



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

**TRANSCRIPT OF PROCEEDINGS
PUBLIC SESSION
Case File N° 002/19-09-2007-ECCC/TC**

**Trial Management Meeting
8 December 2016**

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 24-Apr-2017, 14:17
CMS/CFO: Sann Rada

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

Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
SON Arun
KONG Sam Onn
Anta GUI SSE

Trial Chamber Greffiers/Legal Officers:
CHEA Sivhoang
LIM Suy Hong
Roger PHILLIPS

Lawyers for the Civil Parties:
CHET Vanly
Marie GUIRAUD
LOR Chunthy
PICH Ang
SIN Soworn
VEN Pov

For the Office of the Co-Prosecutors:
CHEA Leang
Nicholas KOUMJIAN
Dale LYSAK
SONG Chorvoïn

For Court Management Section:
SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Judge FENZ	English
Ms. GUIRAUD	French
Ms. GUISSÉ	French
MR. KOPPE	English
MR. KOUMJIAN	English
THE PRESIDENT (NIL Nonn Presiding)	Khmer

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1 PROCEEDINGS

2 (Court Opens at 0902H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session for the Trial
5 Management Meeting.

6 On behalf of the Judges of the Trial Chamber, I formally welcome
7 the presence of the Co-Prosecutors, Deputy Co-Prosecutors, Lead
8 Co-Lawyers for civil parties, and lawyers for civil parties, as
9 well as the -- all the Defence Counsels for the Accused.

10 [09.03.35]

11 And pursuant to Rule 79.7, the Trial Management Meeting shall be
12 held in camera, except decided otherwise by the Trial Chamber.

13 The Chamber received a request from the defence team for Nuon
14 Chea to hold this Trial Management Meeting in the public. The
15 Co-Prosecutors, the Lead Co-Lawyers, and the Defence Counsel for
16 Khieu Samphan did not object to this request.

17 Considering the substance of the Internal Rules, as well as the
18 request by the party and other matters, the Chamber decides that
19 the Trial Management today is held in public in the interests of
20 the general public.

21 [09.04.23]

22 And the purpose of today's Trial Management Meeting is to discuss
23 some matters that the Chamber informs the parties in document
24 E449 including:

25 1) Page length of closing briefs;

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- 1 2) Deadline for filing closing briefs;
- 2 3) Scheduling of closing statements following closing briefs;
- 3 4) Modalities and timing of submissions on applicable law; and
- 4 5) The impact, if any, of the SCC Judgment on the conclusions of
- 5 evidentiary proceedings in Case 002/02.

6 The Trial Chamber also notes that the first, second, and third
7 items are interrelated. The Chamber proposes to the parties that
8 these three items shall be discussed together; that is, the page
9 length of the closing briefs, the deadline for filing closing
10 briefs, and the scheduling of closing statements following
11 closing briefs.

12 And the Chamber first hands the floor to the Defence Counsel for
13 Nuon Chea to make an oral request in relation to the three items
14 of the agenda. You have the floor.

15 MR. KOPPE:

16 Yes, Mr. President, thank you.

17 (Microphone not activated)

18 [09.06.26]

19 MR. KOPPE:

20 My microphone -- my device went wrong.

21 Good morning, again, Mr. President, Your Honours. Good morning,
22 counsel.

23 Indeed, Mr. President, we filed a request on the 11th of October,
24 this year, in relation to issues of the page limit, time limit,
25 and the ultimate content of our closing brief.

3

1 In our submissions, we wrote two things about how we should
2 approach the closing brief in the second trial. We made some
3 legal arguments, which I will not repeat now, and we made some
4 comparison arguments as well.

5 [09.07.27]

6 What we asked for, it is written in our relief. We asked to
7 extend the time limit provided to us to file our closing brief by
8 one month, to three months in total, to begin from January 2017
9 at the earliest date.

10 That last part, by the way, I think has most likely become moot,
11 because we just recently saw the email of the senior legal
12 officer, indicating that in the first week of January we -- we
13 would have a key document presentation hearing. So that would
14 automatically bring the end of the evidentiary proceedings at
15 least until the first week of January. But if that is, indeed,
16 the case, if -- if the document -- key document hearings are the
17 very last hearings in Case 002/02, then, indeed, the three months
18 that we've asked for would start running from the 6th of January
19 or the Monday after presumably.

20 The second thing -- the second issue that we raised is to amend
21 the notice of deadlines and provide that the parties can either
22 file an applicable law brief in advance of our closing briefs or
23 to include such discussion into our closing briefs. Our view now
24 is that it should be integrated as the Prosecution has indicated
25 in the response, as well, in our closing brief that that would

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1 be, by far, the most practical.

2 [09.09.36]

3 The third request we made in our submissions is to allow the
4 Defence -- to allow us to file a 600 page closing brief,
5 inclusive of footnotes and excluding annexes and appendixes.
6 And the fourth request to schedule a trial management meeting
7 has, meanwhile, been honoured; that's why I'm making these
8 arguments now.

9 A few additional remarks or preliminary remarks, Mr. President,
10 if you allow me. Meanwhile, we have been able to review the
11 Appeal Judgment, recently rendered by the Supreme Court Chamber,
12 and there is one particular issue or particular point that I
13 think is pertinent to the discussion of today that I would like
14 to refer to and that is the following: These two issues are
15 closely related. It's, first of all, the decision of the Supreme
16 Court Chamber in paragraphs 418 and 419 and 420, indicating or
17 ruling that in relation to charges of crimes against humanity of
18 murder or extermination that each individual, alleged killing has
19 to be proven beyond a reasonable doubt.

20 [09.11.40]

21 That means that if you read the Supreme Court Chamber Judgment in
22 a -- in a broader context, you will see that each alleged murder,
23 during the evacuation of Phnom Penh, had to be proven beyond a
24 reasonable doubt. So that's why the Supreme Court Chamber, in its
25 Judgment, went quite lengthy to make sure that all requisites --

1 prerequisites were met in this respect.

2 I think that's very important to realize because that means that
3 each and -- each individual murder alleged to have taken place,
4 either in -- in relation to the Vietnamese or the Cham, has to be
5 proven beyond a reasonable doubt. That means that witnesses have
6 to be discussed -- the evidence of witnesses has to be discussed
7 at length.

8 And to -- to make it very specific, one of the most interesting
9 parts of this Judgment is, we feel, the considerations from the
10 Supreme Court Chamber in relation to the testimony of a person
11 called Sam Sithy. He was, basically, the only witness that the
12 Supreme Court Chamber saw and examined, in this courtroom, during
13 the appeal hearings. The Chamber had relied upon his testimony in
14 the 002/01 Judgment.

15 [09.13.26]

16 And just to give you some background, we had asked for this
17 witness to -- to appear and to give his testimony to an alleged
18 execution of multiple persons in April or May 1975. We
19 subsequently made lengthy submissions as to the unreliability or
20 -- unreliability of this particular witness. I think it's very
21 worthwhile to have a look at the response from the Prosecution at
22 the time. That is F28/2.

23 The Prosecution needed nine pages to submit that this testimony
24 was, as they said, "wholly credible and consistent, extremely
25 credible, extremely consistent with his earlier accounts and the

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1 Defence was making desperate attempts to discredit and insult the
2 survivor of an incredibly horrific event, wholly unpersuasive,"
3 etc., etc. It's even called ludicrous at one point.

4 [09.14.46]

5 Now, having that in mind, and having a look at what the -- what
6 the Supreme Court Chamber subsequently ruled on the reliability
7 of Sam Sithy, that is, paragraphs 477, 478, and 479; the Supreme
8 Court Chamber needed one page and a half to come to its
9 conclusion that Sam Sithy account is, "Inherently implausible,
10 hardly believable, and his story is highly improbable".

11 Now, I'm -- I'm using this example to -- to show that it is very
12 -- it's imperative that the testimony of each -- each witness
13 that has appeared in this Chamber should be discussed at length
14 in order to assess the reliability. Now, if we take the -- the
15 Supreme Court Chamber's considerations in relation to Sam Sithy
16 as a minimum, that would mean that at least one page and a half
17 per individual witness should be dedicated to -- in our closing
18 brief.

19 Now, in our submissions, I think we said that about 155
20 individuals have, so far, appeared before the Chamber in Case
21 002/02. I think that number is now up to a little over a hundred
22 and eighty; I think it's 183 now. Of course, it won't be
23 necessary to discuss each and every individual or his evidence or
24 her evidence at length; however, certain witnesses like Duch or
25 like Prak Yut, for instance, needs to be discussed extensively.

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1 [09.16.48]

2 And I'm now all saying this because that directly impacts the
3 question as to how many pages we would really need to make our
4 argument. So we are very strong in our belief and conviction that
5 we should have 600 pages, inclusive footnotes and excluding
6 annexes, to argue our case.

7 I'm happy that the Prosecution agrees that we, at least, should
8 have 500 pages of closing brief, so we're not that far apart, but
9 I think that is very important to note beforehand.

10 There are a few detailed issues that I think we should discuss
11 today, as well. One issue is the troubling prospect that it might
12 not be possible -- at least that's what we read in a recent
13 completion report that transcripts of the hearings that took
14 place might not be finished until way after the -- the possible
15 deadline of our closing brief. That would be very troubling,
16 indeed, because we have noticed, sometimes, very substantial
17 differences between the draft transcript, on the one hand, and
18 the ultimate, definite transcript provided by the translation
19 unit.

20 [09.18.34]

21 Mr. President, I think that these are, for now, the most
22 important things that I would like to say. One thing, maybe, to
23 -- to reiterate one of the things that the Prosecution said in
24 response to our request, and we fully agree with this, and that
25 is that Case 002/02 is an unprecedentedly large case. Probably,

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1 and most likely, the biggest criminal case in international
2 criminal law before tribunals since Nuremberg and I think that
3 that fact needs to be reflected in the pages that you ultimately
4 award to all parties.

5 We have given some comparisons, for instance, with the Karadžić
6 Case, which is also, of course, a very big case where the Defence
7 was allowed a thousand pages. There are some other cases from the
8 ICTY where parties were allowed 600 pages.

9 We believe that this case, which is also, of course, building
10 upon Case 002/01, is so large, is geographically so wide, has so
11 many accusations that our -- our client has to deal with that we
12 believe a 600-page brief would allow us to fully make our
13 arguments before the Chamber.

14 Thank you.

15 [09.20.29]

16 MR. PRESIDENT:

17 Thank you. And the Chamber now hands the floor to the Defence
18 Counsel for Khieu Samphan.

19 MS. GUISSÉ:

20 Thank you, Mr. President, good morning. Good morning everyone.
21 On behalf of the Khieu Samphan defence team, there are several
22 points we agree with the Nuon Chea defence team on with the
23 nuance of the timeline for drafting the final months. I won't
24 repeat what may have been dealt, very well, in Nuon Chea's
25 defence briefing, which indicate that everything in this

1 proceeding should be according to the norms; and that was in
2 E421/5. And that is, of course, concerning the number of
3 witnesses and, of course, the great number of days of hearings
4 and, therefore, transcripts.

5 In spite of everything, I would like to spend some time on a
6 certain number of specificities and specificities on which the
7 Khieu Samphan Defence has often focused. First that concerns the
8 particularities -- and this has an effect on the time requested
9 -- that there are many pieces of evidence that are coming from
10 other investigations. We've tried to take stock of that and there
11 are at least 365 pieces of evidence that come from Cases 003 and
12 004, so that's more than 300 written statements.

13 So I'll come back to that, in a moment, because there is a
14 particular point for Khieu Samphan's Defence that's important in
15 these written statements. But just to say that because we're in a
16 public hearing, so that people understand what that means.

17 It means that during this current trial we have many new pieces
18 of evidence, which were not available during the investigation
19 phase; although the investigation of the Case 002 is the basis
20 for the trial of Case 002, and for that reason, it's a trial
21 that's outside of the norms and standards and that's the reason
22 for which this case and 002/01 are particular.

23 [09.23.02]

24 Challenges have been noted when we're dealing with a drafting
25 because yes, what we might have been able to understand from the

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1 Appeal Judgment, for the time being, have led to other details we
2 need to look at in more detail and to discussions in fact. These
3 things must be discussed in detail and I believe that all of the
4 parties need to be able to do that and I think that also in time,
5 it will be important for the Chamber to have the full reasoning,
6 both in legal and factual merit.

7 There's also the specificity of the legal issues that concern
8 Case 002; genocide, aspects of forced marriage, and something
9 else that we would also like to emphasize, the importance of the
10 fact that there could be a discussion in the final statements of
11 the parties, both concerning factual merit and legal merit.

12 [09.24.25]

13 The specific particularities concerning the Khieu Samphan defence
14 team, and now I come back to the written -- the written
15 statements coming from Cases 003 and 004. There have been
16 questions recently on the audio recordings and the Chamber
17 recently issued a decision saying that it reserved the request
18 for supplementary time that we had submitted in order to have the
19 time to listen to the audio recordings of the statements that had
20 been accepted from other investigations into Case 002/02. And at
21 that point -- and that was our most recent request for
22 clarification to the Prosecution -- and I know that there are
23 discussions underway with members of the investigative team --
24 but at this point, we don't have the detail of how many hours of
25 audio recordings correspond to the evidence that has been

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1 admitted, or that may be admitted based on future decisions that
2 are still pending.

3 So this, also, in the context of preparing our final statements
4 and the arguments that we may have based on the evidence that you
5 will be taking into account in the context of your deliberations,
6 so these are pieces of evidence that we need to be able to
7 discuss. This also requires additional preparatory time for the
8 final statement.

9 [09.25.59]

10 And when I talk about additional time for preparing, concerning
11 these pieces of evidence from and investigations for Cases 003
12 and 004, there is a ton of evidence that has come into evidence
13 and, of course, the Defence has not been able to question these
14 witnesses and, therefore, this evidence is extremely critical and
15 essential for these written submissions.

16 Next, we received the Supreme Court Chamber Judgment and we will
17 need to go through and look at the elements of factual merit and
18 legal merit to see if this is something of a last recourse or
19 not, because there is a (unintelligible) responsibility of the
20 Accused. There is something that the Supreme Court Chamber has
21 not addressed, at all, but is still of great importance for
22 002/02, it is still relevant for that case. In the paragraph of
23 the -- it relates to the paragraph of the closing order and so it
24 will need to be addressed in writing for Case 002/02.

25 [09.27.18]

12

1 So, all of these pieces of evidence that need to be taken into
2 account in our closing statements, need to take into account the
3 fact that we have to address applicable law, the issues that
4 relate to the aspect of marriage; that there are many legal
5 elements to be discussed and there are many conclusions to be
6 drawn on the factual information that we have seen in this
7 Chamber.

8 Having recalled these elements, I would like to mention that
9 those are the reasons for which we agree with the Nuon Chea team,
10 that there needs to be a significant number of pages, at least
11 500 pages; that is essential, and once again, we know that that's
12 going very quickly because we want to go into the precise
13 explanations because we will need to refer to various documents.
14 [09.28.32]

15 And I would like to recall that the Chamber admitted, wholly,
16 entire documents in cases where we had asked for only certain
17 pages to be admitted into evidence and that means that there is
18 even more factual matter that needs to be discussed and reviewed.
19 So for that reason, we are going beyond what even the Nuon Chea
20 team has asked for. He discussed the option of asking for,
21 perhaps, more than three months, but we have additional
22 challenges which mean that these three months; even if they are
23 more than you had originally foreseen, are not enough.
24 The first point that I reminded, the issue of the audio tapes
25 that are recalled and which will take up a lot of time for the

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1 resources and our team.

2 Second of all -- and this is an important element and might be
3 particular to our team -- our working language is essentially,
4 regarding written submissions in particular, is French. We do
5 what's possible to understand and assimilate what was written in
6 the Supreme Court Appeal Judgment, but it's clear that even if we
7 make a lot of efforts, the substance of our argument -- the
8 substance of the Appeal Judgment will only be perfectly
9 understandable to us when there will at least be some kind of
10 translation attempt of the Appeal Judgment.

11 [09.30.13]

12 And I'd like to specify that we are in very tight contact with
13 ITU and, of course, we asked for certain segments to be
14 translated, as a priority, but we will not receive these
15 translations before the end of the year or even at the beginning
16 of next year. So that -- that is to say, regarding our
17 understanding of the factual, legal elements that we will have to
18 discuss in our final submission, well this will depend very much
19 upon that.

20 Now, regarding this, of course, it might be a particularity of
21 our team, but it is a particularity that has an impact on the
22 drafting of our final submissions. And this is why for us, a
23 minimum amount of five months is necessary for us to complete
24 what we have to do, as I explained, regarding the statements in
25 Cases 003 and 004 and also to allow us to draft, in an accurate

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1 and complete way, all of the elements in the Final Submission
2 pursuant now --

3 To finish let me give you a figure here to draw some comparisons.
4 So if we compare 002/01 and 002/02, in terms of the number of
5 pages in the closing submissions in 002/01, there were 187 pages,
6 but for 002/02 there are 434 pages in the closing order. This
7 shows how much of there is in inflation of facts and crimes that
8 we need to discuss in 002/02. In terms of facts, we're going to
9 have extensive discussions.

10 [09.32.04]

11 Now, in terms of the number of people who were heard; in 002/01,
12 there were 92 witnesses; in 002/02, there were 181 up to today --
13 up to date.

14 So regarding the documentary evidence in 002/01, there are 5,824
15 E3 documents and to date in 002/02 we have 10,762.

16 Knowing that there is a specific issue on top of this, that there
17 are certain documents that were admitted, which have not yet
18 received an E3 number. So these are figures that correspond to
19 E3s, but there's more beyond.

20 [09.32.48]

21 Now, finally, regarding the deadlines in 002/01. Given the
22 elements that I recalled to the numbers that I've just mentioned,
23 you can understand that we cannot operate on the same basis and
24 even at two months that you considered are not sufficient in view
25 of all of the elements that I recalled.

15

1 Now, for the Khieu Samphan Defence, a five-month delay for our
2 submissions in view of all the work that was necessary and that
3 will be necessary -- and I'd like to specify that there are 1,331
4 documents that were admitted during the Trial. That is to say
5 1,331 documents that we did not -- we were not made aware of
6 during the investigation. So this should also be taken into
7 account.

8 So I'd like to finish here and let you know that we're asking for
9 five months and -- but, of course, I'm anticipating objections.
10 But, in any case, a minimum of four months is the least that we
11 can afford in order to respond to the serious charges that are
12 levelled against our client.

13 [09.34.00]

14 MR. KOPPE:

15 Mr. President, two small points that I forgot to mention. I think
16 it's practical to mention them now.

17 We would like to have the table of contents which, of course, is
18 necessary for our closing brief to be excluded from the total
19 page limit.

20 And the second request is to be allowed to file the table of
21 authorities, that of course belongs to the closing brief, the
22 next day, the day after the deadline. So the table of
23 authorities, my team says that it is sometimes very difficult to
24 do that properly and that things go wrong technically. For the
25 table of authorities, that is referred to in the closing brief,

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1 whether we should be allowed -- if we can be allowed to do that
2 the next day. So not the closing brief itself but the table of
3 authorities refer to, if we would be allowed, for mostly
4 technical reasons, to file that the next day before close of
5 business.

6 These are my two additional, more detailed points. Thank you.

7 [09.35.29]

8 MR. PRESIDENT:

9 (No Interpretation)

10 (Technical problem)

11 [09.39.05]

12 MR. KOUMJIAN:

13 I believe it may be working now. So thank you.

14 Mr. President, Your Honours, the Co-Prosecutors first would like
15 to address briefly the last two points because I think they're
16 simple enough to handle.

17 We're in agreement with the Defence that the suggestion of Nuon
18 Chea that the table of contents, which can only help, Your
19 Honours, not be counted against the page limit. I think it makes
20 it easier for the readers to understand, but it doesn't make
21 sense to count that.

22 In regards to the table of authorities, I'd go a little further
23 and suggest that there be no harm to anyone if it wasn't due for
24 a week after the closing briefs. I know I personally probably
25 won't be working on that but I know that's a very horrendous,

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1 detailed task for the staff that do. And especially after
2 completing the closing brief we often see corrections have to be
3 filed. It would make more sense, in my view, to give us a week to
4 do it correctly one time.

5 [09.40.16]

6 Mr. President, Your Honours, I'm a strong believer that shorter
7 writing is better writing and the more succinct an argument is
8 made the more persuasive it is.

9 However, we did ask for 750 pages. First, I would explain I think
10 there's an inverse correlation between how many -- how succinctly
11 we can write and how much there's a direct correlation with how
12 succinctly we can write and how much time we have inverse to the
13 number of pages we need and the amount of time we have. The more
14 time we have, the more succinct we can make the arguments and I
15 think the more succinct the clearer it is to the reader and to
16 everyone, to Your Honours, to understand.

17 [09.41.03]

18 However, we certainly agree with the Defence that this is a huge
19 case. There's a huge amount of evidence, there's complicated
20 legal issues such as genocide, the elements of forced marriage.
21 So it is something that will require significant explanation and
22 we think what would help you in writing your judgement is the
23 parties identifying evidence that supports any assertions made.
24 So when we suggested 750 pages for the Prosecution, frankly our
25 thinking that most of that will be footnotes, most of that will

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1 be citations to the evidence. And also in those footnotes rather
2 than just including the name of the witness or the page, I think
3 it's helpful sometimes to quote the exact language that supports
4 the point. So that's part of why we're requesting, we suggest,
5 750 pages for the Prosecution, and that we agree with the Nuon
6 Chea Defence that it should be three months from the end of the
7 evidence.

8 On that point, I think there is one issue that I just want to
9 mention briefly. There is an outstanding appeal filed by the
10 civil parties and it may still be outstanding when the evidence
11 closes.

12 We don't think that that should suspend this schedule. Rule 104
13 specifically says that interlocutory appeals do not cause a stay
14 of proceedings, and if the appeal were granted we would deal with
15 that afterwards. My understanding from the civil parties is that
16 they do not think any additional witnesses would be necessary. I
17 think that's our submissions on the pages and time.

18 [09.43.16]

19 MR. PRESIDENT:

20 Thank you. And the floor is now given to lead co-lawyers for
21 civil parties. You may proceed.

22 MS. GUIRAUD:

23 Thank you, Mr. President, and good morning to all of you.

24 A few short oral observations to complete our submissions and the
25 response to Nuon Chea defence team's request.

19

1 Our submissions E421/5.2, by which we did not object to the Nuon
2 Chea's request to request for extra pages. We recalled in our
3 response that 57 civil parties had been heard since the beginning
4 of the Trial and now we are at 67 civil parties and the review of
5 their statements will make up the substance of our closing brief.

6 [09.44.17]

7 So, of course, we do not object to the Nuon Chea Defence's
8 request regarding the number of pages, we are simply asking the
9 Chamber to apply the same number of pages for all parties and if
10 there are extensions there should also be extensions granted to
11 the civil parties.

12 And the three-month delay that was proposed by the Nuon Chea team
13 seems reasonable to us and we do not have any objections in that
14 regard.

15 No objections either to have the start date for this deadline to
16 begin at the end of the substantive hearings, which, in view of
17 the last emails we received from the Chamber, will happen at the
18 beginning of January.

19 And, finally, a point regarding our interlocutory appeal,
20 <E306/7/3/1/1>, we filed an interlocutory appeal on 28 September
21 2016, and the Supreme Court Chamber, pursuant to Rule 108.4bis
22 has three months to decide on it. No information allows us to
23 believe that the Chamber is not going to follow the three-month
24 delay, so therefore we're quite confident that the Chamber will
25 decide before the end of the substantive hearings at the

1 beginning of January.

2 [09.46.01]

3 So therefore, we can tell the Chamber as of now that if the
4 Supreme Court Chamber was going to accept our appeal, we will
5 therefore not request the hearing of extra civil parties or
6 witnesses.

7 So the information that we can disclose to the Chamber today, is
8 that as far as we are concerned, this interlocutory appeal will
9 have no consequence on the closing of the substantive hearings in
10 002/02 and on the schedule that we're discussing regarding the
11 closing briefs of all parties.

12 I will stop here. I believe that I have addressed the
13 introductory statements of the Nuon Chea defence team.

14 [09.46.47]

15 MR. KOPPE:

16 Mr. President, if I may briefly say one last thing.

17 We support the Khieu Samphan's team request for more than three
18 months because we understand their specific problems in relation
19 to the French language, problems that of course we do not have,
20 but we fully understand their submissions in this respect.

21 So just for the record that we support their request for at least
22 four months.

23 MR. KOUMJIAN:

24 Mr. President, I just wanted to make one point clear about our
25 request that the time be three months rather than two.

21

1 We do not think that that should delay the finally delivery of
2 the judgment because giving us that additional month will allow
3 us to write a brief that we believe -- and I think all parties
4 will be able to write briefs -- that will help, Your Honours, by
5 being clearer about the arguments being made and being more
6 complete in regards to the citations to evidence.

7 [09.47.59]

8 So in that additional month -- and I'm sure there's preparatory
9 work for the judgment writing that, Your Honours, will be
10 involved in -- we also think that it will not delay the final
11 submissions -- it will not delay your judgment.

12 There's one other point I should mention. According to the public
13 completion plan, we expect that the Co-Investigating Judges will
14 be asking for final submissions on probably two cases at the same
15 time that we will be writing the final briefs.

16 This is going to be a huge burden on the Office of
17 Co-Prosecutors, so we'll be working effectively on three closing
18 briefs, closing submissions at the same time.

19 So, I wanted to bring that to your attention and actually next
20 year we'll have fewer personnel. We lost one position than we had
21 this year.

22 [09.49.13]

23 MS. GUISSÉ:

24 Thank you, Mr. President. I just understood that with regard to
25 the Nuon Chea team and to the Khieu Samphan team as well, we

1 disregarded the third point, that is to say the delay between the
2 filing of the final submissions and the final statements.

3 You said that this delay should be one month, and for the Khieu
4 Samphan team, for the same reasons that I said, we know that the
5 closing briefs will be filed in one single language for
6 translation reasons, as I said, and we know, also, that we will
7 receive the closing brief for the Prosecution in English. I'm
8 not, of course, going to ask you to include the translation
9 within that one month delay.

10 I understood in your memo that this is something that you do not
11 consider, however, there is an important point to raise. Even if
12 we are going to be supported we hope by ITU to prioritize the
13 parts in particular regarding Khieu Samphan. So insofar that we
14 will not be receiving a written response in writing, that means
15 we're going to have to respond orally, that means that Khieu
16 Samphan, who must know what is the case and what are the
17 arguments of the Prosecution so that we may discuss together on
18 how to respond during the closing statements.

19 [09.51.04]

20 So the one-month delay under -- provided that we are supported by
21 ITU, seems particularly short to us given the fact that, as I
22 said to you, the stakes legally and factually speaking are much
23 more important in Case 002/02.

24 So, it's hard for me to tell you what the delay should be, but I
25 can tell you that one month seems to me to be extremely short in

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1 relation to the workload that ITU will face and in regard to the
2 necessities of talking to Khieu Samphan about his fate and about
3 the strategy that we must -- we will adopt during our final
4 submissions -- our closing statements.

5 [09.52.00]

6 MR. PRESIDENT:

7 Thank you. Next we move to the item for the -- of the agenda
8 modalities and timing of submissions on applicable law.

9 And first, the Chamber gives the floor to the defence team for
10 Nuon Chea, first to make submissions.

11 MR. KOPPE:

12 Yes, Mr. President. I actually touched upon it already during my
13 initial submissions. It would be safe to say that I think all
14 parties would agree that it would be much more practical and also
15 legally more comprehensible to have the submissions on applicable
16 law in the closing brief and not as we did in 002/01 to have them
17 before. I think it should be in the closing brief.

18 MS. GUISSSE:

19 Yes, I also brought this up when I was speaking about this issue
20 earlier today. And this is why we took this into account in the
21 number of pages we're requesting as well as the delays so that it
22 may be logical in terms of argumentation and so that would be
23 easier to read for all parties and for the Chamber as well.

24 [09.53.42]

25 MR. PRESIDENT:

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1 And Co-Prosecutor, you have anything to add?

2 MR. KOUMJIAN:

3 Simply, we agree that it makes sense to put it within the closing
4 brief, closing -- final submission, although we could do it
5 either way, but we think it makes more sense to argue the law
6 with the facts.

7 MR. PRESIDENT:

8 Very good. Now, we move to the last item on the agenda, Item
9 Number 5 that is, the impact of any of the SCC Judgment on the
10 conclusion of evidentiary proceedings in Case 002/02.

11 [09.54.34]

12 The Chamber has clearly informed the parties about the matter.
13 The reasons that the Chamber bring for the discussion about the
14 impact in TMM is to await the appeal judgment of the SCC and we
15 need to give proper time for parties to read the judgment.
16 Now the floor is first given to the defence team for Mr. Nuon
17 Chea to make oral submission on the impact, if any.

18 MR. KOPPE:

19 I think I also already raised that point in my initial
20 submissions, Mr. President, when I specifically referred to the
21 Supreme Court Chamber's consideration in relation to the level of
22 detail that is apparently required to discuss the reliability and
23 credibility of the evidence.

24 You might recall I gave you the example of the Supreme Court
25 Chamber's treatment of one particular witness, which, as a matter

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1 of fact, is more or less an average kind of witness, many of whom
2 you have seen appearing before this Chamber.

3 And briefly reiterating what I just said, if in that particular
4 instance the Prosecution needs eight or nine pages to discuss the
5 reliability of that witness, whose testimony was not that
6 extensive actually, and we need the same -- similar amount of
7 pages to discuss the reliability, then you can imagine if we have
8 to deal with at the end of the proceedings, presumably, around
9 190 witnesses.

10 [09.56.42]

11 It goes without saying that that is, I think, extremely important
12 to take into consideration. I believe that that is one of the
13 most important aspects in terms of impact.

14 Of course, there are all kinds of other issues, but that will be
15 incorporated, either into discussing the law within the closing
16 brief or discussing certain facts.

17 MR. PRESIDENT:

18 And the defence team for Mr. Khieu Samphan, you may proceed.

19 [09.57.24]

20 MS. GUISSSE:

21 Thank you, Mr. President. Yes, I second what my colleague from
22 the Nuon Chea team has said, with the impact in the way that
23 we're going to manage writing our final statements concerning
24 questions of law and fact that is essential. And therefore in the
25 way that we're going to draft these and the way that you're going

26

1 to deliberate it will be greatly affected by the decision.

2 MR. PRESIDENT:

3 And, Mr. Co-Prosecutor, you may take the floor now.

4 MR. KOUMJIAN:

5 Your Honour, we have nothing to add.

6 MR. PRESIDENT:

7 What about the Lead Co-Lawyers for civil parties?

8 MS. GUIRAUD:

9 I have nothing to add, Mr. President

10 JUDGE FENZ:

11 Just to be absolutely sure. I understand that we don't have to
12 expect any evidentiary requests on the basis of the Supreme Court
13 Judgment; witnesses, experts whatever.

14 Now, for the record, parties agree that this is the correct
15 reading of their statement -- of their submissions. Thank you.

16 [09.58.52]

17 MR. PRESIDENT:

18 I thank you very much. The TMM today has now come to a
19 conclusion.

20 On behalf of the Trial Chamber, I would like to express my
21 sincere thanks to the Co-Prosecutors, Lead Co-Lawyers for civil
22 parties, lawyers for civil parties, the defence teams, staff
23 members of the Trial Chamber, security personnel, interpreters
24 and supporting staff who have tried physically -- who have helped
25 physically and mentally to make the TMM a success today.

1 [09.59.39]

2 The Chamber will bring all the submissions made by the parties
3 today to consider and the Chamber will issue decisions on these
4 issues in due course.

5 The Chamber would like to remind parties that the Chamber will
6 hear 2-TCW-971, tomorrow on Friday 9 December 2016, at 9 a.m.,
7 from Oudor Meanchey by video-link.

8 The Court is now adjourned.

9 (Court adjourns at 1000H)

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