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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

Case File N° 001/18-07-2007-ECCC/TC

16 January 2009

Trial Management Meeting

CLOSED SESSION

Before the Judges:

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

For the Trial Chamber:

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

For the Civil Parties:

YUNG Phanit
HONG Kimsuon
KONG Pisey
TY Srinna
MOCH Sovannary
KIM Mengkhy
Silke STUDZINSKY
Martine JACQUIN
Alain WERNER

For Court Management Section:

SANN Rada

For the Office of the Co-Prosecutors:

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Jurgen Assmann
PAK Chanlino
SAMBATH Pich

For the Accused Person KAING GUEK EAV

KAR Savuth
François ROUX

PROCEEDINGS

(Judges enter the courtroom)

MR. PRESIDENT:

Good morning lady and gentlemen who are present in this meeting today, now we will commence our proceeding according to the planned agenda for today. The agenda for today is on the management of the hearing with the Court Management Section, and then we have sub-items of the agenda. First, it's about the hearing regulations. According to this item, now I would like to announce the hearing regulations that needs to be implemented during the hearing, and a copy of the regulations will be displayed in the Court, in the public gallery.

And the contents of the hearing for the trial hearing is as follows: Internal regulations for the hearing days. In order to ensure the public order, security and effective functioning during the hearings the President of the Trial Chamber has established the internal regulations governing the courtroom on hearing days as follows.

One, all persons who wish to attend a hearing shall be present in the courtroom of the Extraordinary Chambers in the Courts of Cambodia at least before 8.30 am for morning session and before 1.30 pm for afternoon session. Two, participants shall always maintain dignity and proper behaviour in the courtroom. Three, all cameras, camcorders, tape recorders and loudspeakers are prohibited in the courtroom except otherwise approved by the President of the Trial Chamber.

Four, all persons are prohibited from smoking, bring food and drink inside the courtroom.

[9.02.34]

Five, all weapons are prohibited in the courtroom except those brought by competent security guards. Six, the use of cell phones is strictly prohibited. These prohibitions also include phone camera and audio recording. Seven, all persons are prohibited from changing seats or walking

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1 freely inside the courtroom. Eight, all persons are prohibited from clapping, cheering, shouting or
2 making loud noise that might disrupt the hearing. Nine, walking around disorderly during a hearing
3 is also prohibited; permission must be granted by a security guard before entering or exiting the
4 courtroom.

5
6 Ten, children under 16 years of age are prohibited from entering the courtroom. Those from 16 to
7 18 could enter the courtroom if they are accompanied by their father or mother or legal guardian,
8 except those who attend the hearing as civil parties or witnesses. Eleven, the President of the
9 Trial Chamber shall take preventative measures ordering action against any person who breach
10 these internal regulations pursuant to the Internal Rules of the Extraordinary Chamber in the Courts
11 of Cambodia, and the applicable laws of the Kingdom of Cambodia.

12 [9.04.14]

13 These are the regulations to govern the hearing to make it orderly during the hearing days. The next
14 item on the agenda is the transcript and the audio recording, and this agenda is proposed by the
15 Co-Prosecutors. Regarding this item on the agenda the Chamber would like to invite the senior
16 officers of the Court Management Section to make a brief presentation and the update by the CMS
17 on the transcript and audio recording of the proceedings as well as the redactions of confidential
18 information, and the time allowed for this short presentation is limited to 20 minutes. Please take
19 your seat (*sic*).

20 MR. ABDULHAK:

21 Mr. President. I am Tarik Abdulhak, I am a Senior Court Management Officer in the Court
22 Management Section and together with His Excellency Mr. Tony Krahn I will make a brief
23 presentation on the audiovisual and transcript capabilities of the courtrooms, and of course we
24 remain available for any questions and further suggestions. Judges are of course familiar with the
25 courtroom set up that we have, and a number of counsel will have used similar set-ups in other

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1 courts, so we'll keep the presentation brief. But of course, as I said, we'll answer any further
2 questions.

3
4 Essentially, both courtrooms at the ECCC are equipped with a digital audiovisual system which
5 consists of, on the video side, five cameras in a courtroom, which you can see, and obviously the
6 audio -- simultaneous interpretation and conferencing system on the audio side. Dealing with the
7 video system, the cameras are operated from an audiovisual booth which is located behind me. The
8 recording occurs as the proceedings unfold, and the recording is essentially is that which we see on
9 the screens.

10
11 At any one time the Court Management Section records only one "feed" as we call it, that being the
12 footage that you can see on your screens. The cameras are remotely operated from the audiovisual
13 booth, and they can pretty much capture any part of the courtroom. In due course we will submit to
14 the Chamber audiovisual directing guidelines which deal with, among other things, rules for which
15 parts of the court room are filmed at a particular time. But just very very briefly, those guidelines
16 would reflect on other similar courts and tribunals and they focus on producing an objective record of
17 the proceedings, and that means usually that the cameras will be recording the person that is
18 speaking at any one time.

19 [9.07.47]

20 Staying with the video system, in addition to the cameras we have what we call an evidence
21 presentation system, and that consists of a couple of different components, one component being
22 what we call presentation PCs or presentation computers. They are located throughout the
23 courtroom and they allow any one of the parties to present to the Chamber and the participants any
24 digital evidence, meaning any, for example Word files, or PowerPoint presentations or audio
25 recordings or video recordings, essentially anything that you can play on a normal computer. That

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1 of course is usually subject to the Chamber's instruction that such evidence can be presented, but
2 normally a party is able to present the evidence from its bench, from its position in the courtroom,
3 and that digital evidence is then viewable on the screens and also in the public gallery. So that is
4 one aspect of the evidence presentation system.

5
6 The other aspect of it is a device called a document camera or sometimes referred to as an "Elmo"
7 and it's a white device located in the witness box, and as Judges are aware this device is used to
8 present any physical objects which, again, are shown on the monitors. Of course the presentation of
9 any such material on the monitors means it has also been recorded on the audiovisual record of the
10 proceedings. The courtrooms are equipped, obviously, with a simultaneous interpretation system,
11 and proceedings can take place in both courtrooms in the three official languages of the Court. As
12 everyone I think is aware we have interpretation booths in the gallery. The interpreters are able to
13 see the proceedings also with the use of the monitors, and they can also see the evidence that is
14 shown to the Judges.

15 [9.10.05]

16 One other aspect of the audiovisual system is video conferencing capability and I think counsel
17 referred to potentially the need for such a facility during this case. The Court essentially has a video
18 conferencing system that can virtually link up with any location both in Cambodia and abroad. The
19 use of such systems is quite technical and technically demanding, so our only request to the
20 participants is to give us as much notice when such a facility is required. Within Cambodia it
21 requires the use of a portable system, which means us servicing both the remote location, the
22 location from which persons are participating in the proceedings, and obviously the courtroom.

23
24 For international video conferencing we can work either with UN institutions which would have a
25 compatible video conferencing system or with various domestic national authorities in various

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1 countries, and obviously that process requires some preparation but it is certainly available.
2 Moving on to the transcripts, the Internal Rules of course now provide in Rule 97(2) for a full
3 transcript of the trial, and we're putting in place systems, procedures and resources for the
4 transcripts to be provided, and without going into too much technical detail, essentially we hope to
5 provide a draft transcript -- that being a verbatim recording of transcription of anything said in the
6 courtroom during any session -- within 24 hours of the completion of the session. That time may
7 vary from time to time, we may be able to do it in a shorter period of time, and certainly for urgent
8 requests we can do it during the course of a day perhaps for a portion of the transcript. But
9 generally a 24 hour turn around is what we are hoping for. A transcript will be provided in the three
10 working languages of the Court. We propose to provide the draft transcripts to the Chamber, and if
11 the Chamber agrees, obviously, to the parties and then leave a window of time within which
12 corrections and redactions can be proposed.

13 [9.12.40]

14 Which leads me onto the next topic: redactions of the record. Obviously Judges are familiar with the
15 way redactions are conducted but essentially, for the benefit of the other participants, because we
16 are not conducting live proceedings, in terms of a live broadcast through the external media,
17 redactions will occur after the conclusion of a hearing, and they are require an order from the
18 Chamber instructing the audiovisual unit to essentially delete from a public copy of the recording any
19 portions which may be either be containing confidential material stated during a public session or
20 any closed sessions that may occur during proceedings.

21
22 That order, and we will work with the Chamber in relation to technical details, but the order will need
23 to contain sufficient detail for the technicians to be able to redact the correct portion of the record,
24 and it will apply equally to the audiovisual recordings and to the transcripts, and only upon redaction
25 of these materials will we be issuing them to the public. We are putting in place systems to ensure

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1 that that redaction can take place in a very short period of time, usually within the same day when
2 the order is given. Obviously we maintain a full copy of the recording which would be an internal
3 copy available to the Court and to the parties if the Court so instructs.

4
5 Just to touch on an associated item while discussing Court Management support in the courtroom,
6 the Court Management Section is represented by court officers during procedures in the courtroom,
7 there is always a court officer present, and he or she will be located at the far left end of the bench,
8 and will be available to take any requests or instructions in relation to the transcript, the audiovisual
9 materials, and also very importantly they will coordinate, with the Witness and Expert Support Unit
10 the implementation of any witness protection measures. I believe most participants are familiar with
11 the witness protection measures in the courtroom but I can explain them briefly if that's useful, and
12 apart from that I didn't propose to make further comments. I remain available for any questions.

13 Thank you.

14 [9.15.48]

15 MR. PRESIDENT:

16 Thank you Mr. Tarik for your presentation. Next I will give the floor to the parties who are involved.
17 First I would like to give the floor to the lawyers for the civil parties, see if they have any questions,
18 or remarks to be made regarding our item on the agenda or on the presentation by Mr. Tarik.

19 Please.

20 MS. STUDZINSKY:

21 Your Honour, I have only one question to the Chamber. Do you provide the parties with a transcript
22 on request or automatically? Because the Pre-Trial Chamber, for example, only handed it over on
23 request. One question to Tarik, is it planned to provide us with the transcripts during the
24 proceedings? Thank you.

25

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1 MR. PRESIDENT:

2 Thank you Ms. lawyer. Please Mr. Tarik respond to the question of the lawyer, thank you.

3 Regarding the part for the Chamber, we will discuss during the trial session.

4 MR. ABDULHAK:

5 Thank you Mr. President. Yes, we propose to provide the transcripts to all the participants, and in
6 fact they will be made available through the document management system that is in use at the
7 ECCC. So normally they will be uploaded onto a separate folder to which you will have access. The
8 issue of redacted portions and how they are made available obviously is under the Chamber's
9 discretion, but this is a new system that we are putting into place and also the rules have been
10 amended to require an automatic provision of transcripts as opposed to "on request" so yes, the
11 transcript will be produced by default.

12 MR. PRESIDENT:

13 Thank you Mr. Tarik, and Mr. Jean-Marc who wish to make some explanation regarding the issue,
14 please.

15 [9.18.52]

16 JUDGE LAVERGNE:

17 I am perhaps not going to cover exactly the question by Ms. Studzinsky, but I would perhaps like to
18 give you just a reminder regarding the content of debates. We shall be having three types of
19 documents which you will wish to refer to. First, the daily hearings reports, the written records,
20 second are the written transcripts, and the third are the video recordings. Under Article 97(4), any
21 request for a correction in transcripts must be submitted in writing to the preliminary Chamber which
22 will make a decision within three days after the filing of the request. This procedure may seem
23 somewhat cumbersome but that is the procedure that we now have under the present Internal
24 Rules, that was the reminder that I wanted offer you. Thank you.

25

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1 MR. PRESIDENT:

2 Thank you Mr. Jean Marc for his explanation on this issue. Next any lawyers for the civil parties who
3 wish to ask or make remarks regarding the presentation by the Court Management Section? If
4 nobody has any question, I would like to give the floor to the Co-Prosecutors, if they have any
5 questions or wish to make remarks on the presentation by the Court Management Section by the
6 senior officer. Please, Mr. Petit.

7 MR. PETIT:

8 Good Morning Mr. President, Your Honours. Yes, I have a few questions, but first I will start with a
9 request to the Chamber to make sure that I understood correctly. Judge Lavergne, if I understood
10 correctly, the trial record that will be kept by the *greffier*, I assume; will be the evidence of the
11 content of the hearings. A correction to that record can be sought based on any basis, the most
12 likely would be the transcript or failing that the audiovisual record and, the procedure under 97 must
13 then be followed. Am I correct in that understanding?

14 MR. PRESIDENT:

15 Thank you. Mr. Jean Marc would you please respond?

16 [9.21.45]

17 JUDGE LAVERGNE:

18 Let me clarify this. The written records, by the *greffiers* during the audience, these written records
19 are succinct, they are not the full transcript of statements by parties. These full statements will be
20 captured in the transcripts, so it's a different category. Rule 97 says that the daily written records
21 drafted by the *greffier* are deemed authentic but at any time it is possible to refer to the transcript
22 and to audiovisual recordings to supplement or correct the content of these written records. I think
23 the text is self evident and self explanatory. Thank you.

24 MR. PETIT:

25 If I understood correctly this morning presentations and intervention from the Trial Chamber, will the

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1 parties be as a rule provided with the transcripts as soon as they are ready? I'm sorry I will repeat. I
2 wanted to make sure that I understood correctly. The transcripts that will be prepared will be
3 available to the parties as soon as they are ready to be uploaded and put on the shared drive, is that
4 correct?

5 JUDGE LAVERGNE:

6 First and foremost we have to be sure technically speaking this is possible, this is one first aspect,
7 and then we need to discuss amongst ourselves and we shall provide you with an answer as soon
8 as possible on that particular issue.

9 MR. PETIT:

10 I will now address maybe a couple of questions to the CMS section. We've heard yesterday, and if I
11 understood again correctly, that every piece of evidence that will be brought to the attention of the
12 Court by a party -- of course, provided that the Chamber agrees, will be put into a new case file or
13 part of the case file, rather -- E3, if I understood correctly. And will therefore receive I assume, a
14 new quotation number, like E3-001 et cetera, et cetera. If the Chamber wishes to proceed with
15 evidentiary documents through the system, the scanned version of the documents instead of
16 distributing paper copies to everyone, is there a possibility that, to ensure that whatever everybody is
17 looking at the screen and debating and being ruled eventually by the Chamber, that document is
18 properly identified by the Court's record people?

19 [9.25.14]

20 Let me make it even clearer. Let's say a party brings up a document on the screen, a confession.
21 We discuss the confession. The Trial Chamber says yes, page 1 2, and 3 do seem to be very
22 relevant, they will now be known as E3-001. Is there a procedure? I am familiar with it, but I want to
23 make sure we have it, that this particular document or the parts of those documents, the ruling of the
24 Chamber, will then be properly tagged by CMS. That's my first question.

25

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1 Now, Tarik offered to do so, and I think it will be very useful for a lot of the parties here to have a bit
2 of an illustration of what witness protective measures, audiovisual witness protective measures are
3 available. In other words, what will the audience see or hear should the Chamber wish to implement
4 any witness protection measures during the audience for a witness. I think it would be useful for the
5 parties to understand what is available. Thirdly, on a very technical note, I would think that the
6 transcripts provided, at least the draft transcripts provided, it would be very much useful if these
7 were in a Word format as they would be then searchable by terms, because if they are provided in a
8 PDF format, they will be very difficult to search. Perhaps the last version, the finalized version could
9 be in PDF so it can be not altered, but -- sorry for the technicality here so early in the morning.

10 MR. PRESIDENT:

11 Mr. Tarik, please respond to the questions and comments by the Co-Prosecutor regarding this issue.
12 The Court Management Section, Tarik.

13 MR. ABDULHAK:

14 Perhaps with your permission I can address the short and more technical questions first and then
15 discuss the witness protection capabilities. So starting with the last question, transcripts will indeed
16 be provided in Word format and thank you for raising that question because I didn't explain it in my
17 presentation. They will be available in formats which parties will be able to copy from and use in
18 other ways and of course, the official version, the final version once uploaded onto the system is
19 locked so that it can't be changed. But certainly for use by the parties there will be a version that
20 can be edited and copied.

21 [9.28.15]

22 And on the issue of reference to documents in Court, I think that's another very useful technical point
23 that I may not have explained in any detail. Essentially, we have set up a system in discussions with
24 the *greffier* of the Trial Chamber, which will consist of a number of components for documents
25 referred to in Court. There is of course the Practice Direction on filing which provides guidance on

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1 the numbering of new documents, then there is the technical aspect of what happens with
2 documents which are currently in the Investigating Judges' portion of the file and are then referred to
3 or submitted and accepted by the Trial Chamber. And on that technical aspect we are considering a
4 couple of different options in terms of the physical document -- whether it is moved from the
5 Investigating Judges folder into the Trial Chamber folder and at the same time a surrogate or
6 replacement sheet is left in the investigating portion so that the reference, the document is not lost.
7 Another possibility is to create a copy, as the document is moved to the Trial Chamber portion that
8 becomes the original and then a copy still remains in the Investigating Judges folder.

9
10 Of course another technical aspect of this is that these documents will now have two reference
11 numbers, if they are documents that originate from the case file. The first number is the existing
12 subcategory reference from the Investigating Judges binder and then a new, as the Co-Prosecutor
13 mentioned, a new E3 number which will be allocated by the Trial Chamber. Those documents will
14 be searchable in the system under either of those two categories, so they will not be lost as they
15 progress through the case. And lastly there is the aspect of how is the actual reference to the
16 document recorded, and this is what I think the Co-Prosecutor was referring to, and there as well,
17 the way in which we envisage this operating is that the daily record that Judge Lavergne referred to
18 will make reference to a document which was presented and commented on by the Chamber.
19 Obviously, that reference will also be in the transcript and so hopefully that will provide a vehicle for
20 the references to be found when they're needed.

21 [9.30.55]

22 And now moving on to witness protection capabilities in the Court, essentially our witness protection
23 system reflects the witness protection system of other similar courts and tribunals that exists in the
24 world. We are able to have the identity of witnesses protected in a number of different ways.
25 Starting with what occurs in the courtroom, and that would be the most common, I think, witness

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1 protection scenario. We can have a protected witness, a witness whose identity is protected from
2 the public, testify from within the courtroom, from the witness box. They would be protected from the
3 public in two ways.

4
5 There will be a physical barrier or a screen placed behind the witness which obviously shields the
6 view from the public gallery, but the witness remains in full view of the participants in the courtroom.
7 At the same time, the voice and face of the witness as recorded on the system can be distorted or
8 changed in the public gallery so that whilst the Judges and participants in the courtroom can clearly
9 both see and hear the witness, the public in the gallery will hear a distorted sound of the witness'
10 voice and the screens will show a distorted image of the witness when the witness is speaking, and
11 this way, obviously combined with the use of pseudonyms during such proceedings, we protect the
12 identity of the witness.

13
14 The next level of protection would be to have the witness testify remotely, and that can occur in two
15 ways. One is to have the witness testify from within the Court premises but not from within the
16 courtroom itself, and there again we can provide the same type of facility whereby the Chamber or
17 the participants in the Court can see the witness but again the public will be given a distorted image
18 and sound. And that capability exists both whether the witness is somewhere in the Court premises
19 or participating remotely as I mentioned earlier, either from within Cambodia or even potentially from
20 abroad.

21 [9.33.32]

22 So that's the range of protective measures that we have. Obviously witnesses can also testify
23 remotely and sometimes that's seen as a measure of protection. Not necessarily protecting their
24 identity, but they can testify remotely, with their identity provided to the Court, and in our experience
25 that's been often the case with vulnerable witnesses, witnesses who may not necessarily be under a

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1 threat. We can conduct a demonstration, if that would be useful, after the break. I think there is a
2 possibility that we may finish earlier today, as the President was eluding yesterday. If that's useful
3 we can conduct a brief presentation or demonstration after one of the breaks, and show how this
4 facility can operate with the witness in the courtroom. Otherwise we can also do it with any one or
5 more of the parties separately or with the Chamber as well. Thank you.

6 MR. PRESIDENT:

7 Thank you Mr. Tarik for his explanation. Any other questions, the Co-Prosecutors? Please Mrs.
8 Chea Leng?

9 CHEA LANG:

10 Thank you the President. Because the question is related to the Trial Chamber as well as to the
11 Court Management section, I have a question that when the trial is having written records, and the
12 transcript, I think these two records -- which one has more value than the other one? This is the first
13 question. The second question is, if the written records are contradictory to the transcript, what is the
14 procedure to decide on the discrepancy between these two records? Thank you.

15 MR. PRESIDENT:

16 Mr. Jean Marc for your explanation, please.

17 [9.35.55]

18 JUDGE LAVERGNE:

19 I don't have Article 97 with me, but from what I remember, Rule 97 says clearly that the written
20 records, the daily records are the authoritative one unless otherwise proven. And the proof in this
21 instance would be the transcription, which can be supplemented by seeing again the video recording
22 of the hearing. There is a mechanism which is foreseen for the corrections to be brought to the
23 transcripts. I think that Rule 97(4) provides that there must be a request in writing that the Trial
24 Chamber would decide, determine the application of the request in a deadline of three working days.
25 Thank you.

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1 MR. PRESIDENT:

2 Thank you the Judge. Next I would like to invite the defence lawyers of the accused if they have any
3 questions or remarks to be made about the presentation by the senior officer of the Court
4 Management Section? Please rise.

5 MR. ROUX:

6 Thank you, Your Honour, good morning. Since CMS is here present here, I would like to ask again
7 the question that I asked yesterday. Is it foreseen that we may have more than one screen? And
8 what kind of connection will we have for computers? On my table right now I don't see any
9 possibility to connect a computer so that's my concern right now. Thank you.

10 MR. PRESIDENT:

11 Please Mr. Tarik.

12 MR. ABDULHAK:

13 Mr. President, and thank you for that question. Yes, indeed, we will provide additional monitors and
14 perhaps we can discuss this also in follow up to the hearing with individual parties and understand
15 exactly what technical requirements there are. There is certainly capability to provide access to
16 computers for any participant, and those computers can also be linked to the Court's network so that
17 you're able to access the case file from within the courtroom and we remain at your disposal after
18 the hearing. Thank you.

19 [9.38.58]

20 MR. PRESIDENT:

21 Mr. Jean Marc please.

22 JUDGE LAVERGNE:

23 Yes, one comment for the French speaking participants. If you want to have a French keyboard,
24 you better ask for it in advance.

25

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1 MR. PRESIDENT:

2 Please the lawyer for the Civil Parties

3 MS. JACQUIN:

4 Thank you, Your Honour. Before we go to another item I would like to ask a question about the
5 possibility for the hearing of civil parties. Will the civil parties also be protected like the witnesses
6 can be protected, and will there be also a possibility of having remote statements for the civil
7 parties? Thank you.

8 MR. PRESIDENT:

9 Mr. Jean Marc please.

10 JUDGE LAVERGNE:

11 The Internal Rules on this issue is clear. Civil parties can also benefit, after an assessment of the
12 risk they incur, of protection measures similar to those that are granted to witnesses.

13 MS. JACQUIN:

14 May I insist then of then confirmation of the following: can we have remote statements by civil
15 parties?

16 JUDGE LAVERGNE:

17 I think that this will depend first of the assessment that will be made of the risk incurred by the civil
18 party concerned and I think otherwise that there is no limitation otherwise to the scope of protection
19 measures that can be implemented.

20 [9.41.21]

21 MR. PRESIDENT:

22 Regarding the presentation by Mr. Tarik, I have one impression. You raised the issue that an
23 attempt to show the screen to protect the identity of the witness, and during the recesses you would
24 like to make that presentation, and if any participants or any parties who wish to attend such
25 presentation can do so if they all agree, and I would like the Court Management Section to make

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1 such a presentation, if you have a presentation on such a protection for the protected witness.

2 The lawyer for the civil parties? Please Mr. Hong Kimsoun.

3 HONG KIMSOUN:

4 My respect to the President. I am the lawyer representing the civil parties, I would like to see what
5 has been raised by the Court Management system. Thank you.

6 MR. PRESIDENT:

7 The Trial Chamber would like to see this also, because we, I personally noticed these protective
8 measures for witnesses during the break, so I think it would be best if Mr. Tarik actually planned to
9 make sure this arrangement is made so that the parties can also experience these arrangements.

10 Thank you.

11

12 Next we move to practical issues concerning the interpretation and translation services. It will be
13 presented by the coordinator of the ITP which is followed by discussion, and the translation and
14 interpretation issues are prioritized in all matters so I would like now to give the floor to the senior
15 coordinator of the ITP to give the presentation regarding the updates of the translation and
16 interpretation issues, and other matters related to the ITP, and you are allowed no more than 20
17 minutes for such a brief presentation. The Trial Chamber notes that through the written
18 communication in December 2008, that the accused's counsel would like to also ask some
19 questions regarding the translation of the documents to be used in the trial. So I would like now to
20 invite the coordinator of the ITP to present her presentation. The floor is yours.

21 [9.45.11]

22 MS. KEATING:

23 Good morning Mr. President, good morning Your Honours. My name is Michelle Keating, and I'm
24 the senior coordinator for the Interpretation and Translation Pool. I am here with my colleague Mr.
25 Sophy Kong who is the head of the Interpretation and Translation Pool. I am going to give a brief

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1 presentation that is going to focus as requested on the practical issues, and the staff constraints
2 which surround the provision of the interpretation and translation services, and more specifically in
3 connection with the trial proceedings. We are also prepared to answer any questions more
4 specifically with regard the status of translations as well.

5
6 The first part of my presentation will focus on interpretation and then I will hand the floor over to my
7 colleague Mr. Kong who will address more specifically the translation component, and then we are
8 both available, both to the Trial Chamber and to the parties, to answer questions or to provide
9 clarification if anything remains unclear.

10
11 If I begin with practical issues, and with respect to interpretation here in this courtroom, interpretation
12 will be provided simultaneously, into and from three languages: English, French and Khmer. If
13 everyone looks to the back of the public gallery you will see three booths in which the interpreters
14 are going to be sitting. If you look at the booths now you will see that there's only two interpreters in
15 one booth and two interpreters in the other.

16 [9.46.53]

17 And this is an illustration of the shortage of staff that we have at the present time here at the Court.
18 In order to be able to provide services to a court room of this type normally we would need six
19 interpreters to provide the service. We are in the process of hiring additional interpreters, we have
20 additional staff who are slated to arrival, one for next week, two for the month of February, and for
21 our national component, my colleague Mr. Kong is going to be focusing on a recruitment drive in
22 February to hire additional interpreters. We also only have four interpreters working in the booth
23 today because we have two events which are taking place here at the court. We have the Rules
24 and Procedures Committee which is also meeting and of course we also of course need to provide
25 interpretation services for that.

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1 It is clear to the ITP that when the trial begins the first priority of the ITP from an interpretation
2 perspective will be providing interpretation for Court sessions and it is very possible that
3 interpretation requests for other events will have to be scheduled at a different time or at different
4 weeks, because at the present time at least, we are not able to provide two full sets of interpreters.
5 At the request of the Trial Chamber we also have one Khmer/English interpreter that is sitting in the
6 courtroom. They are sitting right over there, he is just standing up. This interpreter is available for
7 the bench for the Judges if they wish to have a quick consultation in English, interpretation between
8 English and Khmer, I'm sorry not French and Khmer at this stage, for quick consultations during
9 Court sessions. Obviously if the Trial Chamber wishes to withdraw and deliberate further then they
10 will withdraw to another room and we would send one of the interpreters from the booth to come
11 down and provide that level of service, including in French if it is required in the deliberation room
12 behind.

13 [9.49.22]

14 I would like to mention as well that only interpreters are allowed to sit in the booth that you see up
15 there. So there will be no visitors, there will be no additional persons allowed, the only persons are
16 the interpreters or persons delivering documents for the interpreters to deal with. On another
17 practical issue, the interpreters, I am sure you have noticed, they identify who the speaker is when
18 there is a change of speakers that is not obvious. That is, if the same interpreter, if we change for
19 example from the President speaking in Khmer to Madame Co-Prosecutor speaking in Khmer, the
20 interpreter speaking in English will identify that there has been a change of speaker, and this is for
21 the ease of participants but also more importantly for the transcript to make sure that the spoken
22 words are attributed to the right person.

23
24 I don't know if you have noticed, but interpretation is always longer than the original, so someone will
25 stop speaking and yet the interpreters will continue to speak for a few moments afterwards. This is

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1 very important because it means that when there is a rapid interchange of speakers these speakers
2 must be disciplined and observe and mark a brief pause to a certain extent to allow the interpreters
3 to catch up. As I've mentioned, interpretation English/French/Khmer, there is one detail that needs to
4 be explained further, in that interpretation from English into Khmer is provided directly. From Khmer
5 into English is provided directly. However when interpretation is provided from French into Khmer,
6 that is for example when Judge Lavergne speaks, or when Mr. Roux speaks, what happens is that it
7 goes from French into English and then English into Khmer. And so the issue of marking a pause
8 between speakers is particularly important.

9

10 You should know this is also the case when we work from Khmer into French, so that when the
11 Honourable President of the Trial Chamber speaks in Khmer, the interpretation goes into English
12 first and then into French, which means that Mr. Roux is in a position where he has to wait almost 30
13 seconds in certain cases before he has heard the full message, before he is able to respond to
14 comments that have been made in Khmer, and this is something that all the participants must
15 remain aware of. The interpreters will mention it, if this is an issue. I am sure that the Court officers
16 may on occasion mention it as well, or perhaps the President of the Trial Chamber may on occasion
17 ask participants on how to deal with that.

18 [9.52.28]

19 We now come to one of my particular sins, which is speed. I know that when I first started speaking,
20 I spoke very fast. It is a natural tendency of most speakers when they first start to start speaking
21 very fast and then we realize oh we are speaking fast we must slow down, so I know that I must
22 mention it. We will remind you, it is very possible that you will see little laminated plastic cards
23 appear on your microphone that will say "please speak slowly for the interpreters" and this is going
24 to be something that we will continue to work on.

25

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1 It's important to know that if two people speak at the same time, if they choose to interrupt or to
2 object, the interpreters will turn off their microphones and will not interpret, because interpreters
3 cannot interpret two people speaking at the same time. We can do a lot of things but not that
4 particular one. One of the things that interpreters do is prepare their materials, they prepare
5 speaking notes, if participants choose to provide them to do so. Goering has said very famously that
6 it is more important to have a good interpreter than a good defence counsel, and I think that is
7 because he understood how important it is, because the Judges hear the interpreter's voice in this
8 case, and information is being relayed through the interpreters.

9
10 So we encourage people to provide us with materials and speaking notes -- confidentially, the
11 materials can be handed over in hard copy, we are happy to return the hard copy directly to the
12 person if you wish. If you wish to provide us with an electronic copy that is acceptable of course, as
13 well. But the more time, obviously that we have to prepare, the better our interpretation is going to
14 be from that perspective.

15
16 I would just like to mention various participants mentioned they would like to show videos in the
17 courtroom. The interpretation pool's position is that we are prepared to interpret videos if we can
18 look at them the day before. That is if you can either provide us with a DVD or with a link so that we
19 can webstream it and view it before, otherwise our position is, if we are taken by surprise, if a video
20 is shown and we have not been given the opportunity to view it or to prepare it, we cannot commit to
21 promise to be able to interpret it right then and right there.

22 [9.55.31]

23 There's one thing I would like to mention with respect to transcripts, and more specifically transcript
24 expectation. Obviously if we have the interpretation system that we have spoken of, that I have just
25 described, it is not realistic to expect that the transcript is going to be an absolute perfect from a

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1 grammatical, spelling perspective, reflection of what was said exactly in the original. It is the best of
2 our ability. When people speak extemporaneously, that is freely, without reading materials at a
3 reasonable speed, a reasonable speed -- it is about 80 words, up to maybe 100 words per minute,
4 then we can reasonably expect the interpreters to keep up from that perspective.

5 I worked previously at the ICTR, at the ICC, and my colleagues who are court reporters say that
6 lawyers can sometimes be clocked at 220 words per minute, especially when they are reading from
7 certain materials or if they get carried away from passion. If we get up to 220 words per minute
8 obviously accuracy drops, and I think that is something that everyone needs to be aware of, which
9 basically goes back to: if you have speaking notes of if you are going to read, if you are trying to
10 cram to more materials in less time because the Judge says you only have five more minutes,
11 remember that interpretation is taking place.

12 [9.57.20]

13 As I've said, we're going to have a recruitment drive to try and increase our staff, for English/ Khmer,
14 Khmer/English interpreters, and we're also trying the elusive French/Khmer or Khmer/French
15 simultaneous interpreters, if they exist, and perhaps train them if we can. This is still a goal that we
16 have, we haven't completely set it aside yet, but it is something that we are working on. I would like
17 to give the floor to my colleague Sophy so that we can have a fair distribution between interpretation
18 and translation. I would propose perhaps that questions relating to interpretation or to interpretation
19 and transcription if the issue arises are kept until after my colleague's presentation. Thank you.

20 MR. PRESIDENT:

21 Mr. Kong Sophy the floor is yours.

22 KONG SOPHY:

23 Your Honours, I am going to present the matters concerning translation. Normally ITP provides
24 translation services based on the requests made from other sections or Chambers, and we provide
25 our translations services to all parties including the Prosecutions, the defence counsels, the civil

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1 parties, and also the Co-Investigating Judges and Trial Chamber and Pre-Trial Chamber, and we
2 also assist in the translation of the documents for the committees, including the Rules and
3 Procedures Committee, Judicial Administration Committee, and other committees of the Court,
4 including the Plenary session.

5 In principle we, the ITP unit, is assisting with the translation of all kinds of documents but only the
6 documents that the party makes such a request for translation. And our translation services is
7 complying with the deadline as requested or proposed in the requests. And if we see that we have
8 enough translators to assist the translation, or if we run out of stuff to do, or to assist the translation
9 requests, then we will sit down together with the requesters so that we can really find a solution or in
10 some cases we can even outsource the services to other NGOs or other individuals who are
11 capable of handling the tasks.

12
13 Regarding this translation, I would like to emphasise that after the OCIJ issued the order concerning
14 the translation services, our offices sent translators for these five legal counsels, one translator for
15 each team, to review the documents that are prioritized and in which language they would like the
16 documents to be translated to. And then, so far we have responses from the legal counsel, two
17 legal counsel did not accept this offer. And one of the defence counsel accepts the translator offer
18 to review the documents that they would like to request for translation.

19 [10.01.54]

20 And in compliance with the order, the ITP cooperates closely with the Office of Co-Prosecutors to
21 assist defence counsel, and we have conducted a regular meeting with these respective Chambers
22 and defence counsel to discuss the matter, especially to review the documents that are in the case
23 file to see which document is prioritized.

24
25 And these requesters or the respected Chamber needs to send these prioritized documents to the

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1 ITP for translation, and so far regarding this case file number 1 we have cooperated with the
2 defence counsel for the accused person, or the charged person Kaing Guek Eav, the defence
3 counsel Mr. Kar Savuth and Francois Roux, and they have sent us the prioritized list of documents
4 to be translated, and we have already assisted them and the deadlines have been well complied
5 with. And regarding the same case file, we also received the list from the Co-Prosecutors. We have
6 some large lists sent by Bill, and we have noticed there are 1,600 pages to be translated by mid of
7 February, the latest date. And ITP normally gives priority to all documents requested to be
8 translated in relation to case file number 1, and we already set the deadline to our translators to
9 translate all these documents before mid of February.

10
11 And regarding the documents sent in by parties with the indication to the unit that these documents
12 are prioritized then we will take these seriously. Without the term "prioritized documents" then the
13 ITP preserves our right to actually deal with these documents at a later date. And I already informed
14 the Trial Chamber already regarding the matter of translation. We submitted our report regarding
15 this translation once after two months to the Trial Chamber, and in the report itself we indicate the
16 documents that are pending the translation, and number two we classify the documents that have
17 already been translated and there are some other documents that are waiting the translation.

18
19 And if I may I would like to inform to you the information regarding the number of documents
20 regarding case file number one that needs translation. In this case file number one so far in our
21 system we received 790 pieces of document, and it constitutes to more than 14,000 pages, and 412
22 pages are prioritized documents, and we have already translated those documents, and the
23 remaining prioritized documents will be translated by mid of February.

24 [10.06.27]

25 And in other part, regarding the document in case file number 1 but are not prioritized as prioritized

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1 documents, we have 265 documents, and the rest have already been translated except for these
2 265 documents. So if you look at this report, if you look at B Section as I reported, that these
3 documents are not prioritized as yet, so if the parties see that these documents are prioritized then
4 we advise you give us this kind of notification to let us know that these documents need immediate
5 translation, and then we will act accordingly.

6
7 And as you may have been familiar that ITP is understaffed because of the shortage of budgets, and
8 what we are dealing for the time being is that we outsource these documents to outsiders to assist
9 with the translation. So we make use of the outsource mechanism, and according to the budget
10 from the UN side we have already outsourced significant numbers of documents to be translated
11 from the outsiders. And DC-CAM is one of the NGOs handling these outsource translation and also
12 the Apsara team who is helping us, and the international team also working in this outsource
13 manner, and without which the ITP would not have reached these significant achievements so far.

14 [10.08.41]

15 MR. PRESIDENT:

16 Thank you very much Ms. Michelle Keating and Mr. Kong Sophy for your presentations to the
17 members of the meeting, and we have realized the update issues concerning the translation and
18 interpretation matters and we take this into account also. So next I would like to give the floor to
19 parties to ask questions, and first and foremost this would be to the civil parties first, whether you
20 would have any questions first whether you would have any questions concerning the presentations
21 made by the senior co-ordinators of the ITP. Mr. Kong Pisey.

22 KONG PISEY:

23 Thank you Your Honour, the President of the Trial Chamber. I would like to draw your attention that
24 when we are working on the trial proceedings in this ECCC, everything has to go through translation
25 services. So, I know that no one is perfect, but if there is any mistakes in the translation, I am afraid

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1 these mistakes can affect the decision by parties involved. But I don't point the finger to ITP, I really
2 appreciate their great performance so far, but based on experience normally when I listen to the
3 Khmer translation, and then people who listen in English sometimes do not really get the full
4 message of the Khmer translation into English, for example, because I noticed this when I see that
5 the person asks or repeats the question, although they have already listened through the
6 interpreters.

7

8 So I don't know if the person failed to pay good attention to the translation or the person actually did
9 not really get the full meaning from the interpreter. And when it comes to translation, again, you said
10 you outsource this these documents to other NGOs or outsiders, and so far as I know before
11 interpreters can be admitted to render the services they have to take an oath to make sure they can
12 preserve the confidentiality of the documents, and I would like to call this into question also, whether
13 the outsource people have already sworn in like the way the ITP people have been imposed to do
14 so? Thank you.

15 [10.12.00]

16 MR. PRESIDENT:

17 Is there any other person who would like or wish to make further questions, and I think we can just
18 bring all the questions at once to the coordinator of the ITP to respond at once. And I don't expect
19 they will be able to answer all, but we can discuss later. So the floor is yours, to Silke Studzinsky.

20 MS. STUDZINSKY:

21 Thank you. I have a very technical question. Translation is now provided via a translation request
22 form which is here on the premises of the Court only available. Could it be possible to find a way to
23 deal with translation requests, either by giving remote access to this form, or handling a translation
24 request without this form, and sending the form later. Because it is really sometimes difficult for us
25 to use this form, and as I learnt from translation services, Court Management it must be submitted or

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1 to is only accepted if it submitted via this form, and to find there a reasonable solution I would like to
2 get your comments. Or maybe Court Management or maybe Tarik or I don't know who is
3 responsible for this could add something. Thank you.

4 MR. PRESIDENT:

5 Any other lawyers of the civil parties have any questions? So now I give the floor to Mr. Hong
6 Kimsoun.

7 HONG KIMSOUN:

8 Thank you the President, I would also like to thank the ITP head. The lawyers of the civil parties in
9 my team have difficulties. Now it has been a little bit better because then the translation
10 coordination has provided some assistance, the difficulty is that when -- regarding the translation of
11 the brief, the procedure of the ECCC also has some time limit we have to do some research before
12 we can write a brief from other sources, from internal sources, and then we sent the brief for
13 translation to the translation unit, into English or into the French language before we can submit to
14 the Chamber. So the translation is having difficulty for my team, because of the time limit. Because
15 the Court limits the time for us to submit our brief, for example one week or ten days.

16 [10.15.36]

17 So the translation request is not possible because they have overloaded the work or they would also
18 spend their resources for the Judges, for the simultaneous interpretation for the meeting and also for
19 the return the translation into Khmer English or Khmer French.

20

21 But this is just a request from my team, because the lawyer for the civil parties in my team lack -- a
22 total lack of resources, I wish the President to facilitate and co-ordinate with the translation unit to
23 provide us the opportunity to translate the documents for us on time. If you say you are busy, that
24 they cannot help us, like you said they engaged in thousands of pages of translation documents, for
25 us a brief could be 10 to 20 pages and we still have difficulties. So my team would like to request

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1 the translation to be done because it takes us time to make the brief before it can be submitted for
2 translation. And I wish to have the time limit improved. This is just for some occasions, not for all
3 occasions. Thank you.

4 MR. PRESIDENT:

5 Thank you, the lawyer. Now I would like to invite Ms. Michelle Keating and Mr. Kong Sophy to
6 respond to the questions raised regarding your presentation.

7 MS. KEATING:

8 Mr. President, Your Honours, what I would first like to clarify is that I want to make a distinction
9 between interpretation on one hand and translation on one hand, to make sure that we are talking
10 about the same thing. Interpretation is when someone is speaking, that is: that is what my
11 colleagues are doing up here, that is they are listening to what I have said and then they are relaying
12 it in the other language. This is also what we do when we come and facilitate in a meeting, even
13 when we don't use equipment. Translation has to do with the written word, and translation is when
14 someone reads a text, and either renders it orally or they also create a new translated document in
15 the other language. That is the first thing that I would like to say.

16 [10.18.24]

17 With respect to your first concern where sometimes questions have to be repeated and you don't
18 know if the problem is because people aren't paying attention or because the interpretation was not
19 accurate, this is a question that we ask ourselves in the booth as well, sometimes. Now that we are
20 going to have the possibility of transcripts being made available, the interpretation team is going to
21 work closely together on issues of accuracy and precision, because we will have the possibility on
22 the days when we are not working in the booth, especially if the Trial Chamber chooses not to sit
23 everyday, to go back over transcripts to improve our accuracy and to make sure that we are as
24 precise as possible.

25

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1 With respect to confidentiality and translation outsourcing, all of the contractors we have signed a
2 contract -- outsourced translations have to sign a confidentiality agreement before we can proceed
3 with the contract, that is before we can send translations out to them, and when the translation
4 agency sends the translations out to their translators, they also have to sign an undertaking of
5 confidentiality from that perspective. With respect to a remote access for translation request forms, I
6 don't know if it's possible. I can speak to IT. I know that we're in the process of trying to set up a
7 platform that would allow better remote access, especially for some of our vendors, so I can inquire
8 about your request, that especially for those -- I'm thinking of defence teams and civil party teams
9 who do not necessarily always work here, to try and come up with a system that would allow us to
10 deal with translation request forms.

11 [10.20.24]

12 Now with respect to the last point, which is the translation of briefs and time limits, what I can say is
13 that we have been working closer with the parties and with the defence teams, but also with Silke
14 and various civil parties to say if you intend to file a brief because you have been given a deadline of
15 one week, then yes, there is -- you plan for your research, you plan for your drafting, but to a certain
16 extent you must plan for the translation time as well, so what we have had people do is that they will
17 come and see us on Monday to day "we would like to file next Monday, in seven days time, a 20
18 page brief," and we would say "okay, in order to translate your 20 page brief, we will need two days."
19 And this means that people provide us with their briefs early enough to allow us the time required to
20 translate the briefs.

21
22 It's true that you must plan for translation time at the beginning. If the brief that you wish to file is
23 particularly voluminous and there is not going to be enough translation time, I can do nothing with
24 the time limits that are imposed by the Trial Chamber. As I said, we can work very closely with you
25 to give you an approximation. We think your document will take x amount of days, so that you can

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1 deal with that. If you need additional time, because there is a peak in translations, and your
2 document is very long, and it wouldn't be possible to meet the deadline, then you would have to
3 refer to the Trial Chamber, and we could provide you with a detailed explanation, from that
4 perspective, but we'd only be able to provide you with a detailed explanation if we are included at
5 the beginning of planning of filing the document.

6
7 What I mean is that if you come and see me on Friday at 2 o'clock to say "I would like 20 pages
8 translated for Monday," my answer is "no, I'm sorry, I can't help you." If you call me on Monday and
9 say "I would like file something on Monday," I will set aside special translators to be ready and
10 waiting for your document so that materials can be done. If we can, we are happy to work with the
11 parties to address these issues and to assist with planning. Thank you.

12 [10.23.02]

13 MR. PRESIDENT:

14 Thank you, Ms. Michelle for the response, in details, and to respond to all the points which have
15 been raised. Does Mr. Kong Sophy have anything else to add? If you don't I would like to give the
16 floor to the Co-Prosecutors. Do you have any remarks to be made, or any questions regarding the
17 topic that we have been discussing by the Court Management Section? Please, Mr. Petit.

18 MR. PETIT:

19 Thank you, Mr. President. I have actually a hopefully short presentation to complement the
20 presentation of ITP on the status of translation as requested by the OCP. However, that
21 presentation will probably taken about 10 minutes. So given the conduct of the hearings yesterday,
22 and the scheduling, would this be a good time to take the morning break, Mr. President, or would
23 you wish me to continue? Because I think it should be done in one go, let's say, for the sake of
24 presentation and understanding, as I will be testing the evidence presentation system through the
25 monitors.

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1 MR. PRESIDENT:

2 Please, Mr. Petit, you are allowed. Please, Mr. Petit, we have 10 minutes before our break. Please
3 make your presentation. Thank you.

4 MR. PETIT:

5 As the OCP has been the main contributor to the burden faced by the translation department, we
6 thought that it would be useful, now that we have all the parties gathered here, to know -- to have a
7 little bit more information about what we have done, and what we intend to do, and the
8 consequences on the resources that are available. Obviously, a very important caveat, this -- what I
9 am about to talk about strictly binds the OCP and reflects the OCP's position, and the documents
10 that we are going to be referring to ultimately of course will be decided upon after observations by
11 every parties by the Trial Chamber in its powers.

12
13 However, again, so that everybody have a better idea of the facts, perhaps to better weigh the
14 arguments, I would, again, be testing the system for the first time, and would call up the first slide on
15 everybody's monitor, if that is possible. Yes! We have landed.

16 [10.26.50]

17 What you have in front of you on your screens is first of all just to give you an idea of the size of the
18 documents on the case file. Of course, these are all general numbers, approximations. However, to
19 date, we estimate that there is about 2,815 documents, pieces of documentary evidence, on the
20 case file. That includes witness statements, included in those witness statements are the records of
21 interviews taken by the Investigative Judges as well as previous statements given by various
22 witnesses.

23
24 Out of those documents, we the OCP estimate that about 2,022 of those would be relevant for the
25 Trial Chamber to reach a decision, or -- should I even more differentially -- that we intend to refer to

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1 in our presentation of our case, or during the trial. So out of that 2,022, 31 per cent of those
2 documents were part of the original case file on the 18th of July 2007. 65 per cent of those came
3 into the case file after that, but on or before the Closing Order of 28 May 2008. A small number of
4 that came in after the Closing Order, we think that for the most part they are transcriptions that were
5 ordered before and filed after, and that sort of thing. But in other words, as far as the OCP's intent
6 to rely on evidence, these disclosure dates are, I would submit, a very clear indication of the OCP's
7 intention at those different dates.

8
9 If we could call the second slide -- yes! To give you a further indication, out of those 2,022
10 documents, 53 per cent of those were, at one point, reference, in other words the subject of a
11 footnote in the introductory submission, the final submission, or the Closing Order. Obviously,
12 again, this is another indication of notice that parties should have taken note from various
13 documents. At the second half of the slide, you see that out of those referenced documents, 628 of
14 those had already been included in the introductory submission, 791 of the final submission, and 1
15 per cent in the Closing Order.

16 [10.30.25]

17 Thirdly, and we get now to the nightmares of the ITP -- the third slide please. Thank you. Now, out
18 of those documents that we intend to refer to, and which will be obviously listed specifically in a Rule
19 92 filing that we intend to produce, first and second group representing 190, well, 200 documents,
20 are statements of witnesses. Generally, these are not records of interviews, but we have requested
21 translations of prior statements given by witnesses or given by individuals whose statements were
22 taken by the OCIJ. In other words, we have requested translation of statements of all the witnesses
23 or possible witnesses that are in the case file. So that you, the Chamber, will have access to all the
24 versions of the story, which we think is essential for ascertaining the truth.

25

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1 You'll see at the right side that those translation requests went out on the 25th of June and on the
2 14th of November, and request translation into either of the missing languages so that these
3 documents, these witness statements will be available in all three languages.

4 The second bulk of documents, group 3, 4 and 5, represent the majority of the documents, or the
5 requested translations. Group 3 and group 5 -- I will direct your attention to group 3 and group 5
6 first. Group 3 is, for the most part, in fact about 90 per cent of it, are open source material: media
7 reports, government reports, various open source material that we allege support the conclusion that
8 there was, at the time of the events, a state of armed conflict between the Republic of Vietnam and
9 Democratic Kampuchea.

10
11 As we were instructed, we have sought, through conversations with the defence, to minimise the
12 burden on the interpretation and translation section, and to see which priorities, or indeed if there
13 was a need for translation into French of certain documents. Obviously, those conversations do not
14 bind anyone other than, hopefully, the parties who are having them, and we have tentatively agreed
15 that those documents, those media reports, articles, that go to prove or support the conclusion of an
16 armed conflict would not necessitate, as far as the defence is concerned, a translation into French.
17 Because they are, for the most part, in original English.

18
19 Group 5 of those documents, representing 789 or thereabouts documents, are grouped under an
20 S21 document categorisation, because they mostly -- or actually they do, as far as we can ascertain,
21 emanate from the operations of S21. About 60 per cent of those documents are prisoners lists, or
22 various iteration of the intake procedures of S21: execution logs, prisoners lists, reports, that sort of
23 thing, but basically with raw information. To be loaded, those have served as the basis for the
24 compiled lists that we have produced that denotes over 12,000 deaths or prisoners and eventual
25 execution at S21. But again, this is raw data.

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1 [10.35.46]

2 The rest of those 798 documents for the most part are documents which were produced during the
3 course of the operation of S21 and which we allege bear annotations by the accused, or annotations
4 reflecting the processes of S21 and, in a larger sense, the security apparatus of the Democratic
5 Kampuchea. As far as the prisoners lists are concerned, again, we have a tentative agreement that
6 the defence does not necessitate the translations into French of those lists, again reflecting simply
7 our discussions.

8

9 Group 4, which represents 471 documents, are essentially documents that we allege will support its
10 findings as to the structure of Democratic Kampuchea at the time of the events. They are obviously
11 for the most part in original Khmer. They consist of documents that we allege emanated from
12 various levels of the hierarchy of Democratic Kampuchea, and have been requested to be
13 translated, for the most part, into two languages, subject, again, to requests by other parties for a
14 third language, depending again on future discussions.

15 [10.38.02]

16 Group 6 are pictures, videos, various items in the case file of visual imagery that we intend to refer
17 the Chamber and the parties to, but of course there are no or very little requirements in terms of
18 translations, perhaps captions to pictures and that sort of thing. Although there is translation to
19 some of the audio of some of the videos that would be necessary. Group 7 -- 2 per cent of that
20 material, is various pieces of evidence that is in the case file that we submit would be of use for the
21 findings of this Trial Chamber.

22

23 Now, as I said, this represents the OCP's position on this, and is obviously dependent on ultimately
24 the decision of the Trial Chamber. We have, as we have been invited to, and we have done on our
25 own, we are continuing and will continue to seek as much as possible to limit the burden on the

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1 interpretation and translation section. We have and we will continue, given however the logistical
2 problems of international representations of the civil parties, try to as well achieve the maximum
3 efficiency in terms of translation requests with the civil parties, all in the hope that we can reach a
4 trial date with as little as possible need for further translation of the material that is now on the case
5 file. I hope this was useful. Thank you.

6 [10.40.00]

7 MR. PRESIDENT:

8 Thank you Mr. Petit for your presentation regarding the status of the translation request and the
9 documents within the Office of the Co-Prosecutors. Because of the time limit, now the time is 10.35,
10 and I would declare a break of 15 minutes until 10 to 11, which is the time you should return back to
11 your seat to continue the proceedings. And I also would like to remind you that Mr. Tarik, the senior
12 officer of the CMS, would like to make a presentation on the protective measures for the witnesses
13 to the participants during the break. Thank you.

14 *(Court recesses from 1041H to 1057H)*

15 MR. PRESIDENT:

16 *(No interpretation)*

17 Sorry. We shall now resume our meeting. I would like to apologise that just now I told all the
18 participants that there would be displays of the partitions for the protected witnesses, but because of
19 technical problem which is time consuming of course, so it cannot be managed now, but the Court
20 Management Section officials will schedule the event to next week session if parties would like to
21 see how protected witness is maintained in the courtroom, so this arrangement will be made at the
22 later date.

23

24 So next, regarding the presentations of the ITP and that of Mr. Robert Petit of the Prosecution I
25 would like to open the floor for questions or comments regarding this latest presentation by the

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1 Prosecution. The floor is open for discussion, if you would like to have any question regarding Mr.
2 Robert Petit presentation.

3

4 JUDGE CARTWRIGHT:

5 Thank you Mr. President. Mr. Petit, thank you for your concise description of the size of the
6 translation problem. Are you able to tell me how much, how many of these documents have been
7 translated, or are they all now translated? The 2022 that you were referring to.

8 MR. PETIT:

9 Thank you. As you will see, the documents under group 3, 4 and 5 -- maybe slide number 3 should
10 be pulled up. Okay. Thank you. That request has gone off recently, okay? You'll see the 6th of
11 January being an indication. And again, as I said, most of these documents have been, or need not
12 be translated into French, at least as far as the accused is concerned, and of course it's a tentative
13 agreement. And that represents the bulk of the documents in terms of pages, in terms of documents
14 themselves. The rest, as you can see in group 1 and 2, have been requested in June and in
15 November of last year.

16 [11.03.16]

17 They have been -- perhaps CMS can enlighten us -- for the most part, I believe, translated, or if not,
18 are part, as far as I understand it, of those documents that are set to be translated by the 28th of
19 February. So, you know, and I thank you for the opportunity to again, perhaps, put these things in
20 perspective. The vast majority of these 222 (sic) documents, or at least in terms of percentage --
21 2022, okay -- are either all witness-related, and therefore would have been necessary to be
22 translated in all three languages, and conscious of that we are asking that now, or have last year to
23 make sure that they're done, and the rest of them, the documents that are, we think -- they will not
24 need to be translated, the S21 documents, that sort of thing -- and the rest, the bulk of them, if you
25 look at them, essentially, is either the armed conflict, which again I don't think is going to be much of

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1 a debate in terms of translation request -- thank you -- and 22 per cent or so represent documents
2 that, again, we allege the Trial Chamber will need to assess elements of crimes, crimes against
3 humanity being one, and to better understand S21 within the larger framework.
4 We have made those requests, again based on the documents that we intend to rely on, or attend to
5 draw the Court's attention on. If a party wishes to make observations about Rule 87 and
6 redundancy and that sort of thing, I think this is not the proper forum, obviously. We have made
7 those translation conscious of our obligation to try and minimise as much as possible the disruption
8 at trial, so that translations need not to be requested during the proceedings, that everything is done
9 beforehand, so we can indeed talk at trial about 87 in a proper context. But before we can talk about
10 that, we have to be able to read, and we have tried to ascertain the needs of the different parties as
11 much as we can, and anticipate those needs.

12 [11.05.55]

13 Thank you. I'm sorry, have I answered your question?

14 JUDGE CARTWRIGHT:

15 Yes, thank you, Mr. Petit.

16 MR. PRESIDENT:

17 Next we have already seen the presentations from the ITP unit, but we have not realised any
18 questions or comments from the defence counsel regarding this presentation, and also if you would
19 like to make any comments concerning both the presentation of the ITP and also of the Prosecution,
20 the floor is yours.

21 MR. ROUX:

22 I thank you, Your Honour. I have several comments and questions. We are all very much aware of
23 the fact that the issues of both interpretation and translation are major issues of paramount
24 importance at all international criminal courts. I can definitely say that in the field of communication
25 what is important is not so much what is said, what is truly important is what is understood, what is

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1 received, and put across to the person, the persons to whom the message is conveyed. I would like
2 to express my thanks to the Interpretation and Translation Pool for having drawn our attention, the
3 attention of all of us, to the fact that it is absolutely necessary in our proceedings to speak slowly out
4 of a sense of respect for the interpreters, and a sense of respect consequently for the people to
5 whom we are speaking.

6
7 When I worked for the *greffier* of the International Criminal Court there had been seminars organised
8 jointly with the interpretation department, and we were informed of the fact that when there is
9 simultaneous interpretation, and even with the best professional interpretation, 25 per cent of the
10 message gets lost -- 25 per cent of the total message gets lost when you have direct live
11 simultaneous interpretation, so we should always bear this in mind. No matter the degree of
12 professionalism and proficiency of interpreters. So once again, our thanks are due to all the people
13 who provide interpretation and translation services.

14 [11.09.47]

15 I should say that from the outset of these proceedings, and from the beginning of the investigation in
16 particular, enormous progress has been achieved. However, there is still a lot to be done. I'm not
17 the only French citizen in this room, there will be French and/or French speaking lawyers for the civil
18 parties, there is a French Judge at the bench. I deeply regret, and I say this with all due respect,
19 whilst I have been working with this Tribunal for nearly two years, I deeply regret that there still is not
20 a direct interpretation between French and Khmer. This is not acceptable, and I'm saying this with
21 all due respect. This is not acceptable.

22

23 And I very much demand that this state of affairs be remedied in the shortest possible time,
24 otherwise there is truly a problem if we want to ensure a fair trial. Consequently I would like to ask
25 the people in charge of administration management at this Court to see to it that in the shortest

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1 possible timeframe there are interpreters who can work directly between French and Khmer and
2 Khmer and French.

3
4 As regards the issue of translation, and the volume of translation, we are very much aware of the
5 amount of pressure that we are applying, that we are putting on the translation services, and that
6 we've been doing so for months. But here again, I have to ask the translation services to be well
7 aware of what is at stake with the work that we're doing. In this site we are not attendants and an
8 international colloquium, this is a tribunal. A tribunal that is in charge of doing justice. Any
9 inadequacy, any shortcoming that can be seen and perceived in the field of interpretation as well as
10 translation is something that can lead to extremely serious consequences, both for the civil parties
11 and for the accused parties. So I do apologise if I belabour the point, but I do believe that it is part of
12 my responsibility as defence lawyer, I must recall constantly that this is a tribunal.

13 [11.13.29]

14 Now, I was extremely interested in the contribution by my distinguished colleague Robert Petit, and I
15 thank him for the clarifications that he has contributed. I would like us to refrain from talking only
16 about documents in terms of numbers. Let's talk about numbers of pages also, so that we are very
17 clear about what this volume is all about. The Chamber has no doubt already understood that the
18 defence, in its own field, is making its best efforts to make life somewhat easier when the defence
19 team says we are not demanding translation of documents relating to the armed conflict. We are
20 doing this because we are showing goodwill and making an effort to not add up more to the burden
21 of translation.

22
23 Nevertheless, I would like to ask the Co-Prosecutors' Office to make an equivalent effort. Do the
24 Co-Prosecutors need 429 documents to prove something about the armed conflict? I don't think this
25 is truly necessary. Does the Co-Prosecutors' Office really need to have all the confessions from S21

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1 to be able to prove the degree of responsibility, or the responsibility of the accused, when you know
2 already that the accused is not challenging that he is indeed responsible. Consequently, I don't
3 think that it is necessary to overburden the translation department with this mass of documents to be
4 translated. So once again, while the defence team is making its efforts not to overburden the
5 translation services, I would very much like the Co-Prosecutors to reciprocate.

6
7 We have agreed not to seek a French translation of all the documents concerning the armed conflict.
8 But, on the other hand, 429 documents on the armed conflict which do exist today in English still
9 have to be translated into Khmer, and I do believe that this is a waste of time, because it's going to
10 take a lot of time for the translation department to process all this when perhaps only half of that
11 overall volume may have been enough. So please I would like everyone to pay some attention to
12 this issue.

13 [11.17.09]

14 As regards our team, and pursuant to the decision of the Co-Investigating Judges, on the
15 18th of July 2008, we forwarded to the translation department a notification of the list of documents
16 for which we sought priority translation work. I would merely like to check whether amongst the
17 documents which we were told earlier that they would be translated by 28th February, we would like
18 to know whether our documents are part of that instalment that will be provided by 28th February.
19 Because, from the list provided by the Co-Prosecutors' Office, 16,000 pages -- and I'm talking in
20 terms of pages, not documents -- 16,000 pages, I somehow felt that 1,600 pages only could be
21 translated by 28th February. So I would very much like to know whether amongst that number of
22 pages -- have you included the documents for which we have already asked for translation to be
23 produced?

24
25 The documents for which we've requested translation, our documents which are chiefly on all the

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1 interviews and all the rogatory letters. And these are the chief documents that all the parties need to
2 have, so it would be highly desirable for the translation department to be able to reassure us on this
3 issue, when we are told that on the basis of the list drawn up by the Co-Prosecutors, when we are
4 assured that this list will be covered, will be fulfilled by 28th February, we would like to seek
5 assurance that our documents, as duly requested by us, will duly be translated by 28th February too.

6 Thank you, President.

7 MR. PRESIDENT:

8 Thank you very much, Mr. Francois Roux, for your clarification regarding the translation matter.

9 Next, I would like to give the floor to Mrs. Michelle Keating and Mr. Kong Sophy to respond to the
10 comments of the points raised by defence counsel.

11 MR. KONG SOPHY:

12 Your Honours, may I be permitted to respond to the defence counsel concerning his team's
13 notification regarding the prioritised documents, whether these documents have already been
14 translated. Of course in the notification, the numbers and names of documents have been identified,
15 and we with the Archive unit already examined the documents to see whether any part of the
16 documents have been already requested by other parties for such translation.

17 And we at the same time have already handled the translation of the documents, but not all the
18 documents have been translated. We believe that these documents will be definitely be translated
19 by the 28th of February after all.

20 [11.21.35]

21 MR. PRESIDENT:

22 Thank you very much Mr. Kong Sophy. And may I know whether any other person who would wish
23 to make further comments? The floor is yours.

24 MS. JACQUIN:

25 Thank you, Your Honour. On the side of the civil parties, we are fully aligned with the comments

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1 expressed by my colleague, Mr. Roux, and I perceive two major problems, two specific problems
2 here. As French speaking civil parties we might be able to make the effort not to request translation
3 of certain documents, and to be content with information in English, or we may ask for the translation
4 of only certain specific documents on an *ad hoc* basis. Nevertheless, there is the risk that there will
5 be a major risk in terms of the spirit and the letter of this Tribunal.

6
7 The criticism may be voiced that a number of documents which are in the file, and which are crucial
8 for the judgment, would exist only in English, and that this is not the mother tongue of the majority of
9 the members of the Tribunal. So we do run the risk of being challenged as to the absolute
10 fundamentals, the principle underlying the existence of this Tribunal. So while we are co-operative
11 from a practical point of view, but there is the risk of this attack from the outside world at some point
12 in time. Thank you.

13 MR. PRESIDENT:

14 Thank you very much for your comments. Mr. Kong Pisey -- sorry, the defence counsel.

15 MR. ROUX:

16 *(No interpretation)*

17 THE INTERPRETER:

18 Apologies from the interpreter for not having switched on her microphone.

19 [11.24.18]

20 MR. ROUX:

21 So I would like to express a comment that is in line with a comment earlier expressed by the civil
22 parties.

23 THE INTERPRETER:

24 Yes, you may continue, sir.

25

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1 MR. ROUX:

2 We have, on other occasions, expressed our concern when we heard that the translation services
3 were having to outsource, and in particular to contract translation with DC-Cam. We feel the
4 deepest respect for the work conducted by DC-Cam, and they've been working very well for a
5 number of years. Nevertheless, we are all aware that DC-Cam has taken a stance, a very
6 respectable stance indeed, which is to defend the civil parties. How can we now accept that an
7 organisation that explicitly defends the civil parties and does this very well indeed -- how can we
8 accept that that organisation is in charge of translating possibly documents of the defence team?
9 How can you possibly expect us to accept that?

10

11 So I must raise the question again: this cannot be a satisfactory arrangement. For DC-Cam to
12 translate documents from civil parties, that is fine, we have no problem with that. For them to
13 translate documents possibly for the Co-Prosecutors, okay, I also have no problem here, but in no
14 way can it be admissible for us to accept that DC-Cam translate documents for the defence. Thank
15 you, Your Honour.

16 [11.26.21]

17 MR. PRESIDENT:

18 Thank you very much the defence counsel for your comments. I think last I may give the floor to the
19 civil party lawyers, Mr. Kong Pisey.

20 MR. KONG PISEY:

21 Thank you very much, the President. Regarding this translation matter I may wish to inform the
22 meeting that so far as I know, the international lawyers need to understand at least two languages,
23 his native language and a second language he may be comfortable with. And I know when I raise
24 this, my colleagues the French lawyer may feel not at ease. However, if they are from England, for
25 example, they can speak English, so English is their native language, and they are supposed to

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1 speak another language, a foreign language which is French, here.

2

3 So if the person is from France, so his or her native language is French, so he or she can speak a
4 second language which is English, so they can also use the language, and if the document is not
5 available in English or French because it is only in Khmer, then it must be translated to the language
6 they understand. However, I think I agree with the point that the Co-Prosecutors has indicated
7 about the documents they would like to be translated, because here we want to make sure that
8 everything is proved beyond a reasonable doubt, and by doing so the Prosecution at the same time
9 has to make sure that all documents is translated so that proof is found beyond that reasonable
10 doubt.

11 [11.28.42]

12 So as we already told you, we the civil parties have found it very difficult to translate our documents,
13 and we sometimes work during weekends, and we need interpreters to assist us, and you know it is
14 our great effort to actually work during the weekend, but we also need people to assist us in such
15 situation.

16 MR. PRESIDENT:

17 Thank you very much for your comments. I think we have discussed at length already regarding this
18 item of agenda, so I would like to now move to the other item, which is about the trial schedules and
19 sitting hours and trial recess. And this information is already adopted by the Trial Chamber, and in
20 general trial will take place for four days within a week, but if the hearing falls on the week that
21 includes the public holiday then we will announce to the public about this trial days in advance, so --

22 THE INTERPRETER:

23 Excuse me, the President, the interpreter cannot really follow you, could you please slow down.

24 Thank you.

25

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1 MR. PRESIDENT:

2 I'm sorry, because I speak Khmer very fast and I have been doing my best already actually to slow it
3 down, but sometimes I just take it for granted, I'm sorry.

4
5 Number two, the hearings start again in the afternoon session at 1.25 pm and conclude at 4.15, and
6 between the intervals there will be 15 minute break. Next, regarding the trial recess, and also the
7 expected trial dates, I think it is now premature for the Trial Chamber to even disclose this
8 information regarding the trial recess at this moment. And regarding the scheduling of the date of
9 the hearing, now the Trial Chamber would like to give you the information regarding the Initial
10 Hearing schedule, but before that we would like to ask parties in the Court about their availability
11 when the trial hearing commences, and we would like all parties to also inform the Trial Chamber
12 whether they would plan to take any legal procedures that may affect the trial hearing or the
13 process, for example the preliminary objections.

14 [11.32.45]

15 So I think I have briefly disclosed the information concerning the sitting hours, trial days and official
16 holidays and the trial recess and the expected duration of the trial to the participants. And I think it is
17 *(unintelligible)* but I would like to open the floor for discussion or comments if you would like to raise
18 any questions respectively. The floor is yours.

19 MR. PETIT:

20 Mr. President, we didn't get -- at least in English, we did not get the full translation of the hearing
21 hours, and it was unclear the part that we did. So if you could enlighten us again about the hearing
22 hours please.

23 MR. PRESIDENT:

24 Let me please repeat it again. I did not put on the headphones.

25

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1 MR. PETIT:

2 We did not get in the English translation an accurate translation of the hours of sitting and if you
3 could repeat it, that would be helpful.

4 MR. PRESIDENT:

5 Thank you. Let me confirm again the schedule of the hearing. The days of the trials and the official
6 holidays and the trial recess. And the weekly trial schedule, usually the hearings will be held on four
7 days in each week. This is for the weeks which there are no holidays. Second, in the weeks in
8 which there are holidays, there are many holidays, then an announcement will be made in advance
9 of the days on which the hearings will take place. The hours of the sitting hours. The morning
10 sessions will begin at 9 am and conclude at 11.50 am. There will be one break of 15 minutes. In
11 the afternoon sessions it will begin at 1.25 pm and conclude at 4.15 pm. There will be one break of
12 15 minutes. Do you get all the translation? Regarding what I have addressed, may have the parties
13 express their opinions. Please the lawyer for the accused.

14 MR. KAR SAVUTH:

15 Your Honour, in accordance with Rule 89.1 of the Internal Rules of the Extraordinary Chambers in
16 the Courts of Cambodia, which stipulates about the objections regarding the jurisdiction of the Trial
17 Chamber, regarding this issue, in the Initial Hearing, I would like to make a preliminary objection.

18 MR. PRESIDENT:

19 Please repeat, because there is a technical issue with the translation.

20 [11.36.55]

21 MR. KAR SAVUTH:

22 My respect to the President. In accordance with Rule 89.1 of the Internal Rules of the Extraordinary
23 Chambers in the Courts of Cambodia, which stipulate about the preliminary objection regarding the
24 jurisdiction of the Extraordinary Chambers of the Pre-Trial Chamber (sic) I would like to request to
25 put my preliminary objection to the Trial Chamber for your examination. Thank you.

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1 MR. PRESIDENT:

2 Thank you, the lawyer for the accused, for your information. And now the Trial Chamber will be
3 ready to estimate the time scheduled, especially the time on this action, if there is any. May the
4 Judge please make your statement.

5 JUDGE CARTWRIGHT:

6 Yes, thank you for that indication that you intend to raise a jurisdictional issue at the initial hearing.
7 Are you able to give any estimate of time or an indication of the nature of the jurisdictional question
8 please?

9 MR. KAR SAVUTH:

10 Your Honour, the time that I will be presenting on the preliminary objection in the preliminary
11 hearing, in the Initial Hearing, I think it can be discussed and it might take one day. One whole day.
12 Thank you.

13 MR. PRESIDENT:

14 Please, the Judge.

15 JUDGE CARTWRIGHT:

16 Yes, does that allow for argument from other lawyers, the Co-Prosecutors and civil parties, does
17 that estimate of time allow for their arguments as well?

18 [11.39.22]

19 MR. KAR SAVUTH:

20 Your Honour, the issue that I will put in my preliminary objection is open to any parties for any
21 controversy or discussion in order to seek for the truth. Thank you.

22 MR. PRESIDENT:

23 Please the Co-Prosecutor.

24 MR. PETIT:

25 I simply would like to note that there was not an answer to the second part of the Chamber's -- the

1 Honourable Judge's question, which was: can you give an indication as to the subject matter of this
2 preliminary objection, which then I think would allow everybody to start preparing, since this is the
3 first notice that I am aware of of such preliminary objection. So are you in a position to let the
4 Chambers and the parties know the subject matter of that preliminary objection, and if not, when will
5 that happen?

6 MR. PRESIDENT:

7 Please, the lawyer Kar Savuth.

8 MR. KAR SAVUTH:

9 Your Honour, the objection, I have all the details, however at this time I will not raise the issue, I will
10 wait for it to be revealed on the hearing day. However, I will submit it in advance to the President.

11 Thank you.

12 MR. PRESIDENT:

13 Because this is a new issue for the Chamber, and I haven't yet -- this is my first time to take a note
14 on this issue, and we will prepare for any written submission, and the objective of the request in
15 advance, so we will have time to examine it and to send to relevant parties for their response for the
16 discussion in our proceeding in the Initial Hearing. However, I thank you to the lawyer for the
17 information that you have provided to us so that we are in a state of preparatory position to receive
18 the request and then we can work out and set the time schedule for such a hearing in order to
19 respond to various issues that we might raise for discussion and to issue decision during the
20 process of the Initial Hearing.

21 [11.42.23]

22 Are there any questions or concerns from other parties regarding the presentation or my respond? If
23 there is no questions for the next agenda. Please rise. Please, Mrs. the lawyer.

24 MS. STUDZINSKY.

25 Mr. President, I have first a question. Maybe a problem with the translation in English. Did you talk

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1 about expected duration of the trial? I didn't get it in the translation. No? Okay. Because the same
2 with the sitting hours, it was not translated first. And then I have another question. Would you like to
3 get information about the availability of the teams also, and to include it in the planning of the trial?

4 MR. PRESIDENT:

5 For the relevant issues regarding the trial schedule that have been raised, it is too early to touch on
6 other topics or the estimate of the trial. If any concerned party wishes to submit a request for the
7 duration of the estimate of time for the trial we will receive the submission and we will have our
8 internal discussion, and we will then notify the concerned parties later. Thank you. Please, the
9 lawyer for the accused.

10 MR. KAR SAVUTH:

11 Mr. President, the day of the hearing I would like to make a proposal to the President, that the
12 hearing shall be done on alternate days, for example if it's on Monday we have a recess on
13 Tuesday, it means we only have three trial days per week, so that we will have enough time to
14 prepare by reading further documents.

15 MR. PRESIDENT:

16 Thank you for your request, the lawyer. And we have discussed these matters internally before we
17 actually publish this information. If you have put such a request we will take note of it and we will
18 have our internal discussion again in order to assess the status of the accused, the scope and the
19 size of the documents to be presented, and whether we can find any solution in order to find an
20 appropriate response to answer and then we will notify you.

21 [11.47.40]

22 Next, I would like to invite -- the issues relating to the broadcasting. The lawyers, do you have any
23 further comment?

24 MR. ROUX:

25 Yes, Your Honour, on issues of schedule I would like to know whether the Chamber can tell us now

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1 what would be the period for the Initial Hearing? Ideally we would like to have a specific date, but
2 we understand that a Chamber cannot give us today a date for the Initial Hearing. However, we all
3 have planning necessities, and we would like to know what is the window of time in which the
4 Chamber considers the Initial Hearing to be possible. That would be helpful information for us.

5 Thank you.

6 MR. PRESIDENT:

7 For this issue, the Chamber takes note of all the opinions expressed by the concerned parties, and
8 for the schedule for the Initial Hearing and we also discussed on many occasions on the appropriate
9 date, and the end of February or early March that the trial will be occupied by the Pre-Trial Chamber,
10 and in early March there will also be a full Plenary session. Therefore, the appropriate time will be
11 notified to you later. Because we have already taken note of your request, and when we can set the
12 date for the Initial Hearing. But because we need to discuss in details in our Chamber and after our
13 discussion we will notify to the meeting. Please, the head of the Victims Unit, if you have any
14 comment.

15 [11.51.08]

16 MS. KEAT BOPHAL:

17 Mr. President, regarding to what I will raise is the set of the schedule of the ten days for the victims
18 to put their applications to the Victims Unit. Due to the fact that the time limit for the Initial Hearing
19 may not be done in this meeting, then I would like to raise this issue to the President and to all the
20 Judges in the Trial Chamber to consider whether our Victims Unit can set the limit, for example,
21 early February for the public meeting for the victims, or for those who intend to lodge applications
22 with our unit, and to explain to the public for them to understand that whenever there is a set for the
23 trial, for the Initial Hearing date, then we will notify to them the actual time limit in order to facilitate
24 them and the victims for the information dissemination to the public, especially for other partner
25 NGOs working with the victims, and the victims who wish to apply, to put the applications to the

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1 Trial Chamber so that it can do it on time. And this is also to work with the Public Affairs Section for
2 the dissemination of information to be widespread.

3 MR. PRESIDENT:

4 Please, Mrs. Judge.

5 JUDGE CARTWRIGHT:

6 Thank you. As I indicated yesterday, the sooner that the civil parties can file their applications the
7 better. It should not be left to ten days prior to the date of the Initial Hearing. The Victims Unit will
8 not be able to process a large number of applications at the last minute, so the message that should
9 be going out is get the civil party applications in urgently. You have been given an indication today
10 of the timeframe within which we have to work for the Initial Hearing, and you will be advised of the
11 actual date of the Initial Hearing probably early next week. But the message should be get the civil
12 party applications in urgently, and don't leave it to the last minute, or they may miss out. Thank you.

13 MR. PRESIDENT:

14 Thank you, Mrs. Judge. And I think the time for this morning is almost over, because it's only 4
15 minutes to 12 -- sorry, 10 minutes to 12. I think it's time for you all to have a break for lunch, and I
16 will announce the closure for this morning meeting. Please the guard take Mr. Kaing Guek Eav alias
17 Duch back to the cell, the waiting room downstairs. Thank you.

18 *(Court recesses from 1155H to 1332H)*

19 MR. PRESIDENT:

20 Please be seated. Greetings, ladies and gentlemen. Now let me continue our proceedings
21 according to our planned agenda for today's meeting. The next item on the agenda -- there is only
22 one remaining. It's about the broadcasting of the hearing, and the control of the information, which
23 is an additional item proposed by the Co-Prosecutors. And the brief presentation will be made by
24 the Public Affairs Officer, and I would like to invite the Public Affairs Section to make the
25 presentation on the broadcasting of the trial, and the time limit for the presentation is 10 minutes. It

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1 might be a little bit over, if it's required.

2 MS. JARVIS:

3 My respect to the President and all the parties involved in today's meeting. I would like to speak in
4 English. We have circulated a small document, containing some details of what I will speak of
5 today. Honourable Judges, we are very pleased to have this opportunity to speak about some of the
6 issues relating to dissemination of information from the Trial Chamber. And we are happy to be able
7 to outline in several different categories of matters to be discussed and to have your direction on.

8

9 The first one is of course the main heading of the session, of broadcasting. And as I'm sure Your
10 Honours will be very well aware, there is intense public interest in every aspect of the ECCC, and we
11 have so far had extremely good reaction and appreciation for the possibility for broadcasting, and
12 indeed live broadcasting, of the public sessions to date from the Pre-Trial Chamber.

13

14 We recognise that in the Trial Chamber that the immediate live broadcast may not be in many
15 cases, or even most cases, possible, but we would appeal for your consideration to see whether
16 there may be parts that can be allowed for live broadcast, especially the opening sessions, or
17 statements that have been prepared in advance. We know that this will be extremely well received.

18 [13.36.26]

19 We also know that we do not have the capability, as was mentioned this morning by my colleagues
20 from Court Management, we don't have the capability for half hour delay or short delay, as some of
21 the other tribunals have. And if we have to wait 'til the following day for broadcasting that is already
22 a loss, so there's a lot of interest on the day, if there can be consideration of at least parts of the
23 hearings. Of course not closed sessions or any sensitive times.

24

25 I should inform you that CTN had previously had a broadcast van here, and I'm sure they will bring

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1 that again for direct broadcast where permitted. The television channel Apsara has been
2 broadcasting in the night time, generally focused on the Cambodian communities in the diaspora in
3 the night programs, and also TVK has been broadcasting, and there have been repeat broadcasts.
4 So it's been very widely picked up. And some smaller portions by CNN, BBC, Australian TV and Al-
5 Jazeera. And French TV.

6
7 The second area on broadcasting is in the past we have had a live feed of the signal from this room
8 beamed out to the screens in the public gallery, and also downstairs to the press area, and we
9 would propose that that practice be continued if possible. It's certainly well appreciated by the press
10 who have to sit here day after day, and tend to want to be in a situation where they can talk and
11 move around. And if they can do that down below, we have very good facilities provided by Court
12 Management Service for I think 36 connections for people to record where recording is allowed, and
13 we have screens for people to watch. So we would very much like to continue that practice into the
14 press room, for them to take notes. Of course I would imagine that recording would not be permitted
15 except for session that are allowed for broadcast.

16 [13.39.05]

17 Further, in the past we have, through the ICT and CMS, been able to provide streaming video into
18 the offices, onto the desktop computers of staff in the ECCC. If this can be continued I think this
19 would be very useful, and would also help ease any pressure on the seating in the public gallery.

20
21 And also I wish to inform Your Honours that all the public hearings to date have been put on an
22 Internet website, for what they call webcasting, from Northern Illinois University. And those people
23 are preparing to continue with any material that we authorise for public access. They will also be
24 indexing them, and I think this is an important and useful resource.

25

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1 The second area, if I could move on, is the question of provision of copies of the public portions of
2 the sessions to be given on DVDs to press and interested researchers. We have been doing this in
3 recent times. For public sessions without redaction, CMS has been able to provide it to us to
4 distribute within several hours of the hearing, and those sessions that require redaction would be, of
5 course, after the redaction and approval from the Chamber. To date I can say that in the hearing of
6 Duch from the Pre-Trial Chamber, 36 sets of the hearings had been requested: 20 in Khmer, 12 in
7 English and 4 in French, and we expect that there will be continued interest in receiving the DVDs.

8
9 The third point is photography. In the past, we have provided, and I would hope and request the
10 Trial Chamber to consider allowing a brief photo opportunity at the beginning of the session. We
11 have had expressions from still photographers in particular who would much prefer to be able to take
12 a photo. They say that the quality is higher, and they can get their own angle, rather than just
13 downloading from the video, however I leave this of course for your consideration. But if they could
14 allow a limited number of say five people to come in, shoot briefly, after the charged person is
15 seated, to watch the Judges come in for some movement, for video, and then leave -- this would be
16 appreciated. I should say that any such photographers would be accredited, we would only allow
17 accredited photographers into the room.

18 [13.42.28]

19 The next point is regards the public gallery. We now have 494 seats in the public gallery, and in the
20 past we have allocated them with a general formula, and have announced to the public in advance
21 that they can take advantage of the allocations. Generally we have followed: 30 seats for
22 diplomatic corps; 60 seats for staff of NGOs; 30 seats for press in this room, if they want to come up
23 into the public gallery; 100 for general public who have made reservations; 100 for general public
24 without reservations; and 140 for groups with a maximum of 20 each. This is our starting point, and
25 then we adjust depending on the reservations and contacts that have been made.

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1 We have, in the past, had capacity audience in the courtroom on many occasions, and I would
2 expect that that will also continue. The President this morning read the rules, and we appreciate
3 having those, and we will do our best to disseminate those rules. I was not able to catch all the
4 details of the rules, so I look forward to seeing that in writing. I don't know if you did mention -- one
5 point I would mention is the issue of clothing that has slogans or advocacy of one party, perhaps that
6 could be included as something that would not be appropriate dress within the Court.

7
8 Another point I would like to raise is press conference. In Cambodia there's a strong interest to have
9 some comments from various parties after hearings, and in the past we have made provisions for
10 the press to meet and to have comments. In the beginning we used to do it in the public gallery, and
11 now at the request of CMS that there should be no cameras in the public gallery, we at the last
12 session moved down to the press room. I think that that is probably satisfactory, but it will require
13 some more arrangement and more careful planning than in the last press conference where there
14 was an unfortunate altercation between the defence and the civil parties, and I think that we would
15 be careful to work closely with security on arranging the programme so that each party was in the
16 room with the press one at a time, and I am not at all worried that we cannot control that and
17 manage it well.

18 [13.45.47]

19 And the final point I would like to raise is regarding public announcements, and information to the
20 public of the programme agenda for the Court and other announcements that you wish to make. In
21 the past we have put a Court schedule -- you may have seen it on the website, on the right hand
22 side -- which is changed to update the expected dates of any sessions, including today's session we
23 have had on there for several weeks, with a note that it was a closed session, and we would
24 propose to continue that. And to send out a media alert and notice to interested parties, NGOs,
25 regarding the hearings. Generally these have been very widely reported and people are aware

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1 when the hearings are taking place.

2

3 As Justice Cartwright pointed out yesterday, there is also a need to reach potential civil parties well
4 in advance, and we are proposing to work with the Victims Unit next week on some more intensive
5 campaign to go beyond the existing intermediaries but to go into the community as a whole. And
6 also I would propose that we put some public announcements in newspapers and radio and through
7 embassies in which there are Cambodian communities residing overseas. We expect to do that in
8 the very near future.

9

10 Of course, if I can conclude with one point on the public announcement is the intense interest on the
11 date, particularly the date at which the Initial Hearing may be held, and the start of the trial proper.
12 We had indicated to the press that they would be likely to know this early next week, and we very
13 much would appreciate if that could possibly be a concrete announcement, preferably a date, but at
14 the very least a range of dates, taking into account, as the President mentioned, the Pre-Trial
15 Chamber's work in the end of February. We already have the Pre-Trial Chamber dates right through
16 to July on the website. So any indication you can give to us would be very much appreciated.

17 Thank you.

18 [13.48.28]

19 MR. PRESIDENT:

20 Thank you very much, Mrs. Helen Jarvis, for the detailed presentation on the Public Affairs Section.

21 Next, I would like to make the floor open to parties concerned who wish to make some comments or
22 questions regarding the matter, so I would like to give the floor to the civil parties lawyers, whether
23 you would like to make any comments, or have any questions regarding the presentations. So the
24 floor is yours, Ms. Silke Studzinsky.

25

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1 MS. STUDZINSKY:

2 Thank you, Your Honour. I would like to draw your attention from Public Affairs also to the situation
3 that we have limited seats here for civil parties in the courtroom, and we do not know yet how many
4 civil parties will attend and participate, but they have to sit in the public gallery, and maybe we can
5 communicate that at least the civil parties -- we have learned yesterday we will have around let's say
6 80 in total -- can have the possibility to be seated and without problems and to include this in the
7 arrangement. Thank you.

8 MR. PRESIDENT:

9 Thank you very much, Silke. Is there any further question from the civil party lawyers? Without any
10 further questions from the civil parties I would like to ask the Co-Prosecutors whether you wish to
11 make any comments, or pose any questions concerning the Public Affairs Section. Mr. Petit.

12 MR. PETIT:

13 So if I understand correctly, there is no agreement with any of the national, or international media for
14 a day to day or even any other type of agreement for broadcasting of the hearings. And as far as, if
15 I understood correctly, the webcasting, this is an agreement that is already in place. I don't know
16 how formal it is, but certainly there is a feed to this webcast. Now, I would simply -- if that is the
17 case, then what, if I understand correctly, the situation will be with media, either here or downstairs
18 having access to this live feed, the possibility obviously of recording is something that I think the
19 Chamber must address. And as we've heard, there is no possibility of time delay. If I understand
20 correctly, we don't have the software capabilities of doing that.

21 [13.52.09]

22 So obviously this is a concern that will need to be addressed by this Chamber, because indeed any
23 witness protection measure envisioned can be negated by this lack of control over the feed. That is
24 why we asked that the item be put on the agenda, because it is a concern.

25

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1 So I think as we move closer to an actual hearing, we will -- or at least certainly interested parties
2 will need clear guidance on the principle and the technical side from this Chamber on this. Thank
3 you.

4
5 MR. PRESIDENT:

6 Thank you. I would like to give this floor to the defence counsel, whether you would like to give any
7 remarks or ask any questions concerning the presentation as presented by Mrs. Helen Jarvis. The
8 floor is yours.

9 MR. ROUX:

10 I thank you, Your Honour. I would like to align myself with comments that I heard in various places
11 to the effect that we're often blamed for being very far away from the centre of Phnom Penh. We
12 are in a kind of bubble, or some kind of an ivory tower, when in fact this trial and the subsequent
13 ones amount for the public opinion of Cambodia and the world that these hearings will be a major
14 event. So in turn I would like to call your attention to the very great importance of ensuring a proper
15 provision of information to the public opinion regarding whatever happens here. Some people had
16 made the suggestion to the effect that there might be every day, more specifically every evening, on
17 Cambodian TV, that there might be a summary of the proceedings of the day, rather than a full
18 coverage of the whole proceedings, that in fact nobody would really want to follow.

19 [13.55.18]

20 I'm not a technical person on these issues, so I'm not too sure about that, but I do think that it is of
21 paramount importance that we pay great attention to the broadcasting, the publicity of what we do
22 here. This is not just something that just has to be done amongst ourselves here. We have to make
23 sure that this trial is an educational experience, and for it to be educational, we have to make sure
24 that we have everything we need, technically and in principle, for it to be well broadcasted and
25 publicised to the public. Thank you.

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1 MR. PRESIDENT:

2 Thank you, Mr. Francois Roux, for your comment regarding the matter. Next, I would like to invite
3 Mrs. Helen Jarvis to address the matter as raised by parties.

4 MS. JARVIS:

5 Thank you for the opportunity. Of course the civil parties must have an allocation of seats, and I
6 would expect to be working closely with the Victims Unit to get indications from every group as to
7 how many would be expected to attend on any particular day. Yes, thank you for pointing that out.

8

9 I take, indeed, the point of the international Co-Prosecutor on the issue of the live feed. It's
10 something that we will need to watch carefully. If we do have a projection into a screen in the
11 gallery, theoretically if it's a screen downstairs, there should be no greater risk, because we would
12 have security ensuring no photography of that screen in the gallery or in the press room. So I think
13 we should be able to manage that. It would only be with the permission of the Court for diffusion, or
14 dissemination and broadcast, that we would be allowing the plugging in for the feed. But of course
15 that also relates to the feed to the staff throughout the administrative building as well. So clearly this
16 is a matter that we need to have some more careful consideration and discussion with the CMS, the
17 ICT people and ourselves together with the direction from the Chamber. So thank you.

18 [13.58.14]

19 With regard to summaries in the evenings, raised by the defence counsel -- yes, there has been a lot
20 of interest in that, and I would expect -- this is really why I said that leaving it to the next day is
21 sometimes too late for the interest. The interest is what happened on that day, and getting
22 something into the news that night is what people will be looking for. If we can possibly
23 accommodate it, I think we would be well advised to do so. And indeed we are working with a
24 number of organisations with regard to educational films and summaries, fortnightly summaries of
25 the work of the Court, weekly summaries, and we would hope that we will be able to distribute these

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1 on DVD. Not everybody wants to watch the entire process, but certainly going out into the
2 countryside and areas of Cambodia that do not have television broadcast, this will be important to
3 have the summaries. So thank you, I hope I have answered the issues that were raised adequately.

4 MR. PRESIDENT:

5 Thank you very much, Mrs. Helen Jarvis, for your questions and remarks by parties. (??1.59.54)
6 there are some issues concerning the decision which needs decision from the Trial Chamber
7 whether this video footage of the hearing shall be or should be live fed to the public and we take this
8 seriously and we will discuss this matter among our Judges of the Trial Chamber and we will make
9 sure that we have the good guidance before we allow this to happen. And I think without any further
10 comments I can conclude that the items of the agenda have been fully covered.

11
12 And as people have requested that we disclose information about the Initial Hearing date, and after
13 lunch break, we among our Judges of the Trial Chamber agreed that the disclosure of the Initial
14 Hearing is scheduled for the 16th and 17th of February 2009, so we can see the possibility that this
15 Initial Hearing can be conducted, because after that date we are afraid that the facility will be
16 occupied and that the Pre-Trial Chamber will make use of the gallery, and that we will have other
17 conflicting schedule with the Plenary Session.

18 [14.01.45]

19 So the 16th and 17th of February would be the best possibility that we can envisage now. And
20 regarding this matter, if we plan to conduct such hearing on the 16th and 17th of February, whether
21 you can avail yourself to participate in such initial hearing, or would you like to make any further
22 comments respectively. Mr. Tarik?

23 MR. ABDULHAK:

24 Mr. President, on a separate matter, perhaps, once this is dealt with. Thank you.

25

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1 MR. PRESIDENT:

2 Would you like to make any comments, please? The defence counsel.

3 MR. ROUX:

4 I would like to respond to your request. As far as the defence is concerned, the dates that you have
5 described are suitable. We are available on the 16th and the 17th of February.

6 MR. PRESIDENT:

7 Thank you very much for your confirmation. So without any further comments I think the date of the
8 Initial Hearing -- I mean the notification of this date of the hearing will be issued next week.
9 Especially the scheduling order for this Initial Hearing.

10

11 Next, the Trial Chamber would also like to inform the defence counsel regarding the preliminary
12 objections and that you are advised to file such matters before the Initial Hearing. And if the civil
13 party lawyers would like to seek protective measures of the civil parties, they are advised to also file
14 their application prior the Initial Hearing. And we will determine this deadline in our notice on the
15 Initial Hearing schedule. So this is just the information. The floor is yours, the head of the Public
16 Affairs.

17 [14.05.09]

18 MS. JARVIS:

19 Could I have some direction from the Chamber. Are we able to make an announcement regarding
20 these dates this afternoon to the press, or should we be waiting for the notification next week?

21 MR. PRESIDENT:

22 I told you earlier this date is only the expecting date but the actual date will be confirmed through the
23 notification. And I think we already got the forms, the templates ready for such notification, and it is
24 not time consuming, we just want to make sure that it is official notification, and have it translated in
25 three languages, and I don't think it will take much longer, so please be patient.

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1 Finally, I would like Mr. Tarik who wishes to actually tell parties about the protective measures on
2 witnesses during the hearing. The floor is yours, Mr. Tarik.

3 MR. ABDULHAK:

4 Thank you, Mr. President. I just wish to inform all counsel that we will perform a demonstration of
5 witness protection systems on Tuesday the 20th of January at 11 o'clock in this courtroom. So
6 Tuesday, 20th of January, 11 o'clock, in this courtroom, we will conduct a demonstration of the
7 various scenarios, both from within the courtroom and a separate facility for witness protection, and I
8 encourage all of those who are available and interested to come and attend. For those counsel who
9 may not be available on the 20th, we can do separate demonstrations, and obviously we remain
10 available to the Chamber at any other time as well. Thank you.

11 MR. PRESIDENT:

12 Thank you very much Mr. Tarik, for the information, and personally and on behalf of the Trial
13 Chamber we actually would like to see how witnesses are protected when protective measures have
14 been issued, and so that we are well prepared. And we want to avoid any mistakes, and I think this
15 information is important, and the event on the 20th of January will be also very significant for this
16 purpose, and we are looking forward to attending such event.

17 [14.08.08]

18 So we can see that we are now moving very close to the end of the meeting already, and all the
19 items of the agenda have been well covered, so finally I would like to wrap up the outcome of the
20 meeting. The participants and all, on behalf of the Judges of the Trial Chamber I'd like to highly (??)
21 the outcome of our two day meeting which commenced yesterday and ends today on the 16th of
22 January 2009. The Trial Chamber notes that there have been vigorous and practical discussions
23 among civil parties lawyers, the Co-Prosecutors, the co-lawyers for the accused and the other
24 representatives from various sections of the Office of Administration. Not only does this meeting
25 evidently assist the Trial Chamber with the preparation for the opening of the Initial Hearing, but it

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1 also gives a good assistance to other upcoming trial hearings.

2
3 During the meeting, several issues pinpointed by the Trial Chamber have been dealt with, while
4 questions proposed by parties have been responded, clarified and well-taken. On top of that, the
5 new issues concerning the legal teams for the civil parties have been realised, as well as the update
6 of new civil party applications. Moreover, presentations by respective units of the Office of
7 Administration, which are the backbones of the trial proceedings are also given. From those
8 presentations, we have learned that they have been ready to assist the Trial Chamber with the
9 commencement of the Initial Hearing. Consequently, the Trial Chamber will make the most of the
10 inputs and information we obtain from the meeting, the essence of which will be deliberately
11 discussed in order to set the Initial Hearing date.

12
13 Last, but not least, on behalf of the Trial Chamber again, I'd like to express our profound thanks to
14 the Co-Prosecutors, the defence counsel for the accused, the civil party lawyers, the civil parties, the
15 officials of the respective units of the Office of Administration, the detention facility security officials,
16 the Trial Chamber's judicial officials and staff, and the interpreters and commitment and great efforts
17 in assisting with the arrangements of this meeting, without which the meeting could not have been
18 that successful. I'd like to wish you, during this international new year, with four Buddha's blessings:
19 long life, good social class, happiness and intelligence. And may I declare that the meeting is now
20 adjourned.

21
22 The chief of security, take the accused person back to the detention facility. Thank you.

23 *(Court adjourns at 1412H)*
24
25

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