



KRT Trial Monitor - a program of The Asian International Justice Initiative, a collaboration between the U.C. Berkeley War Crimes Studies Center and the East-West Center

The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,
alias 'Duch'

Report Issue No. 6:
Week Ending May 24, 2009

In this week's KRT Trial Monitor...

Expert Witness Craig Etcheson Begins Testifying to DK Hierarchy (pp.2-4); Proceedings Stymied By Ongoing Admissibility Issues – Testimony Grinds to A Halt (pp.4-5, 6); Civil Party Lawyers Publicly Disclose Motion Requesting Chamber to Consider UN Corruption Report (p.6); Villagers from Prey Veng and Peam Communes Attend Proceedings (p.7)...

1. SUMMARY

"I don't think it's the role of the Chamber to determine what documents the Parties put before it."ⁱ

After a two-week break during which the King's birthday was celebrated in Cambodia, the Trial Chamber of the Khmer Rouge Tribunal resumed its proceedings this week, hearing evidence from expert witness Craig Etcheson on the hierarchy of Democratic Kampuchea. Etcheson is the first expert witness to be called by the Chamber since proceedings began in March of this year. Yet despite the witness being ready to testify to the contents of his expert witness report, proceedings were increasingly dominated by procedural arguments as the week continued, causing lengthy deliberations, adjournments and finally, a Trial Management Meeting called unexpectedly on Thursday morning. Tensions emerging between the Prosecution and the Defense showed worrying signs that the KRT's seemingly least contentious trial – in which the Accused has already admitted to many of the charges he faces – will prove difficult to complete in a timely manner. Monitors hope that the consensus reached during the Trial Management Meeting will facilitate further cooperation between the Parties.

The key procedural issue discussed this week was the manner in which documents could be put to the Chamber. The Court's Internal Rules require that documents the Parties wish the Chamber to consider are expressly put before it, either through summaries or by being entered on the record at trial. The issue is somewhat linked to the admissibility questions that have already arisen at trial, because they again center around parts of the case file the Prosecution wishes the Chamber to consider that the Defense argues should be limited in scope and application. Thus far, the Chamber has largely adopted a reactive stance toward determinations of admissibility, preferring to consider how to deal with issues as and when they arise, rather than dictating to the Parties what documents should be relevant to its considerations. While this interpretation is consistent with the broad ambit of admissibility seemingly afforded by the Court's Internal Rules, it has done little to facilitate the pace of proceedings.ⁱⁱ

When he did give testimony, Etcheson appeared a calm and eloquent witness, answering questions in an extremely measured tone and clearly aware of the need to slow down to facilitate accurate translation. The witness corroborated the Accused's testimony in certain

respects, particularly with regard to Duch's understanding of hierarchical authority within Democratic Kampuchea ('DK'). Notably, however, the expert rejected the notion that S-21 was a nondescript security center, referring to it as the "security office associated with the penultimate node in the power pyramid of DK" hence recognizing its importance to the Standing Committee.

The attendance of Civil Parties continued to be low this week, although public attendance increased significantly from Tuesday to Thursday. This included the attendance of villagers from Prey Veng Commune and Peam commune, Samaki Meanchey District, Kampong Chhnang province, whose travel was facilitated by the Center for Social Development and DC-Cam respectively.

Despite Etcheson not yet having completed his testimony, the Court will hear expert witness Nyan Chanda on Monday and Tuesday of next week, as the witness is traveling from overseas.

2. LEGAL AND PROCEDURAL ISSUES

A Summary of Accused Person's Testimony and Witness Summary

Accused Acknowledges Agreed and Not Disputed Facts

Following from proceedings prior to the adjournment, the Chamber resumed its examination of facts pertaining to the implementation of the CPK policy at S-21. The Chamber readdressed this topic by reading out relevant paragraphs from the "Defense Position on the Facts Contained in the Closing Order" ("**the Agreed Facts**")ⁱⁱⁱ. Although well intentioned, this strategy meant the Chamber devoted a considerable amount of time to reading out facts that had already been determined as agreed to or undisputed by the Defense.^{iv} In effect, reading out of the Agreed Facts provided Duch with the opportunity to affirm several aspects of his earlier testimony, as well as elaborate on previous comments he had made.^v Consistent with prior testimony, the Accused emphasized that his role was confined to implementing policy decisions that were formulated by "his superiors".

Notably, reading out the agreed facts elicited new evidence on various issues. For example, Duch expounded upon the definition of the term "smash." Elaborating upon his previous statements, Duch explained that the word "smash" meant to secretly arrest, with a view to interrogating, torturing and executing an individual.^{vi} Duch also testified extensively on how confessions were recorded and disseminated. Duch explained that confessions were either written down or/and recorded on tapes, for the purpose of ensuring the authenticity of those confessions. Duch affirmed that some confessions of Vietnamese detainees and "key persons" were broadcast on radio and published in the party's magazines – *Revolutionary Flag* and *Revolutionary Youth*. Duch averred that he had "no right to propose" which confessions should be broadcast.^{vii}

Duch also unabashedly declared that the notion of individual liberty was annihilated during the reign of the CPK, when questioned about judicial safeguards. He further noted that "all levels of court" were entirely abolished. Duch summed up his evidence on this matter by concluding that "there was no law, no individual liberty, no court of all kinds, but there was only the political line".

Craig Etcheson

On Monday afternoon, the Trial Chamber summoned its first expert^{viii} witness, 53-year-old Dr. Craig Etcheson. Etcheson's testimony largely dominated the second day of proceedings. Etcheson, who is currently employed as an Investigator at the Office of the Co-Prosecutors, prepared an expert's witness report entitled "*Overview of the Hierarchy of Democratic*

Kampuchea.” He periodically read out excerpts from the report during his testimony, which centered on the political, governmental and military structure of the Communist Party of Kampuchea (“CPK”).

Organization of Democratic Kampuchea. Focusing on the organization of Democratic Kampuchea (“DK”), Etcheson represented the alleged governmental structure of the CPK using a chart. Etcheson explained that DK comprised of several zones, which had been subdivided into sectors, and further subdivided into districts.

The Command Structure of the CPK. Etcheson stated that the Central Committee “was the most powerful organ of the CPK.” He also detailed the responsibilities of the Central Committee,^{ix} and the implementation of those responsibilities. With the aid of a chart, Etcheson stated that the implementation of the duties of the Central Committee was entrusted to its executive body, the Standing Committee. He confirmed that the Standing Committee, also known as the “Upper Brothers,” had included Duch’s direct superiors –Nuon Chea and Son Sen. Etcheson proffered evidence to suggest that the Standing Committee exercised “total control of the government.” He testified that the Standing Committee devised relevant policies for all sectors and organizational units of DK, and was tasked with “monitor[ing] [the] implementation of policy throughout the country.”

Articulation of CPK Ideology and Policies. Etcheson intimated that the principles of “centralism and collectivism” constituted a crucial aspect of the ideology which guided the regime. Upon questioning by National Deputy Co-Prosecutor, Tan Searong, Etcheson further identified the concept of “independence mastery” as another “fundamental principle” adhered to by the CPK. He explained that the principle essentially embodied the concept of “political and economic autarky.” In essence, the leaders of DK championed a concept that they believed would enable them to “control their own destiny” and become a “model for communist revolutions across the world.”

This ideology entrenched within the CPK manifested itself in the formulation of extreme policies. Members of the “oppressor class”^x were entirely eliminated in a bid to achieve a “classless society.” Petty bourgeoisie were transformed into peasants in order to “accomplish pure communism.” Etcheson also affirmed that the CPK “placed a very high value on secrecy.” Concurring with Duch,^{xi} Etcheson revealed that a key characteristic of the DK regime was its “extreme policy on secrecy for a wide range of topics,” which was “unparalleled in the history of communist movements throughout the world.”

Notably, Duch’s earlier testimony^{xii} was corroborated by Etcheson’s pronouncement that “hierarchical authority was absolute in the CPK and organs of DK ... anyone in the organization was required to obey [the] orders and directives of [a] superior.” Describing the word “absolute” as an ideological “term of art within the CPK,” Etcheson explained that it referred to the “degree of commitment of Cadre to policy lines of the party.”

Referring to the enforcement of party discipline, Etcheson invoked Article 4 of the CPK Statute in support of his position that “all members [were required] to enforce party discipline.” In particular, Etcheson confirmed that zone committees were responsible for enforcing “security and discipline” within the zone framework. Accordingly, these committees were obliged to identify the “bad elements,” who were predisposed to betraying the CPK.

Alluding to several publications of the CPK,^{xiii} he also surmised that “all echelons were exhorted to take action on internal security.” In this regard, Etcheson tendered evidence^{xiv} to illustrate that as a leading figure in the revolutionary army, Son Sen possessed the power to order and carry out purges “throughout the army and party.”

The Impact of CPK Policies on the Functioning of S 21. According to Etcheson, the CPK began to cleanse its ranks of perceived enemies in approximately 1976. Through the use of graphs,^{xv} Etcheson attested to the “widespread purges [that occurred] throughout [the]

revolutionary army of Kampuchea.” He unambiguously stated that “many” of the purged military personnel were sent to S-21.

In a similar vein, Etcheson revealed that “widespread arrests [occurred] throughout all government ministries.” Peppering his testimony with reference to statistics, Etcheson noted that these purges often hampered the ability of the ministries to carry out their duties.^{xvi} To substantiate his claim that district cadre also fell victim to the massive purges, Etcheson employed visual aids allegedly representing the “high concentration of district cadre sent to S-21.”

Establishment of organs under the Central Committee. Detailed questions from Judge Cartwright revealed that Chapters 5-8 of the Constitution of Democratic Kampuchea envisioned the inception of a legislative body, executive body, judiciary and state presidium. Etcheson’s responses revealed that the reality of the regime constituted a marked diversion from the laws it enacted. In particular, Etcheson pointed to the dearth of evidence to prove that a judiciary committee had ever been convened. Etcheson’s responses to Lawyer Tan Searong’s questions further revealed that the scope of offences that warranted penal sanctions were fluid and continued to evolve. Etcheson concluded that the absence of a judiciary in DK, coupled with the CPK’s evolving definition of what constituted an offence, rendered justice under the regime “extremely arbitrary.”

Nature of Communication Networks within the DPK. Etcheson elucidated the different methods by which the Standing Committee communicated with its subordinate units.^{xvii} When asked about the nature of the communication network, Etcheson succinctly stated that the “Party centre was [the] central node of communication, and was the only organ that knew what was happening in the entire country.” However, Etcheson also suggested that horizontal communications from S-21 to other offices did occur, upon the special authorization of the upper echelon.

Etcheson’s Response to Duch’s earlier testimony. Broadly speaking, Etcheson’s testimony tended to corroborate various aspects of Duch’s previous testimony. For example, Etcheson agreed that the CPK statute, which included a description of the structure of the CPK, contained “sensitive” information and was accordingly assigned a “confidential” status. Etcheson also affirmed Duch’s testimony in relation to communication patterns in DK, where he categorically stated that “throughout the administrative, political and military apparatus of DK, communications were strictly vertical.” He added that this strict hierarchy of communications was “ruthlessly enforced.” More pertinently, Etcheson seemed inclined to concur that Duch was denuded of authority to secure the release of prisoners at S-21.

However, he obliquely disputed Duch’s earlier allegation that S-21 was a nondescript security centre. Referring to it as the “security office associated with the penultimate node in the power pyramid of DK,” Etcheson implied that the distinctiveness of S-21 stemmed from the fact that “only [it] had the authority to arrest and detain people from across the country.”

B. Issues and Concerns Arising at Trial

Scope of the Expert Witness Testimony Challenged: Chamber Underscores Right to Ask Witnesses All Relevant Questions. On Tuesday morning, Defense counsel François Roux objected to the fact that Etcheson’s testimony had seemingly deviated from the topics specified in the Chamber’s “Order on Trial Schedule” dated 23 April.^{xviii} Roux contended that the Defence had been taken “off guard,” a fact which he deemed to be “[un]acceptable.” Notably, he impugned the Office of the Co-Prosecutors for failing to notify the Chamber of its desire to stray from the framework indicated in the Chamber’s Order. International Deputy Co-Prosecutor Alex Bates promptly clarified that Etcheson had been summoned by the Chamber, and accordingly, could not legitimately be classified as the “OCP’s” witness. Following lengthy deliberation, the Chamber rejected Roux’s objection on the grounds that

“indications given to Parties on the scope of expert testimony” are not binding on the Chamber. It further underscored its right to pose questions that it deemed to be relevant.

Chamber Issues its Decision on the Use of Statements of Deceased Witnesses and Extra Judicial Documents. The Trial Chamber announced its decision pertaining to the use of Duch’s statement to Mr Christophe Peschoux, and the use of statements of two deceased witnesses taken by representatives of DC-Cam, this week.^{xxix} In essence, the Trial Chamber resolved to “exclude these documents as evidence in the present trial under Internal Rule 87(3).” The Chamber has signaled its intention to issue a detailed written decision on the matter “as soon as reasonably possible”.

Further Concerns Regarding Evidence on the Case File: Prosecutor Requests Clarification About ‘Putting Evidence’ Before the Chamber.^{xx} Proceedings were again dominated by procedural arguments centered on the admissibility of evidence this week, as the Prosecution requested “urgent guidance” from the Chamber regarding how best to ensure the Chamber would consider documents annexed to expert Craig Etcheson’s report. Deputy Co-Prosecutor Alex Bates appeared anxious to ensure that the Chamber consider not only the content of the report, but some 148 sources utilized by Etcheson when drawing his conclusions. This precipitated an argument between the Prosecution and the Defense regarding the relative merits of these documents, with the Defense bemoaning the perpetuation of a “bad habit” that has “spread throughout international courts”: namely, bombarding Chambers with documents and the Prosecution arguing that the procedure it was adopting was in fact facilitating expeditiousness.^{xxi}

After a lengthy adjournment the following morning, the Chamber ruled that every document intended to be relied upon by the parties “must be read out or summarized” before it could form the basis of the Chamber’s judgment. The Chamber reasoned that such a procedure was necessary in order to afford all parties and the Chamber an opportunity to assess each document.^{xxii} As Bates began to implement this procedure later on during the proceedings, however, it became clear that reading out all the documents Etcheson had relied on would take hours, possibly even days, to conclude.

The issue was resolved following a closed session Trial Management Meeting on Thursday, which lasted for the duration of the morning. The Chamber announced that it was unnecessary to read out summaries of the 148 documents. It attributed this decision to the fact that the Defense had “acknowledged the expertise of Craig Etcheson [during the Trial Management Meeting] and does not contest his report.”^{xxiii} Accordingly, the Chamber declared that the report and the documents listed in the annex had been ‘put’ before the Chamber, in accordance with Rule 87(3). Pertinently, Roux later underscored his desire to make a distinction between the period prior to, and after July 2007. This appeared to signal his reluctance to accept Etcheson’s opinions as an expert, if those opinions were informed by elements on the case file of which he became aware after beginning to work for the OCP.

3. VICTIM PARTICIPATION AND WITNESS AND VICTIM PROTECTION AND SUPPORT

Attendance of Civil Parties and their Counsel. The Chamber recognized a new international Civil Party lawyer, (Ms) Elizabeth-Joelle Rabesandratana this week, with President Nil Nonn granting her the same rights enjoyed by her national counterpart. Ms Rabesandratana will be acting as counsel for Group 3.

As in previous weeks, only 3 civil parties were present during the proceedings.

Lawyer for Group 3 Objects To Expert Introducing “Exculpatory” Evidence. Evidence that may assist the Accused Person’s case was elicited during Etcheson’s testimony this week, when the expert witness testified on Tuesday that new documents discovered at DC-

CAM showed more than 100 individuals were released from S-21 at one stage. In response to this statement, newly recognized lawyer for Group 3, Ms Rabesandratana urged the Chamber to proscribe any reference to documents that are not within the case file. She decried the Etcheson's statement on the basis that material outside the case file effectively "did not exist." Accordingly, she argued that any reference to such material would effectively deprive Civil Parties of their right to respond to such material and would infringe her client's rights. The Chamber did not respond to her request.

Civil Parties' Right to Attend Closed Session Hearings. On Thursday morning, the Chamber announced that all Civil Parties were precluded from attending and participating in its Trial Management Meeting. Nevertheless, Ms Silke Studzinsky, Civil Party lawyer for Group 2, was granted leave to publicly express her dissatisfaction with the Chamber's decision. In support of her position, Ms Studzinsky stressed that Civil Parties were parties to the proceedings, and were allegedly afforded the "same rights" as the Accused. She also revealed that the Civil Parties whom she had communicated with had expressed their desire to participate in future sessions. Notably, Roux championed Civil Party participation in Trial Management Meetings, although he maintained that "the rights of the Civil Parties and the Accused are not identical." He added that a confidentiality obligation should be imposed on Civil Parties attending such *in camera* proceedings.

Civil Party Group 1 Files Motion Regarding Corruption Allegations. Civil Party Lawyers for Group 1 publicly disclosed their motion regarding the UN Office of Internal Oversight Services (UN-OIOS) Report this week, requesting that the Chamber hear submissions on the report.^{xxiv} According to the motion, the UN-OIOS Report details an investigation into the "widely reported allegations of corruption at the ECCC", the content of which is confidential.^{xxv} Civil Party Group 1 contends that the existence of the UN-OIOS Report is directly relevant to the proceedings before the Chamber, as its publication after the close of the Duch trial could expose the trial judgment to claims of abuse of process or unfairness by the Accused, and others. The motion requests that the Chamber direct a formal request to the UN Secretary General for the provision of the OIOS Report and that Report be disclosed to the Parties. It further asks the Chamber to instruct the Accused that any written submission filed on his behalf should include a statement "as to his continued commitment to the admissions he has made during the trial proceedings".^{xxvi}

4. TRIAL MANAGEMENT

Judicial Management: Admissibility Issues Causing Serious Delays. Despite a seemingly efficient start, hearing of testimony almost completely ground to a halt this week, as the Chamber became embroiled in arguments regarding how best to ensure large volumes of documents were put before the Chamber and hence admitted as evidence.^{xxvii} As previously discussed in section 2 of this report, the Chamber's initial ruling to have summaries of documents read into the record sparked heated debates between the parties, culminating in a lengthy Trial Management Meeting that dominated Thursday's session. Under the circumstances, the Chamber's decision to convene a Trial Management Meeting represented a commendable effort to resolve the matter as expeditiously as possible. However, the fact that procedural delays continue to hamper the progress of the trial tends to suggest that the Chamber needs to adopt a more assertive stance toward limiting these debates and reaching consensus, if the trial is to continue smoothly.

Extended lunch breaks on Monday and Tuesday may also be indicate that the judges are finding it necessary to deliberate on procedural issues during this time. It is, however, unsurprising that the Chamber appears to be falling significantly behind its tentative schedule set out in its Scheduling Order dated 30 April, given so much of the Chamber's time is being consumed by determining how best to manage these procedural issues.^{xxviii}

Slow Pace of Proceedings Sparks Tensions Between Prosecution and Defense. Defense lawyer François Roux was demonstrably frustrated by the slow pace of proceedings

this week. When confronted with the practical implications of the Chamber's ruling on evidence being put before it, he declared that the Chamber was beset by a "problem of method." He opined that the problem stemmed from the deviation of proceedings from the facts set out in the Indictment. Implicitly invoking the need for the proceedings to continue expeditiously, Roux emphatically urged the Chamber to be mindful that it was "seized" only of the facts in the Indictment. For his part, Alex Bates evinced his irritation at what he characterized as "constant interruption[s] of the Defense." He insinuated that, on occasion, it was "necessary" and appropriate to stray from the facts in the Indictment. Alluding to recent allegations of corruption at the tribunal, Bates underscored the need for a fair and public trial, in which the public's "right to hear evidence that founds [the] judgment" is preserved. The debate elucidated the inherent difficulties associated with balancing two seemingly competing considerations – the need to ensure fairness and transparency on the one hand, and the need to conduct a smooth and expeditious hearing on the other.

Translation Challenges Continue. The KRT's proceedings continued to experience translation problems this week, although not to the same extent as in previous weeks. Notably, interpreters have generally become more assertive in asking parties to slow down and speak clearly when they encountered difficulty in understanding questions – an effort which monitors commend. Nevertheless, translation problems surfaced during Monday's proceedings, when discrepancies in translation arose because the interpreters did not have the latest version of the Agreed Facts. Further, Khmer monitors noted the questionable quality of the Khmer translation at various stages, which made it difficult for them to fully understand the proceedings. The Chamber has previously stated that it would issue a determination on translation concerns prior to hearing its third category of evidence (which it is currently hearing).^{xxix} It subsequently determined that it would issue a decision after the May break, but as yet, no decision has been publicly forthcoming.^{xxx} Monitors urge the Chamber to consider issuing its ruling on this issue (at least orally) soon, to avoid challenges by the Parties to the veracity of evidence being presented.

Unexpected Adjournments/Cancellations of Public Proceedings. The Chamber unexpectedly announced the cancellation of morning proceedings twice this week. While Wednesday's proceedings were scheduled to commence only at 10.30AM, President Nil Nonn entered the courtroom at 10.50AM, for the sole purpose of announcing that the Chamber was still mired in discussions, and would only commence proceedings in the afternoon. Similarly on Thursday morning, the Chamber spontaneously cancelled public proceedings for the entire morning, due to its decision to convene a closed session Trial Management Meeting.^{xxxi} These unexpected and lengthy adjournments could be due to the Chamber's repeated miscalculation of the time needed to resolve various issues. Given that there was a significant presence of villagers from other provinces, it might better serve the public interest if the Chamber could notify the public beforehand.

Case Management Concerns. Case management problems relating to the documentary record surfaced this week, as a significant amount of confusion arose regarding a confession referred to by expert Craig Etcheson. The issue arose on Wednesday afternoon, when it appeared that different dates had been assigned to the same document annexed to Etcheson's report. The expert witness himself attempted to shed some light on the issue by explaining that the translated version of the same document may bear different dates, because different dates were often written on the same confession. This problem appears to stem from the absence of a standardized case management system within the Tribunal, with some Parties seemingly managing sub-systems that are exclusive to their office, and is indisputably a source of concern. None of the parties appeared able to determine conclusively whether the document to which the Prosecution was referring was the same as that to which the Defense referred. An additional challenge is posed by the fact that documents are translated into three different languages, meaning that even the conclusive common records in the case file are assigned different case file numbers, depending on whether they are written in Khmer, English, or French. This often leads to lengthy

discussions between the Parties and the Chamber with regard to which document they are referring.

Attendance in the Public Gallery. Although Monday’s proceedings were poorly attended, public attendance increased throughout the week, and spiked on Thursday morning. In particular, monitors noted the attendance of Cambodian villagers and school children. On Tuesday, 30 villagers from Prey Veng Commune attended the full-day hearing, with the support of the Center for Social Development. The number of people in the public gallery increased on Wednesday, with the attendance of 60 villagers (including Cham people) from Peam commune, Samaki Meanchey District, Kampong Chhnang province. The same group of villagers from the Kampong Chhnang province continued to attend proceedings on Thursday morning, although they were not present for the afternoon session. This could be due to the fact that DC-Cam had facilitated their attendance at proceedings for only a day and a half. Proceedings on Thursday were also attended by NGO staff and students from Beung Trabek High School.

Trial Management Table

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HRS IN SESSION
MON 18/05/09	09:20AM	10:50AM- 11:10AM	12:20AM- 1:50PM	2:35PM- 2:55PM	4:30PM	5 HRS
TUES 19/05/09	09:15AM	10:45 - 11:33 Am	11:35Am- 2:30Pm	NO BREAK	16:25PM	3 HRS 27 MIN
WED 20/05/09	1:50PM	N/A	N/A	3:05PM- 3:25PM	4:45PM	2 HRS 35 MIN
THURS 21/05/09	1:40PM	N/A	N/A	3:05PM- 3:25PM	4:45PM	2 HRS 45 MIN
AVERAGE NO. OF HOURS IN SESSION:					3 HRS 45 MINS	
TOTAL NO. OF HOURS THIS WEEK:					13 HRS, 47 MINS	
TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL:					79 HOURS AND 43 MINS OVER 19 TRIAL DAYS OVER 5 WEEKS	

ⁱComment of Judge Sylvia Cartwright, in response to Defense Counsel Francois Roux’s assertion that the Office of the Co-Prosecutor be more selective with regard to the documents it puts before the Chamber.

ⁱⁱ The KRT’s Internal Rules allow for an extremely broad ambit of admissibility and a fairly strict procedure through which documents are put before the Chamber. Rule 87(1) of the Court’s Internal Rules provides that, except as provided in the rules, ‘all evidence is admissible’. (Under Rule 87(3), the Court may reject a request for evidence where it finds that the request is irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to prove the facts it purports to prove, not allowed under law or frivolous or intending to prolong the

proceedings). Documents must be 'expressly put' before the Chamber, on the other hand, by either being summarized or read into the record. The Chamber seems reluctant to allow for summaries to be provided without having been tested in Court. The test for admissibility seems therefore less onerous/more fluid than that of other international tribunals, where Chambers have had to determine whether evidence was either (i) relevant (as at the Special Court for Sierra Leone) or (ii) relevant and probative (as at the International Criminal Tribunals for Rwanda and the Former Yugoslavia) prior to admitting it.

ⁱⁱⁱ The Accused explained that a fact was deemed to be "agreed" when he had personally witnessed or participated in a particular event. In contrast, a fact was deemed "not disputed" if Accused had only indirect knowledge.

^{iv} See Report Issue No. 2: First Week of Trial in the Duch Case

^v For instance, Duch reiterated that with effect from March 1976, the CPK devoted its attention primarily to conducting internal purges of the party.

^{vi} Duch clarified that prior to 1973, the term "resolved" had been used to refer to the liquidation of perceived enemies. He alleged that the term was merely a "political term".

^{vii} With regard to the use of confessions, Duch revealed that some confessions had been linked to the power struggle between Ta Mok and Pol Pot, although he claimed to be ignorant of this fact until 1983.

^{viii} Pursuant to a series of questions by Judge Cartwright, Etcheson affirmed that he has been engaged in studying the structures of Democratic Kampuchea for approximately 30 years, and has conducted extensive research in relation to South East Asia and genocide studies.

^{ix} Article 23 of the CPK Statute enumerated the responsibilities of the Central Committee as follows: 1) implementation of the Party's lines; 2) instructing all zones, sectors, municipalities and party organs; 3) administering and deploying cadre and party members as a whole while maintaining a clear and important grasp on their biographies; 4) subjecting the cadre and party members to constant indoctrination and education

^x Oppressor class encompassed the capitalist, bourgeoisie and feudalist.

^{xi} Refer to KRT Trial Monitor Report, Issue No. 3.

^{xii} Ibid.

^{xiii} Etcheson specifically referred to the November 1977 and May 1978 issues of the "Revolutionary Flag."

^{xiv} "Minutes of the Meeting of Secretary and Deputy Secretary of Divisions, Sectors and Deputy Sectors," dated 2 August 1976

^{xv} Etcheson indicated that the graphs were based on information of a combined S 21 prisoner list.

^{xvi} By way of example, Etcheson pointed out that more than 15% of the workforce of the Ministry of Public Works was sent to S-21.

^{xvii} Etcheson explained that the CPK employed numerous means of disseminating the party line. Such means included the publication of revolutionary magazines, radio broadcasts, the issuance of reports and telegrams.

^{xviii} According to Roux, Etcheson had been summoned to testify specifically on "military structure of the DK, political and governmental structure of the KR regime, configuration of communication network of this regime and its policy and ideology."

^{xix} Mr Peschoux is the current UN High Commissioner for Human Rights in Cambodia. The specific grounds of Francois Roux's objection are briefly summarized in Report Issue No. 3.

^{xx} Rule 87(3) states that where the Chamber makes its decision based on evidence from the case file, it shall ensure that such evidence has been expressly put before the parties during the hearing. Evidence from the case file is considered put before the Chamber if its content has been summarized or read out in court.

^{xxi} In support of his argument, Roux invoked Internal Rule 85 in support of his proposal. Internal Rule 85 empowers the Chamber to exclude proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth. For his part, Bates proposed that parties who wish to rely on documents in fulfillment of Rules 87(2) and 87(3) should be required to submit an index of documents, which contain a written summary of each of those documents. He indicated his willingness to provide an oral summary of each document type, as opposed to a summary of every single document, in order to facilitate expeditiousness.

^{xxii} President Nil Nonn also reminded all parties of the need to comply with Article 15 of the Convention Against Torture. This reminder clearly evidences the Chamber's ongoing attempts to ensure that the present proceedings fully comply with international standards. Article 15 of the Torture Convention stipulates that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person Accused of torture as evidence that the statement was made."

^{xxiii} It should be noted that previously, Roux had attempted to impugn Dr Etcheson's credibility on the basis of his employment at the OCP. Roux had categorically stated that Dr Etcheson represented the "voice of the Prosecution."

^{xxiv} See *The Prosecutor v Kaing Guek Eav* alias "Duch" (Case No.001/18-07-2007 ECCC/TC) "Public Directive Group 1 Civil Parties' Co-Lawyers' Request That the Trial Chamber Facilitate the Disclosure of An UN-OIOS Report to the Parties", 11 May 2009, distributed via email on May 21, 2009. As yet, this filing has not been uploaded to the Court's website. Lawyers for Group 1 are Mr Karim Khan (Great Britain), Mr Alain Werner (Switzerland),- Ms Ty Srinna (Cambodia) and Ms Brianne McGonigle (USA).

^{xxv} *Ibid.*, paragraph 1.

^{xxvi} *Ibid.*, paragraph 18. The request for the Accused to make this commitment to his submissions is further made, "in light of both the OIOS Report and the fact that it appears that no investigative or oversight mechanism will be established to investigate pending or future allegations". However, monitors have reason to believe that the latter half this statement may not be entirely accurate.

^{xxvii} These factors include lengthy discussions on document numbers, and minor technical problems with ensuring that translation was broadcast to the Chamber and the gallery.

^{xxviii} According to the Chamber's Scheduling Order, the Chamber had anticipated the completion of testimony pertaining to the implementation of the CPK's policy at S-21, and the commencement of testimony pertaining to the armed conflict, by 21 May 2009.

^{xxix} See KRT Trial Monitor, Report No.4, page 9 (Weekending 26 April, 2009).

^{xxx} See KRT Trial Monitor, Report No.5, page 7 (Weekending May 2, 2009).

^{xxxi} President Nil Nonn had initially announced that the Trial Management meeting be completed at approximately 10AM or 10.30AM.