



The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,
alias 'Duch'

Report Issue No. 7:
Week Ending May 31, 2009

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

In this week's KRT Trial Monitor...

Expert Witness Nayan Chanda (p.2) and Dr. Craig Etcheson (p.4) testify before the KRT: issues over experts' credibility continue (p.6); Trial delays ongoing; Chamber could consider being more assertive (p.8); Translation and interpretation issues continue to plague the proceedings (pp.8-9)...

1. Summary

"There is always a choice."ⁱ

"I have never liked scapegoats."ⁱⁱ

During this week's proceedings, the Defense's theory appeared to become clearer. As expert witnesses Mr. Nayan Chanda (on Monday and half of Tuesday) and Dr. Craig Etcheson (during the remainder of the week) were questioned, both the National and International Defense Counsel seemed to be determined to establish the notion that Duch was entirely subject to the will of his superiors, and had no choice but to follow the "party line". Furthermore, both Defense counsels also attempted to insinuate that Duch was but a "scapegoat", by espousing that more responsible people could have been brought to trial, or even testifying as witnesses.

The Defense's efforts, however, seemed at best, partially successful. Mr. Nayan Chanda, who gave an expert account on the "armed conflict between Vietnam and Cambodia", placed most of the responsibility for the armed conflict on the Khmer Rouge's side. He mentioned the aggressive policies the regime had adopted against Vietnam, which in the end pushed Vietnam to take military action against Cambodia. While establishing which party started the armed conflict is not required to prove its existence, this account seemed to strike a nerve with Duch's Cambodian Defense Counsel. While questioning the witness, Mr. Kar Savuth asked Chanda to recall how some local Vietnamese officials had bartered Cambodian refugees for "buckets of salt". While the witness did not recall salt being the exchanged item, he acknowledged that he had heard this occurred with buffalos, and he supposed that the officials knew what was likely to become of them.

Dr. Etcheson maintained his calm demeanor while giving his account as last week. While he acknowledged that the Standing Committee of CPK controlled the communication between cadres and was known to enforce ruthless policies against people who were violating the party line, he insisted that everyone always has a choice.

He also maintained that S-21 and Duch (as its Secretary) held a unique position in Democratic Kampuchea when compared to other Security Offices. International Defense Counsel François Roux exerted effort to draw from him an acknowledgement that S-21 was not the Security Office with the most victims; nevertheless, the expert maintained that the existing data on the numbers of victims at other offices was uncertain, due to both a lack of surviving documentation and the difficulty in establishing the exact number of victims from the excavated mass graves.

As per last week, the issue of expert witness credibility and the need to establish her or his expertise during proceedings was raised again, without any definitive ruling from the Chamber. There seems to be a need to have a practice directive issued with regards to this matter, bearing in mind that the Court still has a number of expert witnesses to hear and the issue had been consuming an extensive amount of the Chamber's time.

Civil Party attendance continued to be generally low, although on Thursday, 28 civil parties attended the proceedings from Group 1. This low attendance has been attributed to factors other than a desire to come, with NGOs noting that many civil parties are disappointed by the fact that they are unable to attend proceedings. In an issue that is also related to trial management, after one and a half days of apparent restraint shown by most Civil Party lawyers in posing repetitive or prolonged questions, this occurred again in the remainder of the week. It should be noted however that the seemingly repetitive questions in part are caused by unclear translation or the Accused Person's circumlocutions. The Chamber may consider exerting more assertive measures in preventing the undue delays caused by such practices.

Document translation continued to pose concerns to monitors this week. The International Co Prosecutor suggested that the original document should be seen as the authoritative version, with any difference in translation being taken into account during deliberation. However, it seems that more comprehensive action needs to be taken to ensure that both the Chamber and the Parties have the most accurate versions of the documentary evidence before them, in a language they understand, in order to ensure proper administration of justice.

The Trial Chamber of the KRT will break for a week in order to facilitate pre-trial hearings previously scheduled by the Pre-Trial Chamber from June 1 – 5, 2009.

2. Legal and Procedural Issues

A. Summary of Witness Testimony

Nayan Chanda

Monday and Tuesday morning of this week's proceedings saw Mr [Nayan] Chanda testify before the Chamber. The witness testified as an expert on the existence of an armed conflict between Vietnam and Cambodia during the period of Democratic Kampuchea.ⁱⁱⁱ Mr Chanda is author of the book "Brother Enemy: The War After the War", ("**Brother Enemy**") published in 1986. He was also a former correspondent for the *Far Eastern Economic Review* in Southeast Asia during the 1970s.

The Dynamics of the Vietnamese-Cambodian Relationship. Mr Chanda was asked by the Chamber to explain the historical background to the conflict between Vietnam and Cambodia. To this, Chanda gave a brief overview of the mid-twentieth century history of Indochina, particularly looking at the rise of communism in the region. He explained that Vietnam, Cambodia and Laos, each colonized by the French, had inaugurated the Indochinese Community Party during the period of the Anti-Imperialist War, but that this party ceased to exist in 1951.

The relationship between Cambodia, on the one hand, and Vietnam and Laos, on the other, began to deteriorate significantly during the Geneva Conference in 1954, which also marked the end of the Anti-Imperialist War. According to Chanda, the Cambodian communists felt slighted because they were not even granted a seat at the negotiation table at Geneva, whereas the communist party members in Vietnam and Laos were granted both negotiating power and actual control in their respective countries. Vietnam's support of Prince Sihanouk further drove a wedge between the CPK and its sister state.

Chanda painted a picture largely favorable to Vietnam. According to Chanda, Vietnam aspired to encourage close cooperation between the three states, and supported the Khmer Rouge, especially after Lon Nol's rise to power in 1970. The expert noted that the Communist Party of Vietnam provided arms and ammunition to the movement, as well as military training. He further argued that the fall of Phnom Penh in 1975 was only possible due to this Vietnamese support – a fact that the Khmer Rouge never acknowledged.^{iv} Still, Chanda noted that Vietnam remained suspicious of the Khmer Rouge's relationship with China, especially after Lon Nol was overthrown, since Vietnam had been colonized by the Chinese empire for over 1000 years.

For its part, according to Chanda, Cambodia was largely suspicious of Vietnam's motives. Historically, Cambodia had been a vassal state to Vietnam – including during the nineteenth century, when Vietnam controlled Cambodia – and this made the Cambodian Communist Party deeply suspicious of the country's motives. As Pol Pot rose within the ranks of the party, he resisted the 'special relationship' Vietnam attempted to cultivate. According to Chanda, Ieng Sary had revealed to him in an interview that he viewed Vietnam's motives as largely expansionist. Vietnam was seen as an aggressor state – a feeling only compounded by the U.S. bombing of Cambodia in the early 1970s, which the Khmer Rouge saw as further evidence that Vietnam was not protecting its interests.

Secret Skirmishes and Protracted Armed Conflict. Chanda recounted the escalation of skirmishes between Vietnam and Cambodia in 1975, which culminated in a declaration of armed conflict in December 1977 that was ongoing and peaked in 1979.^v According to Chanda, the skirmishes were largely kept secret: Vietnam had just ended its own war and did not want to give the international community an excuse to become involved in a further protracted conflict with Cambodia. For its part, the Khmer Rouge wanted to assure that morale within the party and amongst the cadres remained high, and publicizing the growing death toll would only circumvent this aim. Chanda's portrayal was again, largely favorable toward the Vietnamese, with Cambodia perceived to be the aggressor state. According to Chanda, in an interview with Vietnamese Deputy Prime Minister, Vo Dong Giang, the Deputy Prime Minister revealed he had no desire to establish the state of Indochina, fearing only the Sino-Khmer connection. Mr Chanda further asserted that Vietnam was biding its time, hoping that further communication with

Cambodia would resolve the conflict, or that someone more reasonable than Pol Pot would take over. It was only when it became clear that this was not to be the case that the Vietnamese ousted Pol Pot's regime from power.

The "Black Book" and Anti-Vietnamese Policies. Detailing passages from his book, Mr Chanda noted that anti-Vietnamese sentiment was used by the Khmer Rouge to justify its actions against the Vietnamese. According to Chanda, the 1978 CPK publication known as 'The Black Book' provided interesting insights into the minds of the Khmer Rouge leaders. The publication revealed openly racist statements and further noted that the Vietnamese were 'enemies' of the regime, as were Cambodians who sympathized with them. In this regard, Chanda noted that the Khmer Rouge began expelling Vietnamese citizens as early as 1975, and that attacks by the Khmer Rouge into Vietnamese territory were brutal. Chanda said he had visited a border town in 1978 which provided further evidence for this claim: he witnessed wide-scale destruction, and described the place as "looking as if it had been hit by a storm". Dead bodies were stacked up high, laid out, awaiting burial. When asked how he knew the atrocities were committed by Khmer Rouge cadres, he said that carved into the side of one house in Khmer were the words "this is our land". When asked about a claim in the Black Book that the Khmer Rouge had been victorious against the Vietnamese during the battle in 1977 he said, "If victory is determined by the number of civilians killed, then they certainly achieved that".

Overall, Mr Chanda answered cautiously to questions on the factual analysis provided in his book, noting at various points that he could not clearly recollect certain passages because it had been over 30 years since the events he had written about had occurred. Certain elements of his testimony clearly marked him as an expert: Mr Chanda had interviewed several important political elites during the Khmer Rouge's reign, as well as several victims on the Vietnamese-Cambodian border. Yet, at the same time, it became clear that during field trips he had conducted to the border, Vietnamese officials had accompanied him. Furthermore, it was clear that as a journalist, he relied on third party sources for several parts of his book. These factors, taken together with his vague recollection of certain events, seemed to somewhat weaken the reliability of his account. Still, the witness gave an important account of the armed conflict during the period, helpfully pointing out periods when he thought the war was at its most pronounced.

Craig Etcheson

The rest of the week was taken up hearing testimony from Dr Craig Etcheson, who concluded his stint as a witness for the Chamber on Thursday. Dr Etcheson is a researcher and political historian who has studied the Khmer Rouge for decades. He is currently serving as a staff member for the Office of the Co-Prosecutors at the KRT. As per his testimony during the previous week, Dr Etcheson remained calm and answered questions clearly and succinctly. At one point, Defense Counsel François Roux asked him whether he thought, given his role in the OCP, that he could be objective when answering questions. Dr Etcheson answered in the affirmative. "I believe you," Roux replied.

Patterns of Communication within the CPK. Confirming the Accused Person's testimony from previous weeks, Etcheson described the centralized control over communication exercised by the party center, and asserted that in general, only superior-subordinate (or 'vertical') communication was permitted between Khmer Rouge

cadre. Communication between cadre of the same level (or 'horizontal' communication) was only permitted if authorized by the upper echelon. Zone leaders would generally communicate with the party center by telegram, through messengers or during face-to-face meetings. According to Etcheson, only the leadership of the party traveled throughout the country, and in this way gained a monopoly over understanding the situation nation-wide. Etcheson also confirmed the Accused Person's assertion that as Chairman of S-21, he would have reported to Son Sen. He further considered it "reasonable to assume" that letters to Duch from Sur Met, the secretary of Division 502, would have had to go through Son Sen, given their relative positions in the command structure. He noted, however, the general dearth of evidence supporting this claim: "we have only the words of the Accused to confirm this", he said.

Unique Nature of S-21. Reiterating sentiments he expressed last week, Etcheson stated several times throughout his testimony that S-21 occupied a unique position in the DK regime. The expert again affirmed that, in his opinion, S-21 was designated to detain and 'smash' the highest ranking individuals, and had the greatest number of staff members of any of the security centers. When answering questions from civil party lawyer for Group 1, Alain Werner, Etcheson further elaborated on the different types of torture techniques used at the prison, stating that the confession process was "far more detailed and elaborate" than at any other center. He also explained that as Chairman of S-21, Duch would have reported to members of the upper echelon on a direct, daily basis. According to Etcheson, this, combined with his interrogations of cadre from across the country, gave the Accused a unique perspective on the DK period.

Purges, Torture Methods and Executions. A significant portion of Etcheson's testimony comprised him detailing the Accused Person's decision-making authority and degree of control within the Khmer Rouge regime. Etcheson was questioned extensively by the parties regarding who was responsible for identifying "enemies", who took initiative with regard to torture techniques at S-21 and who decided when a prisoner should be executed. Etcheson described Duch as "an innovator, a creator, a developer and an institutionalizer", painting the accused as zealously undertaking the tasks he was ordered to do and rising through the ranks as a result. Hence, with regard to who identified "enemies" – an issue that Etcheson stated "goes to the very heart of what this Chamber must ultimately decide" – Etcheson stated that on the one hand and at one level, the purges were driven by the Standing Committee's paranoia, whereas on the other, "they were driven by the methodology used to define enemies devised by the Accused". Etcheson asserted that Duch devised the practice of drawing up lists of those who had confessed and were to be purged. He also pointed to Duch being the principal trainer of torture techniques, though he further admitted that individual interrogators invented their own practices. When confronted with Duch's statement that executions were decided by Duch's superior, Son Sen, Etcheson said he found this hard to believe: Son Sen was entrusted with the role of Deputy Prime Minister for National Defense as well as Chief of General Staff for the Revolutionary Army – heavy responsibilities which likely left him little time to examine confessions on a daily basis.

B. Legal Issues Arising at Trial

Admissibility of Confessions Given Under Torture: KRT to honor CAT. The issue of the admissibility of S-21 confessions, largely extracted under conditions of torture, was raised on Tuesday of trial this week, with both lawyers for Civil Party Group 1 and the Co-Prosecutors seeking clarification on the matter. The Chamber refrained from issuing

a ruling on the issue, as the matter is still under consideration by the Office of the Co-Investigating Judges for Case 002. However, it did observe that the KRT was bound by the United Nations Convention Against Torture (**CAT**) since Cambodia is a State Party to this Convention. It further noted that Article 15 of CAT – which limits the use of statements extracted under conditions of torture in judicial proceedings – had been incorporated into Article 38 of the Cambodian Constitution and Rule 21(3) of the Court's Internal Rules.^{vi} As a result, the Chamber advised the Parties that, should they wish to determine the veracity of a statement made under suspect circumstances, they would first need to ascertain whether the statement was made while the suspect was being tortured or under threat of torture. Judge Cartwright further clarified that the circumstances under which a statement was made is an admissible fact, and it was further suggested that the Parties should thoroughly consider the significance of admitting the substance of statements into evidence prior to attempting to do so. This seemed particularly sound advice, given testing the veracity of these statements would likely prolong the proceedings.

Equality of Arms: Defense Claims Civil Parties Effectively 'Second Prosecutors'.

Issues surrounding the principle of equality of arms again arose at trial this week, with International Defense Counsel François Roux asserting that the Defense was being confronted “not by one opponent, but many.” Roux made the comment, following on from three Civil Party lawyers agreeing with the Prosecution with regard to expert witness Dr Etcheson's ability to comment on certain documents. While the Court's Internal Rules allow for extensive victim participation in the proceedings, and further state that the role of victims' lawyers is to “support the Prosecution”, they also further prescribe that the proceedings must “preserve a balance between the rights of the Parties.” The Chamber did not rule on the issue in this instance.

Expert Witness Questioned on Sources. The Prosecution questioned expert witness Nayan Chanda on his use of sources in his book, “Brother Enemy” this week, in what the Defense is calling a “common law” strategy that is misplaced when used in the KRT's proceedings. Deputy Co-Prosecutor Alex Bates argued the Prosecution was doing so in order “to establish the witness' expertise”. Defense lawyer François Roux objected to the Prosecution's line of questioning on the grounds that the Prosecution was re-hashing issues that had already been established during the investigation phase and the line of questioning was unnecessary. Monitors noted that the line of questioning pursued tended to focus on the reliability of the sources used, rather than the expert's credibility *per se*. In other words, the Prosecution was not so much establishing witness credibility as it was verifying the reliability of the facts the witness based his assessments upon. The Chamber overruled the Defense objection, on the grounds that it was “unclear and groundless”, but did not provide any analysis for its ruling.

Admissibility of Evidence Related to Etcheson's Report Questioned - Again.

Following on from last week's protracted discussions on the admissibility of annexures to Dr Etcheson's witness report, the Prosecution again attempted to put before the Chamber (and admit into evidence) documents not included in the body of the expert's report. This time, the Prosecution sought to admit nine letters from Sou Met (the Secretary of Division 502) to the Accused, only three of which Etcheson has relied on. The Defense objected, on the grounds that the Parties had a ‘Gentleman's Agreement’ to accept all documents annexed to Etcheson's report, hence making it unnecessary for the Prosecution to have them read into the record.^{vii} Furthermore, it challenged the Prosecution to explain to the public why Sou Met had not been proposed as a witness

before the Chamber.^{viii} It further noted that the Chamber should not rely on documents the witness came to know during the period in which he worked for the Office of the Co-Prosecutors.^{ix} The Trial Chamber did not address the issue of a Gentleman's Agreement. Rather, Judge Lavergne proposed that the evidence be tested with the Accused before Dr Etcheson was questioned on it. Furthermore, he suggested that Defense withdraw the objection to have the documents read into the record, bearing in mind the Chamber would view the evidence from Etcheson with a "grain of salt", given the doubt the Defense had cast over the expert's objectivity. The Defense conceded to this.

Further Guidance on Questioning Experts? Ongoing procedural issues arising with regard to questioning experts may signal the need for the Chamber to provide parties with a Practice Directive on this issue. At points, the Prosecution appears to be overly cautious in exercising its discretion on this line of questioning, especially given neither expert's credibility had been challenged by the Defense. For its part, the Defense seems anxious to seize on arguments that sometimes take more time than the lines of questioning themselves. The trial may be better served if procedural arguments focus on more contentious issues, rather than ones that are not the subject of any substantive dispute.

3. Victim Participation and Victim and Witness Protection and Support

Civil Party Attendance. As has become the norm during proceedings, only three civil parties attended trial for three out of the four days of this week. However, on Thursday, 28 civil parties from Civil Party Group 1 attended the trial.

Civil Parties Rotate Questioning Order Again. Following on from previous practice adopted by the Chamber, Civil Party Lawyers from Group 4 were able to ask questions of expert Nayan Chanda first this week, followed by Group 3, Group 2 and Group 1. The Chamber has adopted this policy to ensure a sense of fairness regarding manner in which Civil Parties are able to put questions to a witness.

Repetitive and Lengthy Questioning of Experts. During questioning of Mr Chanda on Tuesday, monitors noted that questions posed by lawyer for Civil Party Group 4, Mr Hong Kim Suon, were lengthy and, on occasion, repetitive, causing proceedings to slow. However, it should be noted that Mr Kim Suon explained that he had to repeat some of his questions because he had not understood the translation. The 3 other Civil Party Groups kept either their questions short and succinct, or avoided unnecessary questions, with Civil Party Lawyers for Group 2 and 3 refraining from asking any questions at all.

Wednesday and Thursday's proceedings however, saw a return to lengthy (if not repetitive) questioning by Civil Party Lawyers. For example, during Duch's questioning on Sou Met's letters, some Civil Party Lawyers appeared to ask questions outside the scope of the evidence being tested. Questions posed to Dr Etcheson were similarly lengthy. The International Civil Party Lawyer for Group 1 took an especially long time questioning Dr Etcheson, such that the Defense requested that the Chamber limit his questioning. The lawyer was eventually asked to keep to a time limit with his remaining questions.

4. Trial Management

Judicial Management. Generally speaking this week, the Chamber commendably facilitated proceedings. The judges often intervened to ensure parties did not ask irrelevant or repetitive questions, and also reminded parties of the limited availability of expert witness Nayan Chanda. As well as this, on Wednesday, President Judge Nil Nonn intervened in order to assist Civil Party Lawyers rephrase their questions to ensure they were more comprehensible. However, the Chamber's reminders continue to be very general, and often sparked by objections from the Parties, with the judges appearing generally reluctant to interrupt irrelevant answers to questions.^x Given the fact that the trial continues to fall alarmingly behind schedule, the Chamber may consider taking a more pro-active approach: monitors believe that a more assertive approach would help ensure the expeditiousness of proceedings.

Document Translation Issues Continue. Document translation continued to be a concern at trial this week, with a number of documents used during Mr. Chanda's questioning unavailable in French.^{xi} Amongst those available in the three operating languages of the Court, there were discrepancies between the English and French versions (on the one hand) and the original Khmer (on the other). This was especially apparent when the Deputy Co-Prosecutor Alex Bates asked the Greffier to read sections from a document during Dr. Etcheson's testimony on Tuesday.^{xii} This process is generally time consuming and detracts from the proceedings, but it also raises concerns about the accuracy of document translation generally. This lack of accuracy may present the Chamber with serious challenges when the evidence in question is used in their deliberations prior to judgment.

Interpretation Concerns. The interpreters have become more assertive in asking the President to inform parties to slow down and speak clearly when they encounter difficulties, which is to be commended. However, during the proceedings when the Parties and/or witnesses spoke in English or French, the Cambodian monitors noted discrepancies in the translation from English or French into Khmer, rendering some parts either hard to understand or inaccurate. The Lawyer for Civil Party Group 4 also addressed this problem by stating that he may have not fully understood the arguments raised by other Parties due to translation problems.

Court Official and Audience Attendance. The National Co-Prosecutor for this week's proceeding was Mr. Seng Bunkheang, replacing Mr. Tan Sen Narong from last week.

There were fewer people in the public gallery on Monday than during previous weeks, with approximately 30 people from the Cambodian-Cham community, the Chraing Chames commune, and the Rusey Keo district, Phnom Penh attended the morning session. While the funding for their participation is unknown, a Cambodian-Cham audience member stated that the commune authority brought them to attend the hearing. On Tuesday, the attendance remained low, but there were 54 people from Reosey Keo District, Phnom Penh, as well as 35 from the Ministry of Information, 2 from the United States Embassy and 30 from NGOs. Wednesday morning's gallery had more than 50 people from Phnom Penh, organized by the Court's public affairs section. On Thursday, there were approximately 100 people from the Reosey Keo district, Phnom Penh, supported by the local authority, and another 20 people from another province supported by DC-Cam.

Technical Problems. There have been an increasing number of interpretation devices malfunctioning in the public gallery, causing the audience to seek replacements during the course of the proceedings. This issue may be resolved with the Trial Management Section testing the devices and halting the distribution of the impaired ones.

Time Management^{xiii}

The Chamber made a vast improvement on its average number of hours in session this week from the last, increasing the average to 4 hours and 45 minutes. This is commendable.

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HRS IN SESSION
MON 25/05/09	09:14AM	10:45AM- 11:12AM	12:12AM - 1:45PM	3:00PM - 3:23PM	4:30PM	4 HRS 53 MIN
TUES 26/05/09	09:15AM	10:55 - 11:15 AM	11:40AM - 1:35PM	3:15PM - 3:50 PM	4:20PM	4 HRS 15 MIN
WED 27/05/09	09:10AM	10:50 - 11:10AM	12:10 - 1:35PM	3:05PM- 3:25PM	4:20PM	5 HRS 5 MIN
THURS 21/05/09	9:10AM	10:47 - 11:30AM	12:15- 13:50PM	2:55 - 3:20PM	4:43PM	4 HRS 45 MIN
AVERAGE NO. OF HOURS IN SESSION:					4 HOURS, 45 MINS	
TOTAL NO. OF HOURS THIS WEEK:					18 HRS, 58 MINS	
TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL:					98 HOURS AND 41 MINS OVER 23 TRIAL DAYS OVER 6 WEEKS	

ⁱDr. Etcheson in response to Defense Counsel François Roux’s question as to what would happen to Duch if he disregarded his superiors’ orders.

ⁱⁱFrançois Roux’s sentence when concluding his questioning of Dr. Etcheson.

ⁱⁱⁱAs previously explained by the Chamber and noted in last week’s report, Mr Chanda had been previously scheduled to testify on these dates and had planned to travel to Cambodia from the United States in order to do so. As a result, the Chamber ordered a break in the testimony of Dr Craig Etcheson in order to hear this witness.

^{iv}The expert noted that Vietnam placed some military units in Cambodia in the early 1970s (as part of its strategy during the Vietnam War) which assisted the Khmer Rouge in their campaign against Lon Nol. Vietnam withdrew troops in late 1973 / early 1974.

^vAccording to Chanda, Cambodia launched an attack on the Vietnamese islands for Phu Quoc and Pulau Panjang in 1975. Vietnam subsequently reclaimed the islands as well as Pulau Wai island, which formed part of Cambodian territory. The island was later return to Cambodia in August 1975.

^{vi}Article 15 of the CAT states: Each State Party shall ensure that any statement 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.

^{vii}It should be noted that last week the Chamber deemed it unnecessary for the Prosecution to put evidence before the Chamber that formed the annexes of Etcheson's report because "the Defense does not dispute the witness' expertise and does not contest his report". It seems that, short of such an express agreement in each case, it is necessary to test the reliability of sources. If this is the approach the Chamber is taking, it seems likely that questions asked in this vein will continue to be time-consuming and may come to dominate proceedings when expert witness testimony is being heard.

^{viii}International Defense Counsel François Roux was later able to establish that Sou Mett is still alive and active in politics after the fall of Democratic Kampuchea. He also was involved in the negotiations of the 1991 Paris Agreement, officially ending the civil war in Cambodia.

^{ix} During the Defense's initial objection, François Roux stated that the court would be creating new law, by allowing a witness who was employed by the prosecution to serve as an expert witness. In reply to this, the Prosecution quoted ICTY's Jurisprudence, *Prosecutor v Brdjanin*, referring to the proposition that, the fact that a witness is paid by a Party should not be considered as impairing her or his credibility. He also quoted ICTR's *Prosecutor v Muhimana*, which is a precedent for the fact that investigators are allowed to testify; any credibility issues should be addressed during questioning or contested by the opposing Party by bringing their own expert. Roux responded however, that Mr. Etcheson was an expert who was working at the Co Prosecutor's office as Mr. Bates' colleague, which was different from investigators or experts paid to testify by Parties, which was why he doubted Mr. Etcheson's impartiality when he addressed documents he became aware of after he began working for the Co-Prosecutor's Office.

^xFor example, on Wednesday, after two attempts to pose a question to the Accused, Judge Lavergne noted that the Accused was not answering the question. However, this was only after Duch had delivered two long and convoluted answers.

^{xi} For example on Monday morning, Judge Cartwright mentioned a telegram that was only available in English and Khmer.

^{xii} The Defense raised the discrepancies, which were found in the French translation. Mr. Bates acknowledged the discrepancies, which he had identified also in the English translation, and called upon the Chamber to use the original documents as the authoritative version and take into account the translation discrepancies during deliberation. As well as this, The Khmer translation of Etcheson's report was found inconsistent with the original English version. At one point, the difference between Khmer and English version was significant for the question being posed, and the Chamber spent nearly 10 minutes clarifying the issue. As Etcheson commented, this is just "yet another one of the many adventures in trying to work in three different languages."

^{xiii} On Tuesday, the morning session was adjourned 30 minutes early because expert Nayan Chanda's questioning finished before schedule. The break during the afternoon session of the same day was also extended to 45 minutes because the Chamber was deliberating on evidence to be used during Dr. Etcheson's testimony (see Legal and Procedural section of this report).