



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
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TRANSCRIPT OF HEARING  
ON ACCUSED NUON CHEA’S FITNESS TO STAND TRIAL  
AND ON THE SCOPE OF TRIAL IN CASE 002/01  
PUBLIC  
Case File N° 002/19-09-2007-ECCC/TC

25 March 2013  
Trial Day 162

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

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Experts: MR. John CAMPBELL and MR. Seena FAZEL

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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. CAMPBELL	English
JUDGE CARTWRIGHT	English
MR. FAZEL	English
MR. HONG KIMSUON	Khmer
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MS. PLANTE	Anglais
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

1

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

2 (Court opens at 0904H)

3 MR. PRESIDENT:

4 Please be seated.

5 Very good morning, everyone. On behalf the Trial Chamber, and as  
6 the President of the Trial Chamber, I would like to warmly  
7 welcome the Co-Prosecutors, Lead Co-Lawyers for the civil  
8 parties, and counsels for the Accused, who are present today.

9 [09.05.13]

10 The Trial Chamber is scheduled to conduct two separate hearings  
11 today: a hearing today and another for tomorrow session. The  
12 first hearing is meant to consider the comments by the experts  
13 reappointed by the Trial Chamber to review the health and fitness  
14 of Mr. Nuon Chea, the report of which has been submitted to the  
15 Chamber, very recently, document E256.

16 The second hearing today, which is a subsequent hearing, is  
17 scheduled to be conducted this afternoon, or tomorrow morning.

18 During the second session of the hearing, the Chamber will  
19 provide opportunity to parties in Case 002, to comment on the  
20 impacts of the result of the expert report concerning Mr. Nuon  
21 Chea's health and fitness to stand trial, and also the severance  
22 of the case, the decision of which is to be rendered in due  
23 course. I may now declare the hearing open.

24 Greffier of the Trial Chamber is now instructed to report to the  
25 Chamber on the status of the parties to the proceedings today,

2

1 including the experts appointed by the Trial Chamber in document  
2 E256.

3 [09.07.14]

4 THE GREFFIER:

5 Good morning, Mr. President, and thank you, your Honours.

6 Today the 25th of March 2013, every party to the proceeding is  
7 present, except Mr. Nuon Chea, who is present, but in his holding  
8 cell. The two experts the Chamber are going to hear their  
9 testimony, are present in their waiting rooms awaiting call from  
10 the Chamber. The two experts have already confirmed that they  
11 have not been any relationship with any of the civil parties or  
12 the accused. The experts will take the oath before the Chamber in  
13 a moment.

14 MR. PRESIDENT:

15 Thank you.

16 The Chamber wishes to also inform the parties to the proceedings  
17 that Mr. Nuon Chea is present through remote participation  
18 because of his health concerns, and according to the report by  
19 the treating doctor at the Khmer Rouge Tribunal, he emphasizes  
20 that Mr. Nuon Chea has high blood pressure and cannot remain  
21 seated for a long period of time because he feels dizzy. For  
22 that, the Trial Chamber allows him to be excused and that he is  
23 now asked to observe the proceedings from his holding cell.

24 [09.08.51]

25 The reasons behind this decision are plausible, so Mr. Nuon Chea

1 is now permitted to observe the proceedings from there.  
2 AV booth officials are now instructed to ensure that the AV  
3 equipments are properly connected to the holding cell where Mr.  
4 Nuon Chea can observe the whole proceedings, and indeed, these  
5 proceedings are normal as what we have already done in the past.  
6 Regarding hearing number 1, the Trial Chamber would like to also  
7 note that its decision dated the 15th of November 2011 --  
8 document E115/3 -- the Chamber ruled that Mr. Nuon Chea is fit to  
9 stand trial. The experts are reappointed to review the health and  
10 fitness of Mr. Nuon Chea by the Trial Chamber because the Chamber  
11 noted that, Mr. Nuon Chea, on several occasions, had requested  
12 that he be excused, and that he be allowed to observe the  
13 proceedings from his holding cell, through video link.

14 [09.10.24]

15 For that reason, it is really important and fair that Mr. Nuon  
16 Chea should be - his health and fitness to stand trial conditions  
17 are reviewed and assessed by the experts. And on the 13th of June  
18 20011 - document E62/3 - the experts already made their point  
19 concerning their assessment on one occasion back then; and during  
20 the hearing on the 31st of August 2011, matters concerning his  
21 health condition and also treatment also been discussed.  
22 The Trial Chamber would like to also note that through the order  
23 issued on the 18th of December 2012, Professor John Campbell, Dr.  
24 Seena Fazel, and Dr. Huot Lina, were appointed to assess the  
25 fitness to stand trial, and the health conditions of Mr. Nuon

1 Chea, and Ieng Sary.

2 [09.11.42]

3 At that time, the Chamber also requested that the parties  
4 concerned submit their submissions concerning the scope of the  
5 assessment, and that such submissions should be filed no later  
6 than the 21st of January 2013. Due to the fact that Mr. Ieng Sary  
7 passed away at the hospital -- Cambodian Friendship -  
8 Khmer-Soviet Hospital -- on the 14th of March 2013 after he had  
9 been admitted to the hospital on the 4th of March 2013, for that  
10 reason, the Trial Chamber hearing today focuses more on the  
11 report submitted by the experts after they had reviewed the  
12 health and fitness of Mr. Nuon Chea, alone, only.

13 In response to the Trial Chamber, counsels for Nuon Chea  
14 submitted their submission requesting the Chamber to review and  
15 assess some health implications and make sure that the assessment  
16 is meaningful, and the symptoms that the counsel wish the experts  
17 to reassess include, dizziness and fatigue and problem reading,  
18 because Nuon Chea complained that he could not read beyond five  
19 or the sixth lines, for example. And third, that Mr. Nuon Chea  
20 has eyesight problem; and fourth, Mr. Nuon Chea has some  
21 short-term memory; and fifth, he has problem concentrating and  
22 also has problem with time orientation. And sixth, he has some  
23 problem like urinating problem because he, on some occasions,  
24 urinates irregularly, and he continues to be fatigued, and he  
25 also has problem - he feels uneasy turning, moving his head.

1 [09.14.37]

2 And there are a few more points that stated in the application by  
3 counsel for Mr. Nuon Chea, been well received by the Trial  
4 Chamber.

5 The Trial Chamber also received a request by the Co-Prosecutors  
6 asking the Chamber to assess mental and physical fitness of the  
7 accused person, document E256/3.

8 The Trial Chamber also informs the Witness Support Section -- the  
9 WESU unit, in short -- informing the section that the Chamber  
10 would like the experts to be reappointed to review the health  
11 condition and the fitness to stand trial of the accused person.

12 At that time, Dr. Huot Lina said that he would be available and  
13 present during the proceeding when health of Mr. Nuon Chea was to  
14 be reviewed, and the Trial Chamber agreed to appoint two national  
15 experts, medical experts.

16 [09.16.09]

17 And, finally, the Chamber assigned two experts rather, Dr. John  
18 Campbell, and Professor -- or Dr. Seena Fazel to review and  
19 assess the fitness to stand trial of the Accused, and noting that  
20 later on, Dr. Huot Lina was not available. So these two experts  
21 were the only experts who conducted the assessment on health  
22 condition and fitness to stand trial of Mr. Nuon Chea. In the  
23 reports filed by the experts, the Chamber has now gathered enough  
24 information to rule upon the condition of Mr. Nuon Chea, and the  
25 Chamber will discuss this matter in a moment.



6

1 According to the provision provided, the hearing is to be  
2 conducted in public, as much as possible. However, the Chamber is  
3 very mindful of the rights to access to information and the  
4 rights of the Accused. Nonetheless, today hearing is meant to be  
5 in public. If parties would like part of the proceedings to be  
6 held in closed session, they should do so in writing, and the  
7 Chamber will rule upon the request in the interest of justice to  
8 see whether the hearing shall be conducted in closed session, or  
9 in public. We hope we have made this clear to the parties to the  
10 proceedings, and indeed, regarding the privacy of the accused  
11 person, the Chamber may consider holding the hearing in camera,  
12 and also, we balance the rights of the public to access to  
13 information.

14 [09.19.10]

15 The Chamber would like to ask counsels for Mr. Nuon Chea, to see  
16 whether they agree that this following session will be conducted  
17 in public.

18 MR. KOPPE:

19 Mr. President, good morning, Your Honours. We agree that this  
20 hearing should be held in public, in principle. However, there  
21 might be specific medical details that we might not be very  
22 specific about, if you get my drift. Thank you.

23 [09.19.44]

24 MR. PRESIDENT:

25 Thank you, Counsel.

7

1 The Chamber wishes to also inform the parties to the proceedings  
2 that, during today hearing, when the Chamber examines the reports  
3 by both experts, the Chamber will be putting questions first to  
4 the experts, and the session -- the floor will be given to  
5 counsels for Mr. Nuon Chea, subsequently. Later on, the Chamber  
6 will hand over to the Prosecution, and the Lead Co-Lawyers for  
7 the civil parties, to be able to put some questions to the  
8 experts. And finally, the Chamber will also give the final  
9 opportunity to the Co-Lawyers for the Accused to have the final  
10 words, if they would wish to do so.

11 The final submission by Lead Co-Lawyer - by -- rather, by  
12 counsels for Nuon Chea, will be allowed. At the same time,  
13 Co-Prosecutors, and Lead Co-Lawyers for the civil parties would  
14 also be allowed opportunity to do accordingly.

15 Court officer is now directed to bring in the experts, please.

16 (Mr. Campbell and Mr. Fazel enter the courtroom)

17 [09.22.25]

18 MR. PRESIDENT:

19 Very good morning, Mr. Experts.

20 First of all, I would like to put a few questions, in particular  
21 to Professor John Campbell, first.

22 QUESTIONING BY THE PRESIDENT:

23 Q. Mr. Professor, is your name John Campbell?

24 MR. CAMPBELL:

25 A. It is.

1 BY MR. PRESIDENT:

2 Q. Thank you. How old are you, Professor?

3 MR. CAMPBELL:

4 A. Sixty seven.

5 BY MR. PRESIDENT:

6 Q. Thank you. What is your nationality?

7 MR. CAMPBELL:

8 A. New Zealander.

9 BY MR. PRESIDENT:

10 Q. Thank you. Where do you live?

11 MR. CAMPBELL:

12 A. In Dunedin, in New Zealand.

13 [09.23.43]

14 BY MR. PRESIDENT:

15 Q. Thank you. What is your occupation?

16 MR. CAMPBELL:

17 A. Professor of Medicine and Physician at the University of

18 Otago, and the Dunedin Hospital.

19 BY MR. PRESIDENT:

20 Q. Thank you.

21 According to the report by the Greffier of the Trial Chamber, you

22 are not in relationship with any the parties to the proceedings,

23 including the civil parties, and the accused person Nuon Chea; is

24 that correct?

25 MR. CAMPBELL:

1 A. That is correct.

2 [09.24.36]

3 BY MR. PRESIDENT:

4 Q. Professor, according to your recollection – or our  
5 recollection, you appeared before the Chamber to give testimonies  
6 in case file 002, on three occasions already; one on the 29 of  
7 August 2011, and the 30th of August 2012, and another one on  
8 another occasion; is that correct?

9 MR. CAMPBELL:

10 A. That is correct.

11 BY MR. PRESIDENT:

12 Thank you.

13 We would like to proceed to put some questions to Dr. Seena  
14 Fazel.

15 Q. Is that your full name, Seena Fazel? Is that the way your name  
16 is spelled?

17 MR. FAZEL:

18 A. Yes, it is.

19 [09.25.59]

20 BY MR. PRESIDENT:

21 Q. Mr. Fazel, how old are you now?

22 MR. FAZEL:

23 A. Forty-four years old.

24 BY MR. PRESIDENT:

25 Q. What is your nationality?

10

1 MR. FAZEL:

2 A. British.

3 [09.26.20]

4 BY MR. PRESIDENT:

5 Q. Thank you. Where do you live? And what is your occupation?

6 MR. FAZEL:

7 A. I live in Oxford, in the UK, and I am a forensic psychiatrist

8 based at the University of Oxford, and the local hospitals in

9 Oxford.

10 BY MR. PRESIDENT:

11 Q. Thank you.

12 Dr. Fazel, according to the report by the Greffier of the Trial

13 Chamber, you are not in a relationship with an accused or a civil

14 party to the proceedings, in particular accused person Nuon Chea;

15 is that true?

16 [09.27.05]

17 MR. FAZEL:

18 A. That is true.

19 BY MR. PRESIDENT:

20 Q. Thank you.

21 To the best of the Chamber's recollection, Dr. Fazel, you have

22 been involved in giving testimonies to the Chamber on four

23 occasions at this Court; the latest of which is on the 8 of

24 November 2012; is that correct?

25 MR. FAZEL:

11

1 A. I can't remember the exact date. I think it may have been  
2 October, the last occasion I was giving testimony in the Court.  
3 But, yes, I have given testimony before in the Court, on a number  
4 of occasions.

5 BY MR. PRESIDENT:

6 Thank you very much.

7 The reason the Chamber wished to inform you of your presence  
8 during these hearings is because we would like to capture the  
9 questions concerning your qualifications. So by referring to the  
10 records that you already been here on several occasions, the  
11 Chamber has grounds to confirm that you qualify to give testimony  
12 before this Chamber.

13 [09.29.08]

14 According to our Internal Rules, you are supposed to give the  
15 oath before the Chamber, before you give testimony. Are you ready  
16 to do that?

17 MR. CAMPBELL:

18 A. Pleasure.

19 MR. PRESIDENT:

20 Mr. Matteo, could you please administer the oath taking session  
21 to experts?

22 THE GREFFIER:

23 Good morning. Professor Campbell, please repeat after me. I  
24 solemnly declare that I will assist the Chamber, honestly,  
25 confidentially and to the best of my ability.

12

1 [09.29.58]

2 MR. CAMPBELL:

3 I solemnly declare that I will assist the Chamber, honestly,  
4 confidentiality and to the best of my ability.

5 THE GREFFIER:

6 Thank you.

7 Dr. Fazel, please repeat after me. I solemnly declare that I will  
8 assist the Chamber, honestly, confidentially and to the best of  
9 my ability.

10 MR. FAZEL:

11 I solemnly declare that I will assist the Chamber, honestly,  
12 confidentially and to the best of my ability.

13 THE GREFFIER:

14 Thank you.

15 [09.30.34]

16 MR. PRESIDENT:

17 The Chamber wishes to advise the two experts-

18 (Judges deliberate)

19 [09.31.09]

20 The Chamber wishes to advise the two parties that any expert may  
21 respond to the question put by any member of the Bench, if you  
22 feel necessary, and the question is of natural -- of a general  
23 nature. However, if the question is directed to any particular  
24 expert, then you may respond to that question, accordingly. And  
25 the same is for the parties, when they put any particular

13

1 question to the expert, then the expert in question should  
2 respond to the question. However, the other expert may add  
3 additional comment. That is the general procedures in relation to  
4 your response to the various questions put by parties as well as  
5 members of the Bench.

6 [09.32.08]

7 And to proceed, I now hand over the floor to Judge Sylvia  
8 Cartwright to put the questions to the two experts in relation to  
9 the assessment, as well as the report by the two experts  
10 submitted to the Chamber.

11 You may proceed, Judge.

12 QUESTIONING BY JUDGE CARTWRIGHT:

13 Thank you, President.

14 I will start by reviewing the previous examinations that either  
15 of you have made of this accused, Nuon Chea, because we are well  
16 aware you have both been here on previous occasions, examining  
17 other accused.

18 Q. Professor Campbell, I think that you examined Nuon Chea  
19 previously on two occasions in 2011, providing the Court, as the  
20 President has said, with a report on the 25th of August 2011, and  
21 subsequently being examined by the Court and the parties on that  
22 report; is that correct?

23 MR. CAMPBELL:

24 A. That is correct, although the date I have on my report is the  
25 13th of June 2011.



14

1 [09.33.43]

2 BY JUDGE CARTWRIGHT:

3 Yes, that's accurate.

4 Q. Now, you have, more recently, returned to Phnom Penh to  
5 examine Nuon Chea, and that has been recorded in your most recent  
6 report, which has now been filed, and is before us, today, for  
7 examination, and that is the report dated the 20th of March 2013;  
8 prepared in conjunction with Dr. Seena Fazel; is that correct?

9 MR. CAMPBELL:

10 A. That is correct.

11 [09.34.25]

12 BY JUDGE CARTWRIGHT:

13 Q. Dr. Fazel, can you tell the Court, please, whether you have  
14 ever previously, to this most recent examination, examined and  
15 reported on Nuon Chea?

16 MR. FAZEL:

17 A. I have not.

18 BY JUDGE CARTWRIGHT:

19 Q. Thank you.

20 Now, in respect of the present report, it covers two major areas.

21 The first I will loosely describe as Nuon Chea's physical  
22 condition and the second is his mental health and cognitive  
23 status. So I'm going to deal first, with the physical aspects of  
24 Nuon Chea's health status.

25 Starting at his age, according to the records that the Court

15

1 holds, Nuon Chea was born on the 7th of July 1926, which makes  
2 him 86 years of age now, and 87 in July.

3 Is that as you have recorded for your own purposes?

4 [09.35.41]

5 MR. CAMPBELL:

6 A. Yes, that has been our understanding.

7 BY JUDGE CARTWRIGHT:

8 Q. Thank you.

9 Now, in your report, you helpfully list the various physical  
10 conditions, which you consider to have an impact on Nuon Chea's  
11 health. The first you list as, cardiovascular disease, and you  
12 report a history of hypertension going back over 30 years, and  
13 ischaemic heart disease. You also note that he is on treatment  
14 for heart failure, and at present, that his cardiovascular  
15 disease is stable. In reaching that assessment of his health, you  
16 looked at other earlier records of Nuon Chea's health status, I  
17 assume. Can you just, very briefly, we don't want to go back over  
18 them many dozens of health reports that you have examined and  
19 that are held by the Chamber, but just very briefly outline what  
20 assessment of previous clinical records you undertook?

21 [09.37.00]

22 MR. CAMPBELL:

23 A. We had the reports from his doctors. We also reviewed the  
24 written material from his hospital admission, and we visited the  
25 hospital to review his x-rays, and other laboratory results

1 there.

2 BY JUDGE CARTWRIGHT:

3 Q. Can you tell the Court, please, what conclusions you came to,  
4 after examining those reports, and also examining Nuon Chea,  
5 physically, during your assessment of him?

6 MR. CAMPBELL:

7 A. Well, Nuon Chea is a frail, elderly man, at present. His  
8 frailty is due in part, due to his age, and his underlying health  
9 conditions, but is also due to a considerable degree, due to his  
10 inactivity over recent years. He's really been taking no physical  
11 activities, spends most of his day lying on his bed. So it is not  
12 surprising that he's become weaker, in terms of his muscular  
13 strength, and day-to-day activities have become difficult for  
14 him.

15 [09.38.11]

16 BY JUDGE CARTWRIGHT:

17 Q. Did you observe any changes in Nuon Chea's cardiovascular  
18 state, from the time you last examined him nearly - or 18 months  
19 ago, in 2011?

20 MR. CAMPBELL:

21 A. No, I did not. His blood pressure is satisfactory; there were  
22 no signs of heart failure, and he does not have symptoms  
23 currently of angina or ischaemic heart disease, or of heart  
24 failure and that he is not short of breath lying flat. But that  
25 does not mean that he does not have severe underlying cardiac

1 disease.

2 [09.39.02]

3 BY JUDGE CARTWRIGHT:

4 Q. Thank you.

5 I'll turn now to Nuon Chea's respiratory system. And you noted  
6 that he had recently been admitted to hospital with acute  
7 bronchitis, a diagnosis that this Chamber was furnished with by  
8 his treating doctors. Can you expand on that diagnosis as to what  
9 it means for his current physical condition?

10 MR. CAMPBELL:

11 A. He has fully recovered from his bronchitis; he has no signs of  
12 chest infection, at present. However, the importance of the  
13 condition such as bronchitis is that, because of his low physical  
14 reserve, he is very prone to intercurrent<V> illness and  
15 intercurrent illness has a disproportionate effect on his  
16 well-being, and health.

17 [09.40.09]

18 BY JUDGE CARTWRIGHT:

19 Q. Thank you.

20 You specifically referred to the possibility of delirium, which  
21 has an impact on his abilities to participate in this trial. Is  
22 there any comment you want to make on the presence or otherwise,  
23 of delirium?

24 MR. CAMPBELL:

25 A. Delirium is an acute state of confusion, which can occur at

1 any age group when a person has a febrile illness. As you get  
2 older, you are more prone to delirium. In our discussion with  
3 those looking after him, he certainly appeared as though he had  
4 an episode of delirium, at the time of the bronchitis. But the  
5 delirium fully resolved, and it is certainly fully resolved with  
6 him, at present. Normally, it only lasts a few days and has  
7 resolved over that time.

8 [09.41.08]

9 BY JUDGE CARTWRIGHT:

10 Q. Thank you.

11 Well, turning now to the next physical condition that you assess  
12 as contributing to Nuon Chea's frailty, cerebrovascular disease.  
13 You noted, as we have heard previously, that Nuon Chea suffered a  
14 stroke in 1995, and you may recall at the last hearing, the  
15 diagnosis that you made - or, rather, that your assessment of the  
16 diagnosis that had been made in 1995 and subsequently, was tested  
17 enthusiastically. Would you please explain, very briefly, about  
18 that stroke, and whether it has an ongoing impact on his current  
19 health status?

20 MR. CAMPBELL:

21 A. He had a stroke in 1995 which left him with the right sided  
22 weakness from which he made a good recovery. There are very few  
23 signs of that now. He has slightly brisk reflexes in the right  
24 lower limb, which is consistent with a stroke, and he has a  
25 slight spastic catch in his right lower limb, which, again, is

19

1 consistent with an old stroke. But there is no evidence,  
2 clinically, of any recent stroke, and there is no evidence on the  
3 CT scan that we reviewed, of any recent stroke. So his weakness  
4 now, is primarily due to his inactivity, rather than any further  
5 strokes.

6 [09.42.49]

7 BY JUDGE CARTWRIGHT:

8 Q. Now, from common knowledge, often a stroke will have an impact  
9 on the ability -- the mental or cognitive ability of a patient,  
10 and I assume we'll cover that aspect when we turn to the overall  
11 assessment of his current mental health status, and cognitive  
12 ability; that is any connection with that stroke back in 1995.  
13 Would you confirm that?

14 MR. CAMPBELL:

15 A. Yes, cognition is normally affected if the outer area of the  
16 brain is affected, the cortex, or if there are multiple strokes.  
17 But there has never been any evidence of that with Nuon Chea.

18 BY JUDGE CARTWRIGHT:

19 Q. Thank you.

20 In this portion of your physical examination of Nuon Chea, you  
21 refer to his complaint of dizziness. Would you expand on that,  
22 please?

23 [09.44.01]

24 MR. CAMPBELL:

25 A. Dizziness can cover a multitude of conditions, and I think

20

1 with Nuon Chea, it is primarily due to his unsteadiness, when he  
2 is standing. He did complain of some, when rolling over in bed  
3 and you can get some inner ear problems that cause trouble like  
4 that. But on examining -- normally when that's inner ear problem,  
5 there is a jerking of the eyes, as well, and there was no  
6 evidence of that with Nuon Chea. So I think his dizziness is  
7 primarily to his unsteadiness, lack of confidence, when he is  
8 upright. There was certainly no evidence of any drop in blood  
9 pressure when he stood.

10 BY JUDGE CARTWRIGHT:

11 Q. Thank you.

12 Now, moving to the next aspect of his physical condition,  
13 muscular skeletal system; could you please summarize for the  
14 Court, the issues arising from what you describe as Nuon Chea's  
15 longstanding degenerative back problems?

16 [09.45.14]

17 MR. CAMPBELL:

18 A. Nuon Chea does have a long history of back problems, and  
19 that's primarily wear and tear between the vertebrae, and damage  
20 to the discs, cartilage and his discs, which lie between the  
21 vertebral bodies. There is no sign, in examining his legs, and  
22 his back, of any nerve root compression, that's affecting the  
23 nerves, or expecting the spinal cord or the nerves running from  
24 the spinal cord, the so-called cauda equine<V>. So, on  
25 neurological examination, there's no sign of any spinal cord,

21

1 cauda equina or nerve compression. So his back problems are  
2 primarily wear and tear, and are best dealt with by looking at  
3 his seating or lying position, and by minor analgesics. And that  
4 is confirmed by the x-rays, which we also reviewed.

5 [09.46.17]

6 BY JUDGE CARTWRIGHT:

7 Q. Thank you.

8 Turning now to Nuon Chea's gastrointestinal system, you note one  
9 issue there. Could you just briefly, and without causing too much  
10 embarrassment, describe what impact this issue has on his general  
11 physical fitness?

12 MR. CAMPBELL:

13 A. He does have a problem with constipation, and that again, is  
14 primarily due to his inactivity, and this needs to be managed by  
15 regular laxatives to ensure it doesn't become a worse problem.

16 BY JUDGE CARTWRIGHT:

17 Q. Thank you.

18 And again, in the same part of the examination, you looked  
19 specifically at Nuon Chea's vision. Can you tell us what the  
20 outcome of your examination was?

21 [09.47.17]

22 MR. CAMPBELL:

23 A. Nuon Chea has bilateral cataracts. That means the lens of the  
24 eyes are pacified, so light doesn't get through clearly. Whether  
25 he has underlying problems behind or the back of the eye on the



1 retina, it's impossible to tell, because we can't get past the  
2 cataracts to see. That would require an ophthalmologist. He had  
3 difficulty reading ordinary newsprint size print, but could read  
4 the headlines on the newspaper that we tested him with. So, in  
5 terms of written material, it will need to be either large print,  
6 or recorded so he can play for himself, or read to him.

7 BY JUDGE CARTWRIGHT:

8 Q. And what about the possibility of removal of those cataracts?  
9 Did you consider that?

10 [09.48.09]

11 MR. CAMPBELL:

12 A. I gather that has been considered, and not gone ahead with.  
13 His physical condition would not preclude removal of cataracts,  
14 if that was what was advised by the ophthalmologist. It's not a  
15 big operation.

16 BY JUDGE CARTWRIGHT:

17 Q. Finally, in this section on his physical status, you addressed  
18 the whole question of Nuon Chea's concerns about his fatigue.  
19 Could you summarize for the Chamber your findings in that regard,  
20 please?

21 MR. CAMPBELL:

22 A. Yes. We considered this to be physical fatigue rather than  
23 mental fatigue. Given his general overall weakness, and his lack  
24 of activity, any effort that he does have to put in, he finds  
25 very tiring. The only way to really improve that would be through

1 an exercise program that increased his physical reserve; so that  
2 day-to-day activities did not require as much a high proportion  
3 of his strength, as they do at present.

4 [09.49.36]

5 BY JUDGE CARTWRIGHT:

6 Q. Thank you.

7 Now, you concluded this section with some recommendations. This  
8 relates to his physical condition, and could you just go through  
9 those recommendations please, because the Trial Chamber needs to  
10 have a clear understanding of what it might put in place to  
11 ensure that Nuon Chea is as able to participate in his trial,  
12 physically, as is possible?

13 MR. CAMPBELL:

14 A. The first recommendation is that, Nuon Chea uses the holding  
15 cell within the courtroom, and as necessary, and that has the  
16 facilities there for him. And second, that his physical frailty  
17 is likely to increase, if he is not to go to any exercise  
18 program, to try and maintain his muscle bulk. So we've actually  
19 suggested either a physiotherapist or an exercise instructor,  
20 institute a program for him, and it could be carried out under  
21 the supervision of the detention staff; if he is willing to  
22 participate, and this would help maintain his physical strength.  
23 And should also, if he were to participate, improve it.

24 [09.50.58]

25 I didn't feel there was any need to change his cardiovascular

24

1 medications. The problem with constipation, we've already  
2 mentioned, and that will need to be kept a close eye on. As far  
3 as his back pain is concerned, I think that's been managed as  
4 best it can, with his seating, or lying arrangements, and minor  
5 analgesics. And I commented on the way that material should be  
6 presented to him, either on tapes, or read to him, or possibly  
7 printed in large print. And also, Nuon Chea lasted very well  
8 through the sessions we had with him; we did not feel there was  
9 any need to shorten the court sessions, because of his fatigue or  
10 concentration.

11 BY JUDGE CARTWRIGHT:

12 Q. At the very end of your report, you mention additional  
13 proposals for ensuring that Nuon Chea is as comfortable as  
14 possible in the detention centre -- sorry, in the holding cells,  
15 following his removal from the detention centre, each morning.  
16 Could you just briefly mention that, at this stage, please?

17 [09.52.21]

18 MR. CAMPBELL:

19 A. He does really find with the transporting across from the  
20 detention centre, the holding cell, tiring, and we've recommended  
21 that there be a reasonable space of time, that he be transported  
22 across early enough, for him to recover from the journey, before  
23 the Court starts. And that he have paracetamol, for example,  
24 available if the pain in the back becomes troublesome for him,  
25 there.

1 BY JUDGE CARTWRIGHT:

2 Q. Thank you.

3 Well, in summarizing this first section on Nuon Chea's physical  
4 health, I wonder -- and before we turn to the mental and  
5 cognitive health issues -- I wonder if you feel able to give a  
6 prognosis based on Nuon Chea's physical condition?

7 [09.53.26]

8 MR. CAMPBELL:

9 A. That is difficult. Life is very unpredictable at 86,  
10 especially with the underlying problems that he has. As I said  
11 earlier, any minor or intercurrent illness will have a  
12 disproportionate effect on his overall well-being. At present,  
13 from a physical point of view, I felt that he was well enough to  
14 continue with the trial. But his prognosis does have to be very  
15 limited, guarded.

16 BY JUDGE CARTWRIGHT:

17 Q. Well, are you able to be more -- are you able to clarify that  
18 final statement, more limited, guarded?

19 MR. CAMPBELL:

20 A. It is difficult. One of the questions we ask ourselves is,  
21 "Would we be surprised if this person was not alive in six  
22 months?" And I have to say, in Nuon Chea's situation, we would  
23 not be surprised.

24 [09.54.37]

25 BY JUDGE CARTWRIGHT:

1 Q. Thank you.

2 Now, we'll move to the evaluation of Nuon Chea's mental health,  
3 prospective cognitive impairment, and of course, his fitness to  
4 plead and stand trial, as you have outlined in your report. Can I  
5 just summarize the various assessments and examinations in  
6 general that you make before reaching conclusions on mental  
7 health and cognitive impairment in relation to Nuon Chea? Is it  
8 correct that first, you review all relevant clinical records,  
9 going back as far as we have access to them; is that correct?

10 [09.55.25]

11 MR. FAZEL:

12 A. Yes, we comprehensively reviewed all the written records that  
13 were available to us.

14 BY JUDGE CARTWRIGHT:

15 Q. And then, of course, you interview all the medical personnel  
16 who are treating Nuon Chea, and those who are not necessarily  
17 medically qualified, but who assist him, perhaps detention centre  
18 staff, on a very regular basis, to gain their assessments of his  
19 mental health and cognitive impairment?

20 MR. FAZEL:

21 A. That is correct. We interviewed one of the treating  
22 physicians, who's known Nuon Chea for over a year, and also, we  
23 interviewed one person in particular, in the detention staff,  
24 who's known Nuon Chea for over two years, yes.

25 [09.56.35]

1 BY JUDGE CARTWRIGHT:

2 Q. And then the third limb of your very broad assessment is that  
3 you interviewed Nuon Chea himself, and on this occasion, you did  
4 this over, intensively over two or three periods; and you were  
5 examining him with a view to considering his memory, his -- the  
6 accuracy of his memory, his understanding and his concentration  
7 through your personal assessment of him?

8 MR. FAZEL:

9 A. Yes. We reviewed Nuon Chea's mental state on three occasions  
10 over quite long interviews, and on one other occasion, Professor  
11 Campbell, on the 20th of March, also examined him, physically,  
12 for an additional examination. So it was actually over a period  
13 of three days, that the examinations were conducted. Two of those  
14 days, we focussed on mental health, and to some extent, physical  
15 health.

16 [09.57.52]

17 BY JUDGE CARTWRIGHT:

18 Q. And then the final tool that you used is to conduct screening  
19 tests for cognitive impairment, and in this case -- and we'll go  
20 into the details shortly -- you also conducted some other tests  
21 of which you felt would be useful in Nuon Chea's case; is that  
22 correct?

23 MR. FAZEL:

24 A. That is correct. We used some standardized tests which assist  
25 us in our assessment. They don't replace the assessment; they're

1 purely adjuncts or things that help focus our assessments and  
2 guide our assessments.

3 BY JUDGE CARTWRIGHT:

4 Q. Well, starting then with the interviews you had of medical  
5 personnel, and those who assist Nuon Chea on a daily basis, could  
6 you summarize, please, the results of your discussions with those  
7 personnel?

8 MR. FAZEL:

9 A. Yes, in summary, the information we received from these  
10 individuals was that, Nuon Chea's memory was reasonably good. He  
11 remembered items, people, facts, that went back some time. They  
12 didn't feel there was any obvious change in memory; specifically,  
13 they didn't feel his memory was getting worse. And, in addition,  
14 they felt his concentration appeared to be good. He was able to  
15 listen to the radio in his cell, for long periods of time; and  
16 finally, there was no evidence of any depression or other mental  
17 illness from their perspective, and his mood was appropriate;  
18 normal, not obviously depressed.

19 [10.00.06]

20 BY JUDGE CARTWRIGHT:

21 Q. And that was true both of the medically qualified personnel  
22 and the ones who attend to him daily. You specify one of the  
23 detention centre's staff in that regard?

24 MR. FAZEL:

25 A. Yes, that was a consistent picture that was built up, from

1 medical and detention staff, but it was with the medical staff  
2 that we asked, in much more detail, about these issues.

3 [10.00.44]

4 BY JUDGE CARTWRIGHT:

5 Q. Now, the next portion of your report deals with the review  
6 that you made of relevant medical or clinical records. You note  
7 that there has been no previous direct assessment by a  
8 psychiatrist to your knowledge, but could you please summarize  
9 for the Chamber, the results of your review of the relevant  
10 medical clinical records?

11 MR. FAZEL:

12 A. Yes. We noted that some -- two psychiatrists had tried to  
13 assess Nuon Chea in 2009, but were not able to. But they reviewed  
14 all the medical records that were available to them, at the time,  
15 and came to the view that there were no symptoms of mental  
16 disorder, and that his short-term memory appeared to be  
17 consistent with his age. So that's on the basis of reviewing the  
18 records, in late 2009, going backwards. In addition, other  
19 medical -- medically trained individuals have assessed Nuon Chea,  
20 and although they're not psychiatrists, they have, nevertheless,  
21 commented on his mental state. And, in particular, Professor  
22 Lafont, who's a cardiologist, based in France, noted that there  
23 were no signs of dementia, in reports that he wrote in 2008, and  
24 2011.

25 [10.02.35]



1 There's one other examination, which we highlight, and that's  
2 from a neurologist who's Cambodian neurologist, working as one of  
3 the treating team, and they conducted a test of memory and  
4 cognition in February 2011, and that test was normal. So,  
5 specifically, there was no obvious signs of impairment to  
6 short-term memory or attention or concentration based on a simple  
7 screening test that was conducted.

8 BY JUDGE CARTWRIGHT:

9 Q. And, just going back, briefly to the report from the two  
10 psychiatrists from 2009, was their inability to examine Nuon Chea  
11 for his mental health, or cognitive status, because Nuon Chea,  
12 did not feel that he needed to have such an assessment at that  
13 stage?

14 [10.03.58]

15 MR. FAZEL:

16 A. Yes, that's our understanding that he refused to participate  
17 in the assessment.

18 BY JUDGE CARTWRIGHT:

19 Q. You mention, in this part of your report, the report of  
20 Professor Campbell, completed on the 13th of June, last year.  
21 Perhaps we'll come back to that, when we look at the standardized  
22 tests, because there will be an interesting variation between  
23 2011, and currently; and maybe it's better disposed of there.  
24 Now, you specifically, as you have said, assessed Nuon Chea's  
25 mental state on three occasions over the 18th and 19th of March.

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1    Could you give us some more details concerning that -- those  
2    assessments, please, the period over which they were conducted,  
3    and secondly, your findings?

4    [10.05.17]

5    MR. FAZEL:

6    A. Yes. We, as you say, conducted three assessments of Nuon  
7    Chea's mental state.

8    The first assessment lasted from 10 past 10 in the morning to  
9    11.55; the second assessment lasted about 90 minutes on the same  
10   afternoon, and the third assessments was on the following morning  
11   and lasted from 9.30 to 11.50, so over two hours the final  
12   assessment lasted.

13   And we found that Nuon Chea was able to concentrate well over  
14   those three interviews; no obvious difficulty. He responded  
15   clearly to our questions; did not obviously tire. He was lying in  
16   his bed, so we specifically noted he didn't tire mentally or  
17   physically, but he was lying in his bed. He remained alert  
18   throughout and was open and cooperative throughout all our  
19   interviews, actually, including those three that I've just  
20   mentioned.

21   BY JUDGE CARTWRIGHT:

22   Q. Now, over the next few parts of your report, you go into some  
23   detail as to the type of questions you asked Nuon Chea. Could you  
24   summarize your findings that you reached as a result of these  
25   questions? Perhaps just very briefly mention the types of topics

1 that you covered.

2 [10.07.22]

3 MR. FAZEL:

4 A. So, there were three types of topics we covered. They were  
5 broadly trying to look at long-term memory, so memory from many  
6 years ago, but also short-term memory, that's memory over the  
7 last few hours or few minutes, and in both cases, long-term and  
8 short-term memory, we found good evidence that these were  
9 well-preserved. So we asked questions about Nuon Chea's  
10 childhood, his schooling, his career as a -- when he worked, but  
11 also we asked questions about the period in the 1970s and  
12 subsequent to that.

13 In addition, we asked questions about what had happened on the  
14 day of our interviews, what he'd had for lunch, what he had heard  
15 on the radio, so questions also about the more recent past. And  
16 in addition, we asked some specific memory tests which assess  
17 memory over a short period of time, i.e. a few minutes.

18 [10.08.47]

19 So this was broadly the areas that we covered, long-term and  
20 short-term memory, and overall we felt there was good  
21 preservation of both these areas.

22 BY JUDGE CARTWRIGHT:

23 Q. Now, by and large, according to your report and as you have  
24 just summarized, you concluded that his long-term and short-term  
25 memories are well-preserved. There was just the one area where he

1 had some difficulty being very precise.

2 Could you just very much in summary cover that, please?

3 MR. FAZEL:

4 A. Well, there were some areas where Nuon Chea wasn't very  
5 precise. For example, he sometimes couldn't remember the exact  
6 names of some of his family members.

7 We didn't push -- we didn't pursue this in a lot of detail, and  
8 it was our impression that it was partly to do with lack of  
9 interest and also lack of contact with some of his family  
10 members, but on the other hand, there was quite precise  
11 recollection of other details in his past. And so, again, our  
12 overall impression was good evidence of preservation of long-term  
13 memory.

14 [10.10.35]

15 BY JUDGE CARTWRIGHT:

16 Q. What about his mood? Did you examine Nuon Chea and ask him  
17 questions concerning problems with his mood?

18 MR. FAZEL:

19 A. We did. This was an important part of our assessment. We asked  
20 questions, as I've previously mentioned, of the medical detention  
21 staff about mood, but also we asked Nuon Chea directly about mood  
22 and he did not complain of any mood symptoms. His sleep appeared  
23 to be unchanged for some years, and also on examination we noted  
24 that his mood appeared normal. He -- occasionally he laughed  
25 during the interviews at appropriate times. He also became upset

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1 at one moment at an appropriate occasion and that's all an  
2 indication that the mood is normal, it reacts appropriately, it's  
3 not restricted or just depressed. It's -- on the other hand it  
4 was reactive, in medical jargon, which means that it's normal and  
5 reacts appropriately.

6 [10.12.08]

7 BY JUDGE CARTWRIGHT:

8 Q. Turning now, then, to the tests that you administered, you  
9 conducted a number of cognitive tests, which you've already  
10 explained are there to help you focus your examination on his  
11 mental or cognitive status, and by that I infer that you don't  
12 want us to put our entire weight on the findings from those  
13 tests.

14 Nonetheless as the result generally of all of these tests, did  
15 they change the focus of your attention from -- or change your  
16 views on his mental health or cognitive status after your  
17 examination of him?

18 [10.13.07]

19 MR. FAZEL:

20 A. No, the tests were consistent with our clinical examination.  
21 They were consistent with also the information received from  
22 medical and detention staff. They were consistent with all the  
23 previous assessments and reports that were done. So our view is  
24 they are entirely consistent with all the information that we've  
25 reviewed and also our clinical examination.

1 BY JUDGE CARTWRIGHT:

2 Q. The first of those tests, the Mini-Mental State Examination,  
3 or MMSE, had been previously conducted in 2011 by Professor  
4 Campbell but you repeated it on this occasion; is that correct?

5 MR. FAZEL:

6 A. Yes.

7 It was previously completed by also a Cambodian neurologist, Dr.  
8 Ros Sina, and we repeated it on this occasion.

9 [10.14.11]

10 BY JUDGE CARTWRIGHT:

11 Q. And that is a test for screening for cognitive impairment.

12 And can you just summarize for the Chamber, first, the scores and  
13 their significance, the scores achieved by Nuon Chea and their  
14 significance in the context of this cognitive assessment, and  
15 secondly, contrast the two scores from 2011 and today?

16 MR. FAZEL:

17 A. Yes. So, the Mini-Mental State Examination is scored out of a  
18 maximum score of 30, so the higher you score the less evidence  
19 there is of any cognitive impairment.

20 Nuon Chea scored 28 out of 30 on consecutive days -- that is, on  
21 the two days that we performed the tests, and a score of 23 or  
22 less is considered to be indicative of cognitive impairment and  
23 would normally warrant further assessment. So a score above 23 is  
24 not an indication to look any further, and is essentially viewed  
25 as a normal score. So his score of 28 is a good score for an

1 individual who's aged 86, and within the tests there -- within  
2 the screen there are tests of short-term memory, which he  
3 performed well on, there's also a brief test of concentration,  
4 which he also performed well on.

5 [10.16.23]

6 So, in summary, a score of 28 is normal from our perspective. We  
7 would not place any importance on it having changed from 28 --  
8 from 30 two years ago to 28, because there is a normal degree of  
9 variability so from day to day you can change your score by one  
10 or two points, and therefore, over two years a decline of two  
11 points is not of any clinical significance.

12 I'm actually going to ask Professor Campbell to add to this.

13 [10.17.06]

14 MR. CAMPBELL:

15 A. Yes. I would certainly endorse that. A score of 28 out of 30,  
16 given some of his physical difficulties, for example, his poor  
17 sight, it was a very satisfactory score, and there was no  
18 indication on the MMSE of any cognitive impairment.

19 BY JUDGE CARTWRIGHT:

20 Q. Thank you.

21 You went on to administer three other tests, which you describe  
22 as tests of attention which form part of what's known as the  
23 Montreal Cognitive Assessment.

24 Can you describe your findings from those three tests of  
25 attention?

1 MR. FAZEL:

2 A. Yes. These tests of attention measure -- or test attention in  
3 different ways, and Nuon Chea scored well on these tests. He  
4 scored out of a maximum score of 6, he scored 5, which we viewed  
5 as a good score, and that's in the context of another test of  
6 concentration, which I mentioned is in the Mini-Mental State  
7 Examination which he also scored very well in.

8 [10.18.24]

9 So, overall, we felt that the tests of attention and  
10 concentration were consistent with what we saw in our clinical  
11 interviews, which was that he was able to maintain good levels,  
12 high levels of concentration and attention for long periods of  
13 time.

14 BY JUDGE CARTWRIGHT:

15 Q. And there was one more test that you conducted, known as a  
16 Frontal Assessment Battery Screening Measure.

17 Can you describe the purpose of that test and your findings as a  
18 result of administering it?

19 [10.19.17]

20 MR. CAMPBELL:

21 A. The frontal lobe is the lobe that has to do with initiative,  
22 drive, and inhibition, and frontal lobe function isn't well  
23 tested on the MMSE. So we did the frontal battery and he again  
24 scored well on that. There was no indication of frontal lobe  
25 problems. There are particular dementias that affect the frontal



1 lobe, but there was certainly no indication of that with Nuon  
2 Chea.

3 BY JUDGE CARTWRIGHT:

4 Q. Thank you.

5 Now, you considered again the criteria for fitness to plead and  
6 stand trial, known as the Strugar Test being a case where they  
7 were conveniently summarized and brought together. And in the  
8 course of the assessment of Nuon Chea you had those various  
9 categories or capacities in mind. You -- then you decided to  
10 administer what you describe as a semi-structured instrument  
11 called the Competency to Stand Trial Assessment Instrument.  
12 Could you describe what you felt this assessment would achieve  
13 and your findings as a result of it?

14 [10.20.54]

15 MR. FAZEL:

16 A. Well, we focused very much on the criteria that are outlined  
17 in the Strugar Case, and as part of that we looked at this  
18 particular instrument called the Competency to Stand Trial  
19 Assessment Instrument, which we drew on its broad outlines  
20 because it details some of the criteria -- it gives examples of  
21 the sorts of the questions or areas that you can examine for each  
22 one of the criteria, so in more detail. So, it's something that  
23 we drew on. It again assisted us, but was really an adjunct or an  
24 auxiliary set of questions that we drew on that helped us  
25 structure our questions. But as I say, the focus was on the

1 Strugar criteria.

2 [10.22.10]

3 BY JUDGE CARTWRIGHT:

4 Q. Running through those criteria, what do you have to say about  
5 Nuon Chea's understanding of his guilt or innocence in relation  
6 to these charges?

7 MR. FAZEL:

8 A. We felt he understood the difference between guilty and not  
9 guilty and we felt that he had a clear view that he did not  
10 believe that he was guilty, and he repeated this on a number of  
11 occasions throughout our interviews, saying that he denies the  
12 charges.

13 BY JUDGE CARTWRIGHT:

14 Q. And what about his -- your assessment of his basic  
15 understanding of the nature of the charges?

16 [10.23.20]

17 MR. FAZEL:

18 A. We felt he had a basic -- he did have a basic understanding.  
19 Specifically, we asked him what the charges were and he said he  
20 had been accused of genocide and war crimes, and he also said  
21 that he was aware that crimes against humanity was a common  
22 accusation made towards the Khmer Rouge.

23 When we asked him specifically what he understood by these  
24 charges, he said to us that genocide meant killing of one's own  
25 race. When we asked him about what he understood to be torture,

40

1 he said that it would include beating and imprisonment, and he  
2 used the term maltreatment, and then we asked him about the  
3 charge of forced evacuation of people. Again, he said that we had  
4 to move the people from one place to another. So, our view was  
5 that that was an understanding of the charges, a basic  
6 understanding of that charge.

7 [10.24.50]

8 And furthermore, we asked him specifically about what he  
9 understood by persecution of peoples, and again our feeling was  
10 that he had a basic understanding of that and he said that in  
11 response to that that there were no acts of killing of people,  
12 torture of people. And again, our view is that he had an  
13 understanding of these charges at a basic level.

14 BY JUDGE CARTWRIGHT:

15 Q. Thank you.

16 How did you -- what conclusion did you come to when you assessed  
17 his understanding of court procedures, the role and material  
18 provided by witnesses, lawyers, judges, and the ability to  
19 comment intelligently on those matters? What do you understand --  
20 what level of understanding do you assess him as having?

21 [10.25.59]

22 MR. FAZEL:

23 A. We thought he had an ability to follow the course of the  
24 proceedings. He didn't appear to have any problems understanding  
25 questions we put to him over three long interviews, and he

1 explained his position quite coherently over our interviews in  
2 relation to the charges, he gave consistent and coherent  
3 explanations over the two days, and he seemed to have a basic  
4 understanding of the Court process and procedures. He understood  
5 the role of the judges and he understood a decision would be made  
6 collectively by the judges, and he even said that he thought that  
7 any decision made collectively would be reasonable, and he  
8 understood that he would have his legal team represent him.  
9 So we thought he had a good understanding of the course of legal  
10 proceedings.

11 [10.27.19]

12 BY JUDGE CARTWRIGHT:

13 Q. You focused also on his capacity to understand details of  
14 evidence and to, in effect, instruct or inform counsel on his  
15 views of the evidence.

16 What conclusions did you reach under this heading?

17 MR. FAZEL:

18 A. Well, we thought he had -- he understood the details of the  
19 evidence and he was able to put forward his version of events to  
20 counsel and discuss that version of events.

21 So that was the impression we had over our interviews. He gave  
22 specific examples of the type of defences that he was planning to  
23 raise, and again, these were consistent over the interviews that  
24 we conducted. They appeared to us to be coherent. They were  
25 intelligible to us. So there was an overall picture in our minds

1 that he was able to understand the details of the evidence and  
2 also put forward his version of events.

3 [10.28.46]

4 BY JUDGE CARTWRIGHT:

5 Q. In that same part of your report, you refer again to the  
6 difficulties concerning details of evidence due to his impaired  
7 sight, but you also comment on his ability to concentrate.

8 Could you summarize that for the Chamber, please?

9 MR. FAZEL:

10 A. Yes. It's really repeating what Professor Campbell said  
11 earlier, that he would be able to understand and comprehend  
12 material if it's read out to him, or if the reading material is  
13 enlarged. And in terms of concentration, based on our interviews,  
14 one of which was 2 hours, 20 minutes long, we felt that he would  
15 be able to concentrate over court sessions and be able to  
16 participate meaningfully on the basis of his concentration and  
17 his memory.

18 [10.30.10]

19 BY JUDGE CARTWRIGHT:

20 Q. The next category overlaps with some of your prior findings,  
21 but your comments, please, on his ability to cooperate with  
22 counsel and instruct counsel in preparation of his defence.

23 MR. FAZEL:

24 A. Yes. We were of the opinion that he did have the capacity to  
25 instruct counsel and cooperate with his lawyers. He was able to

1 name his national counsel. He explained that his lawyers have  
2 helped him, that he was happy with them, that he believed that  
3 they were working only for him in this case, and that they were  
4 defending him. So he -- by that we took to -- we came to the  
5 opinion that he was able to instruct counsel.

6 [10.31.25]

7 BY JUDGE CARTWRIGHT:

8 Q. You assessed him also on his understanding of the consequences  
9 should a conviction be the outcome of this trial.

10 Can you comment on that, please?

11 MR. FAZEL:

12 A. Yes. We formed the view that Nuon Chea had a clear  
13 understanding of the consequences of any finding of the trial. He  
14 explained that if he was found guilty one possibility was life  
15 imprisonment, and he also added that he wouldn't receive capital  
16 punishment because it wasn't part of natural law -- national law.  
17 In addition, he said if he was found not guilty by the Court he  
18 said that the Court must release him. So he understood that he  
19 would be acquitted if he was found not guilty.

20 BY JUDGE CARTWRIGHT:

21 Q. Finally, in this segment, you comment on his current ability  
22 to testify. Can you summarize for the Court, please?

23 [10.32.56]

24 MR. FAZEL:

25 A. Yes. Our feeling was that he did have the ability to testify,

1 currently. He understood that he would receive questions from  
2 different lawyers, including his defence team, but also the  
3 Prosecution. He understood that the Court was trying to find, in  
4 his words, "the truth", and he said that he would be willing to  
5 speak in court, but did point out that his health made it very  
6 difficult for him to do so, and said that as a consequence he  
7 would be willing to give evidence on video link.

8 [10.33.47]

9 BY JUDGE CARTWRIGHT:

10 Q. Overall, in relation to Nuon Chea's mental health or cognitive  
11 abilities, do you have any recommendations to make?

12 A. No. His mental health is currently good, his cognitive  
13 function is currently good, and we note he listens to the radio;  
14 he talks to staff in the detention centre. So he maintains a  
15 reasonable level of cognitive function, so we have no specific  
16 recommendations. However -- no, I'm not going to say anymore.

17 JUDGE CARTWRIGHT:

18 President, that concludes the major part of the questions that I  
19 wish to put to these two experts. Perhaps if we took the morning  
20 break now and then we can go back over their overall conclusions  
21 when we return. Thank you, President.

22 MR. PRESIDENT:

23 Thank you, Judge Cartwright, and thank you, the experts.

24 It is now appropriate time for the adjournment. The Chamber will  
25 adjourn for 20 minutes.

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1 Court officer is now instructed to assist the two experts during  
2 the adjournment and have them returned to the courtroom when the  
3 next session resumes.

4 (Court recesses from 1035H to 1057H)

5 MR. PRESIDENT:

6 Please be seated. The Court is now back in session.

7 We would like to now hand over to Judge Cartwright to continue  
8 putting questions to the experts.

9 BY JUDGE CARWRIGHT:

10 Thank you, President.

11 Q. At the end of the part of my examination that concerned your  
12 physical assessment of Nuon Chea, you made some recommendations  
13 that would improve -- that might improve his health and his  
14 comfort, and you have also just clarified that he does not  
15 currently suffer from any mental illness, nor does he have an  
16 unusual degree of cognitive impairment for someone of his age.  
17 Can you just summarize any remaining matters that form your  
18 conclusions, please?

19 [10.58.43]

20 MR. FAZEL:

21 A. The only remaining matter was that we felt, both on physical  
22 and mental health grounds, that there was nothing in our opinion,  
23 there were no problems in our opinion that would affect his  
24 ability to exercise the capacities outlined in the Strugar Case  
25 in relation to his fitness to plead and stand trial.



1 BY JUDGE CARTWRIGHT:

2 Q. And in your conclusions you repeat the concerns about reading  
3 difficulties and also your findings that he has no significant  
4 concentration or attention problems. Can you summarize, please,  
5 your view of his ability to concentrate during a normal session,  
6 which lasts about 90 minutes, as you have indicated?

7 MR. FAZEL:

8 A. So our view is that there were no problems, significant  
9 problems, in attention or concentration if the length of time is  
10 90 minutes. Three of our interviews lasted around two hours and  
11 there were no obvious problems in attention or concentration  
12 during those interviews.

13 [11.00. 14]

14 JUDGE CARTWRIGHT:

15 Q. Thank you. Now, we--

16 MR. FAZEL:

17 A. Sorry, I think Professor Campbell has something to add.

18 MR. CAMPBELL:

19 A. I was just going to comment in relationship to his physical  
20 frailty. It's very important that he be maintained as active as  
21 possible, physical activity, and it's both to maintain his  
22 physical reserves and there's also some evidence that physical  
23 activity maintains cognitive function as well.

24 BY JUDGE CARTWRIGHT:

25 Q. Thank you.

1 [11.00.39]

2 Are there any matters that either of you would wish to comment on  
3 that I have not touched on in my summarizing of your report  
4 prepared for this hearing?

5 MR. CAMPBELL:

6 A. Not from my point of view. I think it's been very  
7 comprehensively covered. Thank you.

8 MR. FAZEL:

9 A. No.

10 JUDGE CARTWRIGHT:

11 Thank you.

12 President, that concludes the questions that I wish to put to the  
13 experts, at least for the moment. Thank you.

14 [11.01.17]

15 MR. PRESIDENT:

16 Thank you, Judge Cartwright.

17 Do other Judges of the Bench wish to put questions to the  
18 experts? I note that there is no such question.

19 Now, the Chamber would like to hand over to counsels for Mr. Nuon  
20 Chea to put some questions to experts, if you would wish to do  
21 so.

22 QUESTIONING BY MR. KOPPE:

23 Thank you, Mr. President. Thank you, Your Honours.

24 Good morning, Professor Campbell. Good morning, Dr. Fazel.

25 [11.01.51]

1 Q. It seems that most observations that you have made today, and  
2 earlier in your report, are in conformity with our own  
3 observations of our client. However, we do have a few additional  
4 questions to put to you.

5 The first subject I would like to speak to you about is the  
6 degree of fatigueness caused by the transport of Nuon Chea from  
7 the prison cell to the holding cell. It is this fatigueness that  
8 seems to worry our client the most and I have noticed that you  
9 haven't examined Nuon Chea after such transport from the prison  
10 cell to the holding cell.

11 Could you elaborate a little bit more on the degree of  
12 fatigueness and his ability after that to actively participate  
13 from the holding cell and listen to the procedures?

14 [11.03.02]

15 MR. CAMPBELL:

16 A. As I have commented earlier, his physical frailty is such that  
17 even everyday tasks leave him tired. Our suggestion is that the  
18 move is made 15 to 30 minutes before the court session starts,  
19 which would give him ample opportunity to recover.

20 BY MR. KOPPE:

21 Q. Okay. But my question was rather, whether you should have  
22 examined him also after an effort equivalent to such transfer to  
23 really be able to observe properly the effects of such a  
24 transfer?

25 MR. CAMPBELL:

1 A. I really don't think that would make any difference to the  
2 conclusions. We did see him after some physical activity. But the  
3 physical activity is in shifting him to a stretcher and then  
4 being transferred across here on a stretcher. So I do not feel  
5 the degree of physical activity is particularly great.

6 [11.04.18]

7 BY MR. KOPPE:

8 Q. Thank you for answering this question.

9 My second question, and this is sort of a follow-up question on  
10 this subject, is the degree of his capacity to concentrate all  
11 day. Obviously, I'm not a medical expert, but I presume there is  
12 a difference between, on the one hand your face-to face  
13 examination -- direct examination of Nuon Chea during the few  
14 hours -- and on the other hand -- on the first hand, requiring  
15 him to actively participate and answer your questions -- and on  
16 the other hand, the passive participation in a holding cell by  
17 just listening to a witness giving testimony all day. There might  
18 be a difference in the capacity to concentrate in those various  
19 circumstances.

20 Could you please elaborate on that?

21 [11.05.35]

22 MR. FAZEL:

23 A. We will both comment on that question.

24 My own view is that the active -- what you describe as more  
25 active participation, which was during our interviews in which he

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1 answered the questions, my own view is that requires a higher  
2 level of concentration than what you described as a passive  
3 experience of listening to witnesses and, you know, making  
4 possibly notes mentally or otherwise about what witnesses say.  
5 So I think that all we can do is try and draw on what we assessed  
6 and then try and think about how that would affect his capacity  
7 during a daylong court procedure or process. And our view is that  
8 because he concentrated quite well during these active  
9 interviews, which two of them were on the same day -- one was in  
10 the morning followed by another one in the afternoon of the same  
11 day -- that that was a good sign that -- a clear sign to us that  
12 he was able to concentrate all day in what I think is a less  
13 demanding task of listening to the court process.

14 Professor Campbell?

15 [11.07.19]

16 MR. CAMPBELL:

17 A. Yes, I would certainly agree with that.

18 Certainly, when one is passive in a procedure it is much easier  
19 for one's mind to wander and that occurs irrespective of one's  
20 mental state; it occurs with anyone.

21 BY MR. KOPPE:

22 Q. It happens to me all the time.

23 Following up on this -- these two issues, in our submissions we  
24 have touched upon the possibility, the technical possibility to  
25 have a -- as an alternative, to have a video link stored from his

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1 prison cell so as to give Nuon Chea the possibility to -- if he  
2 doesn't feel able to move from his prison cell to the holding  
3 cell -- to be able to listen to the proceedings from his prison  
4 cell.

5 Does your investigation make you conclude that that could be a  
6 proper alternative for him to be actively participating in these  
7 proceedings?

8 [11.08.35]

9 MR. CAMPBELL:

10 A. It is a possibility but we've not been convinced about the  
11 necessity of it.

12 We would also have the disadvantage that he would be further away  
13 from you, yourself, his defence counsel, and more difficult to  
14 interact.

15 BY MR. KOPPE:

16 Q. Thank you for answering the question.

17 I'm moving on to a completely different subject -- that is his  
18 short-term memory.

19 Is it possible that during the four or five weeks' period of his  
20 acute bronchitis his short-term memory was substantially  
21 affected?

22 [11.09.27]

23 MR. CAMPBELL:

24 A. Our impression from the -- one of the people who were looking  
25 after him was that when he was acutely with the bronchitis, he

1 had an episode of delirium. And delirium has a limited period of  
2 confusion and once the acute illness has settled, the delirium  
3 normally clears, and our understanding of it is that the delirium  
4 cleared. So there's no permanent effect from that.

5 BY MR. KOPPE:

6 Q. Another question in relation to the short-memory.

7 As you are aware, specifically national counsel and the case  
8 manager in this case have been speaking to Nuon Chea in the last  
9 five and half years almost daily. And it is their observation  
10 that there has been a decline in the short-term memory also, so  
11 not only during the acute bronchitis period but also before. To  
12 give you one example, he will continuously ask the case manager,  
13 you know, time and time again about the court schedule of the  
14 same day.

15 [11.10.39]

16 Have you been able to really extensively and properly investigate  
17 his decline in short-term memory within these three sessions that  
18 you have had?

19 MR. FAZEL:

20 A. Well, I think it's not inconsistent with our findings because  
21 there is an aging process also, and with age, memory declines  
22 very, very gradually. If there's an illness like dementia it  
23 declines much more rapidly.

24 So our view would be that he has a normal aging process where you  
25 would expect some decline in short-term memory. What our

1 assessment focused on was whether that was abnormal, whether it  
2 reached a degree of severity that you would call it dementia or  
3 early dementia. And, you know, our view was that it hadn't, it  
4 wasn't at a level that was severe or you would be clinically  
5 worried or you would even call it early dementia. It was our view  
6 that it was a normal aging process, and therefore, his memory  
7 will decline very gradually and it will continue to, as you would  
8 expect any normal 86 year-old man.

9 [11.12.18]

10 BY MR. KOPPE:

11 Q. Thank you.

12 Another question I have is in relation to the four, five weeks  
13 period of his acute bronchitis when he was in hospital. At one  
14 point, or maybe two or three points even during this acute  
15 bronchitis, he was thinking, seriously thinking that he was going  
16 to die. Not only did he say that in speech to his direct family,  
17 at one point he also called upon his family to gather around him  
18 so to enable him to say goodbye to his family. I won't go into  
19 detail on all the other things that he has said, but it seemed  
20 that during that period he really felt that the end was there.

21 [11.13.17]

22 Now, obviously, he has recovered, fortunately so. But would it be  
23 possible that this experience of this - I might call "near-death  
24 experience", has any lasting impact on his mental health in the  
25 next period, or is it something that is really confined to the



1 delirium that he might have been in?

2 MR. CAMPBELL:

3 A. I think it's confined to the period of his illness.

4 He was - a problem - trouble with breathlessness, and that can  
5 sometimes bring a sense of impending doom, but he certainly gave  
6 no indication of it when we saw him.

7 BY MR. KOPPE:

8 Q. Dr. Fazel, my last question would be following up one of the  
9 last things you said before the break. You said that you didn't  
10 have any specific recommendations; however -- and then you  
11 paused, and obviously, I'm curious why you paused and if you  
12 would be willing to add words which were intended after the  
13 "however".

14 [11.14.42]

15 MR. FAZEL:

16 A. Yes. They were actually the things that Professor Campbell  
17 said after the break, which is that the physical exercise will  
18 have a beneficial effect on slowing down any age related  
19 cognitive changes. So I paused because it was an area that I  
20 thought Professor Campbell should comment on, but that was the --  
21 so it's, broadly speaking, a recommendation which does impact on  
22 mental health but it's not specific mental health recommendation;  
23 it's more, recommendation for physical health which has some  
24 beneficial effects on mental health in at least slowing down the  
25 rate of decline.

1 [11.15.31]

2 MR. KOPPE:

3 Mr. President, I have finished my questions. My national  
4 colleague would like to have the floor.

5 QUESTIONING BY MR. SON ARUN:

6 Very good morning, Mr. President and Your Honours, and good  
7 morning to you, the experts.

8 I am Son Arun, counsel for Mr. Nuon Chea, along with my colleague  
9 who already put a few questions to you. I have a few questions  
10 for you.

11 Q. When you administered the tests during the two days period on  
12 three occasions, as you indicated, did you also administer your  
13 tests aiming at other areas other than putting questions  
14 concerning his past experiences?

15 I am not a professional or medical doctor. As an old aged person,  
16 people tend to remember their pasts very well. I also conduct  
17 some tests. I asked him some questions. Three minutes or five  
18 minutes later I repeated the questions and he never remembered  
19 them.

20 Have you ever administered such tests to see whether his  
21 short-term memory is still intact?

22 [11.17.51]

23 MR. FAZEL:

24 A. Yes, we did. So we asked him to recall three objects after a  
25 period of some minutes on two consecutive days and he did well on

1 those tests. And also it was our impression that on the basis of  
2 our clinical interviews that he had a good memory of short-term  
3 events. So for example, he would refer us back to points he had  
4 made earlier, he would in the immediate short-term memory he  
5 remembered our questions even if they were long. So there were  
6 various pieces of evidence that came together that suggested to  
7 us the preservation of short-term memory.

8 [11.18.51]

9 One issue, of course, which might explain why it differs when  
10 different people ask him questions is his mind does -- will  
11 naturally wander. He may not be aware that, you know, a question  
12 is going to be -- he's going to be asked about something again,  
13 and it's common if you're not interested, for instance, in a  
14 topic or in a -- in something in particular, that you don't  
15 remember it, and I think that is an experience that anyone would  
16 have, that something that's not of particular interest to them  
17 they will forget.

18 Professor Campbell, do you have anything to add?

19 MR. CAMPBELL:

20 A. No, I think that's covered very well.

21 Our impression was, in asking both issues of long-term memory and  
22 short-term memory, that he managed both short and long-term  
23 memory very satisfactorily.

24 BY MR. SON ARUN:

25 Q. Regarding his physical fitness, have you obtained any

1 documents telling you that he fell down in the bathroom before he  
2 was admitted to the hospital and that incident alone also took  
3 the toll on his deteriorating health condition? And as my  
4 colleague just reiterated that he, on one occasion, called his  
5 relatives to be near his hospital bed so that he could have his  
6 last words to them.

7 Have you also obtained such information?

8 [11.21.29]

9 MR. CAMPBELL:

10 A. Yes. We are certainly aware that he is very unsteady on his  
11 feet, and that's mainly because he has been off his feet for so  
12 long and he's been lying on his bed. When he stands, he has very  
13 great difficulty finding his balance there. That's not because of  
14 any brain problem, it's because he's been lying flat on his back  
15 for so long.

16 He has a condition which is being called water skier syndrome,  
17 where he leans backwards rather than stands upright, and that can  
18 only be corrected by a process whereby he's got back on his feet  
19 by someone qualified in physical rehabilitation.

20 [11.22.25]

21 BY MR. SON ARUN:

22 Q. Thank you.

23 Professors, I have a few more questions.

24 Before he fell down -- fell over, he -- his health condition was  
25 not that bad, because he could attend the proceedings in the

1 courtroom every now and then. But after that -- and again I'm not  
2 a doctor -- but my observation is that his health is worsening by  
3 -- in the aftermath of that incident. And after that, I looked at  
4 him and inspected his waist and I could see bruises, and I don't  
5 know whether you also included that assessment in your report.  
6 Have you examined his physical condition at that time?

7 MR. CAMPBELL:

8 A. Yes, I did.

9 [11.23.30]

10 There is no evidence of any remaining damage from that fall that  
11 he had. It certainly would have affected his confidence with his  
12 standing and walking, and when you're not confident standing then  
13 you do feel dizzy and you feel more unsteady, and that's the  
14 probable consequence of the fall. But there's no evidence of any  
15 physical damage, no bruising remaining, no evidence of any  
16 fracture. There's no evidence of any brain damage from his fall.

17 BY MR. SON ARUN:

18 Q. To date, the bruises or the damages from that incident  
19 remained, and I do not agree with your accounts.

20 Secondly, I am of an opinion that -- and I feel that after  
21 visiting him at the detention facility and what he responded to  
22 us tells us that he has some lower back pain and he feels dizzy  
23 and it is more frequent that we hear his complaints about this.  
24 Do you think that your findings correspond with what I just  
25 indicated?

1 [11.25.17]

2 MR. CAMPBELL:

3 A. No. I examined him, undressed him to examine him, and found no  
4 evidence of bruising. I examined his back and his back is largely  
5 unchanged. He has longstanding degenerative change in his back  
6 and that may be exacerbated by a fall, but there is no evidence  
7 of any recent damage there.

8 BY MR. SON ARUN:

9 Q. All my questions for both of you were put because I -- or we  
10 are very concerned that Nuon Chea would not be able to return to  
11 the courtroom meaningfully, because if he suffers from mental and  
12 physical difficulties these makes his concentration difficult,  
13 and counsels for him are very concerned, as always.

14 MR. PRESIDENT:

15 Mr. Experts, could you please hold on?

16 Co Prosecutor, you may now proceed.

17 [11.26.40]

18 MR. LYSAK:

19 Thank you, Mr. President.

20 Let me just make a brief objection that we would request that  
21 counsel be reminded that he is not here to provide his own  
22 opinions or observations, rather he is here to ask questions to  
23 the doctors. On a number of occasions, we've heard attempted  
24 testimony and opinions by counsel, and I would simply ask that  
25 his questions be phrased -- not be phrased so that he is

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1 attempting to provide evidence to the Court.

2 [11.27.28]

3 MR. SON ARUN:

4 I wish to respond to the Co Prosecutor.

5 The last time Mr. Nuon Chea was admitted to the hospital, I  
6 remember having made a submission to the Chamber to ask the  
7 Chamber that the treating physicians be summoned to give  
8 testimonies before the Chamber, because counsel would only obtain  
9 the medical report on a daily basis, just piece of writing, and  
10 that would not be sufficient.

11 But the application was rejected by the Chamber, and that the  
12 treating physicians were not allowed to be here in the courtroom  
13 to tell everything about the physical condition of -- or mental  
14 condition of my client -- our client.

15 At this moment, we do not even know whether he is genuinely fit  
16 to stand trial, that's why I put these questions to the experts  
17 to help find the answers; otherwise, I would proceed to other  
18 means.

19 MR. PRESIDENT:

20 The objection is sustained.

21 Counsel is reminded not to give your own testimonies. You are  
22 here to put questions for the experts on behalf of your client.

23 [11.29.07]

24 Experts are instructed not to respond to that question and  
25 counsel is advised to put a few more -- other questions and that

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1 you are refrained from voicing your opinion rather than putting  
2 the said questions.

3 MR. SON ARUN:

4 Thank you, Mr. President, for reminding.

5 I have read the report filed by both experts and I also listened  
6 to the explanation by -- the responses by both experts to the  
7 questions my colleague put, and I feel that I am ambivalent as to  
8 whether the responses are sufficient. Nonetheless, I have no  
9 further questions to put to the experts.

10 I thank you, Mr. President and Your Honours for the floor.

11 [11.30.31]

12 MR. PRESIDENT:

13 Thank you, Counsel.

14 We would like now to hand over to the Prosecution to put some  
15 questions to the experts.

16 You may proceed.

17 QUESTIONING BY MR. SENG BUNKHEANG:

18 Thank you, Mr. President.

19 Good morning, Your Honours. Good morning to all parties present,  
20 and good morning to the two professors, Professor John Campbell  
21 and Dr. Seena Fazel.

22 Q. My first question to you, I have examined your report  
23 submitted to the Trial Chamber on the 20th of March 2013,  
24 particularly paragraph 10 of your report, you provide that Mr.  
25 Nuon Chea has recently been admitted to the hospital with acute



1 bronchitis. And in that same report, it says that there is no  
2 residual sign of chest infection.

3 [11.31.46]

4 My question to you, Experts: What are the causes -- or underlying  
5 causes of acute bronchitis? And can you please distinguish  
6 between the acute bronchitis and the chronic bronchitis?

7 MR. CAMPBELL:

8 A. Acute bronchitis is an acute infection of the respiratory  
9 tract, the upper respiratory tract. It commonly follows from a  
10 viral illness when bacteria follow on the viral infection and  
11 normally requires treatment with antibiotics. The person runs a  
12 fever, may feel short of breath, coughs up purulent sputum, and  
13 as I said, it resolves with antibiotics.

14 Chronic bronchitis occurs in those who smoked and it's due to  
15 chronic low grade inflammation of the respiratory tree, and  
16 people with chronic bronchitis are prone to get attacks of acute  
17 bronchitis on top of this. So the chronic bronchitis does not  
18 resolve fully. It's a chronic ongoing infection and there's no  
19 evidence of that with Nuon Chea.

20 [11.33.19]

21 BY MR. SENG BUNKHEANG:

22 Q. Thank you.

23 Can you enlighten the Court as to whether Mr. Nuon Chea is  
24 recovering from this acute bronchitis?

25 MR. CAMPBELL:

1 A. When we saw him he appeared fully recovered as far as his  
2 chest was concerned. And as I've said, any acute illness in  
3 someone as frail as Nuon Chea can leave him with residual overall  
4 weakness, which requires a time to resolve.

5 BY MR. SENG BUNKHEANG:

6 Q. Thank you.

7 If we see the overall weather condition in Cambodia, particularly  
8 sometime around December, December is the -- one of the coolest  
9 months of the year in Cambodia.

10 [11.34.25]

11 Do you think that our climate has anything to do with the health  
12 condition of Mr. Nuon Chea, particularly the acute bronchitis  
13 that he has been suffering?

14 MR. CAMPBELL:

15 A. I should imagine cool in Phnom Penh is not all that cool. What  
16 sort of temperature are you talking about?

17 BY MR. SENG BUNKHEANG:

18 Q. Well, Professor, if we see in Cambodia, particularly in Phnom  
19 Penh, December is the coolest month of the year compared to other  
20 months throughout the year. And generally, for old age people,  
21 have certain problems when the climate change or -- or the  
22 weather change.

23 And people at Nuon Chea's age might be prone to bronchitis when  
24 the weather gets cooler than usual.

25 [11.35.47]

1 MR. CAMPBELL:

2 A. I can't comment on that in Cambodia. I think probably more  
3 important is to ensure that he does not get influenza, for  
4 example, that he's vaccinated for influenza, and that if he does  
5 show any signs of any chest infection that it is treated promptly  
6 with antibiotics.

7 BY MR. SENG BUNKHEANG:

8 Q. Thank you. Due to the current health status of Mr. Nuon Chea,  
9 when he is lying down or he is sleeping, if you compare with  
10 sitting position, do you observe any difference when he was lying  
11 down and he was sitting upright?

12 MR. CAMPBELL:

13 A. We only really saw him while he was lying down. It was merely  
14 to sit him up to examine him.

15 BY MR. SENG BUNKHEANG:

16 Q. How about your examination on his health? You said that your  
17 examination lasted for about two hours.

18 When you were conducting this examination, were he -- were he  
19 lying down or he was sitting upright when you were examining him?

20 MR. CAMPBELL:

21 A. When we were taking his history and examining his mental  
22 state, he was lying down. For the physical examination, he moved  
23 as required for us to complete an adequate physical examination.

24 [11.37.44]

25 BY MR. SENG BUNKHEANG:

1 Q. Thank you.

2 If you look at the same report, particularly paragraph 9 of your  
3 report, you state that Mr. Nuon Chea has a history of  
4 hypertension going back over 30 years. Can you clarify the  
5 overall condition of hypertension? What was it like?

6 MR. CAMPBELL:

7 A. His high blood pressure is well controlled at present. As I've  
8 indicated in my report, it was 135/75, I think; 130/75 both lying  
9 and standing, so his blood pressure at present is satisfactory.

10 BY MR. SENG BUNKHEANG:

11 Q. Thank you. And again, in the same report, you also stated that  
12 the blood pressure Mr. Nuon is 130/75, both when he was lying  
13 down and he was standing. This level of blood pressure, how do  
14 you comment on this? Is it high by standard or how would you  
15 comment on this?

16 MR. CAMPBELL:

17 A. That's a very satisfactory blood pressure for a person of his  
18 age.

19 BY MR. SENG BUNKHEANG:

20 Q. Thank you. And this is going to be my last question concerning  
21 your previous assessment of his health status starting from  
22 August 2011 to date. And you have produced several reports, and  
23 the last report that you submitted to the Trial Chamber on the  
24 20th of March 2013.

25 Throughout your examination of his health, have you observed any

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1 change or deterioration or so concerning the overall health  
2 status of Mr. Nuon Chea?

3 [11.40.19]

4 MR. CAMPBELL:

5 A. As I've indicated, I think he is more frail than when I first  
6 saw him, but that is largely because of his inactivity. There's  
7 no significant sign of progression in his underlying heart, lung  
8 or cerebrovascular problems. And his kidney function also, on  
9 testing, has remained reasonably stable.

10 MR. SENG BUNKHEANG:

11 Thank you very much, Professor.

12 Mr. President, I have no further questions. I would like to now  
13 cede the floor to my esteemed colleague.

14 [11.41.07]

15 QUESTIONING BY MR. LYSAK:

16 Good morning, Mr. President, Members of the Bench, and good  
17 morning to you, doctors. My name is Dale Lysak, and I am one of  
18 the international prosecutors. I have a few areas where I have  
19 some very short questions that I just want to clarify and a  
20 couple of areas that I'll want to explore with you in a little  
21 more depth.

22 Let me start with one of the short areas. It concerns the issue  
23 of the comparison of the MMSE test that was conducted last week  
24 to the results of the one from February 2011. And you've already  
25 indicated to us that the different results you don't consider to

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1 be clinically significant, but I wanted to clarify one other  
2 matter.

3 Were either of you involved in administering the test that was  
4 conducted, the MMSE test that was conducted in February 2011, or  
5 was this conducted by some other doctor outside your presence?

6 [11.42.25]

7 MR. FAZEL:

8 A. No, this was conducted by another doctor and we were not  
9 present during that examination.

10 BY MR. LYSAK:

11 Q. And in regards to your ability to compare the test results,  
12 the report that I have that was attached to Dr. Campbell --  
13 attached to your second report that you filed with the Court  
14 dated 26th of August 2011, the report that I have that you  
15 reference only contains the score, 30 of 30.

16 My question is whether you saw any more detailed information, for  
17 example, the specific questions that were asked, the results of  
18 answers that were given or results of the tests that allow you to  
19 tell us whether or not you can be certain the test was properly  
20 administered in February 2011.

21 [11.43.39]

22 MR. CAMPBELL:

23 A. It's a standardized test. The questions are fixed. So there  
24 should be -- not be any difficulty in administering it.

25 BY MR. LYSAK:

1 Q. I understand that. My question, Professor Campbell, is: Did  
2 you see the actual results of the test or did you just see the  
3 test score?

4 MR. CAMPBELL:

5 A. My memory is that I would just have seen the test score, that  
6 it was 30 out of 30. The person wouldn't have put any  
7 modification to the questions if they had modified the questions.

8 BY MR. LYSAK:

9 Q. The reason I ask that, Doctor, is I recall that one of the  
10 prior times you testified here, you took issue with the way that  
11 one person had administered the test, so the reason I'm asking  
12 you is simply whether you have done anything to confirm whether  
13 or not the test was properly administered in February 2011.

14 [11.44.52]

15 MR. CAMPBELL:

16 A. No, I don't think so, but I can testify that it was properly  
17 administered in March 2013 and at that -- at this stage, shows no  
18 evidence of cognitive impairment.

19 BY MR. LYSAK:

20 Q. Thank you, Doctor. I certainly wasn't questioning that. I  
21 simply wanted to make it very clear whether we have any basis to  
22 compare or draw any conclusions from the different test result in  
23 February 2011 where he got 30 -- a 30 score to the test result  
24 that was obtained last week where he scored 28 of 30.

25 [11.45.36]

1 MR. CAMPBELL:

2 A. No, I would certainly read no significance into that change in  
3 score.

4 BY MR. LYSAK:

5 Q. Thank you for clarifying that. The second area that I wanted  
6 to ask a very quick question to you is concern -- concerns the  
7 vision -- vision problem of Mr. Nuon Chea.

8 You've made a number of recommendations, including the  
9 possibility of documents being read to him or the size of the  
10 documents increased.

11 My father happens to have macular degeneration and he uses a  
12 magnifying glass to help read documents. I'm wondering whether  
13 the use of a magnifying lens of some sort is another option that  
14 the Court could consider to assist Nuon Chea in reading  
15 documents.

16 [11.46.39]

17 MR. CAMPBELL:

18 A. It's less likely to be effective with cataracts, but it is  
19 something that could be tried.

20 BY MR. LYSAK:

21 Q. Thank you, Professor Campbell. Let me turn now to an issue.  
22 You have indicated already that in your examinations of Nuon  
23 Chea, in particular with regard to his cardiovascular disease or  
24 condition, that there have not been any objective changes in his  
25 condition over the period that you have been examining him.



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1 I want to also go back, if you will, to the examinations that  
2 were conducted of Nuon Chea prior to -- prior to you by Dr.  
3 Antoine Lafont. And am I correct that both of you reviewed Dr.  
4 Lafont's reports in coming to your conclusions regarding Nuon  
5 Chea?

6 [11.47.56]

7 MR. CAMPBELL:

8 A. Yes, I have reviewed his reports.

9 BY MR. LYSAK:

10 Q. And Dr. Lafont, who is the Director of Interventional  
11 Cardiology from the Georges Pompidou Hospital in Paris, conducted  
12 an initial examination of Nuon Chea in October 2007 and  
13 subsequently re-examined him every six months through until 2010.  
14 What I would like to do now is read to you a few excerpts from  
15 Dr. Lafont's report regarding Nuon Chea's cardiovascular  
16 condition with the ultimate aim of seeking your opinion on  
17 whether there has been any significant change or deterioration in  
18 his cardiovascular condition since 2007 when Dr. Lafont examined  
19 him.

20 [11.48.54]

21 And the first examination report from Dr. Lafont, which was dated  
22 the 20th of October 2007 -- and for the record, this is document  
23 D24/7. In that report, Dr. Lafont found that Nuon Chea's blood  
24 pressure was 155/80, that there was no functional cardiac  
25 symptoms or signs such as angina, dyspnoea or palpitation and

1 that, after treatment, his blood pressure was reduced to 125/76.  
2 He concluded that Nuon Chea's hypertension was - "ancient" was  
3 the word that is used in his report, or the English translation,  
4 and he described his coronary illness as "limited to an artery  
5 and stable in comparison to the data of the coronagraphy realized  
6 12 years ago, justifying the continuation of a simple medical  
7 treatment.

8 And in regards to a prognosis for Nuon Chea, Dr. Lafont wrote -  
9 quote:

10 "It is difficult to foretell the future, but in light of this  
11 thorough check-up, this patient enjoys, at present, a real  
12 stability of pathologies from which he suffers. The hypertension  
13 is treated, the coronary illness is remarkably stable since 12  
14 years, and the after effects of the cerebrovascular accident are  
15 ancient." End of quote.

16 [11.50.50]

17 As I indicated, Dr. Lafont continued to examine Nuon Chea every  
18 six months after that through 2010. I will not read to you each  
19 of those reports. Let me just make reference to one of them in  
20 June 11, 2009, document B27/1. Dr. Lafont wrote - quote: "In  
21 practice, the patient's health condition is stable and there has  
22 been a general improvement."

23 And in the prognosis section, he concluded:

24 "As already explained, it is difficult to predict the future, but  
25 in light of the various medical examinations carried out in the

1 past 18 months, the patient's disorders are not only stable, but  
2 the last medical examination revealed an improvement in his  
3 general health condition."

4 And Dr. Lafont confirmed in his other reports as well that there  
5 had been no change in condition.

6 My question for you is based on your review of Dr. Lafont's  
7 reports and your examinations of Nuon Chea in 2011 and this  
8 month. Can you give us your opinion as to whether his  
9 cardiovascular condition has remained relatively stable since  
10 2007 or whether there has been any deterioration or change in  
11 that condition since 2007?

12 [11.52.28]

13 MR. CAMPBELL:

14 A. Well, my examination is restricted to his history, and he has  
15 no history of cardiac symptoms at present, and to a physical  
16 examination. And there is no change in physical examination.  
17 Dr. Lafont used additional investigations, for example, like a  
18 cardiography, which we have not used. If there had been subtle  
19 changes, they would show up on that. But given that he is  
20 asymptomatic at present, there is really no justification for  
21 those additional investigations.

22 BY MR. LYSAK:

23 Q. Is there any evidence, then, that there has been any  
24 deterioration in his cardiovascular disease since 2007 when he  
25 was first arrested and brought into detention at the Court?

1 MR. CAMPBELL:

2 A. There is no clinical evidence of deterioration, but given the  
3 underlying disease, it is likely that there have been subtle  
4 progressions since then. But it's not -- they are not resulting  
5 in any symptoms at present.

6 [11.53.44]

7 BY MR. LYSAK:

8 Q. What type of tests would one need to administer to determine  
9 whether there, in fact, have been such subtle changes that you  
10 just made reference to?

11 MR. CAMPBELL:

12 A. Given that he has no symptoms, there are no tests that we  
13 would use. You could repeat the echocardiogram, but it wouldn't  
14 change management. And to reinvestigate the coronary arteries  
15 would be too invasive given that there would be no therapeutic  
16 outcome from it.

17 BY MR. LYSAK:

18 Q. I'd like to turn now to the last subject that I want to ask  
19 you about, which relates to your prognosis that you gave earlier  
20 and the general question of life expectancy which is, as you can  
21 imagine, something that's been on a lot of people's minds here  
22 lately.

23 First of all, I just wanted to follow up on the statement that  
24 you gave in response to Judge Cartwright's question. And when you  
25 were asked regarding his prognosis, one thing that you said --

1 one concern you expressed related to the -- his susceptibility to  
2 what you called intercurrent illness. And I'm wondering if you  
3 could just explain what you meant by intercurrent illness.

4 [11.55.21]

5 MR. CAMPBELL:

6 A. An intercurrent illness is any illness that is not one of the  
7 existing chronic illnesses. For example, if he had an episode of  
8 influenza, if he had another episode of acute bronchitis, if he  
9 had a bladder infection, then given his overall frailty, these  
10 intercurrent illnesses would have a significant effect on his  
11 well-being. They would affect him far more than they would affect  
12 you or me.

13 BY MR. LYSAK:

14 Q. And you mentioned something in response to my colleague's  
15 questions, which was the importance of having a -- him having an  
16 influenza vaccine. Do you know whether or not he's been  
17 vaccinated for influenza?

18 [11.56.11]

19 MR. CAMPBELL:

20 A. No, I don't.

21 BY MR. LYSAK:

22 Q. And you stated at the end of your prognosis -- first you used  
23 the words "limited" and "guarded", and then you said - quote: "We  
24 have to consider whether we would be surprised if he was not  
25 alive in six months."

1 And you said you would not.

2 I'm wondering if you could, in view of the opinions that are  
3 expressed in your report, that is, various medical conditions  
4 have been stable, can you tell us what objective facts you base  
5 your statement or the six-month number that you provided in  
6 response to Judge Cartwright's question?

7 MR. CAMPBELL:

8 A. Yes. Don't take the two -- six months too literally. One  
9 cannot prognosticate with any accuracy in this situation. What  
10 I'm saying is that he is frail, that there may be problems within  
11 the current illness or with his existing problems.

12 And the question about the six months is one we commonly ask  
13 ourselves with people when we're determining the extent of  
14 investigation or the extent of treatment.

15 I mean, he may well certainly be alive in six months, in a year's  
16 time. It's impossible to say.

17 [11.58.02]

18 BY MR. LYSAK:

19 Q. Is there a reason that you did not put the six-month prognosis  
20 into your written report?

21 MR. CAMPBELL:

22 A. Again, I want to make it clear that I'm not giving him a  
23 six-month prognosis. It may well be longer than that. I'm not in  
24 a position to say how long he will continue to survive. But one  
25 has to realize that, at 86, with underlying cardiovascular

1 disease, cerebrovascular disease, underlying frailty, life is  
2 precarious.

3 [11.58.41]

4 BY MR. LYSAK:

5 Q. Did you provide Nuon Chea with this prognosis or this opinion  
6 regarding the six-month period when you examined and consulted  
7 him?

8 MR. CAMPBELL:

9 A. No, that was not my role. And I think we need to move on from  
10 that six months. It's not a prognosis that I'm giving him.

11 BY MR. LYSAK:

12 Q. I will move on from -- and not mention the six months any  
13 more. Let me ask you a more general question.

14 Would your prognosis for him depend on whether or not he resumed  
15 physical activity and undertook some sort of rehabilitation  
16 problem? Would that affect your assessment of his likelihood of  
17 surviving?

18 [11.59.45]

19 MR. CAMPBELL:

20 A. As we've said in the report, if he could undertake some  
21 physical activity, this would increase his chances of surviving  
22 further, would increase his physiological reserve, which at  
23 present is diminished. But he, of course, would have to be  
24 willing to undertake it, and he may well not be.

25 BY MR. LYSAK:

1 Q. As we are talking about, admittedly, an uncertain and  
2 difficult area, which is the prognosis of life expectancy, I  
3 wanted to ask you as an expert in geriatrics, do you have some  
4 familiarity or understanding with the statistics or science of  
5 life expectancy and the use of life tables?

6 MR. CAMPBELL:

7 A. Yes, but they're not particularly useful when one comes down  
8 to the individual, especially with a number of co-morbidities, as  
9 here.

10 [12.00.55]

11 MR. LYSAK:

12 Mr. President, I'd like at this time to hand a couple of reports  
13 to the experts. One is a national vital statistics report issued  
14 by the CDC that contains life tables for the United States, and  
15 the second one, one closer to home for you, Dr. Campbell, are the  
16 life tables issued for New Zealand issued by the Statistics New  
17 Zealand government agency.

18 I have copies of these for the experts. I have copies of them for  
19 the parties and for the Chamber itself, too, if you wish to see  
20 the documents yourself.

21 MR. PRESIDENT:

22 International Co-Counsel for Mr. Nuon Chea, you may now proceed.  
23 Perhaps the matter is straying far from the medical report,  
24 perhaps.

25 [12.02.16]



1 MR. KOPPE:

2 Thank you, Mr. President. I have to object to this presenting of  
3 documents that we are not aware of.

4 The point, of course, of the -- the relevance of these reports in  
5 respect of our client, who is a Cambodian national, and has  
6 nothing to do with statistics covering the United States or New  
7 Zealand.

8 So I'm convinced that the expert will be able to say that he  
9 doesn't know anything about this or he cannot say anything  
10 intelligently on this subject in respect of Nuon Chea. But  
11 nevertheless, we would object to this line of questioning  
12 following the presentation of these documents.

13 BY MR. LYSAK:

14 Mr. President, perhaps I can ask a few more general questions to  
15 the expert, which I think will amply demonstrate why this  
16 information may be of use both to the experts and to the Chamber  
17 in the decisions that it has to make.

18 And I appreciate that - your qualification about the six-month  
19 period, but I hope you understand that that statement is going to  
20 be picked up and viewed as rather significant. And because of  
21 that, I wish to ask you whether you, as a geriatrician, are  
22 familiar with the general or statistical expected life expectancy  
23 of an 86-year old man in New Zealand.

24 [12.04.02[

25 MR. PRESIDENT:

1 Experts, could you please hold on?

2 Counsel for Mr. Nuon Chea, you may now proceed first.

3 MR. KOPPE:

4 I have raised an objection, Your Honour, and I would like you to  
5 rule on it.

6 (Judges deliberate)

7 [12.05.25]

8 MR. PRESIDENT:

9 The objection concerning the presentation of the document and the  
10 current question by the Co-Prosecutor which is more hypothetical  
11 regarding a case in New Zealand is sustained. Therefore, both the  
12 question and the request for submitting the document are not  
13 granted.

14 The experts are instructed not to respond to the question.

15 BY MR. LYSAK:

16 Q. Professor Campbell, since you, throughout the six-month figure  
17 and indicated your view to this Chamber that you would not be  
18 surprised if he was not -- if Nuon Chea was not alive in six  
19 months, in providing that opinion, did you take account of the  
20 typical life expectancies of persons of that age?

21 [12.07.09]

22 MR. CAMPBELL:

23 A. Typical life expectancies don't apply to individuals. They're  
24 population-based life expectancies. And I think we need to move  
25 away from that six months. I said that's a question we commonly

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1 ask ourselves about patients, didn't apply particularly to Nuon  
2 Chea or his prognosis.

3 Would I have been surprised if he wasn't alive in six months? No.

4 Would I be surprised if he was alive in six months? No.

5 MR. PRESIDENT:

6 The question is rather repetitive and the experts appear to have  
7 already responded to the questions. And it appears to us that  
8 Co-Prosecutor has no more questions.

9 Counsel for Mr. Nuon Chea, could you advise the Chamber as to how  
10 much time would you need to make your final submission concerning  
11 this particular juncture of the hearing?

12 MR. KOPPE:

13 Mr. President, Your Honours, I am doubting whether we will make  
14 submissions at all, so if we do, they're going to be very short,  
15 indeed.

16 [12.08.35]

17 MR. PRESIDENT:

18 Mr. Co-Prosecutor, could you also please advise the Chamber to  
19 the -- as to how much time would you need for the closing  
20 statement as counsel may be brief on that?

21 MR. LYSAK:

22 We can be very brief as well, Your Honour. We will submit in  
23 writing these documents for you. I respect your ruling. I will  
24 not pursue any -- the matter at the time, but we will submit  
25 these documents for your consideration. But in terms of -- in

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1 terms of argument, we can be very short as well.

2 MR. PRESIDENT:

3 What about Lead Co-Lawyers for the civil party? Would you wish to  
4 have some questions for the experts? If you do, how much time  
5 would you need first as about time for questioning and also, the  
6 Chamber would like to know how much time would you need for  
7 closing -- for final words as well?

8 [12.09.45]

9 MR. PICH ANG:

10 Mr. President, Co-Lead Lawyers for the civil parties may need 25  
11 minutes for questions and answers and we may need just very brief  
12 time for the second question you asked.

13 MR. PRESIDENT:

14 Thank you very much, indeed. It is now appropriate time for the  
15 lunch adjournment, although we are now 10 minutes -- I mean it's  
16 10 minutes past 12.00.

17 We may adjourn now and the next session will be resumed by 1.30.

18 And at the same time, the Chamber also notes that great progress  
19 has been made in -- during the session. It is more expeditious  
20 than we anticipated.

21 Security personnels are now instructed to bring Mr. Khieu Samphan  
22 from the detention facility to the courtroom before the next  
23 session resumes so that we can have his participation in the next  
24 hearing as relevant to the topic noted to the Chamber this  
25 morning.

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1 And Court officer is now instructed to assist both the experts  
2 and have them returned to the courtroom by 1.30.

3 (Court recesses from 1211H to 1335H)

4 MR. PRESIDENT:

5 Please be seated. The Court is now back in session.

6 Before we adjourned for lunch, it was about the opportunity given  
7 to the Lead Co-Lawyers for the civil parties to put some  
8 questions. The Chamber will give the floor to the Lead Co-Lawyers  
9 very soon, but before that we would like to rule on the case of  
10 Mr. Khieu Samphan regarding his waiver.

11 As the Chamber already notified the parties to the proceedings,  
12 the Chamber would like to fully respect the rights of the  
13 Accused. And the Chamber notes that we have examined the reports  
14 by the medical doctors and that this afternoon, we also need to  
15 conduct hearing concerning the severance.

16 The Chamber will issue the decision in due course. However,  
17 having notified the parties concerning this, we did not receive  
18 the waiver by the Accused as yet. But recently, we obtained such  
19 waiver from the Accused due to his health concerns. He said he  
20 was fatigued and that his concentration was not good. And the  
21 Chamber notes that this examination is of technical nature and it  
22 is up to his counsels to decide along with Mr. Khieu Samphan on  
23 this and we, therefore, respect his full right.

24 [13.39.08]

25 The Chamber would like to ask that security officials or

1 personnel are now bringing Mr. Khieu Samphan back to his  
2 detention facility and the proceedings here before us continue.  
3 Lead Co-Lawyers for the civil parties, you may now proceed.

4 MR. PICH ANG:

5 Thank you, Mr. President, and Your Honours.

6 Civil party Lead Co-Lawyers would like to hand over to counsel  
7 Hong Kimsuon to put some questions followed by counsel  
8 Simonneau-Fort.

9 MR. PRESIDENT:

10 Thank you.

11 Counsel Kimsuon, you may now proceed.

12 QUESTIONING BY MR. HONG KIMSUON:

13 Thank you, Mr. President, and Your Honours. And good afternoon,  
14 Dr. John Campbell and Dr. Seena Fazel. I am Hong Kimsuon. I am  
15 here representing civil parties and I have very few questions to  
16 put to you concerning your report.

17 Q. I have listened very carefully to the questions put by Judge  
18 Cartwright to you concerning your report, E256/4, and I have  
19 noted in your final conclusion concerning the health condition of  
20 Mr. Ieng Sary (sic) and that you concluded that he is fit. My  
21 question to you is: To you -- to your opinion or observation,  
22 what is the difference between having Mr. Nuon Chea being present  
23 in the courtroom and his being present in the holding cell and  
24 what would be the consequences otherwise?

25 [13.41.25]

1 MR. FAZEL:

2 A. I'm not sure we can answer that question. From a medical  
3 perspective, we've made our views clear in our report and we can  
4 only reiterate the fact that we don't see any reason why Nuon  
5 Chea cannot be present in the holding cell, but further than that  
6 I -- I can't comment.

7 [13.41.57]

8 MR. CAMPBELL:

9 A. Are you questioning whether he should be in the Court here  
10 present or in the holding cell? He is much more comfortable lying  
11 flat and that would be difficult in the Court here.

12 BY MR. HONG KIMSUON:

13 Q. I may wish to ask this follow-up question. If Mr. Nuon Chea  
14 were to be brought into the courtroom, would that help him  
15 physically, for example, by allowing him to be more active when  
16 he has to move from downstairs upstairs for example?

17 MR. CAMPBELL:

18 A. I can't see that it would improve the situation.

19 BY MR. HONG KIMSUON:

20 Thank you.

21 [13.43.20]

22 Q. You already testified before this Chamber and also reiterated  
23 in your report that Mr. Nuon Chea, when remains in detention  
24 facility, tends to lie back and that you observed because he  
25 remains motionless like that; he likes some activity to keep him

1 active. Do you believe that by bringing him into the courtroom  
2 helps him do some exercise? And -- or is it to understand that  
3 well, having him in the holding cell does not make any difference  
4 because he doesn't do any exercise either ways?

5 MR. CAMPBELL:

6 A. No, I cannot see that bringing him into the courtroom here  
7 would increase his exercise -- his activity really at all. It  
8 needs a program when the Court is not in session.

9 BY MR. HONG KIMSUON:

10 Q. Thank you. Can you please also tell the Chamber, what would be  
11 best for Mr. Nuon Chea when sitting up or lying down? I mean  
12 between the two, rather.

13 [13.45.02]

14 MR. CAMPBELL:

15 A. At this stage, he seems much more comfortable lying down and I  
16 think that's what he prefers. It's difficult to get him sitting  
17 up for any length of time.

18 BY MR. HONG KIMSUON:

19 Q. Thank you. Have you provided any advice to his health, for  
20 example, by asking him to do more exercises?

21 MR. CAMPBELL:

22 A. Sorry, I'm not clear about the question.

23 BY MR. HONG KIMSUON:

24 Q. I was asking you that, indeed, when he lies down a lot, then  
25 his health is not good. Have you done something to ask him, for



1 example, to be more active physically so that his health  
2 improves?

3 MR. CAMPBELL:

4 A. No, I've not been seeing him in -- in terms of trying to  
5 improve his health. What I'm suggesting is that he needs a  
6 program of physical exercise to try and increase his muscle  
7 strength and his stability and that would need to be a planned  
8 program taking into consideration his other health problems. It's  
9 not something that can be dealt with in a very short time; it  
10 needs to be sustained over a period.

11 BY MR. HONG KIMSUON:

12 Thank you.

13 Q. You have examined his health condition and with that I would  
14 like to ask a question whether Nuon Chea has ever told you that  
15 he would like someone to give him a massage?

16 [13.47.22]

17 MR. CAMPBELL:

18 A. No, I've not discussed massage with him.

19 BY MR. HONG KIMSUON:

20 Thank you.

21 Q. In your conclusion, you indicated that you have no  
22 recommendation for a change and I refer to your report in  
23 paragraph 49 which you state -- in that you said: "Therefore we  
24 would not recommend any changes to court proceedings in relation  
25 to the timing of sessions which we understand are no longer than

1 90 minutes."

2 With that, do we understand that Mr. Nuon Chea can remain in the  
3 court proceedings for 90 minutes?

4 MR. CAMPBELL:

5 A. Well, that was our feeling after having examined him on a  
6 number of occasions for periods for longer than 90 minutes.

7 [13.38.55]

8 BY MR. HONG KIMSUON:

9 Thank you.

10 Q. At paragraph 44, you also write that he said -- it means  
11 referring to Nuon Chea -- he would be willing to be physically  
12 present in court and speak, but thinks that his health would not  
13 allow him to do so and he said that he would be willing to give  
14 evidence on video link and would prefer to do so from the  
15 detention centre as he becomes dizzy if moved to the Court. My  
16 question to you regarding this question: What would be the remedy  
17 in place to help him to deal with the situation when he feels  
18 dizzy?

19 MR. FAZEL:

20 A. Well, I -- we referred previously to the fact that he would --  
21 we would recommend that he be given 15 to 30 minutes to settle  
22 after he's moved to the holding cell. That would be one remedy.

23 [13.50.18]

24 The second remedy is that, if he complains of pain in his back or  
25 his waist, that he be offered oral paracetamol.

1 And the third piece of good practice would be that when he is  
2 moved, it's done as carefully as possible and I think that that's  
3 already the case that the people move him very carefully and  
4 without too much disruption to his back.

5 MR. HONG KIMSUON:

6 Thank you very much for responding to all the questions. I have  
7 no further questions, yet my colleague would like to have a few  
8 more questions, please. Thank you.

9 QUESTIONING BY MS. SIMONNEAU-FORT:

10 Good afternoon, Mr. President. Good afternoon, Your Honours. Good  
11 morning -- good afternoon, rather, to all parties and good  
12 afternoon to you, Experts.

13 Q. I have a very few brief questions that cover an array of  
14 subjects. My first question would relate to Mr. Nuon Chea's  
15 cataracts. You state that he has bilateral cataracts and that  
16 operating on these cataracts would be rather straightforward. We  
17 all agree that vision is required in order to read documents and  
18 to enhance one's participation and it would also be preferable to  
19 have some documents read to him.

20 Is there a reason why such an operation has not been administered  
21 on Mr. Nuon Chea?

22 [13.52.30]

23 MR. CAMPBELL:

24 A. It was considered earlier, but not gone ahead with, but we  
25 could not find the reasoning behind that. If he did have

1 cataracts removed, it would take a significant time before he was  
2 ready for reading and the more practical solution would be to  
3 have the documents in larger print, to have them on tape, or to  
4 have them read to him.

5 BY MS. SIMONNEAU-FORT:

6 Q. Thank you. Can I gather from your response, therefore, that  
7 you do not favour an operation on his cataracts?

8 [13.53.16]

9 MR. CAMPBELL:

10 A. I wouldn't consider myself qualified to comment on that. That  
11 would need to be a decision by an ophthalmologist; someone who  
12 examined the eyes more fully than I was able to with the  
13 equipment I had available.

14 BY MS. SIMONNEAU-FORT:

15 Q. Thank you very much.

16 My second question concerns your joint authorship of this expert  
17 report. You have arrived at common conclusions. And do you agree  
18 entirely on the conclusions? Were there any points of  
19 disagreement between you two gentlemen?

20 MR. CAMPBELL:

21 A. There were no points of disagreement.

22 MR. FAZEL:

23 A. That's right; there were no points of disagreement.

24 [13.54.20]

25 BY MS. SIMONNEAU-FORT:

1 Q. Thank you very much for that very clear answer.

2 And a third question on an entirely different subject. You heard  
3 my learned friend talk about Mr. Nuon Chea's possible presence in  
4 these proceedings and not strictly from the holding cell and I'm  
5 sure you understand that his presence will have great  
6 significance, notably for the civil parties and obviously, for  
7 the public at large.

8 So that we are all absolutely clear on the matter, can you please  
9 summarize before this Chamber, before everyone present, the  
10 reasons that would prevent Mr. Nuon Chea's presence in these  
11 proceedings? In other words, reasons why you would recommend he  
12 participate in the proceedings from his holding cell in order for  
13 the reasons to be spelled out and be most clear and explicit for  
14 those who are following your testimony.

15 [13.55.37]

16 MR. CAMPBELL:

17 A. I think if he had to sit in the Court, he would find that more  
18 uncomfortable and more difficult to sustain over the period of  
19 the Court's sitting. If he were able to lie in Court then that  
20 might be a possibility.

21 BY MS. SIMONNEAU-FORT:

22 Q. Could you please hand the microphone over to Dr. Fazel so that  
23 he may provide his answer?

24 MR. FAZEL:

25 A. There's one other consideration which is that the holding cell

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1 does provide the opportunity for immediate medical support in the  
2 sense that, for instance, if he was asking for some pain relief,  
3 he could be provided it. So that's one other consideration, is  
4 just the availability of medical support in the holding cell.

5 MS. SIMONNEAU-FORT:

6 Thank you. As far as I'm concerned, I have no further questions.

7 Thank you very much, Mr. President.

8 MR. PRESIDENT:

9 Thank you, Counsels.

10 We would like now to hand over to counsels for Mr. Nuon Chea  
11 because the Chamber noted at the beginning that at the end, the  
12 Chamber would like to hand the floor over to counsels for the  
13 Accused to have a few final comments, observations, if they would  
14 like to do so.

15 [13.58.04]

16 MR. SON ARUN:

17 Good afternoon, Mr. President, again, and good afternoon, Your  
18 Honours, and good afternoon to you both, professors.

19 I have no further questions on this, but we would like to have  
20 our final observation on behalf of Mr. Nuon Chea.

21 MR. PRESIDENT:

22 Thank you, Counsel, but that moment has not yet arrived.

23 MR. SON ARUN:

24 With that, I have no further questions, Mr. President.

25 MR. PRESIDENT:

1 Thank you very much.

2 [13.58.44]

3 The session on the examination of the report filed by medical  
4 experts regarding the health and fitness of Mr. Nuon Chea to  
5 stand trial now almost comes to an end.

6 The Chamber also notes the presence of the experts and that you  
7 are now excused. We believe that your report and testimony would  
8 be very helpful for the Chamber to consider the health and  
9 fitness of Mr. Nuon Chea and on behalf of the Trial Chamber, we  
10 would like to express our profound thanks to you -- to both  
11 professors, Professor Campbell and Fazel, for doing your  
12 professional best and being very patient in responding to all the  
13 questions put to you, and we appreciate your very valuable time.  
14 We note that you have travelled all the way from your countries  
15 to conduct the assessment as ordered by the Chamber.

16 Finally, the Chamber would like to wish you all the very best and  
17 safe trip back home.

18 Court officer is now instructed to assist both professors and  
19 make sure that they are returned home safe and sound. Thank you.

20 (Mr. Campbell and Mr. Fazel exit the courtroom)

21 [14.01.13]

22 MR. PRESIDENT:

23 Next, I wish to hand over the floor to the defence team for Mr.

24 Nuon Chea to make your final closing statement on the first topic

25 of the hearing today. You may proceed.

1 MR. SON ARUN:

2 Good afternoon, Mr. President. Good afternoon, Your Honours.

3 By way of concluding this topic, in my capacity as the defence

4 lawyer for Mr. Nuon Chea: First, based on the report of the

5 expert dated the 20th of March 2013; 2) Pursuant to the hearing

6 -- the oral hearing of the two experts seen this morning, it is

7 clear that my client is still suffering from many ailments

8 including hypertension, the inflame respiratory system, back

9 pain, as well as other diseases including the deteriorating

10 dizziness.

11 These ailments and health problems seriously affects the

12 concentration of my client in following the proceedings. In

13 addition, his physical strength has deteriorated as well and this

14 is in line with the oral testimony of the witness that -- or of

15 the expert, rather, that once his physical strength is

16 diminished, then his cognitive function is consistently

17 diminished and this seriously affects the memory as well as the

18 concentration of Mr. Nuon Chea.

19 [14.03.34]

20 Based on these grounds, even if my client is subject to trial and

21 he is brought to the holding cell downstairs where equipment is

22 installed for him to follow the proceeding, I find that it is

23 meaningless because he cannot concentrate on the proceeding and

24 he does not have the ability to plead and I only see that he - if

25 you ask - if you insist that he comes, then he only comes as per



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1 your orders; he cannot follow anything at all.

2 And the experts also found that my client is suffering from many  
3 ailments. The experts should ask the Chamber to order the  
4 examination, particularly, if possible and if -- if it deems  
5 appropriate, my client should be placed under treatment until he  
6 is well enough to participate in the proceeding.

7 At this juncture, I would like to earnestly request to the  
8 Chamber that my client be referred to the hospital to get his  
9 diseases and ailment treated properly before he is ordered to  
10 participate in the proceedings.

11 [14.05.10]

12 So long as my client is still suffering from the ailments and so  
13 long as his health status is as worse as today, he cannot hear  
14 properly; he does not have the level of concentration good enough  
15 to follow the proceeding, I consider this as the violation of the  
16 right to fair trial of my client.

17 Thank you.

18 MR. PRESIDENT:

19 How about the international counsel, do you have anything to add  
20 to your national colleague?

21 Thank you. Then, if you do not have anything to add, I hand over  
22 the floor to the prosecutor to make the final closing statement  
23 in relation to the first topic of the hearing today.

24 You may proceed.

25 MR. LYSAK:

1 Thank you very much, Mr. President. Let me start first by  
2 responding to what – the assertions made by Mr. Nuon Chea's  
3 counsel.

4 [14.06.28]

5 These assertions are inconsistent with the testimony and report  
6 from the experts that we just heard, to put it simply. It is true  
7 that his client has a history of hypertension; one of the  
8 conditions he just said, however, as indicated in the report, his  
9 hypertension or blood -- blood pressure is under control. The  
10 recent blood pressure from his examination is within normal  
11 range. There -- this is not a disease -- the doctors have made  
12 clear -- that, in any way, affects his ability or his fitness to  
13 participate.

14 The respiratory condition relating to his bronchitis has been  
15 treated. He has recovered from that.

16 And as for other things of which he complains or which counsel  
17 has pointed out such as the physical strength of his client,  
18 dizziness, matters such as this, Dr. Campbell's opinion was that  
19 this was the result of the Accused's inactivity; something that  
20 he has the ability to change or to improve if he wishes to make  
21 the effort to have some form of rehab, some form of physical  
22 activity.

23 [14.07.57]

24 He – in terms of the request that his client be treated until he  
25 is well enough to participate, treated for what would be my

1 response. The doctors have made clear that the existing  
2 medication and treatment is sufficient for his problems and that  
3 his conditions are stable.

4 The question, I think, for Your Honours is what has changed since  
5 your prior finding that Nuon Chea is fit to stand trial.

6 In terms of his physical condition, Dr. Campbell has been clear  
7 that his condition is stable. His cardiovascular condition has  
8 remained stable since 2007. He is not suffering any significant  
9 ramifications from his 1995 stroke. There is simply no change in  
10 his physical condition -- physical condition that would warrant a  
11 change to the fitness decision previously made by this Court.

12 What has changed, I would note, of significance since your last  
13 decision is that Nuon Chea has now been subject to a full mental  
14 evaluation - mental health evaluation by Dr. Fazel. You'll recall  
15 that during the prior period, following the advice of his client  
16 (sic), Nuon Chea refused to meet with Dr. Fazel, and as a result  
17 they were unable to conduct examinations and perform the tests  
18 that they have now been able to perform. So, if there is anything  
19 that has changed, it is - it is that the Court now has a detailed  
20 report from the experts which confirms, by any possible measure,  
21 that with regard to his mental health, he is fit to participate.

22 [14.10.12]

23 He has scored high on all the objective exams conducted and  
24 subjectively, in terms of his interview with the doctors, it is  
25 clear that he meets the criteria. He was able to participate in

1 interviews lasting several hours. He was able to respond to all  
2 questions and more importantly, it was -- it is crystal clear  
3 from the report that he understands the nature of proceedings and  
4 is able to participate in his defence.

5 So our submission would be that not only has nothing changed  
6 since your prior decision that would warrant finding him unfit,  
7 that the record supporting his fitness to participate is even  
8 stronger now.

9 Thank you for the opportunity to make submissions, Your Honours.

10 [14.11.13]

11 MR. PRESIDENT:

12 Thank you, Mr. Prosecutor.

13 Now, I hand over the floor to the Lead Co-Lawyer for the civil  
14 parties to make your final statement.

15 MR. HONG KIMSUON:

16 Good afternoon, Mr. President; and good afternoon, Your Honours.

17 On behalf of the lawyers for the civil parties, given the fact  
18 that we have waited for long times for justice to be done and  
19 actually, not only are the civil parties waiting for justice, but  
20 the defendant, themselves, want the justice to be done  
21 expeditiously, but taking into consideration their health, it is  
22 of our collective concerns.

23 [14.12.12]

24 According to the report submitted by the expert - the two  
25 experts, Professor John Campbell, document E256/4, this is a very

1 well comprehensive report. The defence teams' rejection to this  
2 report is groundless and unsubstantiated because I don't see any  
3 reason why this report should be disregarded because these two  
4 experts are internationally competent to carry out their  
5 function. They have accumulated experience in this and they have  
6 been very objective in their assessment and their report is quite  
7 comprehensive and detail; particularly, they administer certain  
8 test, standardized test, for example, the one administered in the  
9 Strugar Case.

10 And Mr. Ieng Sary - or, rather, Mr. Nuon Chea is found to be fit  
11 to stand trial and his health is not that serious that he cannot  
12 attend and follow the proceeding.

13 [14.13.34]

14 And as for the request by the defence team that Mr. Nuon Chea be  
15 placed under a treatment program for a certain period until his  
16 health condition returned to normal, according to them, is  
17 utterly inappropriate.

18 Mr. John Campbell is not only a competent individual, but he is  
19 also a geriatrician. And if - of course, we look at Nuon Chea, he  
20 is now 86 years of age and in terms of his cataract, if you find  
21 that him -- find him difficult to read or to see something, that  
22 is not highly unusual for people at his age.

23 If you look at the details of the two reports, particularly his  
24 conclusion, he does not recommend to the Chamber that any  
25 situation has changed for Mr. Nuon Chea to follow the proceeding.

1 They only request that Mr. Nuon Chea remains in the holding cell  
2 downstairs to follow the proceeding because he -- when he lies  
3 down, it is not an issue for him. So, by staying there, probably,  
4 he can follow the proceedings smoothly and that will help  
5 expedite the proceedings.

6 [14.15.13]

7 For these reasons, the civil party lawyers are of the opinion  
8 that the expert medical report by Professor John Campbell and Dr.  
9 Seena Fazel is comprehensive and appropriate. Therefore, the  
10 civil parties would like to request to the Chamber to proceed  
11 along its schedule so that the trial be progressing smoothly.  
12 And Mr. Nuon Chea has made it very clear that he wants to follow  
13 the proceeding by himself and he want to participate in the  
14 proceeding and at times, he wanted to make oral statements as  
15 well.

16 And if the defence lawyer says that Mr. Nuon Chea's health is  
17 deteriorating, this is -- this has to be supported by experts'  
18 opinion and according to these experts, who're well qualified and  
19 competent experts, affirms that he is fit enough to stand trial.  
20 And as the expert also take into consideration the fact of his  
21 health status at this age.

22 And finally, according to the paragraph 44 of this report that  
23 Nuon Chea wanted to tell the truth to the public, I, on behalf of  
24 the civil party, will be very pleased to hear his statement of  
25 the truth and we actually support this assertion and we want him

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1 to come forward to tell the truth.

2 [14.17.10]

3 We have nothing to request but to ask the Trial Chamber to  
4 proceed expeditiously. Thank you.

5 MR. PRESIDENT:

6 You may proceed.

7 MS. SIMONNEAU-FORT:

8 I would like to say a few words just to say that I align myself  
9 with the submissions of the Co-Prosecutors and also to support  
10 the words spoken by my colleague of the civil parties.

11 In spite of the attempt made by the counsel for Nuon Chea so that  
12 he shouldn't be declared fit to stand trial, the arguments are  
13 very clear. The experts agreed that he is fit to stand trial and  
14 they have provided arguments. I think the criteria for fitness to  
15 stand trial are clear to everyone.

16 Regarding the physical health status of Mr. Nuon Chea, it is true  
17 that he is elderly. The experts have clearly shown that the  
18 physical status of Nuon Chea is stable and there is no reason why  
19 he should not participate in his trial and he, himself, would  
20 like to stand trial, as my learned colleague has just reminded  
21 us.

22 [14.18.46]

23 However, regarding arrangements that can be made by the Chamber,  
24 the civil parties would like this trial to move forward  
25 expeditiously and that it should not be stalled by various

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1 problems. If the Chamber would like to make any arrangements, in  
2 that regard, to ensure that the proceedings move forward  
3 uninterrupted and without any incidents, we deem it necessary to  
4 have Nuon Chea brought to the holding cell. Such a step is  
5 important, not only for the civil parties, but also for the  
6 public. We think that he should be brought to the holding cell  
7 and not kept in the detention centre.

8 Lastly, I would like to make a suggestion to the Chamber. Given  
9 the importance, again, for the civil parties and in view of the  
10 fact that Mr. Nuon Chea, himself, would like to participate in  
11 these proceedings, we think that it is possible for us to  
12 envisage a situation in which Mr. Nuon Chea could be brought to  
13 the courtroom for everyone to see him; both the civil parties and  
14 the public, in order that they should be fully aware of the fact  
15 that Mr. Nuon Chea is present, that he wants to listen to the  
16 proceedings, and that he wishes to be present. I don't think that  
17 would be something very difficult for us to arrange and I think  
18 that allowing the civil parties and the public to see him at the  
19 beginning of the proceedings would be a very good thing. I thank  
20 you.

21 [14.20.54]

22 MR. PRESIDENT:

23 Thank you.

24 Now I hand over the floor to the defence team for Mr. Nuon Chea  
25 to make their final reply if you wish to. You may proceed.



1 MR. SON ARUN:

2 May it please the Court, I would like to reply briefly to the  
3 civil party lawyers.

4 As far as Mr. Nuon Chea is concerned and in my capacity as his  
5 defence lawyer, I have consulted with him and I have worked with  
6 him very closely. I am not a treating doctor, of course, but I  
7 have visited him on a daily basis. Now, I understand for the fact  
8 that one ailment that he is suffering from is the back pain and  
9 the expert did not elaborate on this point. He cannot even sit  
10 upright. When he gets up for just five minutes, he collapses.

11 That is the serious health condition he is suffering. And even if  
12 he is lying down, when he listen to people talking at a lengthy  
13 period, then he become dizzy immediately. That's why I was  
14 requesting to the experts that they recommend the treatment  
15 program for him and the expert fail to make any recommendation.

16 [14.22.48]

17 I am suggesting that we need to find another expert in order to  
18 institute any treatment program for him. I know that everyone is  
19 waiting for justice, everyone want to see the conclusion of this  
20 trial, but the conclusion has to be fair. And we also want it to  
21 be expeditious as well. It is not at our advantage to prolong the  
22 proceeding.

23 It is my conclusion that if Mr. Nuon Chea health status is  
24 improved, then I believe that he will be responsive to the trial.  
25 Whenever you ask him question, he will be responsive to your

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1 question. As the civil party made it clear earlier on that they  
2 want to hear the statement from Mr. Nuon Chea; they wanted to  
3 hear the truth. So I also want to hear the truth. I also want my  
4 client to be able to speak in the Court.

5 [14.23.46]

6 So I would like to suggest to the Court that so long as we have  
7 any treatment programs that improve his health and he can fully  
8 participate in the proceeding; in other words, if his health  
9 condition improves, even if he can sit for say half an hour, it  
10 is also even better, but today his condition does not allow.

11 I thank you very much, Mr. President.

12 MR. PRESIDENT:

13 Thank you.

14 The next sessions we will deal with the second topic of the  
15 hearing concerning the consequence of the decision concerning the  
16 severance of Case 002, and the Chamber is - will render the  
17 decision concerning the recent decision on severance.

18 But now the Chamber wishes to adjourn and we will resume at 3.00.

19 The Chamber is now adjourned - 20 to 3.00, rather.

20 (Court recesses from 1425H to 1444H)

21 MR. PRESIDENT:

22 Please be seated. The Court is now back in session.

23 As the Chamber already notified the parties to the proceedings  
24 this morning, now we are entering the second session because we  
25 already concluded the first session on the medical report.

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1 During the second session, as emphasized, we focus mainly on the  
2 observations by the parties to the proceedings concerning the  
3 result of the medical report on Mr. Nuon Chea. And this report  
4 may impact on the severance of the proceedings in Case File 002.  
5 And the Chamber will issue our decision on this in due course.  
6 And if the Chamber were to rule that Mr. Nuon Chea would be fit  
7 to stand trial, then we would also envisage what consequences  
8 would we face accordingly, and if Mr. Nuon Chea were to be ruled  
9 unfit to stand trial, then what would be the impact of such  
10 ruling. And, as indicated, the Chamber will be issuing this  
11 decision very soon.

12 And we would like to also hear from parties to the proceedings,  
13 starting from counsels for Mr. Nuon Chea first. You may proceed.

14 [14.47.37]

15 MR. KOPPE:

16 Thank you, Mr. President, Your Honours.

17 I think that at this point in time we do not really have any  
18 submissions to make.

19 The impact of the health situation on the continuance of the  
20 proceedings, if you were to judge that he is fit to stand trial,  
21 has of course a high "we have to cross the bridge when we get  
22 there" quality to it. As you are aware and as the medical experts  
23 have explained, his health situation could deteriorate at any  
24 given moment and suddenly. So, if you were to judge that he is  
25 indeed fit to stand trial, we'll just have to see how it goes. If

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1 he is indeed able to follow the proceedings in the holding cell,  
2 that he's actually capable of understanding what is happening  
3 during these proceedings, and if that, at any given day in the  
4 near future, might change, obviously, we, as his counsels, will  
5 inform the Court promptly and adequately.

6 So, at this point in time, we just hope that your decision on the  
7 - on the scope of the trial will soon be rendered, and that from  
8 that point on we'll continue if you were to consider our client  
9 fit, and that, like I said, we'll cross the bridge when we get  
10 there.

11 [14.49.32]

12 MR. PRESIDENT:

13 Thank you.

14 Counsel for Mr. Khieu Samphan, you may have a few words on this  
15 if you would wish to do so.

16 MR. KONG SAM ONN:

17 On behalf of Mr. Khieu Samphan, we do not have any position  
18 concerning the severance. We neither support nor disagree with  
19 the severance, but practically, we can see that Mr. Khieu  
20 Samphan's interest would be damaged if the severance tends to  
21 delay the proceedings or prolong the proceedings.

22 [14.50.27]

23 We have already made a request to make sure that Mr. Khieu  
24 Samphan is provisionally released, because we would like to make  
25 sure his right is properly exercised. And we still stand by our

1 position that we would like Mr. Khieu Samphan to be provisionally  
2 released.

3 And, again, we would not wish the proceedings to be severed.

4 MR. PRESIDENT:

5 Thank you.

6 Now we would like to hand over to the Prosecution.

7 MR. CAYLEY:

8 Thank you, Mr. President. I also have extremely limited comments  
9 to make.

10 In essence, how does this affect the position of the  
11 Co-Prosecutors that was presented to you on the 18th of February?

12 [14.51.37]

13 Well, we've heard today, the medical experts have concluded that  
14 we have a frail, 86-year-old man with a number of stable and  
15 controlled conditions who is mentally and physically fit to stand  
16 trial, but of course you will remain concerned about his  
17 condition, and naturally so. And we still maintain that, because  
18 of that concern, you should adopt the second option that was  
19 given to you by the Supreme Court Chamber of one smaller trial on  
20 some portion of the indictment and give due consideration to  
21 reasonable representativeness, which you recall I explained in  
22 great depth at the hearing in February. And we still say that  
23 S-21 would satisfy that representativeness standard; and I'll  
24 refer you back to paragraph 50 of the Supreme Court Chamber  
25 Judgement.

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1 [14.52.40]

2 I'd also ask you, when you return to your Chambers, to read  
3 paragraph 43 of that Judgement, which deals with exactly what we  
4 are addressing here today. And I'll read the last sentence of  
5 that paragraph because I think it's worth considering. And I  
6 quote as follows:

7 "If anything, the Trial Chamber's doubts about the Co-Accused's  
8 abilities to participate in a lengthy trial militates in favour  
9 of exploring, at the earliest instance, possible ways of shaping  
10 the scope of Case 002/01 that could maximize representation of  
11 the totality of the charges against the Co-Accused, and thereby  
12 optimize the meaningfulness of the justice to be rendered, in the  
13 shortest amount of time."

14 And so, not to keep repeating myself, but we maintain the  
15 position that including S-21 in this case, in one single trial,  
16 will satisfy that requirement.

17 Thank you very much, indeed, for being able to make these  
18 comments.

19 [14.54.04]

20 MR. PRESIDENT:

21 Judge Cartwright, you may now proceed.

22 JUDGE CARTWRIGHT:

23 Thank you very much, President.

24 Yes, you did explore in great detail your concept of reasonable  
25 representativeness in the hearing which began on the 18th of

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1 February, and you emphasized also then that S-21 would provide  
2 additional crimes that would add to the general  
3 representativeness of a severed trial.

4 You underlined on that occasion that there would be additional  
5 underlying crimes against humanity, two or three of them, but you  
6 also mentioned that grave breaches – that is, war crimes – would  
7 also come into play if the Chamber decided to bring back the full  
8 scope of S-21 into a severed trial. You mentioned that, I think,  
9 three witnesses and something like 200 additional documents might  
10 be required.

11 [14.55.28]

12 I'm just wondering how we could cover the issue of international  
13 armed conflict with three witnesses, all of whom worked at or  
14 were detained at S-21, and some documents. And you may recall  
15 that this was a significant issue in the first trial, and it took  
16 significantly more than that sort of cross-section of evidence  
17 and documentation.

18 So I'm very interested to know just how much additional time you  
19 think simply war crimes – that is, the issue of international  
20 armed conflict – might take, because, as we all know, it's a  
21 precondition to considering evidence in relation to war crimes.

22 Thank you.

23 MR. CAYLEY:

24 Yes. Thank you, Judge Cartwright, for that question.

25 We did, actually, address this issue last time in February. It

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1 was addressed, but we can address it again. I can allow Mr.  
2 Lysak, who in fact addressed it last time, to speak about the  
3 evidence that we rely on that for that particular jurisdictional  
4 issue.

5 [14.57.00]

6 MR. LYSAK:

7 Thank you, Judge Cartwright. The - I'm trying to recall the  
8 details of my response before. I would point out a couple of  
9 things.

10 One, the most compelling evidence that proves the - both the  
11 existence of the armed conflict and the Accused knowledge of it  
12 are documents that are already in evidence in Case 002/01. And  
13 specifically, I would have in mind by that documents such as  
14 reports and telegrams that were regularly sent to the leaders in  
15 Phnom Penh, reporting on the armed conflict, Standing Committee  
16 minutes, and minutes of meetings where conflicts with Vietnam  
17 were discussed, and also announcements issued by the Party  
18 leaders themselves, referring to the Vietnamese conflict; there  
19 are a number of those.

20 So, on the documents itself that are already before the Chamber,  
21 the evidence is quite overwhelming in terms of both the existence  
22 of the armed conflict and the Accused knowledge of it. A number  
23 of witnesses have made reference to that, and I believe I also  
24 noted in my comments last month that there are a number of  
25 military witnesses upcoming who were directly involved as well in



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1 the military conflict as it escalated in 1977.

2 So, from our perspective, as the party with the burden of proof,  
3 we are quite satisfied that the documentary evidence, coupled  
4 with some of the testimony that will occur, will prove beyond a  
5 doubt the existence of the armed conflict.

6 [14.58.50]

7 JUDGE CARTWRIGHT:

8 Yes. Thank you.

9 I read those submissions, as well. However, in the first trial  
10 before this Chamber, which is not directly associated with this  
11 trial, there was significant oral evidence on this very point  
12 because the documents to which you refer were not so specific as  
13 to the time of the armed conflict, which will of course be  
14 relevant.

15 Therefore, I would like to know if you think that it can be done  
16 just with documents and without witnesses. And, as I recall we  
17 had Nayan Chanda, for a significant period in the first trial,  
18 commenting on these very issues of armed conflict.

19 Therefore, I am, as you can see, sceptical about your claims that  
20 this can be done just on documents. And time issues are of  
21 fundamental importance in this - in this trial, as we have been  
22 reminded over and over again and, indeed, as the Trial Chamber  
23 itself has said right from the outset.

24 [15.00.18]

25 MR. LYSAK:

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1 Yes. Thank you, Judge Cartwright.

2 I would submit to you that when we put those documents before  
3 you, if you wish to hear a presentation from us, they will be  
4 overwhelming, both in terms of establishing the timing and the  
5 knowledge of the Accused.

6 And I'm not saying that we are only relying on documents; there  
7 has already been witness testimony regarding incidents of  
8 military conflict with Vietnam. And, if you add S-21, it will be  
9 an issue that will certainly be touched upon with other - other  
10 people.

11 In terms of Nayan Chanda, I do not believe it is necessary to  
12 call an expert on the armed conflict. I believe the  
13 contemporaneous evidence and the testimony of the percipient  
14 witnesses is enough. That is our position.

15 MR. PRESIDENT:

16 Thank you.

17 Finally I hand over to the Lead Co-Lawyers for the civil parties.

18 [15.01.48]

19 MR. PICH ANG:

20 Good afternoon, Mr. President, Your Honours, parties to the  
21 proceedings, and civil parties who are present in today's  
22 hearing.

23 As for the impacts or the consequence as result of the report by  
24 the experts on the current case, we actually had the opportunity  
25 to ask the two experts, Professor John Campbell and Dr. Seena

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1 Fazel, very comprehensively and we have listened to the questions  
2 by the prosecutor as well. Of course, the two experts have done  
3 their job meticulously, and according to their report, there is  
4 no reason why Mr. Nuon Chea cannot attend the proceeding.

5 So the request – any request to separate Mr. Nuon Chea or Mr.  
6 Khieu Samphan in separate trials, we are of the opinion that this  
7 is not a real possibility here and it is not warranted because  
8 Mr. Nuon Chea has the necessary capacity to attend in this  
9 courtroom.

10 Of course, we know that Mr. Nuon Chea is 87 year of age, so it is  
11 understandable that he is grown to various ailments at this  
12 advanced age, and we can also foresee that in the future, from  
13 time to time, there might be health issues arising. However, the  
14 civil parties do not see the importance to separate the case into  
15 many trials.

16 [15.03.58]

17 And, in addition, the civil parties would like to urge the Trial  
18 Chamber to proceed expeditiously.

19 And we do not want the proceeding to cover only a small portion  
20 of the facts. Actually, we want the trial to be as comprehensive  
21 as possible because we want to see the justice done completely.

22 This is the opinion of the lawyers for the civil parties.

23 And, as my esteemed colleague Mr. Hong Kimsuon said, we support  
24 the various mechanisms in order to support Mr. Nuon Chea,

25 particularly to ensure that his health status improves so that he

1 can participate fully in the proceedings, particularly to provide  
2 him the opportunity to tell the truth to the people.

3 And that is all for me, Mr. President, and I would like to cede  
4 the floor to my esteemed colleague if she wishes to make any  
5 further statement.

6 [15.05.15]

7 MS. SIMONNEAU-FORT:

8 Yes, I would like to make a few remarks to spell out our position  
9 as civil parties.

10 My first remark is that once more, we find the situation in which  
11 the Chamber and the parties are confronted with this problem of  
12 finding some balance in terms of representativeness, and we want  
13 the case to proceed expeditiously. This is a very thorny problem,  
14 and that is why we are revisiting this matter again today, after  
15 having discussed it some weeks ago and a few months ago.

16 Regarding the severance per se, I believe we have stated on  
17 several occasions in this courtroom that we are not against the  
18 idea of severance in so far as it remains factual - and I insist  
19 on this word, "factual" - and to the extent that the Chamber  
20 seeks to establish sufficient representativeness in this trial,  
21 since it is increasingly likely that we will not have any trial  
22 after this one.

23 So, we stated that we are in support of a factual severance,  
24 provided it is sufficiently representative. And I have pointed  
25 out that it is not justified, nor is it lawful, to base the

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1 severance on legal characterization of the facts. And I think  
2 that the severance is not possible, so we request that the  
3 Chamber should not decide that there will be a severance.

4 [15.07.05]

5 A severance in terms of the personal jurisdiction is not good.  
6 And in light of the findings of the experts, there is no basis  
7 for a severance of this case, and we would wish, therefore, that  
8 Khieu Samphan and Nuon Chea should be joined in a single trial as  
9 much as possible.

10 Let me add a few words on the issue of death which was mentioned  
11 and which is weighing so much on our remarks and on adversarial  
12 discussions, and perhaps decisions that will be made.

13 It is unfortunate that the death of persons, particularly the  
14 Accused - as something that would spell the end of the trial.  
15 Death is an element that has hung over this trial since the very  
16 beginning, for at least 10 years. However, this doesn't mean that  
17 the death of the Accused is tantamount to the death of the civil  
18 parties, and witnesses, and persons as important as Mr. Vann  
19 Nath, who is a major witness.

20 Death is inherent in this trial. However, I think that we should  
21 not overly focus on time limits - three months, six months, three  
22 months; that doesn't make sense. I think the expert witnesses  
23 were very clear on that; they didn't give any prognosis on that.  
24 His answer was based on common sense, and each and every one of  
25 us could have done the same. It would be unfortunate for us to

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1 hear of the death of Mr. Nuon Chea in six months. However, this  
2 should not dictate time limits. It's not only death that is  
3 important in this trial; there are other things that were need to  
4 establish and prove.

5 [15.09.12]

6 I would also like to state that if death were to come about,  
7 which is possible, or if other problems cropped up and put an end  
8 to this trial, which is also possible, I think it is important  
9 for us to underscore the fact that the proceedings is all what is  
10 said here, and including what the civil parties have stated here  
11 in terms of evidence, history, background, and their  
12 understanding of what happened. All of this is important and will  
13 remain important. So such adversarial proceedings will remain  
14 essential throughout the trial.

15 As I read everywhere that this trial will be a failure, I would  
16 like to lay emphasis on this because we can say that we don't  
17 have any control over death; of course it is a failure, and it is  
18 a half-truth, and it is also a challenge, an front to the civil  
19 parties and all those who have fought to establish the truth and  
20 to reconstitute the memory and what happened.

21 [15.10.28]

22 Death is something we have no control over, but I believe that  
23 there are other things happening here than the death of the  
24 Accused; we should not forget that. And I plead once more that we  
25 should proceed in a trial that has meaning, with proceedings that

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1 have meaning, with representativeness that is significant. And  
2 unfortunately, there might be issues that will put an end to the  
3 proceedings for reasons beyond our control.

4 MR. PRESIDENT:

5 Thank you.

6 And I now hand over to Judge Jean-Marc Lavergne. You may proceed,  
7 Judge.

8 [15.11.14]

9 JUDGE LAVERGNE:

10 Thank you, Mr. President. I have a number of questions to put to  
11 the parties with a view to clarifying the positions of all  
12 concerned.

13 Let me start with the defence for Nuon Chea. A while ago we heard  
14 Counsel Son Arun talk about the opinion of the medical experts,  
15 and if I understood him correctly, he was saying that Nuon Chea  
16 was not fit to stand trial and to participate in these  
17 proceedings. I also heard Counsel Koppe explaining that it may  
18 well be that the issue of fitness to stand trial is not the  
19 current problem we face at this point in time, but that it could  
20 happen in the future, and that when we get to that bridge, they  
21 may - we may cross the bridge and make certain requests at that  
22 point.

23 Should I understand that there is some disharmony in the position  
24 of the Nuon Chea defence team? What is the position of the two  
25 counsels for Nuon Chea? What kind of requests or application are

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1 you talking of when you said, "When we get to that bridge, we'll  
2 cross it and we'll ask certain questions"? Could you shed light  
3 on your position, please?

4 (Judges deliberate)

5 [15.13.52]

6 MR. PRESIDENT:

7 Yes, Judge, you may – you may proceed.

8 JUDGE LAVERGNE:

9 I do not know whether I have the floor or the defence for Nuon  
10 Chea to respond to my request for clarifications. My request was  
11 quite clear. Or would you like me to repeat it?

12 MR. KOPPE:

13 No, Judge Lavergne. Your question was quite clear. I understand  
14 your question.

15 But, rest assured, we are never disharmonious. That's all I have  
16 to say.

17 JUDGE LAVERGNE:

18 Are you saying that you are singing from two hymn sheets?

19 MR. KOPPE:

20 My colleague is saying there is no translation. Is that correct?

21 JUDGE LAVERGNE:

22 The question is you are singing from two hymn sheets?

23 [15.15.05]

24 MR. KOPPE:

25 Also, I understand your question, but we're not, no.



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1 I see that - I mean, you can ask more questions but you're not  
2 going to get an answer from our side on this specific issue.

3 JUDGE LAVERGNE:

4 Very well. That is not exactly what we refer to as stereophony.

5 Now I have another question for counsel for Mr. Khieu Samphan. We  
6 heard his counsel say that an application for release of Mr.  
7 Khieu Samphan may have been filed. If that has been done, I  
8 haven't seen that application.

9 That said, I would like to know at this stage in the proceedings  
10 whether that application has any link with the request for  
11 severance, with Mr. Nuon Chea's health status now, and the  
12 decision by the - or the opinion of the experts that he can stand  
13 trial, he's fit to stand trial.

14 [15.16.21]

15 To avoid a situation of vagueness, can you please clarify your  
16 position? Is your application for release of your client, Mr.  
17 Khieu Samphan, linked to what we have just discussed today? Is it  
18 linked to any application for severance? I haven't quite  
19 understood your position on severance. Are you applying for  
20 severance or not?

21 MR. KONG SAM ONN:

22 Thank you, Your Honour. For this question, I would like to  
23 clarify our position as follows.

24 First, our application for a release on bail is under  
25 preparation; we have not submitted to the Chamber. It is still

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1 being discussed among ourselves.

2 Secondly, in relation to the severance of Case 002, to date we  
3 have not received any decision - decision of the Trial Chamber in  
4 relation to this issue. That's why our application for release of  
5 our client has not - does not have any clear basis yet. Any  
6 reason that may provide prejudice to the right of Mr. Khieu  
7 Samphan will depend largely on the decision of the severance of  
8 the current case.

9 [15.18.24]

10 And I would like to inform the Chamber of our position once  
11 again, that the issue of severance of Case 002, by virtue of the  
12 principle, it should be severed only when there is a conflict in  
13 this current case. And, secondly, it may be necessitated by the  
14 interests of justice. Then the Chamber may examine based on these  
15 two factors. However, there has not been any conflict of interest  
16 in the current case, so the first factor may not be the case that  
17 the Chamber may take into consideration when considering severing  
18 the current case.

19 Secondly, if the Trial Chamber is to sever this current case,  
20 then the risk is that it may lead to the prolongation of the  
21 case, and the severance of this case may also include other  
22 issues that may be subjected to arguments by other parties as  
23 well, and this will definitely prolong the proceedings.

24 [15.19.58]

25 JUDGE LAVERGNE:

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1 Very well. I believe we will just have to content to ourselves  
2 with that response.

3 I have a question now for the Co-Lead Lawyers for the civil  
4 parties. We heard from the National Co-Lead Lawyer. I understand  
5 that his wish is for all of the facts alleged against the Accused  
6 - be included. Now, perhaps I misunderstood something, or perhaps  
7 this is a matter of interpretation, but I did not fully  
8 understand as to whether or not he was in favour of a severance  
9 or a single trial on all of the charges. Therefore, that is my  
10 first question.

11 And, when I heard Simonneau-Fort state that ultimately the civil  
12 parties would be in favour of severance, I do not understand the  
13 basis on which they would be in favour of a severed case. Do they  
14 subscribe to the position of the Co-Prosecutors or do they stand  
15 by a different position, and if so, which one?

16 [15.21.20]

17 MR. PICH ANG:

18 Thank you, Your Honour, for putting the question for  
19 clarification for us. I apologize to Your Honours if the position  
20 I made earlier on was not clear enough. I will speak rather  
21 slowly this time.

22 We are not requesting for one case - we are not. Our position is  
23 not, actually, asking for one case in 002. And neither are we  
24 requesting that there should be only one judgement in Case 002.

25 [Intervention translated from French:] All of the facts are

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1 rendered with one judgement. [End of intervention in French]

2 We actually envisaged that the first segment of trial should be  
3 concluded in a fairly appropriate time, and we actually subscribe  
4 to the position of the prosecutor in this respect.

5 In addition, we are earnestly requesting to the Chamber that -  
6 following the first segment of trial, we suggest that there be  
7 another segment of trial because the civil parties, as well as  
8 the victims, would like to see the trial in - with other facts,  
9 for example of the charges of forced marriage, forced labour, and  
10 other victims, they want to see the trial of those facts as well.  
11 So, we actually want to have the initial trial that is going to  
12 be defined by the upcoming decision of the trial and we would  
13 also like to request that there will be subsequent trials as well  
14 on other facts during the period.

15 I hope I have made myself clear, Mr. President. Thank you very  
16 much.

17 [15.23.55]

18 MR. PRESIDENT:

19 Thank you.

20 Yes, you may proceed.

21 MS. SIMONNEAU-FORT:

22 I believe that my learned friend was very clear. We do stand by  
23 the same position; we are certainly in favour of severance.

24 In terms of the kind of severance per se, we believe that the  
25 Trial Chamber cannot proceed with the severance on legal

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1 characterizations of the crimes. We believe that the  
2 characterization can only be defined at the end of the trial.  
3 And in terms of the factual allegations, we have never diverted  
4 from our previous position, which was to stand by the  
5 Co-Prosecutors.

6 Thank you very much.

7 [15.25.00]

8 JUDGE LAVERGNE:

9 Thank you very much for those much-appreciated clarifications.  
10 And I have further questions for the parties. It would appear  
11 that most are in favour of severance.

12 The Supreme Court has asked the Trial Chamber to discuss with the  
13 parties future intentions or projects for future trials - that  
14 is, to hold further and subsequent trials.

15 Since we are addressing this matter, there is a plethora of  
16 possibilities before us. Either we envisage a second trial once  
17 the first trial has been adjudicated upon - that is, once a  
18 judgement has been issued - and perhaps even once the judgement  
19 has become definitive or we can hold concurrent proceedings -  
20 that is, following an initial severance, while the Trial Chamber  
21 is drafting a verdict for the first trial. We can also envisage  
22 holding other trials and other proceedings under the guise of a  
23 second trial. Neither of the scenarios are identical to one  
24 another.

25 [15.27.00]

1 I recall that the Co-Prosecutors, not too long ago, had indicated  
2 that there could – that the holding of concurrent proceedings was  
3 not ideal, as it was less preferable to have a first trial and  
4 then a verdict, a verdict that would be definitive and that could  
5 serve as a basis for establishing judged and adjudicated facts.  
6 We also must take into consideration the Decision rendered by the  
7 Supreme Court Chamber itself, under paragraph 51, according to  
8 which proceeding with several trials judged by a single bench of  
9 judges could lead to a certain number of difficulties, including  
10 a bias on the part of the Judges.  
11 Now, this has perhaps given rise to some thoughts or positions.  
12 Perhaps the parties would like to make their contributions to  
13 this debate, at which point I would invite the parties to do so.  
14 I understand that the defence for Nuon Chea is not in favour of  
15 severance and perhaps it would wish to expand on its position,  
16 and now would be the most appropriate time.

17 [15.29.29]

18 MR. KOPPE:

19 Thank you, Judge Lavergne.

20 As we have argued in – during the hearing, in respect of the  
21 question of whether there should be one big trial or, rather,  
22 several trials consecutively, we have taken the firm position  
23 that one big trial should have the preference.

24 There's – there are quite some reasons that we have argued this.

25 One of the most important reasons is that the Supreme Court

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1 Chamber seems to have indicated that it might be problematic,  
2 from a viewpoint of bias of the Trial Chamber, if we are to have  
3 the end of one trial and the continuance of the second trial.

4 We've also stated that one big trial has our preference in  
5 relation to the accusations against our client. We feel that the  
6 whole - the complete content of the Closing Order should be the  
7 scope of this one big trial.

8 We've also argued that simply and solely adding S-21 does not  
9 meet the reasonable representativeness test.

10 [15.31.06]

11 As a matter of fact, in answering the earlier submissions of the  
12 International Co-Prosecutors, if you see and if you read  
13 carefully the media reports which have come out after the death  
14 of the co-accused Ieng Sary, one can read the word "genocide" in  
15 almost every article - I presume in every article on his death.

16 We have argued earlier that not prosecuting Nuon Chea for  
17 genocide would not meet that reasonable representativeness test.

18 And in addition to this, although nobody in this courtroom knows  
19 how long our client will still live, it might very well be that  
20 he is indeed completely recovered from the acute bronchitis and  
21 that he might live another three to four years, maybe even six,  
22 maybe it will be a hundred. So, actually, the reports and the  
23 results of the examination of the experts today seem to indicate  
24 extra grounds to our earlier viewpoint that there should be one  
25 big trial based on the scope - on the complete scope of the

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1 Closing Order.

2 And we submit – we repeat our earlier viewpoint – our earlier  
3 stand in this.

4 [15.33.01]

5 JUDGE LAVERGNE:

6 Thank you very much, Counsel Koppe.

7 And the question to other parties. Now, in the scenario that we  
8 do hold several trials, the Trial Chamber would like to know that  
9 – above and beyond the first trial, what are the facts that have  
10 to be judged immediately after the first trial? Counsel Koppe has  
11 talked about the charges of genocide. Is this a view that is  
12 shared by other parties, that such a charge should be tried  
13 immediately in a second trial?

14 Can we please hear from the defence for Mr. Khieu Samphan, unless  
15 the defence for Mr. Nuon Chea wishes to add something?

16 [15.34.00]

17 MR. KONG SAM ONN:

18 Thank you, Your Honour, for the question.

19 I would like to point out that Your Honour already pointed to the  
20 assessment by the Supreme Court Chamber that there would be  
21 pre-judgement if the hearing was not yet concluded and we  
22 proceeded to another case at the same time.

23 If the Supreme Court Chamber has recommended so, this gives rise  
24 to appeal by parties to the proceedings based on this ground. So,  
25 if the Trial Chamber is now conducting hearings on parts of Case



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1 File 002 and continues to hear other parts of the proceedings in  
2 Case File 002 at the same time, this leads to the prejudice or  
3 pre-judgement of the cases. And it is our position that severance  
4 should never be in place, because the Supreme Court Chamber rules  
5 that this is the only way to avoid such pre-judgement.

6 [15.35.51]

7 And, if there is a new panel that is available to adjudicate or  
8 to conduct the proceedings when part of the case is being  
9 adjudicated by the current Chamber, then that would be also a  
10 remedy. But with that, I can conclude that we are of the opinion  
11 that Severance Order is not appreciated.

12 MR. CAYLEY:

13 Thank you, Judge Lavergne.

14 You know we set our position out very clearly in the last hearing  
15 on this matter, and the difficulty that we see of moving to the  
16 next trial pending judgement and appeal in the first trial are  
17 the issues that I referred to last time. There are legal  
18 obstacles that are in place that actually prevent us from going  
19 down this road, and the Supreme Court Chamber pointed that out.  
20 This is the issue of using facts from the first trial in this  
21 second sub-trial. And the answer to those questions have still  
22 not been answered. I see that as a real problem and I don't know  
23 - I can't give you answers on how to overcome that.

24 [15.37.20]

25 As far as the second panel being established and hearing a case

1 afresh - I mean, I think we've got to be absolutely frank, all of  
2 us at this stage; the financial situation of this Court, we know  
3 it very well. And to establish a second Chamber, recruit judges  
4 from overseas - international judges - and commence that trial, I  
5 think it's highly unlikely that that is an option that will work.  
6 It was suggested by the Supreme Court Chamber, but I think the  
7 other factors that the International Civil Party Lead Co-Lawyer  
8 was referring to, we have to confront that. It is a reality.  
9 We still maintain our position that in all likelihood, this will  
10 be the only trial that takes place - this will be the only trial,  
11 it will be the last trial of this Court - and that by adding  
12 S-21, it will make it a reasonably representative trial.  
13 In respect of genocide - you asked about genocide. Of course,  
14 genocide is the most serious charge against the Accused, but -  
15 but let's not recall - and not to diminish that allegation, that  
16 crime - that most of the killings that took place, the vast  
17 majority of the killings were of Khmer, of Cambodian, and that's  
18 never been characterized as genocide. And, indeed, if you address  
19 the killings that took place in S-21, you will be addressing a  
20 proportion of the greatest part of the killing that took place.  
21 Remember that genocide only concerns the Vietnamese and the Cham,  
22 and there are legal reasons for that that we know about.  
23 [15.39.15]  
24 So, again, I would just reiterate our position; it's set-out very  
25 well in our submissions from February the 18th. We maintain that

1 position.

2 Thank you.

3 MS. SIMONNEAU-FORT:

4 Perhaps in response to the first question asked by Judge Lavergne  
5 with respect to the proposals put forward by the Supreme Court  
6 Chamber, with all due respect to the Supreme Court Chamber, I  
7 would submit that its proposals are entirely unrealistic for the  
8 exact same reasons that have just been advanced to you by the  
9 Co-Prosecutor. I believe that it is totally impossible to start a  
10 second trial during deliberation of the first because the first  
11 trial warrants a verdict on appeal before any possibility of  
12 holding a second trial.

13 With respect to establishing a second panel that would work  
14 concurrently with yours, again, as the Co-Prosecutor has stated,  
15 I think this is a totally unfeasible option, given the state of  
16 affairs. It is totally impossible.

17 [15.40.38]

18 With respect to your second question, we have not been able to  
19 consult with our civil party lawyers with respect to a second  
20 trial. However, I do understand that the Trial Chamber is  
21 following a factual and chronological sequence and I believe that  
22 this would be the logic that imposes. However, I cannot comment  
23 further on that. I can simply say that the issue of the legal  
24 characterization of crimes must be considered and is a separate  
25 matter in and of itself.

1 Thank you. I believe that my co-lead lawyer has a few comments to  
2 make.

3 MR. PICH ANG:

4 Regarding question number 1 and that there should be another  
5 hearing being conducted when the Judges of the Bench are  
6 considering the - writing the judgement for the pending - the  
7 current case, to us, by doing so, it is not easy for the handling  
8 of the whole case completely, because we are afraid no judgement  
9 would be rendered expeditiously enough if the approach is  
10 applied.

11 [15.42.27]

12 We, the Lead Co-lawyers for the civil parties, would like the  
13 Judges of the Bench to hear the evidence in the case and then  
14 adjourn so that Judges can render a judgement, so that the  
15 judgement itself can be rendered as soon as possible. That's what  
16 the civil parties had been longing for. And we already note that  
17 Mr. Ieng Sary had passed away when no judgement or conviction has  
18 ever been rendered.

19 And with regard to question number 2, civil parties focus more on  
20 the facts that are very much relevant to the civil parties to be  
21 addressed as priority. Nonetheless, we would like to have some  
22 time to consult with the civil parties to see - or to bring the  
23 most representative cases before the Chamber and we would like to  
24 include also the forced marriages, and life at cooperatives, and  
25 detention centres across the country during the regime so that

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1 the sufferings or damages civil parties had suffered are properly  
2 covered.

3 (Judges deliberate)

4 [15.45.31]

5 MR. PRESIDENT:

6 Thank you.

7 The hearing on the report by the medical experts concerning the  
8 health and fitness of Mr. Nuon Chea to stand trial and also the  
9 observations made by parties to the proceedings concerning this  
10 have now come to the conclusion, and in - also the hearing on the  
11 impact of the Severance Order has come to an end, as well.

12 As the President of the Trial Chamber and on behalf of my fellow  
13 Judges of the Trial Chamber, we would like to thank you, parties  
14 to the proceedings, for today's sessions. Your observations and  
15 comments are very important for our decision, and the Chamber is  
16 to render the decision in due course. As I emphasized, the  
17 Chamber will rely heavily on the observations or conclusions by  
18 parties to the proceedings, and the medical report and the  
19 testimonies of the medical - or the experts during today's  
20 sessions.

21 [15.47.20]

22 And, once again, I would like to thank you, Co-Prosecutors, the  
23 Lead Co-Lawyers for the civil parties, the defence counsels, and  
24 the security personnel, TC staff members, and also the  
25 interpreters, and other relevant units for helping these

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1 hearings.

2 The Chamber also wishes to inform that there are still two  
3 issues.

4 First, the Chamber plans to announce a brief decision concerning  
5 the fitness to stand trial of Mr. Nuon Chea on Friday, the 9th  
6 (sic) of March 2013. The Chamber will notify the parties in the  
7 near future.

8 And at the same time the Chamber also has a small ceremony to be  
9 administered before the Chamber because we have a new  
10 investigator who shall take the oath before the Chamber to make  
11 sure the investigator can fully take the office.

12 I have already made it clear that the Chamber will rule on the  
13 severance of the case and also the fitness to stand trial of Mr.  
14 Nuon Chea at 9 a.m. on Friday, and the Chamber will notify the  
15 parties before the hearing commences on the 29 of March 2013. And  
16 I hope it is clear now.

17 [15.50.18]

18 We would like to proceed to the oath-swearing ceremony. The new  
19 investigator will take the oath. According to Internal Rule 16,  
20 the new investigator who has been accredited has to take the oath  
21 before a Chamber. So, now the Trial Chamber would like to  
22 administer this oath-swearing.

23 The composition of the Judges during the ceremony includes I,  
24 myself, the President, Judge Silvia Cartwright, Judge Ya Sokhan,  
25 Judge You Ottara, and Judge Jean-Marc Lavergne, along with two

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1 Reserve Judges, Judge Fenz and Judge Thou Mony.

2 Mr. Duch Phary, is the investigator present or available to take  
3 the oath?

4 THE GREFFIER:

5 Ms. Plante, Julie, who is the new investigator for the Office of  
6 the Co-Investigating Judges, is present and awaits call by the  
7 Chamber.

8 MR. PRESIDENT:

9 Court Officer is now instructed to bring in the investigator into  
10 the courtroom.

11 (Ms. Julie Plante enters courtroom)

12 [15.52.33]

13 Mr. Co-Prosecutors, would you like to make any observation  
14 concerning these proceedings before us now?

15 MR. CAYLEY:

16 Thank you, Mr. President. We don't have anything to say. Thank  
17 you.

18 MR. PRESIDENT:

19 Thank you.

20 Next, I would like to proceed to read Broadcast Number 40 by the  
21 Ministry of Justice, broadcast on the accreditation to be offered  
22 to the International Investigator for the Office of the  
23 Co-Investigating Judges at the Khmer Rouge - at the ECCC.

24 "According to the Constitution of Cambodia and other Regulations,  
25 hereby decides to offer the accreditation to the new

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1 Co-Investigator with the following identification:

2 "Name and Surname: Plante, Julie.

3 "Born on the 12th of July 1973, in Canada.

4 "Date of Starting Service: the 9th of March 2013.

5 "The investigator's mission or service will be expired after the  
6 - after the mandate of the ECCC also expires or if or when the  
7 service of the investigator expires. And the individual as  
8 indicated above will have to exercise or carry out this Broadcast  
9 effectively from today onwards."

10 Signed: "His Excellency Ang Vong Vathana, the Minister of  
11 Ministry of Justice".

12 The Chamber would like to invite Madam Investigator to please  
13 rise.

14 Court Officer is now instructed to bring the oath to the  
15 investigator so that she can read after us.

16 [15.56.28]

17 MS. PLANTE:

18 I solemnly declare that I will perform my duties and exercise my  
19 powers as an investigator of the Extraordinary Chambers in the  
20 Courts of Cambodia for prosecution of crimes committed during the  
21 period of the Democratic Kampuchea honourably, faithfully,  
22 impartially, and conscientiously and I will not seek or accept  
23 orders in regard to the performance of those duties or the  
24 exercise of those powers from any source other than the  
25 Co-Investigating Judges of the Extraordinary Chambers in the



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1 Courts of Cambodia.

2 MR. PRESIDENT:

3 Thank you very much.

4 You are now instructed to sign on this oath with the greffier.

5 You may be seated now, please.

6 The oath-swearing ceremony now comes to an end, but the Chamber

7 wishes to also have a few words to you, that now you have already

8 been selected to work – recruited by the recruitment panel, and

9 secondly, you have been accredited fully as an investigator for

10 the Office of Co-Investigating Judges, and thirdly, you have

11 already taken the oath before us and everyone. And the Chamber

12 hopes you will do your best to fulfil your duties as you already

13 stated in the oath you read out. And finally, the Chamber would

14 like to wish you the very best.

15 The hearing now comes to an end. The Chamber will adjourn.

16 And security personnel are now instructed to bring Mr. Nuon Chea

17 back to the detention facility.

18 The Court is adjourned.

19 (Court adjourns at 1559H)

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