



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
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CMS/CFO: Krystal THOMPSON

TRANSCRIPT OF PROCEEDINGS
TRIAL MANAGEMENT MEETING
PUBLIC - REDACTED
Case File N° 002/19-09-2007-ECCC/TC

17 August 2012

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

The Accused: NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Andrew IANUZZI
Jasper PAUW
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

Susan LAMB
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For the Office of the Co-Prosecutors:

CHEA Leang
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Lawyers for the Civil Parties:

PICH Ang
Élisabeth SIMONNEAU-FORT
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MOCH Sovannary

For Court Management Section:

UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MR. CAYLEY	English
MR. CHAN DARARASMEY	Khmer
MS. CHEA LEANG	Khmer
MS. GUISSÉ	French
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL Nonn, Presiding)	Khmer
MR. PAUW	English
MR. PICH ANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

Closed Session

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

2 (Trial Management Meeting opens at 0906H)

3 MR. PRESIDENT:

4 As the President and on behalf of my fellow Judges of the Trial
5 Chamber, allow me to warmly welcome the Co Prosecutors, the Lead
6 Co Lawyers for the civil parties, and counsels for the defence,
7 and everyone in today meeting.

8 The purpose of this trial management meeting is to facilitate
9 planning for the remaining phases of Case 002/1 and to give
10 advance notice to the parties of how the Chamber intends to
11 conduct the remaining phases of the trial.

12 [09.08.06]

13 The Chamber has also recently carried out projections of the
14 likely duration of Case 002/1 on the basis of current progress.
15 These projections indicate that without measures to streamline
16 Case 002/1, the hearing of evidence in this trial would be
17 unlikely to conclude until 2014.

18 As the Chamber intends to conclude the hearing of evidence in
19 Case 002/1 in 2013 and to commence Case 002/2 soon afterwards,
20 the Trial Chamber has recently issued a number of decisions
21 designed to enhance trial efficiency.

22 We will also discuss at this meeting further measures intended to
23 expedite trial proceedings. Today's meeting will address the
24 issues raised in the Trial Management Meeting Agenda and has also
25 noted a number of issues raised by the parties for inclusion in

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1 today's discussion.

2 [09.10.06]

3 Some parties expressed a preference for the trial management
4 meeting to be conducted in open session. The Chamber has chosen
5 not to reconsider its decision to hold the trial management
6 meeting in closed session, as it considered that a meeting
7 concerned principally without -- rather, with planning is best
8 conducted informally. This is common practice also before the
9 other international tribunals.

10 However, and for transparency purposes, a transcript or other
11 form of document setting out decisions taken in consequence of
12 the trial management meeting will be issued publicly after its
13 conclusion. All parties responded to certain features of the
14 Chamber's Trial Management Meeting Agenda, and the defence teams
15 have requested discussion of further issues at the trial
16 management meeting, including treatment of oral motions and
17 decisions before the Chamber and translation issues.

18 [09.11.49]

19 I'll turn now to the items raised in the Trial Chamber's Agenda
20 before returning to the additional issues raised by parties.

21 Measures to enhance trial efficiency.

22 First, reduction of the Chamber's partial list of witnesses,
23 experts, and civil parties.

24 Following a review of the remaining individuals on the Chamber's
25 partial list of witnesses, experts, and civil parties, the

1 Chamber considers that the testimony of some individuals on that
2 list is likely to be repetitious of the testimony offered by
3 others or to have no direct and immediate relevance to the facts
4 included in the first trial.

5 The individuals that the Chamber considers need not be heard
6 orally before the Chamber in Case 002/1 are TCW 320, TCW 620, TCW
7 638, TCW 354, TCW 475, TCCP 186, TCW 780, TCW 234, and TCW 707.

8 It has also deferred and would further propose to not hear the
9 oral testimony of TCCP 142, TCCP 178, TCW 645, TCW 679, TCW 548,
10 and TCW 796.

11 The Chamber indicated that a party may nonetheless seek to tender
12 the statements of these individuals pursuant to decision E96/7.
13 [09.14.53]

14 The Co Prosecutors, in their submission circulated as an advance
15 courtesy copy to the Chamber and the parties on Wednesday, have
16 indicated that they agree with the Chamber's proposal to not hear
17 or to defer the hearing of many of these individuals. However,
18 they seek to retain the oral testimony of six persons indicated
19 for possible exclusion in the Trial Management Meeting Agenda,
20 namely: TCW 320, TCW 475, TCCP 186, TCCP 142, TCW 548, and TCW
21 796.

22 Does any other party object to the Chamber's proposal to not hear
23 any of these individuals listed in paragraph 5 of the Trial
24 Management Meeting Agenda orally? If so, they are invited to
25 indicate -- provide brief, reasoned submissions as to the nature

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1 of these objections.

2 [09.16.26]

3 First, we would like to proceed to the Lead Co Lawyers for the
4 civil party first, if they wish -- hold on. Ms. Elizabeth
5 Simonneau, could you please be seated?

6 We note that the counsel for Mr. Khieu Samphan is on her feet.
7 She may proceed--

8 First of all, we would like to hand over to the Lead Co Lawyers
9 for the civil parties to give their remarks concerning the point
10 already raised.

11 MS. SIMONNEAU-FORT:

12 Yes. Good morning, Mr. President. Good morning to the Bench. Good
13 morning to everybody. Very briefly, if I can comment on these
14 deferrals or withdrawals, we accept the position of the
15 Prosecution and the fact that they wish to maintain a certain
16 number of people, so I won't elaborate on that.

17 On TCCP 178, I do believe that this civil party can offer us very
18 interesting testimony, in particular in terms of testimony that
19 has already been brought to this Court or is current at this
20 particular moment, because this witness knows a great deal about
21 structures and facts relating thereto. So I do believe that that
22 civil party has to be kept on the list.

23 [09.18.08]

24 I do have a second point which concerns a civil party that I
25 haven't heard the reference of -- perhaps I wasn't listening well

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1 enough -- but it's TCCP 94. That civil party was on list E172 and
2 now is no longer to be found there, either in the Memorandum or
3 elsewhere, and we believe that that civil party has an
4 interesting and in-depth knowledge of the facts concerning this
5 first trial and an ability to testify on behalf of civil parties,
6 which ought to be used by the Chamber. So we would like that
7 civil party to be brought back in and maintained as originally
8 envisaged by the Chamber in E172. Thank you, Mr. President.

9 MR. PRESIDENT:

10 Thank you.

11 Next, we would like to hand over to counsels for the accused
12 persons if they would wish to also comment on this.

13 Counsel for Mr. Khieu Samphan.

14 [09.19.48]

15 MS. GUISSÉ:

16 Thank you, Mr. President. At the outset, good morning to you, and
17 good morning to all of Your Honours and the parties present here.

18 On paragraph 5 of the Chamber's memo, there are three witnesses
19 that the Khieu Samphan defence would like to be able to hear
20 orally in this Chamber: it's TCW 620, who can speak on K-1/K-3 --
21 that is very important; there is TCW 475, who knows about 870;
22 and TCW 707 -- this person who has attended training dispensed by
23 Mr. Khieu Samphan, and so far I don't think we've had anybody
24 similar.

25 On an issue of principle, I seem to have understood that the

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1 Chamber was planning to hear these witnesses orally and to bring
2 written statements before the Chamber, but we believe that
3 written testimony should be the exception. The ability to
4 confront the witnesses is absolutely fundamental to this trial.

5 [09.21.28]

6 There was a broadly motivated decision that was about the
7 conditions in which written declarations could be received by
8 this Court -- perhaps I should slow down a little -- but to the
9 extent that the possibility might be there of submitting written
10 testimony instead of oral testimony, I wanted to be absolutely
11 clear that for the Khieu Samphan team, if witnesses are called,
12 they should come before this Court so as to answer the questions
13 from all of the parties, and that's part of the fundamental
14 rights that we wished to draw to the attention of this Court this
15 morning. Thank you.

16 MR. PRESIDENT:

17 Thank you.

18 What about other counsels for the accused person?

19 You may now proceed, Counsel for Mr. Nuon Chea.

20 [09.22.28]

21 MR. PAUW:

22 Thank you, Mr. President. And good morning to all. I'll be very
23 brief. We do not have any comments as to the witness that are --
24 witnesses that are proposed to be retracted as such.

25 We just want echo the statements that were made by our colleague,

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1 that if these witnesses do not appear in Court, we take the
2 position that their written statements should not be accepted as
3 such. And it is our understanding -- I just want to make that
4 clear for the record -- that there's going to be another hearing
5 on the issue of the admission of written statements of witnesses
6 that do not appear before your Trial Chamber. So we will not
7 discuss this for now.

8 We underline the importance of an expeditious trial. Therefore,
9 we understand that you want to cut witnesses, but we also think
10 that is a relevant consideration when we will - we will be
11 discussing other issues today, such as the possible expansion of
12 the trial. Thank you.

13 [09.23.42]

14 MR. PRESIDENT:

15 Thank you. Counsel Karnavas, you may now proceed.

16 MR. KARNAVAS:

17 Good morning, Mr. President. Good morning, Your Honours, and good
18 morning to everyone in and around the courtroom. We concur with
19 the comments made by the Khieu Samphan and Nuon Chea defence
20 team.

21 We simply wish to reiterate that, given the limited scope of the
22 trial, of 002/1, and given that we are before professional judges
23 and not a jury, I don't see the need -- we don't see the need to
24 try to introduce all sorts of evidence that is repetitive and not
25 necessarily useful in advancing to the cause of getting to the

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1 truth, and therefore we think that if we are in the process of
2 trying to streamline the case, to do -- to be very vigilant and
3 not allow whether it's oral or written testimony to come in that
4 is simply there as -- that it has nothing to do other than to add
5 to what is already on the record or have been said by witnesses.
6 I think we can streamline as much as possible.
7 And those are my comments. Thank you.

8 [09.25.11]

9 MR. PRESIDENT:

10 Thank you, Counsel.
11 Co Prosecutor, you may now proceed.

12 MR. LYSAK:

13 Thank you, Mr. President. Good morning to everybody.
14 My short - in short response, the reason that we proposed these
15 six witnesses, just to be clear, is that we have identified, in
16 each of them, testimony related to conduct or acts of the Accused
17 that we believe is important. The Trial Chamber will recall that
18 the Ruling on the admission of written statements of witnesses
19 without appearing in Court would not allow such statements if
20 they pertain to conduct or acts of the Accused.

21 [09.26.08]

22 We've heard today objections from them already to hearing the
23 statements of these witnesses if they did not come in to testify.
24 If the Chamber wishes to hear from me, I can briefly go through
25 each of these six witnesses to identify you -- identify for you

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1 specifically why it is we want to hear from them; I'll wait for
2 you to invite me to do that. But I want to make clear that the
3 reason we have identified these six witnesses is because they
4 have significant information specifically relating to acts of the
5 Accused that, under the ruling of the Court, we otherwise would
6 not be able to use.

7 And if the Court wishes to hear from me specifically about the
8 six witnesses, I'm happy to briefly go through each of them.

9 (Judges deliberate)

10 [09.27.27]

11 MR. PRESIDENT:

12 Thank you, Counsels.

13 And the Chamber may not wish to hear the detailed explanation on
14 the case for the time being at the trial management meeting.
15 Counsel for civil parties, you would like to have a few more
16 words? You may proceed.

17 MS. SIMONNEAU-FORT:

18 I believe, Mr. President, that I heard the Nuon Chea defence
19 saying that all of those witnesses who would not be directly
20 heard before the Chamber could not see their written testimony
21 used as proof in this Chamber.

22 [09.28.16]

23 If that is the Defence's position, then I strongly oppose that.
24 You cannot, on the one hand, request that we will not be heard to
25 bring the debate forward and at the same time state that their

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1 testimony in this form cannot be used. This is part of the file
2 -- it's a significant part of the file that has been gathered by
3 the Investigating Judges, and I do believe that the two civil
4 parties that I mentioned just now must be heard in the courtroom.
5 I agree with my colleague that is very important that we should
6 be able to have a discussion around the testimony of these
7 individuals who have been selected as being significant and
8 representative, but if the Chamber refuses to have them heard,
9 there can be no question of their written testimony being quite
10 simply removed from the scenario. Thank you.

11 MR. PRESIDENT:

12 Thank you.

13 Counsel for Mr. Nuon Chea, you may now proceed.

14 [09.29.22]

15 MR. PAUW:

16 Thank you, Mr. President. Just very brief so that there is no
17 misunderstanding, we do not - do not oppose the hearing of these
18 witnesses in Court; we are saying we defer to the Trial Chamber's
19 position on this issue.

20 And whether or not their written statements can be used in Court
21 will be the topic of another hearing that will be heard in the
22 future, if our understanding is correct. That is our position.

23 MR. PRESIDENT:

24 Thank you.

25 The Chamber will take account of all submissions by the parties

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1 in relation to the individuals listed for possible exclusion in
2 paragraph 5 of the Trial Management Meeting Agenda and will
3 indicate in due course which of them will be heard orally before
4 the Chamber or deferred.

5 [09.30.26]

6 The Co Prosecutors further propose that the testimony of
7 additional five individuals on the Trial Chamber's original
8 provisional list also be deferred. These individuals are TCW 326,
9 TCCP 94, TCW 126, TCW 724, and TCW 794. The Chamber is grateful
10 for the indication of these five additional individuals whom the
11 Co Prosecutors consider non essential to meeting their burden of
12 proof in Case 002/1.

13 Does any party have any comments to make to the OCP proposal to
14 not hear these additional five individuals?

15 With regard to this, Lead Co Lawyers perhaps already indicated
16 some points that are relevant to this. If they wish to also have
17 some few more comments that -- different from this, they may do
18 so. Indeed, we heard your comment earlier concerning one of the
19 witnesses listed in the list.

20 MS. SIMONNEAU-FORT:

21 Mr. President, perhaps I read the prosecutor's list too quickly
22 because, actually, I found the civil party that I insisted on
23 earlier on this morning, and I think it's very important that
24 that witness be heard.

25 We haven't heard many civil parties so far, and I think this

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1 could bring some very useful information to this trial. Thank
2 you.

3 [09.32.38]

4 MR. PRESIDENT:

5 Thank you.

6 How about the defence teams? Does any defence teams have any
7 comment to make in respect of this issue? If not, then we will
8 move forward.

9 Following the Chamber's invitation to the parties to suggest
10 further individuals who need not be heard orally before the
11 Chamber, the Ieng Sary defence have further proposed that TCE 65
12 and TCE 80 may also not be heard, in the interest of ensuring an
13 expeditious trial.

14 Does any party have comments to make on this proposal? If you do,
15 we will proceed, starting from the Prosecution.

16 You may proceed.

17 [09.33.49]

18 MR. LYSAK:

19 Thank you, Mr. President. We do propose to keep both of these
20 expert witnesses, and in particular – since we're in closed
21 session, I assume I can refer to them by their names.

22 In regards to Elizabeth Becker, I believe -- we believe her
23 testimony is particularly important. She does not come to this
24 Court simply as a – as an expert who has written a very
25 informative book on the period; also as a journalist who was

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1 present here in the war period leading up the evacuation of Phnom
2 Penh and who has direct knowledge from that and of course as the
3 only western journalist who was brought in to visit Cambodia --
4 Democratic Kampuchea -- during the period. As a result of that,
5 this is a person who has both personal knowledge to bring to the
6 Chamber in addition to expertise. And I would add to that, that
7 she has conducted interviews of some of the Accused, which also
8 we believe to be important matters.

9 In regards to Philip Short, we believe that he brings additional
10 information as an expert. The -- we certainly have heard from
11 David Chandler already, so it may be possible to shorten the
12 period that we have set aside for his testimony, but we certainly
13 believe, based on a review of his book, that there is additional
14 matters that he can enlighten the Chamber on in addition to what
15 has already been heard.

16 [09.35.45]

17 MR. PRESIDENT:

18 Thank you.

19 The National Lead Co Lawyer for the civil party, you may proceed.

20 MR. PICH ANG:

21 Thank you, Mr. President. Good morning, Your Honours. I have
22 nothing much to add to what the deputy prosecutor has said.

23 I simply concur with him, the necessity to hear these two expert
24 witnesses, because these two individuals are the knowledgeable
25 people of the period. In addition, they have written books about

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1 that and they have a wealth of information to share with the
2 Chamber. So I simply concur with the Prosecution on that.

3 [09.36.31]

4 MR. PRESIDENT:

5 How about the other two defence teams? The defence team for Mr.
6 Nuon Chea and the defence team for Khieu Samphan, do you have any
7 other observation on this issue?

8 MS. GUISSÉ:

9 Thank you, Mr. President, a brief remark. We are not of the same
10 view as our learned colleague Karnavas.

11 With regard to Philip Short, he's been mentioned regularly in the
12 Closing Order, and we would like to be able to examine him and we
13 would like to have his clarifications on passages in the Closing
14 Order which is before you.

15 MR. PRESIDENT:

16 Thank you.

17 Yes, Counsel, you may proceed.

18 [09.37.41]

19 MR. KARNAVAS:

20 Thank you. I wish to respond briefly, just to reiterate some of
21 the comments that we've already made.

22 Becker and Short are not experts; they're journalists. I think we
23 need to get that straight. They -- Becker was here as a
24 journalist covering part of the situation that was happening
25 prior to the fall of Phnom Penh, but she's not an expert. She's

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1 got a bachelor's degree and she's got field experience as a
2 journalist covering a war. So I don't think that she qualifies as
3 an expert.

4 And the same goes with Short, who was mainly out at Beijing,
5 although he did spend some time in Cambodia in the seventies.
6 Second of all, their books are not history books, in a sense, so
7 they cannot be even considered on the same calibre or level as
8 something that was produced by David Chandler.

9 [09.38.41]

10 When David Chandler was here, the parties were given ample
11 opportunities to explore everything that was necessary for 002/1.
12 Regarding the fall of Phnom Penh, what can Becker possibly bring
13 out that hasn't already been brought forward with eyewitness
14 testimony of either civil parties or other witnesses and of
15 course what David Chandler has already talked about. His visit to
16 DK -- that one brief visit where Caldwell was killed -- again,
17 how does that add if -- to the case and to proving their case if
18 we're in a process of streamlining?

19 And so, if the purpose is to hear as little evidence as is
20 necessary, then I think we need to be judicious.

21 As far as Philip Short, I would suggest that there is no need to
22 call Philip Short, and even though he has been mentioned in the
23 Closing Order, the Trial Chamber should adopt the same procedure
24 it adopted with Kiernan, and that is not to accept anything that
25 Philip Short -- that is in the Closing Order that is being relied

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1 on by Philip Short.

2 [09.40.06]

3 If you look at the Closing Order, there's all sorts of other
4 documents or statements that are being used to shore up what is
5 being advanced, and the Closing Order is not evidence in and of
6 itself. The evidence is what comes here.

7 So the simple solution is not only not to hear Short and not to
8 hear Becker, but also not to accept anything that is being used
9 or referenced in the Closing Order by these two individuals.

10 Thank you.

11 MR. PRESIDENT:

12 Thank you.

13 The National Defence Counsel for Ieng Sary, you may proceed.

14 [09.40.52]

15 MR. ANG UDOM:

16 Thank you, Mr. President. And good morning, Your Honours. I have
17 nothing much to add to my esteemed colleagues. I simply would
18 like to correct what they -- what my colleague, Mr. Karnavas,
19 said.

20 He mentioned that the books were not the historical books -- was
21 not a history books, but I heard through the translation that
22 this book were the history books, so I would like to simply
23 correct this line of translation.

24 MR. PRESIDENT:

25 Thank you.

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1 So does any other party, other the Co Prosecutors and Ieng Sary
2 defence, have further suggestions for how the Case 002/01
3 witness, expert, and civil party list could be further
4 streamlined in the interests of an expeditious trial?

5 [09.42.11]

6 You may proceed, Counsel Jasper Pauw.

7 MR. PAUW:

8 Thank you, Mr. President. I am not entirely clear if this is what
9 you're asking at this point in time, so I'll keep my comments
10 very brief, but I think the main way that we could streamline
11 this trial would be to not expand the trial, and I just want to
12 put that on the record.

13 MR. PRESIDENT:

14 Thank you.

15 (Judges deliberate)

16 [09.44.01]

17 Thank you, Counsel Jasper Pauw.

18 The issue that you raised just now was not the issue at stake.
19 Soon we will be discussing the issues that you have just
20 observed.

21 At a later point in their written response, the Co-Prosecutors
22 requested the calling of an additional seven individuals who had
23 not even been deemed by the Chamber to qualify for inclusion in
24 their provisional list of witness, experts and civil parties.
25 These individuals are TCW-505, TCW-754, TCW-100, TCE -- TCE-33,

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1 TCE-33 (sic), TCW-720, TCW-781, and TCW-164.

2 The testimony of the proposed expert in particular would be
3 likely to be especially lengthy and contested. The Chamber
4 considers that calling these individuals would undercut many of
5 the above efficiency gains, and it is reluctant to do so in
6 absence of compelling justification.

7 The Co-Prosecutors are now invited to identify with greater
8 particularity exactly why the oral testimony of these seven
9 additional individuals are now sought. The Prosecution, you may
10 now explain the particularity as to why the oral testimony of
11 these seven additional individuals are sought. You may proceed.

12 [09.46.28]

13 MR. LYSAK:

14 Thank you -- thank you for that opportunity, Mr. President. Let
15 me just start for a -- with a general explanation of why these
16 witnesses did not end up on the original phase 1 list.

17 The Chamber may recall that our original trial witness list was
18 made at a time prior to severance. And so there were a number of
19 witnesses who had very significant information both on issues
20 such as administrative structures, the roles of the Accused,
21 existence of the JCE, issues that are -- we are now dealing with
22 as part of phase 1 of the trial. These witnesses also had
23 significant information on specific crime sites. And so, in
24 putting out our initial trial witness list, we, in some cases,
25 listed people in relation to specific crime sites who also have

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1 what we believe is extremely important and helpful information to
2 the Chamber, related to the phase 1 witnesses.

3 [09.47.46]

4 And so, because there was never a -- in the interest of not
5 inviting the parties to re-do witness lists after the Severance
6 Order, there was never a period where we had an opportunity to go
7 back to our entire witness list and look through and see if there
8 were important witnesses, related to what we call the phase 1
9 issues, who had been overlooked, who were on the original
10 proposals.

11 So that's the starting point of where these witnesses come from.

12 In terms of why we believe they are important, let me try to be
13 brief and go through them.

14 TCW-505, a [REDACTED] was the secretary of Tram Kak district. From
15 some point -- we believe, in 1976 to early 1977 -- he was a
16 member to the district committee prior to that time, including
17 prior to the 1975 period. The Court probably -- I need not
18 emphasize the significance of Tram Kak district as one of the
19 core bases of the Party.

20 [09.49.04]

21 This witness was interviewed five times by the Co-Investigating
22 Judges and provides very significant information both -- related
23 to the evacuation of Phnom Penh. This witness describes receiving
24 instructions from the sector office on evacuees, he describes
25 how, when evacuees were on their way from Phnom Penh to Tram Kak,

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1 that Lon Nol soldiers were removed and that the only people who
2 arrived were the wives of them who told them that their husbands
3 -- that the soldiers had been removed.

4 And this witness then, in addition, if you are looking for the
5 best witness that this Court could possibly hear to talk about
6 communications, and reporting structure within the districts and
7 that -- this is your witness, because Tram Kak district is the
8 only surviving -- the only district in which there are surviving
9 contemporaneous records. You're aware that we have an annex in
10 which we've listed some of those records.

11 [09.50.22]

12 In his interviews with the Investigating Judges, this witness was
13 able to identify some of those and to speak to the process that
14 went on. And I won't -- I could go on at length, but I will note
15 that one of the key types of records from Tram Kak district that
16 exist, that I think are particularly important to this trial, is
17 that in the communes in that district, there was an effort made
18 to identify all people who had moved in who were related or had
19 some connection to the prior regime. There are surviving records
20 that show this process, that this witness can identify. So we
21 view him as someone who - who can add a lot to this trial.

22 Two of the other witnesses on the list are TCW-754 and TCW-100.
23 These are both witnesses that we believe would be very good
24 witnesses on military structure issues that are upcoming, and we
25 have proposed removal, I believe, of one or two of the witnesses

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1 that the Court had considered, because we believe that these will
2 be better witnesses on the issues that the Court wants to hear
3 from.

4 [09.51.46]

5 One of them, [REDACTED] TCW-754, was someone who worked at the
6 general staff. We have identified approximately eight documents
7 that are part of the annexes that we submitted, that were
8 authored by this witness, that talk about efforts within the
9 military to conduct political education and to identify enemies
10 within the ranks. This witness was also copied on some very
11 important meetings between Son Sen and the division secretaries.
12 We're happy to identify those records for you. I won't list all
13 of them right now, but they're -- this is - this is a person who
14 can help understand what the role of the general staff and the --
15 in particular in relation to purges within the military.

16 The other witness, [REDACTED] was a cadre within Division
17 801, I believe, who went on to become the head of the Division
18 801 Re-Education Office. And his testimony is also, I think,
19 particularly helpful on military structure because he was present
20 at a general assembly that was held in September 1978 in Phnom
21 Penh, presided over by Pol Pot and Nuon Chea, at which his
22 division and others were created and where they received there
23 marching orders. And at that point he went off to Rattanakiri.
24 And later in 1976, when the concern about internal enemies
25 started to become a prevailing issue for the Party, he was asked

1 by Son Sen to establish a re-education office to deal with
2 internal enemies within the division.

3 [09.53.48]

4 In addition to that, he confirms one crucial fact that was very
5 much disputed by the Defence in Duch but which we have also been
6 attempting to demonstrate with other witnesses, which is that
7 confessions from S-21 were sent out into the -- into the
8 provinces and into organizations. And this witness has testified
9 -- again, he was interviewed four -- I believe, on four occasions
10 by the Co-Investigating Judges -- that confessions with
11 annotations were sent to the division commander and then
12 forwarded on to him and that people who were marked in them, who
13 had been implicated in confessions, were arrested and brought to
14 his prison.

15 So we believe that this - this type of testimony is very
16 fundamental to the JCE that the Co-Prosecutors are seeking to
17 prove.

18 [09.54.45]

19 Briefly -- very briefly, on the other witnesses, I don't think I
20 need to say too much about [REDACTED]. I understand your
21 issues. You are correct he would be a more time consuming
22 witness, he would be a contested witness. I would simply say to
23 you that of all the people in the world, if there was one person
24 that we would turn to explain Communist ideology as it existed in
25 the Democratic Kampuchea regime -- that he would be that person,

1 he would be that person. Again, he is also a person who conducted
2 very important interviews of some of the Accused.
3 And [REDACTED], again, I don't think what I have to say would
4 surprise you in any way. This is an individual who interviewed
5 Nuon Chea [REDACTED]. Nuon Chea has disputed some
6 of these statements from [REDACTED]'s book, so, based on that,
7 it seems to me that it would be useful to bring [REDACTED]
8 in, at least to speak to the circumstances and to confirm with
9 the Court the accuracy of the book that he has written, that
10 contains, if you've read it, very important information related
11 to Mr. Nuon Chea.

12 [09.56.15]

13 The other two witnesses are witnesses, we believe, that would be
14 very short.

15 One of them, [REDACTED], is a Ministry of Commerce witness who can
16 speak to visits to the Commerce warehouse by both Nuon Chea and
17 Khieu Samphan, including one at the -- at the very end of the
18 regime, where Nuon Chea and Khieu Samphan made a statement
19 indicating that there would be no further purges at that point.
20 So these are -- these are brief witnesses. [REDACTED] is a witness --
21 one of the political education witnesses we proposed.

22 We believe these are very short witnesses, witnesses who come in
23 to talk specifically about an event relating to the Accused. In
24 the case of [REDACTED], she was present at political education
25 sessions where Nuon Chea -- Nuon Chea and Khieu Samphan discussed

24

1 enemies in the regime.

2 [09.57.14]

3 So these are the reasons that we have proposed these witnesses.

4 We have proposed them also because at least our understanding was

5 that we would spend the rest of this year dealing with these

6 phase 1 witnesses. These witnesses are -- are the core, really,

7 of this case. These are the witnesses that establish how the

8 regime worked and the responsibility of the Accused. They are the

9 more complex witnesses, but once we are through them, this case

10 becomes, I think, much simpler in terms of the types of witnesses

11 that need to be heard and the length of their testimony.

12 So what we are proposing to the Court is a group of witnesses

13 that we believe -- the best group of witnesses, from our

14 perspective, on these key phase 1 issues related to the JCE --

15 how the regime worked, and the responsibility of the Accused --

16 under a schedule that we believe can be completed by the end of

17 this year.

18 [09.58.24]

19 MR. PRESIDENT:

20 Thank you.

21 I now open the floor for comments by other parties. How about the

22 Lead Co-Lawyers for the civil parties? Do you have any

23 observation?

24 How about the defence teams, then?

25 MR. KARNAVAS:

25

1 Thank you, Mr. President. I'll be rather brief.

2 We got noticed of this approximately a day and a half ago, and
3 according to the Scheduling Order that we received, it says here
4 "no later [by] Friday 10 August ['12]."

5 Now, we understand that the deadline doesn't apply to the
6 Prosecution in this case, and this might be useful information,
7 at least that's what we've been told. But if we are expected to
8 now, on the fly, make a reasoned -- a reasoned response, I'm
9 afraid I cannot do so.

10 [09.59.26]

11 And so we would request that we be given an opportunity to
12 provide written submissions on this -- a response, because we do
13 need to do our due diligence with all of these witnesses.

14 Although I could speak with [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] we know that since then he's been writing some
19 information in order to influence the process, we don't see him
20 as -- he might be a - quote -- "expert" - unquote -- but he is
21 tainted, he is biased, [REDACTED]

22 [REDACTED] and he would add nothing, nothing that could not be --
23 could not have been gotten or hasn't -- has been gotten from
24 David Chandler.

25 [10.00.19]

26

1 And might I add that if the Prosecution felt so strongly as now
2 they claim -- these are the core, the nucleus of the
3 Prosecution's case -- why did they not immediately move to have
4 all these witnesses added and scrap other witnesses that they
5 thought might not be necessary, once the trial Chamber severed
6 the case? This only adds more to the case. Now, if they want to
7 take out some and supplement with others, I leave that up to you;
8 that might be one way of saving time. But if [REDACTED] -- if [REDACTED]
9 was such -- the only person on the universe that could explain
10 these things, why didn't they move to have David Chandler removed
11 from the list and replaced by [REDACTED]?

12 So we want to have an opportunity to provide written submissions
13 because, as we've noted, we abided by your Scheduling Order; the
14 Prosecution has not. And we feel somewhat ambushed to be - to be
15 placed in this position where we have to make decisions without
16 having to actually go through all this material, do our due
17 diligence.

18 [10.01.40]

19 And it might be that in many instances we will agree with the
20 Prosecution and we will not object or we will leave it to your
21 wise discretion, but our position at this point in time is that
22 we need time, now that we've heard the Prosecution's argument as
23 to why these are so important for their case, to respond
24 appropriately. And as I've noted, in your own -- in your - in
25 your own letter to us, you wanted reasoned -- reasoned positions;

27

1 I cannot provide a reasoned position when I have to prepare for
2 an examination of a very important witness -- and I'm in the
3 process of that -- and I receive a 15-page lengthy submission,
4 and I'm supposed to do all of this at the same time. Even with
5 our modest team, it's impossible to do it all.

6 And so, therefore, we ask for some modest time to respond. Thank
7 you.

8 MR. PRESIDENT:

9 Thank you.

10 Counsel for Mr. Khieu Samphan, you may now proceed.

11 MS. GUISSÉ:

12 Thank you, Mr. President. I shall be brief, sir, because I don't
13 want to go on to other points.

14 [10.03.10]

15 But thanks to ITU, we do have a courtesy translation of the
16 Prosecution's notification, but in such a brief period of time,
17 we can't really respond regarding the proposals for new witnesses
18 that they are putting forward.

19 So, if you do wish to add these witnesses to the list, then we
20 would like to be able to respond, but the comment by the Khieu
21 Samphan defence team is that if the purpose is to make the debate
22 shorter and more expeditious, then the proposals made by the
23 Prosecution should not be accepted.

24 Thank you.

25 MR. PRESIDENT:

1 Thank you, Counsel.

2 Counsel Jasper Pauw, you may now proceed.

3 MR. PAUW

4 Thank you, Mr. President, I'll be equally brief. I support our
5 colleagues from the Ieng Sary team and from the Khieu Samphan
6 team; we would like to reserve the right to respond in writing to
7 some of the witnesses as proposed by the OCP.

8 [10.04.29]

9 But I can tell you here today that we support the calling of [REDACTED]
10 [REDACTED]. I think that is it obvious that he is a very important
11 witness for the reasons mentioned by the Prosecution, but also
12 because of his involvement during a -- his involvements in the
13 entire investigation and even before that, his involvement with
14 DC-Cam.

15 So, if you choose to call [REDACTED], we would request that he can
16 be questioned on all topics that are relevant to this trial,
17 which includes the investigation and the collection of evidence
18 by DC-Cam, by the OCP, and by the OCIJ.

19 As to [REDACTED], he is on our list of witnesses and we
20 think he has important information to share with all of us. It
21 will be conducive to ascertaining the truth, and for that reason
22 we would support the calling of [REDACTED]

23 As for the other witnesses, as I indicated, we would like to
24 reserve the right to respond in writing.

25 Thank you.

1 [10.05.45]

2 MR. PRESIDENT:

3 Thank you, Counsel.

4 Mr. Co-Prosecutor, you may now proceed.

5 MR. LYSAK:

6 Yes, just very briefly, Mr. President, just so we're very clear,
7 these are not new -- new witnesses; these are witnesses who are
8 on the Co-Prosecutor's original trial witness list. And you may
9 recall that there was a specific period in which parties were
10 asked to file objections to any of the witnesses on the other
11 party's lists. This happened last year, and indeed, Mr. Karnavas
12 filed objections specifically to [REDACTED] but not to these
13 other witnesses.

14 So I take issue with the idea that these are new witnesses; these
15 are witnesses from our original list. The reason they've come up
16 now is because the Trial Chamber did make an initial selection of
17 phase 1 witnesses, but it was always our understanding that there
18 would come a time when the parties would be asked if there were
19 any additional witnesses they wished to be heard on this - on
20 this issue. That was our understanding of the purpose of -- one
21 of the purposes of the hearing today.

22 [10.06.58]

23 As for the reason we did not file it on Friday, perhaps we had a
24 misunderstanding, but as we read the Order, it asked us if we had
25 any additional new issues that those were to be raised by Friday.

30

1 We viewed the issue of witnesses who were going to be considered
2 to be one of the issues that was going to be discussed today. We
3 thought it would be useful to put it in writing, given the length
4 and that, so that people could see it. But our understanding of
5 the deadline was, if there was any new issues, not issues that
6 were already proposed for discussion, that those needed to be
7 raised by Friday. If we misunderstood that, we apologize, but
8 that certainly was our understanding of the Trial Chamber's
9 Memorandum.

10 MR. PRESIDENT:

11 Thank you.

12 We would like now to proceed to another item.

13 [10.08.03]

14 As indicated in the Trial Management Meeting Agenda, the Chamber
15 has adopted the practice of asking all witnesses to indicate,
16 before they give evidence, whether they have reviewed their prior
17 statements before the Co-Investigating Judges and whether they
18 confirm that they are true.

19 The Chamber has noted the reservations of the Ieng Sary defence
20 regarding this practice. However, the Chamber considers it to be
21 vital to ensuring that significant in-Court time is not wasted by
22 needless repetition by witnesses of sworn statements already made
23 before the Office of Co-Investigating Judges.

24 Where a witness declares that their prior statements are true and
25 accurately recorded in the OCIJ written record, parties are

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1 permitted to ask further questions only where there is a need for
2 clarification of matters that are insufficiently covered by these
3 statements or not dealt with during questioning before the OCIJ.
4 It follows that the parties have the right and, indeed, the duty
5 to test a witness's credibility on areas within or beyond their
6 prior statements, where grounds exist to do so. This, however, is
7 not synonymous with requiring witnesses to repeat at length the
8 contents of their statements where they have indicated that they
9 recall and stand by them.

10 [10.10.23]

11 Does any party wish to make any comment on this practice?

12 Counsel for Mr. Khieu Samphan, you may now proceed.

13 MS. GUISSÉ:

14 Thank you, Mr. President.

15 In a general manner, once you know you have signed statements,
16 then the witness can confirm that. However, sometimes, you have
17 to admit that the Co-Investigating Judges are not infallible;
18 there can be mistakes, there can be interpretation problems,
19 there can be questions that are not well understood or put. And
20 therefore it's very important to give the parties a chance to
21 draw out those mistakes or difficulties and to be able to present
22 them before the Chamber. This is something of an aside, but it is
23 important because it does make it possible for us to go into the
24 substance of these prior statements and the availability of audio
25 files, and -- I have to say this to the Chamber, as well -- is

1 absolutely crucial to us, on the Defence side, so that we can
2 compare the audio files and the documents.

3 [10.12.02]

4 And this is something that our team is going to be bringing up --
5 indeed, I believe all the defence teams will bring it up -- when
6 we have a debate about written statements; perhaps I should point
7 that out in advance. Thank you.

8 MR. PRESIDENT:

9 Thank you.

10 Counsel Jasper Pauw, you may now proceed.

11 MR. PAUW:

12 Thank you, Mr. President.

13 Echoing what my colleague for the Khieu Samphan team just said, I
14 think this is an important issue that will be discussed during
15 the hearing that we will have on written statements.

16 [10.12.36]

17 I understand from a trial management perspective that you want to
18 shorten the questioning of witnesses, but the question as to the
19 probative value of these written statements is a different one,
20 and I think it deserves an in-depth discussion that cannot be
21 held today.

22 I think it's become abundantly clear that there are actual
23 problems with the statements that have been given before the
24 Co-Investigating Judges. The Ieng Sary team and our team have
25 identified those issues. We have numerous times identified

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1 problems, for example with regards to the audio recordings, and
2 we have noticed that certain things that have been said in the
3 audio recordings cannot be found in the written transcripts and
4 vice versa.

5 [10.13.28]

6 There's an issue -- and I will simply flag it today: the defence
7 teams simply do not have the resources to listen to all
8 statements that have been given before the OCIJ. The audio
9 recordings amount to, I believe, more than 1,000 hours of audio
10 recordings, and we just simply cannot go through all of them. And
11 we need to resolve that issue before we can speak about the
12 probative value of statements that have been given before the
13 OCIJ and that would be admitted before this Chamber.

14 I'm tempted to say more, but I would like to leave it at this.

15 Again, I think this needs to be discussed more in-depth during
16 the other hearing that will be scheduled on written statements
17 because there's also important case law that I think would assist
18 your Trial Chamber in reaching a correct position on this issue.

19 Thank you.

20 MR. PRESIDENT:

21 Thank you.

22 Does any other party wish to respond to the comments made?

23 [10.14.57]

24 Madam Chea Leang, you may now proceed.

25 MS. CHEA LEANG:

1 Thank you, Mr. President. Thank you, Your Honours. Good morning,
2 everyone in this courtroom.

3 With regard to the seventh paragraph of the item on the agenda,
4 in general, as principle, the Co-Prosecutors agree with that.

5 However, we would insist that the Chamber is more flexible
6 concerning the reading of the statements by witnesses, for
7 example reading statements to witnesses to confirm, because the
8 events happened a long time ago or the interviews were conducted
9 for some period of time, and these witnesses are of advanced age
10 -- many of whom are -- so their memories are not very good.

11 And concerning the statements before the Co-Investigating Judges
12 and that the Chamber has ruled that witnesses should be asked
13 question about whether they have been familiar or read the
14 statements before they come to the Chamber, it is a good practice
15 we support.

16 [10.16.27]

17 And with regard to the comments made by counsel for Khieu
18 Samphan, we are of the opinion that statements that are given
19 before the Co-Investigating Judges are not a hundred per cent
20 accurate because there's still some points that need
21 clarification during these trial proceedings, the points that
22 perhaps may not be well captured during the Co-Investigating
23 Judges' phase of investigation. So we would like to reserve to
24 question to seek clarification during the trial proceeding.

25 And on another point, after records of the interviews are kept

1 and then, before witnesses are questioned in the actual
2 proceedings -- in the trial proceeding, the party, including the
3 prosecutors, may need to read some statements that made earlier
4 by the witnesses so that the persons -- the witnesses themselves
5 can remember -- or can establish the link of the statement he or
6 she has made to the question going to be put in the hearing.

7 [10.17.53]

8 MR. PRESIDENT:

9 Thank you.

10 Counsel for the civil parties, you may now proceed.

11 MS. SIMONNEAU-FORT:

12 Thank you, Mr. President, perhaps just to recall the position
13 that we have developed at an earlier stage in this courtroom.

14 On this subject, we have a general principle and we have
15 exceptions.

16 The general principle arises quite simply from the application of
17 civil law. These hearing records have important juridical value,
18 and it's not necessary to make witnesses in the courtroom say
19 once again what they have already said to the Co-Investigating
20 Judges. This would otherwise impugn the value of the record. But
21 sometimes it is necessary to have a point clarified; it is
22 necessary sometimes to check something that might have been
23 called into question by another witness. Then, of course, then,
24 you can quote certain excerpts. But the initial principle,
25 nevertheless, is that it is not necessary to systematically have

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1 these things repeated in the courtroom, and we would save a lot
2 of time if we avoided doing so.

3 [10.19.10]

4 MR. PRESIDENT:

5 National Co-Counsel for the civil party, you may now proceed.

6 MR. PICH ANG:

7 Thank you, Mr. President. I wish to add on top of what my
8 colleague just indicated.

9 The testimonies before the Co-Investigating Judges are the
10 statements that were taped, verified by the interviewers who gave
11 the interviews. It is most likely that there is any discrepancy
12 in the statements after them being verified like that. And any
13 statement that state that these statements are of less probative
14 value should not be accepted.

15 If parties feel that there are some uncertain points in the
16 statement, then parties should be given the opportunity to
17 challenge or to seek a clarification in the actual proceedings.

18 So I am of the opinion that the statements before the
19 Co-Investigating Judges shall not be considered as having less
20 probative value.

21 [10.20.46]

22 MR. PRESIDENT:

23 Counsel for Mr. Khieu Samphan, you may now proceed.

24 MS. GUISSÉ:

25 Very briefly, Mr. President, just to answer my colleague from the

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1 civil parties on the question of civil law, the specificity of
2 statements taken by investigators from the OCIJ is precisely
3 that, when we are in our national jurisdictions and we have a
4 record, it is the judge himself or herself who asks the
5 questions; and that is the great difference.

6 [10.21.28]

7 In most documents that we have available to us, it is not the
8 Co-Investigating Judges who ask the questions, but investigators
9 who, quite understandably, make summaries of a kind of the
10 witness's answers. And when you go into the details and you look
11 closely, there are sometimes some elements that may be worth
12 bringing to the witness's attention because the way in which
13 their entire statement has been summarized does not necessarily
14 precisely mirror what was said in the audio recording.

15 So it is necessary to bear in mind that these statements have
16 often been -- generally been taken by investigators from the OCIJ
17 rather than professional judges, who themselves are much more
18 accustomed to asking such questions and indeed, to ensuring the
19 production of accurate records. Thank you.

20 [10.22.33]

21 MR. PRESIDENT:

22 Thank you, Counsel.

23 National Counsel for Mr. Ieng Sary, you may now proceed.

24 MR. ANG UDOM:

25 I have strong interest in this point. With regard to the

1 investigation and the interviews being conducted by the Office of
2 Co-Investigating Judges of the victims, I feel that there are
3 some irregularities in the proceedings.

4 First and foremost, I observe that there is no basic form of
5 conducting the interview because one group may employ different
6 strategies or work habits, as opposed to the other group.

7 Sometimes, the interpreters play more important role than the
8 investigators themselves. In some incidences, there is problem
9 concerning interpreting. Sometimes, the interpreting was not
10 accurate. And in some cases, the witnesses were prompted with
11 testimonies. It suggests that the investigators themselves were
12 testifying, rather than the witnesses were giving testimonies.
13 I would not wish to say that these statements were all of less
14 probative value, but I would like to contest the way it
15 conducted.

16 And we made several requests already during the investigative
17 phase; we asked that the forms, the capacity, qualifications of
18 the investigators be verified and checked, but our requests were
19 not entertained.

20 [10.25.12]

21 And because of that, we have a lot of problems. For example, when
22 we read any statement, we have to read it with comparison to
23 other documents in other languages and we observe great
24 discrepancies -- the written text as opposed to the transcript of
25 the actual tapes. And we commit so much time -- or wasting so

1 much time on that, and we observe.

2 So we are in the position that there should be the possibility to
3 correct the statements by the witnesses, for example to correct
4 the statements he or she claimed before the Co-Investigating
5 Judges.

6 Yesterday, for example, Witness Sa Siek retracted her statement
7 or corrected her statement. She said that she didn't mention so
8 during the investigation phase. And indeed, if we give
9 opportunity to witness to correct a statement they made before,
10 then it would be fair for the witnesses--

11 MR. PRESIDENT:

12 Counsel, could you please be brief? We already gave you the floor
13 before the other parties to touch upon this issue, but we,
14 indeed, indicated that you are allowed to make comments.

15 [10.27.08]

16 We do not really stop counsel for raising the comments concerning
17 the written statements before the Co-Investigating Judges Office.
18 However, we would like to ask you to touch upon any other
19 important element that is not repetitive. Indeed, we would like
20 to hear more. We also will address this issue and we would like
21 you to again summarize your point.

22 MR. ANG UDOM:

23 Thank you, Mr. President. I have nothing more to add.

24 MR. PRESIDENT:

25 Counsel for the civil party, you may now proceed. We noted you

1 are on your feet.

2 MS. SIMONNEAU-FORT:

3 Yes, Mr. President. I don't want to enter into any kind of
4 spurious controversy here. I think it's quite possible to look
5 back at a record, when necessary to do so.

6 [10.28.35]

7 But legally speaking, my colleague from the Khieu Samphan defence
8 team seems to give less value to the records drawn up by
9 investigators. But in the system used by the Co-Investigating
10 Judges, they can send rogatory letters, and under those letters,
11 the actions undertaken by investigators have as much validity as
12 the hearings and interviews by the Judges themselves.

13 Very briefly, to answer the Ieng Sary defence on the legal
14 standpoint, our learned friend said that the investigators and
15 the Judges had different methods. Yes, I think, indeed, it is the
16 human side of justice that human beings do not do things in
17 exactly the same way when they act here, and this is not a legal
18 problem. The fact that if witnesses have been pushed to testify,
19 I think that is something that should be proven; it is a
20 completely gratuitous statement so far.

21 [10.29.41]

22 As concerns the fact that during the investigating stage, our
23 colleagues have called for explanations, I understand this. They
24 have appeal possibilities. There are decisions that are made by
25 Investigating Judges, which are judicial decisions. If there are

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1 appeals, they are handled by the Pre-Trial Chamber. Those are
2 legal decisions; they are final. And then there is a Closing
3 Order which covered all of those difficulties. So we cannot come
4 back to this Chamber and then request that such difficulties be
5 adjudicated upon, because that's been done already. I wanted to
6 stress that from the legal standpoint.

7 Once again, the Chamber here has given the parties the
8 possibility to go back to the record. The Chamber is simply
9 asking that we do not read them systematically and have them
10 re-stated systematically before this Court.

11 [10.30.44]

12 MR. PRESIDENT:

13 Yes, I hand over the floor to the national prosecutor. You may
14 proceed.

15 MS. CHEA LEANG:

16 Thank you, Mr. President. I would like to add a bit. Just now,
17 the President mentioned it very clearly that the observation
18 raised by the national defence counsel for Mr. Ieng Sary deviates
19 from the central topics we are discussing. Now, we are looking at
20 the written records that have already been recognized by the
21 national practice.

22 If we look at the discretion of the Investigating Judges, they
23 have the authority to delegate the power through rogatory letter,
24 and in order to annul the written record, there must be a new
25 evidence or evidence that may contradict the written record. And

42

1 the civil party lawyer has already mentioned clearly that we are
2 not now debating on the legality of the written records. What we
3 are discussing at stake here is what has not been provided
4 sufficiently by the Office of Co-Investigating Judges.

5 [10.32.10]

6 That is the points that I wanted to highlight from the beginning,
7 that if the Office of Co-Investigating Judges cannot provide
8 sufficient information through their written records, then there
9 should be an opportunity to question the witnesses and civil
10 parties, and that will add value to the written records, in
11 addition to the discretion exercised by the Office of
12 Co-Investigating Judges.

13 MR. PRESIDENT:

14 Thank you.

15 I now handover the floor to Counsel Jasper Pauw.

16 MR. PAUW:

17 Thank you, Mr. President. I'll be very brief. It is in response
18 to what my colleague from the civil parties just stated.

19 [10.32.52]

20 I think it's important to note that this fiction that the
21 statements that were given before the OCIJ are somehow
22 untouchable and cannot be challenged simply because they were
23 given before a judicial organ is false.

24 And we have actually challenged several records of interview
25 during the investigative stage, and we have filed several

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1 requests for investigative action relating to statements before
2 the OCIJ, and time and again we were told that if we want to
3 challenge those statements, we have to wait for the trial phase,
4 we have to do this before the Trial Chamber. And this is the
5 phase that we are in now.

6 So, just for the records, these statements are not untouchable,
7 and we should be allowed to challenge them.

8 MR. PRESIDENT:

9 Thank you.

10 The time is now appropriate for adjournment. We will adjourn for
11 20 minutes. We will resume at 10 to 11.00.

12 (Meeting recesses from 1034H to 1052H)

13 MR. PRESIDENT:

14 Please be seated. We are now back in session.

15 We are running a bit behind schedule, so we will have to move
16 forwards a bit faster. Hopefully, we can conclude all the matters
17 on the agenda of this TMM today.

18 The Chamber, in its TMM Agenda, made further suggestions for
19 expediting proceedings, noting for example that some parties
20 utilize two and, on occasion, three lawyers to question
21 individual witnesses, experts or civil parties in Court. This
22 often results in repetitive questioning and can sometimes appear
23 to lack coordination between counsel.

24 All parties are encouraged to consider instead utilizing one
25 lawyer, whether national or international, to lead the in-Court

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1 examination of each individual or to take other measures to avoid
2 repetition.

3 [10.54.00]

4 In view of the Lead Co-Lawyer's role in support of the
5 Prosecution, the Chamber asks the Lead Co-Lawyers and
6 Co-Prosecutors to collaborate in order to avoid repetitive
7 in-Court questioning by these parties.

8 In order to reduce the length of time the Accused must
9 continually sit, the Chamber invited the parties to consider
10 whether sitting instead on Mondays and Tuesday and Thursdays and
11 Fridays each week, with a rest day on Wednesdays, would benefit
12 their clients.

13 No defence team indicated a preference for sitting on Fridays
14 instead of Wednesdays. However, the Khieu Samphan defence has
15 indicated that a change in daily sitting hours to 9 a.m. or 8.30
16 a.m. until 11.30 a.m., and from 13.30 p.m. until 4 p.m. would
17 reduce their client's fatigue. The Chamber will give serious
18 consideration to this proposal.

19 On these two matters, does any other party have any comment to
20 make on it?

21 I will hand over the floor to the Prosecution and other civil
22 party lawyers first.

23 Prosecutor, you may proceed.

24 [10.56.08]

25 MR. CHAN DARARASMEY:

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1 Thank you, Mr. President. And good morning, Your Honours, and
2 good morning to everyone. I would like to have an observation on
3 the points that the President mentioned concerning the fact that
4 the TC encourages the assignment of only one representative --
5 one lawyer, whether national or international, in order to lead
6 the in-Court examination of individuals in order to avoid
7 repetition in questioning. On this particular point, I would like
8 to propose the following ideas.

9 First, as Your Honours may have been aware, that the ECCC is of
10 hybrid nature. Based on the virtue of law of the establishment of
11 this Court, it is appropriate that we apply the same formula --
12 that is, the formula of a mutual assistance between national and
13 international personnel. So they have to consult with each other
14 before they put the questions to the witness when they want to
15 elicit answers from the witnesses. So that is the point that we
16 strongly support. That is a good point that I think we should
17 discuss and decide on this particular issue.

18 [10.57.37]

19 And, secondly, when we have -- both national and international
20 lawyers works together, it demonstrates that there is a good
21 cooperation and coordination between national and international
22 forces in carrying out their duties to achieve the mission of the
23 ECCC.

24 Thirdly, I would also like to inform Your Honours that in
25 relation to this matter, the question put to the witness who are

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1 the Cambodian national, if the Cambodian lawyers or prosecutor
2 asks the questions to the Cambodian witness, they may understand
3 the culture and language very clearly, so the outcome of the
4 questionings might be very fruitful as well, because they
5 understand the character, Cambodian personality traits as well as
6 the culture as well. So I would also like to ask the Chamber to
7 consider this point as well. And what we have done so far was
8 good.

9 [10.58.45]

10 And as the practice in the domestic Court, when we put questions
11 to the witness or experts, as Cambodian, we understand the
12 behavioural trait of the witnesses and experts, we understand the
13 culture. We have been accustomed to the ways of life and attitude
14 of the witness. And those witnesses will be able to respond to
15 the questions directly, appropriately, based on the experience
16 they have come across.

17 And one more point which I would also like to draw attention from
18 the Chamber and meeting. Normally, when we conduct the -- when we
19 hear the testimony in public, the proceeding is screened and
20 broadcast on TV, and this gives a good projection for the
21 Cambodian people at large because, normally, people would
22 understand that Cambodian people are asking about -- questions to
23 Cambodian about the Khmer Rouge regime. That is a better picture
24 than having seen the international lawyer as speaking or
25 questioning.

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1 And as for a repetition, I believe that if we apply the
2 procedures defined in the Internal Rules, concerning the conduct
3 of the proceedings as well as the direction of the President,
4 that will avoid repetition or reduce it to a considerable extent.

5 [11.00.31]

6 And I would also like to take this opportunity to urge the
7 President that you apply more stringent requirements when the
8 questions are repetitious and -- or the questions that deviate
9 from the subject matter that we are discussing. So, in order to
10 expedite the proceedings and to save the Court time and ensure
11 efficiency of the trial proceedings, I would like to urge the
12 Chamber to explore other stringent applications and effective
13 measures in order to ensure that any parties that raise any
14 ineffective questions or questions that are repetitious be
15 reduced to the maximum extent possible.

16 This is my observations. And I strongly hope that Mr. President
17 and Your Honours will take my proposals into consideration. Thank
18 you very much.

19 MR. PRESIDENT:

20 Thank you.

21 International Co-Prosecutor, you may now have the floor.

22 MR. CAYLEY:

23 Good morning. Thank you very much indeed, Mr. President. I'll be
24 extremely brief.

25 [11.01.42]

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1 I concur and agree with all of the comments of Deputy Prosecutor
2 Dararasmey Chan, but I would make one point. The Chambers
3 recognized that there is a level of repetition, and certainly we
4 acknowledge, in the Co-Prosecutors' Office, that both the
5 international and national sides are responsible for a level of
6 repetition.

7 As much as we are asking the Chamber to take steps itself, Chea
8 Leang and I are taking internal steps to try and limit repetition
9 as much as possible so that it doesn't just become an issue for
10 the Court to deal with. So we recognize the criticism and we are
11 addressing it within the office at this time. Thank you.

12 MR. PRESIDENT:

13 Thank you.

14 [11.02.41]

15 National Co-Prosecutor, you may now proceed--

16 Counsel for the civil parties, could you please hold on? We would
17 like the Prosecution to finish this set of remarks; then we may
18 proceed to the other parties.

19 MS. CHEA LEANG:

20 Thank you very much indeed, Mr. President.

21 Mr. Andrew Cayley and Mr. Chan Dararasmey already indicated very
22 clearly, and I fully concur with the statement. However, I would
23 like to point out to paragraph number 8 that is not yet
24 exhaustive, because the Co-Prosecutors, indeed, will cooperate
25 with the Lead Co-Lawyers for the civil parties to ensure that

1 repetitive questions can be reduced or refrained. We will do our
2 best to ensure that there will be no repetitive questions.
3 Mr. Chan Dararasmey indicated earlier on that the facts before us
4 are brought, and it is not easy for us to set the parameter for
5 putting the questions that should not be straying from the scope.
6 But we really confined ourselves to the ambit of the facts
7 alleged in the Closing Order.

8 [11.04.20]

9 In paragraph number 9, as the President already read out, you
10 indicated, concerning the hearings, that need - that can be
11 conducted on Monday through Thursday - or, rather, Fridays, and
12 there should be a pause or break on Wednesdays. However, we would
13 like to suggest that, if the hearing is to be conducted on
14 Fridays, we should leave at 4 p.m.

15 And again, I will leave it up to the defence counsel and also the
16 Chamber to decide on the well-being of the accused persons,
17 whether it is appropriate to do so.

18 MR. PRESIDENT:

19 Thank you, Madam Chea Leng.

20 Counsel for the civil parties, you may now proceed.

21 MS. SIMONNEAU-FORT:

22 Thank you very much, Mr. President. A couple of further comments
23 on the question of coordination and cooperation.

24 There are two issues here: there's the question of internal
25 cooperation and, for us, there's also the question of cooperation

1 with the Co-Prosecutors.

2 [11.02.49]

3 On the first side, which is internal collaboration, I think it's
4 quite clear that we do precisely that. And with all the due
5 respect I owe to the Court and to the Prosecution, I have to say
6 that the civil parties do not entirely agree with the Chamber or
7 the prosecutors. It is not - not some teams that use two lawyers,
8 but almost all the teams that use two lawyers.

9 I believe that precisely by virtue of the hybrid nature of this
10 Court, it is important for us to be able to keep this possibility
11 of taking the floor nationally and internationally. We don't have
12 the same way of seeing things, and even if our objective is the
13 same, there is a kind of complementarity, there is diverse vision
14 as well; there are subtleties in our appreciation of things. And
15 this is all important in the way that we questions witnesses or
16 civil parties or take the floor on other topics.

17 This is particularly true of the civil parties, bearing in mind
18 the number of civil parties and the number of lawyers that we
19 represent. And so it is useful for us to be able to keep that
20 flexibility -- that we should therefore have the trust of the
21 Court vested in us so that, when we take the floor, it is
22 complementary. So, please, bear with us.

23 [11.07.25]

24 On the subject of our cooperation with the Co-Prosecutors, quite
25 clearly we should, of course, do that. But let me clarify what I

1 believe is a significant misunderstanding about the basis of that
2 cooperation. The role of the civil parties is not to support the
3 Co-Prosecutors. That is not written in the Rules and it's not
4 written anywhere. And I note that in decision E-218, the French
5 version actually does state that our role is to participate,
6 while in the French (sic) version the word "participate" doesn't
7 appear.

8 The role of the civil parties -- I have to stress this, Mr.
9 President, it's juridically important -- is to participate as a
10 party, in other words to take steps, to request things, to be
11 able to plead and put questions. Our role is not to support.
12 If the word "support" is used in Rule 23, that is for two
13 reasons. The first of them is that in this trial, the civil party
14 does not have the right to bring a motion. The Prosecution has to
15 do that and has -- the civil party has to be limited to the scope
16 of action as defined by the Prosecution. So the civil party, in
17 participating, does support the Prosecution -- yes, that is true.

18 [11.09.01]

19 Moreover, like the Prosecution, we need to establish guilt in
20 order to justify civil party requests. And so, in pursuit of that
21 objective, then we do, indeed, support the Co-Prosecutors.

22 But I nevertheless wish to dwell on the fact that the role of the
23 civil parties is to participate as a party, and we have freedom
24 of action and strategy and to reason in the way that we see fit,
25 as well. And I would like the Internal Regulations to be

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1 respected. Our role is not to support; it is to participate. And
2 if it is written that we have to support, then it would say so in
3 the Rules. And I invite people to check what it is that the Rules
4 actually say.

5 Needless to say, we wish to cooperate with the Prosecution when
6 we have the same objectives -- and broadly speaking, we are in
7 the same enterprise of seeking to establish guilt -- and we will
8 certainly cooperate with the Prosecution so as to avoid
9 repetitive questions.

10 [11.10.13]

11 One word on that latter subject. The civil parties very much
12 appreciate the fact that the repetitiousness of questions should
13 not be applied to them alone and that it should be pointed out
14 that we are not the only ones that sometimes ask repetitive
15 questions. I think this particular characteristic is very broadly
16 shared within this room, and we do not wish to be targeted in any
17 kind of way in that area. Thank you, President.

18 MR. PRESIDENT:

19 Thank you.

20 Perhaps there is misunderstanding in the message. This term,
21 "repetition", refers to all parties. It doesn't mean that the
22 Chamber is singling out any particular party. We believe that
23 there are some level of repetitions in the questionings by
24 Co-Prosecutors and civil party lawyers because the parties
25 combined may have these elements of repetition. And this is the

1 observation.

2 And, indeed, we are here to find way to reduce the time, to
3 ensure that the proceedings can be more expeditious. And we
4 already informed the parties to the proceedings already at the
5 beginning that we really wish to expedite the process.

6 [11.12.05]

7 Next, we would like to proceed to counsels for the Accused, if
8 they would like to have any comment on this.

9 Counsel for Mr. Khieu Samphan, You may proceed.

10 MR. KONG SAM ONN:

11 Thank you, Mr. President, Your Honours. Good morning. In general,
12 I support the comments made by the Co-Prosecution concerning the
13 practice being applied concerning putting questions to the
14 witnesses, the form -- the way the floor is shared among
15 international and national colleagues in putting questions.
16 And I also wish to stress that, for a trial to be fair, it is not
17 just a matter of expeditiousness, or like -- to make sure that
18 the trial is expeditious, because the trial, to be seen to be
19 fair, it must be fair for all people involved, including the
20 victims and the accused persons. We cannot risk expediting the
21 proceedings at the cost of the irregularities and the rights of
22 the accused persons.

23 [11.13.32]

24 I would like to observe that, when more than two people are
25 putting questions to a witness or witnesses, this routine is the

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1 practice applied or chosen by each independent team, and I
2 believe that it should not be the way that the Chamber imposes on
3 us to proceed with the way we put questions, whether we have only
4 one person to put questions, because each lawyer before the
5 Chamber is professional lawyer and he or she has his or her own
6 ways of putting questions in his or her own profession to the
7 witnesses.

8 We also observe that some groups assigned only one lawyer to pose
9 questions to witnesses, and other groups would proceed with two
10 people to put questions to any witness. There is no prescription
11 in the Internal Rules to restrict this way of putting questions
12 to the witnesses because, if there is such a rule, then it would
13 be a kind of infringement or violation to the rights of the
14 counsels to put questions according of their own choice to the
15 witnesses.

16 That's all from me. Thank you, Mr. President and Your Honours.

17 [11.15.39]

18 MR. PRESIDENT:

19 Thank you, Counsel.

20 The wording in paragraph 14 states very clearly that all parties
21 are encouraged to consider instead utilizing one lawyer, whether
22 national or international, to lead in-Court examination of each
23 individual or to take other measures to avoid repetition. This
24 doesn't suggest that the Chamber is imposing any kind of measure
25 to restrict the rights of the counsels to put questions. It is

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1 encouraged. And if the Chamber wishes to impose anything, then it
2 could not be part of the items of the agenda for debate during
3 this morning session.

4 So please make sure we are on the same page and there is no
5 misunderstanding on this.

6 And, National Counsel for the Ieng Sary team, you may now
7 proceed.

8 [11.16.41]

9 MR. ANG UDOM:

10 I have observed that paragraph 8 in -- of the item of the agenda,
11 is the practice that has already been applied so far by our
12 counsel, and we get used to it. With regard to -- or concerning
13 this method of questioning, we have been using this practice and
14 we will proceed to this.

15 We never object to the idea that the trial will be conducted more
16 expeditiously and we agree to the notion -- we do not feel that
17 -- we feel that when it comes to the number of people to put
18 questions to any given witness -- should be flexible for counsels
19 to do so.

20 The most important thing to be discussed here is more about the
21 allocated time and whether party respect the given time. So far,
22 we have observed that each witness would be -- for each witness,
23 then, prosecutor would be allocated two hours to put questions to
24 him or her, and then civil party co-lawyers will have two hours,
25 and they should stick to the two hours given. And this

1 restriction - allocation of time should also be imposed on the
2 Lead Co-Lawyer -- or, rather, defence counsel as well.

3 [11.19.06]

4 We also observe that when the Lead Co-Lawyers were offered, like,
5 two days for questioning the witness, then counsel for the
6 Accused would be offered, like, half a day.

7 I believe that it is the purpose -- or the wish of the Trial
8 Chamber to expedite the proceedings, and this is also the hope of
9 everyone. However, when it comes to who would question the
10 witness or expert witness first, starting from a Cambodian
11 national or a foreign lawyer or Co-Prosecutor, it's not really --
12 it's not really a big deal; the important thing is the time
13 allocation and how people respect that allocated time or not.
14 In some cases, more times will be requested because, after -- or
15 during the course of the testimony, party may feel that there are
16 more elements in the question that they require more time or
17 perhaps there were some interruptions that they also need to
18 reduce from the questioning time.

19 [11.20.30]

20 Again, I do not point the finger to any party concerning the time
21 utilization or concerning speaking in Court when people speak too
22 fast, the interpreters could not really follow, then counsels or
23 parties will have to repeat the statement, and this waste some
24 time. So I would like to remind everyone of us that we should be
25 very mindful of this so that we can save time.

1 Every now and then, I can communicate with my colleague when he
2 speaks rather fast or when I speak rather fast myself.
3 I will not be dwelling on this further than this. I would like to
4 go to another point the President indicated about the proposal by
5 Mr. Khieu Samphan, who would like the hearings to be conducted at
6 8.30 a.m. I feel that it is not possible to do that because the
7 Court is located here in the outskirts of the city. If it were in
8 Phnom Penh, that would not be a problem, but here we may be
9 hindered by traffic jams, so 9 a.m. would be the ideal time for
10 the commencement of each day's proceedings. Nonetheless, I
11 suggest that we may extend the break time from 20 minutes to 30
12 minutes each time so that counsels or parties or the Judges of
13 the Bench may have some ample time to discuss in between, when
14 the next session is not yet resumed.

15 [11.23.00]

16 And at the same time I may suggest that we may extend the
17 proceedings until 4.30. Going back home late is better than
18 coming to work late, I guess, because -- I know it's difficult to
19 delay the bus schedule, but we can do that by going further than
20 4 p.m.

21 So, finally, I may say that I do not agree with the idea that the
22 hearing should start at 8.30 at all.

23 Concerning point number 9, I already indicated in the letter
24 dated on the 10th of August -- I hope it has been circulated to
25 parties already -- that the hearing should be adjourned -- or

1 there should be no hearing on Wednesdays. With that, our team has
2 an objection to it.

3 It is true that, due to my client ill health, he should be
4 allowed to observe the proceedings on Mondays and Tuesdays and
5 then break on Wednesdays before the commencement of the hearing
6 on Thursdays and Fridays, but this also has some implication on
7 the work regime of the counsels because, after each hearing,
8 there should be a draft transcript of the hearing, either it says
9 draft or the final version. After the hearing, counsel has to
10 take the - take the opportunity of the available transcript to
11 review the elements in the transcript for our preparation for
12 next day. For example, if the hearing were to be conducted on
13 Fridays and that by the end of Friday, we may obtain the
14 transcript at 4 p.m. -- we don't know whether this is a wishful
15 thinking or not, but we feel that it is most likely that we may
16 not obtain the transcript of Friday hearing at 4 p.m. of the same
17 day, and without which we feel that we cannot prepare very well
18 for the following sessions on Monday.

19 [11.25.42]

20 So, to summarize our point, we would like to request that the
21 hearings be conducted on the Monday through Thursdays, as we have
22 been doing so far. If the Chamber decides otherwise, we reserve
23 our position to contest this.

24 MR. PRESIDENT:

25 Thank you.

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1 The Chamber has already indicated that parties have not agreed
2 with this, and we made it clear in the agenda.

3 I thank you, Mr. Ang Udom, for raising this.

4 The Chamber -- the reason the Chamber stated about the time --
5 about the questionings, how or how many people should be posing
6 questions, we received this information from counsel for Mr. Ieng
7 Sary concerning this.

8 With regard to additional time requested, the Chamber has made
9 very clear that no additional time would be granted to parties.
10 However, during the debate that some incidences, for example,
11 there was some submissions or arguments raised during or in the
12 mid of the questioning time which, indeed, the Chamber shall
13 consider to reduce or to cut from the allocated time. And that
14 leads to additional time given to the parties.

15 [11.28.11]

16 And at the same time Judges of the Bench, at some point, may wish
17 to put some questions to a witness or an expert witness and by
18 that time, that allocated -- pre-allocated to the Co-Prosecutors
19 and the civil parties may be used up by the Judges of the Bench.
20 And by that, the Chamber is mindful and we need to substitute the
21 time lost when the Judges of the Bench have the floor to put
22 questions to the witness so that parties receive the actual time
23 -- amount of time for putting the questions to any witness or
24 expert.

25 It is really difficult for the Chamber to determine how much time

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1 would be allocated, exactly to each party. It depends on the
2 quality, the credibility of -- or the elements in the testimony
3 of each witness or expert witness. And in the past we already
4 located some times for -- for example, two days for the
5 Co-Prosecutors and the civil party lawyers and then they can
6 coordinate among themselves to share the time accordingly.

7 [11.29.55]

8 And also to the other side of the Bench, like the defence
9 counsel, we give equal time as opposed to the time allocated to
10 the Prosecution and they should also coordinate it among
11 themselves to make the most of the time allocated. And please be
12 reminded that the Chamber is very mindful of time allocation. We
13 really are fair to both parties.

14 Counsel for Mr. Nuon Chea, you may now proceed.

15 MR. SON ARUN:

16 Good morning, Mr. President. Good morning, Your Honours, and good
17 morning to everyone. The defence team for Mr. Nuon Chea, my
18 apology -- the defence team for Mr. Nuon Chea agree, on a broad
19 basis, with the points observed by the defence team for Khieu
20 Samphan.

21 For us, in our teams, rarely have we repeated the questions in
22 our team. So, we are very mindful and vigilant of that fact. So,
23 we have always discussed among ourselves and rarely have we
24 repeated the questions in our team.

25 [11.31.20]

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1 As for the time allocation as has been practiced before, I
2 respectfully agree with the Chamber's directions and allocation
3 of time. However, on point 9, I would like to raise my
4 observation concerning the request that the hearing be deferred
5 to Friday and having Wednesday as a rest day for that.

6 I, like other defence teams, as well, I do not agree with this
7 proposed schedule because we have to have one day of the working
8 week in order to prepare for our work unless there is important
9 meetings or hearing to be heard on Friday.

10 MR. PRESIDENT:

11 Thank you for the observation on the matters.

12 I now move on to the planning for the remaining phases of trial
13 in Case 002/01. I now would like to draw your attention to the
14 evidence to be called and planning for remaining evidentiary
15 phases of the trial.

16 The Chamber's provisional list of witnesses, experts and civil
17 parties identified, those individuals likely to be called during
18 the early trial phases, but indicated that witnesses and civil
19 parties relevant instead to population movement phases, one or
20 two would be identified at a later date.

21 [11.33.25]

22 In its agenda, the Chamber invited all parties to identify at the
23 TMM a limited number of witnesses, experts, and civil parties
24 from their earlier list who they consider are essential to
25 examine during the population movement segments of the trial.

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1 The Co-Prosecutors have since proposed that a further 21
2 individuals be heard on the population movement trial segments.

3 The Ieng Sary defence has indicated that it will not seek the
4 testimony of additional individuals for these phases.

5 The other parties are now invited to briefly identify individuals
6 that they would seek to call for these phases.

7 The Lead Co-Lawyers for the civil parties, do you have any
8 observation on this particular item on the agenda?

9 MR. PICH ANG:

10 Thank you, Mr. President. Concerning the list of civil parties,
11 based on this memorandum, the civil party Lead Co-Lawyers have
12 worked with the civil parties and their lawyers to re-examine the
13 list of civil parties proposed to the Trial Chamber earlier and
14 we have in our hands the -- two lists of civil parties.

15 [11.35.19]

16 The first one is the list of priorities civil parties that the
17 Lead Co-Lawyer expressly requests the Chamber that their
18 testimony be heard. And in this first list, it contains 16 civil
19 parties. In -- the second list, however, is the list of civil
20 parties as well, but it is considered additional list of civil
21 parties and we will leave it to the discretion of the Chamber
22 whether or not their testimony be heard and at what appropriate
23 time that the Chamber deems appropriate.

24 And there will be a request of additional explanation to the list
25 at a later date and we have these two lists in our hands and we

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1 may submit it to the Chamber as well as the parties, if you so
2 required.

3 And a point of clarification on this as well, the civil parties
4 contained in this list will testify on various aspects of the
5 first phase of population movement and the second phase of the
6 movement. So, their testimony will not, by any means, repetitious
7 because we select them based on different aspects of their
8 testimony concerning the first and second phase of population
9 movement. And I think my esteemed international colleagues might
10 have -- something else to add to this.

11 [11.37.01]

12 MR. PRESIDENT:

13 Thank you, Lawyer.

14 I now hand over to the International Lead Co-Lawyers to proceed.

15 MS. SIMONNEAU-FORT:

16 Thank you, Mr. President, for allowing me to make some
17 clarifications. Our list may appear to be long to the Chamber so
18 we are ready to reduce the list again, but we would like the
19 Chamber to allow us to take the initiative to reduce the list. We
20 should be allowed to choose ourselves, the civil parties that we
21 find most important and appropriate for the subsequent phases of
22 the trial because the lawyers know the civil parties very well
23 and they are in a position to appreciate their ability to testify
24 and to adduce evidence.

25 [11.37.55]

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1 I would like to add something with regard to the list of civil
2 parties who will be summoned to appear. Let me insist, again, on
3 our status as civil parties. A civil party should not be mixed up
4 with a witness. I know that many people do not really understand
5 the civil law and I appreciate it, but we would like the
6 principles to be upheld.

7 Civil parties do not testify only to facts, but they also have a
8 right, like the Accused, to speak up during the proceedings. The
9 civil parties are a party to the trial and they want to avail
10 themselves of their right to speak and we should therefore,
11 understand the importance the civil parties be heard.

12 Let me also add that as civil parties, the civil parties apart
13 from describing facts, they bring to the proceedings a human
14 dimension which is indispensable. Let me point out that we are
15 dealing with crimes against humanity and it is because very
16 serious offences were committed and these offences have a very
17 important human dimension and the civil parties are there to
18 demonstrate through their testimonies, their systematic and
19 organized manner in which those offences were committed. These
20 offences which are very serious and I would like therefore, to
21 insist that the Chamber should hear the witnesses and appreciate
22 the specificity of the testimonies each of them will be making.

23 (Judges deliberate)

24 [11.40.39]

25 MR. PRESIDENT:

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1 Thank you.

2 How about the defence teams for Khieu Samphan and Nuon Chea? Do
3 you have any observation on this particular issue?

4 MR. KONG SAM ONN:

5 Thank you, Mr. President. As for the defence team for Mr. Khieu
6 Samphan, we do not request any additional witnesses, but we
7 simply would like to make an observation concerning the request
8 of the civil party Lead Co-Lawyers. They said that they had a
9 very long list of civil parties.

10 So the inclusion of additional civil parties in the proceedings
11 will eventually lead to the prolongation of the proceedings so, I
12 would like to earnestly request the Chamber to take this into
13 consideration. And in addition we have to be -- we have to take
14 into consideration the particularity of the facts that are
15 relevant to the Accused as well as the facts in the Democratic
16 Kampuchea and if we present any evidence that are less specific
17 as was being proposed by the civil party may unnecessarily lead
18 to the prolongation of the proceedings.

19 Thank you very much.

20 [11.42.12]

21 MR. PRESIDENT:

22 Thank you.

23 How about the defence team for Mr. Nuon Chea? Do you have any
24 observation to make?

25 MR. PAUW:

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1 Thank you, Mr. President. Before I make my submission, I would
2 like to get some clarification from the Chamber.

3 It is our position that contextual evidence is important also
4 when we discuss population movements one and two. We have filed a
5 motion on this issue in which we explain why contextual evidence
6 is important and why contextual testimony is important. If I
7 summarize it, it's crucial to buttress certain defence theories.
8 You have been hearing contextual evidence when we were discussing
9 or when we were questioning other witnesses.

10 We would propose a certain number of additional witnesses that
11 could testify as to the context and then, specifically, the
12 situation in Phnom Penh and Cambodia in April '75 and the period
13 preceding.

14 [11.43.29]

15 So, if you want me to give you the names of the witnesses that we
16 would find crucial in discussing context, I can do so. If you
17 want me to just provide the names of individuals that can testify
18 directly as to population movement one and two, I -- we'll have
19 to be much more brief.

20 MR. PRESIDENT:

21 In this discussion, the purpose is to allow you to do so, but we
22 are going to discuss it at a later stage as proposed by the civil
23 parties just now concerning the list of civil parties whom they
24 intend - that the Chamber summon them to testify when it comes to
25 the examination of the second -- the first and second phase of

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1 population movement.

2 Mr. Jasper Pauw, you have anything else to add?

3 MR. PAUW:

4 I am still not entirely clear as -- what we should do right now.

5 I can read into the record if you desire simply the names of
6 individuals that we would find crucial to buttress the contextual
7 theories that we want to advance at a later stage. I can also
8 provide this to you in writing. It is as you desire.

9 (Judges deliberate)

10 [11.46.04]

11 MR. PRESIDENT:

12 Thank you, Counsel.

13 You were advised to give your explanation in writing because if
14 you make it in writing it's easier for you to provide substantial
15 arguments so that the Chamber has the basis to decide whether or
16 not they are important to be called to testify in relation to the
17 first and second phases of population of movement.

18 And there must be a clear reason or justification as to why we
19 should call those witnesses and the Chamber will, on this basis,
20 decide at a later date as to whether or not to call those
21 witnesses.

22 MR. PAUW:

23 Thank you, Mr. President. We will do so in writing and just to be
24 absolutely clear. And I hope this will not confuse matters, but
25 we have filed a motion in which we ask for the oral discussion in

1 a public hearing of Defence witnesses.

2 [11.47.11]

3 The Trial Management Memo indicated that this issue would be
4 addressed, and we do reserve the right to make further
5 submissions on that issue today.

6 MR. PRESIDENT:

7 Thank you.

8 And I now hand over to the National Lead Co-Lawyer for the civil
9 party.

10 MR. PICH ANG:

11 Thank you, Mr. President. I -- just a point of clarification on
12 the observation made by the defence team for Mr. Khieu Samphan. I
13 think he may have misunderstood me.

14 We do not intend to submit the new list of civil parties to the
15 Chamber. Actually, the civil parties in the current list are
16 those who were also in the list of our earlier list submitted to
17 the Chamber and we have also reduced some civil parties from this
18 list already in line with the recommendation and guidelines of
19 the Chamber. So we have finally selected only 16 priority
20 witnesses instead of 20, and there are other civil parties which
21 we leave to the discretion of the Chamber whether or not they are
22 necessary to be heard.

23 [11.48.36]

24 And on another point which was raised by the same defence team
25 that actually the - we do not need to only discuss the issue

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1 related directly to the Accused. But we have to look at other
2 contextual elements that concern the victims of the regime as
3 well. This is also important to ascertaining the truth as well.
4 So this dimension is, of course, within the domain of the civil
5 parties and they will be useful in this Court.

6 MR. PRESIDENT:

7 Thank you.

8 So we move on to the next point. Having heard or received the
9 submissions of the parties, the Chamber will, in due course,
10 indicate which of these individuals shall be heard at trial and
11 provide notification of this on the case file.

12 At a later date, opportunity to identify documents from the
13 parties' earlier list relevant to population movement will also
14 be provided. The Chamber notes the Nuon Chea defence requests for
15 a public hearing on calling of Defence witnesses. As indicated in
16 the TMM Agenda, the Nuon Chea defence and other defence teams may
17 indicate briefly which witnesses are considered vital to rebut
18 the allegation against the Accused, provided these submissions
19 are brief, reasoned and do not merely canvass the areas on which
20 the Trial Chamber has already repeatedly ruled.

21 [11.50.50]

22 All parties are reminded that of the totality of 1,054 witnesses,
23 expert and civil parties sought in Case 002, only a small
24 percentage of the most relevant of these individuals can
25 reasonably be heard within the confines of a fair and expeditious

1 trial.

2 Some decisions on witnesses, experts and civil parties sought by
3 the parties have already been issued by the Chamber. Others will
4 follow in due course.

5 The Chamber will ultimately provide reasoned decisions regarding
6 the calling of all witnesses, experts and civil parties sought by
7 the parties in Case 002/01. It expects to identify those
8 individuals to be heard orally in Case 002/01 and those deferred,
9 or held in reserve, shortly after the Trial Management Meeting.
10 This is also a convenient juncture to address the Nuon Chea and
11 Ieng Sary defence concerns regarding the treatment of oral
12 motions before the Chamber.

13 [11.52.44]

14 In their list of issues to be raised at the TMM, the Nuon Chea
15 defence alleged that they are prevented from raising relevant
16 issues at trial in oral motions. Contrary to what is alleged, the
17 parties are not precluded from raising issues where they are
18 genuinely relevant to the trial. However, practice has shown that
19 issues raised are often repetitious and follow repeated rulings
20 by the Chamber on them.

21 For example, when the Nuon Chea defence repeatedly seeks to
22 mention higher ranking members of the Cambodian government in
23 Court, this frequently appears irrelevant to the issue under
24 discussion. Consequently, the Chamber has, on occasion, noted
25 that the Nuon Chea defence repeats these issues although rulings

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1 have been made.

2 In general -- in general terms, the Nuon Chea defence have also
3 not sought to demonstrate the relevance of any of these
4 individuals to any of the factual allegations made against their
5 clients in the indictment. The Defence are nonetheless now
6 invited to identify a limited number of witnesses who they allege
7 should be heard orally before the Chamber in order to rebut the
8 allegation against the Accused.

9 [11.54.37]

10 In so doing, they should identify the expected probative value of
11 these witnesses and the specific factual allegations or portion
12 of the indictment in Case 002/01 they are relevant to.

13 The Chamber now open the floor for the defence teams to make any
14 comment on it.

15 The defence team for Mr. Nuon Chea, you may have the floor now.

16 MR. PAUW:

17 Thank you, Mr. President. I will start with the last issue that
18 you addressed and I will address it briefly. It's on the oral
19 motions during trial that relates either to fair trial issues or
20 to the particular witness that is being questioned.

21 We can talk about it long or short, but it's simply not true that
22 we are only prevented from raising issues that relate to high
23 ranking government officials. Any issue that we've tried to raise
24 is cut short, and we simply do not even get the chance, most
25 often, to explain what our issue relates to even though, quite

1 often, it relates directly to a witness or it relates directly to
2 an important fair trial concern.

3 [11.56.04]

4 So we do stand by our suggestion that these issues should be
5 addressed in open Court and if it's not possible according to you
6 to do it during witness questioning then, frequent opportunity
7 should be given to the parties to make such motions. For example,
8 once a week or once every two weeks, we think half an hour would
9 be enough to simply flag certain issues and it should be done in
10 a public session. It is important as a capacity building
11 instrument to inform the Cambodian public on these issues of a
12 fair trial. They should not be delegated to written submissions
13 that, in practice, no one really reads. If it's important to
14 state our position on our theory of the case, on the Defence
15 theory of the case and that theory hinges, to a large extent, on
16 a fair trial considerations. So, we need to be given that
17 opportunity and I'm sure that my colleague from the Ieng Sary
18 team will have some further comments on this.

19 As to your assertion that we have never claimed that these high
20 ranking government officials are relevant in any way to the case
21 of our clients, let's put it this way, I am surprised.

22 [11.57.30]

23 Possibly, we have not been able to address it because our
24 microphone was cut off whenever we were going to address it, but
25 [REDACTED] are mentioned in the Closing

1 Order. Their statements form part of the Closing Order. Their
2 allegations underlie the accusations against our clients.
3 We didn't choose to have these individuals appear in the Closing
4 Order. It's the decision by the Office of the Co-Investigating
5 Judges. By the way, this is the same office that knew that these
6 individuals had not appeared when summoned to testify. It is only
7 basic criminal law procedure that we will want to hear these
8 witnesses. Their statements underlie the accusations against our
9 client.

10 [REDACTED], same principle. He was an important figure at the
11 Ministry of Foreign Affairs. There's many ways in which that is
12 relevant to our client, but I will simply mention the JCE,
13 whatever happened at the ministry B-1 is relevant to Nuon Chea.
14 [11.58.44]

15 More specifically, I can point to the testimony of Mr. David
16 Chandler who testified about certain things that [REDACTED]
17 [REDACTED] stated as to a meeting that allegedly was chaired by
18 Nuon Chea in which possibly the population movement one and two
19 was discussed and possibly the execution of Lon Nol officials.
20 And as we demonstrated during the Chandler testimony, there are
21 conflicting accounts and [REDACTED] actually has exculpatory
22 things to say about that meeting. We addressed it and we are
23 perfectly happy if it hasn't become clear to all the parties why
24 this is irrelevant, we're perfectly to address that in a further
25 motion.

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1 So we do not name these names without any relevance. No. They are
2 relevant for basic criminal law considerations. Of course, we
3 have a further purpose in highlighting the role of these
4 individuals and that is simply to buttress our theory that the
5 government of Cambodia is interfering in the work of this
6 tribunal.

7 [12.00.04]

8 And whether or not you agree with that theory, it is our theory,
9 it's a valid theory. It's again a basic criminal law theory and
10 we need to be able to explore that issue. And simply put, if
11 these individuals have something to hide that would provide a
12 reason for them to be interfering in the work of this Court to
13 not appear before your Chamber to possibly put pressure on
14 witnesses, again, it is all basic criminal law theory. So, I
15 don't think that we should be prevented from making those motions
16 and I think, actually, it is very damaging that we are being
17 prevented from making those motions.

18 I think, again, as part of the capacity building, but also as
19 part of the quest to ascertain the truth, we need to get the full
20 picture of what happened in Democratic Kampuchea. Very simply
21 put, our client is accused of pretty much everything that went
22 wrong in '75 to '79, if lower downs are responsible and if they
23 had a certain level of autonomy, which is our position and we
24 think there's evidence to support that, it will diminish the
25 culpability of our clients. And again, that is something we need

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1 to be allowed to explore.

2 [12.01.29]

3 And I think this speech that I am holding now should actually be
4 held in public and should be heard by the wider Cambodian
5 population. It should not be relegated to trial management
6 meeting. And this is where I come to the second part of my
7 statement today and this is where we get to address the crucial
8 witnesses that we would want to hear to rebut the allegations
9 against our clients.

10 I think our position can be clarified very simply by something
11 you said this morning - this, today, is an informal meeting that
12 relates to the planning of the trial and we therefore, feel it's
13 not appropriate to now put forward names and to argue why certain
14 individuals are important for considerations of fair trial, to
15 establish possible government interference and to establish the
16 wider context of Cambodia, both pre-1975 and post-'79.

17 We have asked for a public hearing in the motion that is
18 mentioned in the Trial Chamber memorandum and the reason, again,
19 is that we feel it's important. Capacity building, fair trial
20 considerations, they should be heard by the wider public. And
21 again, it is a crucial component of our defence theory and it
22 should not be relegated to an informal meeting about the planning
23 of the further trial.

24 [12.03.08]

25 We submit that we should be allowed to discuss the relevance of

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1 these witnesses in a public hearing. We are perfectly happy to do
2 so using pseudonyms although we think it's not necessary because
3 most of the witnesses are -- on our list are public figures and
4 many of them are non-Cambodian. So, we do not think there's any
5 risk of them being threatened or otherwise influenced by their
6 names being mentioned and in fact, considering the subject
7 matter, we think it's important that it's mentioned -- that these
8 names are mentioned in a public trial so that we can buttress our
9 theory of the case.

10 So, I have asked for clarification in an email to the senior
11 legal officer as to whether this constitutes a decision on our
12 motion for a public hearing on the witnesses that we put forward.
13 It's still not entirely clear to me if it is your decision, but
14 our position will still be that we want to argue our witnesses
15 and the relevance of our witnesses in a public hearing and we, in
16 that sense, reserve the right to do so.

17 [12.04.32]

18 MR. PRESIDENT:

19 Thank you.

20 What I observed from the Khmer rendition, we seem to disagree
21 with the item of the agenda and the position by counsel for Nuon
22 Chea, so this -- the submission by counsel is somehow
23 contradictory to what is aimed by the agenda, because we believe
24 that you would like the public hearings concerning some of the
25 witnesses counsel proposed, so I take that as a kind of

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1 disagreement already. And I take that as an important issue.

2 We would like counsels for Mr. Nuon Chea to review the matter and
3 we would like to hear from counsel after lunch adjournment. The
4 Chamber would like to be clear on that. Indeed, we would like to
5 finish the meeting by form of result.

6 So it is now lunch adjournment, and we will adjourn for the
7 lunch. The next session will be resumed as usual -- that is, 1.30
8 p.m. in the afternoon.

9 (Meeting recesses from 1206H to 1330H)

10 MR. PRESIDENT:

11 Please be seated. We shall now resume our meeting.

12 This morning, we already stated the final -- the item concerning
13 the floor for Mr. Nuon Chea. Now we proceed to counsel for Mr.
14 Ieng Sary.

15 MR. KARNAVAS:

16 Thank you, Mr. President. Thank you, Your Honours. And good
17 afternoon to everyone in and around the courtroom.

18 As far as additional witnesses, our concern in light of the last
19 two witnesses that we've heard and in light of some of the
20 testimony that was elicited from the witnesses, it would now
21 appear that we would be requesting for the Trial Chamber to
22 summon [REDACTED].

23 [13.32.12]

24 If you may recall, both these individuals were named respectively
25 by the last two witnesses concerning certain meetings which they

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1 were present -- allegedly present when my client allegedly made
2 certain comments that the witnesses attribute to him and which
3 are part and parcel of the Trial Chamber -- of the Prosecution's
4 case or a feature in the Closing Order. So we would be making a
5 request to have them summoned.

6 As you may well recall, in the past we did make several requests
7 concerning these two individuals, but we will be putting that in
8 writing, specifying exactly the reasons why so you will know the
9 relevance of their testimony in this case, particularly in light
10 of what we have heard from the last two witnesses.

11 On the other issue that was briefly addressed by counsel for Nuon
12 Chea concerning, basically, fair trial rights. Let me begin by
13 saying that in over 30 years of practising law, I have never had
14 a Judge shut a mic on me -- a microphone. We come to Court
15 prepared. We come as professionals. We try to be diligent. Some
16 of us may not be as charming or as disarming in their
17 personalities as others. We may come from different legal
18 traditions, but we are trying to be professional, in every sense
19 of the word.

20 [13.34.00]

21 And we are trying to make a record at times, not because we're
22 threatening the Trial Chamber that we're going to be appealing,
23 but we do need a record, one, because we will be given an
24 opportunity to make final submissions, both in written form and
25 in oral form, but also in the event there are issues, legal

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1 issues or factual issues, that we believe are errors. We need to
2 be able to point them out. And if they're not on the record,
3 then, obviously, we have failed, as advocates on behalf of our
4 client, to make a proper record for appeal.

5 Now, I understand that at times we are testing the patience of
6 the Trial Chamber, but one also gets the sense that the Trial
7 Chamber is becoming increasingly impatient with the Defence. And
8 I say "the Defence" in general because I think I speak for my
9 colleagues as well.

10 [13.35.08]

11 We feel that the trial -- that the Bench, at times, is almost
12 hostile towards the Defence, shutting of the mic, treating us in
13 a rather rude fashion in front of the public when all we're
14 trying to do is make our record.

15 Now, there are times when I stand up after another colleague has
16 made a submission because I wish to preserve my record, not their
17 record, but my record, because the decision that you may be
18 taking may affect my client as well. And if I remain silent, it's
19 as if I acquiesced with whatever your decision is. So for me to
20 stand up and then have my -- have the microphone cut off prevents
21 me from making a proper record.

22 There are other times when I'm trying to make an offer of proof
23 to provide reasons why a particular line of questioning may be
24 relevant. It is not always apparent to the parties or to the
25 Bench why a line of questioning may be relevant to a particular

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1 point that is necessary to be made in the defence of our client.
2 And so, at times, we -- we're trying to explain, and our
3 microphone is cut off.

4 [13.36.54]

5 We think that some patience is required, and we try not to make
6 political speeches. We try not to accuse the government of doing
7 anything. Whether they are or not is irrelevant, as far as I'm
8 concerned. I'm concerned about the trial. I'm concerned about my
9 client.

10 We also get a sense that sometimes, when objections are made,
11 there's no real deliberation. There is just a quick decision,
12 either by the President or some of the Judges, but not all of the
13 Judges, of the Bench. And it would appear, lately, that virtually
14 every single objection from the Prosecution gets sustained, every
15 single objection from the Defence gets overruled. The other day,
16 I won an objection. I was almost shocked.

17 This is the perception that we're getting. It's unfortunate. I
18 welcome this opportunity to be heard on this matter. I am almost
19 grateful that we're not doing this in the public because I don't
20 wish to embarrass anyone, but I wish to -- as I stand here, I
21 stand here as a professional.

22 [13.38.18]

23 We work very long every day so we can come here and do a
24 professional job. And without the Defence, you cannot have a
25 legitimate process. You cannot do it yourselves. The Prosecution

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1 cannot do it. The Prosecution rises to the occasion when they
2 have a good Defence. The Bench is more able to get as close to
3 the truth as possible when the Defence is challenging the
4 evidence. We all benefit. But I must say, thus far, it is both
5 disheartening and discouraging. It's as if we are told or
6 expected to simply be here like potted plants, for décor, as
7 opposed to mounting a vigorous and robust defence.
8 And it's disparaging and dispiriting to -- for us to be on the
9 attack all the time. And sometimes, one wonders, is it worth it.
10 Is it worth getting up early in the morning to prepare knowing
11 that when you stand up to make submissions, you're going to be
12 shut down before you even make the submissions?
13 So we would respectfully request to exercise a little more
14 patience. On our part, we will endeavour to be much more -- more
15 prepared, more direct, get to the point, make sure that our
16 points are clear to you and why they're relevant. But I must say,
17 in 30 years, I've never been treated in a courtroom in the way
18 I've been treated here, where, routinely, my microphone is being
19 shut off.
20 [13.40.14]
21 I don't find that to be an appropriate approach, especially when
22 the public is here to see a model Court. And I know that, at
23 times, we test your patience, but sometimes that's what trial
24 lawyers do. They test the patience of the Trial Chamber. And part
25 of your job is to be patient, to allow us to make our record,

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1 even if you don't agree with our theories. But in the end, you
2 will do what you need to do, and it's all about procedural
3 fairness, not just substantive fairness.

4 Thank you.

5 [13.40.56]

6 MR. PRESIDENT:

7 Thank you.

8 International Co-Prosecutor, you may now proceed.

9 MR. LYSAK:

10 Thank you, Mr. President. Let -- let me first address the issues
11 relating to the Defence witness requests. I am glad to see that,
12 at least on the Ieng Sary team, they have proposed witnesses as
13 requested by the Court.

14 I would submit, while we would wait to see the showing they would
15 -- that they can make on this, but certainly, from our
16 perspective, the testimony that was -- that we've heard from the
17 witnesses the last few days does not make these witnesses
18 essential.

19 [13.41.51]

20 The Supreme Court Chamber has already given some guidance as to
21 the showing that will need to be made on these witnesses, and I'm
22 referring here to paragraph 32 of a decision that they issued
23 that is document E116/1/7. And it is a -- it was a decision on
24 immediate appeal by Nuon Chea against the Trial Chamber's
25 decision on fairness of judicial investigation.

1 And in this paragraph, they address the issue of the testimony of
2 not only the government witnesses, but also the King Father. And
3 they note that this is an issue that, ultimately, will need to be
4 addressed by the Trial Chamber and that it will depend, for
5 example, on the following, quote:

6 "[...] whether such requests are admissible under Rule 87, whether
7 the facts for which the testimonies are proposed are disputed,
8 whether the called witnesses appear and, if they fail to do so,
9 whether the facts upon which they had been called to testify may
10 be established otherwise."

11 [13.43.14]

12 We would simply submit that, in making this showing -- and I
13 would put this to the Defence -- that it is not sufficient simply
14 to demonstrate that witnesses have relevant testimony. We are
15 talking about a period where virtually every person who is here
16 has some relevant testimony on evacuations or that.

17 There are many intellectuals and other people who were present at
18 these meetings. [REDACTED] is just one of the intellectuals who
19 was part of the FUNK and one of the intellectuals who was at the
20 Ministry. There were other people who were at these meetings,
21 other people, in fact, who've been interviewed by the
22 Investigating Judges.

23 [13.43.58]

24 So I would say that the Defence has to do more than just
25 demonstrate that there is relevant knowledge. They have to

1 demonstrate that this testimony is essential, not available from
2 other witnesses, and exculpatory to their clients.

3 And I think it is telling that the Nuon Chea defence, once again,
4 given an opportunity to identify specific witnesses, did not do
5 so. They made some general arguments. I wrote down the argument
6 with respect to [REDACTED] is relevant because whatever happened
7 at the Ministry of Foreign Affairs is relevant to the JCE
8 involving their client. I think they're going to have to make a
9 much more precise showing as to why these individuals' testimony
10 is essential to this proceeding.

11 I think it's also telling that they make reference to some of the
12 statements, the prior interviews of [REDACTED]
13 [REDACTED] that are part of the case file. We have offered to
14 stipulate that these interviews can go into evidence and be
15 considered. That stipulation has never been taken up by the
16 Defence.

17 [13.45.18]

18 I would submit for you the reason for that is -- is very obvious
19 when you read the statements. They are powerful, inculpatory, and
20 there is nothing exculpatory about what they have to say. And if
21 I am wrong, they should make that demonstration.

22 They have repeatedly been given the opportunity in this Court to
23 ask witnesses questions about [REDACTED]. They
24 have only been stopped when they get into questions asking a
25 witness to provide an opinion on whether [REDACTED]

1 [REDACTED] should come to testify, asking them to comment on why
2 they haven't come to testify, questions we all know are not
3 appropriate questions for a fact witness. But they have been
4 allowed to build a factual record, and I would submit it is time
5 for them to attempt to make the showing that the Supreme Court
6 Chamber has referenced.

7 [13.46.18]

8 I don't wish to get into any length the other issues that they've
9 raised. I have a little different perspective. I have not seen
10 Mr. Karnavas shut off that much at the microphone, and -- and I
11 do distinguish that he -- most of the shutting of the microphone
12 has happened, from my observation, when counsel have persisted in
13 trying to make arguments when told by the Court to move to a
14 different issue. And that would happen in any courtroom in the
15 world whether shutting off the microphone, whether a judge
16 telling you to stop your argument.

17 At The Hague, they have issued gag orders against lawyers for --
18 for weeks. I'm not suggesting we should be doing that, please,
19 but when counsel -- counsel should be vigorous in representing
20 their client, but there does come a time when the Court has
21 ordered them to move on that, if they don't, the Court needs to
22 ensure that the proceedings continue.

23 And it is a balancing act, and I, of course, think -- welcome the
24 Court to take the comments of counsel at their face, but I do
25 have a slightly different perspective on -- on some of the

1 observations.

2 [13.47.50]

3 In terms of deliberations on objections, I disagree that every
4 time an objection is made that the entire Chamber needs to
5 deliberate. Again, it has been my observation that where there is
6 an objection, that there is some significant issue that needs to
7 be consulted that the Judges have got up and consulted. There are
8 other times when objections are made which can be ruled on
9 immediately. And certainly, if other Judges have a difference of
10 view, they can -- they can comment on that.

11 But in no way or fashion can we stop this trial every time an
12 objection is made and have a lengthy consultation and have a
13 lengthy record. That is not how it works in any trial. Objections
14 are often ruled on immediately and it's part of the record. And
15 if counsel feel they've been unfairly ruled on, it's a part --
16 it's an issue they can raise on appeal.

17 So I think that's responsive to the points they've made, and
18 that's all I have to say.

19 [13.49.08]

20 MR. PRESIDENT:

21 Mr. Lead Co-Lawyer for the civil party, first.

22 MR. PICH ANG:

23 Thank you, Mr. President, Your Honours. I will be very brief.

24 Concerning the summons of -- summoning of high-ranking officials,
25 the two individuals, having noted the testimonies of the current

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1 two key witnesses, I have observed no need to call these two
2 witnesses to appear before the Chamber through the questioning --
3 the questions posed to -- in the courtroom.

4 We feel that the need to call these two witnesses is not to
5 present the facts before the Chamber, but to implicate them in
6 the trial proceedings. And it is really politically motivated.
7 And I don't want to play politics or to involve in politics in
8 this.

9 [13.50.40]

10 With regard to the turning off the mic, the President of the
11 Chamber shall enjoy all the rights to ensure that the proceedings
12 are conducted expeditiously and smoothly, and the Chamber,
13 indeed, respects the rights of party to be heard. But when the
14 rule or when the decision is made and when parties are warned not
15 to proceed on the matters ruled upon, then they should move on.
16 And I, personally, also feel that if I stray beyond the scope of
17 the facts, I would never be objecting my mic being shut off.
18 I hope -- Élisabeth may wish to also add. That's all from me.

19 MS. SIMONNEAU-FORT:

20 I would like to perhaps clarify our position as civil parties. It
21 is not an absolute stand.

22 I, for one, consider that each of the lawyers here present is
23 sufficiently competent to appreciate as to what witness to call.

24 I think they have the professional competence to decide whether
25 or not to call such a witness.

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1 [13.52.25]

2 MR. PRESIDENT:

3 Mr. Jasper Pauw, would you wish to make any comment -- further
4 comment on this? Because the floor was given to you already to
5 elaborate on the point being discussed and we should move on, as
6 we already received a response from the other side of -- already
7 and we would not wish to reopen this.

8 MR. PAUW:

9 Thank you, Mr. President. I will be very brief, and I have just a
10 comment in response to the International Co-Prosecutor's position
11 on the witnesses.

12 We will be identifying the witnesses that we propose for the next
13 phase of the trial, as I indicated. The email will be sent out
14 this afternoon to the senior legal officer, and we will provide
15 the further reasoning in short term.

16 [13.53.28]

17 What I do take issue with, and the prosecutor does not address
18 this issue at all, as to the witnesses that have not appeared,
19 and especially the high-ranking government witnesses, the
20 prosecutor himself, I think, has provided the main reason that
21 these witnesses should appear in Court. The prosecutor himself
22 has indicated -- and I quote -- "that these people have provided
23 powerful inculpatory statements". And that's exactly the reason
24 that we need to be able to question them in Court.

25 Furthermore -- and this is the last thing I will say on this

1 issue -- I do take issue with the fact that the Prosecution does
2 not address at all that these witnesses have ignored Court-issued
3 summonses. And I just want to point out that the Prosecution
4 seems to have changed its position on this issue because one of
5 the first acts that this International Co-Prosecutor, Mr. Andrew
6 Cayley, undertook when arriving at the ECCC, was to issue a
7 support for the Nuon Chea team as to the summoning of these
8 witnesses. And I'm referring to D314/1/5, in which Mr. Cayley
9 quite rightly noted -- and I quote:

10 [13.54.56]

11 "According to the Judge, the testimony of these proposed
12 witnesses would be conducive to ascertaining the truth regarding
13 the facts alleged in the introductory submission. The
14 International Co-Prosecutor concurs with this determination." End
15 of quote.

16 And he supported our request to have these people summonsed.

17 And I do think that at this Court, where one of the purposes is
18 to have a capacity-building role, we need to have these witnesses
19 appear in Court. If you want to assure respect for this
20 institution, it does not suffice to sanction my colleagues for an
21 alleged lack of respect for this Court. I think respect for this
22 Court should come from these people that have ignored the
23 summons. I think that should be a relevant consideration in your
24 determination whether or not to call these witnesses.

25 And I do think that the Prosecution should be worried about this

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1 issue. They do not address it at all, and of course I think your
2 Trial Chamber should be at least keeping this in mind when
3 deciding whether or not to hear these witnesses.

4 [13.56.16]

5 MR. PRESIDENT:

6 Thank you, Counsel.

7 Counsel for Mr. Khieu Samphan, you may proceed, but please be
8 brief because we have already addressed this and that we move to
9 the other party and now it's bouncing back. And I don't know, if
10 we keep doing like this, we will have to have another day for the
11 session.

12 MS. GUISSÉ:

13 I am well aware, Mr. President, that we are running out of time,
14 but we are dealing with a paragraph with regard to which the
15 defence teams have to indicate the witnesses they wish to call
16 before this Chamber. And it is, therefore, the right of counsel
17 for Khieu Samphan to give the names of their witnesses.

18 [13.57.13]

19 MR. PRESIDENT:

20 Counsel, actually, you should have stated your position
21 immediately after Counsel Karnavas stated the position. The
22 proceeding is that the other party of -- in the Court already
23 submitted their position and now it's bounced back to you, to the
24 other side.

25 I don't know how we can really move on if these things still

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1 happen like this because the Chamber would really wish to hear
2 your concerns at the same time or immediately after counsel for
3 another Accused already raised. Indeed, you have the right to
4 express within the Chamber, and the Chamber respects this full
5 right. That's why you are all invited and given opportunity to
6 address, but you should have addressed the problem on the
7 appropriate time given.

8 [13.58.24]

9 MS. GUISSÉ:

10 Mr. President, it appears that in this courtroom it is incumbent
11 on everyone to respect other parties and the prosecutor rose
12 before me, and I gave him the floor out of courtesy. I have taken
13 note of the position of the Chamber and I will try to be more
14 courteous next time.

15 I just want to add something to what my learned colleagues have
16 said regarding the rights of the Defence. Of course, we recognize
17 the rights of the Presiding Judge to properly supervise the
18 proceedings, but the Rules also provide that the rights of the
19 Defence should be respected regarding witnesses they would like
20 to call before this Chamber. I will try to be brief as to the
21 reasons why we would like to call them.

22 The reasons have been provided in the list that we have given. I
23 would very briefly request the Chamber to carefully consider the
24 testimony of TCW-384, who was the former driver of Khieu Samphan,
25 regarding 870. That witness will have clear testimony on the

1 management of Mr. Khieu Samphan's agenda during that period. He
2 worked in K-12 as a driver, but he also observed movements in K-3
3 and K-15, and so he will be able to talk about meetings of the DK
4 regime.

5 [14.00.33]

6 We would also like to talk about TCW-390. He has a direct vision
7 because his position was under the auspices of the Minister of
8 Commerce. He will also talk about 870, imports and exports, and
9 the procedure that was followed in the hierarchy. He will also
10 talk about administrative structures in Democratic Kampuchea, so
11 he is an important witness.

12 Another witness that we would like to call is TCW-380. He was
13 also a driver who worked at K-12. He will talk about the way
14 information was channelled during that period.

15 Another witness that we would like to call this time around is --
16 was an agricultural cadre, TCW-363. He will talk about a meeting
17 of the 5th of January 1979 at Borei Keila. He will talk about
18 what happened. He will talk about what Mr. Khieu Samphan said.

19 [14.01.58]

20 And to end with my list, the witnesses are both factual witnesses
21 and character witnesses. There is TCW-673, [REDACTED]
22 [REDACTED]. She was with him for several years and will talk about
23 his schedule and the different activities he engaged in during
24 the period of Democratic Kampuchea.

25 And lastly, TCW-665, who is also someone who worked at K-1 and

1 K-3, and he will be in a position to talk about the schedule and
2 manner in which Mr. Khieu Samphan functioned during that period.
3 These are the witnesses that we would like the Chamber to call
4 and to have them examined before the Chamber.

5 MR. PRESIDENT:

6 Thank you.

7 Let's move to another topic, on the Co-Prosecutor's request to
8 expand scope of trial in Case 002/01.

9 Despite the Chamber's concerns as to the pace of the trial, the
10 Co-Prosecutors have repeatedly urged extension of the scope of
11 charges to be addressed in Case 002/01. Although the principal
12 focus of the Chamber's efforts has been to ensure greater
13 streamlining and trial efficiency, the Chamber has also devoted
14 significant time and resources to assessing the impact of
15 acceding to the Co-Prosecutor's request to expand the scope of
16 the first trial.

17 [14.03.56]

18 The Chamber's Annex to the TMM Agenda provided in -- provided an
19 indication of a modus extension. The Chamber may be willing to
20 contemplate in relation to executions on the 17 of April 1975 of
21 evacuees at sites in Kampong Tralach Leu district and four of
22 former Lon Nol soldiers and officials in 1975 at Tuol Po Chrey
23 and at S-21. However, it also indicated that a number of issues
24 that would remain to be resolved should this proposal be adopted
25 and that adopting it, even in part, would entail a significant

1 prolongation of the trial in Case 002/01.

2 The Chamber estimates that even if agreeing to the substantially
3 smaller extension than that posed by the Co-Prosecutors, this
4 would still amount to a prolongation of trial in Case 002/01 by
5 at least three months.

6 [14.05.16]

7 It is important to stress that the prolongation of proceedings
8 entailed by this extension is not limited to testimony. It will
9 have an impact on, amongst other areas, documentary issues as
10 well as implications for the drafting of the verdict. The Trial
11 Chamber invited the parties to respond to specifically address
12 the following questions:

13 (a) The Co-Prosecutors, what, if any, impact would failure to
14 grant this proposed extension have on your ability to meet your
15 burden of proof in Case 002/01 and the Co-Prosecutors and Lead
16 Co-Lawyers?

17 Do the envisaged benefits offered by this proposed extension
18 outweigh the risk created by a prolongation of trial proceedings,
19 particularly in view of the interests of victims of the Khmer
20 Rouge era crimes in reaching an early verdict?

21 The Co-Prosecutors have seen -- provided their responses to this
22 issue in writing as well as an indication of which individuals
23 they would seek to hear on these expanded areas and need not
24 repeat this submission here. The Lead Co-Lawyers may now briefly
25 respond to the question.

1 [14.06.46]

2 The defence teams were also requested to provide reasoned
3 submission regarding the time required to adequately prepare a
4 defence to the areas of indictment described in the confidential
5 annex.

6 Now, the Lead Co-Lawyers may now briefly respond to this question
7 if they so wish.

8 MR. CAYLEY:

9 Mr. President, excuse me, this is -- this is obviously a
10 fundamental issue for the Office of the Co-Prosecutors, and I
11 think it's important, as much as we've expressed our argument in
12 written form that something actually exists on the transcript.
13 And I understand time is moving on, patience is running short.
14 It's Friday afternoon. But I would like to make some brief
15 remarks, and I also would like to make some remarks about four
16 other very small issues, but again, I would like to address the
17 Court, if I may.

18 [14.08.04]

19 MR. PRESIDENT:

20 Yes, you may proceed.

21 MR. CAYLEY:

22 I'm most obliged, Mr. President.

23 You've clearly identified the first two questions posed to the
24 Office of the Co-Prosecutors, the first being the effect on the
25 burden of proof if this expansion in the scope of the case is

1 allowed. And indeed, as I've said, you'll find the bulk of our
2 arguments in paragraphs 20 to 22 of the notice that we filed.
3 But I would emphasize to the Court that if this expansion, if
4 this enlargement of the scope is granted, it will significantly
5 assist the Office of Co-Prosecutors in respect of the burden that
6 we have to meet in this case. The inclusion of the killings at
7 District 12, Tuol Po Chrey, and S-21 will demonstrate to the
8 Court the full extent of the criminal intent behind these forced
9 movements that you are considering anyway.

10 [14.09.12]

11 Yes, the forced movements were implemented to enforce social and
12 economic change in this country, but they were also designed to
13 weed out and exterminate soldiers and officials and civil
14 servants of the Khmer Republic. The killings at District 12 and
15 Tuol Po Chrey were predominantly of former members of the Khmer
16 Republic.

17 We also know that many former members of the Khmer Republic,
18 members of the police and the army and the civil service were
19 murdered in the early days of the operation of S-21.

20 So our position, really, is in respect to the burden of proof in
21 order to tell the full story of this forced transfer. You must
22 address the killings at these three sites that, indeed, you have
23 put forward in your memorandum.

24 [14.10.12]

25 Benefits against risks, the second point the President made,

1 bearing in mind the interests of the victims, so what are the
2 benefits of expanding the scope against the risks, in particular,
3 to the victims.

4 Mr. President, we're asking for an additional 17 and a quarter
5 days of trial in what will be a nearly two-year trial. Whichever
6 way we look at it, this case is going to last for two years. With
7 the additional time required for document hearings, additional
8 witnesses proposed by the other parties, we have calculated an
9 additional 33 and a quarter days of trial time.

10 Many of the witnesses that you will hear in respect to forced
11 movements, so witnesses that you would have had to have heard
12 anyway, will give evidence of killings at the execution sites
13 that are being proposed.

14 [14.11.12]

15 In your Severance Order from September 2011, you stated that you
16 had to safeguard victims achieving meaningful -- meaningful and
17 timely justice. We have always said in our office that we share
18 your concerns about expedience, about speedy trial.

19 The fact is, Your Honours, there is a strong likelihood that
20 there will never be a second trial in Case 002. I know we move
21 forward upon the basis of speaking about the next trial, but
22 there are many compelling reasons to believe that there will not
23 be a second trial. These are factors that we cannot avoid in
24 considering this particular matter.

25 The financial resources of this Court are in a crisis. There's an

1 article in the "Phnom Penh Post" today about this. The prospects
2 of finding further resources for another trial, in my view, are
3 remote. And I have a lot of contact with the International
4 Community in trying to keep this Court afloat, as my national
5 colleague knows.

6 The Accused are old. I don't -- do not even need to expand on
7 that issue.

8 Thirdly, the legal hurdles of moving to a second trial without a
9 judgment in the first trial or an appellate determination in that
10 trial. These are legal hurdles that I don't know how we're going
11 to get around this to move to a second trial, not even
12 discounting all of the other issues that I've mentioned.

13 [14.12.56]

14 And I just do not believe, in the current climate, that we can
15 expect to see a second trial. I was interested to read comments
16 from Mr. Karnavas in a newspaper article. I don't know whether he
17 was accurately quoted, but he's quoting as saying, "Anyone
18 experienced in these sorts of mega cases would readily foresee
19 when factoring the evidence involved and the age of the Accused
20 that the odds of trying the remainder of the 002 Cases after this
21 first phase of the case was nil, fantasy".

22 I don't know whether I'd agree with the term "fantasy", but I
23 certainly agree with the other comments of Mr. Karnavas.

24 Your Honours, Case 002 was always principally about the death or
25 murder of nearly 25 per cent of the 1975 population of this

1 country and the responsibility, or otherwise, of the Accused for
2 those events.

3 What will any of us say to the living victims and to future
4 generations of Cambodians that no killings, no significant
5 killings were ever addressed in the second case.

6 [14.14.14]

7 I feel obliged, respectfully, to emphasize to you that you must
8 make this decision now, because we are rapidly approaching a time
9 when simply it will be too late to take these measures and expand
10 the scope of the trial. We are asking for a five to six week
11 extension and for 13 witnesses to make an extraordinary
12 difference to the legacy of this case.

13 You have Annex A, the Proposed Trial Schedule by the
14 Co-Prosecutors. I'm not going to go through it. I think it's
15 fairly clear. I would like to briefly address you on a number of
16 other issues which will take a matter of minutes.

17 The first is notice and I see and understand from your memorandum
18 that you feel, at this time, that the parties do have sufficient
19 notice for us to proceed with this expanded case. But I would
20 make a point to you, at least in my submission that notice really
21 consists of two separate forms. First of all, notice of facts and
22 charges. Now, the Closing Order -- the Indictment in this case
23 demonstrates, in fact, in my submission -- it surpasses
24 international standards in terms of sufficiency of notice of
25 facts and charges.

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1 It was issued in September of 2010. The parties have had that
2 document for nearly two years. Also, in your Severance Order in
3 September of 2011, you placed the parties on notice that further
4 crimes could be heard in this case. So, the parties have had
5 plenty of notice of the facts and charges in this case.

6 [14.16.09]

7 The second form of notice that we recognize is what I would call
8 scheduling notice so that the parties have sufficient time to
9 prepare for the new witnesses that they didn't previously believe
10 were going to be heard in this case. Now, if you accept the
11 expansion in the scope of this case, and that decision is made
12 now or very shortly after these hearings, the parties will have
13 at least six months in which to prepare for these few more
14 witnesses. Again, I would submit to you that this is sufficient
15 time.

16 You also asked us to address the issue of additional time
17 required for the document hearings that have become a convention
18 of the trial process here at the ECCC.

19 [14.17.07]

20 And we have suggested, and you can see this in Annex A, that we
21 would propose and obviously we welcome suggestions from our
22 colleagues, three days at the end of April of 2013. You also
23 asked us to consider the issue of the additional time required by
24 the other parties in the event that you granted this expansion in
25 the scope of the case. And, if you look at the annex you'll see

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1 that we have suggested that there be a period of 12 days in May
2 of 2013.

3 Lastly, you asked for a -- for two clarifications. First of all,
4 in terms of provisions of the Closing Order that were relevant to
5 this proposed expansion of the case, and we certainly concur with
6 the conclusions that you made in paragraph 15, footnote 10 of the
7 Annex to the memorandum. But in order to allay any fears that may
8 arise from our agreement with you, first of all, the allegations
9 in those paragraphs of the Closing Order overlap with many that
10 are already part of this case.

11 Secondly, in terms of the first phase of the evidence where you
12 are essentially dealing with structures and linkage, you've heard
13 a great deal of evidence that is already relevant to these
14 allegations that you identify in the Closing Order.

15 [14.18.48]

16 Lastly, you asked for a clarification in respect of S-21 were it
17 to be included in an expanded scope. We sought to include purges
18 of cadres from new North, Central, and East zones and you were
19 asking were these to be included as additional crimes or simply
20 as evidence that cadres from these zones were killed at S-21. The
21 latter position is the correct one. We would simply be offering
22 this as evidence that these cadres from these zones were killed
23 at S-21.

24 Those are the sum total of my comments. I'm grateful for being
25 given the time to make these submissions to you, submissions that

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1 we regard in our offices absolutely fundamental in these
2 proceedings. As I say, I would only reiterate my request that we
3 act now on this. Thank you.

4 MR. PRESIDENT:

5 Thank you.

6 The International Lead Co-Lawyer for the civil party, you may
7 proceed.

8 [14.20.09]

9 MS. SIMONNEAU-FORT:

10 Thank you, Mr. President.

11 I believe that this is certainly a vital question, the scope of
12 the trial. The Chamber invites us to express ourselves about the
13 advantages versus the risk of such expansion, all of this in
14 terms of the interest of victims for an early verdict. Let's be
15 clear, it's quite obvious that the victims and the civil parties
16 that represent them want to see a verdict provided within a
17 reasonable time limit. It is the civil party right, as well as
18 the right of the Accused, and that is what we wish to see.

19 Notwithstanding, in no case can the civil parties believe that
20 the expeditiousness of the trial should carry more weight than
21 its meaning, including its symbolic meaning.

22 A year ago, the Chamber gave a Severance Order, and we
23 immediately indicated that we, as civil parties, believe that
24 such severance as it had been made was a limitation of the trial
25 that could not suffice to represent genuinely the interests of

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1 the victims. We said that then and we haven't changed our
2 position today.

3 To compare the advantages and the disadvantages of an extension
4 of the scope of the trial and an extension of it in time and
5 looking at the possible risks, I think there are two parameters
6 that are to put forward.

7 [14.21.53]

8 One is the age of the Accused. And, of course, they are elderly
9 and tired. The same can be said of the civil parties, and some,
10 indeed, have passed away without having received the slightest
11 advantage from these proceedings. This is an old parameter.

12 People knew about it in 2003, 2007, 2010, 2011, and it is not
13 more significant today than it was at those dates.

14 The second parameter is the question of donor funding and their
15 capacity to continue to provide money for this trial. That
16 parameter was also known at every phase of the installation of
17 this Court and at every phase of the trial.

18 And nowadays it's not necessarily the length of the trial that
19 makes them hesitant to submit funds. There are perhaps other
20 causes connected in other ways. But the importance of the trial
21 already implied to everybody that it would last a long time,
22 there's nothing new here. And, obviously, a trial of this order
23 cannot be completed in several months. That is a risk, I think,
24 that everybody took and continues to take.

25 [14.23.11]

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1 What would be the value of an expeditious decision for the civil
2 parties and the victims? In that connection, I would say that a
3 trial is clearly not merely a decision per se, it is quite
4 obviously the debates as well that preceded the scope of its
5 debates, the purpose, and the extent that will all feed into the
6 decision that will give it weight -- for the victims, in
7 particular -- in this case.

8 There is no acceptable decision, however expeditious, if it's not
9 based on the significant debate that has a sufficiently broad
10 scope. For the civil parties, we don't know if there will be
11 other trials for the reasons that have just been mentioned in
12 this room and which everybody is aware of. Within the
13 consolidated group of civil parties, some will perhaps not hear
14 the crimes to which they were subjected ever mentioned. That's
15 something they have to accept and it's not very easy necessarily
16 for them nor is it acceptable at all for some of them.

17 Nonetheless, I believe that the civil parties hope that the first
18 trial will be sufficiently representative and be sufficiently
19 symbolic for them. And that is the reason why we accept the risk
20 for an extension and we support it.

21 [14.24.51]

22 We believe that it is up to the Prosecution to define the scope
23 of the extension, so I won't personally comment on that in terms
24 of the different components of the extension. Let me say to this
25 Court that we prefer an extension over a rapid decision that

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1 would be denuded of a certain amount of meaning. Thank you.

2 MR. PRESIDENT:

3 Thank you.

4 Now, the defence teams were also requested to provide reasoned
5 submissions regarding the time required to adequately prepare a
6 defence to the areas of the indictment described in the
7 confidential annex. And does the earliest date on which they
8 would consider individuals indicated by the Co-Prosecutors as
9 relevant to these areas might be called before the Chamber?

10 So, the floor is now given to the Defence.

11 Counsel Michael Karnavas, you may proceed.

12 MR. KARNAVAS:

13 Thank you, Mr. President. I will begin, and my colleague will
14 supplement my comments.

15 [14.26.16]

16 I do want to address some points that were made by the prosecutor
17 because he made a rather compelling argument as to why you should
18 go ahead and expand your decision to limit the first case, 002/1.
19 And he spoke of notice and, of course, first let me begin by
20 saying that we did not ask for the severance.

21 The severance was placed on us, and we weren't -- as the
22 Prosecution or the civil parties weren't -- consulted, but
23 nonetheless, presumably, the Trial Chamber, recognizing all the
24 factors in this case -- the age of the Accused, the massive
25 Closing Order -- came up with a shortened first trial based on

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1 the rules that are applicable before the ECCC. And that's why, as
2 I understand it, the Trial Chamber decided to do this -- to sever
3 the case as it did.

4 [14.27.40]

5 Do we have notice of the overall case? Of course, we do, and
6 nobody's arguing that we don't. But the second type of notice
7 that was noted by the prosecutor on scheduling -- well, I would
8 submit that there may be a third kind of notice or maybe the
9 second notice that he mentions is really not so much of
10 scheduling.

11 I'm told to slow down and to pause; my apologies.

12 We began this trial based on the severance, which means in
13 preparing for every witness, we looked at the relevant paragraphs
14 and based on that, we limited the scope of our questioning, the
15 scope of how we were going to approach this particular trial.

16 Now, we're being asked to perhaps enlarge this first part which
17 means we may need to go back and see whether any witnesses will
18 need to be recalled. Now, the Prosecution asks one particular
19 witness, Duch, for S-21; we submit we may need to call other
20 witnesses that have already appeared to delve into areas that we
21 chose not to deal with because of the limited scope.

22 [14.29.27]

23 It would cause a significant delay. The Prosecution says four to
24 six weeks. I submit it would be more like three to four months in
25 testimony because nothing goes as smoothly as we would like it to

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1 go. There are always delays, some witnesses take longer than
2 others, their illnesses and there are all sorts of other
3 unexpected events such as my client not being able to follow the
4 proceedings. So, I am not as optimistic as the prosecutor that
5 this is only a four to six week addition. It's more like three to
6 four months.

7 Then there's the issue of documents if they want to put in. And I
8 want to address that a little bit as well in conjunction with
9 this enlargement of the case. Because we would submit that
10 they're asking 1400 -- 1,400 documents or statements to come in
11 and we would submit that that decision has to be made now, not
12 later because depending on your decision, we would then know to
13 what extent we would need to do -- to question the witnesses.
14 So, we think and I don't want to speak for everyone, but I did
15 speak with my colleagues in advance to see what their position
16 is, but we believe that a minimum of four months will be required
17 by the Defence to prepare for the additional expansion of the
18 case and to review all these statements.

19 [14.31.16]

20 And when I say four months, I'm saying four months at a minimum,
21 where there are no sittings, no witnesses. We cannot do it all.
22 We do not have the manpower or resources that the Prosecution
23 have. We're barely able to keep up as it is. We cannot also
24 prepare for an expansion plus deal with 1,400 statements when we
25 have to go through them and do our due diligence. And so, we

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1 think, this expansion will cause approximately a six-month delay
2 to the trial. That's what you're looking at, adding six more
3 months.

4 We were perfectly happy to go forward with the entire Closing
5 Order. You made that decision to reduce it. We think now, given
6 that we've already proceeded with the course of this trial and in
7 light of the decisions that have been made thus far, and the
8 complexities that we're facing, it is best to just finish this
9 part without complicating an already complex situation.

10 [14.32.35]

11 The prosecutor mentioned the age of the Accused. And this is a
12 subject that we try to avoid talking about, but I dare say, as I
13 said -- as I was quoted, that it's rather transparent why we're
14 having a trial within a trial; why we're having this first phase
15 of the Closing Order, because we don't want to have a Milosevic
16 situation on our hands. That's the real reason. You want to be
17 able to complete part of the Closing Order and have a judgment on
18 that before any of the three Accused are dead.

19 That's what -- let's be honest about it. And it would defeat the
20 purpose if we were to expand at this stage and run that risk.

21 Now, that's a decision that you have to make. We think it's going
22 to take six months. We leave it to your discretion to expand it
23 because we're not in a position to say no. We did have notice
24 over the overall overarching indictment, but we do need time to
25 prepare and to refocus and to see how we may deal with issues

1 that haven't been dealt with before and to prepare with the new
2 upcoming witnesses.

3 [14.34.03]

4 We simply do not buy, however, the Prosecution's notion that
5 unless you add and expand this first trial -- that, somehow, they
6 will not be able to prove their case. That argument has no merit
7 because the Indictment -- the Closing Order is rather clear.

8 Every paragraph is rather clear and then you take -- you take the
9 law and you take the facts and the evidence is coming in, why do
10 they need to expand the scope of the indictment in order to prove
11 002/1 as it is? As for the public and symbolism, I would like to
12 think that we're not here in Court for symbolic purposes.

13 I do think that in your wisdom in limiting the first trial, you
14 did so in a way that effectively represents the entire case of
15 002. It may not cover specific acts, but it does cover the
16 essence of 002. But again, it's a decision that you must make
17 and, we do agree with the Prosecution and the civil parties that,
18 if a decision is to be made, it has to be made as quickly as
19 possible so that at least we know where to proceed.

20 But we think that if you do expand, we would be asking for a
21 minimum of four-month delay of proceedings so we could prepare
22 for that part as well as to address the document issue, which, we
23 believe and we submit, is an issue that has to be dealt with
24 right now because that would also assist you in determining how
25 to limit the scope of the evidence here in Court. Because the

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1 more documents or more statements you will accept, that may
2 effect on limiting the scope of the viva voce testimony, which
3 would make the proceedings more efficient and more streamlined.

4 [14.36.45]

5 Thank you.

6 MR. PRESIDENT:

7 Thank you. Counsel for Mr. Ieng Sary.

8 National Counsel, you may now proceed.

9 MR. ANG UDOM:

10 Thank you, Mr. President. Good afternoon, Your Honours. I have
11 three brief points to make and in the interest of time I would
12 like to proceed quickly.

13 First, I would like to observe the meeting process. This is a
14 meeting, indeed. It is not a hearing. However, my observation is
15 that the President would like the meeting to be conducted in a
16 courtroom setting form. Perhaps there is a misunderstanding or
17 not because I feel that anyone can talk first and any other
18 people can add.

19 [14.37.54]

20 MR. PRESIDENT:

21 Counsel, please proceed to the point you would wish to add.

22 Indeed, the reason that we would like to stick to the principle
23 that we would not wish to delay this meeting and we want to make
24 sure that the meeting can be concluded as soon as possible. And
25 we fully understand that this proceeding is -- or should not be

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1 misunderstood and I would like you to do your best to follow the
2 items of agenda. We are behind the schedule. There's still plenty
3 of more things to address.

4 MR. ANG UDOM:

5 My apologies; indeed, if we care for the timing, then we also
6 should be concerned about the content of the meeting as well.

7 I would like to also share with you concerning the trial
8 proceedings. Some would like the scope to be bigger when others
9 would like the proceeding to be moving more expeditiously. You
10 know like -- it's more like ox cart that is heavily loaded. You
11 can't expect that -- the heavily loaded ox cart move faster like
12 we want. So it can either be unloading some of the luggage and
13 then make the ox cart move faster.

14 [14.39.46]

15 I have a question. Mr. Michael Karnavas and other people already
16 stated a few points in the letter -- our letter dated on the 10
17 of August addressing to the senior legal officer. Mr. Karnavas
18 already stated concerning the turning off the microphone when we
19 were speaking. I would not touch upon this again, but we have
20 five to six more points to raise during this meeting.

21 I do not know whether I am allowed to express the remaining five
22 to six points here, and if I am allowed, when should I be allowed
23 to do so?

24 MR. PRESIDENT:

25 You may raise the issues before the Chamber for our consideration

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1 and I think this message has been communicated to you precisely
2 already. The other businesses will also be included in -- or at
3 the end of -- or near the end of the item of the agenda and we
4 have not proceeded to the final paragraph, which is paragraph 48;
5 we have just passed paragraph 22.

6 [14.41.28]

7 So, parties have already been apprised of what the Chamber would
8 wish to hear and also the proposals counsels or parties would
9 like to be addressed during the meeting. And, this is the purpose
10 of today meeting. We would like the good flow of the proceedings
11 during this meeting.

12 I believe that it should not be misunderstood. However, you are
13 not supposed to raise other issues that have not been proposed to
14 the Chamber through the letter in response to the letter by the
15 Chamber to parties, because in that letter -- or notification,
16 the Chamber indicated that parties are not allowed to raise
17 things that are not included in that letter.

18 Since it is now appropriate time for adjournment, we may adjourn
19 for 20 minutes.

20 (Meeting recesses from 1442H to 1504H)

21 MR. PRESIDENT:

22 Please be seated. We are now back in session.

23 We are really running out of time for the day, and I wish to
24 advise the parties that in this last session, Judge You Ottara is
25 not present because he has other immediate commitments.

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1 Now, I would like to hand over to the other two defence teams. If
2 you have any observation to make, you may proceed.

3 [15.06.11]

4 MR. PAUW:

5 Thank you, Mr. President. I will try to be brief. I think that my
6 colleague, Mr. Karnavas, has put it very well, and we concur with
7 all that he has said.

8 I have a few comments that are in addition to the comments by my
9 colleague. And the first issue is related to the link between
10 S-21 and the other topics that we are discussing during the first
11 trial -- 002/001. I think that that link is tenuous at best.

12 I do not think there is a logical connection between population
13 movements 1 and 2, on the one hand, and S-21, on the other. I
14 understand that and why the Prosecution wants to include S-21 as
15 part of this first trial, but I do not think that there is a
16 logical link. And if we are trying to have this trial in an
17 expeditious fashion, I do think that S-21 falls outside the scope
18 of issues that we are discussing during this trial, and already
19 for that reason, you should not grant the prosecutor's request.

20 [15.07.37]

21 However, as I say, I understand that and why the Prosecution
22 wants to include S-21. I understand it's to them an important
23 topic, and it is our position that if you concur with that
24 assessment, then we need to deal with this issue at length.
25 We cannot have -- and I apologize for using the word, but I use

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1 it with a purpose -- we cannot have a "mini-trial" as to S-21; it
2 is an important topic -- it is to the Prosecution. And if we are
3 going to deal with S-21, we need to do it well; and that means no
4 shortcuts. We need to discuss the facts.

5 And to the Defence it is very obvious, what the core issue in
6 S-21 is; it is the credibility of Duch. And we have questioned
7 Duch as part of the first trial here, but we did not get to test
8 his credibility in full, simply because it was outside the scope
9 of what we were allowed to question Duch on.

10 [15.08.56]

11 We will need to hear more witnesses that can testify on S-21 and
12 that can tell us more about Duch's credibility. That will mean
13 that we will be asking for staff members of S-21 to appear here
14 in this courtroom to testify, because these staff members, in the
15 first trial, have given statements that contradict some of the
16 things that Duch has said.

17 Same for survivors; certain survivors have testified and have
18 contradicted some of the issues that Duch has testified to.

19 And we will also suggest to hear expert witnesses, just like in
20 Case 001, who can testify on S-21 and on Duch, because again we
21 need to be able to challenge Duch's credibility.

22 And I've mentioned Case 001, and I think it's important to note
23 that we cannot rely on the factual assessments in Case 001. And
24 I'm not here to argue or re-argue Case 001, but a few relevant
25 observations are that, as you know, the Defence in 001 was, in

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1 fact, on many points concurring with the Prosecution. So there
2 was not a very strong factual discussion on certain issues.
3 Another issue was that the suspect in Case 001, Duch, was
4 cooperating and he was testifying. However, it is our position
5 that he had reasons to minimize his own position and, therefore,
6 not declare truthfully during his own trial.

7 [15.10.44]

8 It is important to note also that the Prosecution has
9 acknowledged this in their final submissions in Case 001. They
10 have stated on paper that Duch's testimony is, at times, not
11 truthful.

12 Long story short, we cannot rely on Case 001. In Case 001, there
13 were 72 days of hearing evidence. There were 17 fact witnesses,
14 seven character witnesses, 22 civil parties, and nine expert
15 witnesses. I do not suggest that we would need a similar amount
16 of days to speak about S-21 if we do it as part of this case, but
17 we will need a very substantial number of witnesses simply so
18 that we can test the credibility of Duch.

19 I think I can conclude by saying that we concur with Mr. Karnavas
20 that we would need four months of preparation simply to prepare
21 ourselves for the trial of S-21, which, again, would be an
22 important topic if it's added to the schedule, and we will be
23 proposing a substantial number of new witnesses that we assert
24 will undermine the credibility of Duch.

25 [15.12.23]

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1 So again, of course, it is your discretionary -- it's in your
2 discretionary power to decide whether or not we will proceed. Our
3 submission is, if you want this trial to be expeditious, you
4 should not allow this extension. If you do it, all the issues
5 that I've raised in this submission will be relevant, and I think
6 it will prolong the trial considerably.

7 Thank you.

8 MR. PRESIDENT:

9 Thank you.

10 Counsel for Khieu Samphan, you may proceed.

11 MS. GUISSÉ:

12 Thank you, Mr. President. Briefly, I fully support the statements
13 made by my colleagues.

14 In the presentation made by the International Co-Prosecutor, the
15 forecasts for the duration of the trial, were there to be an
16 extension, that he made before us this afternoon seem to me to be
17 particularly optimistic.

18 [15.13.34]

19 We've already said that on the matter of principle, it is very
20 important for us that there should be the presence of witnesses
21 in this courtroom, so that they can be questioned. And of course,
22 if there is to be an extension, we will be strongly opposed to
23 the submission of proof through written declarations or
24 statements.

25 To what my colleague said, I would add that those submissions

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1 before the Co-Prosecutors concern not only 1,400 statements -- as
2 my colleague, Mr. Karnavas, said - but, in fact, as we counted
3 them, there are 2,416 documents. So, yes, there are material
4 considerations to be taken into account.

5 [15.14.30]

6 On the Defence side, we do not have the same resources that the
7 Co-Prosecutors Office has and to have a fair trial we do need a
8 minimum of preparation time, and I would echo my learned friends
9 in saying that four months without hearings would seem to us to
10 be a minimum. There are only 24 hours in a day, and we have teams
11 who are working well beyond the hours set out in their contracts.
12 Nobody can do the impossible, and if you want a fair trial for
13 the Accused, then you have to take account of these material
14 things as well.

15 Mr. President, you will already have understood that on the issue
16 of principle, we are opposed to an extension to the scope of this
17 trial and, it goes without saying, that the decision lies with
18 you, sir, but of course the decision has consequences on the
19 preparation time needed by the Defence. It will have consequences
20 as well for the scope of witness questioning in the courtroom and
21 it's important for my team to state that the written statements
22 about new charges in 002/1 should be properly prepared by the
23 defence teams.

24 [15.15.58]

25 In closing on this issue, I would also draw your attention to the

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1 fact that documents, written statements by witnesses, are very
2 important here. If you're going to extend the trial then, of
3 course, you're going to extend the paragraph of the Closing Order
4 and extend the footnotes as well with documents that were not
5 initially concerned by the trial as severed.

6 And, in conclusion, I would say that you have taken the severance
7 decision yourself to subdivide the trial into different parts,
8 and on a number of occasions the Co-Prosecutors have asked you to
9 revise your decision. You have maintained your position all
10 along, so I don't know what might have changed between the time
11 when you took the decision and today. The issues connected with
12 the age of the Accused, the external political and funding
13 contingencies remain, but the fact is we're here in a criminal
14 trial for which the Accused have to be able to be adequately
15 defended, have the time to prepare themselves and, in the
16 framework of your decision, those are elements that have to be
17 taken into account. Thank you.

18 [15.17.32]

19 MR. PRESIDENT:

20 Prosecutor, you may proceed.

21 MR. CAYLEY:

22 Very, very briefly. I realize the afternoon is coming to an end
23 but I do briefly want to respond to some of the comments that
24 have been made.

25 Mr. Karnavas mentioned that if this expansion--

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1 MR. PRESIDENT:

2 The International Co-Prosecutor, can you -- can you please hold
3 on because we have not actually come to the conclusion on that
4 matter yet because we will have to listen to every aspect of this
5 issue because so far the Trial Chamber has broken down this
6 matter into smaller sections. Then we will, of course, grant the
7 floor to the Prosecution to provide observation or response to
8 the observation by the other parties. So can you please hold on,
9 on that matter? Then, once we have heard from all the parties
10 then we will, of course, give you floor to respond.

11 [15.18.40]

12 In order to move more expeditiously and, in addition, we have one
13 more important things that the Chamber have already promised with
14 the parties, that we are going to discuss the matter concerning
15 the placing of documents before the Chamber. So, in order to
16 ensure that we will cover this matter before we conclude the TMM
17 meeting today -- so I would like to discuss this matter,
18 particularly the technical aspect as well as the procedures in
19 order to place the document before the Chamber in order to avoid
20 any confusion or contest by parties concerning those documents.
21 In order to assist the Trial Chamber in making its ultimate
22 decision on whether the Co-Prosecutors proposed extension can be
23 adopted, it sought clarification from the Co-Prosecutors
24 regarding certain details of their proposed extension of the
25 scope of Case 002/01.

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1 [15.19.51]

2 The Trial Chamber agrees that addition of executions in District
3 12, executions of former Lon Nol soldiers and officials at Tuol
4 Po Chrey and security centre S-21, may be in keeping with the
5 chronological and logical sequence of events to be heard in Case
6 002/01, but is concerned to limit the overall impact that these
7 proposed extensions may have upon its ability to conclude the
8 trial in Case 002/01 expeditiously.

9 Therefore, the Chamber invited the Co-Prosecutors to address a
10 number of areas of concern at the trial management meeting. The
11 Co-Prosecutors have since responded to these issues in writing,
12 indicating that it would not seek to call or recall any of the 31
13 individuals originally proposed to hear in Case 002/01 or already
14 heard. This does much to safeguard the goal of streamlining
15 proceedings by reducing the number of individuals originally
16 scheduled to be heard in Case 002/01.

17 Now, the impact of these proposed extensions on witness
18 testimony. The Co-Prosecutors in their original request to expand
19 the scope of trial had requested that an additional 23 civil
20 parties and witnesses from their initial Rule 80 list of
21 witnesses be called to address these proposed extensions.

22 [15.22.01]

23 In their more reasoned submissions, the Co-Prosecutors have
24 accepted many of the Chamber's suggested reduction to this number
25 on the execution of 17 April 1975 evacuees at sites in Kampong

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1 Tralach Leu, District 12. Following the Chamber's suggestion that
2 a maximum of five to six additional witnesses be called to
3 address the execution of the 17 April 1975 evacuees at sites in
4 District 12, the Co-Prosecutors have since indicated a list
5 substantially similar to that provided by the Chamber of six
6 proposed witnesses to be heard in this area.

7 Opportunity for comment by the other parties on this will be
8 provided in a few moments.

9 On the executions of former Lon Nol soldiers and officials in
10 1975 at Tuol Po Chrey, Kandieng district of Pursat province in
11 relation to the alleged executions of former Lon Nol soldiers and
12 officials in 1975 at Tuol Po Chrey, the Co-Prosecutors have
13 agreed with the Chamber's suggestion that only two additional
14 witnesses be heard in this area.

15 [15.23.32]

16 On S-21 and Choeng Ek -- concerning S-21 and Choeng Ek, the
17 Chamber had indicated that it did not share the wish of the
18 Co-Prosecutors to call subordinates of Kaing Guek Eav who appear
19 unlikely to be able to testify to the responsibility of the
20 Accused in Case 002. In view of the testimony of Kaing Guek Eav,
21 testimony to date, in addition to the totality of crime-based
22 evidence already before the Chamber in relation to these topics
23 and admissible in consequence of decision E96/7, the Chamber was
24 unconvinced of the need to hear additional witnesses or civil
25 parties in relation to crimes committed at S-21 and Choeng Ek.

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1 The Co-Prosecutors, in their reasoned submission, have renewed
2 their request to hear four subordinates of Kaing Guek Eav in Case
3 002/01. The principal basis of this is: (a) an alleged public
4 interest in understanding the inner workings of S-21; and (b) as
5 Kaing Guek Eav was not himself questioned on these expanded
6 areas. The Chamber considers that this latter concern is best met
7 by recalling Kaing Guek Eav rather than hearing additional
8 testimony from his subordinates.

9 [15.25.15]

10 Additionally, the Co-Prosecutors did not address whether any of
11 these four proposed additional witnesses are capable of
12 addressing the responsibility of any Accused in Case 002/01.
13 Further, and as the inner workings of S-21 formed the subject of
14 the entirety of Case 001, the Chamber is unconvinced by the
15 argument that the public expect to be further informed about
16 S-21.

17 Also, ample documentary evidence or statements regarding the
18 operation of S-21 is already or may yet be put before the Chamber
19 if required.

20 So the Co-Prosecutors are requested to provide clarification on
21 this element. So that is the opportunity for the Prosecution to
22 make an observation and clarification on this point, as well as
23 the observation made by other parties on the earlier subject.

24 The floor is now yours.

25 (Judges deliberate)

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1 [15.27.16]

2 My apology; it may be a bit confusing because just now we are
3 talking about the document put before the Chamber and the issue
4 to be discussed on Monday, and this was in pursuant to the
5 request by the defence counsel for Nuon Chea concerning the
6 document to be put before the Chamber in relation to Mr. Suong
7 Sikoeun. And in order to address this issue swiftly without any
8 further ado, I would like to advise the parties that you make
9 your submission in writing to the Chamber as appropriate so that
10 it saves the Court time.

11 (Judges deliberate)

12 [15.28.24]

13 MR. PRESIDENT:

14 (No interpretation)

15 JUDGE CARTWRIGHT:

16 Thank you, President. I just wanted to clarify because I think
17 that the translation is getting a little bit confused here.
18 The comments that the President has just concluded on the
19 extension of the trial, we've already had a big round of
20 discussion about that. If there are any further comments because
21 of the short amount of time we have left today, we are inviting
22 the parties to send, informally, their comments to the senior
23 legal officer. We do not require lengthy responses. So that this
24 will enable us now, enable the President now, to move to the
25 issue of the use of documents which is a live issue in the trial

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1 at the present time.

2 So I hope I've managed to clarify that matter. Thank you. Thank
3 you very much, President.

4 MR. PRESIDENT:

5 Thank you, Judge Cartwright.

6 [15.29.37]

7 The main pending issue is concerning the documents, and allow me
8 inform parties that we still have other topics to be discussed
9 but we have no time to address them today but we will address
10 them in due course. And in the item of the agenda, the Chamber
11 has indicated clearly that if matters cannot be addressed today,
12 then we would be considering having another session where the
13 remaining matters would be addressed.

14 Now, with regard to the documents, if additional witnesses -- if
15 parties wishes to discuss any document, party is advised to
16 convince the Chamber that the document has been placed before the
17 Chamber. The document is noted with "E" number and it is regarded
18 as document relevant to Case File 002/1.

19 In case the document has received a new classification, it must
20 receive the notification as pursuant to Rule 87/4 (sic) before it
21 can be used before the Chamber. When the Trial Chamber is
22 convinced that the documents are placed before the Chamber or met
23 the requirements to be accepted before the Chamber, then parties
24 are allowed to examine the document.

25 [15.32.22]

1 When a party wishes to base questions on a document that has been
2 put before the Chamber and to provide a hard copy to the witness
3 or put it on screen, it must first ask the witness if he or she
4 has seen the document. If so, the document may be screened or
5 provided to the witness.

6 The President retains the discretion to order that the document
7 not be displayed or provided if, for example, its contents are
8 not within the knowledge of the witness or any influence – or may
9 influence his testimony.

10 In relation to documents not put before the Chamber, it has, in a
11 limited number of circumstances, indicated that parties may
12 nonetheless utilize certain documents as the basis for
13 questioning of a witness provided that the document itself is not
14 quoted. This was permitted, for example, when the Ieng Sary
15 defence belatedly discovered prior publications of an expert
16 published years previously and had failed to satisfy the Chamber
17 that their admission had been sought in a timely fashion. This
18 was decision E172/7 -- rather 24/4 -- of 21 June 2012.

19 [15.34.05]

20 Although these documents, therefore, could not be admitted
21 pursuant to Internal Rule 87.4, the Chamber had indicated that
22 there was no barrier to using their contents as the basis for
23 questioning of the expert, provided the documents themselves were
24 not quoted or obviously put up on the screen or provided in hard
25 copy. The Chamber had, however, requested the Ieng Sary defence

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1 to provide timely, advance courtesy copies of those documents to
2 the Chamber and the other parties.

3 The parties may now request clarification of any further issue
4 concerning documents, should they wish. We would proceed from the
5 Co-Prosecutors and the Lead Co-Lawyers for the civil party if
6 they would wish to make any comment or raise any concern
7 regarding the filing of documents.

8 MR. LYSAK:

9 Just to clarify, Mr. President. We were talking about the issue
10 of -- a number of issues including, I believe, the presentation
11 of documents. If there - if there's -- if the Court is looking
12 for some comments related to the issue that came up the other day
13 with counsel, we would address that. Otherwise, on the other
14 procedural issues we would have no comments on.

15 (Judges deliberate)

16 [15.36.20]

17 MR. PRESIDENT:

18 The Chamber has already considered this and the Chamber just wish
19 to solve problems concerning documents put before the Chamber.

20 We know that there are pending matters to be addressed, and that
21 when it comes to filing of documents, the Chamber wishes to make
22 it clear that this is the way the documents should be filed and
23 be treated because we do not wish to have the same problem as it
24 happened during the questioning of Witness Suong Sikoeun.

25 And if -- after this, senior legal officer will be asked to

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1 address the counsels and parties to the proceeding by Monday, and
2 that when it comes to testimony of Mr. Suong Sikoeun, we will
3 hear him for only a morning, then the -- this is just the
4 procedural matters that we need to clarify and we believe that
5 the Chamber has made it clear concerning the documents to be
6 placed before the Chamber during the testimony of the witness.

7 [15.37.47]

8 If you feel that there is any matter to be discussed concerning
9 this, you may raise. Otherwise, we may wrap-up the meeting.
10 Counsel for the civil parties, you may now proceed.

11 MR. PICH ANG:

12 Thank you, Mr. President and Your Honours. With regard to the
13 instruction just now, it is relevant to the previous ruling or
14 instruction as well.

15 However, I have observed a new point which states that witness
16 shall be asked concerning the relevance of the document and that
17 the document can be put up on the screen. And the statement also
18 indicates that if the document has never been seen by the witness
19 before or has -- or may influence witness testimony, I feel not
20 sure I understand this. What kind of document that can be
21 withdrawn, for example whether it may influence his or her
22 testimony?

23 We believe that any document that is wished to be shown is for
24 the purpose of reflecting the witness's memory. So, more or less,
25 the document may influence his or her testimony, but I do not

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1 understand how it can be not influencing his testimony.

2 [15.39.37]

3 MR. PRESIDENT:

4 Well, the matter is this. For example, the document is placed up
5 on the screen and then you would like him or her to read from the
6 document that is being shown. So I will give you another example.

7 Like, for example, a document is being placed on the screen and
8 the witness is being asked questions concerning that document.

9 The witness may be now reading the document in his or her hand
10 and, at the same time, you place another document up on the

11 screen so the witness may feel that he or she is now reading the
12 same document not the new document you asked to be put up on the
13 screen.

14 That's why we should ask question to see whether witness has seen
15 that document before or not because we do not want to distract
16 the attention of the witness to the new document rather than the
17 one being in the hand of the witness.

18 [15.40.56]

19 I do not know whether I have answered your question.

20 MR. PICH ANG:

21 Mr. President, I am now still ambivalent as to the expression
22 "may influence his testimony". Your explanation is clear and --
23 but still broad because here we are talking about the testimony
24 -- sorry -- the influence, and I still don't understand how the
25 document that may influence the testimony can be withdrawn.

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1 MR. PRESIDENT:

2 I think it is simple because if the document that is being put up
3 on the screen, which is different from the document that the
4 witness is holding, this new document may influence that
5 witness's testimony because the witness is reading the other
6 document already.

7 [15.42.09]

8 So the purpose of the Chamber is the same because we just want to
9 remove the document from the screen in order not to influence the
10 testimony of the witness because when the document -- or if the
11 document is not read or has never been seen by the witness
12 before, it should be removed and we should proceed with the
13 document that placed before concerning the Case File 002/001. And
14 the proceeding may continue without that document being placed on
15 the screen because the witness has never seen it.

16 Judge Lavergne, you may now proceed.

17 JUDGE LAVERGNE:

18 Thank you, Mr. President. I will try to further clarify this
19 matter. I think it is important to make a distinction between two
20 questions.

21 The first has to do with the use of documents to lay a foundation
22 for questions. I think what is important for the Chamber is to
23 know or ascertain whether the documents that parties intend to
24 use have been tendered into evidence before the Chamber or not.

25 [15.43.42]

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1 If the documents are already in evidence, there shouldn't be any
2 limit as to how documents that are already before the Chamber are
3 used. The document can be quoted, it can be used as general
4 information, but the only question that will arise will have to
5 do with the relevance of the questions asked. If the questions
6 turn out not to be relevant, the Chamber or the President will
7 interrupt the examination of the witness in order to move on to a
8 more relevant question.

9 Regarding the question concerning documents that are handed to
10 the witness or that are put on the screen in the courtroom, this
11 question is, to my mind, different. Placing a document on the
12 screen or giving a witness a document should be aimed at
13 refreshing the witness's memory or enabling him or her to take
14 stock of a document which the witness is familiar.

15 [15.45.07]

16 Let me give you an example. There could be documents from S-21
17 when you are examining Duch. It would be relevant to give him
18 documents from S-21 because he is familiar with such documents.
19 What the Chamber wouldn't like to see is a situation in which a
20 witness is influenced by being shown a document that the witness
21 doesn't know about. For instance, it could be an interview that
22 the witness never granted or an examination or interrogation
23 which he did not participate, and it doesn't make any sense
24 giving that witness such a document or placing it on the screen.
25 I hope this clarifies the issue for parties or does it call for

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1 other questions?

2 MR. PRESIDENT:

3 Counsel for Mr. Nuon Chea, you may now proceed.

4 MR. PAUW:

5 Thank you, Mr. President. I will be brief and I think we will
6 need to read your ruling on Monday to probably better understand
7 the details of your explanations, but we appreciate the
8 clarification and also the clarification by Judge Lavergne.

9 [15.46.39]

10 A few issues that I would like to raise here in the courtroom
11 because they have come up repeatedly. I do think that there are
12 certain occasions where a witness has not seen a document before,
13 but it can still be relevant to show him the actual document. And
14 I am sure that the Prosecution will agree with me on this issue.
15 I'll give one example but I can think of many others. A telegram
16 that I used in questioning the witness last week described a
17 meeting that Suong Sikoeun attended, and it described in detail
18 who was there and who said what and who did what.

19 It is relevant to have Suong Sikoeun read the document to give
20 his version of the events, to testify as to whether that
21 description is accurate or not. It is not confusing the witness,
22 it's not steering the witness; it is simply providing the witness
23 an opportunity to state his version of events.

24 [15.47.42]

25 I agree that sometimes it will not be the case and a document is

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1 not relevant and for that reason should not be shown to the
2 witness, but there are simply occasions where documents should be
3 used, should be allowed to be used, in the questioning of a
4 witness because the witness can testify as to something that is
5 contained in the document or probably the authenticity of the
6 document. That's my first point.

7 The second point -- and I again, do not want to complicate
8 matters -- but I understand your instructions today to mean that
9 if a document has been put before the Chamber it can be used for
10 all purposes.

11 As far as I understand, not all documents that parties have
12 listed on their lists in April 2011 have been put before the
13 Chamber as such. And so far, the position of the Trial Chamber
14 has been that those documents that have been mentioned on those
15 lists can be used for questioning, and I think that is a
16 reasonable and just approach to the issue.

17 [15.48.54]

18 To have the use of documents depend on whether or not the Trial
19 Chamber has already decided as to whether these documents are put
20 before the Chamber seems to me -- I don't want to sound
21 accusatory in any way -- but it seems to be arbitrary.

22 I think that the better approach would be -- but, of course, it
23 is all in your discretion -- to allow the parties to use the
24 documents that are mentioned on those lists of April 2011.

25 Another option could be to allow the parties, before questioning,

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1 to identify the documents that they want to rely on and that have
2 not yet been put before the Chamber but that do exist on those
3 April 2011 lists.

4 I'm not sure that's very practical and it would also put the
5 Defence in a strange position because the Defence may want to use
6 certain documents in questioning the witness while these
7 documents are, in and of themselves, inculpatory. And if you
8 would choose this approach, you would force us to put before the
9 Chamber documents that are inculpatory to the case of our client
10 and that would be, in our submission, a perverse use of the
11 system of documents used in the questioning of witnesses.

12 [15.50.24]

13 The last thing is -- and that will be my final point -- I would
14 hope that what is guiding the issue on the use of documents while
15 questioning witnesses is the fact of whether or not a document is
16 prima facie reliable and/or authentic. If that is the case, I
17 think that these documents should be used and should be -- we
18 should be allowed to use these documents in questioning the
19 witnesses as long as that first test has been met, the
20 reliability and authenticity of the documents.

21 I've spoken too long. It's Friday afternoon. I do not want to
22 ramble, so I'll leave it here and -- but I do -- I did want to
23 flag these issues. Thank you.

24 [15.51.18]

25 MR. PRESIDENT:

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1 Thank you, Counsel.

2 Co-Prosecutor, you may now proceed.

3 MR. LYSAK:

4 Thank you, Mr. President, and thank you, Judge Lavergne.

5 I believe I'm very clear on what the rules are, and -- I mean,

6 counsel is correct. There are situations where there is a

7 sufficient foundation for a witness to speak to a document

8 whether they've seen it before or not. That is a good example

9 where there are minutes of a meeting that the witness

10 participated in. Someone else may have prepared the minutes; the

11 witness may never have seen the document before.

12 In that situation, it seems entirely appropriate and if -- I

13 think what the Court is saying is that we should establish that

14 foundation with the witness as part of the process of asking a

15 document to be put on the -- before the screen -- put up on the

16 screen before the witness.

17 [15.52.23]

18 I do disagree with my colleague -- his characterization of the

19 document he was trying to use with the witness -- because that

20 was a telegram from the French Embassy who, from an unidentified

21 sources, had information about a meeting between Pol Pot, Ieng

22 Sary and the Thai delegation. And the witness indicated that he

23 was not present at the part of the meeting that involved Pol Pot

24 and Ieng Sary.

25 So that is a perfect example of a situation where you should not

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1 be allowed to put the document before the witness because then
2 you are attempting to lead the witness and put information that
3 is not part of his personal knowledge.

4 So I don't want to go on any further, it's late in the day, but I
5 think I understand what the Trial Chamber is saying, and the
6 issue is whether there is a legitimate foundation for that
7 witness to testify and look at that particular document.

8 [15.53.29]

9 MR. PRESIDENT:

10 Thank you.

11 Does any other party to the proceeding wish to add something
12 else? I think we have a little time left.

13 Counsel for Mr. Ieng Sary, you may now proceed.

14 MR. ANG UDOM:

15 Thank you, Mr. President and Your Honours, again. I would like to
16 finish the remaining issues. This relates to the due process.

17 MR. PRESIDENT:

18 We only open the floor for concerns regarding the documents or
19 filing of documents. Other issues will be addressed in another
20 trial management meeting because we cannot have all the matters
21 addressed today.

22 And if you would wish to be heard, you should prepare your notes
23 and, as indicated, if you have new proposals you should submit it
24 to the Trial Chamber, whether it should be included in the next
25 trial management meeting on the "Other Businesses" item of the

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1 agenda. We have only halfway through -- have been only halfway
2 through and there's still plenty of other issues that have not
3 been addressed.

4 [15.55.37]

5 The Chamber, at the same time, wishes to address all the matters
6 but we couldn't do that. The issues are complicated to be
7 addressed -- too complicated to be addressed in a day. So we
8 would like to inform parties that if you would like to attend the
9 trial management meeting on 24 August just for one morning --
10 which is on Friday -- we would like to know what would you
11 comment on this if we are going to convene that meeting on that
12 morning.

13 Counsel for Mr. Khieu Samphan, you may now proceed.

14 MS. GUISSÉ:

15 Thank you, Mr. President. I would like to first of all state that
16 it is important for Khieu Samphan's team to ensure that the
17 issues raised with regard to Khieu Samphan should be dealt with
18 in an in-depth manner.

19 The problem is that the detention centre where we meet our client
20 is only available on Fridays, and it will not be possible for us
21 to meet the client on Fridays. I would like you to consider this
22 problem. I wanted to raise it so that you may consider it as part
23 of this trial management meeting.

24 [15.57.36]

25 MR. PRESIDENT:

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1 Thank you.

2 Counsel for the civil parties, you may now proceed.

3 MS. SIMONNEAU-FORT:

4 Yes, Mr. President. I am sorry to say that I am not available on
5 the morning of the 24th.

6 Furthermore, we have a civil party forum on the 25th in Siem Reap
7 and U.N. vehicles have to leave very early in the morning of the
8 24th to go to Siem Reap for that meeting. That is another
9 problem.

10 (Judges deliberate)

11 [15.58.25]

12 MR. PRESIDENT:

13 Ms. Chea Leang, you may now proceed.

14 MS. CHEA LEANG:

15 I will be very brief. The Co-Prosecutors will have no objections
16 to the session being convened on Friday morning, but we leave it
17 up to the Chamber to decide.

18 MR. PRESIDENT:

19 Thank you very much indeed. We are here today to grasp the
20 information that is important for the smooth conduct of the
21 proceedings, and the Chamber will take into account all the
22 pending matters or issues that have not yet been addressed in
23 another meeting.

24 And we have also learned that some members of the meeting or
25 parties are not available or raise their concern with regard to

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1 the meeting that is supposed to be convened on the Friday
2 morning. But the Chamber will make a decision based on these
3 comments and a new date will be set to make sure that everyone
4 can take part to finish all the remaining issues.

5 [15.59.51]

6 Last but not least, on behalf of the Trial Chamber, we would like
7 to express our profound thanks to everyone, and I highly value
8 the outcome of the meeting. We have observed that we received
9 comments, inputs, from all parties to the proceeding. These
10 inputs and comments are very important for the Chamber to discuss
11 and we believe that there will be a decision -- or decisions in
12 due course. And we hope that upon having issued the decisions,
13 the future trial proceedings will be more expeditious.

14 And, once again, on behalf of the Trial Chamber I would like to
15 thank you, Co-Prosecutors, the civil party lawyers, the defence
16 counsels for the accused persons and support staffs, security
17 personnel, members of the Trial Chamber and interpreters for
18 their best effort in making this meeting a great success.

19 Finally, I would like to wish everyone all the best.

20 The meeting is adjourned.

21 (Trial Management Meeting adjourns at 1602H)

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