



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

27 August 2012

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

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
DUCH Phary

Lawyers for the Civil Parties:

PICH Ang
Élisabeth SIMONNEAU-FORT
Christine MARTINEAU

For the Office of the Co-Prosecutors:

CHAN Dararasmeay
Andrew CAYLEY
CHEA Leang
Dale LYSAK
SONG Chorvoin

For Court Management Section:

UCH Arun

Closed Session

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
MR. CAYLEY	English
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
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

Closed Session

1

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

2 (Trial Management Meeting opens at 1335H)

3 MR. PRESIDENT:

4 Good afternoon. On behalf of the Trial Chamber and the Trial
5 Chamber Judges, we would like to express our profound thanks to
6 the prosecutors, civil party lawyers, and defence counsels for
7 the accused persons, and everyone in - during today meeting.

8 This meeting is a continued meeting from the previous trial
9 management meeting in which some of the items of the agenda have
10 not been completely covered.

11 During the last trial management meeting on the 17th of August
12 2012, the Chamber discussed several items concerning the measure
13 to enhance trial efficiency and the planning for the remaining
14 phases of trial or the list of the -- list of witnesses, and we
15 also discussed several other issues, including the witness to be
16 called and the request by the Co-Prosecutors to extend the scope
17 of the trial proceedings. However, the Chamber has not dealt with
18 several other issues, and we would like to have them addressed
19 now. At the same time, we also, during that last meeting,
20 discussed about the submissions to be filed by parties to the
21 proceedings.

22 [13.37.30]

23 During this afternoon's session, we will commence by the item
24 concerning assessment of victim impact and character, closing
25 statement, and reparation, and also submissions of parties

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1 regarding closing briefs. Another point is -- that will be
2 covered also, the relationship between treating physicians and
3 the Accused's co-lawyers and other topics proposed by the
4 parties.

5 So we will now begin with the assessment of the victim impact and
6 character, closing statements, and reparation.

7 The Trial Management Agenda also provided advanced notice to the
8 parties regarding organization of the concluding segments of the
9 Trial in Case 002/1, namely: victim impact, the character of the
10 Accused, and closing statements.

11 At the conclusion of the evidentiary phases in Case 002/1, the
12 Chamber will grant each defence team three days to present
13 evidence as to the Accused's character. The Defence will shortly
14 be called upon to identify which witnesses, if any, they wish to
15 call for this purpose.

16 Are any defence teams yet in a position to indicate which
17 witnesses they will call for this purpose? So these witnesses are
18 more the character witnesses. We would like to hear from defence
19 counsels, if you would wish to be heard on this.

20 [13.39.56]

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

22 MS. GUISSÉ:

23 Thank you, Mr. President. During the last trial management
24 meeting, we have provided you a list of witnesses who would be
25 speaking to the facts.

3

1 Now, in response to this very specific request with respect to
2 character witnesses, we suggest TCW-267 (sic), [REDACTED]
3 [REDACTED], who is an individual who has known Mr. Khieu
4 Samphan for a certain number of years.

5 We have also suggested this person as a character witness as well
6 as a factual witness: TCW-673.

7 Another witness we intend to propose be summoned is TCW-84. He is
8 a person who has known Mr. Khieu Samphan for a certain number of
9 years and who has a -- very familiar with his political
10 background and formation.

11 [13.41.09]

12 We also propose a witness who will speak to the facts as well as
13 speak to Mr. Khieu Samphan's character, TCW-665.

14 And, lastly, we are suggesting TCW-742, [REDACTED]

15 [REDACTED].

16 Those are the witnesses we would seek to have summoned in order
17 to speak to Mr. Khieu Samphan's character -- (unintelligible) two
18 have been mentioned to appear as factual witnesses during the
19 previous trial management meeting. Thank you.

20 MR. PRESIDENT:

21 Thank you, Counsel.

22 What about counsel for the other accused persons?

23 MR. ANG UDOM:

24 Thank you, Mr. President. Good afternoon, Your Honours and the
25 meeting. For Mr. Ieng Sary, we would like to inform the Chamber

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1 that this issue is new, and we have not had an opportunity to be
2 prepared for this because we have been having other prior
3 commitment concerning our preparation of the current trial
4 proceedings.

5 [13.42.35]

6 And with regard to the character witnesses, we would like to
7 inform the Chamber that, after this, we will prepare to inform
8 the Chamber concerning the witnesses, if any. If not, we will
9 also inform the Chamber on this. Thank you very much.

10 MR. PRESIDENT:

11 Thank you, Counsel Ang Udom.

12 Counsel for Mr. Nuon Chea, you now proceed.

13 MR. PAUW:

14 Thank you, Mr. President. I copy the statements by my colleague
15 for the Ieng Sary defence team.

16 We will provide you with a list of those individuals as soon as
17 possible. We will have to study the issue a bit further.

18 MR. PRESIDENT:

19 Thank you.

20 [13.43.35]

21 Next, as indicated in the Trial Management Meeting Agenda, the
22 Chamber will then permit the Civil Party Lead Co-Lawyers one week
23 of in-Court time to present evidence of the suffering of civil
24 parties, and hence the impact of the crimes tried in Case 002/1
25 on victims. Further directions as to the date by which the Lead

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1 Co-Lawyers shall file their final claim for collective and moral
2 reparation will be provided in due course.

3 In reforming the system of civil party participation before the
4 ECCC, the Plenary wished to ensure that proceedings in Case 002/1
5 could result in meaningful reparation for victims. In view of
6 limited donor funds and finite human resources in the Lead
7 Co-Lawyers and Victims Support sections, the Chambers suggested
8 that the Lead Co-Lawyers prioritize for development a small
9 number of reparations awards out of the totality currently
10 contemplated and commence preparation for the implementation as
11 soon as possible.

12 [13.45.21]

13 The Chamber's decision following the Lead Co-Lawyer's -- rather,
14 preliminary indications of reparations sought is currently
15 pending. These preliminary indications indicate that, despite the
16 practical and financial constraints within which the ECCC
17 operates, the Lead Co-Lawyers seek an extremely large number of
18 measures. It would be useful for the Chamber to get an indication
19 at this stage from the Lead Co-Lawyers as to which of these
20 potential awards appear to confront the most favourable
21 conditions for implementation and which are likely to be
22 prioritized by them for early development.

23 Are the Lead Co-Lawyers able to provide any indication as to
24 which awards out of the many sought are at this stage prioritized
25 by them?

6

1 Counsel Élisabeth Simonneau-Fort, you may now proceed.

2 MS. SIMONNEAU-FORT:

3 Mr. President, allow me to make a few observations with respect
4 to, firstly, the victims' impact, as well as the reparations,
5 which are two crucial points.

6 [13.47.03]

7 With respect to victims' impact, we would like to seek a bit more
8 than four years - four days, rather. Based on our estimations, we
9 would require approximately eight days -- two weeks, that is --
10 two weeks to talk about the impact on civil parties. We are
11 before a Chamber that has introduced the role of civil parties,
12 and therefore we cannot neglect the full significance of the
13 impact of civil parties and victims, since that is going to
14 inform and serve as the basis of your Judgement as well as the
15 basis of our request for reparations

16 The civil parties have already begun to make our selections.
17 However, we have not concluded them. We have also proposed the
18 summoning of two witnesses -- two expert witnesses who could
19 speak on the impact on victims.

20 We are therefore, today, asking for eight days of hearings, and
21 not the equivalent of one week, which is only four days. That is
22 the first request that I seek to put before Your Honours with
23 respect to the impact on victims.

24 [13.48.22]

25 Now, in the scenario that the Chamber seeks to extend the scope

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1 of this trial, we may propose having two or three additional
2 civil parties be summoned and speak to the impact on victims.

3 This is entirely appropriate for this trial.

4 As for your second subject matter raised by you -- that is,
5 reparations -- from a legal standpoint, the Trial Chamber has
6 asked us to develop a small number of projects and begin to set
7 the parameters for implementing those projects. We seek to
8 reassure the Chamber that we have heeded that suggestion. We have
9 been working on reparations projects for the last 18 months, and
10 in our submissions and pleadings, we have drawn an exhaustive
11 list. However, we will be very selective in making a final
12 selection in order to make sure that there is financial viability
13 and full implementation.

14 This is not always an easy task. At this particular point in
15 time, there are still legal issues that are pending, consultation
16 with civil parties that have to be carried out, issues of
17 feasibility, and issues of financing, which are not at all
18 negligible.

19 [13.50.00]

20 We do have a certain number of draft projects in progress, and
21 during the time that we are not preparing for hearings or are
22 actually in hearings, we are now at the stage of defining the
23 nature of the projects as well as the modalities to implement
24 them. We are also seeking to secure funding. We are travelling --
25 working with NGOs, and we are fully acquitting ourselves of the

1 duty that has been conferred to us.

2 We simply want to make it known that it is not always easy to
3 secure funding, as donors are only, often, willing to advance
4 funds when the deadlines, modalities, and other project details
5 are clearly defined. This is complicated process, and I would
6 impress this point upon the Chamber.

7 It should also be known that we are fully aware that we must
8 establish our list of priorities for projects. As it stands, we
9 are encountering great difficulties in meeting with those -- with
10 certain partners who -- not sure of the status of certain
11 projects, and to make sure that all projects would fall under the
12 category of compensation. We are therefore in the midst of trying
13 to persuade such stakeholders and potential stakeholders of those
14 issues.

15 [13.52.00]

16 We've only had a few months to develop our projects. We've only
17 selected a small number, and we have made progress, and we will
18 continue to make progress, but we do hope to submit our requests
19 at the earliest opportunity.

20 In any event, reparations and all the related submissions are
21 going to be predicated on a guilty verdict, and, therefore, I
22 believe that we do have some time at our disposal before --
23 during -- before we come up with a final draft for those
24 projects, and we will continue to work on them in the meantime.
25 We, at this point in time, are not obliged to provide with all of

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1 the details, and we would seek some leeway as well as trust to
2 continue piloting these projects in full compliance with the
3 Internal Rules.

4 Thank you.

5 MR. PRESIDENT:

6 Judge Lavergne, you may now proceed.

7 JUDGE LAVERGNE:

8 Thank you, President.

9 [13.53.31]

10 Would it be possible for the Civil Party Co-Lead Lawyers to
11 provide some more specific indications? For the time being, your
12 projects seem to be rather vague. Are you able to provide us with
13 any idea of a timeline? Would it be possible -- I understand that
14 today you're not in a position to provide very specific details,
15 but can you give us an idea of when you would be able to share
16 concrete details with respect to the status of certain projects
17 that you have prioritized or that you intend to have implemented?

18 MS. SIMMONEAU-FORT:

19 Certainly, Your Honour. I understand the full meaning of your
20 question. However, I am rather surprised to hear it, because this
21 is a legal question and we are not under any obligation,
22 whatsoever, to provide those details.

23 [13.54.32]

24 We do not have a deadline in mind. This is a very broad domain.

25 We are continuing to work on this day after day. Obviously, we

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1 would want to work with as flexible and extended a deadline as
2 possible and we do not intend to make any requests before the
3 Chamber before the final phases of the trial -- that is, prior to
4 the submission of closing arguments and submissions.

5 We do not understand very well the reason why we should have to
6 provide more detailed information, as it is all predicated on a
7 guilty verdict.

8 However, if the Chamber were to provide us with a date, perhaps
9 we can provide an answer.

10 And that should not be a reason to refuse reparations at the time
11 that we should be debating them.

12 MR. PRESIDENT:

13 Thank you.

14 However, the Chamber wishes to know from the Lead Co-Lawyer for
15 the civil party, in particular International Lead Co-Lawyer,
16 could you -- or we would like to inform you that the practices
17 here of the legal framework is based on the Criminal Procedural
18 Code of Cambodia. We cannot wait until -- that the verdict is
19 rendered, and that only after that the reparation could be
20 discussed.

21 [13.56.35]

22 We will do the same as what we have done in Case 001.

23 Before the closing of the hearing, the Chamber would like to be
24 provided by the Lead Co-Lawyers the final complaints --

25 submissions concerning the claims -- the reparation. The Chamber

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1 feels that it is now time for the Lead Co-Lawyers to tell the
2 Chamber concerning the claims and the reasons behind these
3 claims, because your indication of the reparation schemes -- or
4 claims are very important for us to properly manage the conduct
5 of the proceedings. We just would like to know the prioritized
6 projects that are appropriate for being implemented, and that the
7 claims should not be too ambitious.

8 And Lead Co-Lawyers themselves already indicated that you would
9 not wish to submit any proposed reparations scheme that would
10 then, eventually, be rejected by the Chamber. The Chamber
11 understands that we would like forms of reparations that are
12 meaningful for the victims, and we hope that this procedure is
13 clear to parties to the proceeding.

14 [13.58.42]

15 And before the closing statement, then civil party lawyers would
16 be asked by the Chamber to be on their feet concerning their
17 reparations and claims. And this - this is indeed true that
18 reparations could only be asked after the accused person is found
19 guilty. And if the Accused is found to be not guilty or
20 acquitted, then civil parties will not be entitled to any
21 reparation.

22 You may proceed.

23 MS. SIMONNEAU-FORT:

24 I beg your pardon, Mr. President; perhaps I did not express
25 myself clearly.

12

1 Yes, obviously, we have to make our claim for reparation at the
2 end of the proceedings, not after the issuance of the Judgement.
3 This is entirely in keeping with the procedural framework that we
4 abide by. We will, of course, be making our claims prior to the
5 end of trial, prior to the end of proceedings. That's exactly
6 what we intend to do. I apologize for having perhaps
7 miscommunicated this.

8 MR. PRESIDENT:

9 Thank you.

10 We just needed to clarify this because we need to make sure that
11 we understand -- that we're on the same page concerning the
12 length of time.

13 [14.00.39]

14 As the Trial Chamber intends to conclude Case 002/01 as
15 expeditiously as possible and then to commence trial on other
16 portions in the Indictment in Case 002, the Chamber provided
17 advanced notice to the parties that it wished to limit the length
18 of closing briefs to be filed at the conclusion of Case 002/01.
19 The suggested length of closing briefs for the Co-Prosecutors was
20 75 pages in English or French, and the corresponding length in
21 Khmer; 50 pages in English or French for the Lead Co-Lawyers; and
22 50 pages in English or French for each accused.
23 The Chamber suggested that these briefs be due in Khmer or at
24 least one other official ECCC language within one calendar month
25 of the conclusion of trial proceedings in Case 002/01. The

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1 parties were accordingly on notice of the need to prepare this
2 brief in parallel with trial proceedings and to make
3 suitably-phased arrangements for translation.<

4 [14.02.25]

5 The Ieng Sary defence proposed instead that they permitted to
6 file a 100-page closing brief with a deadline for submission of
7 three months after the conclusion of the hearing of the evidence.

8 The Co-Prosecutors have suggested that they be permitted a
9 180-page closing brief, due in English within seven weeks at the
10 conclusion of the trial, with the Khmer translation to follow.

11 They further indicate, based on the notion of equality of arms,
12 that each defence team be permitted no more than 60 pages for
13 their closing brief.

14 The impact of the Lead Co-Lawyer's closing brief on this question
15 was not addressed.

16 As the conclusion of Case 002/01 is merely an interim phase in
17 Case 002/02, the Chamber is concerned to avoid unreasonable
18 delays to proceedings in subsequent parts of Case 002.

19 The Chamber welcomes the Co-Prosecutor's suggestion that brief
20 may be filed in one language alone in the first instance, with
21 translations to follow.

22 The Chamber would also appreciate hearing whether parties could
23 instead, perhaps, consider making oral closing statements in lieu
24 of lengthy written briefs.

25 [14.04.25]

14

1 This is the issue concerning the closing brief, both in terms of
2 time for preparation as well as the length of the brief. There
3 has been request by parties for the times allocated as well as
4 the length, and also the suggestion of the Chamber. This is the
5 issue before us.

6 We envisage that, if the brief is made in writing and it contains
7 many pages, it will involve a lot of translation work, which may
8 result in unnecessary delays of the proceeding. That's why we are
9 bringing this issue up for the discussion in this trial
10 management meeting.

11 So I would now like to open the floor for the discussion on this
12 issue.

13 I give the floor now to the Prosecution. You may proceed.

14 MR. CAYLEY:

15 Thank you, Mr. President. Good afternoon.

16 We've expressed ourselves in our filing. Certainly, we've
17 repeatedly stated, throughout these proceedings, our desire to
18 move quickly, as you wish to move quickly, and to keep filings as
19 brief as possible; nobody wants to produce voluminous documents
20 with no purpose.

21 [14.05.50]

22 But to be absolutely frank with you, Your Honours, the suggestion
23 of 75 pages for the Prosecution post-trial brief in this case,
24 due one month after the proceedings close, is -- respectfully,
25 it's unrealistic, both in terms of the page length and also the

1 translation time. All of the teams will be analysing 200 days of
2 transcript and thousands of documentary exhibits.

3 You've already stated, Mr. President, clearly, our position. I
4 think, as we've done in the filing and for the purposes of this
5 meeting, it's actually worthwhile briefly looking at the
6 practices of other courts that deal with these very large and
7 complex cases to get some idea of how they address this problem.

8 If you look to the Yugoslav Tribunal, the page limit for
9 post-trial briefs is 200 pages. Where there's more than one
10 accused, that figure often increases. To give two recent
11 examples, in the Gotovina Case, which was a three-handed case --
12 three accused -- the Prosecution were granted 266 pages. In the
13 Stanisic and Zupljanin Case -- two accused -- the Prosecution
14 were given 319 pages. And both of those figures exclude annexes.

15 [14.07.32]

16 If we look at the practice of the Special Court for Sierra Leone,
17 we find that the page limit for post-trial briefs is 200 pages or
18 60,000 words. In fact, in the Taylor Case -- the Charles Taylor
19 Case that's just had Judgement issued very recently, the
20 Prosecution were granted 519 pages for their post-trial brief.

21 I'm not suggesting that we look at that figure, but it's
22 worthwhile seeing the size of briefs in other courts.

23 If you look at the ICTR, the page limit there is 30,000 words
24 plus 20,000 additional words for each additional accused. So, in
25 a three-accused case, you'd be looking at 233 pages.

16

1 Very recently, in the International Criminal Court, the Lubanga
2 Case, very straightforward, single accused case, post-trial brief
3 of the Prosecution was 250 pages.

4 Indeed, if you look at Case 001 in this Court, the Duch Case,
5 single-accused case -- parts of the case were actually
6 uncontested, unlike this case: 160 pages for the Prosecution.
7 You've already mentioned, Mr. President, our position on the
8 proportions -- what proportion the Prosecution get -- should get
9 compared to the Defence. Please recall that we have the burden of
10 proof in this case; the Defence don't have a burden. Each of the
11 defence teams is defending one individual; we're prosecuting
12 three individuals.

13 [14.09.09]

14 We would ask you to take into account the manner in which timing
15 for the questioning of witnesses is allocated, and as we've
16 already said, we would propose 180 pages for the Prosecution and
17 60 each for the Defence. We think that that is a very reasonable
18 figure.

19 Now, in terms of the timing of the briefs, as much as all of us
20 want to move in an expedient manner, to seek both Khmer and
21 English versions one month after the close of the proceedings is,
22 again -- frankly, respectfully, it's unrealistic.

23 If you look at the practice of the Rwanda Tribunal, it's 60 days
24 in a single-accused case, and in a multiple-accused case, it's 90
25 days after the close of trial proceedings.

17

1 In Case 001, you will recall that the parties were given
2 approximately eight weeks in which to file their post-trial
3 briefs.

4 We propose seven weeks in one language. It's not ideal. We
5 realize that this document should be in Khmer and English -- this
6 is a Cambodian Court -- but at least, by doing that, it will
7 enable the Court to work on the Judgement pending the production
8 of the Khmer translation.

9 [14.10.34]

10 And my only other recommendation, in terms of the Khmer
11 translation, is that the date set for the filing of that document
12 not just be done without consultation with the Translation Unit,
13 because we're all going to be in the same position on this issue.
14 There are limits to what the Translation Unit can produce, and we
15 will certainly need to consult with them before coming up with a
16 - with a due date.

17 In terms of giving oral submissions in lieu of a written filing,
18 the convention is, in all of the other international courts, that
19 both take place, and normally the oral submissions are less
20 detailed than the written brief, which, you know, is the
21 definitive document. But I think there will be an expectation
22 that both of these forms of argument take place at the end of the
23 trial.

24 Thank you, Mr. President.

25 MR. PRESIDENT:

1 Thank you.

2 The Lead Co-Lawyer for the civil parties, you may proceed.

3 MS. SIMONNEAU-FORT:

4 Thank you, Mr. President.

5 [14.11.55]

6 As far as we are concerned, we do hope that the closing briefs
7 can be done both in writing and orally.

8 We would prefer to follow the practical guideline and the number
9 of pages that is set out therein.

10 As concerns the one month deadline, we have no particular comment
11 to make.

12 But we do have a question for the Chamber: Do our -- does our
13 closing briefs include the request for reparations as in normal
14 civil law or not? We imagine that we will be submitting a closing
15 brief and then pleading on all issues -- impact and reparation --
16 at that stage. So, if the Chamber could enlighten us on that
17 particular point, it would help us to organize our work better.
18 And on the matter of the page length, we would hope to have 100
19 pages.

20 (Judges deliberate)

21 [14.21.52]

22 MR. PRESIDENT:

23 I now hand over to Judge Jean Marc Lavergne to respond to the
24 observation made by the Civil Party Lead Co-Lawyers. You may
25 proceed, Judge.

1 JUDGE LAVERGNE:

2 Thank you, Mr. President.

3 On this question of the closing briefs, the primary concern of
4 the Chamber concerns, firstly, the criminal process per se, what
5 -- in fact, in French we call "action publique". And the
6 conclusions that we will hope to obtain from the parties are
7 those that concern the question of the guilt or innocence of the
8 Accused.

9 On the subject of requests for reparations, the Chamber does not
10 have enough information on that and, therefore, will reserve its
11 decision on whether those requests are going to be included in
12 the final briefs.

13 [14.23.05]

14 But the Chamber has to stress that there is a clear distinction
15 to be made between requests for reparations of a traditional
16 nature, that are directed against the Accused, and the third
17 path, you might say, that was set up in the Internal Rules,
18 whereby the Chamber merely intervenes to give its approval to a
19 project that has obtained external funding.

20 Looking at that particular type of reparations, it is important
21 that the Chamber should be kept regularly informed about the
22 progress and headway of the project because it is clearly
23 important that -- to have these projects submitted in --
24 sufficiently in an advanced state of play for them to be
25 approved. Otherwise, we simply cannot. So we urge you to make

20

1 sure that there is a minimum degree of communication between us
2 so that we can know what is going on.

3 The process is independent from the guilt of the Accused because,
4 there, the findings are not going to be -- become the burden of
5 the Accused. I hope I make myself understood.

6 But the Chamber -- do please understand -- does need to be kept
7 informed with how the procedure is proceeding -- developing.

8 Thank you.

9 [14.25.37]

10 MS. SIMONNEAU-FORT:

11 Yes, we have entirely understood, but, of course, reparations do
12 remain conditional upon guilt; that's how it's set out in the
13 Internal Rules. And we know that we have two choices: either
14 requests against the Accused or these projects. We have indeed
15 understood that, and we are also well apprised of the concerns of
16 the Chamber, and we will certainly see what we can do. Thank you.

17 MR. PRESIDENT:

18 So, we move on to miscellaneous issues--

19 Sorry. The Defence Counsel, you may proceed.

20 MR. KARNAVAS:

21 Thank you, Mr. President. Good afternoon, everyone. Let me just
22 briefly respond to some of the remarks made by the prosecutor.

23 First, I do agree with him that, at the other international
24 tribunals, the allotted page or word limitation is much more
25 generous than the one being presented here, especially given the

1 complexity of this particular case.

2 [14.26.58]

3 Where I would find fault in his argument is to say: "There is
4 three accused here, so let's divide whatever page limit we give
5 the Prosecution -- divide it by three; that would be enough."

6 That's what I heard.

7 First - first of all, we're not one Defence. We're three separate
8 Defences. We represent one individual, each Defence, but
9 nonetheless we have our own respective cases. There is the issue
10 of JCE policies, and what have you, that are -- that generally
11 apply to all, as well as what applies to our individual accused.
12 So I don't think it is appropriate, nor do I find anywhere -- in
13 the jurisprudence anywhere in other tribunals where they look at
14 the page limitation for the Prosecution, then divide that to the
15 number of accused, and then make that the limitation for the
16 Accused.

17 We think -- first of all, we're being asked to provide you with
18 what we would call, in the United States, findings of facts and
19 conclusions of law, what we believe the facts are that came into
20 the case and what's in the file, to present you what the law --
21 the applicable law is, and then to -- for you -- and then, when
22 we put the law to the facts, to provide you with what we believe
23 the outcome ought to be. It is for your assistance.

24 [14.28.40]

25 We do not believe that, in that page limitation, you could

22

1 adequately address the facts, the law, all in 60 pages or 50
2 pages that you originally provided us. It simply cannot be done.
3 We would submit that just for the law section itself, that's a 30
4 or 40 pages.

5 We think that one way to deal with that is to make - perhaps,
6 make submissions on the law itself in advance. The parties would
7 submit what it believes the law is, and for us to have -- and for
8 you to, perhaps, rule on that, so you would have a clear
9 understanding of the applicable law. If that were the case, then,
10 perhaps, we could be a lot more judicious in our final brief and,
11 perhaps, be targeted only to the findings of what you believe the
12 law is -- the applicable law is.

13 Otherwise, if we deal with a section on the law, the facts, JCE,
14 in our individual clients, I would say, less than 100 to 120
15 pages, it's virtually impossible. I think for -- 180 for the
16 Prosecution is sufficient, but I don't think that simply because
17 they get 180, we should get 60. We believe 100 to 120 pages would
18 be more adequate.

19 [14.30.20]

20 And we also believe that allowances should be made for annexes to
21 be attached to the brief. And of course it is for you to decide,
22 if annexes are to be attached, in what shape and form they should
23 be. In other words, we should not be trying to make legal
24 argument in the annexes in trying to circumvent the page
25 limitation.

1 In any event, these are my -- our submissions from the Ieng Sary
2 defence team. Thank you.

3 MR. PRESIDENT:

4 Thank you, Counsel.

5 Counsel Jasper Pauw, you may now proceed.

6 MR. PAUW:

7 Thank you, Mr. President. I can be a bit more brief.

8 I agree with many of the things that were said by the Prosecution
9 in the case, this complex -- both as to the facts and as to the
10 law; the proposed limitations by the Trial Chamber will just not
11 suffice.

12 [14.31.28]

13 I also agree with my colleague, Mr. Karnavas, that the limitation
14 that the Prosecution proposes on the Defence briefs is
15 deceptively fair -- and I say "deceptively fair" because I do not
16 think that the math that is being applied does justice to what
17 we're actually talking about.

18 One of the problems is that a lot of the issues relate to all the
19 three defendants -- and I'm speaking about the law, and the
20 solution proposed by the Prosecution would allow the Prosecution
21 to, for example, spend 100 to 120 pages on the law and then limit
22 itself to, for example, per accused, file briefs of 20 to 30
23 pages. Either way, it would put us at a major disadvantage, and I
24 think the math that the Prosecution applies as such would work if
25 those 60 pages that they see us use would be limited to exactly

24

1 60 pages relating to each specific accused, and that would mean
2 that each legal submission -- all the submissions per accused
3 would necessarily be repetitive as to the legal issues that are
4 overlapping.

5 [14.33.02]

6 I'm not sure that I'm explaining myself very clearly, but I do
7 think that the more important issue, as Mr. Karnavas pointed out,
8 is we simply need more space. We need to have the chance -- we
9 need to be provided opportunity to cover the incredibly
10 complicated legal issues that surround this case at length.

11 And with regard to the facts, I can only state that, especially
12 concerning our client, Mr. Nuon Chea, we would submit that the
13 page limit proposed simply will not do. Whatever way you look at
14 it, Nuon Chea's case is larger, is more complex than the case of
15 the co accused. I'm not suggesting that we need to be treated in
16 any different way from the Defence; I'm just providing you a
17 reason for the fact that we would propose 180 pages to properly
18 defend our client, and we would -- I think we would need 70 to 80
19 pages relating to the law, and 90 to 100 pages relating to the
20 facts. And I just think about Duch and his credibility; I can
21 predict that we would be using 30 pages only to challenge Duch's
22 credibility.

23 [14.34.39]

24 One last thing -- and the Prosecution raised this issue last
25 week, at the earlier TMM. And basically, if I understood the

1 Prosecution correctly, the Prosecution said: Let's call a spade a
2 spade; the chances of having a second trial before this Chamber
3 are slim. We're dealing with very elderly Accused, funds are
4 drying up, and it's not unlikely that there is not going to be a
5 second case that's going to end.

6 We, therefore, think it's important that all these issues that
7 come up in this case are briefed thoroughly. We are dealing with
8 huge fact patterns, we're not just looking at population
9 movements 1 and 2; there's a much broader overview that's being
10 provided before your Trial Chamber during these witness
11 testimonies. And if, again, I want to call a spade a spade, we
12 are in a way judging the whole DK era; that deserves
13 comprehensive briefs as to the law as to the facts.

14 One last point I want to make -- and that would assist the
15 Defence greatly -- is the way it's envisioned now, if I
16 understand it correctly, the Defence would be obliged to submit
17 its briefs at exactly the same time as the Prosecution.

18 [14.36.18]

19 We submit that is impractical because we need to know what
20 charges and also what legal arguments we need to respond to. We
21 do not want these briefs to be ships passing in the night; we
22 want to address the specific accusations that the Prosecution
23 submits in its closing brief and also address certain specific
24 legal arguments that the Prosecution wants to make. Of course, we
25 can predict, to a certain extent, what the submissions are and

1 will be, but also, for -- to a large extent, those submissions
2 will be a surprise to us, and we will not be able to predict all
3 of these legal arguments and factual observations as made by the
4 Prosecution.

5 So the Defence would submit, in order to prepare more focused
6 briefs, that the Defence would be -- would be provided two months
7 after the OCP files its legal and factual submissions -- to
8 respond to those two months later. I think it will benefit the
9 quality of the work that you have to read. I also think it's in
10 line with simple fair-trial principles where the Defence needs to
11 be able to adequately respond to submissions by the Prosecution.
12 If we are supposed to do it at exactly the same time, we will
13 simply not be able to do so.

14 [14.37.55]

15 So, in short -- I spoke for longer than I meant to. In short, the
16 Nuon Chea defence team would submit it needs 180 pages to
17 properly represent the interests of Nuon Chea and we would like
18 our deadline to expire two months after the OCP has filed its
19 submissions.

20 MR. PRESIDENT:

21 Thank you.

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

23 MS. GUISSÉ:

24 On behalf of the defence for Mr. Khieu Samphan, the issue of the
25 closing brief is one of paramount importance. It is one which,

1 for us, is at the very heart of what we consider this trial to be
2 -- that is, to say, it's nature of fairness and equity.

3 [14.39.03]

4 I've raised issues of translation before. I believe that in a
5 trial of this type, in a trial that is so complex and is so
6 significant given its scope on a legal basis as well as a factual
7 basis -- I do not believe that we can sacrifice the quality of
8 debate. And I think this is a timely point for Khieu Samphan's
9 defence to make its position known.

10 Now, the Prosecution has already been able to make an
11 introductory submission as well as a closing order, which
12 provides a general perspective of the case file, and yet the
13 Defence have not been able to avail themselves of an opportunity
14 to make a written submission with respect to the facts that are
15 being levelled against the Accused.

16 I believe that it's very important that we be given all of the
17 means possible in all fairness, where we all carry very serious
18 and significant burdens. We must be given the opportunity to
19 provide, before this Chamber, the position and the vision of all
20 of the Accused.

21 This is an international tribunal; we are not academics. We are
22 not seeking to put forward individual thesis; what we intend to
23 put forward in our closing briefs are obviously going to be
24 related to the trial and -- which will serve as the objective to
25 inform your deliberations. We are not simply seeking to draft

1 pages that have to be translated; we simply want to make sure
2 that our client's vision is properly conveyed and his
3 interpretation of the testimony is properly opined upon.

4 [14.41.15]

5 There are some 187 written exhibits that all carry E3 numbers.
6 What is the probative value of all of these documents? That is
7 also at the heart of the matter. We have reams of documents, we
8 have hours of testimony to review, and yet the Defence is now
9 being asked to draw up a pithy résumé -- or a summary of all of
10 this. This is not in respect of the Accused rights to a fair
11 trial.

12 I join my learned colleagues and echo the fact that there must be
13 a minimum page number limit to argue the legal arguments. And I
14 believe that some of the arguments that were put forward by the
15 Co-Prosecutor do not hold water, and I believe that international
16 jurisprudence will show that the points made by my learned
17 friends on this side of the Chamber stand.

18 Your Honours must bear in mind that the closing briefs of the
19 Defence as well as those of the Co-Prosecutors and the civil
20 parties serve as tools, not as burdens that you will bring with
21 you into the deliberation room.

22 [14.42.44]

23 The final point which I believe is also of great significance --
24 and it does tie into the issue of language, but I do ask that you
25 keep this in mind.

1 With respect to translation, we have in our possession a memo
2 that was produced during Case File 001. This document is
3 D288/6.61 - 69, rather, /1.1 [D288/6.69/1.1]. The ITU clearly
4 states that the number of words used in French are much greater
5 than the words used in English when expressing one single
6 meaning. Now, in such conditions, we would ask that Your Honours
7 bear this in mind when determining the page-number limits for the
8 Khieu Samphan team.

9 I would conclude by recalling that if we are to address all of
10 the charges against our accused and all of the issues brought
11 forward during this trial, we must be able to do so with all of
12 the means possible, just as the Co-Prosecutors have been able to
13 do with the Introductory Submission and other submissions. This
14 is essential, regardless of the Accused, regardless of the time
15 available. This is a minimum that we must acquit ourselves of for
16 this trial.

17 [14.44.33]

18 MR. PRESIDENT:

19 Thank you, Counsel.

20 It is now appropriate time for the adjournment. The Chamber will
21 adjourn for 20 minutes. The next session will be resumed by 3
22 o'clock.

23 (Meeting recesses from 1444H to 1502H)

24 MR. PRESIDENT:

25 Please be seated.

30

1 International Co-Prosecutor, you may now proceed.

2 MR. CAYLEY:

3 Thank you, Mr. President. Very briefly -- I know we have a number
4 of other issues to deal with, but it's simply one point that Mr.
5 Jasper Pauw of the Nuon Chea team made, a proposal that the
6 Defence file their recent submissions two months after the
7 Prosecution. I've never heard of this anywhere, ever before.

8 [15.03.38]

9 And, in fact, if you look at the structure of submissions in
10 these cases, the Nuon Chea team will be given an opportunity to
11 address submissions made by the Prosecution. That's why it's a
12 bifurcated process. Everybody files written submissions at the
13 same time -- you recall that happened in the first case -- and
14 then, subsequently, in the oral submissions, the parties are
15 given the opportunity to address the legal and factual arguments
16 made by the parties in their written submissions.

17 So we would absolutely reject that proposal because the current
18 structure of submissions gives people ample opportunity to
19 address the arguments of the other party.

20 Thank you.

21 MR. PRESIDENT:

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

23 [15.04.42]

24 MR. ANG UDOM:

25 I wish to also share my view concerning this. I appear to be in

1 agreement with Mr. Jasper Pauw.

2 If we look into the practice in submitting our submissions before
3 the National Court concerning civil cases, the Court allows the
4 person who files the complaint to write the submission first, and
5 then, later on, other party to the proceeding would be allowed 20
6 days to write their response in the form of submission.

7 However, in this case, when the prosecutor has submitted the
8 closing statement, I think we have two options. First, defence
9 counsel will be allowed to have some time to read the statement,
10 and then the prosecutor will be allowed to orally address this
11 during the Court again. So, again, I would like to repeat: after
12 the submission by the Co-Prosecutors, then counsels will be
13 allowed some time to look at the statement and respond
14 accordingly, and then they will eventually submit their response.

15 [15.06.21]

16 And when it comes to the oral statement, the prosecutors will be
17 also given some time to think before they can orally respond to
18 our response -- or reply to our response.

19 So I think it is best if the Co-Prosecutors, as Mr. Jasper Pauw
20 indicated, write their submission, and then submit it and allow
21 the Defence to read it, and then give us some time to respond,
22 and then the prosecutor will eventually have time to orally reply
23 to the response. So I think there should be some ample time for
24 this.

25 MR. PRESIDENT:

1 Thank you, Counsel.

2 Counsel Son Arun, you may proceed first.

3 MR. SON ARUN:

4 Thank you, Mr. President. Counsel for Mr. Nuon Chea supports the
5 – the position by counsel Ang Udom because this is a practice
6 before the National Court. When we talk about the National Court,
7 we, indeed, follow the Criminal Code of Procedures of Cambodia.
8 So, for that, we have no objection at all. Thank you.

9 [15.08.01]

10 MR. PRESIDENT:

11 Madam Chea Leang, you may now proceed.

12 MS. CHEA LEANG:

13 Thank you, Mr. President, and Your Honours, and the parties to
14 the proceeding. I think we should leave it to the Chamber to
15 decide, after all. However, I wish to respond a little bit to the
16 comment made by counsel for Mr. Ieng Sary just now.

17 I believe that it is not appropriate. I am also dealing with the
18 national practice, and I think, when it comes to the examination
19 in Court, we have different stages. Submissions also have
20 different stages to be filed, and the submissions have to be
21 filed before the hearing. Before the hearing there would be
22 response, but after the hearing there would never be any response
23 or reply.

24 So I think this is how it is done at the National Court, and I
25 still am convinced that the national practice shall always be

1 followed.

2 [15.09.27]

3 And my suggestion is that the Chamber will have all the
4 discretion to decide on this, and there should not be more time
5 given -- like two months offered to the Defence to respond to the
6 submission by the prosecutors -- I have never heard about this
7 either. And we have already achieved great achievement in Case
8 File 001, and then we should go back and follow what we have done
9 very well already.

10 MR. PRESIDENT:

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

12 MS. GUISSÉ:

13 Thank you, Mr. President. Very briefly, so that this should be
14 clear on the transcript that the Khieu Samphan team supports a
15 minimum of 180 - I'm sorry, a minimum 150, but 180 at an optimum
16 three months after the end of the debate, and then that be
17 submitted in one single language.

18 Thank you. I just wished to clarify that.

19 [15.10.45]

20 MR. PRESIDENT:

21 We would like now to proceed to another item, which is the
22 "Miscellaneous" point.

23 With regard to the remaining matters covered in the Trial
24 Management Meeting Agenda, the Chamber does not consider a
25 two-week deadline for the admission of new documents in advance

1 of an individual's testimony to be onerous, but rather necessary
2 to follow (phonetic) the Chamber and the other parties adequate
3 opportunity to prepare for testimony.

4 Further, documents sought at the last minute by parties as new
5 documents have virtually, without exception, not been published
6 within that two weeks, but were instead available far earlier.

7 [15.11.50]

8 Regarding the use of daily documents interface, the purpose of
9 this interface is to provide parties with a convenient mechanism
10 to inform the Bench and the other parties of documents they will
11 use in Court the next day. The purpose is entirely frustrated
12 where the parties upload large quantities of material far in
13 excess of what could feasibly be put to an individual on any
14 given Court day onto this interface.

15 The parties are reminded that use of the daily documents
16 interface should be limited to key documents that the party are
17 certain or virtually certain to use in the course of their
18 examination. An indicative figure of five to 10 documents was
19 suggested, but the broader principle is that the documents
20 uploaded should be limited to those likely to be put to the
21 witness in question.

22 The Chamber has noted the suggestions of the Ieng Sary defence
23 regarding possible technical improvements to the daily documents
24 interface and will advise the parties of their feasibility in due
25 course.

1 [15.13.20]

2 Relationship between treating physician and the Accused's
3 co-lawyers.

4 Finally, the Trial Chamber had indicated that it would, at the
5 trial management meeting, discuss with the parties measures
6 designed to preserve the independence of medical examinations of
7 the Accused.

8 The Chamber wished to clarify that, where any defence team
9 considers an accused to be – rather, to require special medical
10 assessment -- that is, where it considers that an assessment
11 other than the routine periodic medical checks is warranted --
12 that team may alert the Chamber of this, whether by way of motion
13 before the Chamber or, informally, through its Senior Legal
14 Officers – officer, rather. Where the Chamber considers an
15 additional assessment to be warranted, it will then make
16 necessary arrangements for it. Once a medical assessment is
17 ordered, the parties shall not be present during it.

18 The reasons for this are: firstly, that counsel are not medically
19 trained, and this is therefore a matter outside their competence;
20 secondly, the Chamber wishes to preserve the independence of any
21 medical examination, and presence of counsel during it may give
22 rise to allegations of undue influence.

23 [15.15.07]

24 Comments by defence teams, if you would wish to comment on this.

25 MR. SON ARUN:

36

1 Thank you, Mr. President. I believe that during the hearing, if
2 our client needs medical examination, counsels for the Accused
3 shall have the right to be there when our client is being
4 examined medically, because we represent -- or we're responsible
5 partly for the health and the wellbeing of our client and
6 representing the client at the same time, and the family of the
7 accused person gives more trust to the counsels for each
8 respective accused than other people.

9 So we believe that it is not - it is not an appropriate gesture
10 not to allow - not to allow counsels to be in the room when the
11 client is being examined.

12 [15.16.59]

13 MR. PRESIDENT:

14 Thank you.

15 Counsel Ang Udom, you may now proceed.

16 MR. ANG UDOM:

17 Thank you, Mr. President, and good afternoon, Your Honours,
18 again.

19 We have had bitter experiences concerning this when the Court had
20 contract with the Calmette Hospital concerning the wellbeing of
21 our client. We had - we have had a lot of difficulties.

22 Restrictions were imposed on us. We were not allowed to see our
23 client, even on a gesture of courtesy. So we protested time and
24 again, but to no avail. Before the Co-Investigating Judges, we
25 lodged our complaints, and we did so before the Chamber.

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1 Now, the ECCC has signed a new contract with a new hospital --
2 this time, Sihanouk Hospital. The situation is less intense than
3 before. Communication seems to be more open -- openly allowed for
4 us to communicate with our client, and the doctors are
5 friendlier.

6 Indeed, when we see our client, we did not - we do not wish to
7 interrupt the medical doctor's affairs; we just wish to inspect
8 our client.

9 [15.18.43]

10 Again, I can see that doctors are more friendly, although some
11 still maintain that they would never want to breach their
12 professionalism as the doctor, and there's still some
13 restrictions, although we believe that the restrictions are very
14 now limited and we feel that we can communicate with those
15 doctors. And we believe that in the future -- that doctors will
16 also be open or allow us more, but we still feel that the doctors
17 will change the attitude, somehow, concerning our visit to our
18 client.

19 MR. PRESIDENT:

20 Thank you.

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

22 MR. KONG SAM ONN:

23 Thank you, Mr. President. I have a point to raise concerning the
24 submission of documents.

25 [15.19.41]

38

1 We see that the parties to proceedings appear to have filed
2 overlapping documents, and counsel for Khieu Samphan is of the
3 opinion that if a party files a document, the same document that
4 filed by another party should not be filed by -- or proposed by
5 another -- filed by another party as new document because it's
6 already been filed once.

7 However, with regard to the health issue and the visit to our
8 client, we agree that they should - they shall be examined by the
9 medical doctors and we also are convinced that our presence is
10 important because we need to know the status of our client's
11 health condition because we are representing our client's
12 interest and we need to know his or her wellbeing.

13 Thank you.

14 MR. PRESIDENT:

15 Thank you.

16 Mr. International Co-Prosecutor, you may now proceed.

17 MR. LYSAK:

18 Thank you, Mr. President. I wish to address the issue of the
19 document interface.

20 Our office's position on this is that what would be helpful, I
21 think, to avoid - perhaps, avoid the problem that the Court is
22 concerned about is -- goes to the question of whether there will
23 be preclusion against the parties for documents that are not
24 listed on the daily interface.

25 [15.21.43]

1 From our office's perspective, the problem right now is -- our
2 understanding is that if we do not list a document on the
3 interface, we will not be allowed to use it in Court, and because
4 of that, we are required to list documents that we may use but
5 are not certain that we would use.

6 So, for example, we often do not know ahead of time, based on a
7 written statement of a witness, whether they are familiar or not
8 with "Revolutionary Flags". The witness may not have seen
9 "Revolutionary Flags", in which case we will not be able to
10 submit them to the witness.

11 Sometimes we list -- I have a number of documents prepared in
12 case we need to refresh the recollection of a witness on a number
13 of points. It may turn out to be unnecessary to use those
14 documents in Court, but if a witness doesn't recall a matter and
15 we wish to use a particular document, we need to have those
16 documents on the interface under the current system.

17 [15.22.53]

18 So, I understand the Court's concern. I think there's -- there's
19 two different approaches that are options that are available to
20 the Court.

21 One would be to ask the parties to list only the documents that
22 they are most reasonably certain that they will - they will use
23 and rely on the good faith of the parties to do that. And, I
24 think, for such a rule to work, there cannot be preclusion if a
25 witness in Court can't remember a particular matter and we wish

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1 to use a document to refresh the memory -- or there are other
2 scenarios where additional documents may want to be used. That is
3 one option available to the Court.

4 But if the Court is concerned about the parties listing all
5 documents ahead of time, then I think that a limit of five to 10
6 documents will not work because there are simply some witness for
7 whom, even if we only use five to 10 documents in Court, we do
8 not know with precision ahead of time which documents will be
9 necessary. That will depend on how the witness's testimony
10 proceeds in Court.

11 [15.24.21]

12 A couple of other suggestions on the interface. Perhaps it is not
13 necessary for the other parties to list the OCIJ interviews of
14 each witness. I think it can be assumed that each party will want
15 to use those. So I think at this time what is happening is that,
16 as counsel has pointed out, every team is listing all the OCIJ
17 interviews on the interface, and that is creating more documents
18 on there than probably need to be. I think we can all assume that
19 OCIJ interviews are something that we are likely to use with the
20 witness.

21 But I think it's - it's the Court's decision here on whether it
22 wants the interface to be preclusive or not, because that greatly
23 affects the decisions we have to make and what we list on the
24 interface.

25 [15.25.21]

1 MR. PRESIDENT:

2 Mr. Jasper Pauw, you may proceed.

3 MR. PAUW:

4 I just want to state that I fully support the OCP submission on
5 this issue. I think it's fair and reasonable. Of course, it
6 applies -- should apply to all the parties.

7 That's simply true that sometimes, during questioning, certain
8 topics come up that were not -- could not be predicted before,
9 and sometimes documents need to be used on short notice.

10 For us, it's sometimes even more difficult than for the
11 Prosecution because we do not know which direction the
12 Prosecution is going with the questioning of a certain witness.
13 And depending on the answers a witness gives, we sometimes want
14 to use other documents, and in the past we have chosen not to use
15 certain documents simply because we have not uploaded them on the
16 interface. I think it's not conducive to ascertaining the truth.

17 [15.26.24]

18 I do think that the actual purpose of the interface should be
19 acknowledged, and that is that documents are used that follow
20 your guidelines as to document use.

21 I would submit that, indeed, if there are circumstances that
22 certain documents need to be used that could not be envisioned
23 before, both the Prosecution and the Defence -- and the civil
24 parties, of course -- should be allowed to do so. And I think the
25 suggestions by the Prosecution are reasonable, especially with

1 regards to the statement before the OCIJ.

2 MR. PRESIDENT:

3 Thank you.

4 Now, International Lead Co-Lawyer for the civil parties, you may
5 now proceed.

6 MS. SIMONNEAU-FORT:

7 Very quickly, Mr. President, we don't have any comment on the
8 deadline for the deposit of documents nor, either, about the
9 interface, but just a question about the link between the
10 counsels and the doctors.

11 [15.27.41]

12 We don't really understand the Defence's position because we
13 believe that medical examinations are carried out by completely
14 independent physicians who is giving a medical opinion on a
15 situation and there is no need to interfere with such a thing. We
16 do not see why, therefore, that lawyers should be present in what
17 is a purely medical examination.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you very much, indeed, for all the comments.

21 Next, we would like to proceed to the other topics proposed by
22 the parties.

23 In addition to the issues already canvassed, the Khieu Samphan
24 defence have indicated a desire to discuss the volume of
25 documents under discussion not yet translated and the necessity

1 for discussion of documents admitted at trial. It also seeks
2 further clarification of the Chamber's practice of responses and
3 replies.

4 [15.29.03]

5 These appear to be areas in which the Chamber has repeatedly
6 either ruled or provided directives, for instance by indicating
7 that document hearings would be held at the end of each trial
8 segment, providing the parties the opportunity to highlight
9 documents or portions of documents considered particularly
10 relevant to that party from their perspective.

11 Parties have also been repeatedly reminded of the need to ensure
12 the translation of the documents before seeking to rely on them
13 in Court. And the Chamber has permitted reliance documents for
14 which translations are incomplete fairly sparingly. Whilst there
15 are no limits placed by the Chamber on responses, replies have
16 been subject to a requirement of leave, as practice has shown
17 that replies seldom enhance the Chamber's ability to rule on
18 issues before it, but extend decision run times and translation
19 burdens considerably.

20 [15.30.25]

21 The Chamber has also repeatedly provided guidelines and overseen
22 standard operating procedures for use by the ITU and CMS where
23 deficiencies of translation are alleged. Recently, the Court
24 Management Section filed a further response to Khieu Samphan's
25 motion E195 concerning translation, addressing measures in place

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1 to ensure that errors in translation may be corrected and that
2 translation services provided by the ECCC conform to
3 international standards. This response is filed as E195/2.

4 And the Chamber is unclear of what further gains can result from
5 discussion of this issue at the trial management meeting but
6 invite the Khieu Samphan defence to indicate what specific,
7 additional relief they now seek.

8 If counsels wish to raise concerns regarding this, counsels for
9 Mr. Khieu Samphan, you may proceed.

10 MS. GUISSÉ:

11 Thank you, Mr. President, very quickly. Indeed, we have received
12 the memo from the legal officer with respect to translation and
13 measures to take when we make note of discrepancies or
14 differences between the various language versions.

15 [15.32.39]

16 I'm sure, as you've seen today, for example, that I've had to
17 take the floor very often in order to remind parties to observe a
18 pause during exchanges, and I think this remains a very important
19 point.

20 Now, above and beyond the issue of translation or interpretation
21 for the services that are provided during hearings, according --
22 well, during the expert testimony of Mr. David Chandler, the
23 majority of documents used by the Co-Prosecutors were in English
24 and did not have a French translation. And I believe that it is
25 important to draw the Chamber's attention to this, as the lack of

45

1 translation can pose a problem for the defence teams.

2 We are doing our utmost to make sure that the Chamber does not
3 lose any time and that we all abide by the timelines set out when
4 it comes to making interventions during the proceedings or during
5 exchanges with the senior coordinator or in the submission of our
6 filings. However, I would remind you that this matter is still
7 lagging.

8 [15.34.04]

9 With respect to the translation, it is my understanding that
10 there are French-speaking members represented on each and every
11 party to this proceeding, so this issue is not exclusive to the
12 Khieu Samphan defence team. There are many translation requests
13 underway, but I do believe that if there's at least one French
14 speaker in the Co-Prosecutor's Office and at least one
15 Francophone with the civil parties, I'm sure that we can all
16 stand united in raising the banner to draw people's attention to
17 this matter.

18 MR. PRESIDENT:

19 Thank you.

20 How about other parties? Do you have any observation concerning
21 the translation issue?

22 MS. SIMONNEAU-FORT:

23 I simply want to subscribe entirely to what my learned colleague
24 has just said. We'd point out that the majority of civil party
25 lawyers are French speakers, and that I share her opinion in its

1 totality.

2 [15.35.35]

3 MR. PRESIDENT:

4 Thank you.

5 The Khieu Samphan defence also wishes to highlight the issue of
6 delayed French translation of various Chamber orders and
7 decisions. This factor, which stems from limited translation
8 resources, has meant that the Chamber has sometimes found it to
9 be practically necessary to issue decisions in English and Khmer,
10 with French to follow.

11 Usually, the French translation is -- of an order or decision is
12 filed very shortly afterwards, and, wherever possible, decisions
13 are issued in all three languages simultaneously. Deviating from
14 this practice and requiring all decisions to be issued
15 simultaneously in all three languages would radically slow the
16 pace of trial and would appear to be unnecessary from a
17 fair-trial perspective, given that all the teams are bi or
18 sometimes trilingual.

19 [15.36.56]

20 Similarly, translation into French and/or Khmer of emails
21 emanating from the Chamber's Senior Legal Officer or other legal
22 officers working under her direction is also impracticable in the
23 interests of an expeditious trial and would substantially reduce
24 the Senior Legal Officer's capacity to communicate issues to the
25 parties on an urgent or even timely basis.

1 Finally, the Khieu Samphan defence had highlighted a number of
2 difficulties of access to the ECCC detention facility. They
3 explained that as the detention facility is current accessible
4 only until 4 p.m. on weekdays, in practice, the only time during
5 which they can consult with their client is only on Friday
6 mornings, Friday afternoons being reserved for family visits. The
7 Khieu Samphan defence inquired as to whether extended access to
8 the detention facility could perhaps be granted in order to
9 permit access also on Saturdays, whether for defence teams or for
10 families.

11 The detention facility is presently giving consideration to the
12 Khieu Samphan defence request and will revert to the Chamber
13 shortly regarding what might be practically possible, and the
14 Chamber will update the parties in due course.

15 [15.38.42]

16 Other defence teams facing similar restrictions should, in the
17 first instance, consult with the chief of the detention facility
18 and Mr. Bouchard so as to discuss their needs with them.

19 This is not a contentious issue, but it has remained an issue
20 with the party. We have to discuss with the detention facility
21 officers in order to establish a better and smooth relation,
22 particularly when it comes to access by the defence team to their
23 clients. We have to find ways in order to ensure that they have
24 times to consult with their clients accordingly.

25 And parties may also discuss the issue concerning the documents.

1 As for the discussion on this issue, we have also dealt with,
2 unless other parties have any observation concerning the other
3 matters, and we have actually dealt with all the items on the
4 agenda.

5 [15.40.13]

6 So, on behalf of the Trial Chamber, I would like to highly
7 commend on the effort given by all the parties involved in this
8 trial management meeting. And the Chamber has observed that the
9 trial management meeting conducted on the 17 of August 2012 and
10 this afternoon were very active and very fruitful, with
11 contribution by all parties involved -- the Civil Party Lead
12 Co-Lawyers, the Prosecution and the defence teams.

13 And the Chamber will summarize the outcome of the meeting that
14 have been discussed during the trial management meetings and
15 forward the summary of the meeting, as well as the decision of
16 the Chamber on various matters that have been discussed, to all
17 parties involved.

18 And, once again, on behalf of the Trial Chamber Judges, I would
19 like to thank you all -- the Prosecution, the defence teams, the
20 Civil Party Lead Co-Lawyers, the Administration Office, security
21 guards, the translation and interpreting teams, as well as those
22 who were involved in making this trial management meeting a
23 success. I thank you very much and I wish all parties good luck
24 and success for your endeavours.

25 I now declare the meeting closed.

1 (Trial Management Meeting adjourns at 1542H)

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