [14.26.11]

3 However, in general at that moment I was -- I could feel that
4 Peschoux, who represented the United Nations, he came like a
5 thief who came to steal things from me. I do not regard him as
6 other persons but I called -- now, I'm talking about Mr.
7 Peschoux, who did not have any permission from the government yet
8 but he worked -- he acted like a thief who came to interview me.
9 In my opinion, the United Nations should be more well-behaved and
10 not the way like Peschoux treated me.

11 And I would like to note that the reason that I was satisfied at
12 that moment, because of Thomas Hammerberg conducted a press
13 release on the 30th. He told the people that he found me -- I
14 was found and he sent the name to Sok An, to the Minister of
15 Justice and to Pol Sarouen, and if he had done that it would have
16 been proper but the way Peschoux conducted an interview with me
17 was not that proper. This is based on my thought.

18 Q.How long after this interview were you taken into custody?

19 A.Thank you, Your Honours, for asking this question. On the
20 fourth night, in the morning of the 4th of May, I left the
21 Monorom Hotel to sleep at Battambang. On the night of the 5th I
22 went to sleep at my house and on the night of the 6th the police
23 took me to sleep at the prison in Battambang. But they did not
24 have me sleep in the prison cells but they allowed me to sleep in
25 the working office of the prison staff.

57

1 In the morning of the 7th I was picked up by a helicopter and
2 brought to Phnom Penh, and on the night of the 7th I slept -- I
3 apologize; I slept at the camp at the Meanchey district
4 headquarters for one night -- at the police headquarters for one
5 night, and a person named Soeun from the Ministry of Interior
6 went down to interrogate me. And later I saw the staff from the
7 Military Court to come to get me and I was brought to the
8 Military Court on the night of the 8th.

9 [14.31.00]

10 Q.So during these meetings or interviews with Mr. Soeun, the
11 Minister of the Interior, or with the judges from the Military
12 Court, were you presented with the content of the interview that
13 took place with Mr. Peschoux? Were you confronted with the
14 content of the interview that was conducted by Mr. Peschoux?

15 A.Your Honours, when an Investigating Judge from the Military
16 Court conducted an interrogation with me he had no tape recording
17 or any text. I apologize. He did not bring any tape recording,
18 tape for the tape, or any text or copy of the text of Christophe
19 Peschoux to present to me during the interrogation, and from my
20 recollection he did not even mention about that event.

21 [14.32.55]

22 Q.In your interview a proposition has been brought up, a
23 proposal to bring you to Thailand so that you may be arraigned
24 there and eventually judged in Belgium. They also mentioned that
25 a certain amount of money had been offered to you to go to

58

1 Thailand. Can you tell us a bit more about this? Can you tell
2 us also most specifically when this proposal was made to you?
3 A. Your Honours, thank you, Your Honours, for raising this
4 question.
5 Towards the end, Peschoux and Ms. Hugo told me that Peschoux went
6 around the whole world in order to find an asylum for me -- for
7 me to be a political asylum. And in the end they said they
8 couldn't find it, and then they told me "Okay, so be imprisoned
9 in Belgium;" that I should go to Belgium to be imprisoned there.
10 I was -- I could not believe it. I was speechless.
11 So I asked them if I were to go to Belgium and if I were to be
12 tried -- if I were to be tried and if I were to be sentenced not
13 for a life sentence and if I had to return home how could I find
14 enough money to buy an airfare to return home? And then I also
15 asked another question, if I were to be in prison in Belgium
16 could my relatives go and visit me? How could they find enough
17 money to spend on airfare to go and visit me there?
18 This is the way that I tried to show my gentle objection.
19 However, they still forced me to go. They gave me \$50 to get on
20 a car and left. After I left a bit further from Poy Pet, then
21 the international police would arrest me and then that I would be
22 sent to Belgium. I was speechless so I left in the morning.
23 That was the time when Bernard spoke one word to Peschoux. He
24 was disappointed.
25 [14.37.52]

59

1 Please stop. Let me rephrase. That was the time Bernard play a
2 word to Christophe Peschoux. Peschoux asked me if I ate enough.
3 The Khmer word means filled with -- let the interpreter stop and
4 let me say in Khmer. When Peschoux asked me whether I was full
5 with my meal I replied that yes, I was full. Then Père Bernard
6 said, "full with dissatisfaction." It means I was disappointed,
7 angry. That was correct.

8 Q.When were you offered the first time to go to Thailand; at
9 which exact moment?

10 MR. PRESIDENT:

11 Judge Lavergne, could you please ask the question again because
12 the accused was too quick to respond to your question without
13 giving enough time to the interpreter to interpret. Please ask
14 the question again.

15 And I would like to remind the accused that please listen to the
16 interpretation and when the interpretation completes then you can
17 respond.

18 BY JUDGE LAVERGNE:

19 Q.So I will ask you the question again. At which specific
20 moment was the possibility brought up to you to go to Thailand in
21 order to be tried abroad?

22 [14.40.54]

23 A.Your Honours, they started to show their intention for me to
24 be in prison in Bruges -- they showed their intention to be
25 imprisoned in Brussels when they finished their interrogation.

60

1 That is it was on the evening of the 3rd of May 1999.

2 JUDGE LAVERGNE:

3 I do not have any further questions, thank you.

4 [14.42.40]

5 MR. PRESIDENT:

6 The Co-Prosecutor, do you have any comments to make or what is
7 your intention of wanting to take the floor? Because this is the
8 time now the Chambers will declare the end of any adversarial
9 discussion on M 13 office.

10 MR. BATES:

11 Thank you, Mr. President. It was just that the Co-Prosecutors
12 wished to ask one or two follow-up questions from Judge
13 Lavergne's questions to the accused on the circumstances of the
14 1999 interview. We do not have anything more to say on M 13.

15 MR. PRESIDENT:

16 Yes, the floor is yours but I would like to remind you all that
17 the defence has clearly stated from the beginning that we should
18 not ask any content of that interview; only we ask about the date
19 of the interview and the location the interview was conducted.

20 MR. BATES:

21 Thank you, Mr. President. That was in fact my intention.

22 QUESTIONING BY THE CO-PROSECUTOR

23 BY MR. BATES:

24 Q.Mr. Kaing Guek Eav, you've made some very serious allegations
25 about the conduct of the people who interviewed you. You have

61

1 said that Christophe Peschoux and Heng Hamkheng shouted at you a
2 number of times, and you have said that Mr. Peschoux is like a
3 thief come to steal information. Is there any reason why you did
4 not tell the Investigating Judges those things when you were
5 given the opportunity to put your responses either verbally or
6 writing?

7 That's my first question.

8 [14.45.11]

9 A.Now my response to the Co-Prosecutors. I would like to state
10 that the evidence to confirm the discussions and the force that
11 they made upon me was recorded in the tapes. You can examine the
12 tapes. Secondly, my submission -- my suggestion is just my
13 suggestion. So if I am guilty of my suggestions then of course I
14 will accept it, because that's what he did; Peschoux acted like a
15 thief. It was a democratic country. Why they did not have any
16 agreement in advance with the government? If I am guilty of this
17 presumption then I am responsible and I'm willing to take it.

18 Q.To be more specific, Mr. Kaing Guek Eav, you have had the
19 opportunity to point out these threats that were made by Monsieur
20 Peschoux and Mr. Heng Hamkheng. You've had the opportunity to
21 have the tape listened to and those parts of the tape put where
22 you allege that they are threatening you or shouting at you. Can
23 you explain to the Court why you have not done that so far?

24 A.My respectful Co-Prosecutor, can you look back at those times?
25 Can you see those issues, how many minutes that the Judge has

62

1 just asked me?

2 [14.47.23]

3 Q.Mr. President, I would like to read a document from the case
4 file which has already been referred to by His Honour Judge
5 Lavergne. It is the record of interview of the accused dated
6 21st of January last year, Document D38; in English, ERN
7 00159555. In response to a question by the Co-Investigating
8 Judge, Marcel Lemonde, regarding the conditions of the meeting
9 which took place in early May 1999, the charged person answers in
10 some detail and at the end he says, "I will send you these
11 observations shortly, early February at the latest." That is in
12 relation to the interview that we're discussing today.

13 I ask again, Mr. Kaing Guek Eav, is there any reason why you have
14 not presented these extremely serious allegations of the
15 behaviour of Mr. Peschoux before today?

16 A.My respectful Co-Prosecutor, for the document that you read I
17 would like you to read from the beginning so it could be in
18 details, and probably it's better if you can ask the Cambodian
19 Co-Prosecutor to read it in Khmer. That is the first suggestion.
20 Secondly, I would ask you, Alex Bates, to really think of the day
21 that interview was taken at the time, because you were present
22 there, how many minutes we have? And now how many minutes we
23 have to discuss on this particular issue?

24 MR. BATES:

25 I'm very happy to invite my Cambodian colleague to read from the

63

1 portion in Khmer. Perhaps we'll need just a moment before that
2 can happen.

3 MR. PRESIDENT:

4 The National Co-Prosecutor, you can take the floor to read out
5 the document in Khmer, as requested by the accused.

6 [14.50.40]

7 MR. TAN SENARONG:

8 Thank you, Mr. President, for allowing me to read out this
9 document. On page 4 with ERN Number 158838, in the section when
10 the accused stated that:

11 "I was interrogated every day from 7.00 to 11.00 and from 2.00 to
12 4 p.m., starting from the 30th of April and the 1st of May until
13 the evening of 3rd of May. The interview was conducted at the
14 hotel where I was rented for and the accommodation fee was
15 covered by Mr. François (sic) Peschoux."

16 The questions by Peschoux in French and translated in Khmer by
17 the translator and I responded to the questions in Khmer and the
18 translator translated into French. Mr. Judge asked me to provide
19 my observation in writing regarding both documents -- Document
20 001, under the title, "The Questioning of Duch as the Chairman of
21 S-21," dated on the 4th, the 5th, and 6th of May 1999. And
22 Document 07 D9 under the title "Interview with Duch":

23 "I will send you these observations shortly, early February at
24 the latest."

25 [14.52.52]

64

1 So this is what Mr. Kaing Guek Eav, alias Duch, stated as my
2 colleague already submitted.

3 MR. ROUX:

4 Mr. President, I am used to asking for complete readings when
5 readings are made. So I would like to read in French, therefore,
6 read out this interview of the 21st of January but from the
7 start; not only what suits the Co-Prosecutors.

8 So since the start it is a question coming from You Bunleng, the
9 Investigating Judge, who, on the 21st of January 2008 is asking
10 Duch:

11 "Do you remember that on the 4th, 5th, and 6th of May 1999 you
12 were interviewed by journalists and by UNHCR representative?"
13 And the following paragraph is titled "Observations by François
14 Roux." So I would like you, please, to read it. What did I say
15 then? Before our client answers this question the defence would
16 like that his expressed reservations regarding this document be
17 noted in the written documents.

18 These reservations are twofold. First, Mr. Duch was not only
19 interviewed by journalists, but also by a United Nations
20 representative who should have informed him of his right to
21 remain silent which was not done.

22 Second, there is some confusion regarding the various
23 translations of this interview which have been included in the
24 case file. Incidentally, we would like to obtain a copy of the
25 audio recordings of this interview. These reservations, having

65

1 been noted, our client is ready to answer your questions.

2 [14.56.14]

3 And indeed, later on the Judges asked -- put questions, such as
4 Judge Lavergne is doing, on the way the meeting took place. And
5 at the end of these questions the possibility was given to Duch
6 to express his comments. Duch then waited for the Co-Prosecutors
7 to provide a copy of the recordings, since there was indeed
8 serious difficulties with the written documents that had been put
9 forth.

10 We did not understand these documents anymore, some of these
11 documents were just notes that had been taken down by Mr.
12 Peschoux himself and other documents were an English translation
13 of the statements that Duch supposedly made.

14 So, when we met again on the 5th of May 2008 before the
15 Investigating Judges, after Duch was able to listen to the tapes
16 this is what was -- may I please have five minutes, Your Honour?
17 May I please have five minutes? I apologize.

18 JUDGE LAVERGNE:

19 It seems important for me to add a bit of precision so that the
20 proceedings may be fair. Under Index D-79 of the case file there
21 is a letter which is a letter that was -- that Mr. Peschoux wrote
22 to the Co-Investigating Judges. This letter is dated 8th of May
23 2008 and it is the letter stating that the tapes were sent. So I
24 am therefore not sure that on the 5th of May the tapes were
25 available to the accused. Maybe he could give us the answer.

66

1 [14.58.46]

2 MR. ROUX:

3 I think that we received the first tapes before because on the
4 5th of May 2008 Duch was questioned again by the Co-Investigating
5 Judges and he said the following -- you are right -- yes, you are
6 right, in fact they had not -- the tapes had not yet been
7 included in the case file, you're right. But anyway he said the
8 following:

9 "I was never told that this statement would be used against me by
10 a prosecutor and nobody notified me of my right to remain silent.
11 Therefore, I do not wish to make any comments concerning this
12 statement."

13 Therefore, I -- of which -- and I also noticed that the original
14 tapes had not even been included in the case file and this
15 therefore is on May 5th. We are therefore now on May 5th and on
16 the 5th of May 2008 the tapes were still not included in the case
17 file indeed, and Duch concludes before the Co-Investigating
18 Judges:

19 "I tried during the investigation [he said] in the presence of my
20 lawyers, [Duch said] to answer all of the questions from the
21 Judges and I consider, therefore, that this statement to the
22 UNHCR as obsolete and without any interest today."

23 This was to answer the prosecutor who seemed to want to hold
24 against Duch the fact that he did not provide any further
25 comments. Please, colleague, you can refer to the written record

67

1 of the 5th of May 2008 and indeed it is stated in this written
2 record -- he stated to the Co-Investigating Judges that he did
3 not wish to provide any additional comments since he had
4 explained himself before the Judges.

5 MR. BATES:

6 I understand Maître Roux's point, but I'm afraid it's a bad one.
7 I'm not asking or seeking that every single, tiny point to be put
8 before this Court. It's not a matter of tiny detail. It is not
9 an insignificant detail for an accused to allege that he had been
10 shouted at, in effect threatened, and it is that point that I
11 wish to bring to the Trial Chamber's attention. I believe I've
12 made my point. I don't believe we're going to get an answer and,
13 to quote my friends own words, "The Chambers can draw their own
14 conclusions from that."

15 BY MR. BATES:

16 Q.I have one last question to put to the accused, and that is
17 this: would Mr. Kaing Guek Eav accept that the real reason he
18 does not want the responses he made to Christophe Peschoux put
19 before this Trial Chamber is because some of the responses are
20 even more incriminating than he gave and has given so far, and
21 that today he doesn't want those answers used against him?

22 A.I don't understand your question and I don't know what you
23 asked me.

24 [15.03.59]

25 MR. PRESIDENT:

68

1 The Prosecutor, it appears that you were asking or putting a
2 question to the accused, but through our observation we don't
3 know whether it was your question or your own remarks --
4 interpretation of the point, so could you please rephrase your
5 question so that the accused is able to answer your question.
6 And please try to avoid ambivalent questions that make the
7 accused not answer your question and then he would be framed as
8 pretending not to answer the question. So please repeat your
9 question.

10 MR. BATES:

11 Of course, Mr. President. Thank you.

12 BY MR. BATES:

13 Q.Simply the question: is the accused afraid of the responses
14 that he gave to the representative of the High Commissioner for
15 Human Rights, Christophe Peschoux?

16 A.I would like to frankly put it to the Prosecutor that I am not
17 in any fear. In my heart I would like to make sure that I can
18 really get something out of my chest. So this is about the
19 interrogation that Peschoux asked me and about the response I
20 made to him.

21 [15.06.09]

22 MR. ROUX:

23 Mr. President, I do not wish that through these questions the
24 Prosecutor is trying to get the accused to talk about the
25 substance of that interview, because that is not what is at issue

69

1 here. We said that we would only discuss the conditions under
2 which the statement was taken, and the Prosecutor is trying to go
3 in through the window because the door has been closed. I beg of
4 you, please do not put any questions relating to the substance.

5 MR. BATES:

6 No further questions, thank you, Mr. President.

7 MR. PRESIDENT:

8 The remarks by the defence are appropriate. Now the Chamber has
9 received all related information regarding that document and the
10 Chamber will issue a decision in due course.

11 So now the Chamber would like to announce that the matter of M-13
12 comes to an end and from now on the Chamber is in the session of
13 putting to discussion the matter of the establishment of S-21 and
14 Ta Kmao Prison.

15 The Chamber also reminds parties to the proceedings that
16 according to the direction regarding the topics, there are eight
17 topics: the M-13 and then followed by the establishment of the
18 S-21 and Ta Kmao prison. So the reasons we laid out these orders
19 of the event is to help smooth the proceedings and it is in
20 accordance with the Closing Order that the orders are organized
21 that way and to avoid the mix up of the facts. That's why we
22 would like you parties to only focus on this particular topic and
23 facts at issue, and we try to avoid any confusion by just only
24 focusing on this particular topic.

25 [15.09.15]

70

1 Next the security guard, could you please bring the accused to
2 the dock and then we can proceed with what the Chamber has
3 already planned?

4 MR. PRESIDENT:

5 Mr. Kaing Guek Eav, are you now clear that from now on the Court
6 is in session concerning the establishment of S-21 altogether
7 with the prison in Ta Kmao?

8 Could you please change the headsets for the accused?

9 MR. PRESIDENT:

10 Before we comes to the heart of the issue, we would like to
11 inform Duch that we are now proceeding to the facts of S-21
12 regarding the establishment of S-21 and another subsidiary fact,
13 which is the Ta Kmao Prison, and because there are a lot of facts
14 in the case that's why we have to put them in order, starting
15 from the M-13 I mean and to the establishment of the S-21 and Ta
16 Kmao Prison and then come to the functioning operation of S-21.
17 Do you understand?

18 QUESTIONING BY THE BENCH:

19 BY MR. PRESIDENT:

20 Q.Mr. Kaing Guek Eav, can you tell the Court about your memory
21 of the establishment of S 21? You take the floor.

22 [15.12.24]

23 A.Mr. President, first I would like to confirm that S-21 was the
24 combination of security office of Division 3 called Office 03 by
25 Nat and other cadres who came from M-13 office. So my

71

1 introduction is that S-21 was formed from Security Office M-13
2 and cadres from Office 03.

3 MR. ROUX:

4 Mr. President, there are serious translation problems. It is not
5 Office 03, it is Office 703. It is not the same thing.

6 THE ACCUSED:

7 I would like to confirm again that the division was Division 703
8 and that security office belonged to the Division 703 or called
9 Office 03, and I only used this term. Nat had a secret name
10 which he referred to as Brother 03.

11 So next I still remember that. I would like to state this to the
12 whole Court. At the beginning I only touch upon the parts of the
13 cadres from 703 who joined hands at S-21.

14 On the 20th of June 1975 I was called to attend a training
15 session -- my deputy, Som, and Meas and Brother Mom Nay, alias
16 Chan, who were party members who started in Phnom Penh starting
17 from the 24th of June 1975. Why I remember the date clearly,
18 because there are documents, the notes of Brother Mom Nay that
19 the Co-Investigating Judges Office gave to me.

20 I attended the session for about half a month and my boss, Mr.
21 Son Sen, asked me to wait for the division at the train station,
22 and other cadres were allowed to go back to their office, except
23 Comrade Som, who was allowed to look for a wife in Siem Reap. So
24 I waited for work at the train station in Phnom Penh, which was
25 called the secretariats messenger.

72

1 [15.16.25]

2 So coming to this point, I would like to take this opportunity to
3 reveal the truth that was presumably -- that was wrongly
4 presumed. They said that I stayed at the office of the messenger
5 and with the leader, but actually it was not true. At this
6 location it was for the messengers of Son Sen, for cadres who
7 were not being appointed to stay temporarily before they were
8 appointed.

9 At this location it was at the train station of Phnom Penh.
10 Before that there were cadres who had stayed at that location,
11 including Pol Pot and Son Sen, but they had left already. And
12 the evidence is in the confession of Khieu Samphan, who said Pol
13 Pot, Nuon Chea and he himself stayed at the train station and
14 after the train station they stayed at Preah Kev Morokat. They
15 call them silver pagoda.

16 And a short while later they went to K-1 and K-3, according to
17 their testimony. So altogether by June they reached Office K-1
18 and K-3 already. These are the evidence that I had not raised
19 before.

20 And also I would like to confirm that the messengers of Son Sen
21 classified into three categories. One category were referred to
22 the close messengers. Well, they're called protecting
23 messengers. They were Comrade Nuon and Pon, who were the close
24 messengers of Son Sen, and they were ready to be used at any
25 moment because they were close to the boss.

73

1 With the name of messenger it doesn't mean that we were close to
2 the leader. So there were 12 messengers controlled by Comrade Pi
3 and they're stationed at the office where Son Sen worked to the
4 north of Borey Keyla, or stadium. And the name of the place was
5 -- in the map by the Co-Investigating Judges we identify it as
6 "B". And the telephone central office was also installed there
7 and other equipments were installed. And we worked with the
8 leaders also at this location, and the location for the leaders
9 was named as "A" at the train station. At this location it was
10 for cadres who were not yet appointed but were waiting for being
11 appointed.

12 [15.19.52]

13 So in conclusion, after the training we stayed at the train
14 station, which was the place where people were waiting to receive
15 duties but not staying with any leaders.

16 And after a while then our leader asked Nat to take me from the
17 train station to live with Nat at the old general headquarters on
18 Norodom Boulevard, and then we stayed at that location for being
19 appointed or given duties.

20 On the 15th of August '78 we were called to present the name of
21 the establishment of S-21 with Nat as the chairperson and Kaing
22 Guek Eav as deputy chief and another comrade called Khem Va --
23 not Vad -- Khem Va, alias Hor, who was also a member. The
24 details of that location was not yet made by the leader. And
25 then the leader appointed Duch "to bring your cadres from Amleang

74

1 to Phnom Penh and that Nat, you should stay to finish your police
2 work at Division 703 until it's completed."
3 And at the same time when you went to bring forces, then you can
4 -- you could collect documents from the chiefs of the soldiers
5 and the police and the public buildings so that those documents
6 could be collected. And then I collected those documents.
7 [15.21.46]
8 I would like to say that I asked Sok, Comrade Sok, the chief of
9 the secret force in Phnom Penh. I already presented Comrade Sok
10 to you because there were two pictures of me and Sok standing --
11 posing for pictures.
12 So I just collected those documents. I informed the Chamber that
13 when I went to collect those documents at a place called CIPRA --
14 CIPRA is an abbreviation, a French abbreviation. C stands for
15 "centre" or "central". I means "interrogation". So it's an
16 interrogation centre. And P stands for "prison". It is an
17 interrogation centre. In the Khmer the CIPRA is called the
18 interrogation centre for the prisoners of war and the defectors.
19 This is the document that the Co-Investigating Judges wanted to
20 ask me about the CIPRA. This is not a DC-Cam document but DC-Cam
21 collected this information from the CIPRA. I recognize this
22 document because I collected those documents and I collected
23 those confessions from their office.
24 This is just a small description of the CIPRA. It was north of
25 Pasteur Road -- my apology, it's east of Pasteur Road but it's to

75

1 the west of the Norodom Boulevard and I stayed north of the
2 Sisovat School. That's where I was. It's near the old building
3 of Omset (phonetic). That's where I collected the information.
4 And I did not collect those confessions so DC-Cam went to collect
5 those documents and confessions.
6 So in summary, I went around to collect those documents, the QCRR
7 building. It's the army's administrative headquarters and I also
8 collected from Wan Sal's (phonetic) house, also from Lon Nol's
9 house. I myself went there for two days to ransack it to collect
10 documents. So I spent time collecting those documents and
11 Comrade Meas went to collect the files from Amleang to Phnom Penh
12 from the M 13 office, and then we stayed at Sansam Kosal Pagoda
13 near the Kamara Kumen (phonetic) Road. It was called 371 Road --
14 I'm not sure.
15 [15.25.10]
16 So we stayed there. I went around gathering documents, and the
17 rest they looked for those houses because we weren't yet assigned
18 any duties. At that time, after I collected some documents Nat
19 called me to go to Ta Kmao as his deputy, so he took me around to
20 see places. So he took me to see a prison in Ta Kmao. When I
21 went there I suddenly recognized a person who used to be close to
22 me, so I withdrew myself. I thought, "Oh, now, I came to the
23 same situation," and I did not want to go to that place again.
24 But later on Nat took me again to a special prison. The special
25 prison is for those from Kampong Chhnang. It was a villa of the

76

1 Prince Sisowath Monireth. It was on the Norodom Boulevard to the
2 south of the National Bank.
3 So Nat took me there and I saw Sorphan there, sitting there
4 writing confessions. Sorphan was a deputy governor of Phnom Penh
5 during the Lon Nol regime. So that's when I went to see the old
6 prison.
7 Now let me talk about the Ta Kmao. Ta Kmao used it as a prison
8 for that Division 703, or it was called Office 03. They detained
9 ordinary prisoners there. Let me confirm to the Chamber that Nat
10 used the word 03 until the end of November, he still used it, and
11 it's shown in the documents about the biography and the follow-up
12 of Kum Toth (phonetic) it's what he wrote in that document with
13 his signature. So he used 03. Even after establishment of S 21
14 he still used the word 03. I doesn't want to say that, okay, 03
15 was responsible for the other part. I just want to say that S 21
16 was a combination of the forces from M 13 Office and the Security
17 Office 03.
18 So probably if in September or October, I was not sure --
19 probably it was in October, from my recollection, Nat ordered me
20 to stay in a house in street number 413 or 431. It was behind
21 the Tuol Sleng Genocidal Museum. The house belongs to the
22 General Khieu Kim Eng (phonetic). He rented to UNHP at the time.
23 I stayed there and then I was asked to bring the prisoners from
24 Ta Kmao to that house for the cadres to interrogate them.
25 [15.28.37]

77

1 So my duties started from there. It means collecting those
2 documents from the beginning. So the establishment of S 21
3 office started from that time with me as deputy chairman, and the
4 Ta Kmao prison was a big prison but the prison at the south of
5 the current Tuol Sleng Museum is an interrogation place.
6 A bit later Nat changes the place from the west of the current
7 Tuol Sleng Museum to the general headquarters or the police
8 headquarters, which was called P.J., but that was just an
9 interrogation place. It was not like at the Ta Kmao prison.
10 This is according to the evidence of the remaining documents.
11 So we stayed there for a while, then the superior said, oh, we
12 couldn't stay there because of the Chinese visitors. So Nat then
13 changed it back to the old location, which was the west of the
14 current genocide museum of Tuol Sleng. After that I was moved
15 from the house 413 to another house which was called number 2.
16 This house number 2 was an old villa of Dr. Mey Samedi. I stayed
17 there.
18 And when the interrogator was still at the P.J. and after Nat
19 left, I left that Dr. Mey Samedi's house and stayed at the house
20 where I took a photo with Comrade Sok, which I wrote number 3 on
21 the map. So after Nat left I supervised S 21. I had the keys of
22 the S 21 to myself. That is my response.
23 Q.Can you give the reasons why the security office was called
24 S-21? What is the meaning of S-21 and when was it called by that
25 name, and who designated that name?

78

1 A.I would like to confirm that the word "S-21" was put on the 15
2 of August '75. At that time Teacher Son Se, my superior, said we
3 did not use -- we no longer use the word "police" because the
4 word used by the police -- by Youn used that word so we don't use
5 it, we use the word Santebal. The police means people who look
6 after the territory. The word Santebal means those who looked
7 after the peace, who preserve the peace in the country. So we
8 use the word Santebal and the short is "S" and then we thought of
9 the number,

10 [15.32.34]

11 When the superior has not responded, then we put "21" because
12 that is my communication number. So then they thought S-21 was
13 established.

14 So let me just add a bit further to this; that this office was
15 officially known as S-21, not S-24. S-24 was, you know,
16 (inaudible); I was surprised to hear that S-24 because there's
17 surviving documents about the meetings on the agricultural
18 matter, for example. Comrade Tue (phonetic) went to a meeting in
19 the name of the S-21, not S24, so I rejected the term "S-24"
20 because not (inaudible) that name, not by the Communist Party of
21 Kampuchea, but S-21 is under my responsibility and the crimes
22 there, I am responsible for it.

23 That is my response to you, Your Honour.

24 Q.Can you confirm on the organization of the Santebal office or
25 security office, S-21. How was it organized; what is its

79

1 organizational structure from the establishment in the beginning?
2 A.Mr. President, Your Honours, after its organization has been
3 established, as I informed, I was in a -- we were in the process
4 of organizing those documents from the Lon Nol regime, and to
5 compile some of those documents and then to report to the
6 superior and to send some documents to the superior as well. For
7 example, we confiscated some maps of the location -- of the
8 military locations in Youn and in Thailand to send to the
9 superior. That was the first duties.

10 [15.34.47]

11 Later on, when we were at a general headquarters of the police we
12 -- I taught them how to interrogate and to look after -- to watch
13 those who interrogate the prisoners and not use (inaudible) as
14 his club.

15 He established another organizational structure which is further
16 in details; he wanted to create an office of the S-21. Then, I
17 also signed on the word "S-21" for that office name. So that is
18 the truth.

19 Separately, the daily activity and the administrative work,
20 including those in Presaw (phonetic) was under the supervision of
21 Comrade Ho. I still maintain that I do not avoid from the crimes
22 committed but I just want to express the truth. I myself was
23 organizing those documents and the confessions.

24 Also, the party's work. I would like to inform the Chamber that
25 Nat was a secretary. So the parties were his responsibility; he

80

1 knew. Nat and I were in the revolutionary line from 1965. So on
2 the theory, I beat him. On the common theory, I beat him. On
3 the proletarian theory, yes, I beat him.
4 So Santebal, or the security office of S-21 was established, but
5 did not lead the meeting, so the party's works was my
6 responsibilities and the records was also my responsibility. It
7 means the works of the confession and the sending of documents to
8 the superior was my responsibility at that time, but the daily
9 works was under Ho -- under Ho's supervision (inaudible).

10 [15.37.11]

11 They say the organizational part of the S-21 and those cadres
12 from Amleang were part of the interrogation team.
13 Q.We have read the document and it is clear about the mechanism
14 of the establishments of various offices and the S-21; for
15 instance, the document office, the logistics, the guards, the
16 interrogation team, for instance.

17 Let me put a question to you. At the start of the establishment,
18 what is the functioning of those organization, whether -- did
19 they draw the organizational chart for various units, for its
20 operation from that time -- for the time of its establishment or
21 at a later stage?

22 A.Mr. President, Your Honours, the old organizational chart was
23 in place and I did not change it. I was a deputy and I did not
24 want to change the organizational chart.

25 So after he left I was also -- I did not change and I allow Ho to

81

1 manage all the daily activities and I, myself, I dealt with the
2 superiors and for other units, photography, for instance, the
3 interrogation, the guards, the special force team, the production
4 unit, and the re-education unit. These small units were existing
5 from the previous arrangement.

6 [15.39.14]

7 And for those who came from M-13 were put only in interrogation
8 unit and Brother Mam Nai who, at the time, Mam Nai he was used as
9 his clerk by Nat but then I use him as assistant. For example,
10 when I want to order somebody to do something I write -- I wrote
11 it down and I gave it to Mam Nai. But for Ho I did not have to
12 write him anything; I called him to come and discuss and then I
13 assigned him work to do and he did the work as my deputy without
14 going through Nai.

15 But Nai had to give to -- to take the written order from me and
16 for Comrade Pon, he was not an assistant, he was a cadre of the
17 -- for interrogation of the important prisoners and, besides
18 that, I still maintained the old existing infrastructure.

19 Q.Do you still remember the names of the people who were in
20 charge of S-21? Were they called the chairman of S-21 and deputy
21 chairman of the S-21 or secretary or members like what you said,
22 or were there any differences in the way people were identified
23 in the roles at S-21?

24 A.Mr. President, in the formal way of the party, I was the
25 secretary of committee of S-21 where -- office and -- so this is

82

1 the full-time member of S-21 and we did not recruit people, and I
2 was regarded as the chairman of S-21, while Ho was my deputy.
3 But in general the office was called -- I was called the chairman
4 of S-21.

5 Q. Could you tell the Court that when the forces were integrated
6 from Division 703 and from Office M-13 altogether -- for example,
7 Meas brought them -- how many of them were altogether?

8 A. There were 100 people from Division 703. I could not -- I'm
9 not sure of how I can calculate the numbers. But I would like to
10 say that Nat was the secretary of the division. He was the
11 secretary of the division. Comrade Hor in the wartime before 7th
12 of April he was the secretary of the special unit and he was in
13 the military rank, and the special unit was trusted so they
14 fought their heart for the Party by way of indoctrination they
15 obtained. But when they came to S-21 Nat tried to promote Hor to
16 the regiment position. And when I was at Amleang, I was member
17 of the branch office only.

18 [15.43.18]

19 So in short, these forces -- if we're talking about the value of
20 the forces, it was equivalent to a battalion or we can put it
21 this way, that the value of it was that no one was on top of it
22 and was below it. It was the regiment, independent regiment.
23 So there were two -- no, three units, the unit of the secret
24 resistance. There were about 10 of them who brought in. And
25 finally only one leave; he left, escaped to Peam Kampon Tralach,

83

1 Kampong Chhnang province. So these three units were combined
2 together and hundreds of people from Division 703.
3 According to the collection, there were about 200 people from
4 Division 703. So in the division there were a lot of forces. So
5 I took them on a truck -- two trucks. So altogether there were
6 about 50 people that I requested. So the composition of the
7 people at S-21 were in the hundreds, along with the cadres and
8 the combatants. And people who were half combatants and cadres,
9 I think altogether there were about 2,000 -- or more than 1,000.
10 But it was not under my control anyways for those people.

11 [15.45.38]

12 Q.You said the people who organized the establishment of S-21
13 was initiated by Son Sen. Is that correct?

14 A.People who initiated the establishment of S-21 was Son Sen, my
15 superior. He was the general staff.

16 Q.Just now you said you travelled to Ta Kmao prison. Was it the
17 prison at the location of the psychiatrist?

18 A.Yes, it was at that location.

19 Q.Did you notice that the prisoners who were detained at that
20 location, how many of them were there?

21 A.I went only into one room and met Doctor Gy (phonetic) who I
22 had known at 25 and I did not want to know more in the name of
23 the deputy chief about the people who were arrested there.

24 But I would like to say that the prison at Kmao although Nat left
25 it Nat asked me -- I use the word pleaded with me. He explained

84

1 to me that we should not give -- we should give Doctor Kmao (sic)
2 to others. But then when he left he came back to pay a visit to
3 Comrade Hor. So I can say that the Kmao prison existed until May
4 or July and then we organized Ponghger Yat High School to detain
5 prisoners.

6 After Nat left he asked me to keep this prison. One day my
7 superior, Mr. Son Sen, called me and said "Duch" and I said
8 "Yes." "The prison at the Kmao did Ministry of Social Affair
9 wanted it" but I said that no, I could not give the prison now
10 until I -- unless I already resumed all the bones of the dead
11 body from that location and empty it. And then I talked to Hor.
12 Brother Son Sen demanded that we send -- or that we give the Kmao
13 prison to the Social Affair, but then we had to deal with the
14 bones, the people who were buried, and resume them and then have
15 them cremated. And a month later, Hor reported that the bones
16 were cremated but still there were some under the big dykes. And
17 then later on I called my superior that of course the bones were
18 exhumed and cremated except the bones under the two big canals.
19 So this is how the prison was organized. That's why no bones was
20 left.

21 [15.49.36]

22 Q.You said earlier that later on there was an interrogation --
23 there were two interrogation locations and that -- could you
24 please confirm that position?

25 A.At P.J., I taught people to interrogate and also I prepared

85

1 report to the superior regarding the string of traitors.

2 Q. My question is that the prisoners that you said were brought
3 from the Kmao prison to be interrogated in two interrogation
4 locations, including the former P.J. prison. So after
5 interrogation where were they sent to? They were sent to the
6 Kmao back or left in Phnom Penh?

7 [15.50.48]

8 A. In principle, anyone who was being -- after interrogation
9 everyone was to be smashed. And I can presume that at that Kmao
10 prison was the place where people were smashed.

11 So at P.J. prison we could not really kill the people -- people
12 could not be killed and buried because they were made of brick
13 floor, cement floor.

14 I would like to make it clear that at P.J. I never paid a visit
15 there. Once I sat down with Nat's uncle called Ban Ouch Nol
16 Pech, the former Khmer Issarak. His name was given by the former
17 Prince Sihanouk. So Nat probably would like me to help with
18 maintaining that location, but I just listened.

19 [15.52.00]

20 MR BATES:

21 Mr. President, I'm sorry to interrupt the accused, but I do
22 invite the accused to speak a little more slowly. It's a little
23 difficult for the translators and I'm having trouble myself.

24 MR. PRESIDENT:

25 Let me remind you again the problem of the translation. I myself

86

1 find it difficult too because I speak fast, so I try to slow down
2 on my reading and speaking, and it's an appropriate remark by the
3 Co-Prosecutor. So please speak slower to give enough time for
4 the interpreter to interpret for both the questions and the
5 response.

6 Next I give the floor to the Judges of the bench. Do you have
7 any questions to be put to the accused related to the facts on
8 the establishment of S 21 and the Ta Kmao Prison, the former
9 psychiatrist hospital?

10 My apologies; let's have a brief break because we are running out
11 of tape. Court Officer, please arrange a replacement for the
12 tape.

13 (Break for technical reasons)

14 MR. PRESIDENT:

15 Next, would our Judges wish to put any questions to the accused
16 concerning the establishment of S 21 and Ta Kmao Prison? The
17 floor is yours, Judge Sokhan.

18 [15.55.21]

19 JUDGE YA SOKHAN:

20 Thank you, Mr. President.

21 BY JUDGE YA SOKHAN:

22 Q.he accused, could you please confirm that when you said to the
23 President that the person who initiated the establishment of S 21
24 was Mr. Son Sen, what was the role of Mr. Son Sen and where did
25 he come in the rank in the Party? And could you presume whether

87

1 there has been any agreement from Pol Pot and Nuon Chea to
2 establish the location?

3 A.Your Honour, thank you, and I would like to respond as
4 following.

5 Mr. Son Sen, he was the Minister of Defence and the general staff
6 of the Army of Democratic Kampuchea, but in the Party rank he was
7 the seventh person of the Party. The first person was Pol Pot.
8 The second one was Nuon Chea, the First Deputy Secretary. The
9 third person was Sor Phem, alias Yan, the Second Deputy Secretary
10 in charge of the East Zone.

11 The fourth person was Oung Choeun, alias Mok, the Third Deputy
12 Secretary in charge of the new Southwest. The old Southwest was
13 both located on the north and the east of Road Number 4.

14 Previously Sector 25 was part of the Special Zone. After the 17
15 April there was no longer a Special Zone. Let me continue.

16 Person Number 5 in the Communist Party of Kampuchea is Teacher
17 Ieng Sary, alias Van. He was a full-rights member of the
18 standing committee in charge of foreign affairs, both with the
19 (inaudible), both with the governments -- overseas governments of
20 other countries.

21 [15.58.50]

22 Person Number 6 was Vorn Vet, alias Vorn. He has a lot of
23 aliases; Thouk, for instance. He was in charge as a Deputy Prime
24 Minister, the Second Deputy Prime Minister. The First Deputy
25 Prime Minister was Ieng Sary and the Second Deputy Prime Minister

88

1 was Brother Vorn. So he was Person Number 6. He was a cabinet
2 member of the standing committee. And Person Number 7 in the
3 standing committee was Professor Son Sen. He was a Third Deputy
4 Prime Minister but he had a lot of power because he was in charge
5 of the police, the security.
6 That's what I reported according to the document of the 9 October
7 '75. Therefore the work was done when they were together at
8 Office 870. They reported straight away. And the establishment
9 of the S 21 office, I was not sure when the decision was made
10 because I did not see any documents on it. However, there was no
11 reason to deny that Pol Pot was not the initiator of the
12 establishment. Whatever Pol Pot decided, Nuon Chea had no rights
13 to make decisions but his duty was all involved with the works of
14 the implementation of the policy of the Communist Party of
15 Kampuchea.
16 Therefore Pol Pot was the one who initiated the idea, Son Sen
17 implemented it, but Nuon Chea was the one who would do the
18 follow-up. This is from my observation and from the surviving
19 document, the document of the 9 October 1975. That is my
20 response to you, Your Honours.
21 Q.The establishment of S-21, what was its duty in establishment?
22 Was there any writing, any authorization, or any letter in
23 writing? And what is its role comparing to other security
24 offices?
25 A.Thank you, Your Honour.

89

1 I would like to state that the organization of the Khmer Rouge in
2 the Communist Party of Kampuchea, it was very -- extremely hard
3 to find any letter of appointment or authorization letter. The
4 surviving document which came into my hand during the time of the
5 investigation -- I saw two documents, one dated the 30th of March
6 '76 and another one dated the 9th of October '75. These two
7 documents were the secret documents which would not go to the
8 lower level; it was only with the upper echelon.

9 [16.02.45]

10 So in conclusion, the appointment or the authorization of the
11 establishment of S-21 was unknown. Even the document dated the
12 30th of March '76 and the document dated the 9th of October '75
13 did not have any stamp on it or any signature on it, but it was a
14 secret document.

15 So it was clear the 30th of March '76; it was extremely clear.

16 It was the crisis used by Pol Pot. It was short but firm.

17 Everybody recognized his style. So whatever Pol Pot decided, it
18 has to be implemented.

19 I would like just to state to Your Honours that whether there was
20 any authorization, official authorization or permission for the
21 establishment, that is my response, and I would like to thank
22 you, Your Honour, for asking the question.

23 There was another document confirming that S-21 was under the
24 supervision of Son Sen according to his -- to my direct daily
25 activity to my superior and based on the document dated 9th

90

1 October '75.

2 And for the communication between S-21 and other security office
3 throughout the country, there is no horizontal communication
4 line.

5 INTERPRETER:

6 The interpreter would like to correct.

7 THE ACCUSED:

8 There was no what they call a communication line. There was only
9 horizontal communication line. So if the security office under
10 which zone then the secretary for that zone was responsible for
11 it. The surviving documents --

12 [16.05.04]

13 MR. ROUX:

14 Mr. President, I would like the translation to be verified.
15 Would you be so kind to repeat, Mr. Duch, when you refer to
16 vertical and horizontal lines? I think there is a translation
17 problem there. Could you please repeat what you said more
18 slowly, please?

19 MR. PRESIDENT:

20 Mr. Kaing Guek Eav, please repeat again because we have a problem
21 of translation?

22 And we will also decide on the issue of the translation at a
23 later stage, but the proceedings will go on. We will try our
24 best to endeavour our effort for the proceedings to proceed
25 smoothly.

91

1 So please repeat about your horizontal and vertical lines to the
2 questions raised by the Judge?

3 [16.06.05]

4 THE ACCUSED:

5 Let me state that the vertical communication line is between,
6 basically, the office to another security office. For instance,
7 the security office S-21 communicated with the security office in
8 the West Zone. That is called the vertical communication line.
9 In French, it's called horizontal communication line. That was
10 the communication between the S-21 to the other security office
11 in the zone.

12 So there was no communication from the S-21 to the Centre Zone or
13 to the West Zone. So it was between the police to the police, or
14 some (inaudible) to (inaudible). There was only one horizontal
15 communication from me to my superior, Mr. Son Sen. It means from
16 the bottom to the upper level; that is vertical communication
17 line.

18 This communication is confirmed in a document dated the 13th of
19 May '76 -- 30th of March '76, and the person who had the
20 decision, who could decide to smash at the base areas, was under
21 the zone. The Zone Standing Committee did not refer to any
22 member of the Standing Committee, but it only referred to the
23 special secretary.

24 I give you an example. A document of Kang Chab, alias Se,
25 secretary of the new H01 Zone reported to Pol Pot; he showed from

92

1 the secretary of the zone from Se, or alias Kang Chab to Pol Pot.
2 So that was an evidence of a communication line. And when Kang
3 Chab, alias Se, went to make an arrest and then it was a relative
4 of the wife of Khieu Samphan, then with this document Pol Pot
5 allowed to make a decision to order the arrest and brought to the
6 S-21. So the records of the confession -- of the last confession
7 was there and that was the evidence.

8 So it shows there was no --

9 [16.09.48]

10 MR. BATES:

11 I'm sorry, Mr. President --

12 THE ACCUSED:

13 -- there was no vertical communication line from S-21.

14 MR. BATES:

15 Please, a little more slowly. My learned friend and I, the
16 defence, are looking at each other across the room and shaking
17 our heads. We're not really getting this.

18 MR. PRESIDENT:

19 Judge Lavergne, please make your remark.

20 JUDGE LAVERGNE:

21 I think it is absolutely crucial for us to have the exact
22 reference of the document being referred to, otherwise it
23 wouldn't be very useful. Could the accused please give us the
24 reference of the document that he's referring to?

25 MR. PRESIDENT:

93

1 The accused, can you do that?

2 First, please be reminded that you speak rather slower so that
3 your speech can be translated well. And also please point to the
4 reference if you would like to refer to them.

5 Can you do that?

6 THE ACCUSED:

7 Thank you, Mr. Co-Prosecutor and Judge Lavergne.

8 The documents that Khieu Samphan reported that relatives of his
9 wife were arrested, and that Pol Pot decided to arrest Cham Sam,
10 alias Se; so Document D49 page 5 in Khmer, this text appears on
11 the first line. D49 is the name -- the code of the document,
12 page 5, ERN 001569192 in Khmer. So I would like to read the
13 document in Khmer; the question of the assistant of the
14 Co-Prosecutor:

15 "Therefore, how did you know that the prisoners at Preah Vihear
16 were released?"

17 "Among the people who were arrested there were relatives of my
18 wife who were sent to Ta Kmao, and Ta Kmao unit was in charge of
19 supporting the office K-1 and K-3. The cadre who arrested them
20 was Kang Chab. Later he was also arrested."

21 So this document indicates the role of Kang Chab in relation to
22 the security office of Zone 801. I have not brought with me
23 another document regarding the document sent by Kang Chab, the
24 confession of San Eap to Pol Pot. San Eap was the chairman of
25 commerce in Phnom Penh and I have not brought it along with me.

94

1 This document the Co-Investigating Judges already sought my
2 clarification.

3 [16.13.56]

4 So according to the document --

5 MR. BATES:

6 Mr. President, the document to which the accused refers is a
7 "procès verbeaux" of Khieu Samphan of 14 December 2007 and it is
8 not in Case File 1. We have a slight problem. The defence of
9 course may wish to put this on the case file. It's a matter if
10 they wish to apply, but it's currently not on the case file.

11 MR. PRESIDENT:

12 I can see that it is now tense and time is running out and that
13 it's time for a break already for the day, so the Chamber would
14 like to declare the adjournment of today's hearing at this
15 moment, and the session will be resumed tomorrow morning.

16 [16.15.45]

17 The Chamber would like to order the security guards to take the
18 accused back to his detention facility and bring him in before 9
19 a.m.

20 MR. PRESIDENT:

21 We would like to inform that tomorrow the hearing will be
22 conducted only the whole morning, and the Chamber will not have a
23 hearing in the afternoon because we need to discuss on some
24 remaining issue regarding the ruling of some applications and
25 requests made by parties.

95

1 So please, participants who would wish to attend the hearing,
2 come before 9 a.m. tomorrow.

3 (Court adjourns at 1617H)

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