



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**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 29-Jul-2013, 13:00  
Sann Rada  
CMS/CFO:

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

23 July 2013  
Trial Day 214

Before the Judges:

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

The Accused:

NUON Chea  
KHIEU Samphan

Lawyers for the Accused:

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Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy  
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For the Office of the Co-Prosecutors:

William SMITH  
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SENG Bunkheang

For Court Management Section:

UCH Arun  
SOUR Sotheavy

**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MS GUISSÉ	French
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. SAR SARIN	Khmer
MS. SIMONNEAU-FORT	French
MR. VEN POV	Khmer

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

2 (Court opens at 0906H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session.

5 Today, we have some important outstanding issues to be addressed  
6 in Case 002/001, some of which have been raised by the parties at  
7 the last minute.

8 The Trial Chamber will first address the Co Prosecutors' request  
9 to call further witnesses on the events at Tuol Po Chrey and all  
10 parties will be given a chance to respond to these submissions.  
11 Following this, the Trial Chamber will consider submissions of  
12 the parties on the Co Prosecutors' application for  
13 reconsideration of its position, not to recall Civil Party Sar  
14 Sarin. The Co Prosecutors will then be allowed to address the  
15 Chamber in regards to the two issues raised yesterday by email  
16 with the Trial Chamber's Senior Legal Officer: first, with  
17 respect to the request for adverse inferences to be drawn against  
18 Khieu Samphan and Nuon Chea; and second, regarding the admission  
19 of documentary evidence and the allocation of E3 numbers. All  
20 parties will be allowed to respond.

21 [09.08.26]

22 The Chamber notes the Nuon Chea defence team's sixth and final  
23 request to summons TCW 223, which was filed yesterday. As this is  
24 a renewal of pending motion, no submissions are required and the  
25 Chamber will address this issue in the final decision on

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1 witnesses. Following this, the Chamber will allow oral  
2 submissions regarding the Nuon Chea's defence team's request to  
3 summons witnesses in respect of alleged policy of targeting Khmer  
4 Republic officials, a courtesy copy of which was provided  
5 yesterday.

6 And finally, the Chamber will hear oral submissions on the Khieu  
7 Samphan's defence team's request for information with respect to  
8 the condition of Nou Mouk's appearance before this Court, which  
9 was filed yesterday.

10 And finally, the Chamber will provide further indications to the  
11 parties regarding scheduling of final deadlines.

12 Starting with the request for witnesses on the events at Tuol Po  
13 Chrey, I would like to know whether the Co Prosecutors' wish to  
14 supplement their written request, and if you have it, please take  
15 the floor.

16 [09.10.41]

17 MR. LYSAK:

18 Thank you, Mr. President. Good morning, Your Honours, counsel.  
19 We do not have any supplemental submissions to add at this time,  
20 other than depending on the response of the other parties to  
21 reply to them, but we do not have any supplemental additions up  
22 to what was submitted in our filing last week.

23 MR. PRESIDENT:

24 And what about the Lead Co Lawyers for civil party, do you wish  
25 to make any comment on this issue?

3

1 MR. PICH ANG:

2 Good morning, Mr. President and Your Honours.

3 Regarding the request by the Co Prosecutors for witnesses, we  
4 fully support the submission as the witnesses proposed by the Co  
5 Prosecutors will provide clear evidence regarding the events  
6 occurred at Tuol Po Chrey, namely the transportation of those who  
7 were taken to Tuol Po Chrey and what happened there next. The  
8 witnesses can also shed light on the various stages of  
9 infrastructures of the Khmer Rouge leadership as well as the  
10 crimes committed at that location. So the request made by the Co  
11 Prosecutors is appropriate and I fully support it.

12 [09.12.28]

13 MR. PRESIDENT:

14 Thank you.

15 And what about the two defence teams? First for the Nuon Chea  
16 defence, do you wish to make any comment or observation to  
17 respond to the submission made by the Co Prosecutors? That is,  
18 the request for the witnesses regarding the events at Tuol Po  
19 Chrey. If so, you may proceed.

20 MR. KOPPE:

21 Thank you, Mr. President. Good morning, Your Honours. Good  
22 morning, counsel.

23 We do not have many submissions to make other than saying that we  
24 have read the request with interest, especially in the light of  
25 the recent opposition from the Prosecution to our request to have

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1 witness TCW 382 summonsed. As you know, TCW 382 was one of the  
2 producers of the film, "One Day at Po Chrey". We think this  
3 witness is very important to shed further light on the events  
4 that happened at Tuol Po Chrey, especially his knowledge when it  
5 comes to people that have appeared in the film. So that  
6 opposition regarding our witness at Tuol Po Chrey was interesting  
7 especially in the light of this new request.

8 [09.14.07]

9 However, we would like to point out and draw the Chamber's  
10 attention to our own filing - that was E291 - that was an urgent  
11 request to summons key witnesses in respect of Tuol Po Chrey that  
12 was dated on the 17th of June 2013. In that request, we have  
13 asked the Chamber to summons one of the witnesses that is now  
14 being asked by the Prosecution - that will be TCW 644. We have  
15 listed him to be heard in our request, but in that same request -  
16 E291 - we have also requested the summonsing of two additional  
17 witness, 802 and 803, because our reasoning in respect of that  
18 request was that all relevant witnesses mentioned in the Closing  
19 Order, or anywhere else in respect to Tuol Po Chrey, should be  
20 summonsed before the Chamber.

21 So having noted this, then, of course, we do not object to TCW  
22 644 being summonsed by the Chamber, but then we would like to add  
23 that our request to have those two additional witnesses also be  
24 summonsed.

25 [09.15.42]

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1 In respect of this new witness, this person, I don't think has a  
2 TCW number yet, the person that is coming from the list of civil  
3 parties in Case 003 and 004, we note that whatever he has been  
4 saying about the events at Tuol Po Chrey are not very convincing  
5 in describing the alleged facts. There is no, it seems, direct  
6 testimony coming from him in a statement, just a brief summary of  
7 the things that he might have seen or might have heard. But  
8 extending the same reasoning to this particular new witness, of  
9 course, we have in principle no problem when this witness is  
10 summonsed. We feel that the events at Tuol Po Chrey should be  
11 examined as extensively as possible. We still uphold that there  
12 is no evidence, no convincing evidence of executions and there's  
13 certainly no evidence whatsoever of any connection between these  
14 executions and any ordering from the side of the Party set.

15 [09.17.01]

16 We noticed that the Prosecution is saying in its request that  
17 they are having, or so it seems, problems with the question  
18 whether there is enough evidence. We agree with that position and  
19 any light - new light that can be shed on the events, of course,  
20 the Nuon Chea defence team welcomes that, but not without  
21 reiterating and underlining the importance of our own request of  
22 last week to have TCW 382, the producer of the movie, "One Day at  
23 Po Chrey", be summonsed as well.

24 Thank you.

25 MR. PRESIDENT:

6

1 Thank you.

2 And Madam Counsel, you may proceed.

3 [09.18.01]

4 MS. GUISSÉ:

5 Thank you, Mr. President. Good morning to you and good morning to  
6 all of the parties.

7 I will not take up much of your time. At the previous Trial  
8 Management Meeting, we said that we would leave it up to the  
9 Chamber to assess the need for calling new witnesses. On this  
10 fact, we note that witnesses have already come to testify about  
11 Tuol Po Chrey and now what they have said seems apparently not to  
12 suffice for the Co Prosecutor and they are asking for more  
13 witnesses, but I think at some stage you have to draw to a close  
14 on this kind of procedure. That, I think, needs highlighting.  
15 If the evidence is inadequate, perhaps one should draw the  
16 logical legal conclusion, which is that perhaps there isn't  
17 enough evidence quite simply. Those are the only conclusions I  
18 wish to draw at this stage on the request by the Co Prosecutors.

19 Thank you, Mr. President.

20 [09.19.04]

21 MR. PRESIDENT:

22 Thank you, Counsel.

23 The prosecutor, you may proceed.

24 MR. LYSAK:

25 Thank you, Mr. President.



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1 I will be brief in view of counsel being relatively brief in  
2 their responses. Let me start by responding to the Khieu Samphan  
3 defence.

4 The Co Prosecutors' position is certainly not that the evidence  
5 is insufficient. It is rather, as stated in our motion, that the  
6 Court has heard from several witnesses regarding what was the  
7 first step or first stage in the events at Tuol Po Chrey, the  
8 gathering of the Lon Nol officials and soldiers at the Pursat  
9 Provincial Hall. We've heard from a number of witnesses about the  
10 transportation by truck of these individuals to the Tuol Po Chrey  
11 site.

12 [09.20.19]

13 What we believe would be useful to the Chamber is to hear from  
14 two witnesses who were at the execution site: one a local  
15 villager who came the next day and saw the bodies and can  
16 describe the scene there, and the second possibility, a new civil  
17 party from Case 004, whose statement - and it is hard sometimes  
18 for us to interpret these statements because we get simply a  
19 brief English summary of the party's - civil party application -  
20 but it clear from the application that this was an individual, a  
21 soldier, who was at - says he was at the execution site.

22 It seems to us on the Prosecution side that with the Defence  
23 continuing to say that there is no evidence of killings, with  
24 witnesses available who were at the execution site, that it would  
25 be beneficial to hear these witnesses. And that is the reason for

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1 the Co Prosecutors' request.

2 [09.21.32]

3 In response to the Nuon Chea defence comparison to TCW 382, I  
4 don't think that is a fair comparison. They're requesting a film  
5 producer be called who, it is clear from the email that we saw  
6 last week, has very little understanding of the events at this  
7 location. In this email, his lack of understanding of his own  
8 film is so extreme. He was criticizing an accurate description of  
9 the film he released in the Phnom Penh Post. That is how little  
10 this individual has to offer this Chamber.

11 In comparison, the people we are proposing are people who were at  
12 the execution site, people who have contemporaneous knowledge of  
13 these events. So I think the comparison from the Defence to a  
14 film producer is inappropriate. And other than that, we have no  
15 other comments in response to the other party's submissions.

16 [09.22.48]

17 MR. PRESIDENT:

18 Thank you, Mr. Prosecutor.

19 The Chamber will deliberate and make a decision in due course.

20 There is another issue.

21 On the 18th July 2013, the Co Prosecutors' requested the Chamber  
22 to reconsider its decision not to recall Civil Party Sar Sarin.

23 Although the Internal Rules do not provide for reconsideration of  
24 Trial Chamber decisions, this Chamber generally does not  
25 entertain applications concerning matters upon which it has

1 already ruled. It notes that the Lead Co Lawyers have given  
2 preliminary notice that they wish to be heard on this  
3 application. They will be given 20 minutes and each defence team  
4 10 minutes should they wish to respond.

5 And for that reason, the floor is now given to the Lead Co  
6 Lawyers for civil parties to express their opinion on this  
7 request made by the Co Prosecutors for the recalling of Civil  
8 Party Sar Sarin.

9 [09.24.24]

10 MR. PICH ANG:

11 Once again, Mr. President, Your Honours, the Lead Co - the  
12 lawyer, Ven Pov, will be assigned to speak on this point and then  
13 the International Lead Co Lawyer will continue.

14 MR. PRESIDENT:

15 Yes, you may proceed.

16 MR. VEN POV:

17 Good morning, Mr. President, Your Honours, and good morning  
18 everyone in and around the courtroom.

19 In order to respond to the request made by the Co Prosecutors for  
20 the Chamber to reconsider its decision not to recall my civil  
21 party, Sar Sarin. As a lawyer for the civil party, I fully  
22 support that request in the framework that he shall be summoned  
23 as a civil party. The request made by the Co Prosecutor that this  
24 civil party refused to testify and that he shall be sanctioned  
25 based on Internal Rule 35, I do not agree with this request.

10

1 [09.25.55]

2 What has been submitted by the Prosecution regarding Internal  
3 Rule 35 is inappropriate. The fact is, my civil party does not  
4 violate the Internal Rule 35, and my civil party client, Sar  
5 Sarin, was recognized by this Chamber as a civil party in Case  
6 002. He was summoned by the civil party (sic) and he shall be  
7 heard so as a civil party, and for that reason he is a party to  
8 this proceeding. And, referring to Rule 23.4 of the ECCC Internal  
9 Rule, which states that civil party shall not be questioned as an  
10 ordinary witness in this case.

11 And another point that I wish to bring to Your Honours attention  
12 is that my client refused to testify previously was based on the  
13 reason that he gave on the 29th of April. It was relation to the  
14 fear and his personal security as well as that of his family  
15 members. He was of grave concern after the return from the  
16 testimony from this Chamber. And Your Honour actually ruled on  
17 that decision - that is, on the day of the testimony on the 29th  
18 April, and in reference to your memorandum of understanding on  
19 the 28th of June this year, Your Honour states clearly that the  
20 civil party shall not be coerced to testify within the framework  
21 of the ECCC Internal Rule - that is, in reference to Rule 23.4.

22 [09.28.20]

23 And another point, this is again in regards to the request by the  
24 Co Prosecutors to reconsider his status as a civil party. It is  
25 my submission that that request is not appropriate and for that

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1 reason I objected to it. My client is willing to participate in  
2 this proceeding in his capacity as a civil party, and the reason  
3 for his refusal was given in his reasons – that is, his personal  
4 safety and the safety of his family members.

5 He stated clearly on the 29th of April, during his testimony  
6 regarding a murder of Mr. Haing Ngor who was a film star in the  
7 infamous "Killing Fields" movie, who was murdered in the United  
8 States in 1996. And based on the statement of Duch, which was  
9 stated in the transcript before this Court, which was held on the  
10 25th of November 2009, the document is E3/80 – 83.1; ERN in Khmer  
11 is 00406939; and in English, 00406730; and in French-

12 THE INTERPRETER:

13 The interpreter cannot get the ERN number. Please, ask the  
14 speaker to repeat.

15 [09.30.18]

16 MR. VEN POV:

17 My client is fearful of his safety, as in the case in the murder  
18 of Haing Ngor. The request made by my client to the Chamber on  
19 the 29th of April 2013 was made and the request was subsequently  
20 rejected by Your Honour on the same day.

21 In the case that the Chamber recalled my client, he shall be  
22 recalled as a civil party without being forced to testify before  
23 Your Honour, and if it is possible, security measures shall be  
24 granted to him for his personal safety.

25 And I'd like now to hand the floor to my international

12

1 counterpart. Thank you.

2 MR. PRESIDENT:

3 Thank you.

4 You may now proceed.

5 [09.31.42]

6 MS. SIMONNEAU-FORT:

7 (No interpretation) ...that Mr. Sar Sarin - thank you, Mr.

8 President, Your Honours. Thank you everyone here present. Thank

9 you for the opportunity to give us of - giving us the opportunity

10 to elaborate on the request made by the Co Prosecutors regarding

11 Sar Sarin.

12 My learned colleague has already presented the concerns regarding

13 this witness, and it is his right. The Co Prosecutors have raised

14 a number of legal arguments which appear to be well-founded.

15 Since your Chamber will define the jurisprudence regarding the

16 stages and the role of civil parties, it is therefore our duty to

17 explain why each of these arguments are not well-founded and

18 should not be used as a basis for decisions.

19 [09.33.05]

20 There are two important points in the application by the Co

21 Prosecutors. The first point is aimed at showing why the civil

22 party should be considered as a witness and should therefore be

23 allowed to appear. The second point in the submissions of the Co

24 Prosecutor is that the Chamber can sanction the civil party by

25 depriving that civil party of his or her status. Let me further

13

1 elaborate regarding considering the civil party as a witness and  
2 calling him, and that is the first time he will be summoned.

3 I observe with regret that over the past two years I have tried  
4 to explain why a civil party is not a witness, and I hope that  
5 this time around I will succeed. I observe that the rules  
6 referred to by the Co Prosecutors are interpreted in a manner  
7 that is contrary to what the civil party status really means. I  
8 will say a word on that:

9 It is said that a civil party can be obliged by the Chamber to  
10 appear, pursuant to Rule 41 of the Internal Rules, and in French  
11 the word is "convocation", in English, "summons". If we analyze  
12 this rule we should refer to the French because this rule is  
13 drawn from civil law and consequently its meaning should be  
14 considered in the French sense. In French, "convocation" does not  
15 entail an obligation.

16 [09.34.55]

17 In the French civil procedure code, and I'll return to that  
18 later, when there's an obligatory component there are specific  
19 rules that penalize someone who is summoned and doesn't appear.  
20 And let me say that this is never the case for the civil party,  
21 so we should refer to the French term "convocation". It does not  
22 have a coercive component.

23 I also note that the Co Prosecutor refers to note 16, that is  
24 paragraph 7, in the brief Rule 80 base, according to the Co  
25 Prosecutors we can say that the civil party is obliged to respond

14

1 to a summons. I have read Rule 90 and I have not found anything  
2 in line with this argument.

3 [09.35.58]

4 The second argument by the Co Prosecutor is a reference to a  
5 source of law, particularly French law, and it is note 23 of  
6 their brief, contained in paragraph 8 of that brief, and here  
7 again regarding note 23, the Co Prosecutor refers to Article 312  
8 of the Code of Penal Procedure. I don't see how there is coercion  
9 in this article. It simply says that all the parties can put  
10 questions to the accused as well as to the civil parties. I am  
11 still trying to find out why an obligation to appear would be  
12 coercive.

13 In note 23, reference is also made to Article 346 of the code of  
14 criminal procedure and the article is quoted in the brief and  
15 that quotation and reference to note 23, and the reference to  
16 Article 346 of the French penal code. That article in the French  
17 penal code refers to the fact that the civil party has the  
18 possibility of speaking at the end of the proceedings.

19 This is an option and there is also case law in support of this  
20 article in France and it is clearly said that it is a right for  
21 the civil party, and not using that right does not affect the  
22 rights of the Defence. As a matter of fact, in note 23, pursuant  
23 to Article 346, the citation made in the brief is Article 329 of  
24 the French Code of Criminal Procedure and this article refers  
25 exclusively to witnesses and on no account to civil parties.



1 [09.38.17]

2 Lastly, my third point in this first argument raised by the Co  
3 Prosecutors is note 31, which states that the fact that a civil  
4 party, as well as a witness, can only remain silent if they  
5 self-incriminate themselves. And reference is made to the  
6 footnotes to Rule 28 of your internal rules, which exclusively  
7 refers to witnesses. There isn't a single reference to civil  
8 parties, and there are indeed specific obligations as far as  
9 witnesses are concerned. The same applies to paragraph 14 of the  
10 Co Prosecutors' brief, still with regard to the testimony that  
11 self-incriminates and it says that notes 46 and 48 still refer to  
12 note 28 which does not apply to civil parties.

13 The last point in the first argument by the Co Prosecutors, and  
14 it is paragraph 16 of their brief; the Prosecutors refer to the  
15 fact that by remaining silent and refusing to appear the civil  
16 party can be likened to persons who disrupt the course of  
17 justice. All the articles refer to - consist of jurisprudence  
18 that have to do with witnesses and therefore do not concern civil  
19 parties and so they cannot be applicable to civil parties in this  
20 trial.

21 [09.40.06]

22 Regarding the second point, I will try to be more brief. To  
23 conclude, let me point out that in light of the sources of law,  
24 we find that the French penal code penalizes certain persons who  
25 do not respond to a summons and it is only witnesses who are

1 penalized, and these articles, 437 and 438 of the French penal  
2 code, they only concern witnesses.

3 As for the Cambodian Code of Criminal Procedure, which your  
4 Chamber refers to – we should read Article 153 of the Cambodian  
5 penal code, which again refers explicitly to witnesses in the  
6 case where such witnesses refuse to heed a summons issued by an  
7 Investigating Judge. We should also refer to Article 315 of the  
8 Cambodian penal code which penalizes exclusively witnesses who  
9 refuse to respond favourably to a summons by your Chamber.

10 [09.41.19]

11 Let me point out that this article, 315, which refers to  
12 witnesses, should be considered with three other articles that  
13 are referred to in the Cambodian penal code, and they refer to  
14 persons who would be penalized if they do not heed the summons.

15 Now, regarding the third point of the Co Prosecutors' brief, the  
16 Co Prosecutors are asking the Chamber to sanction civil parties  
17 who refuse to appear, and they argue that their status as civil  
18 parties can be withdrawn and that they would be considered as  
19 witnesses. And it's footnote 69 of the Co Prosecutors' brief.

20 That note refers to Article 23bis.5 of the internal rules.

21 Article 23bis.5 of the internal rules explains precisely that the  
22 civil parties have the right to decide at any point in time  
23 during the preliminary stage to waive their right as civil  
24 parties. So this is a civil party's right. So I wonder why you  
25 can withdraw what is a right and how can the Chamber consider

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1 that as a penalty. A penalty must be written, it is not so  
2 written in the internal rules, which is quite normal, it is  
3 therefore impossible for your Chamber to penalize such civil  
4 party.

5 [09.43.14]

6 And again, to conclude, I regret having to make these  
7 explanations today but I believe it is important that your  
8 Chamber should remind all the parties of the status and rights of  
9 civil parties, because you are the first Bench to do so in  
10 international justice and we cannot say that civil parties can be  
11 likened to witnesses and can therefore be penalized. I therefore  
12 request that the legal arguments of the Co Prosecutors be  
13 rejected for reasons I've just given and to consider that these  
14 arguments can on no account serve as a basis for an amendment of  
15 your decision on the subject.

16 I thank you.

17 MR. PRESIDENT:

18 Thank you.

19 Now, the floor is given to the defence team if you wish to  
20 respond to this observation by the Lead Co Lawyer for the civil  
21 parties.

22 [09.44.50]

23 MR. KOPPE:

24 No translation through, Mr. President, but just a very quick  
25 reply. The Prosecution has laid down your legal test for

18

1 reconsideration. It says, and I think that it is correct, the pre  
2 Trial Chamber found that it has an inherent power to reconsider  
3 one of its previous decisions in three circumstances. One, when a  
4 change of circumstance permits it; two, when the Court finds its  
5 previous decision was erroneous; or three, when the decision has  
6 caused an injustice.

7 I have heard or read earlier no argument that there is a change  
8 of circumstances; I see no reasons to say or to argue that the  
9 previous decision of the Trial Chamber was erroneous; and  
10 certainly, that the early decision has caused any injustice, so I  
11 don't think there is any ground for reconsidering your earlier  
12 decisions.

13 MR. PRESIDENT:

14 Thank you, Mr. Victor Koppe, for your observation.

15 And Mr. Kong Sam Onn, you may proceed now.

16 [09.46.15]

17 MR. KONG SAM ONN:

18 Thank you, Mr. President, and good morning, Your Honours, and  
19 good morning to all parties.

20 I have only a brief observation in respect of the request by the  
21 - application by the Co Prosecutor for your Chamber's  
22 reconsideration of recalling Civil Party Sar Sarin and the  
23 request for various measures to be taken by the Chamber.  
24 The clarification by the Lead Co Lawyers for the civil party, I  
25 partly concur with their point; however, there are a few other

19

1 points that I believe that I can enlighten the Chamber so that  
2 the Chamber has the basis for its consideration and decision.  
3 Now, concerning the summoning or recalling of Civil Party Sar  
4 Sarin, as per the request by the Co Prosecutor, we are of the  
5 opinion that even though within the purview of the Chamber  
6 discretion that the Chamber may decide to recall civil parties  
7 also involuntarily but this is against the willingness of this  
8 particular civil party that he wished not to make any further  
9 clarification or testifying to this Chamber provided that he not  
10 be provided with the appropriate protective measure.

11 [09.47.54]

12 If the Chamber decides to recall Civil Party Sar Sarin, I don't  
13 think that this is useful because he has already stated his  
14 position very clearly. Now, with respect to the status of Mr. Sar  
15 Sarin, according to the prosecutors' request his status shall be  
16 withdrawn or changed to that of the witness, and I believe that  
17 this request is not appropriate because the civil party is  
18 entitled to certain rights.

19 Over the past many years in the start of our proceedings, Mr. Sar  
20 Sarin has appeared before this Chamber as the civil party, but in  
21 the last minute the Prosecution requests that Mr. Sar Sarin be -  
22 status be changed to civil party, and he also suggests that  
23 coercive measure may be considered in this respect, and I believe  
24 that this is not appropriate.

25 [09.49.23]

20

1 Mr. Sar Sarin appeared as a civil party in Case 002/01, and his  
2 intention was clear. It was to tell the Court of his suffering  
3 and harms that he has sustained, and he also requests for  
4 reparation for the harm he has sustained. And he appears before  
5 this Chamber to enlighten the Chamber in relation to the facts so  
6 that the Chamber would take his account of facts into  
7 consideration for its decision. And in any case, Mr. Sar Sarin  
8 shall not be forced to change his status from being a civil party  
9 to that of a witness, and that is provided explicitly in Rule 23.  
10 And the civil party may appear before the Chamber as a victim who  
11 has sustained morally or physically and psychologically from the  
12 alleged crimes.

13 And I believe that the application by the prosecutor is not  
14 appropriate because if a person who is a victim who has already  
15 expressed his harms and suffering from the alleged crime, this  
16 person would not be in the position to provide a balanced  
17 testimony or balanced evidence to the Chamber. And in addition, I  
18 am of the view that the prosecutor might be - err in its  
19 consideration of the change of status of Mr. Stephen Heder from  
20 being an expert to the witness, but I believe that with this  
21 particular civil party this is completely different, because the  
22 subject matter is different and the status of witness in civil  
23 party must be clearly distinguished.

24 [09.52.02]

25 MR. PRESIDENT:

21

1 Thank you, for your observation.

2 And Mr. Prosecutor, you may proceed.

3 Mr. Prosecutor, please hold on because the international lawyer  
4 for Mr. Khieu Samphan is on her feet.

5 You may proceed, Counsel.

6 MS. GUISSÉ:

7 Yes, thank you, Mr. President.

8 We have been having problems with the channels this morning.

9 MR. PRESIDENT:

10 It appears that there is a problem with the interpretation. Court  
11 Officer, could you please check with the interpreting booth to  
12 make sure that everything is working well.

13 Now, it works well, and Counsel, you may proceed.

14 [09.53.06]

15 MS. GUISSÉ:

16 Yes, thank you, Mr. President. I will be extremely brief.

17 I just want to say that we, for once, endorse the legal analysis  
18 by the civil party Lead Co Lawyers and we completely agree with  
19 them that the status of witness and the civil status of civil  
20 party cannot be likened to one another.

21 For the record, let me remind the Chamber of submissions we made  
22 in March 2013 - E67 - in which we stated that the Accused and the  
23 civil parties had a specific status before this Chamber. It's  
24 unfortunate that we are going from the Co Prosecutors' brief and  
25 requesting the civil party, Sar Sarin, to appear and the civil

22

1 party simply abided by their right not to appear, and it is their  
2 right. And they are now being - we are now being asked to  
3 penalize them.

4 [09.54.26]

5 So we should remind the Co Prosecutors of what have been said by  
6 the civil party Lead Co Lawyer, that your decision stands and  
7 there is no need to reconsider that decision. And so the Co  
8 Prosecutors' application should be quite simply rejected.

9 MR. PRESIDENT:

10 Thank you.

11 Mr. Prosecutor, you may proceed.

12 Mr. Prosecutor, please hold on. The National Lead Co Lawyer for  
13 the civil party, do you have anything to say?

14 [09.55.05]

15 MR. PICH ANG:

16 Thank you, Mr. President.

17 I apologize; I would like to clarify on one issue before the  
18 prosecutor may respond.

19 I - of course, counsel Anta Guissé is misrepresenting the point  
20 of the Lead Co Lawyer for the civil parties. Our position is very  
21 clear. We want Mr. Sar Sarin to appear before this Chamber, and  
22 we also seek appropriate measures by the Chamber so that he can  
23 come to testify with confidence, and he must - and he do not have  
24 any fear coming to testify before this Chamber.

25 So once again, I believe that the counsel is misrepresenting our



23

1 position and I would like to reiterate once again that our civil  
2 party would like to testify before this Chamber. He really wants  
3 to enlighten the Chamber and the public at large and he wants to  
4 contribute to ascertaining the truth. This is my point of  
5 clarification, Mr. President. Thank you.

6 MR. PRESIDENT:

7 Thank you.

8 Mr. Prosecutor, please proceed.

9 [09.56.25]

10 MR. LYSAK:

11 Thank you, Mr. President.

12 Let me make a few points in response to what has been said this  
13 morning.

14 First, let it be very clear, we are not arguing that Sar Sarin  
15 should be treated as a witness, rather that he be treated as a  
16 party to this proceeding. Parties to legal proceedings have  
17 obligations; they have rights, they also have obligations.

18 With regard to the authority of the Chamber to summons Sar Sarin  
19 to testify, we believe it is clear, under the internal rules. I  
20 will not repeat the discussion of the rules that is in our  
21 filing, but we wish to highlight two provisions. Rule 41, which  
22 my friend has raised this morning, Rule 41.1 clearly states that  
23 a summons is an order to any person to appear before the ECCC and  
24 that it may be issued to a civil party, and Rule 41.5 is even  
25 more specific. It states - quote: "At the trial stage and beyond,

1 civil parties may be summoned through the civil party Lead Co  
2 Lawyers."

3 [09.57.53]

4 And, Your Honours, this is a standard rule, not only in France  
5 but in virtually all courts, pursuant to which parties to the  
6 proceedings may be directly compelled by the Court through an  
7 order to their counsel. The Court does not need to send someone  
8 out to serve a summons on someone who is a party to the  
9 proceeding. They can issue the order directly to their counsel.  
10 Rule 59.1 and 59.6 are also significant on this issue. Rule 59.1  
11 provides authority to the Co Investigating Judges during the  
12 judicial investigation to interview civil parties, and what is  
13 particularly interesting in this rule is Rule 59.6, which  
14 specifies certain conditions in order for an ECCC investigator,  
15 as opposed to the Investigating Judges, to interview a civil  
16 party. And one of the conditions in order for an investigator to  
17 interview a civil party is Rule 59.6(a) which provides that the  
18 civil party must - quote: "Expressly agree thereto, such  
19 agreement being mentioned in the written record of interview."  
20 End of quote.

21 [09.59.28]

22 This requirement of agreement from a civil party only applies,  
23 only applies when they are to be interviewed by an ECCC  
24 investigator pursuant to a rogatory letter rather than by the  
25 Judges. It does not apply if the Judges interview nor is this

1 requirement of the agreement of the civil party extended to  
2 testimony of civil parties before this Chamber.

3 Finishing on some of the rules very briefly, Rule 35, and I  
4 sincerely hope we never get to have to deal with Rule 35, but I  
5 would note that Rule 35 applies to any person, that is the  
6 language. Any person who does not comply with the Court order is  
7 subject to Rule 35. It does not only apply to witnesses.

8 Let me briefly comment on the inherent power that any Court has  
9 to issue orders to parties who have appeared before it. The  
10 reason I say that we do not ask you to treat Sar Sarin as a  
11 witness at this stage is because you have more authority over  
12 parties than you do over witnesses, more authority not less  
13 authority. A party is someone who has voluntarily submitted  
14 themselves to the jurisdiction of this Court and is asking the  
15 Court for relief, asking the Court to issue reparations on his  
16 behalf. And like any party who has submitted himself to the  
17 jurisdiction of the Court, he is subject to Orders of the Court  
18 and obligated to comply with those Orders.

19 [10.01.32]

20 No one here contends that Sar Sarin has any immunity or  
21 privilege. He is not the king, he is not the law, he is not a  
22 judge of this Court, he is not above the law. It is not for him  
23 to decide whether or not he testifies; that is a power that Your  
24 Honours have and Sar Sarin's responsibility as a party to these  
25 proceedings is to comply with your Orders. We have addressed this

1 in our Brief and the civil parties and the Defence do not contend  
2 that the victim or civil party has a general right to remain  
3 silent like the accused do. As indicated in our brief, it is  
4 clear under Article 35(g) of the ECCC law that the general right  
5 to remain silent is a right that an accused have. The reason we  
6 cited Rule 28 is that, I would think that a civil party would  
7 have the same right that a witness would have if a situation  
8 arose where a question was posed to them that potentially would  
9 incriminate them that they would have a right to exercise in that  
10 situation. But we are not dealing with that situation here. We  
11 are asking Sar Sarin to testify about statements, very damaging  
12 statements made by Nuon Chea and Khieu Samphan; statements that  
13 would incriminate the accused, not incriminate civil party.

14 [10.03.27]

15 Your Honours, the testimony of victims is an essential part of  
16 criminal prosecutions. Most victims do not have to be compelled  
17 to testify, they do so voluntarily because they seek justice.  
18 Where they have legitimate and reasonable concerns for their  
19 safety or security, appropriate measures can be taken to protect  
20 them. There are, of course, some criminal cases where victims may  
21 not want to cooperate and testify.

22 One sees this in domestic courts, for example, sometimes in cases  
23 of family abuse or spousal abuse. And that is one of the reasons  
24 that we bring this motion; we believe it involves a fundamental  
25 issue regarding the authority of this Court and the obligation of

1 victims or civil parties to provide testimony. The role or the  
2 responsibility of the Prosecution here is to represent the  
3 interests of all the people; to represent the public interest in  
4 pursuing a prosecution and not just the interests of the victims.

5 [10.04.49]

6 That is why we have separate skilled counsel here whose job it is  
7 to specifically represent the interests of the civil parties and  
8 the victims. In order to fulfil that important public interest,  
9 it is fundamental that any court, any court have the authority to  
10 compel victims to testify in the rare, admittedly rare instances  
11 where it is necessary to do so. So while victims certainly have  
12 rights in relation to how their testimony is provided, the  
13 possibility of protecting their identity, of testifying in closed  
14 proceedings, of having security temporarily assigned to them,  
15 they do not have a right to remain silent and to refuse to  
16 testify.

17 Your Honours, of the over 4,000 civil parties who have joined the  
18 Case 002 proceedings, these people – these are good people. They  
19 are victims of this period who have taken valuable time out of  
20 their lives to become part of these proceedings, to share their  
21 stories, to seek justice for the victims of the Khmer Rouge. Sar  
22 Sarin is not a typical civil party, nor is he an example or role  
23 model for the other civil parties. The role models, the people  
24 who exemplify what it means to be a civil party are those who  
25 came to this courtroom, sat in that box and despite the

1 difficulty of reliving their years, have the courage to testify  
2 about what happened to them.

3 [10.07.00]

4 The people who exemplify being a civil party are those that have  
5 come to be with us here in this courtroom every day. Every day  
6 people, civil parties have taken the time to come to this  
7 courtroom to remind us of what this case is about. Sar Sarin is  
8 somewhat atypical because he was a cadre during the DK period who  
9 received political training from both Nuon Chea and Khieu Samphan  
10 and therefore, he has somewhat unique information that  
11 distinguishes him from most other civil parties. That is clear  
12 from his DC-Cam interview which we have put before Your Honours.  
13 I would note briefly that Mr. Sar Sarin was very well aware when  
14 he provided this detailed interview to DC-Cam, that this  
15 information would be provided to the Court.

16 [10.08.08]

17 At the very start of his DC-Cam interview, which is document  
18 D230/1/1/874(c), the DC-Cam representative informed him that his  
19 interview may be submitted to the Court afterwards and Sar Sarin  
20 responded - quote: "Yes, no problem. I am happy and would also  
21 like to testify before a court of law for the prosecutions of  
22 those senior leaders."  
23 Sar Sarin was also told and agreed that his interview could be  
24 used in DC-Cam's magazine, "Searching for Truth". He then  
25 proceeded to provide an extremely detailed account of speeches of

29

1 Nuon Chea and Khieu Samphan. I will not repeat all of what is in  
2 our brief, but I do want to reiterate here that an important part  
3 of those speeches reflect the policy targeting former officials  
4 and soldiers of the Lon Nol regime. For example, he described a  
5 speech of Nuon Chea as follows - quote: "Regarding CIA, we must  
6 smash the CIA of America. It is easy to smash the CIA -  
7 [10.09.43]

8 MR. PRESIDENT:

9 Mr. Prosecutor, please hold on. I noticed that the defence  
10 counsel for Khieu Samphan is on her feet. You may proceed.

11 MS. GUISSÉ:

12 Excuse me, Mr. President, I am intervening here to object because  
13 we are moving away from the question of whether or not there is  
14 any need to reconsider this question and what is the response of  
15 the Co-Prosecutors are bringing into the question of whether or  
16 not a civil party can be forced to come and testify before the  
17 Chamber. Here we seem to be subtly sliding off in the direction  
18 of an argument by the Co-Prosecutor about the testimony that he  
19 might have expected Mr. Sar Sarin to give and this is not the  
20 right time or place for that. Here, were are making an oral  
21 submission with observations on the subject of whether or not  
22 there are elements that make it possible to force Mr. Sar Sarin  
23 to come and testify as a civil party and that's the point that  
24 the Co-Prosecutors are meant to be answering about.  
25 [10.10.55]

30

1 There is a very important element that hasn't been brought up in  
2 this courtroom yet, but which is in your decision and that is the  
3 WESU E29/460 document where there's a detailed interview with Mr.  
4 Sar Sarin on the conditions under which he would or not like to  
5 come before this Chamber. I think this is what we should be  
6 looking at rather than going into excessive detail on the DC-Cam  
7 document and about what the Co-Prosecutor might wish to interpret  
8 from what Sar Sarin said. I do not wish us to enter into closing  
9 arguments before the due time for such things. Thank you.

10 MR. LYSAK:

11 Mr. President, with all due respect, the Nuon Chea counsel has  
12 challenged whether there are grounds for reconsideration and  
13 correctly noted the test. Our motion was based on two of those  
14 grounds: one, that the decision had a legal error, that is the  
15 issue of whether or not the Trial Chamber has the authority to  
16 compel Sar Sarin to appear here and testify, an issue I have  
17 dealt with. The second ground for reconsideration is whether an  
18 injustice would be caused and that is the reason for noting the  
19 evidence that this witness would provide, this - excuse me that  
20 Sar Sarin would provide. This is not simply a person who would  
21 come to court to tell his experiences as a victim; this is a  
22 person who has compelling evidence regarding statements by Nuon  
23 Chea and Khieu Samphan, and that is the basis for our argument  
24 that an injustice would be done if Sar Sarin is not compelled to  
25 appear here.



1 [10.12.51]

2 So, if I may proceed Your Honours, to finish this quote because  
3 it is important. We have a defence counsel here who continues  
4 assert that there is no evidence of a policy. We have Mr. Sar  
5 Sarin who has provided a detailed statement to DC-Cam of a speech  
6 by Nuon Chea in which he specifically discusses the policy to  
7 target -

8 MR. PRESIDENT:

9 The Prosecutor, please wait. The counsel for Nuon Chea, you may  
10 proceed.

11 [10.13.31]

12 MR. KOPPE:

13 Mr. President, just a brief observation basically in line with  
14 what the Khieu Samphan defence team has just argued. This is  
15 information that we all knew when Sar Sarin was testifying here,  
16 that he has given testimony to that alleged affect. It's nothing  
17 new. What we would like to hear is what is new since the decision  
18 of the Chamber not to have this person come back; that is what we  
19 are interested in and to sort of rehash what might be the  
20 importance of this witness, there is no place for this.

21 Otherwise, we would be very happy to argue our sixth request to  
22 have witness TCW-223 summoned because we filed it yesterday; the  
23 Chamber has said it is very clear what the content is and you  
24 will decide upon it in due course. Why is the Prosecution now  
25 allowed to rehash arguments which are already known to the

1 Chamber?

2 [10.14.35]

3 MR. LYSAK:

4 Mr. President, it is -

5 MR. PRESIDENT:

6 The Prosecutor, please make your point brief. The floor is not  
7 for you to repeat your written submission which we already have  
8 because the Internal Rule does not specified that the Chamber  
9 shall reconsider its own decision. However, as your request is  
10 related to the right and the benefit of the civil party and for  
11 that reason, the reasons were given by the Lead Co-Lawyers for  
12 the civil parties.

13 [10.15.24]

14 And as you have noticed, so far this is the only disagreement  
15 between the Prosecution and the Lead Co-Lawyers because your  
16 request seems to infringe the right of their client and for that  
17 reason, the floor is given. And, of course, the reasons were  
18 given by the lawyers for the civil parties and the floor is not  
19 given at length to the Prosecution to repeat your written  
20 submission. And if you can respond, please respond briefly to  
21 what has just been raised by the Lead Co-Lawyers for the civil  
22 parties and that we can use it as our basis for the decision  
23 making. And we reminded all the parties regarding this point  
24 before we hand the floor to the parties.

25 MR. LYSAK:

1 Thank you, Mr. President. Let me proceed – let me just simply  
2 note that one of the issues that Mr. Koppe raised, the third  
3 ground for reconsideration whether an injustice would result, is  
4 related to the substance of his testimony and I will not repeat  
5 it again. It is in our various briefs.

6 [10.16.47]

7 Let me conclude by saying this, by refusing to testify and  
8 provide the important information that he has to this Court, Sar  
9 Sarin has let down his fellow civil parties and harmed their  
10 interests. He violates the fundamental responsibility and  
11 obligation that the 3,999 other civil parties have that they have  
12 gladly fulfilled without the need for compulsion, the obligation  
13 to provide to this Chamber, relevant information that is in their  
14 possession. If Sar Sarin wants to be a party to these  
15 proceedings, he must come and testify and I would hope he would  
16 do so voluntarily, but if not, this Chamber does have the  
17 authority to order him to testify and it should do so. And we  
18 would respectfully submit that to order him to testify would not  
19 infringe the rights of any civil parties, it would not be an  
20 affront to the civil parties; quite the opposite. We believe it  
21 would affirm the vital roles that civil parties and victims have  
22 in these proceedings, the importance of evidence they may provide  
23 and the fundamental responsibility they have as parties to  
24 provide relevant evidence that assists this Chamber in  
25 ascertaining the truth. That is our submission, Your Honour, and

1 I appreciate the time. Thank you.

2 [10.18.37]

3 MR. PRESIDENT:

4 Thank you, and Judge Lavergne, please take the floor. Thank you.

5 JUDGE LAVERGNE:

6 Thank you, Mr. President.

7 I do have one question to put to Mr. Sar Sarin's lawyer. This  
8 morning we heard that as he holds, Mr. Sar Sarin would like to  
9 come and testify; it's been said more than once including in the  
10 courtroom this morning.

11 Now, we would like to know what Mr. Sar Sarin's lawyer means when  
12 he makes this statement; does it mean that between counsel and  
13 his client, there has been a discussion about a request for  
14 protection measures and about the extent of any such protection  
15 measures within the ECCC? I think the Chamber has made it clear  
16 as indeed, WESU has as well, that a certain number of the  
17 requests submitted by Mr. Sar Sarin are either impracticable or  
18 unrealistic. Now today, his counsel is telling us that he would  
19 like to come even if the protection measures are not granted; is  
20 that right or what should one understand?

21 [10.20.40]

22 Presumably, it has been explained that it is in everybody's  
23 interest that Mr. Sar Sarin should come and make statements in  
24 the interests of the furtherance of justice.

25 MR. PICH ANG:

1 Once again, good morning Mr. President and Your Honours; to  
2 respond to the question by Judge Lavergne, I'd like to clarify  
3 that Sar Sarin is still intending to give his statement before  
4 this Chamber and it is not what has been raised by the  
5 Prosecution. When he is available and free from his work, he  
6 always wishes to participate in the proceedings before this  
7 Chamber; he is a tentative civil party to this case. And even  
8 today, despite his busy schedule, Mr. Sar Sarin is here to listen  
9 to the proceeding.

10 Secondly, we have had discussions with Mr. Sar Sarin regarding  
11 other measures that can be taken so that it can relieve him of  
12 his safety concern if he testifies. In particular, it related to  
13 certain major issues regarding the instructions given by the  
14 accused during the Khmer Rouge regime.

15 [10.22.44]

16 The Chamber may grant him limited measures and Mr. Sar Sarin is  
17 of the view that appropriate measure has not yet been granted to  
18 him. And for that reason, he still stands by his request that he  
19 raised before this Chamber previously. And we are of the opinion  
20 that the Chamber shall revisit the issue again so that  
21 appropriate protective measures can be granted to Mr. Sar Sarin  
22 when he's asserting his right to testify before this very  
23 Chamber. He also wishes not to transfer or to change his status  
24 from civil party to a witness.

25 And if my points are not clear, I am willing to raise for the

1 clarification if you wish to do so.

2 JUDGE LAVERGNE:

3 One further point of detail, is Mr. Sar Sarin present here today  
4 at this hearing?

5 MR. PICH ANG:

6 Yes, I met him in the Court this morning, but I cannot see him  
7 right now. I think he's in the public hall.

8 (Judges deliberate)

9 [10.25.28]

10 MR. PRESIDENT:

11 Judge Lavergne, please take the floor.

12 JUDGE LAVERGNE:

13 Thank you, Mr. President.

14 Well since Mr. Sar Sarin is available, then I think he can come  
15 into this courtroom and take his place in the box and then he can  
16 give us the explanations that we are seeking.

17 MR. PRESIDENT:

18 Court Officer, please bring Mr. Sar Sarin into the courtroom.

19 The Prosecutor, you may proceed.

20 MR. LYSAK:

21 Thank you, Mr. President.

22 [10.27.18]

23 Just a procedural issue, if the purpose of this is to make  
24 further enquiry with Sar Sarin regarding threats, his feelings of  
25 - the need for security and measures - if that is the purpose of

1 this then it would be our position that this should be done in  
2 closed session, that the witness should be – not be – the civil  
3 party should not have to talk about possible threats to him in an  
4 open public hearing.

5 So if that is what we are – we are going to do, it would be our  
6 position that this should be done in closed session.

7 MS. SIMONNEAU-FORT:

8 Mr. President, I think if we are talking about protection  
9 measures here, then we should talk about them with the person  
10 concerned.

11 MR. PRESIDENT:

12 Counsel Victor Koppe, you may proceed.

13 [10.28.27]

14 MR. KOPPE:

15 I might be mistaken, Mr. President, but I thought this was  
16 already done by WESU, we have a copy of what he wants, he wants  
17 four bodyguards. I think – why are we revisiting these  
18 interesting requests from this civil party? I'm not quite sure  
19 why we are doing it. And certainly why we should have the doors  
20 closed, because actually he made the same request in a public  
21 hearing last time.

22 (Judges deliberate)

23 [10.33.40]

24 MR. PRESIDENT:

25 The Chamber wishes to advise the party that the Chamber will

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1 conduct this questioning in public, he is present here. However,  
2 the Chamber wishes to advise the party that parties are not  
3 granted the floor to put the question to this individual. The  
4 Chamber will put the question to this particular person.

5 Court officer is now instructed to usher in Mr. Sar Sarin.

6 (Mr. Sar Sarin enters courtroom)

7 [10.35.36]

8 MR. PRESIDENT:

9 Good morning, Mr. Sar Sarin.

10 The Chamber received the report from the WESU unit concerning  
11 your rejection to come to testify before the Chamber. And the  
12 grounds for such rejection was identical to your oral assertion  
13 before the Court concerning your personal safety and security and  
14 you requested that the Chamber provide you protective measures.  
15 And the protective measure you have been requesting to the  
16 Chamber is falling beyond the competence of the Trial Chamber.  
17 This is not within the competence of the Trial Chamber. For this  
18 reason, the Chamber decides not to consider recalling you to  
19 testify again before this Chamber.

20 The Chamber is vested with the authority to provide certain  
21 protective measures. However, your request for protective measure  
22 of providing you a lifetime security protection and security  
23 guards accompanying you and relocating you to a second country,  
24 this is not provided for in the Internal Rule of the  
25 Extraordinary Chambers in the Courts of Cambodia.



1 [10.37.26]

2 And today, we have heard respective observations by the parties  
3 to the proceeding, particularly the Lead Co-Lawyers for the civil  
4 party made it explicitly clear that you still intend to testify  
5 before this Chamber in public. This is the reiteration of the  
6 position of the Lead Co-Lawyers for the civil party. And this has  
7 - defer slightly from your statement earlier on that unless you  
8 were provided with the security measures that you requested the  
9 Chamber, you would not be willing to respond to question or  
10 testifying before this Chamber.

11 Can you please now reaffirm your statement, are you willing to  
12 testify before this Chamber without any condition attached or you  
13 are still requesting the protective measure you made to the  
14 Chamber earlier on?

15 [10.38.35]

16 MR. SAR SARIN:

17 My respect to Mr. President, Judge Nil Nonn, and good morning to  
18 Your Honours, members of the Bench.

19 I would like to reiterate my willingness and position concerning  
20 my intention to testify before this Chamber. Thus far I have  
21 submitted my request as reiterated by the President, this is the  
22 fact and I would like to maintain this request because the  
23 testimony that I will be providing to the Chamber has far  
24 reaching implication. It affects Mr. Khieu Samphan and Mr. Nuon  
25 Chea and it is not confined to only them. But when I raise this

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1 account, it will affect with the neighbouring country and then my  
2 security and safety will be at risk. This is my brief  
3 reaffirmation of that and according to the lesson I took in the  
4 past, if we raise this event, then of course it involved other  
5 neighbouring countries like Vietnam and other countries. And then  
6 if I raise this issue, then they - I fear of my personal security  
7 and safety if you do not provide me protective measure or you  
8 relocate me to a second country in the West or I can be sure that  
9 my personal safety and security is secure, then I am not willing  
10 to respond to the question.

11 [10.41.04]

12 MR. PRESIDENT:

13 Thank you, Mr. Sar Sarin.

14 Your Honours, do you have any question to put to Mr. Sar Sarin?

15 Judge Lavergne, you may proceed, please.

16 JUDGE LAVERGNE:

17 Yes, Mr. Sar Sarin, in order that what you are saying is fully  
18 understood, we have heard your request for protective measures. I  
19 believe you have also heard and apprised yourself of the report  
20 by the victims and witness protection unit. We cannot grant your  
21 request for protective measures, it is not possible.

22 So there's only one question that arises today, under these  
23 conditions, do you accept, yes or no, to testify before this  
24 Chamber? Is that clear to you?

25 [10.42.24]

41

1 MR. SAR SARIN:

2 No, I don't. I only accepted to testify before this Chamber on  
3 the condition that I am provided with the protective measure I  
4 have requested. Otherwise, I would like to reserve my right not  
5 to testify.

6 MR. PRESIDENT:

7 Thank you, Mr. Sar Sarin. You are now excused, you may leave the  
8 courtroom.

9 On this issue, the Chamber will render its decision in due  
10 course.

11 The time is now appropriate for the morning break. The Chamber  
12 will adjourn now and resume at 11.00.

13 The Court is now adjourned.

14 (Court recesses from 1043H to 1111H)

15 MR. PRESIDENT:

16 Please be seated. The Court is now back in session and before we  
17 move on to another topic, I would like to give the floor to Judge  
18 Lavergne in order to clarify with the Co-Prosecutors.

19 You may proceed, Judge.

20 JUDGE LAVERGNE:

21 Thank you, Mr. President.

22 In fact, we have a question for the Co-Prosecutors. Bearing in  
23 mind the appearance this morning of Mr. Sar Sarin, bearing in  
24 mind the position that he reiterated to us, do the Co-Prosecutors  
25 maintain their request that they have submitted concerning Civil

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1 Party Sar Sarin or do they wish to withdraw it?

2 Thank you.

3 [11.12.41]

4 MR. LYSAK:

5 Thank you, Judge Lavergne.

6 The short answer to your question is yes, we maintain our request  
7 for the reasons that I've stated here. It is not for a civil  
8 party to make the decision of whether or not he will testify  
9 about this critical information. This is a matter that the Court  
10 should decide and the Court - we believe has - must have the  
11 power to compel a civil party to provide information such as  
12 this.

13 So our - the short answer to your question is yes, we - our  
14 request remains.

15 MR. PRESIDENT:

16 Thank you.

17 The Chamber now invite the Co-Prosecutor to address the Chamber,  
18 first with respect to the request for adverse inferences to be  
19 drawn against Khieu Samphan and Nuon Chea; and second, regarding  
20 the admission about documentary evidence and the allocation of E3  
21 numbers. All parties will be allowed to respond.

22 You may now proceed.

23 [11.14.04]

24 MR. LYSAK:

25 Thank you, Mr. President. I will be fairly brief on both of these

1 issues.

2 The first issue, a request that we have made in writing regarding  
3 the issue of adverse inferences being drawn from the - Khieu's  
4 selective refusal to respond to questions. I will not repeat the  
5 arguments that we've made, this issue was brought up in last  
6 Court. We simply wish to put this issue on the calendar because  
7 before - as we are approaching the close of evidence, we want -  
8 one of the things we believe needs to be done is to schedule some  
9 time for the Co-Prosecutors to specifically tender to the Accused  
10 the general subjects on which we intended to submit questions, in  
11 order to create a record on these specific issues that the  
12 Accused are refusing to respond to.

13 This is important, as stated in our motion, in order for there to  
14 be a record or a basis on which adverse inferences may be drawn.

15 [11.15.18]

16 And so the reason for us putting this on the calendar was simply  
17 as - is stated at the end of the request that we filed on the  
18 16th of July, document E288/4/1. We would request an opportunity  
19 in Court in the presence of the Accused to put before them the  
20 general topics or matters on which they would have been  
21 questioned and to have them confirm their refusal to respond to  
22 those general subjects.

23 In terms of the time, my best estimate - sometimes these are hard  
24 - it is hard to anticipate how this would proceed, but our best  
25 estimate is we would need no more than one hour with each accused

1 in order to do this. So that is the issue of - relating to  
2 adverse inferences.

3 The second issue is more of a housekeeping issue relating to  
4 admission of documents. Again, it is our request that before the  
5 evidence be closed that the Court issue rulings on the admission  
6 of documents that remained to be decided. Obviously, in order for  
7 us to do our final submissions - which are already in process -  
8 it is important for us to know what evidence is admitted and what  
9 evidence is not admitted.

10 [11.17.03]

11 There are a number of remaining documents categories - general  
12 categories of documents on which we are awaiting rulings,  
13 including the witness statement - witness statements where there  
14 are a large number of witness statements that were the subject of  
15 motions and arguments, and a few additional categories relating  
16 to certain annexes and new documents. We have also noted - and I  
17 wish to bring this to Your Honours' attention that from time to  
18 time we discover a document that appears to us may have fallen  
19 through the cracks in terms of receiving an E3 number, there are  
20 a number of - for example, there is a "Revolutionary Flag" that  
21 was in our presentation to the Chamber that still only has a D  
22 number, it appears to us that that was simply a clerical issue.  
23 So there are a number of documents and we will submit an email of  
24 those that we are aware, but our general point is simply that in  
25 order for the parties to do their final submission, we do need to

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1 know which documents are admitted and we, of course, wish to have  
2 E3 numbers as much as possible in order to be able to properly  
3 reference the documents in our briefs.

4 [11.18.28]

5 Those are the two issues that we wanted to raise and that is all  
6 that we wish to say on them.

7 So I thank you for – Your Honours, for the time.

8 MR. PRESIDENT:

9 Thank you.

10 And the International Lead Co-Lawyer for civil parties, you may  
11 proceed.

12 MS. SIMONNEAU-FORT:

13 Very briefly, Mr. President, we support both the request put by  
14 the Co-Prosecutors. The first concerning the selective silence of  
15 Mr. Khieu Samphan, and we support the submission E288/4/1  
16 submitted by the Prosecution and we support the request to submit  
17 the contents of the question to the Accused during a hearing.

18 [11.19.23]

19 As to the second request concerning documents, we too would like  
20 as soon as possible to have a decision from the Chamber making it  
21 quite clear what the E3 documents are and which ones can be  
22 clearly referred to in the closing arguments and in the final  
23 submissions.

24 In other words, we support both requests that have been put by  
25 the Prosecutors.

1 MR. PRESIDENT:

2 Thank you.

3 And what about the defence teams, do you wish to make a comment  
4 or respond to the two requests by the Prosecution?

5 Nuon Chea defence, you may proceed first.

6 MR. KOPPE:

7 Thank you, Mr. President.

8 [11.20.14]

9 Very briefly, we do of course support the second request made by  
10 the Prosecution. The defence teams of course also need as soon as  
11 possible insight in which documents receive - are going to  
12 receive E numbers. And in this respect I would like to remind you  
13 of a request that we have filed and which is - of which we have  
14 sent to you a courtesy copy. We have indicated in this request  
15 that it seems to us that you are on the verge of coming to a  
16 decision of possibly admitting around 1,500 documents. In respect  
17 of these documents - in the light of this decision, we have filed  
18 our request to summon witnesses in respect of the alleged policy  
19 of targeting Khmer Republic officials. We understood that a Khmer  
20 translation will be finished on Thursday, so then it will be  
21 officially filed. But from the courtesy copy you can see, Mr.  
22 President, that we have attached an exhibit with names to which  
23 about 110 documents refer to. These are names of witnesses who  
24 gave statements to the OCIJ.

25 [11.21.45]



1 And we would like to draw attention to this list in order to  
2 maybe convince the Chamber to give priority to giving E numbers  
3 in respect of a document.

4 So if it is, indeed, the decision of the Chamber to have these  
5 specific documents given E numbers, then we would like to have  
6 the Chamber give these specific documents that we refer to in our  
7 annex priority. But in general, of course, we do support the  
8 position of the Prosecution. We need as soon as possible to have  
9 clear which documents are, in fact, getting E numbers.

10 In respect of the question of adverse inferences, we do feel that  
11 this question is really a matter of closing arguments. I'm not  
12 quite sure what the relevance or the purpose would be to give our  
13 clients a list of topics on which questions were supposed to be  
14 asked.

15 [11.22.57]

16 We can all predict the topics that the Prosecution and the civil  
17 parties were intending to ask questions on, so I'm not sure what  
18 the relevance of this is. But at the end of the day, it is a  
19 decision which the Trial Chamber – which the Trial Chamber can  
20 only do something in its end decision with, so there's – there's  
21 nothing at this stage that the Trial Chamber can do with any  
22 submissions in relation to this specific topic.

23 So we do not see the relevance of – or we don't see the purpose  
24 of doing this right now since it is a typical subject belonging  
25 to the closing arguments and the closing briefs. So we would

1 object to this session of an hour in which these documents are  
2 presented.

3 The Nuon Chea defence team knows what the law – what the case law  
4 is, if any, in respect of the possible drawing of adverse  
5 inferences. We do not agree with the position of the Prosecution  
6 and we will address the issue, obviously, where it should be  
7 addressed, and that is in our closing briefs and closing  
8 arguments.

9 [11.24.13]

10 So I really see no – no point, no necessity, no urgent need to  
11 have this done at this stage of the proceedings. We have properly  
12 advised our client what the – the possible consequences, if any,  
13 would be if he would remain silent. He chose very deliberately to  
14 remain silent after the events, the particular events of last  
15 Tuesday.

16 In this respect, I can inform the Chamber that we are presently  
17 preparing a formal withdrawal of the notification in which our  
18 client had earlier indicated that he would answer questions.

19 Hopefully, we will finish this withdrawal of notification today  
20 so that it is quite clear and there can be no argument as to why  
21 our client decided last Wednesday to remain silent – invoke his  
22 right to remain silent.

23 But these are all, at the end of the day, matters that you – that  
24 the Chamber has to take into consideration when coming to its  
25 final decision, and so there's no place – we repeat that, we

1 reiterate this particular point - to have that done at this stage  
2 of the proceedings.

3 [11.25.35]

4 MR. PRESIDENT:

5 Thank you.

6 And the counsel for Khieu Samphan, you may proceed.

7 MS. GUISSÉ:

8 Thank you, Mr. President. I will be very brief at this stage  
9 because we intend to respond to E288/4/1 in writing to the  
10 prosecutors. But I would like officially to restate what we did  
11 already say at the previous hearing before this Chamber, namely,  
12 that this presentation of issues upon which the Prosecution  
13 believes that adverse inferences can be drawn against the Accused  
14 belong in the closing arguments and not here at this juncture.  
15 We have the French translation - or rather, we do not have the 14  
16 pages in French translation and we do not interpret the text in  
17 the consequences in the same manner as the Co-Prosecutors, and we  
18 believe that we are entitled to receive a precise written  
19 response with the necessary case law references as well.

20 [11.27.00]

21 But let me say that on the issue of principle, we oppose the  
22 Co-Prosecutor's request. That is the first point.

23 On the second matter, the allocation of E3 numbers and the  
24 possibility of having a precise list of E3s set by the Chamber,  
25 we've already brought this up, in fact, at the last TMM and I

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1 believe that we all agree in this Chamber that this is a very  
2 important point because we need to know which documents have been  
3 judged admissible and we need to know on what particular  
4 documents you will, of course, base your conclusions.  
5 This brings me to a third point that was also brought up at a  
6 prior stage but which is, in fact, connected with the E3s, as I  
7 see it, because I want to refer you to translation problems and  
8 to necessary time lines for revising the transcripts of the  
9 hearings. We stressed this when we saw occasionally that there  
10 were problems of translation or interpretation which led  
11 sometimes to mistakes being made in testimony, and it's very  
12 important for Khieu Samphan's team - and perhaps we are not alone  
13 in this. Perhaps on the civil party side it's the same thing. But  
14 we are going to be working on the transcripts in French and I  
15 think we need to have a discussion in this Chamber about these  
16 documents. And we asked for a fortnight's time to look at these  
17 documents, and it's very important that we are, given that our  
18 resources are limited. We only have one person within our team  
19 who is in a position to be able to make a comparison between the  
20 three languages and to bring any translation problems to the  
21 fore.

22 [11.29.10]

23 We will be making submissions on this subject, but I wanted to  
24 give you a forewarning of that because what we are seeking is a  
25 final debate on - that is the same for all parties, that it's a

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1 level playing field between the English, French or Khmer  
2 speakers. And we believe, therefore, that this point does need to  
3 be stressed in connection with the E3 documents because you have  
4 to know what we're going to be basing – what this Court is going  
5 to be basing itself on for the purposes of the final submissions.  
6 Thank you for hearing me out, Mr. President.

7 [11.29.48]

8 MR. PRESIDENT:

9 Thank you. The Chamber wishes to advise the party that the  
10 Chamber will deliberate on this issue and a ruling will come at  
11 the end of the day's hearing.

12 Now, turning to the Nuon Chea defence team's request to summon  
13 witnesses in respect of alleged policy of targeting Khmer  
14 Republic officials, the Chamber notes that the courtesy copy was  
15 provided in English only. It is therefore – it therefore invites  
16 the Defence to present its argument briefly before the Chamber,  
17 following which the other parties will be allowed to respond.  
18 The defence for Mr. Nuon Chea, you may proceed.

19 [11.31.03]

20 MR. KOPPE:

21 Yes, Mr. President. I shall be brief.

22 Most arguments are, of course, within our written filing which,  
23 as I just said, will be fully translated hopefully on Thursday.

24 We've also just briefly made reference to the approximately 1,500  
25 written statements which you have indicated will receive E3

1 classifications soon. And it is in respect of a limited amount of  
2 these written statements that we have deemed it necessary not to  
3 wait for your decision, but to already file this particular  
4 request.

5 The main argument in this request is that there is almost -  
6 almost no reliable direct evidence of a policy to execute Khmer  
7 Republic soldiers and officials. We have argued, of course, the  
8 same - this very same point in our reply to the presentation of  
9 the key documents two weeks ago.

10 Nevertheless, we have also seen the possibility of an argument  
11 presented by the Prosecution that the existence of such a policy  
12 could possibly be deferred from its occurrence in other parts -  
13 in parts of Democratic Kampuchea between '75 and '79. And if - we  
14 have identified approximately 110 statements in which people  
15 possibly speak about targeting of Lon Nol officials and Khmer  
16 Republic soldiers.

17 [11.33.05]

18 We have argued in this request that, up until now, once  
19 cross-examined, these witnesses seem to be quite unreliable in  
20 all aspects of their testimony. Numerous statements are about -  
21 are really distant hearsay. They often come from unspecified  
22 sources. Most of them, when they speak about events, they only  
23 say that former Lon Nol officials were - were taken away from -  
24 from a row, from a queue.

25 The evidence that we have identified in these statements is, on

1 its face, unreliable and has the same value as we have seen  
2 during cross-examination of witnesses that have been called  
3 before your Chamber.

4 Not knowing what the status of these statements of these 110  
5 people is at the moment, we nevertheless thought it was very  
6 important to request all those witnesses to appear before the  
7 Chamber and to give live testimony so that we can cross-examine  
8 them on these very issues.

9 [11.34.26]

10 You will see in our arguments we have identified certain  
11 witnesses who have already appeared before your Chamber, what the  
12 cross-examination has turned out, what results of the  
13 cross-examinations were, in fact, to be seen. As a matter of  
14 fact, the very reason, as we have indicated this morning, that  
15 the Prosecution is asking for, again, more witnesses in respect  
16 of Tuol Po Chrey is a confirmation of exactly that point that we  
17 are making.

18 I do not wish now to go into detail why we object to the  
19 admittance of these documents, of these witness statements. You  
20 know our position in this. But once you do decide to admit these  
21 statements of these 105 or 110 witnesses, then obviously there is  
22 a - it is of crucial importance that the Defence has the  
23 possibility to examine these witnesses, to cross-examine them the  
24 way that we have done with witnesses who have been called upon  
25 earlier before your Chamber in respect of, for instance, Tuol Po

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1 Chrey or a general existence of such policy.

2 [11.35.44]

3 We have, like I said, again, identified a list of potential  
4 witnesses who could say something about an alleged policy to  
5 target and execute former Lon Nol officials. We have argued in  
6 our request that this evidence is highly unreliable, but  
7 nevertheless, if they are admitted then, of course, automatically  
8 - almost automatically, our right arises to be able to  
9 cross-examine these very witnesses.

10 One last point to the - the fact that we are now coming with this  
11 request, technically we, of course, should have waited for your  
12 decision to have these 110 witness statements admitted to  
13 evidence. At this point, we are still not certain that you will  
14 decide to do so. So in this respect, we could even say that our  
15 request is - is early. But assuming that you will, in fact, admit  
16 these witness statements as evidence, we thought it was the  
17 appropriate time to file that request.

18 [11.37.02]

19 But in any case, it is a generally new request which we couldn't  
20 have made earlier since these witness statements were never  
21 admitted at this point as evidence. So this is, in very broad  
22 terms, our request, and I would be happy to reply to any  
23 observations at this stage, maybe, from the Prosecution.

24 MR. PRESIDENT:

25 Thank you.



1 Mr. Prosecutor, you may proceed.

2 MR. LYSAK:

3 Thank you, Mr. President. I first would respond to the last words  
4 of counsel that, technically, they should have waited for this  
5 filing and that they are early.

6 [11.38.00]

7 On the eve of these proceedings being closed at 4 o'clock  
8 yesterday afternoon, we received in English only a request from  
9 the Defence that this Chamber call an additional 110 witnesses.

10 Not a request for one or two witnesses, a request that the  
11 Chamber call 110 additional witnesses.

12 This request is certainly not early. It is extremely late. This  
13 is an issue that the Defence has been aware of for a long time.

14 If they wished the Chamber to summons some or all, but if they  
15 wished to - to call some of these witnesses, this information has  
16 been available to them for a long time.

17 Now, there are a lot of issues that are raised by this motion,  
18 arguments made regarding the Court's reliance on witness  
19 statements that we believe are incorrect and contrary to the  
20 rulings, incorrect assertions of the state of evidence in terms  
21 of what it proves regarding policy.

22 In view of the fact that this request was just received at 4  
23 o'clock yesterday, we would like the opportunity to file a  
24 written response to it because it raises important issues.

25 Nonetheless, I will make a few brief comments today based on the

1 little time that we have had to review it.

2 [11.39.49]

3 First, I do wish to note that the Defence misstate the issue  
4 here. They focus exclusively on the policy to execute, a policy  
5 to kill or execute soldiers and officials from the Khmer Republic  
6 regime. And I would remind the Defence and the Chamber that the  
7 policy in issue here is broader than that. It is a policy to  
8 target people in this group.

9 The crimes with which the Accused are charged are not just  
10 murder. They are charged here with persecution on political  
11 grounds, meaning discrimination, discriminatory acts against this  
12 group of individuals.

13 So when the Defence dismisses evidence that merely shows that  
14 these people were segregated, that they were arrested, that they  
15 were sent to re-education centres, they are – they are misleading  
16 the public and the Chamber. That is evidence that proves the  
17 policy with which they are charged and the crimes with which they  
18 are charged. And I refer specifically here to Closing Order  
19 paragraphs 1416 through 1417, which are the paragraphs  
20 specifically relating to the crime of persecution on political  
21 grounds. That is one general observation I would make on the  
22 motion.

23 [11.41.33]

24 Second, there is a significant amount of posturing and  
25 misstatement in the motion. In some ways, this is the – an

1 attempt by the Defence to have early closing arguments on this  
2 issue. I will not, today, engage the Defence fully on this, but I  
3 do wish to say, for the record, that assertions such as are made  
4 in this brief that there is almost no evidence of this policy, we  
5 vigorously disagree with.

6 The characterization of some of the – of the witnesses by the  
7 Defence, the characterization of their testimony we disagree  
8 with. Let me give you just one example.

9 The Defence assert that the testimony of Meas Moeun in no way  
10 supports the existence of a policy targeting Khmer Republic  
11 soldiers. I would remind the Chamber and the Defence that Meas  
12 Moeun, who was the deputy commander of the West Zone army,  
13 testified that there was a special unit in the military that was  
14 tasked to review the biographies of cadres and to purge persons  
15 who were identified as having connections with the prior regime.  
16 That was the testimony of Meas Moeun.

17 [11.43.08]

18 The Defence has given you a list in which it acknowledges that  
19 there are 21 witnesses or civil parties who have provided  
20 testimony to the Court on this issue. So the Court has heard a  
21 substantial amount of testimony. And I would note here again,  
22 without getting into too many details, that the Defence list is –  
23 leaves out a number of significant witnesses who have testified  
24 on this issue, Al Rockoff, Sydney Schanberg, Philip Short and,  
25 most significantly, Duch, the chairman of S-21, who testified

1 that the first group of victims who were targeted in the early  
2 days of S-21 was this very group, persons associated with the Lon  
3 Nol regime.

4 So we very much take issue with the characterizations and  
5 arguments in this brief. As I indicated, we would propose to do a  
6 written filing on this issue in order that there be a complete  
7 record. It is a lengthy filing that makes a number of  
8 misstatements. But for the benefit of the Court, these are the  
9 general observations I have, having received the motion yesterday  
10 at 4.00 p.m.

11 I thank you for the time.

12 [11.44.50]

13 MR. PRESIDENT:

14 Thank you.

15 And the International Lead Co-Lawyer for the civil party, you may  
16 proceed.

17 MS. SIMONNEAU-FORT:

18 Yes. Thank you, Mr. President. Very briefly, again, we endorse  
19 the position of the Co-Prosecutors.

20 In the face of this application made at the very end of this  
21 trial to hear 110 additional witnesses, this is purely dilatory  
22 to try to justify the application. My learned friend writes that  
23 the need to hear this - these witnesses is a fact that we've  
24 heard some of them and that those heard are not reliable.

25 This is his personal view, and he can elaborate on it in the

1 closing briefs. And it's up to the Chamber to assess the  
2 reliability of the testimonies of witnesses already heard.

3 [11.46.00]

4 In the face of this request, I wish to point out that my learned  
5 friend has not quite understood the use to have a trial with  
6 pre-trial investigations and to hear witnesses who have been  
7 called and that it is not necessary to summon more witnesses.  
8 The investigative report is something that is reliable and it is  
9 absolutely not necessary to hear all the persons who have already  
10 been heard by the Co-Investigating Judges with the rogatory  
11 letters, so I would request the Chamber to reject all these  
12 applications.

13 MR. PRESIDENT:

14 Mr. Victor Koppe, you may proceed.

15 MR. KOPPE:

16 The last observation is very interesting because it begs the  
17 question what we have been doing in the last two years at this  
18 trial. All - most, if not all, witnesses who have appeared here  
19 have - had, in fact, given testimony to the Office of the  
20 Co-Investigating Judges, so if we could just simply rely on their  
21 statements, then this whole trial of two years wouldn't have been  
22 necessary. So I take it that you do not take this remark of the  
23 civil parties very seriously.

24 [11.47.26]

25 The other thing is yes, on the face of it, it might seem very

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1 late, our request to have 110 witnesses appear. But on the other  
2 hand, as I explained earlier, all these documents that we have  
3 referred to in our attachment are not yet admitted. There is no  
4 formal decision of the Chamber to admit these written statements.  
5 Of course, I will - I will not advise the Chamber that there  
6 would be a very easy way out in respect of this request simply by  
7 not admitting all those documents that we refer to in our annex.  
8 But if you have done so already, then again, like I said, the  
9 first possible moment to file a request to have these witnesses  
10 cross-examined comes exactly after this - after the admittance of  
11 these very documents.

12 So I will repeat my earlier observation that we are, in fact,  
13 technically speaking, premature because all those documents, all  
14 those witness statements have not, in fact, at this point in  
15 time, been admitted as evidence to Case 002/01.

16 [11.48.52]

17 MR. PRESIDENT:

18 Thank you. For this, the Chamber informs the parties that this  
19 request will be addressed as part of the witness statements'  
20 decision, which the Chamber will address later in this hearing.  
21 And since this request has been responded orally, the Chamber  
22 does not require other party to file any written submission in  
23 this respect.

24 The Chamber now turns to the Khieu Samphan defence team's request  
25 for information with respect to the condition of Nou Mouk's

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1 appearance before this Court. And the Chamber therefore invites  
2 the Defence to represent its argument briefly to the Chamber and,  
3 following which, the other parties will be allowed to respond.  
4 I hand over the floor to the defence team for Mr. Khieu Samphan  
5 first.

6 I hand over to the defence team for Mr. Nuon Chea first.

7 [11.50.40]

8 MR. KOPPE:

9 I apologize. I'm not quite sure what - answer to what? Sorry, Mr.  
10 President. I didn't get it.

11 MR. PRESIDENT:

12 Oh, well, yesterday the Chamber is seized of the request by the  
13 defence team for Khieu Samphan defence team requesting for  
14 information with respect to the appearance of Mr. Nou Mouk, and  
15 this request was filed with the Chamber yesterday. And now the  
16 Chamber invites the parties to make observation in response to  
17 this request by the defence team for Mr. Khieu Samphan.  
18 And since this request was made by one party, then this request  
19 shall be observed by other parties. So if you have any  
20 observation, you may proceed, but otherwise, you may cede the  
21 floor to others because the Chamber would like to make sure that  
22 everyone has the floor to make any observation in respect of the  
23 submission by other parties.

24 You may proceed.

25 [11.52.00]

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1 MR. KOPPE:

2 I understand. Thank you, Mr. President. We have no observations.

3 MR. PRESIDENT:

4 Thank you.

5 Now I hand over the floor to the Prosecution. You may proceed.

6 MR. LYSAK:

7 Thank you, Mr. President. I will be very, very brief on this  
8 motion which we also received yesterday afternoon.

9 The motion asks the Chamber to conduct further investigation  
10 relating to the circumstances under which Nou Mouk was provided  
11 with a photograph of Ben Kiernan and provided with notes of his  
12 prior interview by Ben Kiernan. Simply put, our submission is  
13 that no such inquiries or investigations are necessary here. The  
14 Trial Chamber itself has already explained during his testimony  
15 the reason that the photograph of Ben Kiernan was used by WESU,  
16 which was to ensure that they had correctly identified the  
17 witness that they were searching for.

18 [11.53.22]

19 And in regards to the notes of the interview, it does not strike  
20 me that there is any harm that has been caused by a witness being  
21 allowed to see notes of an interview he provided. It seems to me  
22 that that is a fair opportunity for a witness who is going to  
23 testify to have an opportunity to review the material on which he  
24 will be examined.

25 This witness made corrections or - when he believed that the



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1 notes did not accurately reflect his memory, advised the Court of  
2 that, so I simply fail to see why there is any reason for the  
3 Court to conduct further inquiries on this issue. And we would  
4 request that the motion be denied.

5 MR. PRESIDENT:

6 Thank you.

7 Now Lead Co-Lawyer for the civil party, you may proceed.

8 [11.54.38]

9 MR. PICH ANG:

10 Thank you, Mr. President, and good morning, Your Honours.

11 We at the civil party, we concur with the Prosecutor that there  
12 is no specified reason to conduct further investigation in  
13 relation to this particular witness, Mr. Nou Mouk. Like the  
14 prosecutor, we suggest that this motion by the defence team for  
15 Mr. Khieu Samphan be rejected.

16 Thank you.

17 MR. PRESIDENT:

18 Thank you.

19 Mr. - Madam Anta Guissé, you may proceed.

20 [11.55.28]

21 MS. GUISSÉ:

22 Yes. Very briefly, Mr. President, you would recall that during  
23 the appearance of that witness, Nou Mouk, I, the person who  
24 examined him, questioned him on two main points: one, under what  
25 conditions the photograph of Ben Kiernan was given to the witness

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1 and, secondly, when he became aware of the notes of Ben Kiernan  
2 during the interview he had with him.

3 Regarding the first point, you would observe that it is not  
4 simply a question of having the Chamber's answer that a  
5 photograph was shown him for identification purposes. As you  
6 know, my request is a lot more specific, that is, under what  
7 conditions the photograph was shown him and at what point in time  
8 he got it.

9 This point is very important because we recall that Ben Kiernan's  
10 name was written on that photograph. Again, in our submissions on  
11 which I will not dwell, the conditions under which he received  
12 the photograph are very important because we are asking for  
13 further information because we want to know when, at what point  
14 in time the testimony of that witness was contaminated by  
15 information he received before appearing before the Chamber to  
16 give evidence.

17 [11.57.09]

18 Secondly, regarding the notes of Ben Kiernan, I believe the  
19 Chamber, in its prior decision, was very clear. There is no  
20 problem in us receiving statements signed and certified by the  
21 witness, but when we are dealing with information that is  
22 external to the witness, that is, notes that the witness received  
23 and information that wasn't obtained at the time of the  
24 interview, then it is important to know. And we cannot know  
25 unless clear questions are put to the witness.

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1 If such questions are not put to the witness, it is not possible  
2 for the parties to know when the information was requested, when  
3 the witness was oriented or guided or not. So these points are  
4 very important. We cannot use notes taken by a person during an  
5 interview and attach them to a statement that was signed by a  
6 witness and that is in the witness' language, and that is why we  
7 wish to know when those notes by Ben Kiernan were given to the  
8 witness. And we wish to know whether they were shown to the  
9 witness before his appearance.

10 [11.58.26]

11 That is a statement that was signed and read by the witness. This  
12 is very important. We have already emphasized this point. There  
13 has been - there have been lengthy debates on this during witness  
14 Nou Mouk's appearance. And this was eluded with the statements  
15 that contradicted one another that we have notes here that do not  
16 tally with this statement that was read and signed by the  
17 witness.

18 If that was received before, that would definitely have an impact  
19 on how you would assess the witness' testimony and the probative  
20 value you would give to the witness' testimony given the fact  
21 that there's a likelihood that the testimony was contaminated.  
22 This is the information I wish to provide at this point. We will  
23 elaborate on this in our submissions, and I reject entirely the  
24 arguments of the civil parties and the Co-Prosecutors that the  
25 witness was given that purely for identification purposes.

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1 [11.59.42]

2 MR. PRESIDENT:

3 Thank you. Now it is an appropriate point to break for lunch. The  
4 Chamber will adjourn now and resume at 3.00 this afternoon.

5 The Chamber wishes to advise the parties that, this afternoon,  
6 the Chamber may be in a position to issue all the decisions  
7 concerning all the application and request filed by the parties.

8 And after that, the Chamber will also announce the future  
9 scheduling from this point forward.

10 Security guards are instructed to bring Mr. Khieu Samphan down to  
11 the holding cell and have him returned to this courtroom this  
12 afternoon before 3 o'clock.

13 The Court is now adjourned.

14 (Court recesses from 1200H to 1507H)

15 MR. PRESIDENT:

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

17 Following the OCP submissions and the parties' responses, the  
18 Chamber now issues rulings on a number of the parties' requests.

19 The full reasons for these decisions shall be contained in the  
20 decision on objections to the admissibility of witness, victim,  
21 and civil party statements and Case 001 transcripts proposed by  
22 the Co-Prosecutors and civil party Lead Co-Lawyers, to be issued  
23 shortly and the final decision on witnesses.

24 Now, on the Co-Prosecutor's request that the Trial Chamber hear  
25 additional Tuol Po Chrey witnesses, on 19 July 2013, the

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1 Co-Prosecutors requested the Chamber hear the testimony of two  
2 additional witnesses relating to Tuol Po Chrey, namely TCW-644,  
3 and a new civil party in Case 004. The Nuon Chea defence do not  
4 object to the OCP request and further requests the Chamber to  
5 summons TCW-802, TCW-803, and Rob Lemkin.

6 [15.10.02]

7 The Chamber considers that the evidence of TCW-644, TCW-802,  
8 TCW-803, and the new civil party would be repetitive of other  
9 evidence and not conducive to ascertaining the truth. These  
10 requests are therefore, denied. The request to summons Rob Lemkin  
11 is addressed in a separate decision which will be issued very  
12 shortly.

13 On OCP requests to reconsider decision not to recall Civil Party  
14 Sar Sarin, there is document E293/1. The Chamber now addresses  
15 the Co-Prosecutor's request to reconsider its decision not to  
16 recall Civil Party Sar Sarin. Even if considered a first  
17 application, the Co-Prosecutors do not allege any new  
18 circumstances, nor is the Trial Chamber satisfied that the  
19 provisions of Internal Rule 35 have been met. The OCP request -  
20 that is, document E293/1 is therefore rejected.

21 [15.11.45]

22 Now, on Nuon Chea's request to summons witnesses in respect of  
23 alleged policy of targeting Khmer Republic officials, which is a  
24 courtesy copy, the Nuon Chea defence requests the Chamber to  
25 summons more than 100 new witnesses who made statements

1 concerning the targeting of Khmer Republic officials. It repeats  
2 and elaborates upon previous submissions concerning the  
3 admission, absent the opportunity for confrontation of statements  
4 going to important or central issues in the Prosecution case. The  
5 Chamber considers that the defence fails to satisfy the  
6 requirements of reasonable diligence in discovering and proposing  
7 the new witnesses pursuant to Internal Rule 87.4.  
8 Further, with respect to the OCP request to respond to this  
9 motion, the Chamber considers that issues regarding to the  
10 admissibility and probative value of witness statements have been  
11 thoroughly briefed and it will shortly issue a decision on this  
12 topic. Any future motions on these issues will be considered  
13 repetitive and not be accepted for filing. The overall request is  
14 rejected with more detailed reasons to follow in writing.

15 [15.13.50]

16 Now, on Khieu Samphan's defence request for information regarding  
17 Nou Mouk, the Chamber first notes that the Witness and Expert  
18 Support Unit is presumed to exercise its functions scrupulously  
19 and impartially. The parties had an opportunity to explore issues  
20 regarding contacts with WESU during the questioning of the  
21 witness. In addition, the Trial Chamber has informally received  
22 the relevant information from WESU and therefore, concludes that  
23 an investigation in accordance with Rule 35 is not warranted. The  
24 Chamber nonetheless directs WESU to provide this information in a  
25 formal report to the Chamber within two weeks.

1 [15.15.04]

2 I turn now to the Co-Prosecutor's request both oral and contained  
3 in document E288/4/1, with respect to the respective accused  
4 refusal to testify. The Chamber considers that the warnings made  
5 to all accused on the 18 April 2012 and reaffirmed on 16 July  
6 2013 adequately addressed the underlying substance of the  
7 Co-Prosecutor's request. The 18 April 2012 warning expressed that  
8 the relevant international jurisprudence indicates that adverse  
9 inferences from selective decisions to remain silent may be  
10 drawn. The Trial Chamber does consider that this request had been  
11 answered already. The Co-Prosecutors additionally request to  
12 state in Court, in the presence of the Accused, topics and facts  
13 on which they would have questioned them. The Chamber does not  
14 consider that this will be necessary. The Co-Prosecutors will  
15 have the opportunity to indicate, as part of their closing brief,  
16 those points on which they are requesting the Chamber to draw  
17 adverse inferences.

18 [15.17.07]

19 Next, the Chamber will address the Nuon Chea's defence request to  
20 admit new documents, summons Rob Lemkin, and initiate an  
21 investigation. The Chamber will file its decision today or  
22 tomorrow rejecting this application in its entirety for reasons  
23 set out therein.

24 Turning to the status of other decisions, the Trial Chamber will  
25 issue two decisions in the near future. There is the decision on

1 objections to the admissibility of witness, victim, and civil  
2 party statements and Case 001 transcripts, as proposed by the  
3 Co-Prosecutors and civil party Lead Co-Lawyers; and the third  
4 decision on objections to documents proposed for admission before  
5 the Chamber. Both of these decisions will contain annexes. All  
6 documents that are admitted as a result of these decisions will  
7 be recorded in E3 number.

8 [15.18.46]

9 Finally, the Chamber would like to address the subject of  
10 scheduling from this point forward. In its second severance  
11 decision - that is document E284, the Trial Chamber determined  
12 the extent of the facts it would consider in Case 002/01. That  
13 decision was appealed by the Co-Prosecutors and Nuon Chea.  
14 Pending the appeal, and in order to avoid any prejudice to the  
15 parties, the Trial Chamber will not therefore, announce that  
16 hearing on evidence in Case 002/01 is formally concluded until  
17 the Supreme Court Chamber decision is issued. Pending the  
18 decision of the Supreme Court Chamber, which will provide for the  
19 guidance in this respect, the Trial Chamber announces however,  
20 that its tentative schedule is as follows:

21 Closing briefs are to be submitted by 12 September; in the first  
22 instance, in any of the ECCC languages, with translations to  
23 follow. Closing statements will be held starting 9 October and  
24 concluding 22 October, including Fridays.

25 [15.20.59]



1 The Trial Chamber has chosen 9 October as a start date in view of  
2 scheduling challenges during the month containing many holy days.  
3 In accordance with the decisions of the Supreme Court Chamber,  
4 the Trial Chamber will formally confirm or amend its schedule  
5 when the appellate decision is delivered. For the same reasons,  
6 the Trial Chamber will not deliver its final decision on  
7 witnesses, experts, and civil parties to be heard in Case 002/01,  
8 which will now be included in its verdict rather than be issued  
9 separately ahead of time. The Chamber notes that the parties have  
10 already been provided courtesy copies of the annexes to that  
11 decision and that the information contained in those annexes has  
12 not changed.

13 [15.22.28]

14 Finally, with respect to the closing briefs, the Chamber is  
15 according each party an additional 25 pages to respond to any  
16 additional evidence or documents put before the Trial Chamber,  
17 pursuant to the Chamber's final evidentiary decisions. The  
18 Co-Prosecutors therefore, now have 225 pages for their closing  
19 brief, the Accused each have only need of 125 pages, and the  
20 civil parties have 105 pages, excluding submissions on  
21 reparations.

22 This concludes the oral rulings of the Chamber. The Chamber  
23 thanks the parties for their assistance and cooperation in these  
24 matters and the hearing today has come to an adjournment. The  
25 Chamber will adjourn now and it will resume on the 9th October

1 2013, commencing from 9.00 a.m.

2 The floor is not opened for parties, please be seated.

3 And security guards, you are instructed to take the two Accused

4 back to the detention facility, and the Trial Chamber will issue

5 its order to bring them to the courtroom in the appropriate time.

6 The Court is now adjourned.

7 (Court adjourns 1524H)

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