



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
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Trial Management Meeting
13 June 2013

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

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VENG Huot

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. CHAN DARARASMEY	Khmer
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL Nonn, Presiding)	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English
MR. VERCKEN	French

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

2 (Trial Management Meeting opens at 0906H)

3 MR. PRESIDENT:

4 Please be seated.

5 This morning, the Chamber will have the Trial Management Meeting
6 for Case 002/01. As the President on - and on behalf of all the
7 Judges of the Trial Chamber, I would like to welcome the
8 Co-Prosecutors, the defence teams and the Lead Co-Lawyers for
9 civil parties who are present here this morning.

10 The purpose of this final Trial Management Meeting in Case 002/01
11 is to permit the parties a last opportunity to raise any issue
12 whose resolution is still outstanding at trial. And after the
13 TMM, the Chamber intends to schedule the last remaining hearings
14 at trial and, once they conclude, to announce the close of
15 evidentiary proceedings in Case 002/01.

16 To facilitate this Trial Management Meeting, the Chamber issued
17 in advance of it four annexes to the parties. The first three of
18 these annexes provided the parties with the Chamber's tentative
19 disposition of all requests to hear oral testimony at trial.

20 [09.08.52]

21 The parties over the course of Case 002/01 have requested to hear
22 a combined total of 1,054 witness, experts and civil parties. The
23 first of these annexes indicated those individuals relevant to
24 Case 002/01 whom the Chamber intends to hear at trial.

25 The second annex lists those individuals sought by the parties in

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1 Case 002/01 whom the Chamber has decided not to hear at trial.

2 The third annex lists all individuals contained by the parties on
3 their original Rule 80 list for the entirety of Case 002, but who
4 were not considered by any party to be relevant to Case 002/01.

5 All decisions in relation to this later annex have been deferred
6 to future trials.

7 The parties over the course of the trial have been provided with
8 multiple opportunities to identify relevant individuals to be
9 called, and the purpose of this Trial Management Meeting is not
10 to repeat these earlier requests. It is, instead, to grant the
11 parties a last opportunity to raise any genuinely novel issue
12 regarding these annexes and the individuals they identify.

13 [09.10.54]

14 The parties have, in advance of the TMM, identified a number of
15 additional witnesses they seek to hear at trial and opportunity
16 will be provided today to discuss these requests. The Chamber
17 will decide on these requests shortly after the TMM.

18 In advance of the TMM, the Trial Chamber also issued a fourth
19 annex outlining all 285 motions filed by the parties over the
20 course of the trial in Case 002/01. In order to assist the
21 parties in identifying any last remaining issues, the Chamber has
22 linked all motions and requests with their corresponding
23 decisions rendered at trial.

24 A small number of motions remain pending before the Chamber and
25 in order to aid discussion at the TMM, the Chamber has provided

1 the parties with advance notice of their likely disposition.

2 The parties were requested to provide the Chamber advance notice
3 of the issues they wished to discuss at the TMM. All parties have
4 complied with this request, and this has greatly assisted the
5 Chamber in planning.

6 [09.12.52]

7 Before proceeding to discuss the 17 additional witnesses sought
8 by the parties to be heard before the conclusion of the trial in
9 Case 002/01, the Chamber will first dispose of all other issues
10 raised by the parties in advance of the TMM.

11 Now, on the final document hearing, at the conclusion of the
12 testimony of Witness TCW-801, the Chamber will hold a final
13 hearing to permit the parties to present key documents in
14 relation to joint criminal enterprise and the role of the
15 Accused. It is likely to occur during the week commencing 24th
16 June 2013.

17 The Co-Prosecutors have requested that they be allocated three
18 days in order to present key documents at this hearing. The Lead
19 Co-Lawyers have requested the same amount of time.

20 The Chamber would like to inquire as to whether, in seeking these
21 time allocations, the Lead Co-Lawyers and the Co-Prosecutors have
22 collaborated to ensure that they will not present the same
23 documents at this hearing or might otherwise give presentations
24 that are duplicative. And for that reason, I would like to give
25 the floor to the Prosecution and the Lead Co-Lawyer to clarify

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1 this matter.

2 The Prosecution, you may proceed.

3 [09.14.49]

4 MR. SMITH:

5 Good morning, Mr. President. Good morning, Your Honours. Good
6 morning, Counsel.

7 Your Honours, in relation to the document hearings, as you've -
8 Your Honours have stated, we have asked for three days. And the
9 three days is in relation to the policy of forced transfer, work
10 sites and cooperatives, forced marriage, enemy policy and
11 targeting groups.

12 We haven't spoken yet with the civil parties, but we will
13 endeavour to do so and to try and ensure that the documents that
14 are presented are not duplicative. So we'll do that in the next
15 day.

16 MR. PRESIDENT:

17 Thank you for your information.

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

19 [09.15.48]

20 MS. SIMONNEAU-FORT:

21 Good morning, Mr. President. Good morning to everybody here.

22 Very briefly, we are, of course, going to discuss these
23 documents. I would like to tell the Court at this juncture that
24 we have decreased the time that we are going to be needing and
25 that we'd like to say now that one and a half days will be quite

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1 enough for us. And of course, we will liaise to make absolutely
2 sure that there is no duplication. Thank you.

3 MR. PRESIDENT:

4 Thank you for the information.

5 Judge Lavergne, please proceed.

6 [09.16.34]

7 JUDGE LAVERGNE:

8 Would it be possible for the Lead Co-Lawyers for the civil
9 parties and for the Prosecution to tell us if they have already
10 prepared their lists of documents that they are planning to table
11 at the presentation and if they have exchanged the lists with
12 each other?

13 So I'm really asking you what stage of preparation has been
14 reached. Thank you.

15 MR. SMITH:

16 Thank you, Judge Lavergne.

17 Just to even be slightly more accurate, the estimation of the
18 document hearings from the Prosecution's perspective was three
19 days, but that was including the role of Nuon Chea in Democratic
20 Kampuchea. So the document hearings purely on the JCE policies,
21 that is - would be, we estimate, two days, just under two days.
22 As far as the state of preparation of these hearings, most of
23 them are in a reasonably advanced state, but as far as an
24 accurate list of documents, I would say that would be - they
25 would be available more towards Monday than - than this

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1 afternoon. But they are in an advanced state of preparation, Your
2 Honours, and so we could provide those lists to the civil
3 parties, I would say, by Monday afternoon to assist them.

4 [09.18.24]

5 MR. PRESIDENT:

6 Thank you.

7 The Lead Co-Lawyer, you may proceed.

8 MS. SIMONNEAU-FORT:

9 Just to be specific, we have reserved our rights to submit
10 documents on the two Accused, so one and a half days for us
11 concerns the two Accused and JCE. We are reasonably well
12 advanced, but we are far from the end. To be perfectly honest,
13 I'm not sure we will have finished by Monday, but we will
14 certainly try to finish in the course of next week.

15 [09.19.08]

16 JUDGE LAVERGNE:

17 Thank you for that information.

18 MR. PRESIDENT:

19 Thank you, and thank you, Judge Lavergne.

20 The Nuon Chea defence have indicated that they do not, as such,
21 wish to present key documents at this hearing, but have requested
22 a maximum of one day in order to respond to the document
23 presentations of the other parties.

24 In its motion, E263, the Khieu Samphan defence submits that the
25 key document hearings violate the Accused's right to a fair and

1 adversarial trial insofar as they are not intended to allow
2 adversarial argument in relation to the documents presented and
3 due to alleged inconsistencies regarding the conduct of these
4 hearings before the Trial Chamber.

5 They submit that the Khieu Samphan defence must be accorded a
6 real opportunity to discuss all accusations against the Accused
7 and that further hearings on the admissibility of documents are
8 to be scheduled.

9 [09.20.31]

10 The Khieu Samphan defence also submit that key documents
11 presented so far should further be examined for probative value
12 so as to permit full adversarial debate and that opportunity be
13 provided at the end of proceedings for a thorough assessment of
14 the entire body of evidence against the Accused.

15 The Chamber has previously explained that the key document
16 hearings which were held at the conclusion of each trial segment
17 are required because there is no need within the ECCC legal
18 framework for documents to be tendered only through relevant
19 witnesses or experts. These hearings were designed to permit the
20 parties to indicate for the benefit of the Chamber those
21 documents alleged by them to be of particular relevance to each
22 trial segment.

23 [09.21.55]

24 The Chamber has previously emphasized that the purpose of these
25 hearings is to ensure that both inculpatory and exculpatory

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1 evidence is appropriately highlighted before the Chamber.

2 These hearings serve also to permit a greater measure of public
3 accessibility to the documentary aspects of the trial in due of
4 the vast size of the Case 002 case file and the unlikelihood that
5 the general public would otherwise be aware of the contents of
6 these key documents.

7 As separate hearings were held specifically to enable challenges
8 to the admissibility of all documents tendered at trial,
9 arguments as to admissibility were not permitted during the key
10 document hearings. However, the Accused or their lawyers were
11 never prevented from discussing the relevance or probative value
12 of the key documents presented during them.

13 In light of the Khieu Samphan's defence's allegation that they
14 lacked adequate opportunity for adversarial argument in relation
15 to these documents, the Trial Chamber invited the Khieu Samphan's
16 defence to indicate at this TMM how much time they now require
17 for this purpose and to specify the documents to which they wish
18 to further object or comment.

19 Could the Khieu Samphan's defence now provide these indications?

20 You may proceed, Counsel.

21 [09.24.11]

22 MR. VERCKEN:

23 Thank you, Mr. President. Good morning, everybody.

24 The position of Khieu Samphan's defence team remains unchanged.

25 As we see it, these key document hearings are not at all

1 connected with a judicial trial. And in a sense, we are locking
2 the stable door after the horse has bolted because here, the
3 system seems to be to examine a certain number of elements and
4 testimonies during a public trial, after which, as happens in
5 international trials, an opportunity is given to all of the
6 parties to exchange memoranda and submissions and in which they
7 examine the documents that have been filed during the trial and,
8 finally, they have an opportunity to respond to each other in
9 writing or, if not possible, then in Court.

10 [09.25.38]

11 The basic normal, shall we say, process for a trial is that. Now,
12 these instances where we discuss key documents have varied
13 somewhat in the way they have been organized.

14 At the beginning, the Chamber said that the purpose was only to
15 present documents for public benefit and for the benefit of the
16 media, and we protested against that and said that we were not
17 journalists, nor were we media people. Obviously, the public has
18 to know what we are talking about, but our mission is judicial in
19 essence.

20 And when you look at the way in which things are being conducted
21 today, our position is to take note of the fact that under the
22 pretext of the fact that we have these document hearings, we end
23 up in a situation at the end of the trial where we are going to
24 be granted for our final submissions 100 pages, roughly, in a
25 trial which lasted several years, including almost two years of

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1 hearings with 70 witnesses coming before the Chamber and several
2 thousands of documents up for discussion. And we have to put down
3 on paper our final conclusions in 100 pages.

4 [09.27.19]

5 Well, accept my apologies, Mr. President, but this is extremely
6 restrictive.

7 Gradually, we are coming to understand that we will have certain
8 time limits for the final statements and basing ourselves on a
9 memo, I believe - Memo 282, Mr. President - saying that our final
10 arguments should be a summary of our 100-page document.

11 Consequently, our position remains unchanged. These hearings that
12 were initially announced as being essentially for educational
13 purposes, you might say, have become a kind of cover for the
14 Chamber to slice away at the Defence's possibilities leading to a
15 defence of Mr. Khieu Samphan of 100 pages and a few hours of
16 final pleading.

17 [09.28.53]

18 We believe that this is a very serious violation of a right to a
19 fair and adversarial trial, and we don't think that this is
20 acceptable. For that reason, we, therefore, refuse to participate
21 in these hearings which, for us, Mr. President, seem to be
22 something of a trap. That's our position.

23 We would like, once the trial is over, for us to look back and
24 think that the trial was properly organized and that we had full
25 time to submit all of the evidence and all of the documents that

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1 we wished to present and to have all of the time to answer our
2 opponents.

3 Now, that's all. We're not challenging the – the Severance Order
4 or anything like that. All we're asking for is a normal fair
5 trial.

6 And for us, there is direct connection in this debate to the
7 uncertainty that still weighs over the nature of the evidence. We
8 have submitted several requests concerning the E3 codes because
9 the awarding of codes to written documents that have been put to
10 the hearings initially struck me as heavy in significance, and it
11 seems to have changed over time. I'm not going to repeat what we
12 have put into our memoranda, but–

13 [09.30.50]

14 MR. PRESIDENT:

15 What you have just raised will be discussed at a later stage,
16 particularly concerning the time for preparation of your closing
17 statement and closing brief. Just now, the Chamber accorded you
18 the opportunity to address the Chamber as to how much time your
19 defence team need for this purpose and identify the documents
20 that you intend to object or to comment on.

21 This is the issue at stake that the Chamber grants you the
22 opportunity to say about it as – but your argument just now will
23 be – will be dealt with at a later stage during this Trial
24 Management Meeting. Otherwise, you will repeat the issue again or
25 we may not be able to achieve the objectives set for this Trial

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1 Management Meeting.

2 You should respond to the question at issue that the Chamber
3 would like the defence team to express your opinion in relation
4 to the time allocation. Thank you.

5 [09.32.14]

6 MR. VERCKEN:

7 What I have said is related to that issue, Mr. President. It is
8 very difficult to separate the issues. All the issues are
9 inter-related. We cannot isolate one issue from the other. I say
10 if they were not part of a whole, it's like an engine. If you
11 remove the carburettor, the engine will not function.

12 MR. PRESIDENT:

13 Yet you have not responded to what you have requested. Of course,
14 we have two separate issue and we would like to deal with your
15 first request first.

16 We would like to hear your intention of your application because
17 I treat it as a different issue.

18 MR. VERCKEN:

19 As far as we are concerned, we would like to challenge all the
20 evidence that has been adduced in this case at the time of
21 closing arguments, Mr. President.

22 MR. PRESIDENT:

23 I hand over to Judge Jean-Marc Lavergne. You may proceed.

24 [09.33.29]

25 JUDGE LAVERGNE:

1 Yes. Thank you, Mr. President.

2 You are right in saying that we should not mix up the issues,
3 which are essentially of a different nature. Some criticisms were
4 levelled regarding the presentation of key documents by parties
5 during this trial, and Khieu Samphan's defence team challenged
6 the manner in which we proceeded, saying that they did not have
7 an opportunity for adversarial debate on the documents presented.
8 The question we are putting to counsel for Khieu Samphan today is
9 what are the documents that you are challenging and can you tell
10 us how much time you need to challenge the documents so
11 presented.

12 [09.34.44]

13 We are not asking you to say whether you are reserving all of
14 this for the final or closing arguments knowing that you will
15 have a limited number of pages for each of the parties and there
16 will also be a limited time for closing arguments. Today, we are
17 putting this question clearly to you.

18 Can you tell us where you stand? It is not very complicated. You
19 have - do you have key documents that you would like to present
20 yourself?

21 MR. VERCKEN:

22 I stand by my position. I am sorry to retreat from the objective
23 assigned to us by the Chamber. We consider with a holistic view
24 that these documents which initially were meant only for the
25 public for educational purposes are now being converted into a

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1 hearing on the merits. It is not normal. We consider that when
2 the time comes for us to respond to all the arguments and all the
3 evidence and all the positions of the parties that will be the
4 time for closing briefs and closing arguments.

5 As far as we are concerned, this - these hearings are out of
6 place insofar as the Chamber wants to limit the time we will be
7 allowed and the - the pages.

8 [09.36.31]

9 JUDGE LAVERGNE:

10 I think Khieu Samphan's team will have the possibility to discuss
11 all the documents presented. That possibility, that opportunity,
12 is given to you today. It is not up to you to set the rules. We
13 are giving you an opportunity to discuss all the documents that
14 are being presented.

15 Should we take note that you do not wish to avail yourself of
16 this opportunity?

17 MR. VERCKEN:

18 I think there has been a break in dialogue insofar as we do not
19 have the same vision of things, Your Honour. I have a holistic
20 view of the situation and you persist in telling me that this
21 audience, this hearing on key documents is a highlight of the
22 proceedings, and that is not my view of the situation.

23 [09.37.31]

24 As we approach the close of these proceedings, we find that there
25 have already been three hearings on key documents, and during

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1 those hearings, there were no adversarial discussions and
2 dialogue and the parties could not react to the presentations.
3 And now you want us to behave as if we did not face the problems
4 we faced in the past and you wish that we should react now.
5 I think the only logical approach is to wait for the time for
6 closing arguments and closing briefs.

7 JUDGE LAVERGNE:

8 Just one reaction.

9 You are not the only defence team. There are other teams. You
10 attended the hearing during which documents were presented and
11 you observed that other teams presented documents and challenged
12 certain documents.

13 MR. VERCKEN:

14 I will quite simply read what the presiding Judge said in 2012 at
15 the hearing of the 19th of October regarding a hearing on key
16 documents -- and I quote. And it is the President speaking:

17 "We cannot assess the weight and the probative value of the
18 documents. The parties are not supposed to assess the probative
19 value of evidentiary materials because we are not yet at the end
20 of the trial. The parties should limit themselves to speaking
21 about the specific relevance of documents because the assessment
22 will be done only at the end of the trial."

23 [09.39.27]

24 There we are. Initially, the hearings on key documents had been
25 announced as hearings that focus on educational purposes. And I

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1 recall that the first hearing on key documents, lawyers were not
2 allowed to speak, and only the Accused were supposed to speak
3 with regard to the documents.

4 Mr. Nuon Chea, who wanted to stay in his cell, was forced to come
5 up to the courtroom and was told that he had the capacity to
6 react on documents and not his counsel.

7 I just want to remind the Chamber of the normal course of a
8 judicial process. Perhaps for you, you think that is the case,
9 but for the Defence, I do not claim to represent all the defence
10 teams.

11 [09.40.22]

12 MR. PRESIDENT:

13 Counsel Koppe, you may proceed.

14 MR. KOPPE:

15 Thank you, Mr. President. Good morning.

16 I must admit that we are also, to a certain extent, confused
17 about the – the extent of these key document hearings. If you
18 would be able to clarify on this.

19 If – are we supposed to challenge the key documents solely on the
20 admissibility of those documents or also on the probative value
21 of those documents, rather, the evidentiary value of those
22 specific documents?

23 If the first is the case, we don't have any problem. We
24 understand the concept of key documents being presented. That is
25 helpful for everybody, for the parties, for the Chamber, for the

1 public.

2 But if we are now – I don't know if that is the case, but if we
3 are now asked to also comment on the probative value of the key
4 documents, then, of course, we have a completely different
5 situation.

6 I think that is maybe the cause of the confusion or the cause of
7 the controversy right now. So maybe if – if you will be once more
8 able to provide absolute clarity on the status of us challenging
9 the key documents from the Prosecution and the civil parties.

10 (Judges deliberate)

11 [09.44.00]

12 MR. PRESIDENT:

13 I hand over to Judge Silvia Cartwright to clarify on issues
14 raised by the two defence teams on the last issue.

15 Judge, you may proceed.

16 JUDGE CARTWRIGHT:

17 The term "key documents" is and has always been used by the Trial
18 Chamber as referring to those documents which each party
19 considers it – considers to be critical to its case. So, for the
20 Prosecution, in order to assist it in discharging its burden, and
21 for the Defence, obviously, in the defence of their clients.

22 [09.44.47]

23 Therefore, an opportunity has been given for each party to
24 present those documents that they think are vital to their case
25 as they perceive it to be. An opportunity is also given to other

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1 parties to comment on those documents, and they may comment in
2 any way they wish except on the issue of admissibility, which has
3 already been determined.

4 Therefore, it is entirely within the discretion of each party to
5 comment, for example, on the probative value of those documents
6 or to refer to other documents that might put the reliability of
7 those documents in question.

8 Throughout the hearing – throughout this trial, whenever
9 documents have been referred to, the parties have always had the
10 opportunity to comment on those documents. So the only matter
11 that is not to be discussed during key document hearings is the
12 issue of the admissibility.

13 Now, I hope that is sufficiently clear now for the parties. And
14 perhaps on behalf of the President I can ask again, is Khieu
15 Samphan wishing to present any key documents or does he simply
16 wish the opportunity to comment on key documents presented by
17 other parties?

18 [09.46.36]

19 MR. VERCKEN:

20 The position of Mr. Khieu Samphan's defence team is that, in
21 light of what you have just stated, Your Honour, his position is
22 contrary to what has been said in the past regarding key
23 documents. And we filed a motion E263-

24 JUDGE CARTWRIGHT:

25 Would you please-

1 MR. VERCKEN:

2 (No interpretation)

3 [09.47.08]

4 JUDGE CARTWRIGHT:

5 Would you please answer the question if you wish to do so?

6 MR. VERCKEN:

7 We will not take part in hearings that violate our fundamental
8 rights.

9 MR. PRESIDENT:

10 The Co-Prosecutors have expressed a wish to be able to respond to
11 Khieu Samphan motion E263. The Chamber will now permit them a
12 brief opportunity to do so orally.

13 MR. SMITH:

14 Thank you, Mr. President.

15 I think Judge Lavergne and Judge Cartwright have made a number of
16 the points that the Prosecution would like to make in relation to
17 that - that motion, E263.

18 In response to my learned friend this morning stating that,
19 somehow or another, the document hearings have violated the
20 fundamental rights of the Accused, as Your Honours are aware in
21 Article 35 New of the statute, that's where the rights of the
22 Accused are in relation to fair trial.

23 And perhaps the one that's most particular that counsel may have
24 been referring to was to examine evidence against them and obtain
25 the presentation-examination of evidence on their behalf under

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1 the same conditions as evidence against them.

2 [09.49.01]

3 Your Honours, in this case, just a bit of a global response. The
4 Court has heard evidence from witnesses and the Defence have been
5 given the right to cross-examine. The Court has also admitted
6 documents.

7 And the Court has, to my mind, had document hearings at great
8 length on the admissibility of documents, as Judge Cartwright has
9 said, which was quite distinct from the key document hearings.

10 And in those document hearings on the admissibility of documents,
11 all parties were able to put forward documents to the Court they
12 wanted admitted. And all parties, including Khieu Samphan, were
13 able to respond to the admissibility of those documents, which
14 was done at length by all parties. And that relates to every
15 document that's been put before this Chamber.

16 [09.50.07]

17 So when Khieu Samphan's counsel states that our fair trial rights
18 have been violated because they haven't had an opportunity to
19 challenge the documents, they've had significant opportunities in
20 those admissibility hearings to challenge them in relation to
21 admissibility and, as Your Honours have remembered, also in
22 relation to probative value at that point in time, particularly
23 if the counsel thought that those documents passed the
24 admissibility test.

25 So that's a complete - the defence counsel for Khieu Samphan have

1 completely got it wrong that they haven't had an opportunity to
2 challenge the documents.

3 In relation to the key document hearings, which Judge Cartwright
4 has just put forward, the purpose of those hearings was
5 different. Those hearings dealt with the exact same documents
6 that were dealt with on the admissibility hearings, but there
7 were two aspects to those documentary hearings or the key
8 document hearings, as Judge Cartwright has stated.

9 One was to make sure that the trial is transparent, which is also
10 a fundamental right of the Accused so that the public would get
11 to hear what evidence is being considered by Your Honours. How
12 that is a violation of an accused's right is very difficult to
13 understand because if the hearing was done in private and that
14 evidence wasn't known to the public, the Khieu Samphan defence
15 would be complaining this wasn't a public trial. And that was the
16 purpose - one aspect of those document hearings.

17 [09.51.52]

18 The other aspect of the document hearings, as Your Honours have
19 stated, was to - for the parties to highlight to the Chamber key
20 documents that they would like Your Honours to take into account.
21 Every party, including Khieu Samphan, was given an opportunity,
22 the same as the Prosecution, the same as the civil parties and
23 Nuon Chea and Ieng Sary, to present those documents that they
24 wanted to highlight. It was a right that they had, but if they
25 chose not to exercise that right, that's a question for them. But

1 they can't say it's a violation of their fundamental rights.

2 [09.52.35]

3 At those document hearings, particularly in the earlier ones of
4 the three that have been heard, Your Honours have stated that the
5 Accused could comment on those documents. Initially, there was a
6 little bit of uncertainty whether or not the Accused's counsel
7 could comment at that stage on the probative value at those
8 initial document hearings. But contrary to what my learned
9 friend, Mr. Vercken, has said, that at all of the document
10 hearings there's been no opportunity for the Defence to comment
11 on the probative value, if we look at paragraph 11 of E263, they
12 state:

13 "During the third hearing on the 22nd of January 2013, the
14 parties were given an opportunity for rebuttal or to comment on
15 documents presented by other parties."

16 And then they quote Your Honour, Judge Cartwright, stating that
17 the parties could comment on the probative value at these
18 hearings, but not on admissibility. And that's quite obvious, of
19 course, because we've had those admissibility hearings well in
20 advance of the key document hearings.

21 So that was a mistake, of course, by Mr. Vercken.

22 [09.54.03]

23 Your Honours, you know - and I think the other issue which is
24 important is the - perhaps the approach of the Khieu Samphan
25 defence. As Your Honours can see from their motions on this

1 particular issue from E263, they're quick to complain about
2 problems in procedure and how the procedure's not correct, yet at
3 the same time, when on three occasions Your Honour, Judge Nonn,
4 Judge Lavergne and Judge Cartwright, this morning had - have
5 offered them directly an opportunity to perhaps put forward their
6 submissions on the probative value of some of these documents
7 that perhaps, at the earlier document hearings - and we can look
8 at document hearing 1 and 2 - that only the Accused had a chance
9 to respond. Certainly not the third document hearing, as they -
10 as they note in their motion.

11 [09.55.07]

12 And on three occasions, the defence counsel have decided not to
13 take up that opportunity. Again, that is a question for them.
14 Your Honours, we would submit, bearing in mind the Khieu Samphan
15 defence do not want to take Your Honours' invitation to respond
16 as to how many hours, perhaps, they may like to talk about the
17 probative value of some documents raised in document hearing 1
18 and 2 - not 3 because they were given that opportunity - then
19 their right has been fulfilled. They've been given that
20 opportunity, and they've chosen not to take it.
21 If they choose to take it, I would submit that, at the document
22 hearings on the 24th onwards, that - if they choose to take it,
23 that they be given, say, two hours to respond to those particular
24 documents they have concerns about the probative value from
25 hearings 1 and 2, bearing in mind they've had that opportunity

1 with the admissibility hearings.

2 Your Honours, we wanted to respond to some other matters in E263.

3 Shall we address those matters now – and that's in relation to

4 the questioning of – perhaps, Your Honours, if I can have some –

5 perhaps before I go ahead, if I can have some clarification.

6 Does Your Honour just want our response in relation to E263 or

7 does Your Honour want our further response in relation to the

8 issues raised by the Khieu Samphan team in their latest filing to

9 the Court in relation to the questioning of Accused, the length

10 of pre-trial briefs? We can discuss those matters now or perhaps

11 we'll leave it on this particular issue. It's up to you, Your

12 Honour.

13 [09.57.33]

14 MR. PRESIDENT:

15 Well, you should comment on only motion in document E263. And as

16 for other matters, you will be accorded the opportunity to do so

17 in due course. Thank you.

18 MR. SMITH:

19 Thank you, Your Honour.

20 So if we look at the motion, E263, the relief that the Khieu

21 Samphan team sought was first to not proceed with key document

22 hearings. We would submit that undermines the Accused's right to

23 have a fair and public trial. If the information in those

24 documents is not made accessible to the public, then it reduces

25 the ability for this trial to be public. And it reduces the

25

1 ability for the Khieu Samphan team, as well as the Defence and
2 the Prosecution, to bring documents to your attention. And then I
3 would also, in relation to their next ground, of asking for Khieu
4 Samphan at the end of the trial to comment on all the key
5 documents presented, should he wish to do so; we would object to
6 that.

7 [09.58.50]

8 In relation to document hearings 1 and 2, if they require a
9 couple of hours for that, we would ask that be done next week in
10 the document hearings. And certainly, in relation to document 3,
11 they've had that document hearing 3, they've had the opportunity
12 but they refused that opportunity today, so perhaps it's a moot
13 point. The third relief they've asked for is that the Trial
14 Chamber would not limit the parties' closing brief to 100 pages,
15 perhaps I won't respond to that now because that relates to
16 another issue that Your Honour would like to attend to. And the
17 fourth ground of relief is by guaranteeing to allocate the
18 parties the time they require to present their closing arguments,
19 and that relates to another issue which I think is on the agenda,
20 perhaps if I reserve our submissions until that point.

21 Thank you, Your Honour.

22 [10.00.01]

23 MR. PRESIDENT:

24 Thank you. Having received request of all parties for time
25 allocations for the final document hearing, the Chamber will

1 provide more detailed indications regarding the schedule of this
2 hearing very shortly after the TMM.

3 In addition, the Co-Prosecutors have requested an update
4 regarding the issuance of E3 numbers at trial and the likely
5 timing of the Chamber's decision on admissibility of written
6 statements. The letter will be issued as soon as possible and is
7 expected within the next two to three weeks. And in any case,
8 prior to the conclusion of trial proceedings in Case 002/01, all
9 statements admitted will then in due course receive E3 doc
10 numbers. The Chamber estimates that approximately 1,500 written
11 statements will shortly receive E3 classifications once this
12 decision and its annexes are finalized over the coming weeks. To
13 date, approximately 4,000 documents have been admitted at trial
14 and have received an E3 number. These constitute the vast
15 majority of the documents sought to be admitted by the parties at
16 trial. The remainder, approximately 800 documents, will very
17 shortly be afforded an E3 classification once the Chamber renders
18 its final decision on admissibility of documents tendered at
19 trial in Case 002/01. The issue of this decision is also
20 imminent.

21 [10.02.28]

22 Now, on the questioning of the Accused, following indications
23 that the Accused intend to answer questions before the Chamber,
24 the Co-Prosecutors have requested that the Trial Chamber allocate
25 them six full days for the questioning of each Accused. The

1 Chamber notes that it is currently unclear for how long the
2 Accused will be able or willing to respond to questions from the
3 Chamber and the parties. The Chamber will therefore not indicate
4 time limits for this questioning, which shall be permitted to
5 continue for as long as the Accused remain willing to respond to
6 questions and insofar as the questioning by the parties remains
7 relevant and pertinent to the facts at issue in Case 002/01. And
8 parties will be informed as soon as possible of the dates when
9 the questioning of the Accused will take place. This will depend,
10 amongst other things, on the availability of the remaining
11 witnesses, if any.

12 [10.03.50]

13 The Khieu Samphan defence requests advance notice of all
14 documents to be utilized during the questioning of the Accused.
15 The Chamber agrees with this suggestion and requests all parties
16 to provide timely notice to the other parties and Chamber, of
17 documents they may confront the Accused with at this hearing. The
18 Chamber shall also advise the parties of documents they seek to
19 utilize for this purpose.

20 Regarding closing briefs and closing statements, many parties
21 have made renewed request for the extension of the deadline for
22 the filing of closing briefs. The Co-Prosecutors have requested
23 reconsideration of the Chamber's determination in E288 to
24 maintain this deadline at one month from the conclusion of the
25 evidentiary proceedings. The Khieu Samphan defence now request

1 approximately three months for the filing of their closing
2 briefs. Although this issue has already been extensively
3 litigated, the Chamber will nonetheless grant the Co-Prosecutors'
4 request for an extension of time to six weeks from the close of
5 evidentiary proceedings for the filing of closing briefs.

6 [10.05.25]

7 It cannot however, entertain further extensions of time, nor can
8 the Chamber accommodate the Khieu Samphan's defence request to
9 file final briefs of 300 pages in length. As the Chamber
10 indicated only last week in its Decision E288, the previous page
11 limits indicated for closing briefs are maintained. The Chamber
12 wishes to note that it considers that all parts of the Cambodian
13 Penal Code have now entered force. And while the parties have
14 already filed briefs on the applicable law, they may still
15 address this issue in their closing briefs, should they wish to
16 do so.

17 The Co-Prosecutors have in advance of the TMM requested
18 clarification regarding the format of closing statements. The
19 nature of this request is unclear. The Chamber has previously
20 indicated that oral closing statements will be scheduled
21 approximately 30 days after the date on which closing briefs are
22 submitted.

23 Now, can the Prosecutors indicate what remains to be clarified?

24 [10.07.14]

25 MR. SMITH:

1 Thank you, Your Honours. Certainly those indications assist us
2 and the parties greatly, perhaps if I deal with just a couple of
3 slightly outstanding issues and then ask for a couple of
4 clarifications, if I can.

5 Your Honour, in relation to the ruling that the prosecutors or
6 civil parties provide a list of documents in advance of the
7 Accused's questioning, I assume that is - that would be one list.
8 And from your ruling, the request by Khieu Samphan that the
9 prosecutors provide topics, I assume has not - has not been
10 granted. Certainly under Rule 90 of the Internal Rules, there's
11 no requirement that a list of topics be given to witnesses - well
12 certainly the Accused, nor indeed witnesses that are being
13 cross-examined by opposing parties.

14 [10.08.36]

15 And we would submit that if that is Your Honours' ruling, we
16 certainly agree with that as it's important that the Accused and
17 all parties are able to present evidence in the same manner and
18 as required by Article 35 New, to examine evidence against them
19 and obtain the presentation and examination of evidence on their
20 behalf under the same conditions as evidence against them. So
21 certainly the provision of topics to Khieu Samphan would be an
22 unfair advantage to the other parties who - it has not been
23 required of the Defence or other parties to provide topics to the
24 witnesses in advance of their cross-examination. As far as the
25 topics are concerned, the Prosecution certainly informs the

1 Chamber, the topics that would be discussed with Mr. Khieu
2 Samphan and of course Mr. Nuon Chea, are the topics that are
3 identified particularly in this case, the topics that have been
4 articulated and the paragraph numbers that relate to the Closing
5 Order of this severed trial, all of those topics will be
6 discussed with the Accused. So to that extent, we have provided
7 notice of those topics.

8 [10.10.29]

9 In relation to the format of the closing statements, what the
10 Co-Prosecution were referring to was how the time would be
11 divided up. For example, Your Honours, in your memo of the 31st
12 of May 2013, in relation to this Trial Management Meeting, you've
13 allocated three days to the Prosecution, one day to civil
14 parties, two days to Nuon Chea defence and Khieu Samphan, two
15 days. It appears normal practice, and it certainly was in the
16 Duch case and as well as Case File 001 as well in other courts -
17 other international courts, that the parties make their
18 statement, the Accused - all parties make their statements and
19 then the Prosecution reply and civil parties reply to the Accused
20 statements and then lastly, the Accused get the final rebuttal.
21 So our question is: Are those days that Your Honours provided, do
22 they include replies and rebuttals? And what would be helpful for
23 all the parties I believe, is how Your Honours propose to divide
24 that time up between the initial statements and the rebuttals and
25 replies. And some guidance on that would be helpful in terms of

1 how parties plan their oral statements.

2 [10.12.17]

3 Just – as I said Your Honours, Your Honours have very much
4 cleared up a number of matters for us – just in relation to the
5 length of the closing brief. We understand Your Honours' ruling
6 that the page limits will remain the same. What – the difficulty
7 that perhaps I understand Khieu Samphan's defence team is having
8 and I think it may well be – it's certainly a difficulty that the
9 Prosecution are having – is to somehow direct Your Honours to the
10 documents which support particular allegations that each of the
11 parties claim to have been proven or not – or disproven. So for
12 example, with 200 pages from the Prosecution's side, much of the
13 referencing to the evidence needs to be – it could be done within
14 those 200 pages, or alternatively it could be provided as end
15 notes to the 200 pages in the same way that the indictment is
16 structured, where the text is there and then at the end rather
17 than footnotes, there are endnotes. Now the idea is not to try
18 and surreptitiously extend the length of the briefs, but what it
19 does do, it allows all of the parties to indicate the references
20 comprehensively to the claims we are making in our briefs.

21 [10.14.05]

22 So for example, Your Honours have said there's 4,000 documents
23 currently admitted at trial, there's 800 that will be given an E3
24 number soon and potentially another 1,050 from the written
25 statements that'll be given E3 numbers. So in essence the parties

1 are dealing with 6,000 pieces of relevant evidence. And what the
2 Prosecution certainly doesn't want to do, and Khieu Samphan and -
3 I'm not going to speak for them but it's clear from their
4 pleadings - they don't want the situation where we can't
5 reference any of those or a significant number of those pieces of
6 evidence because there's just not enough room in the brief. What
7 we - what we have discovered in the Prosecution, that often half
8 the pages footnoting to the allegation and the other half is the
9 statements that we would like to make. And because there are so
10 many pieces of evidence, up to 6,000, we're simply not going to
11 be able to refer to relevant pieces of evidence if we can't have
12 the referencing as an endnote.

13 [10.15.24]

14 And I think that would cure in large part the complaint of Khieu
15 Samphan and certainly we would support it, that the parties
16 therefore have a good opportunity to present their case by
17 indicating to Your Honours the particular pieces of evidence they
18 rely on. The Defence need a full opportunity to do that and the
19 Prosecution also - and civil parties - particularly the
20 Prosecution as well - we have an obligation to prove the case
21 beyond a reasonable doubt. And it's important that we point Your
22 Honours to every piece of evidence we think supports those
23 allegations. So the suggestion or the request is, Your Honours,
24 rather than - we're not asking you now that you've made your
25 further ruling, to vacate that ruling, but just allow the parties

1 to reference their written or their closing briefs in the exact
2 same manner that the Investigative Judges have done in their
3 indictment. We think that the cost – the benefit to Your Honours
4 will be far greater than the extra time and translation, bearing
5 in mind the absolute importance of this process.

6 The other alternative is – but I think this is a better
7 alternative – the other alternative would be as is the practice
8 at many of the international courts, when annexes are attached to
9 the brief, which is a normal practice, that those references be
10 placed in an annex. But we think it would be better if there are
11 direct footnotes – or direct endnotes to the text. So Your
12 Honours would still receive the page lengths that you've asked
13 for in terms of the argument, but the length – in effect it
14 allows the evidence that the parties wish to rely on not get lost
15 in this process. And as we all understand, millions and millions
16 of dollars have been spent on this incredibly important process
17 and all we're asking – and to that extent supporting Khieu
18 Samphan – is that the page limits stay the same, but the
19 referencing be done in that manner that there's – every party has
20 the best opportunity to put their case forward.

21 And if – I'm just double checking now, Your Honours, in terms of
22 the Accused testifying one or two weeks after the remainder of
23 the evidence, we would submit that – that's the Khieu Samphan
24 request – we would submit that that would not be appropriate.
25 He's had five and a half years to prepare for his testimony and

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1 he's been sitting through this case for the last year and a half.

2 [10.18.31]

3 And with all of the breaks that have been had largely due to of
4 course the illness of Ieng Sary and Nuon Chea, he has had more
5 than enough time to prepare himself for this testimony, listening
6 to it day by day. He's in good health; he's relatively younger
7 than Nuon Chea. Nuon Chea wasn't given that opportunity and we
8 think that there is no reason that he should have one or two
9 weeks' break, he's had five and a half years to prepare.

10 I think, Your Honours, there are - the only matter, if I can just
11 have one comment. The ruling of Your Honours that the E3 numbers
12 would be issued and the admissibility of written statements would
13 be issued as soon as possible, that is - we certainly welcome
14 that just for the very reason because as time goes on, parties
15 obviously have to prepare their closing briefs. And knowing
16 what's in and what's out in terms of admissibility, makes a
17 significant difference in what can be referenced in the text. I
18 understand it's a big job; however, we do appreciate Your Honours
19 saying that that would be done as soon as possible.

20 [10.20.01]

21 I have nothing further to raise, Your Honours.

22 MR. PRESIDENT:

23 Thank you, Prosecutor.

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

25 MS. SIMONNEAU-FORT:

35

1 To briefly comment on certain points, Mr. President, with respect
2 to the questioning of the Accused, we have asked for three days,
3 we can reasonably reduce that to two days with respect to the
4 civil party lawyers. That's my first point. Second, as regards
5 warning of the Accused in advance of the questions we're going to
6 be asked, we are not opposed to giving the principal teams in
7 advance, but we do wish to retain the right to be able to ask
8 additional questions in terms of the responses by the Accused.
9 That seems to us to be an elementary right for the civil parties.

10 [10.21.08]

11 As regards the number of pages, we will abide by the Chamber's
12 decision. We have no particular comment other than the fact that
13 we agree with the prosecutors, and I believe with the Khieu
14 Samphan defence as well, in that the endnotes should not be
15 counted in the number of pages of the actual closing brief; so we
16 do support that request.

17 Finally as requests – the time requested by Khieu Samphan for
18 preparation, we will abide by the decision of the Chamber, but we
19 would tend to go along with what the prosecutors have said. It
20 seems that Khieu Samphan has had considerable time to prepare
21 himself already and the final appreciation on the situation of
22 course falls to the Chamber.

23 Thank you.

24 MR. PRESIDENT:

25 Thank you.

1 National Counsel for Khieu Samphan, you may proceed.

2 [10.22.11]

3 MR. KONG SAM ONN:

4 Thank you, Mr. President. Good morning, Your Honours, and good
5 morning, everyone.

6 I'd like to make a brief response that Khieu Samphan and Khieu
7 Samphan's defence had sufficient time for the preparation of
8 documents and that we do not need additional document - rather
9 additional time to prepare those documents.

10 I think there is some misinterpretation in the Khmer channel - in
11 the French channel rather, I just quoted the statement made by
12 the prosecutor and the Lead Co-Lawyer, that we do not need
13 additional time - that is, the one-week additional time in order
14 to prepare the documents. It is our position that we made such a
15 request - is firstly, our defence team involved in the procedural
16 last and the previous counsel for Khieu Samphan left and then we
17 came to replace them.

18 And as for Khieu Samphan, our client himself that had plenty of
19 time during the past five years to prepare the documents, that is
20 incorrect.

21 [10.24.19]

22 Khieu Samphan has been in the detention centre for five years.

23 And that is not the proper time for him to prepare documents
24 during the detention period in order to respond to all those
25 thousands documents presented before him.

1 Also another aspect is Mr. Khieu Samphan's health. Although he is
2 younger than Nuon Chea, it does not mean he's a full strength
3 youth. He has also experienced some health issues and despite all
4 that he tries his best to follow the proceedings. For that
5 reason, the request for one week additional time makes sense and
6 it is not in order to drag the time of the Trial Chamber, but it
7 is for the benefit of the defence of my client.

8 Thank you, Mr. President.

9 MR. PRESIDENT:

10 Thank you.

11 International Counsel Vercken, you may proceed.

12 [10.25.29]

13 MR. VERCKEN:

14 Thank you, Mr. President. My apologies for these communication
15 difficulties, but just to make sure that things are clear, we are
16 asking for a genuine time break to make it possible for Mr. Khieu
17 Samphan to work with his lawyers on the documents and themes
18 which the civil parties, prosecutors and Judges wish to take up.
19 We request that this amount of time be calculated as of the point
20 when we receive all of those elements. As my learned colleague
21 said, this is a very particular kind of trial, we're judging
22 evidence that goes back 40 years, the Accused are old, about 80
23 years old or more, they are elderly. Mr. Khieu Samphan and Mr.
24 Nuon Chea, in the special cell, attend the daily hearings and
25 it's quite tasking. We do not have the staffing strength that the

1 Prosecution does. And you can see that the prosecutors take turns
2 in these hearings to question the witnesses, while we are always
3 the same individuals. So hearing time is not a time when we can
4 devote our resources to doing anything else.

5 [10.27.21]

6 Our teams are smaller and in addition to that, the death of Mr.
7 Ieng Sary has reinforced the imbalance because it's made it
8 possible for the Prosecution to reallocate their team members who
9 were dealing with that to other tasks connected with the two
10 remaining Accused. And in our view of things, this would warrant
11 a three-week break after the end of evidentiary proceedings to
12 allow us to prepare. And the deadline would be as of the
13 communication of those lists, after which we would request the
14 three weeks. And we would also like to have access to our client
15 during the weekend. The prison is closed to us at the weekend as
16 things stand at the moment. And we think that the concentration
17 potential of a gentleman of 80 is not the same of somebody of 40.
18 And what I'm therefore telling you is that we cannot effectively
19 work for a whole day with our client on documents and so forth.
20 That's the first reaction I have to the response of the
21 Prosecution.

22 We believe that the time allocated is a kind of maximum, Mr.
23 President. The time for questions seems to be suitable; I will
24 have to talk about this with my client of course, because that
25 will be burdensome for him.

1 [10.29.25]

2 As to the closure of hearings and the preparation of the closing
3 briefs, we would request a final list of all the documents
4 receiving the E3 code as I - tell me if I'm wrong - of all
5 documents, Mr. President, that your Chamber will use for its
6 reasoning and to substantiate its verdict. Mr. President, so far
7 we are talking about 4,000 documents and you are going to take a
8 decision on the basis also of written documents instead of
9 submissions by actual witnesses, I won't go into this, we've
10 already submitted matters in writing on the subject. But we have
11 5,500 documents roughly and we would like to have a list. When we
12 submitted various requests asking for clarifications about E3
13 documents, we were referred to the daily notes of the greffiers.
14 But to give you a very simple example, so far the last daily
15 hearing report from the greffiers that we officially received
16 dates back to February, so we seem to be getting these months
17 afterwards. And in order to be able to begin proper work on the
18 closing briefs, we do demand that we be given a list of the
19 documents considered by the Chamber as substantiating its
20 eventual decision.

21 [10.31.22]

22 We need time to review translation problems. We've had some quite
23 considerable problems in this area. Frequently, we see Khmer
24 transcripts that are at variance with French or English ones. Let
25 me give you a very simple and recent example. In preparation for

40

1 this hearing I made some submissions in E288, yesterday I was
2 talking with my Cambodian colleague on the Khmer version that was
3 submitted, and lo and behold where I was talking about the death
4 of Mr. Ieng Sary made it possible for the Prosecution to increase
5 the staff strength for its work, it says in Khmer the death of
6 Nuon Chea means that the Defence has more resources to do its
7 work. That's one example of serious translation problems of which
8 there are many others. And we would like, before we calculate the
9 deadlines for our closing briefs, that there should be an
10 additional fortnight to revise the transcripts. And this is a
11 huge task because I think we have reached 87 witnesses and
12 there's a huge amount of work to be done there. A comparative
13 task of alignment, we have a very small team and two weeks seems
14 to us to be a minimum to do that job.

15 [10.33.26]

16 Once all that has been covered, we believe that we need two or
17 three months to draft closing briefs of 300 pages. As I said,
18 even 300 pages as I see it is an extremely restrictive figure. On
19 the other side of the room there are noises coming that we are
20 being supported by this - by them in terms of the footnote
21 layout. But the 100 pages that are being allowed to us by the
22 Chamber, I really don't know what you're meant to do with 100
23 pages when you've got 87 witnesses, hundreds of days of hearings
24 and goodness knows how many thousand documents. Nobody can
25 achieve the impossible.

41

1 And as regards the closing arguments, we would ask for the time
2 given to us to prepare them be calculated from the moment when we
3 receive the adverse pleadings in French or Khmer, depending on
4 whichever language the client can understand because French is a
5 possibility, Khmer is a possibility, but the Prosecution writes
6 in English.

7 [10.35.10]

8 So we would like the delay, the deadline, to be calculated as of
9 the moment when we have a translation in a language that the -
10 our client can understand, of the adverse arguments and then an
11 additional final week for the preparation of the closing
12 argument.

13 Thank you.

14 MR. PRESIDENT:

15 Counsel Koppe, you may proceed.

16 MR. KOPPE:

17 Thank you, Mr. President. The Nuon Chea defence team would also
18 like to go on the record that we concur with the position of the
19 Khieu Samphan team and the Prosecution in respect of the amount
20 of pages of the closing brief and the amount of time allotted for
21 our closing arguments.

22 [10.36.05]

23 It has been said before so I won't do it again, but 100 pages
24 covering 6,000 documents, many thousands of pages of witness
25 testimony; that seems to be impossible. An average domestic drug

1 case would already take 100 pages just to make an argument. I
2 know the Chamber has decided about this 100-pages limit, but we
3 have just heard if we - if I'm informed correctly - that you have
4 announced the decision admitting another 1,500 written statements
5 including about - I presume - 106 written statements in respect
6 of the Lon Nol - or the policy of killing Lon Nol soldiers. And
7 you know from our courtesy copy of our request yesterday, that we
8 challenge these accusations. And in order to be able to properly
9 make our arguments - make our defence arguments, Mr. President, I
10 think we really need more than those 100 pages. And I'm also not
11 quite sure of the rationale behind the limiting to those 100
12 pages or limiting the amount of time needed for the closing
13 arguments because this is an incredibly comprehensive and complex
14 case, maybe the most complex and comprehensive case since the
15 Nuremberg and Tokyo trials. I know there is something to be said
16 to limit parties in their submissions, but 100 pages seems to be
17 the other extreme.

18 [10.37.55]

19 So, again, to be on the record, we really need to be given more
20 opportunity to properly state our case and not to feel restricted
21 in our arguments. We have absolutely no reason to come up with
22 superfluous arguments or to use our very limited time with
23 arguments that don't make any - that are not relevant. So to sum
24 up, Mr. President, we do support the positions taken by the Khieu
25 Samphan defence team and the prosecutor that we really do need

1 more time to not only prepare, but also to make our written
2 arguments and our closing submissions.

3 MR. PRESIDENT:

4 Thank you. Judge Jean-Marc Lavergne, you may proceed.

5 [10.38.55]

6 JUDGE LAVERGNE:

7 Yes, thank you, Mr. President.

8 I would like us to revisit the proposal made by the
9 Co-Prosecutors. And the proposal is that the closing briefs be
10 separated from the footnotes and filed at different times. May I
11 know whether the Co-Prosecutors have an idea as to the number of
12 pages of footnotes? I ask this question because footnotes are
13 generally written in tiny print and require a lot of time for
14 translation. Let me also point out that when we go into the
15 details of footnotes regarding not only giving references in the
16 source language, you also have to make sure that those references
17 are coherent across the three official languages - or the three
18 working languages - and you may face surprises. So this problem
19 should be borne in mind because the closing briefs cannot be
20 filed only in one language.

21 So my first question is whether you have an idea as to the number
22 of pages required for those footnotes?

23 MR. SMITH:

24 Thank you, Judge Lavergne. Firstly, I'm not sure whether it's a
25 translation problem, but the Prosecution are certainly not saying

1 that the footnotes – or the endnotes – and the closing argument
2 proper be filed at a different time. It would be filed at exactly
3 the same time, simply that the footnotes would appear as
4 endnotes.

5 [10.42.03]

6 Your Honour, as far as the possibility of putting the sources of
7 the evidence, the references in three different languages
8 relating to the English, French and Khmer translation, certainly
9 in Case File 001 the Prosecution was absolutely unable to do that
10 in the time. It's – we would submit it's virtually impossible to
11 do that in a very, very short period of time, it takes – it would
12 take months and months. And that's why in the Case File 001
13 certainly the parties only put it in one language, not the three.
14 I think we would need sort of a staffing size far bigger –
15 everyone would need a staffing size far bigger than anyone's got
16 access too. I would submit that in the – in the timeframe given,
17 it's virtually impossible to be able to put the references in
18 three languages. That's how we – I can't see any other way unless
19 the staff – the staffing size in increased.

20 [10.42.20]

21 Your Honours, just in relation to the briefs, you know, I mean
22 the Prosecution has two responsibilities, one is to make sure
23 that whatever it puts forward is only – is found if it's a
24 finding of fact beyond reasonable doubt, that's one issue that
25 guides us in our submissions today. And the other issue that, you

1 know, the trial is fair and everyone has a reasonable opportunity
2 to say what they need to say at the end of this case. The
3 Prosecution - we certainly wouldn't object to an extra 50 pages
4 for the, you know, in addition to the endnote situation, we
5 wouldn't object to an extra 50 pages to each of the defence teams
6 and raising the Prosecution's to 250; we wouldn't object to that.
7 But - because people should have the ability to be heard on their
8 cases - but, you know, one way around it, and it doesn't perhaps
9 solve the problem completely, but certainly it significantly
10 addresses it, is the turning the footnotes into endnotes. Your
11 Honours - and so we would support the Defence to that extent.

12 [10.43.40]

13 Your Honours, just one point I would like to raise, we're almost
14 at the end of the trial and we've heard from Khieu Samphan
15 defence, you know, complaining again about a number of issues,
16 and this time they're complaining about they don't have enough
17 resources. Now I've - I haven't heard in this case at any time,
18 that Khieu Samphan saying that they've got inadequate time and
19 facilities to prepare their case. And I haven't really heard them
20 ever say that the Prosecution size is so much bigger - the
21 resources than the Defence. And just to set the records straight,
22 Your Honours, so that the public understand, the statement that
23 the Prosecution changed prosecutors to question the witnesses,
24 that's clear, that's obvious, because of the amount of detail
25 required. But, you know, so does Khieu Samphan, you know, there's

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1 three other international - I'm not sure if we're getting
2 translation - but there's three other international counsel. Mr.
3 Jacques Verges has been on this case since the beginning; perhaps
4 he's in Paris writing the closing brief now. And we have his
5 other co-counsel who obviously prepares while Mr. Vercken is in
6 court. So this idea that somehow another -- the Prosecution are
7 doing things differently to what the Khieu Samphan are doing, I
8 mean it's just not correct.

9 [10.45.20]

10 And the other - the other issue we would like to put on record is
11 that the Prosecution are not just prosecuting one Accused, we're
12 prosecuting two Accused, two defence teams. And secondly, we're
13 also involved in the investigation - or the supervising of the
14 investigation of two other cases, Case File 003 and 004. We don't
15 - and without going into the numbers this morning because we've
16 done the calculations, the Prosecution resources are no bigger
17 combined than the Defence, bearing in mind their other
18 responsibilities on other cases. And other lawyers in our
19 Prosecution office are working on those other cases as is our
20 responsibility. So I would just like that to be clear on the
21 record that there is not an inequality of arms. And secondly,
22 it's interesting how this is raised right at the last point of
23 the case. One would have thought it would have been raised
24 earlier if it was a serious issue.
25 Thank you.

1 MR. PRESIDENT:

2 Thank you.

3 The time is appropriate for adjournment. The Chamber will adjourn
4 now and resume at five past 11.00.

5 The Court is adjourned.

6 (Trial Management Meeting recesses from 1046H to 1106H)

7 MR. PRESIDENT:

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

9 Now I'd like to touch up on the schedule for final claim on
10 reparations and timetable for future trials. The Lead Co-Lawyers
11 have requested clarification regarding the scheduling of their
12 final claim on reparations and a timetable for future trials in
13 Case 002. As indicated in the Trial Chamber's Second Severance
14 Decision, the Trial Chamber's ability to hold future trials
15 depends on future contingencies such as the fitness to stand
16 trial of the remaining Case 002 Accused, that are currently
17 unknown and which are beyond the control of the Chamber.
18 It will therefore hold a status conference late in 2013 to
19 reassess the situation then. Date lines for the submission of
20 reparation claims will also be communicated later in the year. It
21 follows that final submissions on reparation are not expected
22 imminently. The Chamber will shortly indicate whether the Lead
23 Co-Lawyers prioritized request for implementation via project
24 management are considered by the Chamber to appropriately give
25 effect to the harm suffered by victims as the result of crimes

1 charged in Case 002/01 pursuant to Internal Rule 23.3(b). Status
2 of translations: On 28 February and 5th March 2013 respectively,
3 the Co-Prosecutors and Lead Co-Lawyers indicated that they would
4 have difficulty in meeting the Chamber's deadline of March 2013
5 for the completion of all pending translation requests. Since
6 that date, the parties have indicated that considerable progress
7 has been made on all pending requests.

8 [11.09.19]

9 The Chamber also indicated in advance of the Trial Management
10 Meeting that it agreed with the Co-Prosecutors submission that
11 certain critical resource documents self-evidently do not require
12 translation such as photos, diagrams, drawings or maps, and video
13 excerpts played in Court that have already been translated in the
14 transcripts. The Chamber agrees and has further indicated that it
15 will entertain any reasonable request that would enable any
16 translation backlog to be resolved at the latest by closing
17 arguments in Case 002/01.

18 [11.10.15]

19 Can the parties confirm that all pending translation matters are
20 well on their way to being resolved and able, in any event, to be
21 concluded by the likely date of closing arguments namely early
22 October 2013? The Prosecution, you may proceed.

23 MR. LYSAK:

24 Thank you, Mr. President. The short answer to that question is
25 that I believe that they will be able to complete translations of

1 all significant pieces of evidence on which the parties are
2 relying.

3 There has been progress since our filing. We had indicated in our
4 filing, we had given some estimates of the numbers of documents
5 that still require translations. I think – we had hoped that most
6 of those would be completed by now, perhaps because of some of
7 the difficulties that the Court had in that interim with periods
8 when translation services may not have been available, they have
9 not been fully completed, but it appears to me that the number of
10 documents that remained to be translated is fairly minimal; with
11 some of the caveats that the Court has noted from our filing. Let
12 me just give you a couple of pieces of specific information. Of
13 the witness statements and complaints that the Co-Prosecutors
14 have recently requested that we put before the Chamber and
15 admitted, which my number was somewhere around 1,050; all of
16 those are available in English. All but one of the 1,050 are
17 available in Khmer and that appears to be an issue dealing with
18 the fact that it is a handwritten document is the only reason
19 that it has not been translated. And of the 1,050 there are only
20 19 that remain to be translated into French.

21 [11.12.43]

22 Similarly, when I looked at the E3 documents that have already
23 been admitted by the Chamber, taking out documents such as
24 videos, photographs, maps, that the Court has recognized, there's
25 a relatively small number that remain to be translated. As we've

1 indicated there's a couple of other issues on which we would seek
2 guidance from the Chamber.

3 One of the areas in which there are remaining documents to be
4 translated are S-21 prisoner lists. Now there are approximately
5 150 of these that lack translations in all three languages.

6 [11.13.35]

7 Our position has been that these are documents that are in Khmer
8 originals. These are lists of names of people. If you look at
9 documents that have either an English or French translation
10 already, that cuts the number in half that would need
11 translations, and our proposal in our filing was that with
12 documents such as this, which are lists of names, that it would -
13 the parties certainly can appreciate and adequately understand
14 the evidence if they are in Khmer, their Khmer original and
15 either in English or French translation, since we are dealing
16 with lists of names. That would also make it much easier for CMS
17 to complete the remaining translations in the next few months.
18 Sometimes they have more available resources to translate into
19 English; sometimes they have more available resources to
20 translate into French. They are constantly communicating with us
21 about those resources, but if we were able to tell them that with
22 regard to this one category of documents, it can be either in
23 English or French translation. That would facilitate things.
24 Other than that, I believe we'll be in quite good position on the
25 translations. The one other issue that the Court I think should

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1 be aware of and is aware of is that there are a number of long
2 documents such as books, the book written by Philip Short; there
3 are some long documents such as the monthly FBIS reports where
4 the parties have only translated the parts that they consider to
5 be relevant. Some excerpts as well have been used in Court and
6 read and translated there.

7 [11.15.36]

8 My expectation is not only from the Prosecution, but also from
9 the Defence that the one area where there may be some
10 realizations that: "Oh, there's an excerpt that I would like to
11 rely on from this long document and it hasn't been translated,"
12 this is the one area that I think when the parties do their
13 briefs, that they may decide - come to realize that there's this
14 particular page that hasn't been translated. So I think that it
15 would be helpful if there were some flexibility. These types of
16 limited exceptions are things that can be rectified fairly
17 quickly, but I wanted to bring that to the Courts attention
18 because that is one area that I think could arise as the parties
19 prepare their final briefs. But other than that, I think we're in
20 a good position on the translations.

21 [11.16.29]

22 MR. PRESIDENT:

23 Thank you, Lead Co-Lawyer for civil parties. You may proceed.

24 MS. SIMONNEAU-FORT:

25 Thank you, Mr. President. I'll answer your question and if I may

1 also, I will turn to the other two points that you brought up,
2 the reparations matters. On the question of translations first,
3 as far as we are concerned, I think we will manage to have all of
4 our documents translated within from one to two months; that is
5 what we have been told by the translation unit. We have about 60
6 documents remaining to be translated and the page number, if the
7 Chamber is interested, is 317 pages. So we are hoping that we can
8 get those processed fairly fast. I do, nevertheless, support the
9 comments by the Prosecution that there should be a certain degree
10 of flexibility and where possible, only having translations
11 either in French or in English so as not to delay proceedings
12 unduly. On the matter of subsequent trials, may I say that I
13 have heard what the Chamber is saying, but our concern lies more
14 in the area of law, that would arise connected with 002/2/3/4
15 etc., and we are well aware that there are factors that the
16 Chamber is equally aware of that will constrain it's action. But
17 what we would like to know is if the Chamber has a position about
18 the authority of res judicata; is it possible to start a second
19 trial without having their decision on the first itself possibly
20 on appeal and in that we would like to know if the Chamber has a
21 legal answer to submit to us because that, of course, falls
22 within its exclusive competence. That too is important for
23 general preparation of subsequent cases. So we would like to have
24 an answer on that. With respect to paragraph 153 and 154 of the
25 Second Decision on Severance, in particular.

1 [11.18.55]

2 On the other issue, can the Chamber tell us about the dates if it
3 will be before or after the final brief that's on reparations? On
4 reparations, I was listening to Mr. President, the interpretation
5 of the final part of your comments, but I didn't entirely
6 understand what you were requesting about Article 23.3(b) and I
7 think that may have been problematic in the English version as
8 well. So could I respectfully ask you say once again what the
9 Chamber is telling us about Article 23.3(b) and if I understand
10 or if I suspect correctly, it is about the Chamber's decisions
11 and the alleged facts, but clarity on that would be most welcome,
12 sir.

13 [11.20.06]

14 MR. PRESIDENT:

15 Judge Lavergne, please proceed.

16 JUDGE LAVERGNE:

17 Thank you, Mr. President. The question at issue here is if the
18 priority projects for implementation will be taken by the Chamber
19 as providing affective reparation to the victims arising from
20 002/1 in accordance with Internal Rule 23.3(b). I hope that is
21 clear.

22 (Judges deliberate)

23 [11.23.20]

24 MR. PRESIDENT:

25 Judge Cartwright will take the floor in order to clarify on the

1 request by the Lead Co-Lawyer concerning res judicata issue.

2 Please take the floor, Judge Cartwright.

3 JUDGE CARTWRIGHT:

4 Yes, thank you President.

5 In reference to the second issue that the Lead Co-Lawyers raised
6 concerning whether the Chamber has a position on the legal issue
7 of res judicata in relation to Case 002/02 and subsequent trials,
8 the Chamber considers it premature to discuss these issues at
9 this point; first because we await a decision from the Supreme
10 Court Chamber which may well clarify a few of these issues. But
11 secondly, we have indicated to the parties that after closing
12 addresses are completed in Case 002/01, we will be holding a
13 trial management meeting where the issues such as res judicata
14 can be raised and all parties can make their submissions at that
15 point. So, I hope that that is a sufficient answer for the Lead
16 Co-Lawyers at this point. Thank you, President.

17 [11.25.02]

18 MR. PRESIDENT:

19 Thank you, Judge Cartwright.

20 Now we move onto another topic - that is the additional
21 individuals sought to be heard at trial. Before we begin
22 discussing this issue, the Chamber would like to remind all
23 parties that pseudonyms should be used in the debate on each
24 witness; and parties should not reveal any information which may
25 lead to a conclusion on the real identity of a witness namely the

1 current rank or position of a witness except those who have
2 already testified. Regarding assisting proposal witnesses and
3 experts, in advance of the Trial Management Meeting, the Khieu
4 Samphan's defence requested clarification of the status of
5 proposed expert Stephen Heder, the Chamber indicates that efforts
6 by the Witness Expert Support Unit to secure his testimony
7 whether as an expert or as a witness are still ongoing. The
8 parties will be kept informed and advised in good time of the
9 dates of his testimony if this can be secured.

10 [11.26.29]

11 Regarding the Co-Prosecutor's request to recall TCCP-186, the
12 Chamber advises that the renewed risk assessment by WESU
13 following his unexpected in Court request for protective
14 measures, is expected very shortly. It is at present unclear if
15 TCCP-186 will agree to be recalled before the Chamber. The
16 Chamber has therefore, and contrary to what is alleged by the
17 Khieu Samphan defence, yet to take any affirmative decision on
18 the Co-Prosecutors' request to recall this individual. Should the
19 Khieu Samphan defence oppose the Co-Prosecutors' request to
20 recall this individual, perhaps they could now pose this
21 objections orally?

22 MR. VERCKEN:

23 I missed the end of that, Mr. President; I apologize.

24 I believe that we have submitted our comments on this in writing,
25 E286.1/1 and just for clarity's sake, let me state that we are

1 opposed to this individual being recalled. Thank you.

2 [11.29.01]

3 MR. PRESIDENT:

4 Thank you for your clarification.

5 Regard - requests regarding proposed additional witnesses and
6 civil parties. Over the course of the trial to date, the Chamber
7 has heard or indicated that it will hear approximately 89
8 individuals. In advance of the TMM, the parties have given notice
9 to the Chamber of requests that an additional 17 individuals be
10 heard before evidentiary proceedings in Case 002/01 are
11 concluded.

12 The Chamber will provide opportunity for the parties to indicate
13 why they consider it necessary to call these new individuals and
14 will shortly rule on whether the hearing of these additional
15 individuals is necessary in the interest of justice.

16 The Co-Prosecutors' request that an additional 10 individuals be
17 called before the Chamber, five in relation to forced movement,
18 three in relation to Tuol Po Chrey and two in relation to the
19 role of the Accused.

20 Firstly, the Co-Prosecutors seek the testimony of TCW-505,
21 TCW-386 and TCW-651 in relation to the first phase of forced
22 movement regarding the policy to target the Lon Nol regime.

23 [11.30.49]

24 In relation to the second phase of forced movement and concerning
25 the Cham, the Co-Prosecutors seek additionally to hear TCW-674

1 and TCW-269.

2 The Chamber notes that TCW-505, TCW-386 and TCW-651 were all
3 identified by the Co-Prosecutors as priority individuals for
4 calling in Case 002/01 at the second TMM, or shortly afterwards.

5 That is document E236.

6 TCW-674 was, in fact, on the Chamber's reserve list for calling
7 in relation to forced movement, but ultimately not heard on
8 grounds of repetitiveness. However, it notes that TCW-269 has
9 never previously been identified by the Co-Prosecutors or any
10 party as potentially relevant to Case 002/01.

11 Could the Co-Prosecutors now briefly elaborate on these five
12 requests, particularly with regard to TCW-269?

13 [11.32.34]

14 MR. SMITH:

15 Thank you, Mr. President. I will be brief, as you have - everyone
16 has the document before them, E288/3, which we filed on Tuesday
17 raising the 10 requests and substantiating within that request.

18 Perhaps I need to - I just want to have one introductory remark.

19 We understand Your Honours are saying that this is the last

20 opportunity to raise any genuinely novel issue regarding

21 witnesses. And certainly the - these five particular witnesses,

22 and it also relates to the other five, have only been put forward

23 on the basis of the Prosecution making sure they have a

24 reasonable opportunity to prove their case beyond reasonable

25 doubt.

1 As Your Honours are aware – Your Honours know, unless any of the
2 key allegations in this case are proved beyond reasonable doubt,
3 on that particular allegation the Accused must get the benefit of
4 that doubt.

5 [11.33.58]

6 We understand that it's a very high threshold, and so to say that
7 these requests are genuinely novel, apart from the fact they have
8 been raised before other than 269 – Witness 269, they're novel in
9 the sense that now the Prosecution has had an opportunity to
10 review the evidence as admitted in this late stage of the trial.

11 We've reviewed the transcripts. We've reviewed the documents. And
12 these requests are put forward on the basis that we think it's
13 our responsibility to put these forward in order that we have the
14 best, or at least a reasonable, opportunity to prove matters
15 beyond reasonable doubt.

16 The – when these requests were put forward before, that was at a
17 stage when certain witnesses hadn't been called to testify, and
18 that was a stage when the challenge to particular aspects of this
19 indictment was not as clear. And now, having reassessed and
20 having seen the line of challenge from the Defence in relation to
21 this case and having heard the evidence, the prosecutors believe
22 it's their responsibility to ensure that we have a reasonable – a
23 reasonable opportunity to prove these aspects.

24 [11.35.48]

25 So the reason why we ask for the three witnesses in relation to

1 the first forced movement, as Your Honours have stated, it's to -
2 each of those three witnesses assist in proving the policy of
3 targeting individuals from the Lon Nol regime during and around
4 that first forced transfer.

5 That is a significant allegation, a significant area in this
6 case, as murder charges arise out of that that the Accused can be
7 facing.

8 In terms of - it's clearly from Nuon Chea, particularly, in their
9 recent motions and both defence teams in the last number of weeks
10 - it's very clear that this policy of targeting the Lon Nol
11 regime is something that is much debated by those teams. And so
12 in order that we have the best opportunity to prove that policy,
13 we would like to call these three witnesses because the three of
14 them come from different parts of the country. And as a result,
15 their evidence - and you can see from the motion - shows that
16 there was a policy happening in different parts of the country or
17 a practice in different parts of the country in the District 12
18 and the Tram Kak area of the targeting of Lon Nol regime
19 personnel.

20 [11.37.32]

21 And it's that - it's that pattern of conduct that's occurring
22 around the country at the same time as the forced transfer, at
23 the same time that the statements were being made about the super
24 traitors and the killing of the super traitors from that regime
25 that, we submit, supports that there was a policy in existence of

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1 targeting members of the Lon Nol regime.

2 We can have policy, obviously, proved directly through
3 conversations and documents and statements, and policy can also
4 be proved through circumstantial evidence through practice.

5 [11.38.17]

6 And Your Honours, we would like to be clear, we are not calling -
7 we're not seeking to call these witnesses to try and introduce
8 evidence on other events that Your Honours have excluded by
9 virtue of the severance, so TCW-386 and 651, who are from
10 District 12, we asked for that District 12 to be the subject
11 matter of this case and Your Honours have decided that that
12 wouldn't be included.

13 So we're not seeking to ask for convictions if the evidence
14 presents itself on District 12 as a criminal event, but the
15 reason why we're putting these people forward is so that we have
16 a reasonable opportunity to show that there was a policy of
17 targeting Lon Nol regime. And these witnesses from Tram Kak and
18 District 12 all provide evidence that indicates that, in fact,
19 was the case.

20 And it's that pattern of behaviour across the country which we
21 would certainly be arguing at the end of the case that is
22 evidence of a policy of targeting those - targeting those
23 particular soldiers - sorry, targeting those particular former
24 members of the regime.

25 And one thing we can say, Your Honour, in terms of timing, we do

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1 not propose that any of these five witnesses, let alone the 10,
2 would take up a lot of time. What we are proposing is half a day
3 each per witness so - in relation to the 10, but I know you're
4 asking now in relation to the five - we would be asking for two
5 and a half days, a witness in the morning, a witness in the
6 afternoon, and we would just absolutely focus in on the reason
7 why they were called. And we wouldn't be asking questions about
8 all other areas that are not the main reason for being - for them
9 being called, which is the targeting of the Lon Nol regime.

10 [11.40.24]

11 We feel that we need this opportunity to - to have the best
12 opportunity to prove this issue in the case, which Your Honours
13 obviously will be judging on shortly.

14 In relation to the - and the descriptions in the filing, Your
15 Honour, I think that's - they speak for themselves and they
16 support, I believe, what I'm saying today.

17 In relation to the second forced movement, these two witnesses,
18 215 and 269, have been requested in order to support the
19 paragraphs in the indictment which are the subject of this case.
20 And those paragraphs are 266, 268 and 281.

21 [11.41.24]

22 And in those paragraphs, which relate to the second forced
23 transfer, Your Honours will see that it talks about the planning
24 of the second forced transfer was - or the reason for the second
25 forced transfer, two reasons have been put forward in the

1 allegations, one reason being to move labour forces from the
2 south of the country to the north of the country as a significant
3 reason. And another reason was - put forward in the allegations,
4 was to disperse the Cham population.

5 And we understand - we absolutely accept Your Honour's position
6 that you have put forward in your second Severance Order
7 decision, which dealt with our request for including some
8 witnesses to support these paragraphs in the indictment. And our
9 request was dated on the 8th of April, 2013, and it's E279.

10 And we note what Your Honours have said in relation to that
11 request. Even if it's arguable that the factual allegations
12 surrounding the population movement could be re-characterized as
13 persecutions on religious grounds or genocide, the Trial Chamber
14 has previously ruled that these charges have been excluded from
15 the scope of the first trial and would be part of further trials,
16 if any.

17 [11.42.58]

18 And so we accept that position and, in that motion, we ask for
19 two things: one, to call - to call these witnesses on the basis
20 that perhaps the facts could be re-characterized; and that
21 decision clearly said that you would not be re-characterizing the
22 charges other than what you have in the second severance
23 decision. But perhaps one aspect that wasn't answered, and we
24 were seeking your answer on this, is that because the second
25 forced transfer that's included in this case, the reasons

1 provided for that forced transfer was to move the population and
2 one was to disperse the Cham.

3 And I won't read those paragraphs out, but it's clear.

4 [11.43.54]

5 It's important that the Prosecution receives an opportunity to be
6 able to prove those paragraphs, not to prove genocide of the
7 Chams, not to prove any other charges other than what's in this
8 severed trial, but just to prove that the forced transfer - the
9 second forced transfer was done without legal justification, and
10 those paragraphs point to that non-legal justification of
11 dispersing - dispersing the Cham population.

12 So, Your Honours, if - as we've had no witnesses - no Cham
13 witnesses on this particular point to prove this unlawful purpose
14 of the forced population, we may well be left with - we may well
15 be in a position where we haven't really been given the
16 opportunity to prove that one of the reasons for the second
17 forced movement was to disperse the Cham community. And then that
18 will reduce our ability to show that the forced transfer - the
19 second forced transfer wasn't lawful because it would largely
20 take away one of those reasons.

21 And so, Your Honours, you know, the argument is hopefully clear
22 in our motion and the descriptions of the witness of how they
23 would assist in proving that are there. And so, Your Honours,
24 that is the reason for asking for those two witnesses.

25 And as far as TCW-269, again, we're submitting this is a

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1 genuinely novel request in the sense that TCCP-215 was on the
2 Trial Chamber's reserve witness list. We perhaps, you know, were
3 of an assumption that that witness may well - may well be called.

4 [11.46.12]

5 That witness hasn't been called, and we think to reasonably meet
6 the proof to show that was one of the reasons of the second
7 forced movement, it would be reasonable to call two witnesses
8 rather than one. And again, Your Honours, we would be proposing
9 half a day for one witness, half a day for another, and so it
10 would be two and a half days in total.

11 And these witnesses are only being put forward to make sure that
12 we have the best opportunity to argue the case that we think
13 exists in relation to the Lon Nol policy and one of the illegal
14 reasons for the second forced transfer, and for no other reason -
15 certainly not asking for a re-characterization at the end of this
16 trial. We understand that quite clearly. And we would like to
17 deal with these points very effectively and very efficiently so
18 it doesn't take up too much time of the Chamber.

19 Thank you.

20 [11.47.20]

21 MR. PRESIDENT:

22 Yes, Judge, you may proceed.

23 JUDGE CARTWRIGHT:

24 Yes, thank you, President.

25 I have one question, Mr. Smith. I think the Chamber fully

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1 understands the reasons that you set out for seeking these five
2 witnesses, but I am a little concerned about the way in which you
3 estimate the time for each of them. I can't recall any witness
4 during this trial that has taken as little as half a day, and I'm
5 wondering if, in your calculation, you have included the
6 opportunity for other parties to examine these five witnesses in
7 your calculation of a total of two and a half days.

8 [11.48.12]

9 MR. SMITH:

10 Your Honours, we have - no, I can understand you thinking it
11 might be wishful thinking from the Prosecution's side in order to
12 make the proposition more attractive but we submit it's a genuine
13 proposition, a genuine request. And what the Prosecution would
14 do, as I've stated, we would focus particularly just on that
15 particular issue and we would not focus on other issues other
16 than the reason why they were called.

17 And we feel that if we - if we are targeted in our questioning,
18 and we state that we will be, based on an understanding that this
19 trial has to finish in a very short period of time or reasonable
20 period of time, we will do that. And I think you've seen that we
21 can be very economic in - with our questions if we make sure and
22 understand that that's the Chamber's expectation. So it would
23 include the other parties' questioning.

24 MR. PRESIDENT:

25 Thank you very much for clarifying it.

66

1 Does anybody object to the proposal to hear any of these
2 additional individuals at trial as proposed by the prosecutor?

3 [11.49.57]

4 MR. KOPPE:

5 Thank you, Mr. President.

6 It will not come as a surprise that we do not object to the
7 proposed witnesses by the Prosecution. It comes to the first
8 forced movement in the policy targeting the Lon Nol regime and
9 the Tuol Po Chrey execution sites, those witnesses, 505, 386, 651
10 and the ones mentioned in respect of the Tuol Po Chrey
11 executions. Because the Prosecution is right when they are
12 arguing in this motion and also briefly repeating it, that the
13 Nuon Chea defence is challenging this Lon Nol policy, is
14 challenging the events at Tuol Po Chrey and, for that reason, has
15 filed the request yesterday to the Chamber asking to have five
16 more witnesses in respect of Tuol Po Chrey testify.

17 If - I will come to our request later if you will address this
18 question, Mr. President.

19 We do have a problem with the two witnesses in respect of the
20 second forced movement. We - I really can't see why this is a
21 genuine - genuinely new issue.

22 [11.51.29]

23 This is something that has been known all along, and those two
24 witnesses should be have been asked at the beginning. So I don't
25 really see the relevance and the necessity for those two

1 witnesses, TCCP-215 and TCW-269.

2 Of course, when it comes to the role of Khieu Samphan, we have no
3 submissions to make. But we accept - understand the request-

4 MR. PRESIDENT:

5 Counsel, could you please refer to the two witnesses you referred
6 to? Because it appears that it was lost in the translation.

7 MR. KOPPE:

8 Yes. Sorry, President. We - I'm referring to TCCP-215 or TCW-674
9 and TCW-269. Those are the two witnesses mentioned when it comes
10 to forced movement. We object to those.

11 We do not have - that was my last sentence, I think - any
12 submissions to make when it comes to the role of Khieu Samphan,
13 TCW-164 and TCW-781.

14 [11.53.02]

15 MR. VERCKEN:

16 Well, Mr. President, I just wish to point out that, again, we are
17 overloading the case with additional elements, 10 witnesses plus
18 five, and TCCP-186. I think the - I don't have anything against
19 the prosecutor doing their work but, generally speaking, they
20 should have been long - done a long time ago. And I would prefer
21 to use the time to prepare a longer closing brief and to plead
22 correctly, particularly since these requests are rather late,
23 arriving on the 10th of June.

24 We were here in a hearing, and I wasn't able to look at the
25 matter in detail, so I am not in a position to subscribe to or to

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1 oppose to the estimates given by the Co-Prosecutors for
2 cross-examination of those witnesses if you want to accept them.
3 This is a problem I am not in a position to address now. I can
4 neither object to it or subscribe to it because I've not been
5 able to look into the matter in detail and to assess the time
6 required by the Co-Prosecutors.

7 [11.54.37]

8 MR. PRESIDENT:

9 Thank you.

10 Mr. Prosecutor, you may proceed.

11 MR. SMITH:

12 Your Honour, just a brief response because I know there's a lot
13 to get through. Just in relation to my learned friend from Mr.
14 Khieu Samphan's defence team, these requests in relation to the
15 first forced movement are not late. The prosecutor made these
16 requests years ago.

17 In relation to the second forced movement put forward and the -
18 mentioned by the counsel for Nuon Chea that TCCP-215, otherwise
19 known as TCW-674, was not put forward before, that witness, in
20 fact, was put forward before.

21 The only witness that hasn't been put forward before by the
22 Prosecution - well, in fact, it has, and that was on the 8th of
23 May - on the 8th of April in the filing E279, but wasn't put
24 before that. So, all of these witnesses have been put forward to
25 Your Honours before. And, of course, this is what happens when we

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1 get towards the end of a trial, particularly in the civil system.
2 It's ultimately Your Honours that decide which of the witnesses
3 that come to Court, so until such time that you advise us what
4 your final decisions are, which you have done, and we appreciate
5 that, it's only then can the parties realize what witness - what
6 witnesses you are excluding. So the issue that these requests are
7 late is just - just doesn't - doesn't make any sense.

8 [11.56.30]

9 As far as the timing, Your Honours, just by analogy, if we look
10 at the four civil parties that were heard per day in that part of
11 the hearing, I think, you know, that type of economic questioning
12 would be - would certainly be adopted by the Prosecution in that
13 regard.

14 Thank you.

15 [11.56.58]

16 MR. PRESIDENT:

17 Thank you.

18 Secondly, the Co-Prosecutors' request to hear the testimony of
19 three of five individuals who appear in a video excerpt relevant
20 to the executions at Tuol Po Chrey, and this video has been
21 admitted into evidence before the Chamber.

22 These individuals have not previously been identified as relevant
23 to Case 002, and this request is therefore, in substance, a
24 request to hear new evidence pursuant to Internal Rule 87.4.

25 Could the prosecutor now address this request in more detail and

1 indicate in particular why, specifically, three of these
2 individuals are sought?

3 [11.57.55]

4 MR. SMITH:

5 Thank you, Your Honour.

6 Your Honour, we've asked for the three of five individuals from
7 the video one day at Po Chrey. E186.1R is the video, which has
8 been admitted by the Chamber. And that video was, in fact, put on
9 the civil parties' document list back in April, April 2011. And
10 then the Co-Prosecutors got the copy of that video and, in a
11 separate request, put that video to the Chamber because it didn't
12 have the copy of it prior to that, and it was admitted by the
13 Chamber as new evidence even though it was identified in April
14 2011.

15 Your Honour, this relates - the reason why we've asked for these
16 three witnesses from this video is that - well, firstly, the
17 reason why we're asking for further witnesses in relation to Tuol
18 Po Chrey, as Your Honour knows, two witnesses have appeared
19 before this Court in relation to the executions as alleged in the
20 indictment. And looking at the testimony of those witnesses, in
21 some respects, matters that appeared in the statement did not
22 come out as matters that were sort of upheld by the witnesses
23 when they testified.

24 [11.59.46]

25 Their - we would be submitting their evidence is still probative

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1 and most definitely assist in proving the executions at Tuol Po
2 Chrey, but their testimony did fall short, to a certain extent,
3 of the evidence that they gave in their statements. Events,
4 perhaps, that were mentioned in their statements that they said
5 they saw in their testimony on questioning they said they heard.
6 And it was clear that when Your Honours selected witnesses based
7 on, I suppose, requests from the Prosecution, that - it may have
8 been assumed that what we saw or what we could see in the
9 statements would, in fact, be fully supported in their testimony.
10 And as that - as that did not occur, what - and because Nuon Chea
11 defence team challenged this - these executions in the way that
12 they appear in the indictment quite strongly and in order that
13 the Prosecution gets a reasonable opportunity to - to prove these
14 events, we would like to call at least three other witnesses.

15 [12.01.14]

16 And we could, of course, you know, put forward the witnesses -
17 the five witnesses that Nuon Chea have requested in relation to
18 the execution sites, the five witnesses that provided statements
19 to the offices - the Co-Investigating Judges' offices. And in
20 fact, if this request is granted and the three witnesses that we
21 would like to testify from this video cannot be found - we
22 believe they can be - then we would be calling for the witnesses,
23 certainly at least three of them, that were put on Nuon Chea's
24 list which he would like - he would like to have called.
25 And the reason why we're asking for these witnesses now, these

1 particular witnesses now from the video and not before is,
2 firstly, when we put our witness list out in 2011, the video
3 wasn't available. Even though it appeared on the - even though it
4 appeared on the civil parties' document list in April 2011, the
5 actual hard copy of the video wasn't made available until later -
6 later that year or early in 2012. And when we received a copy of
7 that video, we placed it on the case file. So we had no
8 opportunity to be - identify those particular witnesses from the
9 video because the director at that stage wouldn't release it to
10 us.

11 [12.03.03]

12 So - and therefore, why these three people - Your Honours, if I
13 can just take up just a moment because the descriptions - I think
14 Your Honours have seen the video. But there were three soldiers -
15 Khmer Rouge soldiers that were there and present at the execution
16 scene. And if I can just quote from one, he stated he drove -
17 this is from the video. He drove important officials of the Lon
18 Nol regime to Tuol Po Chrey on the third day after liberation. He
19 talked to them to make them feel relaxed. They did not know why
20 they were about to be killed. They thought they were going to
21 meet the Prince and study. He already knew about the plan, that
22 they would be killed.

23 Your Honours, perhaps I won't go any further with the
24 descriptions, perhaps for maybe obvious reasons. But the
25 descriptions of these three people in the video are - appear to

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1 be far better evidence than the information obtained in the OCIJ
2 interviews relating to TCW-644, 699, 803, 689 – and I don't have
3 the accurate reference of the last witness that was put forward
4 by the Nuon Chea team.

5 [12.04.53]

6 So certainly the Prosecution and the Nuon Chea team are in
7 agreement, and I think for perhaps obvious reasons, that
8 certainly the Prosecution should get a better opportunity to be
9 able to prove that case beyond reasonable doubt.

10 The Defence – and obviously they will plead. But the Defence
11 would like an opportunity to disprove it and show that the event
12 didn't occur certainly in the way that's in the indictment. And
13 we have witnesses before this Court that, despite the fact they
14 have given probative evidence, because they have fallen short in
15 a couple of areas; that is why we're making the request now. This
16 request wouldn't have been made, perhaps, if the testimony didn't
17 fall short in a couple of areas.

18 [12.05.51]

19 And so I'm unsure whether the Nuon Chea defence team have closely
20 looked at the video, but certainly we can, in a filing to Your
21 Honour, put the descriptions – I've got descriptions here, of
22 what each of these three witnesses from the video have said. I
23 think Your Honours have actually seen it in a document hearing.
24 And where the best evidence is available, particularly in a
25 criminal case, as you know, Your Honours, the best evidence,

1 whether it be for the Prosecution and the Defence, should be put
2 forward. And we submit the three statements made on video as to
3 directly participating and directly observing the executions, in
4 one way or another, should be the top priority witnesses that
5 should be called.

6 Certainly if any of them could not come, we would ask that some
7 of the witnesses that were identified by the Nuon Chea team and
8 perhaps, if I can say, in order of importance, 644, 699, 803, 689
9 and then the last witness, that those three witnesses from the
10 video be replaced by one, two or three of the witnesses
11 identified by the Nuon Chea team so that we have a reasonable
12 opportunity to be able to prove – not just prove the case, but
13 prove the case in the form that's been alleged in the indictment.
14 And so that's the reason for requesting the video witnesses
15 rather than the OCIJ witnesses because it's our assessment that
16 it's just better evidence. And Your Honours should hear the
17 better evidence rather than, you know, something not as good but
18 still, we would say, significant.

19 Thank you.

20 [12.08.12]

21 MR. PRESIDENT:

22 Thank you.

23 Lead Co-Lawyer, you may proceed.

24 MS. SIMONNEAU-FORT:

25 Very briefly, Mr. President, I just wanted to say that the Lead

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1 Co-Lawyers support the request from the Prosecution as we do with
2 respect to the requests for the witnesses. I believe the
3 Prosecution bears the burden of proof and is capable of
4 identifying the witnesses necessary and we, therefore, put our
5 trust in them on that. Thank you.

6 [12.08.52]

7 MR. PRESIDENT:

8 How about the defence team? Do you have any objection to the
9 proposal by the Prosecution to hear any of these additional
10 individuals at trial?

11 Mr. Koppe, you may proceed.

12 MR. KOPPE:

13 Thank you, Mr. President. I'm mindful of the time, so I'll be
14 brief.

15 Yesterday, as I just mentioned already, we filed our urgent
16 request to summons key witnesses in respect of Tuol Po Chrey.

17 There, we had laid down the argument why those witnesses, the
18 five witnesses that we have identified, are so important and
19 crucial to ascertaining the truth.

20 It is right that we are contesting the events at Tuol Po Chrey as
21 described in the Closing Order. We contest that there was a
22 policy of targeting and killing Lon Nol officials.

23 We have laid out in our request that, indeed, those same two
24 witnesses that the Prosecution is referring to were the trigger
25 for the Nuon Chea defence team to have those witnesses that we

1 have described here added.

2 [12.10.10]

3 Along – according to those same lines, we understand that the
4 Prosecution is asking for those witnesses in the video although
5 what we don't understand is why not also the documentary maker,
6 Thet Sambath, is being requested as a witness because that's –
7 would seem to make sense. He would be able to – to shed light on
8 the way those people were found, whether there were other people
9 that he interviewed who didn't see anything or have been saying
10 contravening things.

11 But the bottom line is that we agree to disagree on what happened
12 at Tuol Po Chrey and whether there was a – in fact, a policy of
13 killing Lon Nol soldiers. That's why we have asked for these
14 witnesses, as mentioned in our request, to appear before the
15 Chamber.

16 [12.11.07]

17 Basically, what's happening is that the prosecuting – prosecutor
18 is flying from another angle and asking the same thing, so that's
19 why we do not object to those specific witnesses being asked by
20 Prosecution.

21 I might – I don't know if now would be the opportunity to say
22 some more about our request to summon a few witnesses because it
23 is the same subject, but I leave that up to you, mindful of the
24 time, Mr. President.

25 (Judges deliberate)

1 [12.13.55]

2 MR. PRESIDENT:

3 The Chamber wishes to advise parties and members of the public
4 that at this juncture of proceeding on Case 002/01 there are only
5 a few remaining issues to be resolved. There has been a request
6 by the defence team for certain witnesses that the defence team
7 intends to raise, but we are running out of time. And this
8 afternoon, the Chamber has scheduled to hear the testimony of
9 Witness Sim Hao.

10 The resumption of this afternoon hearing will - begins with the
11 question put by the defence team and, for this reason, the
12 Chamber cannot estimate the exact time for the hearing of the
13 testimony of Sim Hao this afternoon. For this reason, when we
14 resume this afternoon, we will continue to hear the testimony of
15 Witness Sim Hao as the Chamber advised the party and the general
16 public yesterday.

17 The hearing will begin at 1.30 this afternoon, and if we can
18 conclude this testimony earlier, then the TMM will resume because
19 there are actually only a few remaining issues that we need to
20 address in this meeting. We probably need around an hour or so.
21 So that is the tentative schedule of the Chamber.

22 [12.15.48]

23 The Court is now adjourned, and we will resume at 1.30 this
24 afternoon. And we will begin hearing the questions put to Witness
25 Sim Hao by the defence team according to the schedule.

1 Thank you.

2 (Trial Management Meeting recesses from 1216H to 1511H)

3 MR. PRESIDENT:

4 Please be seated. I would like to declare the meeting resumed.

5 We will continue from where we left off this morning. There
6 remains a few more items to discuss this afternoon. This morning
7 we left off where the prosecutor requested that additional
8 individuals be heard. And the defence team for Mr. Nuon Chea also
9 requested to hear evidence of five further individuals and three
10 appear on Annex 3. Individuals identified as relevant to Case
11 002, but not for Case 002/01, namely TCW-644, TCW-689 and
12 TCW-699. Two have not previously been identified at trial or may
13 be individuals who were incompletely identified by Nuon Chea
14 list. And today, could Mr Nuon Chea defence - could the Nuon Chea
15 defence team elaborate on the nature of this request.

16 [15.13.58]

17 MR. KOPPE:

18 Yes, we can, Mr. President. Let me start by apologizing for
19 mentioning this morning the name of the documentary maker, I
20 shouldn't have done that, I should have called him TCW-720. I'm
21 also mentioning TCW-720 because in his film earlier referred to,
22 the film about Tuol Po Chrey, he's not only portraying the
23 soldiers spoken about by the Prosecution, but in that same movie
24 you can also see the documentary maker asking our client Nuon
25 Chea whether there was in fact a policy existing in and before

1 the DK period of targeting and killing Lon Nol soldiers and
2 officials. And in that same documentary, our client is very
3 adamant and very persuasive, I might add, when he says "No such
4 policy existed." And it is this foundation which ultimately lies
5 underneath our request that we filed as a courtesy copy
6 yesterday, our request to summon key witnesses in respect of Tuol
7 Po Chrey.

8 [15.15.47]

9 We haven't asked, Mr. President, five witnesses in this request,
10 we've asked six witnesses and I would like to start, if you allow
11 me, with that sixth witness mentioned in this request, TCW-223.
12 TCW-223 is for the Nuon Chea defence team without a shadow of a
13 doubt, the most important witness. Not only because TCW-223 knows
14 Nuon Chea very well, the reason why we've asked for him to appear
15 as his one and only character witness, also because he was a
16 senior military commander having knowledge about the existence of
17 a policy existing, yes or no, to target Lon Nol officials and
18 soldiers. He was present, presumably, at a meeting in which this
19 policy was discussed and he is very - he seems to be strong in
20 his earlier "evidence" that there was no such policy and that
21 there was no policy in which the targeting of Lon Nol officials
22 was discussed. There was no killing of Lon Nol soldiers and
23 officials. So this fact, this importance of TCW-223 is the
24 underlying rationale of our further request.

25 [15.17.50]

1 Let me, Mr. President, take the opportunity that I would hope
2 that today or maybe at a later stage, we will be informed as to
3 why the Chamber couldn't reach an agreement as to the summoning
4 of TCW-223 as the one and only character witness for Nuon Chea.
5 That's a separate issue, but we hope to have - to be enlightened
6 on that subject.

7 But having said all this, the reason that we have now asked for
8 five additional crime-base witnesses in respect of Tuol Po Chrey,
9 is the fact that in the week of end April beginning of May, two -
10 the only two witnesses testified in respect of the events
11 allegedly occurred at Tuol Po Chrey. It is - it's obvious that
12 the Prosecution and the Defence agree on the fact that these two
13 witnesses did not confirm at all what they had been testifying in
14 front of the OCIJ. There were huge discrepancies which we all
15 have described in our request between, on the one hand their
16 statements and on the other hand their live testimony.

17 [15.19.24]

18 Therefore, we find it of the utmost importance that the five
19 witnesses that the OCIJs are relying on in their closing order,
20 should be summonsed and appear as witnesses in front of the
21 Chamber. I've heard the Prosecution say today that if it's not
22 possible for whatever reason to have the three soldiers in the
23 movie called here as witnesses, then at least three of those five
24 should appear. So it is for the defence - for the defence of Nuon
25 Chea of crucial importance that not only TCW-223 will appear, but

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1 also those five additional Tuol Po Chrey witnesses. We have been
2 describing who they are and what they could testify and what they
3 have said earlier in their statements to the OCIJ. I'd be happy
4 to paraphrase that, but I'd be also happy to refer the Chamber to
5 what we have written in our written - in our request for these
6 witnesses. So to sum up, it's, for the Defence, crucial that we
7 have all six witnesses appear before we close the evidence in
8 this segment of the trial.

9 [15.21.09]

10 MR. PRESIDENT:

11 Thank you very much for clarifying this issue.

12 Does any other party object to the calling of these individuals
13 proposed by the defence team for Mr. Nuon Chea?

14 Yes, the Prosecutor, you may proceed.

15 MR. SMITH:

16 Thank you, Your Honour. I just wanted to reiterate our position
17 today. We don't necessarily object to the calling of witnesses
18 from Tuol Po Chrey. The Prosecution and Defence are in agreement
19 that further evidence would be beneficial to both parties to
20 discharge their obligations. All that we say is that the Chamber
21 will have to determine when there is enough evidence, and what we
22 - what we have suggested is that if we call the three witnesses
23 in the video and the amount of evidence is satisfactory, it may
24 be the case that we may not need to get to call all of the
25 witnesses that Nuon Chea's counsel have put forward.

1 [15.22.29]

2 But what I would suggest, based on the principle that this Court
3 should be dealing with perhaps what – dealing with the best
4 evidence from the video as discussed, those three soldiers appear
5 to provide more direct eyewitness evidence than the five that are
6 being put forward. So we would ask that those three witnesses be
7 called first and then subject to, you know, Court time, etc.,
8 then proceed down the list to call the other witnesses for Tuol
9 Po Chrey. It's just a question of time management and ensuring
10 that both parties get enough evidence called to be able to
11 discharge their obligations.

12 And with – just also to be clear for the record in relation to
13 TCW-233, the prosecutors confirm their position on this witness,
14 and that position has been laid out in previous motions that we
15 filed to the Court. They can be found in prosecutor's filing
16 E93/2 dated the 11th of July 2012 and E9/14/1/1/1 dated the 11th
17 of March 2011.

18 [15.24.09]

19 And we would – we would also like to put on record that the
20 Prosecution has put forward to this Court that if the witness is
21 not called to this Trial Chamber, that their statements be
22 admitted, certainly TCW-233's transcript be admitted by agreement
23 with the Defence. And we also submit that the transcript – the
24 associated transcript of the interview with Ben Kiernan of TCW-92
25 – also be admitted if in fact TCW-233 cannot – is unable to come

1 to Court. Now the document I'm referring to is D313/1.2.406.1,
2 and that contains the record of interview of TCW-223 in relation
3 to the incident or the meeting that he states that he was at with
4 Nuon Chea on the 20th of May 1975 when it was discussed - when it
5 was asked what the position was in relation to the policy of Lon
6 Nol soldiers. And the reason why we ask that TCW-92's transcript,
7 which is an associated interview, also be admitted is that it
8 puts the statement of TCW-233 in perspective as to his version of
9 the events of that meeting on the 20th of May 1975, which is
10 different to that of 233.

11 [16.26.16]

12 Again, we would only request that this be done, if the Defence
13 agreed, because these statements do relate to the acts and
14 conduct of the Accused, and perhaps would otherwise not be put
15 before the Chamber. But if 233 does not come to Court, I think to
16 preserve the record for both Defence and Prosecution purposes,
17 that the Prosecution would agree that those statements be
18 tendered as evidence. At least that would be before Your Honours
19 and you could take that evidence into account. But that would
20 require the agreement of the Nuon Chea team and the Khieu Samphan
21 team.

22 Thank you.

23 MR. PRESIDENT:

24 There could have been problem in the translation, because it
25 appears that there was a difference in the discussion. Mr. Smith,

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1 you raise an issue relating to TCW-223 or 233? Because there was
2 only one witness proposed by the defence team for Mr. Nuon Chea.
3 Out of six of them, there was one witness whose pseudonym is
4 TCW-223, not 233. So this is a point of clarification so that
5 parties are not confused by the different pseudonym of witnesses.

6 [15.28.03]

7 MR. SMITH:

8 Thank you, Your Honour, my mistake. I was referring to - meant to
9 refer to TCW-223.

10 MR. PRESIDENT:

11 Thank you.

12 And, Counsel, please hold on.

13 The Lead Co-Lawyer for the civil party, you may proceed.

14 MS. SIMONNEAU-FORT:

15 Briefly, President, but it has to be said. The Lead Co-Lawyers
16 have no opposition to the proposal made by the Nuon Chea defence
17 and we leave the Chamber the freedom to make a decision on
18 whatever eventually is chosen, but we have no position principle.

19 MR. PRESIDENT:

20 Thank you.

21 Counsel Victor Koppe, you may proceed.

22 [15.29.02]

23 MR. KOPPE:

24 Thank you, President. The thing is - the thing what I would like
25 to stress is the following. We have, as you know, requested

1 earlier for TCW-223, but it's very important that all the parties
2 and the Chamber realize that this is a new request based on the
3 addition of Tuol Po Chrey to this segment of the trial.

4 [15.29.26]

5 We have requested TCW-223 earlier. He has been denied. We have
6 been describing this in our request. Now we are in a new
7 situation because of the adding of Tuol Po Chrey. We are of the
8 opinion that his testimony is becoming even more important and
9 is, in fact, crucial for the understanding whether there was, in
10 fact, an underlying policy of killing or targeting Lon Nol
11 officials when it comes to Tuol Po Chrey. He is crucial to decide
12 whether the events, if they happened at Tuol Po Chrey, were local
13 actions of revenge against Lon Nol soldiers or were, in fact, the
14 execution of an earlier existing policy.

15 So just to be absolutely sure, this is a new request with new
16 arguments when it comes to TCW-223, and like I said in the
17 beginning - and I cannot stress this enough - this witness is for
18 our defence of absolutely crucial importance.

19 MR. PRESIDENT:

20 Thank you.

21 Counsel Vercken, you may proceed.

22 MR. VERCKEN:

23 Thank you, Mr. President. Regarding the submission of written
24 statements by witnesses who cannot appear concerning the acts and
25 conducts of the Accused, we are opposed in all cases, as we

1 pointed out in E277, which contains our conclusions on such
2 matters, which was submitted on 9th April 2013. Thank you.

3 [15.31.38]

4 MR. PRESIDENT:

5 Thank you. Finally, and in relation to the role of Khieu Samphan
6 and in particular with regards to political education, the
7 Co-Prosecutors seek to call TCW-164 and TCW-781. Both individuals
8 were identified by the Co-Prosecutors as key individuals to be
9 heard in Case 002/01 at the last TMM, but are currently proposed
10 for deferral to future trials by the Trial Chamber.

11 Could the Co-Prosecutors now elaborate on the basis of this
12 request?

13 [15.32.30]

14 MR. SMITH:

15 Thank you, Mr. President. Again, the basis of this request is
16 founded on the fact that much evidence has been heard in this
17 case now and as of, Your Honours', announcement on the 31st of
18 May about what further witnesses will be called in this trial,
19 and based on our assessment of the evidence that has been
20 admitted by the Chamber through witnesses called and through
21 documents admitted, it was our view that bearing in mind the
22 position of the Khieu Samphan defence that has become louder and
23 clearer as the trial has continued, that Khieu Samphan had no
24 real authority in the DK regime, that he had no substantive
25 participation in the Joint Criminal Enterprise and the different

1 policies during the DK regime and, in large part, he had no
2 knowledge of the Joint Criminal Enterprise and the crimes
3 occurring during the period.

4 Bearing in mind that position, and also the position in relation
5 to the statements that the Prosecution have asked to be put
6 before the Chamber relating to, amongst other things, the acts
7 and conducts of the Accused in the DK period and understanding
8 the Trial Chamber's position and international practice that
9 statements should not be admitted to this Court as evidence, at
10 least where they contain or – where they contain information
11 relating to the acts and conduct on the Accused unless there's a
12 cross-examination by the Defence, or certainly those portions of
13 the statements, should not be admitted. That, generally, is the
14 international practice and that appears to be the decision of the
15 Chamber.

16 So, the numerous references to Khieu Samphan's political
17 indoctrination or participation in promoting the different
18 policies of the JCE – the forced transfer policy, the worksite
19 policy, the killing and targeting of the enemy policies among
20 others – much of that evidence has been collected in the
21 statements, won't be before this Chamber.

22 [15.35.29]

23 And when we look at what the Prosecution originally proposed for
24 the Trial Chamber to hear in relation to Khieu Samphan's
25 authority, his participation in the Joint Criminal Enterprise,

1 his membership with Nuon Chea in that Joint Criminal Enterprise
2 and also his knowledge of the crimes that were occurring at the
3 time, we have proposed seven witnesses and now we can see that of
4 those seven, two have been heard before the Trial Chamber.

5 [15.36.12]

6 And those two have - they're public witnesses, Chea Say and Em
7 Oeun, and then we have another witness who we discussed this
8 morning, TCCP-186, whose evidence is incomplete and it relates to
9 this very point, the allegations relating to the political
10 indoctrination of CPK policies by Khieu Samphan. We have heard -
11 still, we have heard two other witnesses, Pean Khean, and Ruos
12 Suy, a defence witness, who made reference to these activities of
13 Khieu Samphan.

14 But of the witnesses, the Prosecution would have liked to have
15 called to prove this aspect of his role, to prove his strong
16 association and membership to the Joint Criminal Enterprise,
17 particularly with Nuon Chea, to prove his authority and influence
18 and knowledge of those policies, which is necessary for us to do.
19 Our assessment is that we would like to call two more witnesses
20 to have a significant opportunity to prove that aspect of Khieu
21 Samphan's role, particularly as the DK period was for, you know,
22 the three years and eight months. We propose that the two
23 witnesses, the time period to question them would be half-a-day
24 each, so it would be one day for the two witnesses. We propose to
25 focus on that aspect alone.

1 [15.38.11]

2 When we look at the two witnesses in terms of their probative
3 value to demonstrate Khieu Samphan's role in the Joint Criminal
4 Enterprise and his knowledge of the policies and his promoting of
5 the policies, if we look at TCW-164 - and you'll see from our
6 submission that we made to the Chamber just before this Trial
7 Management Meeting - that Khieu Samphan - he testifies that Khieu
8 Samphan and Nuon Chea participated in the two study sessions at
9 Borei Keila stadium in 1976 and 1978. And he states that Khieu
10 Samphan discussed the arrest of Pang from Office 870 because he
11 was a traitor collaborating with "Yuon", and he also describes
12 Nuon Chea at the session in '78 with Khieu Samphan talking about
13 the treason of Koy Thuon.

14 [15.39.10]

15 And if we look at what TCW-781 has to offer in this regard, he's
16 a ministry of commerce worker who talks about the disappearances
17 of half of his unit over that period for the purpose of study
18 sessions. And he explains the purpose of study sessions was, in
19 fact, known that people had been arrested and disappeared and
20 taken away.

21 And then he talks of a meeting with Khieu Samphan, Van Rith, and
22 Nuon Chea in early January 1979 where the three of them announced
23 the end of calls for study sessions, meaning ends of calls of
24 study sessions because of the need to be unified to fight the
25 enemy. And this witness understood that to mean that there would

1 be no more arrests because we need to unite to fight the
2 Vietnamese.

3 So, Your Honour-

4 MR. PRESIDENT:

5 Counsel, you may proceed.

6 MR. VERCKEN:

7 Yes, Mr. President, I would like to interrupt my learned friend
8 because I don't know what is happening now. We are now discussing
9 technical matters and the prosecutor is pleading. He goes into
10 details, he talks about testimonies and what is said. I don't see
11 the relevance of this. We are in a Trial Management Meeting and
12 the prosecutor is going a bit too far.

13 [15.41.02]

14 MR. SMITH:

15 Your Honour, I understand my friend's point. I mean, it's
16 obviously relevant, it relates to the reason why we'd like to
17 call these witnesses, but certainly we would request that we call
18 - that the Chamber call these two witnesses because it's strongly
19 disputed by the Khieu Samphan defence team that he was involved
20 in these political indoctrination sessions where he clearly shows
21 his knowledge of the Joint - the criminal policies.

22 And as we've only had two witnesses called by the Prosecution on
23 that point to discharge our burden, we'd like a reasonable
24 opportunity to do that by asking for two witnesses over a one-day
25 period. Thank you.

1 [15.42.04]

2 MR. PRESIDENT:

3 Thank you. Other parties, would you like to make any comment
4 regarding the request by the prosecutors to hear these witnesses?

5 MS. SIMONNEAU-FORT:

6 Yes, Mr. President, we endorse the application made by the
7 Co-Prosecutors and, in that vein we have also made a request that
8 TCCP-214 be heard for similar reasons. Would you like me to
9 explain very quickly what these reasons are? That would allow the
10 Defence to respond to all these proposals or would you like me to
11 do that later?

12 We made this application before the Chamber officially a few days
13 ago and it's TCCP-94. I wouldn't want to state what I said orally
14 what was already written. These arguments are identical to those
15 elaborated upon by the Co-Prosecutors.

16 This person is on our initial list. At one point that person was
17 on the Chamber's list. That person was proposed with regard to
18 the structures as well as the role of the Accused. That person is
19 also in a position to provide information regarding speeches
20 delivered by Mr. Khieu Samphan to Cambodians from abroad,
21 particularly in May 1976. And, in particular, that person is in a
22 position to talk about other speeches by Mr. Khieu Samphan. He
23 will also talk about Mr. Khieu Samphan's knowledge of policies of
24 Democratic Kampuchea.

25 [15.43.59]

1 I'm going very quickly and I'm relying on the contents of my
2 application. I believe that that person could provide interesting
3 and relevant evidence. That person is a civil party, of course.

4 MR. PRESIDENT:

5 Counsel Vercken, you may proceed.

6 [15.44.24]

7 MR. VERCKEN:

8 Thank you, Mr. President. I would like to respond to the
9 prosecutor.

10 I am somewhat amused to hear the Co-Prosecutor give the
11 impression that all of a sudden they are discovering the
12 existence of a rule in international criminal law according to
13 which witnesses testifying to the acts and conduct of the Accused
14 should be challenged in cross-examination.

15 And, similarly, when I hear the Co-Prosecutor say that in the
16 course of this trial he has discovered that Mr. Khieu Samphan
17 challenged the facts against him, I would like to refer you, Mr.
18 Co-Prosecutor, to the Opening Statements to this trial to remind
19 you that the position of Mr. Khieu Samphan has not been formed in
20 the course of the proceedings, it has been very clear since the
21 very outset. I think we have heard arguments and submissions that
22 were given in bad faith. The Chamber will rule on that.

23 The Co-Prosecutor in addition has cited all the witnesses who
24 have testified on this issue and there are quite a few, and we
25 are opposed to the calling of additional witnesses. I will not

1 elaborate any further, Mr. President. We are running out of time
2 and if those persons are not called we will proceed quickly to
3 the Closing Arguments.

4 [15.46.16]

5 Regarding the civil party, let me say that, there again the
6 counsel or the Civil Party Lead Co-Lawyer has said we made a
7 request some days ago. That request has already been the subject
8 of lengthy debate at the hearing of 11 January 2013. It is
9 E1/251. It is TCCP-94.

10 Let me respond. The table disclosed by your Chamber after the
11 issue of your Memorandum of 30 May was very clear as regards the
12 situation, your position on that application, and we are
13 therefore opposed to the calling of that additional civil party.

14 [15.47.24]

15 MR. PRESIDENT:

16 Thank you.

17 And Nuon Chea's defence, do you have any comments to make
18 regarding the request to hear additional testimony of two
19 witnesses by the Prosecution and the request by the Lead
20 Co-Lawyer for hearing a civil party - that is, TCCP-94?

21 MR. KOPPE:

22 No, Mr. President, we don't have any submissions.

23 MR. PRESIDENT:

24 Thank you.

25 Finally it appears that the Khieu Samphan defence does not seek

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1 to call additional witnesses at trial. Can the Khieu Samphan's
2 defence confirm that this is the case?

3 MR. VERCKEN:

4 In principle, at this stage of the discussions, no, Mr.
5 President. If the situation were to change as regards witnesses
6 who may be called after the numerous applications that have been
7 made, I would reserve my right to respond later on and I will
8 not, therefore, respond immediately.

9 Completely independently of this response, let me point out to
10 the Chamber that on the table that you issued and which contains
11 all motions filed during the proceedings, there is one motion
12 missing on that list, that is, a Khieu Samphan motion and the
13 Exhibit Number is E220. And in that motion, which was filed on 14
14 August 2012 titled "Application by Mr. Khieu Samphan to Tender
15 into Evidence a New Document", that document is missing on that
16 list. That is all I wanted to say, Mr. President. That motion by
17 the defence of Mr. Khieu Samphan has not been addressed by the
18 Chamber - decided by the Chamber.

19 [15.50.13]

20 MR. PRESIDENT:

21 Thank you, Counsel Vercken, for this very important piece of
22 information.

23 We will review all the requests as we receive many, many requests
24 by all the parties - that is, in regards to the proceedings in
25 002/01. And the total number is 28+5, and I think that could be

1 a mistake in missing out that request by your team. We review and
2 resolve this matter in due course. Thank you for raising this
3 matter to the Chamber, Counsel Vercken.

4 [15.51.13]

5 The Chamber thanks the parties for their submissions. The Chamber
6 will consider them and will shortly indicate which of these
7 additional individuals now sought will be called at trial.
8 Justifications for why any are not heard will be included in the
9 Chamber's final witness decision which is currently pending
10 before the Chamber and which is expected to be issued over the
11 coming weeks.

12 And before we conclude the Trial Management Meeting, are there
13 any remaining matters that the parties wish to raise? And as in
14 the case of Counsel Vercken, he raised a matter regarding the
15 missing request by Khieu Samphan - that is, document E220 - that
16 he did not find it in the Annex of the requests submitted to the
17 Chamber by all the parties. And that is a useful piece of
18 information for the Chamber and we will review it in due course.
19 If there are no matters to be raised by the parties, this
20 concludes the Trial Management Meeting, and the Chamber thanks
21 the parties for their input and will issue its scheduling order
22 for next week's document hearing very shortly, as well as for the
23 last remaining hearings in Case 002/01 in due course.
24 And on behalf of the Trial Chamber, I would like to thank the
25 prosecutors, the Lead Co - the Lead Co-Defence teams and the Lead

1 Co-Lawyers for civil parties, as well as all the concerned staff
2 for your support in this Trial Management Meeting and which
3 facilitates the smooth operation of the Trial Management Meeting.
4 And I wish you all the very best and success in your respective
5 duty.

6 I declare the closure of the Trial Management Meeting now.

7 (Trial Management Meeting adjourns at 1554H)

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