



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 TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

CONFIDENTIAL

Case File N° 001/18-07-2007-ECCC/TC

23 June 2009, 1333H

Trial Day 32

TRIAL MANAGEMENT MEETING

CLOSED SESSION

Before the Judges:

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

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KIM Mengkhy
YUNG Phanit
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Trial Chamber Greffiers/Legal Officers:

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

For Court Management Section:

KAUV Keoratanak

For the Office of the Co-Prosecutors:

William SMITH
YET Chakriya
PICH Sambath
Zachery LAMPEL
PAK Chanlino

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
François ROUX
Heleyn UÑAC

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. HONG KIMSUON	Khmer
MR. KAR SAVUTH	Khmer
MR. KIM MENGKHY	Khmer
MR. KONG PISEY	Khmer
JUDGE LAVERGNE	French
MR. ROUX	French
MR. SMITH	English
MS. STUDZINSKY	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	English

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1 (Judges enter courtroom)

2 [13.33.44]

3 MR. PRESIDENT:

4 This afternoon, as the President of the Trial Chamber and on
5 behalf of the Judges of the Trial Chamber, I would like to
6 express my warm welcome to the present parties, ladies and
7 gentlemen, for the trial management meeting this afternoon.

8 After the consultation with the parties in the hearing on the
9 11th of June 2009 some of the parties requested to the Trial
10 Chamber to look into possibility and there were a request for a
11 reduced number of the witnesses so that the Trial Chamber can
12 move expeditiously and to ensure the fairness of the trial.
13 In this regard the result that we obtained and in response to the
14 request made by Mr. François Roux this morning, now the Trial
15 Chamber will discuss and mainly to the witnesses. The Trial
16 Chamber made a division on the witnesses on yesterday's hearing
17 and the Trial Chamber would like to hear comments from the
18 parties, especially the notes of the Trial Chamber which
19 circulated to the parties and the agenda for our discussion this
20 afternoon that we need to find a better solution.

21 [13.35.49]

22 We have four items in the agenda; number one is the names of the
23 witness that were requested for removal from the list of
24 witnesses; number two, the list of witnesses proposed by the
25 Trial Chamber for clarification by the party, the grounds of

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1 hearing of the witness; number three, the Trial Chamber will
2 reduce the hearing time for the testimony of the witnesses, and
3 number four, the list of witnesses requested for the
4 videoconference hearing. These are the topics proposed for
5 discussion today in an effort to ensure the fair and expeditious
6 trial.

7 The Trial Chamber would like to inform the parties that you
8 should maintain and use the pseudonym of the witnesses who are
9 yet to testify, except those the witnesses -- foreigner witnesses
10 that we do not designate the pseudonym to them.

11 And do any party have any comments or suggestions in relation to
12 the agenda and topics for this afternoon?

13 Mr. Co-Prosecutor, do you have any comments?

14 Please, Judge Cartwright, the floor is yours.

15 [13.37.45]

16 JUDGE CARTWRIGHT:

17 Thank you very much, Mr. President.

18 We understood that the Office of Co-Prosecutors had asked for an
19 additional half hour before the meeting convened. Is this still
20 required?

21 MR. SMITH:

22 Your Honour, I asked all the other parties whether they would
23 like some more time because we thought we might. I certainly --
24 we certainly can provide a large amount of the information right
25 now but not completely. We've got to the discussion of about 90

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1 percent of it. So if you proceed on the 90 percent or
2 alternatively I can give you the 100 percent if we have another
3 20 minutes. We're in Your Honours' hands.

4 JUDGE CARTWRIGHT:

5 Well, I think that the Trial Chamber is prepared to give a little
6 extra time at this point to enable all the parties to be well
7 prepared.

8 And I think Mr. President has already said that we are grateful
9 to the parties for agreeing to this much earlier meeting, trial
10 management meeting, and I realize that it puts everyone under
11 pressure but equally we are all well aware that this is an
12 exceptional set of circumstances, and the Trial Chamber, and I
13 know the parties, will wish to accommodate the needs of Maître
14 Roux.

15 I noted before, Ms. Studzinsky, that you were a little dubious
16 about whether you could manage to be ready by this afternoon.

17 Can I inquire of you whether you are prepared to accommodate this
18 exceptional set of circumstances, given the fact that you are, of
19 course, an experienced lawyer, and we're all under pressure this
20 afternoon? So can we count on your ability to participate?

21 MS. STUDZINSKY:

22 Yes, we could respond to three of the four questions and would
23 ask for a postponement by the end of this week for so-called
24 Annex B, the three witnesses, CP/1, 2, 3 and like to get a
25 postponement, but to the others we can respond, and I qualified

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1 your statement. Thank you.

2 JUDGE CARTWRIGHT:

3 Well, it's a little disappointing because I don't know that we
4 will be able to give a postponement. We must make a decision
5 about this as soon as possible and I note that other civil party
6 lawyers are in agreement because on this trial management meeting
7 depends the scheduling for the next several weeks.

8 So I would ask you to do your best this afternoon to cooperate
9 and I'm sure, given your experience, you will be able to do as
10 much as you can. So I don't think you can count on a
11 postponement of this meeting.

12 Mr. President, were there any other matters that you wished me to
13 comment on?

14 MR. PRESIDENT:

15 Please, Judge Cartwright, try to explain more clearly so that we
16 can have a better discussion and a fast discussion on the next
17 time. Thank you.

18 JUDGE CARTWRIGHT:

19 Yes. The President has asked me to indicate that we will resume
20 in half an hour; that is at 10 past two. Thank you all very
21 much.

22 (Judges exit courtroom)

23 (Court recesses from 1342H to 1410H)

24 (Judges enter courtroom)

25 MR. PRESIDENT:

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1 Now the Trial Chamber is back in session and we will continue our
2 discussion based on the agenda that I circulated to the parties.
3 Now we come to topic number 1. It's about the list of witnesses
4 which request to reduce the number of the witnesses. In this
5 topic, the parties have received the document and I will read
6 again. The witnesses are as follows: KW-12, KW-13, KW-14,
7 KW-17, KW-16, KW-18, KW-19, and KW-25 and CP/6, CP2/7, A06, Nic
8 Dunlop, KW-27, KW-28, CP2/4, A04, KW-06, CP2/10, Raoul Marc
9 Jennar.
10 [14.12.24]
11 And the trial put these witnesses for discussions. And does any
12 party have any reason for keeping or retain these witnesses for
13 the discussion even though the Trial Chamber proposed this list
14 of witnesses. We thought that the proposed witnesses were
15 interviewed by the Co-Investigating Judge and the Trial Chamber
16 will take those interviews or record of interviews, to be read at
17 an appropriate time.
18 And now you need to look at the list of witnesses from number 1,
19 topic number 1.
20 The Trial Chamber also notes that if any party thinks that any
21 witness important to him or her and if the party thinks that who
22 would like to keep that witness, please indicate your reasons for
23 keeping that witness at the end of today's meeting.
24 Please, the Co-Prosecutors, you take the floor first.
25 MR. SMITH:

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1 Good afternoon, Mr. President, Your Honours.

2 Thank you again for giving the parties an opportunity to discuss
3 and put some ideas forward in relation to trial management. The
4 prosecution greatly welcomes this decision to streamline the case
5 and to make it end as soon as possible; however, at the same time
6 making sure that justice is served by the truth of what happened
7 at S-21 is borne out and the public are aware of it.

8 In relation to names being removed from the list, Annex A, I
9 think maybe there's two issues. One issue to briefly mention is
10 the legal issue of them not coming to court and the issue of
11 public perception and the ability for the public to hear the
12 evidence and to see the witness, so this Court pays the full
13 reconciliation role which it's required to do as much as
14 ensuring, and primarily ensuring, it's a fair and expeditious
15 trial.

16 [14.15.56]

17 On the basis, Your Honour, that the statements of these witnesses
18 will be taken into account under Rule 87(3), the prosecution
19 would first submit that the decision whether or not the witnesses
20 would be called should be postponed for, say, perhaps another
21 four or five weeks.

22 But in saying that, we're not saying that Your Honours shouldn't
23 go ahead with your trial listing as planned and put these group
24 of witnesses, we would say, as a reserve list. And Your Honours,
25 it's our suggestion that you mould the witness list in a way in

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1 which you would like obviously the case to be finished. That
2 would, in fact, exclude this group of witnesses.
3 Then in a reserve capacity, or perhaps if the parties could
4 reserve their right perhaps to raise in four or five weeks' time,
5 when you think it's appropriate, when you feel as though that
6 enough evidence has been heard and the proof of the matters has
7 been achieved and the public has heard as much evidence as you
8 think is important for the public to hear, that the decision
9 whether or not any extra witness from this reserve list perhaps
10 should be called, be made at a time when we're all in a far
11 better position to be able to make that assessment.
12 In terms of legal proof, as Your Honours are aware, the accused
13 states that he wasn't in a number of the locations where some of
14 the crimes occurred, and so the proof beyond doubt in some areas
15 may not fully come from the accused but will necessarily have to
16 come from the witnesses.
17 [14.18.03]
18 But having said that, that would be the first proposition of the
19 prosecution that this list become a reserve list and the
20 remaining list of witnesses be moulded in the way that you see
21 fit. It's certainly not a submission to postpone a decision
22 where parties can come back and say, now that we've had the
23 opportunity to view the evidence, we want everyone to come; it's
24 certainly not that.
25 In our experience in other cases, what can often happen,

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1 particularly in cases where the crimes occurred 30 years earlier,
2 peoples' memories are diminished, particularly the witnesses that
3 are left and the ones Your Honours are seeking to reduce or
4 remove -- a lot of them are in positions where they would be
5 viewed or could be viewed as culpable for committing the crimes
6 themselves. A large number of these witnesses obviously are
7 guards at S-21. It may well be the case that the first group of
8 witnesses that come to this Court may want to exercise their
9 right against self-incrimination under Rule 28.

10 Now I know Your Honours have the ability to decide whether or not
11 witnesses would be forced in fact to answer a question under that
12 rule. Nonetheless, Your Honours may not take that decision,
13 bearing in mind the seriousness of the evidence that would be
14 given.

15 So, Your Honours, that would be our first position. If that
16 happened we feel as though that would enable the trial to be
17 managed in the way that you want and we greatly welcome, but it
18 gives, I think, the parties and Your Honours an opportunity to
19 call a witness or one or two or three from this list if you feel
20 that, once the evidence has transpired, something is missing.

21 [14.20.17]

22 And my respectful submission is, that happens often and I don't
23 think it's necessary at the moment to make a prediction that that
24 won't happen and these people won't be required. Having said
25 that, bearing in mind how the evidence has come out from the

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1 accused over the last couple of weeks, which has been quite full.
2 Hopefully, after the first 10, 15 witnesses that Your Honours
3 have suggested be heard, or the 20 witnesses to be heard, maybe
4 that will happen in exactly the same way from the witnesses'
5 perspective and it may well be likely that all parties think that
6 that's enough proof, that's enough evidence for the public to
7 hear.

8 And so that would be our first submission, and I think it
9 wouldn't interfere with exactly the plan that Your Honours had in
10 mind.

11 Our second submission I think would be, if Your Honours had to
12 make a decision today, which we would urge Your Honours don't on
13 that list, that as Your Honours have stated, the statements be
14 taken into account under 87(3) whether or not you read them out
15 to the public, which is a different issue, of course. The legal
16 issue is whether or not you can take them into account in your
17 judgement.

18 [14.21.56]

19 If any aspect of that statement is -- if the defence disagree
20 with any aspect of any of those statements, those OCIJ
21 statements, that if they're going to challenge it or confront it,
22 that the witness be called. I don't think we can have a
23 statement read and then the defence challenge the central issue
24 of a statement, perhaps in relation to the accused's physical
25 involvement -- allegations of physical involvement in crimes or

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1 other matters. So that would be our preliminary remarks.

2 In relation to the civil party witnesses, we don't have any
3 comment on that. We're in Your Honours' hands.

4 One question that we would ask is that KW-25 appears in Annex A
5 and also appears in Annex C, and perhaps if it could be clarified
6 whether or not that witnesses is to be reduced or to be taken
7 into account under 87(3) but not called.

8 We have a third submission, but if Your Honours agree with number
9 one and number two then we won't -- it's probably not important
10 to come back at this stage to -- which few witnesses perhaps we
11 would like, even at this stage, if Your Honours aren't in mind of
12 creating a reserve list. So that's the comments in relation to
13 Annex A.

14 We've got quick comments in relation to B, C and D -- a lot
15 quicker. You can have them now or we'll wait until this item is
16 finished, Your Honours. Thank you.

17 MR. PRESIDENT:

18 Please, Judge Lavergne, you take the floor.

19 [14.24.00]

20 JUDGE LAVERGNE:

21 There may have been interpretation problems, but I think it's
22 important for us to be very clear about a number of points upon
23 which the Chamber wishes to achieve greater clarity.

24 So far, we have produced a list of witnesses regarding whom it
25 does not seem necessary to us for them to come to the Court to be

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1 heard by this Chamber. We would like to ascertain this afternoon
2 the opinion of the parties in terms of reasons, exceptional
3 reasons, whereby the presence of such witnesses appear to the
4 parties to be absolutely necessary.

5 As has already been said, we consider the possibility of using
6 statements earlier produced during the investigation phase by
7 these witnesses. These statements have been recorded by
8 investigators or by the Investigating Judges or possibly also by
9 the Co-Prosecutors Office. And this also necessarily excludes
10 statements that may have been obtained by NGOs or other entities,
11 be it in media press articles, et cetera.

12 So I repeat once again, what we are seeking to know now is, what
13 are the parties' reasons for wishing this or that witness to
14 come, to judge that that witness's presence is fundamental for
15 the proceedings? Withdrawing a witness from the witness list, if
16 this is accepted by the defence, is tantamount to waiving a
17 request to have a confrontation at the Court in a hearing. This
18 needs to be understood very clearly.

19 [14.26.25]

20 MR. SMITH:

21 Thank you, Your Honour.

22 In relation to that, in fact, the prosecution and the defence
23 were very close to an agreement that the accused's statements,
24 all of his statements that he has made, be placed before Your
25 Honours under Rule 87(3) and, in that vein, we hadn't finally

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1 agreed but we were very close to an agreement, that all of the
2 OCIJ statements be placed on the case file pursuant to Rule
3 87(3). And the reason for that is that we, particularly the
4 Co-Prosecutors, didn't want the evidence gained by the
5 Co-Investigating Judges to be wasted and not being able to be
6 taken into account by Your Honours.

7 The most important position for the prosecution is that Your
8 Honours take evidence into account under 87(3) and so if Your
9 Honours are in mind for the parties to -- well, I go back to the
10 original submission, namely, that we would like a right to call a
11 witness once the first group of witnesses have been heard, just
12 in case it's felt the public would require that evidence to be
13 heard.

14 MR. PRESIDENT:

15 Thank you, Mr. Co-Prosecutor.

16 I would like to provide clarification about the K-25 (sic) A and
17 C. We have new documents. We delete KW-25 from Annex C, so in
18 our new list we do not have KW-25. We have only Annex A.

19 JUDGE CARTWRIGHT:

20 Perhaps just to clarify. KW-25 should not appear in the third
21 list of those witnesses whose time for giving testimony has been
22 changed. So delete KW-25 from that list.

23 [14.29.18]

24 MR. PRESIDENT:

25 Next, I would like to give the floor to the lawyers for the civil

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1 parties, if you have any comments to make regarding the list of
2 Annex A which is being discussed now.

3 MR. WERNER:

4 Mr. President, just one word to tell you that we are in agreement
5 with our group and I don't think there was any agreement amongst
6 civil parties -- my understanding -- so I can just only talk
7 about my own group, and we are in support of the prosecution's
8 position and we do not have any further comment on the list.
9 And I would just like -- because we would like that to have on
10 the record, and I'm talking about on behalf, I believe, of all
11 civil parties. We would like to thank Your Honour because you
12 have agreed to hear the 37 hours requested for civil parties, and
13 we would like to place on the record that we appreciate and we
14 are grateful for that.

15 MR. PRESIDENT:

16 What about the other civil party lawyers? You have any comments
17 to make?

18 MS. STUDZINSKY:

19 Yes, thank you, Mr. President.

20 I also would like to emphasize that we really appreciate that the
21 Chamber considered our additional -- our request for additional
22 hours for civil parties.

23 To the point number one and Annex A, we carefully reviewed the
24 proposal of this list and we are of the opinion that,
25 nevertheless, the following witnesses should be heard.

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1 This is KW-13. This is witness who was in the special unit and
2 was working on making arrests outside and he also -- that is as
3 far as I see -- not mentioned in his statements, but appears as a
4 statement that he made at least one raid together with 10 Chinese
5 persons who were involved in this raid and participated
6 physically as far as I understood the written document. And the
7 accused is contesting the arrests - or partly contesting, let's
8 say - the arrests that were made by the special unit from S-21.
9 [14.32.16]
10 The next witness is KW-18 - and one comment -- as far as I see,
11 there is no witness who could give a similar statement like
12 KW-13. I come now to KW 18.
13 This person should be heard because it concerns, as well, a
14 statement that the accused conducted interrogations personally,
15 and this is a point that he is contesting apart from the
16 exceptions that he has made. But here this witness is talking
17 about foreigners and important prisoners were he observed
18 personally that they were interrogated by the accused. And I
19 think this is because it's a contested fact and until today, so
20 far, so that I think it is not enough to read it out. And I
21 think this witness should be interrogated here in Court and so
22 that -- I would suggest as well to keep him on the witness list.
23 In addition, of course, that is another torture method that he
24 mentioned, that is using of spotlight but, therefore, I think he
25 shouldn't be summoned, but the other point that I've mentioned -

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1 conducting interrogations personally - is an important point that
2 is contested by the accused.

3 Then, I come to KW-25, and thank you for the clarification. This
4 is a witness who was a messenger and who is reporting about as
5 well a fact that is contested, and that is the meetings that the
6 accused had with upper echelon, and there were regular meetings.
7 Even if this witness, so far as I understood, does not -- well,
8 cannot report about contents of these meetings but about the fact
9 that the meetings took place. And as far as it is contested, I
10 think that this witness should be heard instead of only having
11 read out his testimony.

12 Then I come to CP 2/6. This witness should be interrogated as
13 well in Court on the issue of the visit -- or visits of the
14 accused in Choeung Ek that this witness -- which is also
15 contested so far -- that he accompanied the trucks going to
16 Choeung Ek in a car beside these trucks.

17 [14.35.57]

18 In addition, this witness -- this could be read out of course --
19 that is the fact about pregnant women who were shackled as well,
20 which is also contested by the accused, so far he is informed of
21 -- or was informed about the situation.

22 Then I come to KW-28. This witness is interesting for the fact
23 and the personal story of the accused; what about his
24 relationship with the Khmer Rouge who ordered him and he had to
25 obey these orders.

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1 And then what he was doing after January 1979, and there he
2 continued which is, of course, not within -- I know, of course,
3 within the direct jurisdiction of the Court but, of course, the
4 behavior of the accused, who pretends to having only fear and
5 more fear at the end of the DK period and then continuing as a
6 policy, this witness will talk about how the accused ordered
7 arrests and torture and interrogation and so on.
8 So that I think for the situation that -- or the account that the
9 accused has given so far that he could not escape, that he hated
10 this work but, however, continued after '79. That makes it clear
11 that this is not credible.
12 I come then to CP2/4, and this witness should be heard and
13 interrogated in Court because this is the only witness talking
14 about the conditions of the staff in S-24, and concerns evidence
15 about forced marriage as a group wedding observed in S-24 and
16 which is, of course, relevant how the conditions of staff were,
17 and this is the only one who is talking about this.
18 [14.38.40]
19 She has never been asked in detail and, therefore, it would not
20 be enough to read out the statement which only is saying one
21 sentence as far as I see. There was a group wedding of 20 to 30
22 couples of staff and medics in S-24 who were forced to marry.
23 But, of course, this witness should be interrogated in Court and
24 provide further details which is not yet on case file.
25 So far, our comments with the other proposals, we agree and to

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1 read out their statements or even with CP 2/10 could provide the
2 picture, the photograph about this wedding that was on our
3 witness list. That is, we agree with providing in another manner
4 than hearing these witnesses in court; to read it out or to
5 submit the photo which concerns CP 2/10.

6 So far, our comments to Annex A, and I stop here and give other
7 participants the floor. Thank you.

8 MR. PRESIDENT:

9 Thank you, lawyer, civil party lawyer. Please, the next group.

10 MR. MENGHKY:

11 Mr. President, the lawyer for group 3. We have no objections to
12 what was raised by the Co-Prosecutors in relation to the list of
13 witnesses and the reserved list of witnesses for calling the
14 witnesses for a hearing.

15 But I would like to bring the attention to Your Honours that the
16 witnesses of the civil party group number 3, we submitted to the
17 Trial Chamber and the accused recognized the testimony of those
18 witnesses so there is no need to invite those witnesses to come.
19 And if those witnesses to be called or to be reduced, if there is
20 any objection by the defence counsel or the accused, then that
21 particular witness should be invited for a confrontation for the
22 best interest of the hearing and to seek for the truth that's
23 hidden for 30 years now.

24 Today the accused has the right to express his remorse and regret
25 but we cannot object that a number of witnesses would like to

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1 express their own remorse and regret about their past.

2 [14.42.22]

3 So the civil party lawyers for group 3 will support the position
4 of the Co-Prosecutors and if the Trial Chamber agree or decided
5 to remove the names of any witness, but we should not reduce the
6 number of witnesses but reduce the time for hearing of each
7 witness. Thank you.

8 MR. PRESIDENT:

9 Please another group, group number 4.

10 MR. HONG KIMSUON:

11 Thank you, Mr. President, Your Honours, in having the meeting.
12 To me, I am the lawyer for civil party group number 4; I don't
13 have any strong objection but first I support the position of the
14 Co-Prosecutors, and secondly the statement made by civil party
15 lawyers group 1, group 2 and group 3.

16 I would like to mention that KW-12, KW-13, KW-14, KW-18, KW-19
17 and KW-28, these are the witnesses that fall within the
18 perception of our teams and we would like them to come to the
19 Court to provide a testimony, no matter they provide interviews
20 to the Co-Investigating Judges or we have the written statement.
21 So what we would like is not to reduce the number of witnesses
22 but to reduce the time for their speaking. We want to hear from
23 their mouths. Thank you.

24 MR. PRESIDENT:

25 Thank you, Mr. Lawyer for group number 4.

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1 What about you, the defence counsel; do you have any comments to
2 make?

3 [14.45.03]

4 MR. KAR SAVUTH:

5 Thank you, Mr. President.

6 As the defence counsel I agree 100 percent on the list of names
7 of witnesses that are proposed for the reduction of witnesses,
8 but I would like to have one proposal. I agree to the 17 but I
9 would like to remove Raoul Marc Jennar to keep him as the
10 witness.

11 My proposal to keep Raoul Marc Jennar is that he is the
12 researcher for the crimes during the Democratic Kampuchea. His
13 research -- he went to research every prison. He went to almost
14 every prison, 190 of them, only a few that he missed to do the
15 research. So he researched well, studied well the condition and
16 everything at those 196.

17 If you compare that system to the S-21, what were the difference?
18 We would like to find out, so was S-21 the worst or were the same
19 as others? And each prison, how many victims were killed and the
20 method of interrogation? So he did a research to those 196
21 prisons. He has a long list of prisons that he researched, so he
22 is one of the most important witnesses for us so that he can
23 identify how worst S-21 and we would like to know the comparison,
24 and this only can be done by Raoul Marc Jennar. Thank you.

25 MR. PRESIDENT:

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1 Please, Mr. Francois Roux, the floor is yours.

2 [14.47.26]

3 MR. ROUX:

4 Thank you, Mr. President.

5 Once again I would like to thank the Chamber and the parties for
6 having accepted to change the agenda in order to allow me to
7 participate in this very important meeting today.

8 And if I could just add a little something that's a bit -- I
9 would say that all little boys believe that their Mummy is the
10 strongest in the world and I would have never have imagined that
11 my old Mummy would be able to modify the agenda of an
12 international tribunal.

13 And I would like therefore now to support what Mr. Kar Savuth
14 said concerning Raoul Marc Jennar and to make a suggestion. It
15 seems to us obvious that, as of the moment when the
16 Co-Prosecutors Office has questioned one expert witness, Mr.
17 Craig Etcheson, and they will on top of this question a second
18 witness, Mr. David Chandler, well, I believe that it would not be
19 fair to prevent the defence from calling in an expert witness.
20 However, I believe that we can absolutely agree to the fact that
21 Mr. Raoul Marc Jennar be included in Annex C; that is to say a
22 witness with reduced testifying time. We do not need to question
23 Mr. Raoul Jennar for three days or even for two days, as was the
24 case for Mr. Nayan Chanda, for example, and we can perfectly
25 question him within one day.

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1 Now, concerning the other witnesses, I'm just a little bit
2 surprised by the divergence in stances among the civil party
3 lawyers, because if we add up which each civil party wished to
4 keep, well then, I believe that this could not stand, and I
5 imagine that the Chamber before drawing up this list thought
6 about the fact of whether or not these witnesses were absolutely
7 necessary to provide the evidence that has to be provided. So I
8 do not understand clearly the position or, let's say, the
9 different stances among the civil party lawyers, but I also do
10 not understand very clearly the position of the Co-Prosecutors.
11 Either we take away or we do not take away. This desire of
12 always having a safety wheel accessible, well, there's that one
13 moment you have to say, "I accept the facts the way they are."
14 Who is the most in danger if we accept the list that is being
15 proposed by the Chamber? Well, it's the defence.
16 It is the defence that is in the most vulnerable spot because you
17 indicate yourself in point number 2 of your agenda that, as of
18 the moment when we accept that these witnesses do not come, well,
19 this means that the defence will not be able to question them.
20 The defence will not be able to confront them, so therefore,
21 again, it's the defence that has the most to lose.
22 [14.51.56]
23 However, nonetheless, the defence is telling you, okay, you have
24 to know how to take risks in life, my dear esteemed colleagues,
25 Co-Prosecutors. And the defence is willing to take the risk of

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1 not calling in these witnesses.

2 However, the defence is requesting that it be noted that it
3 accepts all of the testimonies by the mere fact that it does not
4 need to call up these witnesses. The defence, therefore, will
5 reserve itself the right to discuss some of these statements when
6 I do not remember -- for example, when a witness speaks about 20
7 or 30 bags of blood, well, the defence in that case, for example
8 -- the defence reserves itself the right to disagree. That's
9 all.

10 Is this going to change the whole trial, do you believe? So
11 therefore, the defence indeed agrees with the Chamber's proposal,
12 under the reservation of Mr. Raoul Jennar, and the defence is
13 requesting Mr. Raoul Jennar to pass from Annex A to Annex C.

14 Thank you.

15 MR. PRESIDENT:

16 Thank you, Mr. Francois Roux, who made your comments on the
17 witness.

18 Your Honours, Judges, do you have any comments to make on agenda
19 number 1? If Your Honours do not have any questions, we move to
20 agenda number 2 and it's related to civil party group 2 and other
21 civil parties lawyers. You don't have any issue in relation to
22 Annex C or B here?

23 [14.54.36]

24 In this agenda is the list of names of witnesses. We would like
25 to hear the explanation, whether or not civil party group 2

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1 retains your position to keep civil party CP2/1, CP2/2 and CP2/3.
2 Do you want to keep these witnesses and could you please give the
3 reasons for retaining these witnesses in relation to the facts
4 and to the hearing please?

5 MS. STUDZINSKY:

6 Thank you, Mr. President.

7 Our position on point Annex B is the following. We want to
8 maintain CP2/1 and withdraw CP2/2 and 3. The reason for CP2/1 is
9 we discussed it extensively in the oral hearing. CP2/1 will
10 establish direct exchange between the accused and the Division
11 02, and in addition will give evidence about the time after the
12 collapse of the Khmer Rouge. And then the accused spent his time
13 together with CP2/1 and who will provide the Chamber and all
14 parties with information that he could have, of course, escaped
15 and that he stayed with the Khmer Rouge because he was convinced
16 to do so.

17 Therefore, we would like to hear CP2/1. That is all on this
18 point.

19 MR. PRESIDENT:

20 Now we move to agenda number 3 and in agenda number 2 it's only
21 civil party lawyer group 2 and she requested to remove the other
22 two witnesses. She keeps only one witness and she mentioned
23 reasons for that.

24 [14.57.58]

25 In the next agenda, in Annex C, the Trial Chamber wishes to

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1 inform the parties that it will apply the one-day maximum per
2 witness principle, and to reduce the proposed time of testimony
3 of 13 witnesses as the following.
4 Witness KW-10, before we allocate the time for two days and a
5 half and reduce to one day; David Chandler we planned to give two
6 days but now we reduce to one day. And KW-23 we reduce from one
7 day to half a day; and CP2/5 from one day to a half-day; and
8 KW-34 and Françoise Sironi-Guilbaud will provide joint time from
9 four days to one day for their testimony.
10 Excerpts of the testimony to be given by KW-08 and KW-09 that
11 need to be heard; their testimony should be two days for each
12 witness. So we will spend four days for two witnesses here.
13 Other parties, if you have any comments or suggestions to make,
14 you share your comments and proposals and even though there is a
15 proposal to include the item in the agenda to hear the testimony
16 of the witnesses. The parties seem to agree there should be a
17 reduction of times but not the number of the witnesses and we --
18 the parties propose the reduction of time but not the number.
19 Please, Mr. François Roux?
20 MR. ROUX:
21 Your Honour, please could you just repeat? The last two
22 witnesses; who are the last two witnesses? We did not get the
23 interpretation of this; the last two witnesses that you
24 mentioned.
25 MS. STUDZINSKY:

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1 And please could you also repeat (microphone not activated)
2 sorry, could you repeat also KW-10? Thank you.
3 [15.01.31]
4 MR. PRESIDENT:
5 We have discussed that in principle we agreed the use of the
6 pseudonyms. However, because of today's in-camera meeting, we
7 are able to inform you that the KW-08 and 09 are the two
8 witnesses that we actually planned to have them testify. They
9 are Mam Nai and Him Huy, and for Mam Nai, alias Chan, and Him Huy
10 we actually scheduled them previously because they are related to
11 a lot of facts, including M-13. That's why we -- after the
12 calculation, that we need two days each for each of the
13 witnesses.
14 As for KW-10; KW-10 will need one day, so there's a reduction
15 from two and a half days to one day for KW-10. Do you require a
16 name for the pseudonym KW-10? Because for the sake of
17 clarification, that's why I provided the names for the two
18 pseudonyms.
19 Our main goal is to reduce the time, the overall time for all the
20 witnesses.
21 The floor is now given to the Co-Prosecutor.
22 MR. SMITH:
23 Your Honours, we agree with the suggestion. The only one in
24 relation to KW-10, he's very central to the case and we would
25 suggest that perhaps if in Your Honour's questioning you can't

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1 reach the end within the few hours assigned during the day, that
2 that might go on to a day and a half. But other than that we
3 agree with the suggestions, Your Honour.

4 MR. PRESIDENT:

5 Thank you, Co-Prosecutor.

6 Now the floor is given for the opinions to the civil party
7 lawyers for group 1, did you have any comments to make regarding
8 the time reduction for the hearing of the witnesses' testimonies
9 in Annex C of our agenda?

10 [15.05.01]

11 MR. WERNER:

12 We have no comments, Your Honour, so we agree.

13 MS. STUDZINSKY:

14 Yes, our comments concern KW-10 as well and we would like to add
15 the following. It's not only very important and a core witness
16 here, but this witness is contested by the accused and there are
17 -- I think as well it needs more time to interrogate him and so I
18 don't know even if one and a half days would be enough because he
19 is very detailed and contested on a lot of points by the accused.
20 And then concerning -- may I ask for clarification of what
21 happened -- KW-34? You decided to reduce to one day or he was
22 not -- or the witness was not mentioned.

23 JUDGE CARTWRIGHT:

24 Yes, the Trial Chamber has decided that KW-34 and Françoise
25 Sironi-Guilbaud will jointly give their testimony, and that that

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1 will be allocated a total time of one day. Is that clear now?

2 MS. STUDZINSKY:

3 Okay, thank you for this clarification. Then I would suggest,
4 concerning these two experts and -- witnesses who may examine the
5 accused and who seem to me very important to shed light on the
6 accused and to assess what he is saying, his behaviour, and I
7 fear that one day for both might be a very short time and I
8 suggest to grant them at least, both together, one and a half
9 days that also the parties have enough opportunity to ask them,
10 because I find, according to this that I have read in their
11 expertise, that there could be -- or they need more time, in my
12 opinion, to report their findings. Thank you.

13 [15.07.55]

14 With the other suggestions we agree.

15 MR. KIM MENGKHY:

16 Thank you, Mr. President. My group has no objection to the
17 proposals made by the Chamber. We fully support it. Thank you.

18 MR. PRESIDENT:

19 Lawyer for civil party group 4, Mr. Hong Kimsuon.

20 MR. HONG KIMSUON:

21 Thank you, Mr. President.

22 For the group 4 we support the comments and the proposals raised
23 by the civil party lawyers and the Co-Prosecutors. We have
24 considered the witness CP2/5. This witness, he's an expert
25 doctor and I would like the President and the Judges to consider

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1 that the half a day period is short for this expert to provide
2 the testimony regarding all the events connected to the accused
3 regarding the regret, the pain or the reparations. So I think it
4 would need at least one day because all parties would seek to put
5 questions to this expert witness. Thank you.

6 [15.09.33]

7 MR. PRESIDENT:

8 Thank you, all the lawyers. Now I would like to give the floor
9 to the defence counsel. Mr. Kar Savuth, the floor is yours.

10 MR. KAR SAVUTH:

11 Mr. President, I fully agree to the proposal raised by the
12 President that some witnesses would need half a day or some would
13 need one day. However, I would request that for half a day or
14 for a one-day witness time allocation I would want the Chamber to
15 allocate the time for each respective party. Otherwise we are
16 the last one in the row and we would have less time.

17 MR. PRESIDENT:

18 Thank you for your positive and bright idea. This is the
19 experience for our Chamber in the trial management and the time
20 allocation is a better solution to expedite the proceedings.
21 François Roux, if you have any comments to make, the floor is
22 yours.

23 MR. ROUX:

24 Thank you, President.

25 I think that for once I shall concur with my esteemed colleague,

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1 Mrs. Studzinsky, regarding the two expert witnesses, the
2 psychiatric expert witnesses. We need to reserve for ourselves
3 the possibility of an extra half day, at least as a possibility.
4 And I would like to state right now that subject to availability
5 of this expert; I would very much request the presence of Mrs.
6 Sironi-Guilbard here rather than through a video link.
7 Considering that the Chamber will be devoting two days to KW-08
8 plus two days to KW-09 plus one day to KW-10, I do believe it is
9 not too much to ask to have a bit more than one day in order to
10 look at the -- to receive the testimony of a psychological
11 expert.

12 [15.12.32]

13 Regarding Mr. Chandler, I do believe this person is one of the
14 greatest and deepest experts with deep knowledge about S-21. I
15 do believe an extra half day, at least, should be provided for
16 his testimony. His work is an absolute must in the field of
17 knowledge about S-21. It has been used as a reference for the
18 investigation and I think we should keep for ourselves the
19 possibility to have an extra half day to put questions to Mr.
20 Chandler.

21 I would tend to think that it would be more important to have
22 one and a half days for David Chandler as an objective witness
23 rather than to have two days each for KW-08 and KW-09 because Mr.
24 David Chandler is an independent expert. He has no relation to
25 the prosecutors office, no relation to the civil parties, no

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1 relation to the defence and he is one of the people with the
2 deepest level of knowledge about S-21 so what he will have to say
3 definitely would carry as much weight as, say, the testimony of
4 KW-08 or KW-09.

5 MR. PRESIDENT:

6 Thank you for your remark regarding all the points especially
7 related to the expert witness.

8 It is also through our experience that the testimony of witnesses
9 tends to take longer time due to their detailed knowledge and
10 expertise. And the Chamber also took note of this matter and
11 will discuss and consider the issues amongst ourselves -- whether
12 the time is less or more or sufficient -- in order to have a fair
13 trial with the expedition.

14 I notice the presence of a civil party lawyer.

15 [15.15.09]

16 MR. KONG PISEY:

17 Thank you, Mr. President.

18 Your Honours, I think my opinion is little, but if -- I hope even
19 if it's minor, it's going to contribute to the overall time
20 reduction.

21 So my point is the time allocation for each witness and for the
22 parties; how have it been performed? When we talk about half a
23 day or one day testimony, it is also a lot of time, but if you
24 take the actual hours into consideration -- that is from 9 to 12
25 -- in the morning, we only have three hours. And in the

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1 afternoon from 1.30 to 4.30 so the maximum is three hours and for
2 one day, the total hours is only six.

3 And have you taken into account the possible objections raised by
4 a party and then if there is an objection, then the Chamber would
5 have to decide to rule on it.

6 Another point is that we take a break and each break takes 20
7 minutes so if we take 20 minutes for half a day, it means we only
8 have two hours and forty minutes for half-a-day session.

9 And another point is related to the interpretation. Sometime
10 there is an objection to the interpretation or sometime there is
11 a request for a fast speaker so all this adds up to the time
12 allocation of half-a-day or one-day testimony and it is not easy
13 to manage. And this is just for the consideration of the
14 Chamber. If we talk about half-a-day testimony, what is the
15 actual hours allocated for such a location?

16 [15.17.24]

17 MR. PRESIDENT:

18 Thank you. Thank you for your remark and actually all remarks
19 have been noted and discussed amongst the judges, and in the
20 past, for some objections, the Chamber had to adjourn and had to
21 deliberate and provide the decision. And we also had to consult
22 the international jurisprudence as well. And if it keeps
23 repeating, the process; it's going to affect the overall time.
24 So after we resolve all those major objections and lately, it is
25 noted that there's not so many major objections and only for some

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1 minor objections, we can rule verbally in the courtroom itself.
2 So we hope there will be no major objections as what happened in
3 the beginning of the trial.
4 The calculation made by the Chamber is that for one day -- one
5 day is the general norm for each witness. We think some
6 witnesses would need less than one day so there is the
7 opportunity to continue to the next witness. What happened in
8 the past was that sometime we could not listen to them on time,
9 but now, probably, invite them in a row. So for those whose
10 testimony is less than one day, we can proceed to the next one.
11 And if one takes a bit longer than one day then we deduct it from
12 the next witness; however, in general we consider one day for
13 each witness is sufficient.
14 And you also talk about three hours per each morning or afternoon
15 session with a 20-minute break plus any possible objection which
16 might take five to 10 minutes. We will try to adjust to the
17 actual proceedings. And also we have to be careful on the
18 precise questionings. And you, as parties, also have to be
19 precise on your questionings. They needs not to be long and they
20 needs to be accurate, acceptable so that each party is able to
21 participate in the process of questioning.
22 [15.20.10]
23 And through our experience during the proceedings this week, we
24 actually planned to have two-and-a-half days hearing; however,
25 due to a technicality, we only have it done for one and a half

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1 days so it means our calculation is one day's amiss.

2 Previously, we had the schedule for two days but it took four
3 days in reality. So that is the experience we have encountered,
4 however, it seems to be more precise about the later stage of our
5 scheduling and the proceedings.

6 However, we thank you for all your remarks because it is in
7 confirmation to the discussions that we have had amongst
8 ourselves.

9 Please, Mr. Co-Prosecutor.

10 [15.21.24]

11 MR. SMITH:

12 Thank you, Mr. President.

13 There is still a small grey area I think and it's in relation to
14 the value of the statement that's put in under 87(3) versus the
15 value of witness testimony. And I would submit -- I mean, the
16 defence have said that they could still disagree with some
17 aspects of the statement if it's put in under 87(3).

18 All I would add is that if the defence seriously contend or
19 dispute an aspect in any statement that's put in under 87(3), I
20 think it's important that that witness be called to Court and
21 that confrontation be had because unless, I think, Your Honours
22 have that confrontation on a significant issue, I think it would
23 be difficult to resolve the factual basis of that allegation.

24 I'm not talking about less central issues, which perhaps Your
25 Honours can take into account in how the witness statements

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1 either corroborate or not corroborate or support other witness
2 testimony, and then Your Honours can place weight on that, but
3 where there are significant, central, crucial, allegations, I
4 think it's very important that that witness be called to Court if
5 the accused seriously dispute it. And that's a different
6 situation, Your Honours, I submit, in relation to calling
7 witnesses so the public can hear the testimonies, which is
8 important for the truth-telling aspect.

9 And, perhaps, if I just refer to one of the witnesses that one of
10 the civil party lawyers referred to, and that's in closed
11 session, it's Uk Bunseng. Now, he states:

12 "After the fall of Phnom Penh, a few days after it, Duch was in
13 the mountains and stayed there for some time. He had his
14 subordinates with him. He instructed his subordinates to torture
15 and kill seven prisoners. This is a few days after the
16 Vietnamese came in."

17 [15.23.38]

18 That's a serious allegation, and I think it's difficult for Your
19 Honours to weigh that allegation up as to the truth of it unless
20 -- if the defence disagree with it -- unless that witness has
21 been confronted, otherwise I think we end up having some
22 evidence, crucial pieces of evidence, being in a grey area.

23 And that type of allegation, particularly in light of the
24 accused's position so far, that he was scared and hopeless at the
25 end of the DK regime, that piece of evidence directly contradicts

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1 that, and I think if the defence disagrees with that that person
2 should be called. Now, that could be a confrontation of 20
3 minutes or half-an-hour. It's quite different to the
4 truth-telling exercise and the communicating to the public.

5 Thank you.

6 MR. PRESIDENT:

7 Thank you, Mr. Co-Prosecutor, who raise these important points.

8 And the Trial Chamber have made a lot of remarks and, based on my
9 personal understanding, there might be a difference in perception
10 and in particular the readings; whether or not the reading is to
11 everything. Sometime through the reading we may have the
12 different understanding between the prosecution and the defence.
13 So the weighing of the value, it seemed to be different among the
14 two parties, so in between the aggravating circumstances and the
15 mitigating circumstances, so we need to find the better way for
16 that matter.

17 [15.25.47]

18 So if the Trial Chamber decide not to call any witness to
19 testify, but when we read the statement of that witness and there
20 is an objection by the defence counsel or the accused to that
21 reading, we can continue that reading and the hearing because we
22 do not have the witness who provided those accounts, or should we
23 look at all together the statement and the Trial Chamber put that
24 before itself based on the document, do we hope to have no
25 objection, and if we predict to have the objection, we will act

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1 on that.

2 So the restriction of the number of witness, so we need to limit
3 the calling of the witness only to the contested section of the
4 statement so that we can expedite the proceeding; so when we read
5 those statement with no objection then we can go fast in that
6 manner. So can we proceed in that manner?

7 Sometimes we are not sure altogether, but when we come to each
8 statement we will know for sure, and if you need to call the
9 witness or we need to spend two weeks at least, the gap in time
10 between the issuance of the summons and the appearance of the
11 witness to the Court.

12 MR. ROUX:

13 Your Honour, what my esteemed colleague has said is called
14 "returning to square one". Basically, you are suggesting that we
15 revisit everything over again.

16 So we could spend 10 years on this Duch trial. There is stuff
17 for us to process for 10 years, but we might also decide that
18 with the help of everything that you already have collected, we
19 have plenty. And you do come from a system where there is the
20 guilty plea, which is part of the system. You know full well
21 that when somebody pleads guilty, a number of facts can be left
22 aside.

23 [15.28.54]

24 So I would very much like us not to return to square one. The
25 Chamber has decided, wisely so, that a number -- a certain number

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1 of witnesses would be redundant over and above those who have
2 been kept on the list and, consequently, it is not essential for
3 the debate to have these people summoned. So I would say, "Don't
4 worry, he pleads guilty".

5 MR. SMITH:

6 Your Honour, it's not a question of the accused pleading guilty.
7 There's no such thing as a guilty plea in this system. It's a
8 question of truth beyond reasonable doubt, and it's a question of
9 resolving how much and how willing the accused was in
10 participating in these crimes.

11 That particular incident I refer to was critical and central, and
12 that was central to the issue of whether or not he was willing
13 and voluntarily committed those crimes.

14 MR. PRESIDENT:

15 Yes, thank you to your remarks and comments.

16 I remember that in the last trial management meeting we discussed
17 the initiatives to reduce the number of witnesses. I remember
18 that the international Co-Prosecutor raised that suggestion also.
19 And number two, it might be that a contradiction between -- on
20 the reduction of witnesses and to expedite the proceeding and to
21 prove the case beyond reasonable doubt, and it might be too that
22 we try our best to prove the crime beyond reasonable doubt, we
23 need to have the maximum examination, including the duration of a
24 hearing for each witness against the accused, and the parties and
25 the number of parties to participate. That's why we try to find

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1 a better way, to ensure that the trials are conducted in a fair
2 and expeditious manner.

3 That's why we try to find a solution and we need to hear the
4 parties' suggestions on the 11th of June on the basis where we
5 can reduce the number of the witnesses, and we would like to hear
6 to what extent and how many witnesses should be needed for the
7 purpose that we are looking for, and to make it efficient and
8 perfect in its own trial; that the more reduction we make, it may
9 affect the principle of justice.

10 [15.32.42]

11 And if we try our best to find the justice and we may risk to
12 violate the trial in a timely fashion in this manner. Yes, we
13 agree that we have a slight difference in opinions in terms of
14 the hearing of witnesses or reduced number of witnesses. And the
15 difference here, I find it is only the times and the duration we
16 should increase to some witnesses but request to reduce some
17 witnesses.

18 So the increasing in time is only increased by half a day for the
19 expert witness, and for some witnesses the times would be reduced
20 for those particular witnesses, and the Trial Chamber will
21 consider this suggestion and request. Again the Trial Chamber
22 thanks you for parties that you contribute to the discussion, and
23 the Trial Chamber will take these suggestions and we will
24 consider and decide in its ruling.

25 The fourth part in our agenda is to testify of certain witnesses

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1 by the videoconference. There are three witnesses and just now
2 Mr. François Roux mentioned that the witness Françoise
3 Sironi-Guilbaud, the defence requests that that witness should be
4 summoned to hear in person, and I now give the floor to
5 discussion to point number 4 here. Do you have any suggestion or
6 comment to make in relation to the hearing of witnesses by
7 videoconference? If you have any suggestions to make please, Mr.
8 Co-Prosecutor.

9 MR. SMITH:

10 Your Honour, we're in agreement with that. It's cheaper and I
11 think more efficient, and I don't think we lose too much in
12 relation to these witnesses.

13 [15.35.35]

14 MR. PRESIDENT:

15 Now civil party lawyer, group number 1, do you have any comments
16 to make on agenda number 4?

17 MR. WERNER:

18 Your Honours, we do not have any comments on agenda number 4 but
19 I will have just a very quick additional comment, and that is
20 this.

21 There is one expert that we have proposed and you decided to call
22 him, and this is Charles Figley on the trauma of second
23 generations. Charles Figley. Now, our understanding is that
24 this expert had some problems of availability and, as well, the
25 fees, the money he was requesting; the per diem or whatever it

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1 was.
2 Now, because he was a witness called by your Court, we have told
3 him to communicate directly with Your Honours, and I don't know
4 if he did or not, but because now you are assessing globally this
5 witness list, we thought it would be appropriate for us to tell
6 you that as far as we understand, there may be a problem with
7 that expert and I'm not sure -- I don't know what is exactly the
8 position, if he did or not communicate with Your Honours, but it
9 may be an idea for your legal office or yourself to come back to
10 this expert to check, because there may be a problem there. I
11 stand guided if you need more clarification.

12 MR. PRESIDENT:

13 In response to the remarks by lawyer Alain Werner, we get the
14 information from the Greffier of the Trial Chamber. She mentions
15 that he could not come to testify in the Court for our Court.

16 [15.37.57]

17 MR. WERNER:

18 I'm grateful for that position.

19 MR. PRESIDENT:

20 Please, civil party lawyers, group number 2, in relation to
21 agenda number 4.

22 MR. KONG PISEY:

23 Mr. President, Your Honours, in relation to this agenda we agree
24 to that but, the important point, it was not for the technical
25 point, Your Honours, it was the IT problem. But when we provide

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1 a testify, could the IT connect to our Court, so how fast is it?
2 Would there be any interference that causes any delay and loss in
3 time? So if we have the IT person here who can explain to the
4 Chamber whether or not it is a disadvantage in using the
5 videoconference. But based on our experience here in the
6 courtroom, there is some interference in the IT technicality
7 problem, so if you have that kind of explanation would be fine.

8 MR. PRESIDENT:

9 Thank you for your remarks. It's similar to my concern. I am
10 one of the Cambodians that I feel a bit strange to have the
11 videoconference hearing. But we get the confirmation from the IT
12 person here; he said that please don't be worried on that matter.
13 So the Trial Chamber, before we put this for discussion, we have
14 consulted with the IT experts here and your concern is similar to
15 mine.

16 [15.40.07]

17 So I raised this to the expert and we have discussion before
18 putting in our agenda, and we will do a calculation in a
19 timeframe about the difference in times between Cambodia and
20 other times in overseas countries, and then they will notify us
21 on that window.

22 We have the morning here and the afternoon there. We can arrange
23 for that. So is it right that I make this kind of remarks? We
24 have a consultation with the IT officer in relation to the video
25 conference.

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1 MS. STUDZINSKY:

2 Thank you, Mr. President.

3 I have a point that is related to video conference but does not
4 concern witnesses but civil parties. I would appreciate if you
5 could clarify. If a civil party -- this is E2/77, one of our
6 clients who is rather sick who is not able to come to the Court
7 and I do not know how the situation will be in some weeks or
8 months, so could you clarify if for those civil parties who are
9 living in a village, if and how a video conference could be
10 possible -- only to clarify. I don't want an answer now, but
11 maybe it's the right moment to ask this or to take any
12 organizational matters.

13 [15.42.21]

14 Thank you.

15 JUDGE CARTWRIGHT:

16 I think that the possibility of having a video conference in a
17 rural area is not going to be very easy, so I think you need to
18 bear that in mind. We appreciate that a number of the civil
19 parties will be frail and that there are transport difficulties,
20 but we also have to take into account that Cambodia does not have
21 the extensive network of communications that some other countries
22 have, and be realistic about this. So no promises.

23 MR. PRESIDENT:

24 Now the floor is for the civil party group 3.

25 MR. KIM MENGHKY:

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1 Thank you, Mr. President. Our group has no objection to the
2 hearing of the testimony through videoconferencing and we have
3 noticed that the matter regarded through our civil parties,
4 because I would request the ability if any civil party is able to
5 provide testimony through videoconferencing and to what label or
6 whether it's possible for the civil parties to provide testimony
7 through videoconferencing.

8 Thank you.

9 MR. PRESIDENT:

10 Thank you.

11 [15.44.19]

12 Mr. Hong Kimsuon, no need for you to stand up. Yes, you can take
13 a glass of water now. Because the DVD needs to be changed. We
14 just take a very short break. No need to go anywhere. Just a
15 couple of minutes break so that the Audio and Visual Unit can
16 change the DVD.

17 Court Official, can you facilitate audio-video unit for the
18 change of the DVD?

19 (Court recesses from 1545H to 1547H)

20 MR. PRESIDENT:

21 I think we can now resume our meeting again. The meeting has
22 been progressing well and I think Hong Kimsuon really wants to
23 speak. He doesn't want to miss his turn.

24 I would like to clarify that for the lawyer of the civil party
25 group 3; I gave the floor to Judge Cartwright on the possibility

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1 of a videoconferencing within Cambodia. So it is already clear
2 that it's very unlikely that we can proceed with the
3 videoconferencing in Cambodia.
4 However, for the international videoconferencing, from abroad --
5 however, even from Vietnam we are uncertain yet. We had a
6 consultation with the experts regarding the overseas
7 videoconferencing and the response is positive. The time
8 difference has also been considered.
9 So an appropriate time will be considered to schedule for both
10 sides to be able to proceed within the working hours of the
11 Chamber. However, it differs from one region to another, from
12 half and hour to one hour, for instance, from state to state for
13 the interested people to provide the testimony.
14 [15.49.20]
15 Actually, I asked Judge Cartwright regarding the information and
16 she personally contacted the technician. Maybe the
17 interpretation is not complete, so she did not provide a complete
18 picture to you regarding the ability for videoconferencing from
19 overseas. We already considered that option.
20 So it's not really a main issue. That's why we put that on our
21 item of the agenda. So if we haven't yet consulted with the
22 expert, we won't be able to proceed with this option. Actually,
23 we already consulted with the technician, with the expert and
24 with a positive response. That's why we put the item on the
25 agenda.

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1 I think we already responded to you regarding the domestic
2 videoconferencing or maybe Judge Cartwright or Judge Lavergne
3 would like to provide any further clarification on the technical
4 issue related to domestic videoconferencing. Probably you can
5 add to what I have said if I missed some points.

6 If you don't have anything to add, now I would like to give the
7 floor to Hong Kimsuon.

8 MR. HONG KIMSUON:

9 Thank you, Mr. President.

10 Your Honours, for our group 4, we do not have any questions or
11 objections, however, we have some remarks.

12 One point that I asked to inquire with your Honour: We have a
13 client who resides overseas, actually in France; he submitted a
14 request to provide testimony through videoconferencing, and up to
15 today we haven't yet received any response or decisions from Mr.
16 President. I understood that Judge Cartwright said in Cambodia
17 it is difficult for the videoconferencing, but this civil party
18 client of ours resides in France which is a very well-developed
19 country, so it's a possibility.

20 [15.52.02]

21 MR. PRESIDENT:

22 Let me respond to your question. What we have raised is
23 concerning the experts and expert witnesses. The civil parties'
24 lawyers actually requested for videoconferencing for certain
25 witnesses to provide testimony. In principle, we agree to the

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1 request because then we can actually save the time, the troubling
2 time of the concerned persons. So this our positive response
3 that we accepted your request.

4 Next I would like to give the floor to the defence counsel, Mr.
5 Francois Roux. You have anything else to add regarding your
6 position on the fourth item of the agenda?

7 MR. ROUX:

8 Thank you, Mr. President.

9 First of all, before I speak about this, and even if we aren't in
10 an in camera session, the defence has just been informed by a
11 release that is published on the tribunal's website, has been
12 informed of the resignation as of -- the resignation of Robert
13 Petit as of September 1st. So the defence would like to state
14 that it regrets this fact, and that it wishes all its best to Mr.
15 Robert Petit.

16 Now, concerning the topic itself, it is -- the defence is
17 particularly concerned by Annex D, and I can confirm that Mr.
18 Goldstone, whom I met recently in the context of my other
19 activities in the Hague, well I'd like to confirm that Mr.
20 Goldstone agrees to speak through videoconferencing, but we will
21 have indeed a problem of time difference, because if I've
22 understood correctly, Mr. Goldstone is often in the United
23 States. So this represents an 11 or 12 hour time difference with
24 Cambodia.

25 [15.54.50]

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1 And I would like to specify that before the ICTR, a certain
2 number of hearings are conducted at night, or after dinner, to be
3 more exact, in order to include videoconferencing with the
4 outside. So we might be in a situation where we will have to
5 plan this kind of situation. I do not believe that it will be
6 possible to impose on Mr. Richard Goldstone to testify at 4
7 o'clock in the morning from the United States.

8 And I'd also like to say that in the context of this meeting, I
9 called Mr. Stéphane Hessel, the Ambassador, and he confirmed his
10 agreement to testify through videoconferencing, and he would have
11 wished to be present himself, but as you know, he is 92 years old
12 and this would be a journey that would be too difficult for him.
13 But, however, he agrees to testify from Paris through
14 videoconferencing.

15 Now concerning Mr. Goldstone, as well as Mr. Hessel, I believe
16 that a half-day maximum -- maximum, I repeat -- will be enough
17 for their testimonies. In fact, I believe that they will speak
18 even for less than a half a day.

19 However, concerning Mr. Hessel and maybe other witnesses who will
20 also testify through videoconferencing, I would also like us to
21 consider the possibility of having a member of the defence team,
22 and of the Co-Prosecutor's office as well, if so desired, well, I
23 would like to request one of these members to be next to the
24 witness.

25 [15.57.15]

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1 And I would also like to indicate, concerning the time allotted
2 to the defence witnesses, well, the majority of the defence
3 witnesses will be very brief, and maybe 20 minutes or 30 minutes
4 maximum for some of them. So I would like the Chamber to take
5 this into consideration in the organization of the testimonies.
6 And also concerning the witnesses, I would like to remind you
7 that Professor Henry King, who because of his age had also
8 accepted to testify through videoconferencing, has passed away
9 unfortunately. But he presented me with an affidavit, and in one
10 page he specified what would be the meaning of his testimony, and
11 the defence would like -- is proposing to include this document
12 in the case. And the Greffier has made copies in English and in
13 French of this document. And the defence would like to include
14 this document in the case, as well as Mr. Henry King's book that
15 is already in the case and that we would like to use.
16 And finally, Mr. President, before knowing that the trial
17 management meeting would be programmed to this afternoon, we
18 started discussing with Judge Lavergne the idea -- the
19 possibility of having me participate in a trial management
20 meeting on Thursday through videoconferencing. I'm wondering if
21 we could stand to this idea and therefore to have discussion on
22 Thursday from my residence in Montpellier so that we could at
23 least test the videoconferencing system. And if this can indeed
24 help the Chamber, well I'm willing to take time off on Thursday
25 morning in France to test the videoconferencing system. It's

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1 just a suggestion that I am making.

2 (Deliberation between Judges)

3 [16.00.49]

4 MR. PRESIDENT:

5 Thank you, Mr. François Roux, who raised this request. This is
6 also the suggestion that I have agreement on the matter that you
7 have a family problem that you need to return to your country,
8 and you try to take the possibility to test the videoconference
9 in the afternoon of the 25th of June but it is the anticipation
10 by the Trial Chamber, but now our IT here, we have taken advance
11 preparation to the overseas points of videoconference, so your
12 attempt to test the system maybe could not be done. So in order
13 to do that we have a plan for that in advance.

14 Now, do other parties have any suggestion or comment to make?

15 And from the Judges on our Bench, do you have comments to make?

16 Mr. Co-Prosecutor, please, the floor is yours.

17 [16.03.50]

18 MR. SMITH:

19 Yes, Your Honour, just briefly. Tomorrow, Thursday and Monday, I
20 was just wondering, now that the trial management conference has
21 been moved forward, how long you would be planning on questioning
22 the accused for in relation to Prey Sar? And about how long the
23 parties would get to question following that, so that we can plan
24 accordingly. Thank you.

25 (Deliberation between Judges)

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1 MR. PRESIDENT:

2 Thank you for your question in relation to the duration for
3 questioning to the accused on the facts that we plan to hear in
4 tomorrow's session and the day after tomorrow.

5 Based on our consultation and discussion, number one, the Trial
6 Chamber estimated that the hearing by the Chamber regarding the
7 establishment and the operation of S-24, or called Prey Sar, it
8 will take one day at the most. But our estimation based on the
9 maximum calculation but we try to spend less than that, and the
10 parties -- the timing for the parties, and the Chamber have
11 decided to give six hours for the Co-Prosecutors and six hours
12 for -- one hour; correction, yes -- one hour for the
13 Co-Prosecutor, one hour for the civil parties lawyers, and one
14 hour and a half for the defence counsel.

15 MR. SMITH:

16 Thank you, Your Honour, for communicating.

17 (Microphones not activated)

18 [16.08.52]

19 MR. ROUX:

20 Thank you, Your Honour. Along the same lines, I would like to
21 ask whether the Chamber is in a position to give us any idea of
22 what witnesses will be heard immediately thereafter. Have you
23 already decided which are the witnesses who will be heard
24 immediately after the hearing on Prey Sar? Of course, I'm sorry,
25 I'm asking this question in direct relationship with my movements

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1 out of Cambodia and back into Cambodia. I would need to know
2 whether it is important for me to be here as of Monday, for
3 instance.

4 MR. PRESIDENT:

5 On Monday the Trial Chamber notified the parties on the variation
6 of the schedule for the three weeks' period, including this week,
7 and from the next week and the following week the Trial Chamber
8 will sit and hear the testimony of the survivors from S-21.
9 There are nine of them and we will hear nine of the survivors.
10 There are nine survivors to be heard: KW-01, D25/3, D25/1,
11 CP1/6, E2/61, E2/23, E2/33, E2/80, E2/32 -- a total of nine
12 survivors for two weeks, next week and the following weeks.
13 Due to a delay in time, I would like to inform the parties that
14 we need to have the agreement in this trial management meeting
15 that we do not invite the witness to hear and we just put their
16 statement before the Court and we inform the parties on Monday
17 already.

18 Mr. Francois Roux, do you get the information?

19 MR. ROUX:

20 Your Honour, the order in which you have indicated these names
21 will be the order that you will be following as of Monday. Is my
22 understanding correct? Are they to appear in court in the order
23 in which you have read out their names?

24 [16.13.05]

25 MR. PRESIDENT:

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1 Yes, we will follow the order on our list based on our available
2 time and we will invite the witness to wait and if there is any
3 change, we will take another witness to hear so that we can
4 proceed with our hearing.

5 Thank you. Now, the Chamber and the meeting comes to the point
6 that we have discussed all points in the agenda. And the parties
7 and ladies and gentlemen, on my behalf and the Judges in the
8 Trial Chamber, we express warm welcome and thanks to the parties
9 who contributes their ideas and views and discussion to all the
10 points in the agenda of the meeting.

11 The Trial Chamber highly rated the effort and the contribution by
12 the parties and make effort to bring good cooperation with the
13 Chamber. The remaining issues and the difference in opinion --
14 the Trial Chamber will consider based on the views and the
15 suggestions raised in the meeting, the discussion, so that we can
16 have the proceedings which ensure the fair and expeditious trial.

17 Once again, the Trial Chamber thank for the members and the
18 parties who support the meeting that we have a good result and
19 you spend your effort and all mental support and I wish all of
20 you success in your mission, and especially I wish Mr. François
21 Roux have a good trip back to your country.

22 The Trial Chamber declares its adjournment of the meeting now.

23 (Judges exit courtroom)

24 (Court adjourns at 1615H)

25

Closed Session