



**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**

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Case File N° 002/19-09-2007-ECCC/TC

11 December 2013

Trial Management Meeting

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

Accused: KHIEU Samphan

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

Trial Chamber Greffiers/Legal Officers:  
SE Kolvuthy  
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Matteo CRIPPA

Lawyers for the Civil Parties:  
PICH Ang  
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For the Office of the Co-Prosecutors:  
CHEA Leang  
Nicholas KOUMJIAN  
William SMITH  
SENG Bunkheang  
Dale LYSAK  
VENG Huot  
Keith RAYNOR  
SONG Chorvoin  
Vincent DE WILDE D'ESTMAEL  
Tarik ABDULHAK

For the Office of Administration:  
KRANH Tony  
Knut ROSANDHAUG  
KONG Sophy  
Isaac ENDELEY

For Court Management Section:  
UCH Arun  
SOUR Sotheavy

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MS. CHEA LEANG	Khmer
MS. GUISSÉ	French
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
MR. KOUMJIAN	English
MR. KRANH TONY	Khmer
JUDGE LAVERGNE	French
THE PRESIDENT (NIL Nonn, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. ROSANDHAUG	English
MR. SON ARUN	Khmer
MS. YE	English

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

2 (Trial Management Meeting opens at 0905H)

3 MR. PRESIDENT:

4 Please be seated.

5 Before we commence, the Greffier, Ms. Se Kolvuthy, could you  
6 report the attendance of the parties and individuals to today's  
7 meeting?

8 THE GREFFIER:

9 Mr. President, for the Trial Management Meeting today, all  
10 parties and individuals are present, except Ms. Élisabeth  
11 Simonneau-Fort, the International Lead Co-Lawyer for civil  
12 parties, who is absent for personal reasons. However, she  
13 assigned the role to Beini Ye, the civil party lawyer.  
14 Khieu Samphan, the Accused, is present in the holding cell  
15 downstairs.  
16 And Nuon Chea, based on the information from his team, is not  
17 willing to attend this meeting.

18 [09.06.40]

19 MR. PRESIDENT:

20 Thank you.

21 In today's Trial Management Meeting, we have the presence of the  
22 accused Khieu Samphan, who is now in the holding cell downstairs.  
23 We instruct the AV Unit to link the proceeding to the holding  
24 cell downstairs so that Khieu Samphan can follow the proceeding.  
25 As the President of the Trial Chamber and on behalf of my fellow

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1 Judges, we wish to express a warm welcome to everyone in  
2 attendance today. Following the conclusion of the trial hearings  
3 in Case 002/01, the purpose of this Trial Management Meeting is  
4 to facilitate advanced planning for Case 002/02. Initially this  
5 Meeting was intended to address practical and technical issues  
6 central to the preparation of Case 002/02. Accordingly, the Trial  
7 Chamber gave notice to the parties of its intention to raise two  
8 issues for discussion:

9 1) The scope of Case 002/02 and future trial segments;

10 2) Tentative trial schedule for Case 002/02.

11 However, following the Supreme Court Chamber's Decision on  
12 severance and its recent issuance of the full reasons for its  
13 Decision, the Chamber notified the parties that the focus of the  
14 Meeting had shifted to the issue of the appointment of a second  
15 panel of the Trial Chamber to try Case 002/02, which must be  
16 determined on an urgent basis and as a preliminary matter. In  
17 addition, the parties were notified that the administrative  
18 aspects of trial management in Case 002 may be discussed at this  
19 Meeting.

20 [09.09.37]

21 In order to facilitate discussion of the administrative aspects  
22 of trial management in Case 002, the Trial Chamber requested the  
23 attendance of the ECCC Acting Director and Deputy Director of the  
24 Office of Administration at the meeting to answer questions from  
25 the Chamber and the parties. The Chief of the Defence Support

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1 Section is also in attendance to discuss issues concerning the  
2 Defence budget, if necessary. The Chamber thanks the Acting  
3 Director and Deputy Director of the Office of Administration as  
4 well as the Chief of the Defence section for their attendance  
5 today.

6 I will now turn to the items raised in the Trial Chamber's Agenda  
7 circulated to the parties in advance of this meeting on 4  
8 December 2013.

9 1) Implementation of the Supreme Court Chamber Recommendation to  
10 appoint a second Panel of the Trial Chamber:

11 In its Summary of reasons for its second Decision on severance of  
12 23 July 2013, the Supreme Court Chamber proposed the constitution  
13 of a second panel of the Trial Chamber as one means to ensure  
14 that the next segment of Case 002 commences as soon as possible.  
15 [09.11.41]

16 The Supreme Court Chamber recently issued its full reasons for  
17 its Decision, in which it indicated that it is "the  
18 responsibility of the President of the Trial Chamber to avail  
19 himself of the existing possibilities" to form a second panel to  
20 try Case 002/02. With a view to implementing the recommendation  
21 of the Supreme Court Chamber, the Trial Chamber will first pose  
22 questions on the available framework relevant to the formation of  
23 a second panel of the Trial Chamber. This discussion will assist  
24 the President to assess the timeframe within which a second panel  
25 might be established and commence working and will provide an

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1 opportunity for the parties to put forward their comments in  
2 relation to this matter. Further, it will allow the public to  
3 understand the progress in the preparation of Case 002/02.

4 [09.13.28]

5 As noted in the Scheduling Memorandum issued prior to this  
6 Meeting, the Trial Chamber estimates that if the Chamber  
7 maintains its current resources, the judgement in Case 002/01 can  
8 be issued during the second quarter of 2014. The Trial Chamber  
9 would therefore start hearings in Case 002/02 soon afterwards,  
10 provided that the scope of a second trial segment has been  
11 determined by then. The President of the Trial Chamber has  
12 determined that all the Judges comprising the current Trial  
13 Chamber panel and the current support staff are needed to focus  
14 exclusively on the preparation of the Judgement in Case 002/01,  
15 to ensure its timely issuance.

16 Accordingly, new judges would be required if a second panel were  
17 to be established. In turn, additional national and international  
18 support staff will also be required to assist a second panel: the  
19 President has assessed that five national and five international  
20 legal staff will be required to support a second panel.

21 [09.15.13]

22 We now have some questions for the ECCC Acting Director and  
23 Deputy Director. I would like to invite the ECCC Acting Director  
24 and Deputy Director of the Office of Administration to answer  
25 some questions on the implementation of the Supreme Court

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1 Chamber's recommendation to appoint a second panel of the Trial  
2 Chamber and we will also give the floor to the parties to pose  
3 additional questions if required.

4 First, in paragraph 3 of your memorandum to the President of the  
5 Supreme Court Chamber – that is, document E284/4/7/1/2 dated 31  
6 October 2013 – in response to the Order to explore the  
7 establishment of a second trial panel, you mentioned that "the  
8 Office of Administration has reviewed administrative and  
9 financial implications of an establishment of a second Panel of  
10 Judges within the Trial Chamber and confirms its readiness to  
11 support any decision made by the Supreme Court Chamber or the  
12 Trial Chamber to duly complete the judicial processes in Case  
13 002".

14 [09.16.54]

15 The Supreme Court Chamber in paragraph 74 of its Decision,  
16 document E284/4/8, states that "no financial or administrative  
17 impediment exists to the establishment of a second panel".

18 Can the ECCC Acting Director and Deputy Director indicate the  
19 precise nature and the scope of the review you have done? Which  
20 body or individuals, if any, have been consulted at the National  
21 or International level?

22 You may take the floor.

23 MR. KRANH TONY:

24 Good morning, President and Your Honours. Good morning, everyone  
25 in and around the courtroom. The view of having a second trial

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1 panel was based on the Decision of the Supreme Court Chamber. In  
2 its Order to the Office of Administration, the Supreme Court  
3 Chamber asked the Office of Administration to explore that  
4 possibility and as we outlined in our memorandum and as quoted by  
5 Your Honour, it is up to the discretion of the President of the  
6 Trial Chamber to consider whether a second trial panel shall be  
7 established and, of course, the Office of Administration will  
8 lend its full support financially and materially. And it is  
9 unlikely that we will foresee any obstacle in our support - full  
10 support, that is - to the Trial Chamber, Your Honour.

11 Thank you.

12 [09.19.05]

13 MR. PRESIDENT:

14 Thank you.

15 Would the Deputy Director wish to add to that comment?

16 MR. ROSANDHAUG:

17 Good morning, Your Honours and all those present in the  
18 courtroom.

19 I second the Acting Director's comment and I may add that our  
20 memo to the Supreme Court contains two alternatives.

21 The first alternative is that the present Chamber continues, and  
22 we, of course, stand ready to support that alternative in full.

23 The second alternative is that we also stand ready to support any  
24 alternative to the current Judges. Thank you.

25 [09.19.50]



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1 MR. PRESIDENT:

2 Judge Cartwright, please take the floor. Thank you.

3 JUDGE CARTWRIGHT:

4 Yes, thank you, President.

5 Yes, that's very helpful, thank you very much. However, you have  
6 not fully answered the question that the President posed, which  
7 related to the precise nature and scope of the review that you  
8 have undertaken and what bodies or individuals you have  
9 consulted; and that's in reference to financial and  
10 administrative impediments that might exist if a second panel is  
11 to be established.

12 As you will understand, this Chamber – this Chamber is very  
13 concerned to ensure that once it – once the second phase of Case  
14 002 is started, that there should be no disruptions to it – and  
15 they can be administrative, they can be financial, as well as the  
16 legal and procedural obstacles that we deal with every day in  
17 the Court.

18 So could you please answer those other questions? Who have you  
19 consulted? Because I'm not sure that there was a full  
20 consultation with the Trial Chamber about any aspect of this, but  
21 maybe you've consulted in more appropriate areas.

22 Thank you.

23 [09.21.35]

24 MR. KRANH TONY:

25 Thank you, Your Honour, for your question.

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1 Your Honours, as a principle, upon the Decision by the Trial  
2 Chamber as to which alternative you choose – that is, whether to  
3 establish a second or third or fourth panel – then the Office of  
4 Administration will take a detailed consultation with all the  
5 relevant sections. What I have just stated is, as a principle,  
6 whichever option or alternative chosen by the Trial Chamber – for  
7 instance, for the establishment of a second trial panel, there is  
8 no financial or administrative impediment by the Office of  
9 Administration. In fact, the ECCC will have sufficient structure  
10 to support its functioning and we might only require certain  
11 legal experts and judges, and for that, we don't see any major  
12 obstacle for the establishment of that second panel.  
13 So, once again Your Honours, only upon the decision made by the  
14 Trial Chamber, then we will take detailed and deep technical  
15 consultations in terms of financials and other issues to lend our  
16 full support to your Chamber.

17 Thank you.

18 [09.23.28]

19 JUDGE CARTWRIGHT:

20 Yes, thank you, President.

21 It's very encouraging to hear that you foresee no financial  
22 obstacles. And I just want to say that we will probably return to  
23 this issue in more detail later during the Trial Management  
24 Meeting because that is one of the matters that concerns the  
25 Chamber in its – in its quest to ensure that there are no

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1 disruptions to the trial, whether conducted by this panel or by a  
2 second panel. So, as I said, it's very encouraging, but you can  
3 see I'm a little bit sceptical.

4 Thank you.

5 MR. PRESIDENT:

6 Thank you.

7 And, Judge Lavergne, please take the floor.

8 [09.24.35]

9 JUDGE LAVERGNE:

10 Yes, thank you very much, Mr. President.

11 I must confess that I have a difficult time understanding. I  
12 believe that you were put relatively straight forward question so  
13 as was to whether or not there were any consultations that took  
14 place during the review that you undertook; you have said that  
15 consultations were made once - or would be made once the  
16 President issues his decision. But you've also stated that there  
17 seems to be no problem.

18 Are we to understand therefore, that this opinion is generally  
19 shared and there's consensus with the various departments and  
20 bodies in New York, at the United Nations in New York and with  
21 the Government - well, the Government of Cambodia? Is that a  
22 statement that you are making? Do you have clear evidence that  
23 would allow us to conclude what you have just stated?

24 [09.25.50]

25 MR. KRANH TONY:

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1   What I spoke is within the capability of the Office of  
2   Administration and as an Acting Director and that is also in  
3   pursuant to the Order and instruction relate by the Supreme Court  
4   Chamber. We also obtained information from all relevant partners  
5   of the ECCC and it is the view that what we have decided is  
6   within the capability of the ECCC as a whole.

7   However, in order to realise that, it is beyond our capability in  
8   the term of Office of Administration. We will, of course, lend  
9   our full support in terms of financial or administrative to the  
10   Trial Chamber.

11   JUDGE LAVERGNE:

12   My following question is for Mr. Rosandhaug.

13   I wish to know, sir, if the review undertaken by the Office of  
14   Administration also included an assessment of the legal issues  
15   that would arise from the matter. I ask because it would appear,  
16   Mr. Rosandhaug, that you met with representatives from the  
17   Supreme Court on the 18th of September and you issued a  
18   memorandum, E20 – E284/4/7/1/2, and in that very memorandum you  
19   refer to Article 3 of the Agreement; and I shall cite it in  
20   English: "This provision raised the question whether the  
21   establishment of a second panel of the Trial Chamber would  
22   require an amendment to the Agreement." [End of intervention in  
23   English.]

24   [09.28.23]

25   And in the following paragraph, you write: "[In English:] As has

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1    been expressed, is that Article 3.8 of the Agreement which  
2    provides that the President of the Chamber may, on a case-by-case  
3    basis designate from the list of nominees submitted by the  
4    Secretary General, one or more alternative judges to be present  
5    at each stage of proceedings and to replace an International  
6    Judge if that Judge is unable to continue sitting , may in effect  
7    authorize the establishment of a second panel of the Trial  
8    Chamber." [End of intervention in English.]

9    I wish to know if a legal assessment was part and parcel of the  
10   review that you were invited to undertake and, if so, can you  
11   please tell us who is the author of the legal opinion to which  
12   you make reference when you say that an alternative view has been  
13   expressed?

14   Thank you.

15   [09.29.50]

16   MR. ROSANDHAUG:

17   Thank you very much.

18   Let me - allow me to clarify the correspondence between the  
19   Office of Administration and the Supreme Court Chamber. It  
20   constitutes two memos, both referred to already.

21   The memo now cited is a request for clarification of the "Order  
22   to Explore", and you will see from the last section of that memo  
23   that my office asked the Supreme Court to clarify if there is a  
24   need to amend the Agreement. If that is how I should understand  
25   the "Order to Explore", I will have to involve the parties to the

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1 Agreement. So that was the intention of this memo. There has been  
2 no feedback on this memo from the Supreme Court Chamber.

3 On the other hand, the latest severing order from the Supreme  
4 Court Chamber basically spells out that this is no longer an  
5 option and it is for the President of the Trial Chamber to decide  
6 on the way forward.

7 So, to answer your question very concretely, there has been no  
8 legal assessment of this establishment of a second panel because  
9 it has not been necessary.

10 [09.31.13]

11 You will see from my second memo that assessment has been based  
12 on administrative and financial implications, and we have  
13 concluded, the two of us, that there are no impediments on the  
14 side of Office of Administration to continue with the second  
15 phase, either in its current Chamber, current form, or any other  
16 alternative decided by the President.

17 Thank you.

18 JUDGE LAVERGNE:

19 Let me be sure I've understood this. When you refer to the first  
20 memo, I quoted a legal opinion that is to be found in it and the  
21 Supreme Court Chamber based itself on that legal opinion to state  
22 that there was no legal obstacle to the establishment of a second  
23 Panel of Judges. So, the memo is therefore an important source,  
24 but I still haven't understood if this is your own opinion; an  
25 opinion based on a precise legal view or if it is simply the

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1 opinion of a third party of which we are unaware.

2 So could you please be a little bit more precise or must we

3 simply make do with the answer we have heard so far?

4 [09.33.08]

5 MR. ROSANDHAUG:

6 The memo is signed by me, so I'm responsible for its contents.

7 Thank you.

8 MR. PRESIDENT:

9 Judge, you may proceed.

10 JUDGE CARTWRIGHT:

11 Deputy Director, you have not answered the question. We know that

12 this was your memorandum, but Judge Lavergne wanted to know more

13 about whose alternative view this one was. And we know that you

14 are legally qualified and quite entitled to make your own legal

15 assessment.

16 Did you make this assessment of Article 3.8 or was some other

17 source consulted? Because this is very – this is useful for the

18 Trial Chamber when it has to decide – or when the President has

19 to decide the extent of his legal powers to appoint a second

20 panel.

21 And, secondly, if the Trial Chamber – if the President of the

22 Trial Chamber were to appoint a second panel and staff to begin

23 work now, are you saying, with the Acting Director, that you have

24 sufficient funding to support that second panel and its support

25 staff?

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1 [09.34.47]

2 MR. ROSANDHAUG:

3 The memorandum is, as stated, signed by me, so I'm responsible  
4 for its contents. Now, obviously, I don't work in a vacuum, so I  
5 do consult with United Nations, but that doesn't mean that the  
6 memorandum is from them. The memorandum is mine.

7 On the second part of the question, yes, we do stand ready to  
8 support any decision from the Trial Chamber, being either need  
9 for more judges or need for more staff.

10 Thank you.

11 MR. PRESIDENT:

12 Thank you for the Acting Director and Deputy Director for  
13 responding to the question.

14 Second, subject to the jurisdiction of the President to appoint  
15 alternate Judges as set out in the ECCC Agreement and the ECCC  
16 Law, which Judges outside the current Trial Chamber are available  
17 to be appointed to sit in Case 002/02, if a second panel were to  
18 be established?

19 [09.36.25]

20 Article 11new, paragraph 4, of the ECCC Law gives the Supreme  
21 Council of Magistracy the exclusive authority to appoint  
22 Cambodian Reserve Judges "as needed" and the President of each  
23 Chamber may designate one or more reserve foreign Judges "already  
24 appointed by the Supreme Council of Magistracy".

25 How many Cambodian or foreign Reserve Judges are currently



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1 appointed by the Supreme Council of the Magistracy to sit in the  
2 Trial Chamber? If there are insufficient judges already  
3 appointed, how long would it take to conclude the process for the  
4 appointment of new judges by the Supreme Council of the  
5 Magistracy? Has the Secretary General of the United Nations  
6 already selected and nominated applicants and has a list of  
7 nominees been officially forwarded to the Cambodian authorities?  
8 Do you have any idea, Mr. Deputy Director and the Acting  
9 Director?

10 MR. KRANH TONY:

11 (No interpretation)

12 [09.38.06]

13 MR. PRESIDENT:

14 Could you hold on a moment, please?

15 Please, Mr. Sam Onn, you may proceed.

16 MR. KONG SAM ONN:

17 Thank you, Mr. President. Good morning, Excellency, Your Honours,  
18 lady and gentlemen.

19 If we could not have a proper respond to this question, should  
20 you keep asking the Administration before giving the floor to the  
21 parties?

22 MR. PRESIDENT:

23 Thank you, Mr. Sam Onn. We will give you an opportunity to  
24 respond, but we would like to go further with the Administration  
25 first.

16

1 Please, Excellency, you may proceed.

2 [09.39.02]

3 MR. KRANH TONY:

4 In responding to this question, under the current existing  
5 structure at the ECCC, we have five Reserve Judges on the  
6 national and other Reserve Judges at the Trial Chamber and we  
7 have another four Judges on the international side appointed and  
8 they are working for the Trial Chamber.

9 If the President thinks that you need more reserve judges in  
10 addition to these Judges, you can appoint following the current  
11 procedure to the Administration and then the Administration may  
12 act accordingly.

13 In responding to the timeframe needed for that purpose, the ECCC  
14 has appointed national and international Judges and we don't  
15 spend much time for proceeding to the Supreme Council of the  
16 Magistracy and may spend only one month for the whole process, so  
17 that's all I could respond to Your Honour.

18 Thank you.

19 [09.40.26]

20 MR. PRESIDENT:

21 Mr. Acting Director, do you wish to add anything to this question  
22 – the Deputy Director, do you have anything to add into this  
23 question?

24 MR. ROSANDHAUG:

25 I second what was said on the detail on the United Nations. The

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1 United Nations – the Secretary General draw from a list of  
2 available judges, but no action has been taken from the UN side  
3 because no request has been provided to the UN to nominate  
4 additional judges.

5 Thank you.

6 MR. PRESIDENT:

7 Judge Lavergne, you may proceed.

8 [09.41.20]

9 JUDGE LAVERGNE:

10 Thank you, Mr. President. Just a follow-up question to make sure  
11 that we fully understand this.

12 I've just heard that there are five alternate judges appointed on  
13 the Cambodian side, five reserve judges who would be appointed  
14 and there would be four international reserve judges who would  
15 also be appointed.

16 Now, what exactly does this term "appointed" mean? Is this  
17 something that goes through a Royal Decree after hearing the  
18 views of the High Council of the Magistracy or is this aimed at  
19 one particular chamber because hitherto for the Magistracy  
20 Council designates per chamber; therefore, are these five judges  
21 available for the Trial Chamber or are they designated for other  
22 chambers as well?

23 [09.42.39]

24 As for the four alternate international judges, I do understand  
25 that within the United Nations there is a list of potential

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1 candidates, but so far the United Nations Secretary General has  
2 not transmitted an official list of candidates that the Supreme  
3 Council of Magistracy would pick from to appoint additional  
4 international reserve judges. Now, I may not have understood this  
5 correctly, but if that is the case and if that list has not been  
6 referred to the Supreme Council, I would like to know from you  
7 how much time it would take to check if the potential judges are  
8 available to come and work here, how long it would take to set up  
9 the process that leads to their definitive appointment by the  
10 Supreme Council of the Magistracy? I hope that's clear.

11 And there would, of course, be a follow-up question about the  
12 appointment of support staff – additional support staff that  
13 would be necessary to work with a second Panel of Judges.

14 Thank you.

15 [09.44.20]

16 MR. KRANH TONY:

17 Maybe there's a translation problem.

18 I said that in the present time, we have the existing alternate  
19 Judges. We have five Judges, including the Reserve Judges and  
20 also the Co-Prosecutor and also at the Trial Chamber, and if Your  
21 Honour would like to have new judges in addition to our current  
22 ones, you can propose to the Supreme Council of the Magistracy  
23 and we will act following that. And in our practice and  
24 experience, we took not more than one month to complete the  
25 proceeding of the appointment.

19

1 MR. PRESIDENT:

2 Judge Lavergne, you may proceed.

3 JUDGE LAVERGNE:

4 Thank you.

5 So, when you refer to the five Reserve Judges, you are talking  
6 about the five that currently sit in the Chambers. Here we have  
7 Judge Thou Mony who is a Reserve Judge. But can you tell us if in  
8 the Pre-Trial Chamber on the national side there are other  
9 Reserve Judges who are appointed or if we need to go through the  
10 full appointment process that is laid down in the regulations?

11 [09.46.10]

12 MR. KRANH TONY:

13 I don't mean to say about the right to appointment because it is  
14 the right and power of this Trial Chamber, but I would like to  
15 refer to the current alternate Judges, including Judge Thou Mony,  
16 and also some Judges at the PTC and if we count our alternate  
17 Judges at the ECCC, we have those Judges.

18 Regarding the new alternate Judges, it is in the discretion of  
19 the Trial Chamber, so I think we have five alternate Judges and  
20 if you need more judges, the Trial Chamber President may request  
21 to the Supreme Council of the Magistracy as we have done in the  
22 past.

23 Thank you.

24 MR. PRESIDENT:

25 Judge Lavergne, you may proceed.

20

1 JUDGE LAVERGNE:

2 I apologize, but I'm still not quite clear on this. Apart from  
3 Judge Thou Mony, who is currently the Reserve Judge who is  
4 appointed to sit in the Trial Chamber, at the moment are there  
5 other Reserve Judges who are appointed for the Trial Chamber? You  
6 say there are five Reserve Judges available; where are they? Who  
7 are they? I'm afraid I don't quite follow this.

8 [09.48.21]

9 MR. KRANH TONY:

10 In simple words, I see that we have one Reserve Judge at the TC,  
11 and we have one at the Pre-Trial Chamber, one at the OCIJ, and  
12 the Supreme Court Chamber we have another one. So, if you count  
13 all of the Reserve Judges who have been appointed, there were  
14 five of them currently.

15 MR. ROSANDHAUG:

16 I may add, hopefully clarifying.

17 The numbers referred to have already been allocated to the  
18 Chambers, so there is no extra list of names already appointed  
19 which is not allocated a task, a Chamber – if that is what you  
20 are asking for.

21 [09.49.20]

22 I believe, in the very initial question, there was a question  
23 about turnaround for the United Nations to identify new nominees.  
24 That's a relative size. Obviously, I can commit that United  
25 Nations will give absolute first priority to such a request from

21

1 the Court, and then it's down to contacting the individuals on  
2 the list and ask for their availability. That can take a few  
3 days, a few weeks, a month, but, you know, the message here is  
4 that the United Nations will do what is need - needed from them  
5 to expedite this nomination.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you.

9 Now, Judge Cartwright, you may proceed.

10 JUDGE CARTWRIGHT:

11 Thank you, President.

12 Yes, I think that we clearly understand where the five Reserve  
13 Judges are currently placed. However, I have a question  
14 concerning the President's jurisdiction to use those or to  
15 appoint those Judges who are not in the Trial Chamber to form a  
16 second panel.

17 Would either of you care to expand on your proposal, which seems  
18 to imply that the President would have such jurisdiction?

19 [09.51.06]

20 MR. KRANH TONY:

21 Yes, I understand that. My obligation and capacity is  
22 administrative and financial. The obligation of the Judges are  
23 those of the legal, so if you ask me like that I would refer to  
24 the existing five Reserve Judges.

25 If Your Honour thinks that there will be a problem of

22

1 jurisdiction, it will be in your hands to make decision on that.

2 I could not make any decision that those Judges could be assigned

3 for the second panel of Judges. So, I mean, only the Reserve

4 Judges could perform duty when there is assignment for them to

5 work. But in responding to legal question, it is beyond my

6 responsibility.

7 Thank you.

8 JUDGE CARTWRIGHT:

9 The Deputy Director, did you wish to expand on that answer or to

10 more directly answer my question?

11 [09.52.28]

12 MR. ROSANDHAUG:

13 I'm happy to answer.

14 It is my viewpoint that the President has such jurisdiction. If

15 he deems that this is not the case, we stand ready to facilitate

16 the request to the Supreme Council Magistracy to re-allocate the

17 individuals in question.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you.

21 Judge Lavergne, you may proceed.

22 JUDGE LAVERGNE:

23 Thank you, Mr. President.

24 We have talked at some length about the appointment of new

25 Judges, but we have not said so much about the problem of support



23

1 staff to work with a second panel. We have heard some precise  
2 figures from the President about the numbers that would be  
3 necessary.

4 [09.53.28]

5 And so my question is: Is this an aspect of the problem that has  
6 been part of the review that you have done and do you believe  
7 that the same degree of expeditiousness that you have referred to  
8 just now for the Judges could also be applied to the support  
9 staff?

10 Thank you.

11 MR. KRANH TONY:

12 Yes. In the drafting of the budget for 2014 and 15, we include  
13 into a package of budget which is not for a contingent fund. If  
14 the Trial Chamber decided to have a second panel of Judges and  
15 then we look at the five, six or three of staff member that you  
16 need. So it is now not clear about the number of supporting staff  
17 because a second panel has not been decided, but we have a  
18 flexibility in responding to the current draft budget.

19 MR. PRESIDENT:

20 Judge Lavergne, you may proceed.

21 [09.55.08]

22 JUDGE LAVERGNE:

23 I know that financial matters are trivial ones that Judges are  
24 not supposed to dabble in, but I did, nevertheless, seem to hear  
25 that there had been a freeze in the appointment of staff. Has

24

1 that freeze now been lifted or is it still in place?

2 MR. KRANH TONY:

3 Yes, what we have been doing - we try to have a good  
4 administration in terms of human resource service. In practice,  
5 we have personnel available for the purpose.

6 Sometimes you are talking about freezing the budget, but our  
7 priority is for the Trial Chamber. It will not be affected on  
8 what we are going to decide on this matter.

9 Thank you.

10 MR. PRESIDENT:

11 Judge Cartwright, you may proceed.

12 [09.56.46]

13 JUDGE CARTWRIGHT:

14 Yes. Thank you very much. And it's good to hear that the  
15 Administration has a contingency fund against which it can apply  
16 new staff appointments for the Trial Chamber.

17 In the document A/68/532, commonly known as the Subvention  
18 Request, at paragraph 20, the document says: "Pending further  
19 decisions of the Supreme Court on this matter-"

20 And that refers to a decision by the Supreme Court to require a  
21 second panel to be established within the Trial Chamber and of  
22 course the Supreme Court has not done that.

23 But, "pending further decisions of the Supreme Court on this  
24 matter, the proposed budget for 2014-2015 does not include  
25 provisions for a second Trial Chamber."

25

1 So I'm just a little bit concerned that your contingency  
2 financial arrangements will not - will not cover the obvious  
3 shortfall that there is going to be in next year's budget.

4 Do you want to comment on that?

5 [09.58.10]

6 MR. ROSANDHAUG:

7 Yes. Thank you.

8 The subvention document you referred to is a funding request, and  
9 it's not the budget.

10 The budget do have a contingency but do not stipulate cost of a  
11 potential second panel, it - simply because it's not part of our  
12 work plan as we speak.

13 The contingency is not for our free discretion. We have alerted  
14 the principal donor group that there might be a need for  
15 additional funds for unforeseen activities. We will have to go  
16 back to the principal donor group with a justification of why we  
17 want to dip into the contingency when we have such.

18 We currently have no request from judicial authorities to  
19 establish a second panel, so it's not included in the work plan.

20 Thank you.

21 [09.59.15]

22 MR. PRESIDENT:

23 Thank you.

24 And I'd like to make my observation that the questions I posed to  
25 you, the Acting Director and the Deputy Director, is because in

1 paragraph 72, 73, and 74 of the Supreme Court Chamber Decision,  
2 it entirely quotes the memorandum from the Office of  
3 Administration that was sent to each Chamber, in which it clearly  
4 states that there is no impediment on the second trial panel  
5 establishment, and for that I am very concerned with my duty and  
6 effectiveness of my duty in this very Trial Chamber.  
7 And to me, this is rather strange and for that reason, we need a  
8 full clarification from you in this Trial Management Meeting.  
9 Otherwise, it's going to be a big burden on me as the President  
10 of the Trial Chamber as I, myself, do not know which  
11 qualification or jurisdiction that I have to request all the  
12 Reserve Judges, both national and international, for the creation  
13 of another panel at my own discretion for this Trial Chamber.  
14 [10.01.11]  
15 In the Agreement between the United Nations and the Royal  
16 Government of Cambodia, it clearly stipulates the need for the  
17 appointment of national and international Judges, both, including  
18 the Reserve Judges; that it has to be done through the Supreme  
19 Court (sic) of Magistracy. And seven Judges shall be appointed,  
20 including the two Reserve Judges for the Trial Chamber as well as  
21 for the Supreme Court Chamber and nine National Judges, including  
22 the two Reserve Judges, for the Trial Chamber and the Supreme  
23 Court Chamber.  
24 So the Agreement clearly stipulates the allotment and the number  
25 of the Judges to be tasked in this ECCC, including the sitting

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1 Judges and the Reserve Judges. And there could be more than one  
2 Reserve Judge for each Chamber.

3 [10.02.28]

4 As for the second issue that I'd like to raise to your attention  
5 that is based on the Royal Decree for the appointment of the  
6 prosecutor – that is, Royal Decree 05062014, dated 7 May 2006,  
7 clearly determines the list of the Judges; namely, for the Trial  
8 Chamber Judges, there are five sitting Judges and two Reserve  
9 Judges: one national and one international.

10 Second, Judges for the Supreme Court Chamber comprise nine  
11 Judges: seven sitting and two reserve.

12 And the question to you is that – based on the Order by the  
13 Supreme Court Chamber, which relied entirely from the memorandum  
14 from your Office, in its Decision – that is, in paragraph 74,  
15 which gives discretion for the establishment of the second trial  
16 panel to the President of the Trial Chamber. The question is:  
17 What qualification do I possess to appoint Judges from other  
18 Chambers to work for the Trial Chamber – that is, in order to  
19 establish the second trial panel? Because, to me, your Office  
20 sends the memorandum to the Supreme Court Chamber and the Supreme  
21 Court Chamber relies on it in its Decision. Could you clarify  
22 that?

23 [10.04.39]

24 MR. ROSANDHAUG:

25 The memo is signed by me, so it is my opinion.

28

1 Now, if the President of the Trial Chamber does not share my  
2 opinion, I subject myself to your interpretation of the legal  
3 framework. It is offered as an opinion.  
4 Thank you.

5 MR. PRESIDENT:

6 Here we are not talking decidedly on whether we agree to it or  
7 not. But what we want to clarify is the burden passed on to the  
8 Trial Chamber by the Supreme Court Chamber. And of course, I'm  
9 grateful that you have such an opinion.

10 And I'm obligated for the alternative option of the second penal  
11 establishment. But in my view, I do not see any existing law  
12 which empower me to have a broad discretion for the establishment  
13 of a second trial panel within the Trial Chamber, either in the  
14 Agreement or the ECCC Law or the request by the United Nations  
15 Secretary General or the Judges - or the National Judges.

16 [10.06.10]

17 All the requests have to be made through the Supreme Court -  
18 through the Supreme Council of the Magistracy and they have to be  
19 appointed by the Royal Decree, and even for the Judges of the  
20 Trial Chamber - and when we even had to re-assign the duty from a  
21 Reserve Judge to a sitting Judge, it has to be done by a Royal  
22 Decree. And I, myself, as the President, has no legal authority  
23 or jurisdiction to appoint anyone at my own discretion, except a  
24 provisional assignment based on the Internal Rule 79.4, as in the  
25 case of unavailability of a sitting Judge for a short or a medium

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1 term. And I only relied on that Rule 79.4, and I have used it  
2 consistently during the proceedings. And that's because I'm  
3 empowered by that Internal Rule to do so.

4 And I thank you for your letter of clarification, Deputy  
5 Director.

6 I think we have some questions, but you probably answered those  
7 questions already.

8 If any identified judges were to be appointed by the President or  
9 by any other body, how soon would they and the necessary support  
10 staff be available to take up their duties and to begin work?

11 Could you respond to that?

12 [10.08.58]

13 MR. ROSANDHAUG:

14 Yes. As stated earlier in bits and pieces, upon an actionable  
15 request we will give - we will give the request the highest  
16 priority. We have already alerted stakeholders, being either  
17 financial or nominating authorities, of this potential need in  
18 the future. So we all stand ready to action this as soon as  
19 possible.

20 There - I cannot provide any timeline as such, because it also  
21 depends on the individuals that we approach on their  
22 availabilities. When it comes to staff, it's a little bit  
23 simpler; the market is favourable to us. And since this is  
24 short-time undertaking, the process is swifter than a regular  
25 job. We assume that the Chamber intends to maintain its current

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1 workforce, so as soon as the verdict is provided, there will be a  
2 phase-in of the current staff, so hence new staff will only be  
3 needed in the interim.

4 Thank you.

5 [10.10.11]

6 MR. PRESIDENT:

7 Thank you.

8 Judge Cartwright, you may proceed.

9 JUDGE CARTWRIGHT:

10 Yes. Thank you, President.

11 Deputy Director, thank you for your response, and I think we all  
12 understand that the Administration is willing and, indeed,  
13 enthusiastic about supporting anything, administratively and  
14 financially, that the Trial Chamber or the President decides in  
15 relation to the second panel.

16 However, our experiences in - just using one example - obtaining  
17 replacement staff, legal officer staff is - shows us that's it's  
18 not a particularly swift process, and it can take anything from  
19 three to six months to get a legal officer in place.

20 So can I assume that this is the swifter process that you're  
21 talking about, something in the vicinity of three to six months  
22 to get legal staff in place, even given the simpler process that  
23 you have described and which I accept?

24 [10.11.33]

25 MR. ROSANDHAUG:



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1 You are now referring to the UN side of the Court. On the  
2 National side, it's faster.

3 Now, on the UN side, it depends on the contract type, the one you  
4 referred to is the regular contract. If we go with interim  
5 contracts, being either consultancies or temporary staff, they  
6 can be much faster.

7 Thank you.

8 JUDGE CARTWRIGHT:

9 Would you be able to tell me what you mean by "much faster",  
10 please?

11 I understand the process to some degree, but the parties don't  
12 necessarily, and certainly the public. So, when you say it can be  
13 much faster, are you talking two weeks, two months, two years?  
14 Please, give us a timeframe.

15 [10.12.20]

16 MR. ROSANDHAUG:

17 As I stated in my first answer, I cannot offer a concrete  
18 timeframe. This depends on the individual in question. But  
19 consultants are recruited locally; I have that authority myself,  
20 I can turn it around overnight.

21 MR. PRESIDENT:

22 Judge Lavergne, you may proceed.

23 JUDGE LAVERGNE:

24 Unless I am mistaken, I understand that the contracts under which  
25 current UN staff are currently employed are on a three-month

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1 rolling basis. You have talked about the appointment process for  
2 those who are here on a temporary duration or those who are here  
3 on a long-term duration.

4 However, I do not clearly grasp why legal officers who would come  
5 and provide assessment – support rather for a second Panel of  
6 Judges would take up to one year. Why would such staff be  
7 recruited on a temporary or interim basis?

8 [10.14.00]

9 Do you foresee or are you counting on the relocation of temporary  
10 staff for a period of three or six months, and after six months  
11 once they have understood the legal framework in which they were  
12 working – and once they have an understanding of the case file of  
13 – that is being tried by a second panel, would the new staff then  
14 be sent home after a period of six months?

15 I'm afraid I don't have a very clear understanding, can you  
16 please clarify?

17 MR. ROSANDHAUG:

18 In danger of becoming a little bit too technical – the current  
19 Chamber has a present workforce. I would assume that the  
20 intention was to keep them moving forward and not allow them to  
21 let go at the verdict of the first phase. So, since that is the  
22 assumption – the intention is to keep the current staff, which  
23 has firm case knowledge – the additional staff will have to be  
24 for an interim period. So that's my starting point. Now, since  
25 they are interim staff – we are not talking about regular posts –

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1 we can then go with alternative employment regimes, which is  
2 faster to recruit.

3 [10.15.38]

4 Now, if the Chamber opts to keep the new staff and let the old  
5 crew go, clearly we have to look for a different employment  
6 regime, which then will maintain the newcomers. But that's not -  
7 that was not my assumption.

8 In generic terms, we will do what is needful for the Chamber to  
9 be supported.

10 Thank you.

11 JUDGE LAVERGNE:

12 Now, therefore, if I'm crystal clear on your proposal, if it's  
13 possible for the Chamber to recruit temporary staff, then in the  
14 future if it were to be determined if there to be cuts, they  
15 would only be offered an uncertain time period?

16 MR. ROSANDHAUG:

17 That depends on the contract type.

18 [10.16.59]

19 MR. PRESIDENT:

20 We now move on.

21 The provisions of the ECCC Law and of the Agreement dealing with  
22 the appointment of reserve judges shall be read in conjunction  
23 with Internal Rule 79.4, which provides as follows:

24 "In case of absence of a sitting judge, the President of the  
25 Chamber may, after consultation with the remaining judges, decide

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1 to adjourn the proceedings or designate a reserve judge to sit in  
2 place of the absent Judge for the remainder of the proceedings in  
3 question. Where, however, the replaced sitting Judge is able to  
4 return, the Chamber may, after taking into consideration all  
5 factors relevant to the case and being satisfied that the  
6 returning Judge has been fully informed of the evolution of the  
7 case during his/her absence, decide to replace the Reserve Judge  
8 by that sitting Judge."

9 [10.18.18]

10 Assuming that new judicial appointments have been finalized by  
11 the Supreme Council of the Magistracy, there are a number of  
12 possibilities or scenarios for the timing of the designation by  
13 the President of replacements for the current sitting Judges. If,  
14 for example, the hearings on the substance have not begun before  
15 the Trial Chamber verdict in Case 002/01 has been delivered, have  
16 you considered that the Trial Chamber Bench for Case 002/02 might  
17 comprise the existing five sitting Judges, plus an additional  
18 five to seven alternate Judges?

19 Can you confirm that your administrative planning could implement  
20 such a decision by the President? That is, by myself.

21 MR. KRANH TONY:

22 Thank you, Mr. President.

23 Once again, we are ready to support any scenarios opted by the  
24 Trial Chamber.

25 For the scenario of what we have in regards to the existing

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1 Reserve Judges, that is easier. However, if you opt for  
2 additional judges, I believe we have the financial and  
3 administrative capability to deal with that. The mechanism  
4 already in existence and in a worst case scenario, a few judges  
5 or some support staff may be required, so we have all the  
6 existing infrastructure to support any option that you may  
7 choose. And it is within our capability to manage it effectively  
8 in terms of finance and administration.

9 [10.20.41]

10 MR. PRESIDENT:

11 Thank you.

12 Deputy Director, do you wish to add to your colleague's comment?

13 MR. ROSANDHAUG:

14 An additional comment, maybe, that Judges are appointed for life  
15 or for the duration of the ECCC. So, as such, the status as a  
16 judge remains throughout the proceedings.

17 It is the President of the different Chambers which has the  
18 prerogative of designating workload. So it relies on the work  
19 plan of the President, who will be installed from the list of  
20 Judges and who will not. So we will have to act on the request.  
21 But as the Acting Director stated, when such request is received,  
22 we will, of course, entertain it.

23 MR. PRESIDENT:

24 Thank you.

25 Judges of the Bench, you have questions to pose?

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1 I will now invite the parties to pose any further questions on  
2 these matters.

3 And first, I'd like to give the floor to the Co-Prosecutors. You  
4 may proceed.

5 [10.22.32]

6 MR. KOUMJIAN:

7 Thank you, Mr. President. Just a few questions for the Office of  
8 Administration.

9 First of all, just to be very clear, in the Trial Chamber's  
10 Agenda, there was a specific question about the number of legal  
11 officer staff that may be required for an additional trial: five  
12 international and five national staff. In your opinion, can the  
13 Office of Administration provide that 10 additional staff to form  
14 a second Trial Chamber if that is ordered? In other words, does  
15 the contingency fund – is that sufficient to provide for this  
16 additional staff?

17 MR. ROSANDHAUG:

18 Okay. I will answer that on behalf of the two of us. The short  
19 answer is yes.

20 [10.23.34]

21 MR. KOUMJIAN:

22 Okay. Now, a follow-up question on that: If the Office of the  
23 Prosecutor has proposed an alternative trial plan that this Trial  
24 Chamber begin the trial in a few months, Case 002/02, in parallel  
25 to writing the judgement, recognizing that that would place an

37

1 additional burden upon the Trial Chamber, could the same  
2 additional staff – five international and five national – if so  
3 requested by the Trial Chamber, be provided in order to give the  
4 Trial Chamber the resources to do both 02/02 and 02/01 in  
5 parallel?

6 MR. ROSANDHAUG:

7 In short, yes, it's the same resources.

8 MR. KOUMJIAN:

9 Recognizing that there are financial implications about when  
10 02/02 starts and the additional staff needed, can you comment  
11 upon the additional cost that would be involved in either a  
12 second Trial Chamber or additional staff for the Trial Chamber  
13 while it – to begin Case 02/02 earlier – some months earlier? Can  
14 you compare that cost to the cost of the entire proceedings  
15 taking additional time because we start later? In other words,  
16 compare the cost of additional staff or judges to beginning the  
17 trial earlier to extending the entire proceedings additional  
18 months.

19 [10.25.20]

20 MR. ROSANDHAUG:

21 It's quite clear to me that the cost of starting earlier is much  
22 less than starting later. The monthly cost of keeping the  
23 machinery going is much higher than the 10 staff requested.

24 MR. KOUMJIAN:

25 Thank you.

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1 That's all our questions, Your Honour.

2 MR. PRESIDENT:

3 Thank you.

4 And Madam Prosecutor, you may proceed.

5 MS. CHEA LEANG:

6 I am grateful upon the commitment and support made by the Acting  
7 Director and the Deputy Director for the establishment of a  
8 second trial panel. If I am right, there is no financial or  
9 administrative impediment for such establishment and I have  
10 several other questions.

11 [10.26.20]

12 The budget which has been adopted for 2014 and 2015, is it only  
13 for the current existing proceeding excluding the proceeding for  
14 002/02?

15 MR. KRANH TONY:

16 We'd like to clarify that the budget for 2014-2015 has not yet  
17 been adopted; it is in the process of being considered by the  
18 donor countries.

19 MS. CHEA LEANG:

20 In the case that the Trial Chamber decides that the Case 002 and  
21 - 02 shall proceed, will the Chamber and other parties have the  
22 capability to request for additional staff for their respective  
23 unit? And, if so, how long?

24 MR. ROSANDHAUG:

25 The current budget is based on the current planning, and



1 currently the second panel is not planned. However, as stated  
2 earlier, we have reserved a contingency in the request of funds  
3 to the principal donor group. Our intention is to dip into that  
4 contingency if there is a decision to establish an additional  
5 panel or recruit additional staff to do the phase 2 of Case 002.  
6 [10.28.11]

7 We stand ready to expedite that request as soon as we receive it.  
8 We have alerted - already alerted the receiver of such a request  
9 so they are aware that this may come. So I believe firmly that we  
10 all stand ready to support the judicial process when it moves  
11 forward.

12 MS. CHEA LEANG:

13 I have another question to you. I've heard that you have the  
14 contingency fund. In the case that the Office of the  
15 Co-Prosecutors require additional human resources, will we be  
16 able to access that contingency fund?

17 MR. ROSANDHAUG:

18 Any request will be looked at and if the substantive offices  
19 justify the request, it will be entertained.

20 MS. CHEA LEANG:

21 My next question is now related to the request by the Trial  
22 Chamber. And in the case that the Trial Chamber decides to  
23 establish the second trial panel, it seems like a new Chamber is  
24 established and all parties have to participate and not just only  
25 the Judges. In that scenario where the second panel is

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1 established, we, as a party to the proceedings and that we have  
2 to participate in the proceedings in 002/02, will we be able to  
3 access that contingency fund too?

4 [10.30.13]

5 MR. ROSANDHAUG:

6 With "we", I don't know if you mean the international side of  
7 your Office or the national side. The contingency fund I refer to  
8 is on the UN side of the budget.

9 MS. CHEA LEANG:

10 What I heard, I - maybe it's my mistake that a contingency fund  
11 is applicable to both national and international sides. But now  
12 it is clear that the Deputy Director just clarifies the  
13 contingency fund is only available for the UN side.

14 And for that reason, I will redirect the question to the Acting  
15 Director. Could you please respond to that question?

16 [10.31.05]

17 MR. KRANH TONY:

18 Yes, I respond to that. What we discussed today is to look at the  
19 future proceedings in the Trial Chamber. And as I insist, we are  
20 flexible and we have the capability to deal with the additional  
21 expenses if so required and if so decided by the Trial Chamber  
22 for the establishment of the second trial panel.

23 In our budget on the national side, we don't have the contingency  
24 fund, but we have certain urgent packages; for example, the  
25 provision of such fund for the consultancy services or provision.

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1 So, if there is any clear and concrete and substantive request by  
2 respective unit, there is no obstacle for us to consider that and  
3 to entertain such a request by using those packages.

4 MS. CHEA LEANG:

5 And, yes, this question is largely to the Acting Director, and we  
6 are all in the support of the trial proceedings in 002 or 02 with  
7 the possible establishment of the second panel, provided that  
8 financial impediment is not met.

9 [10.32.40]

10 If such a panel is established based on the instruction by the  
11 Supreme Court Chamber, to me it seems that this is another tier  
12 of a Chamber which requires judges, the greffier, the prosecutors  
13 and other relevant support staff. For that reason, it is not  
14 possible for a Deputy Director to act alone for such a case. And  
15 for that, it has at least a Deputy Reserve Co-Prosecutor, for  
16 instance, to work on that case so we need additional resources.  
17 And if that is the case, what is the solution by the national  
18 side?

19 MR. KRANH TONY:

20 Once again, we will entertain all reasonable requests and based  
21 on your respective action plans. Of course, here, we refer to the  
22 actual fund. Since 2008 or 2009, we have a problem with our cash  
23 flow, but we have tried our best to provide a salary to all our  
24 staff.

25 And once again, we will fully support your request or any party's

1 request based on the actual action plan in terms of financial and  
2 administrative assistance.

3 And of course we can have further discussion on these technical  
4 issues upon this decision made by the Trial Chamber if they  
5 decide to open a second panel.

6 [10.34.48]

7 MS. CHEA LEANG:

8 Thank you for your response.

9 My next question is also related to the shortfall of funds. If  
10 there is a decision by the Trial Chamber to establish a second  
11 panel after dealing with all the legal jurisdictional issues,  
12 here I refer to about the appointment of the support staff; not  
13 the staff that need - that needed to be appointed by the Royal  
14 Decree. For those support staff, what would be the reasonable  
15 length of delay of such appointment of the support staff? And I  
16 believe this question has been raised by Judge Cartwright, as it  
17 takes quite some time for the appointment of such support staff.  
18 And if we rely and implement the Decision by the Supreme Court  
19 Chamber, we had to expedite the proceedings. And if that is the  
20 case and we require additional support staff, will the national  
21 side of the Office of Administration expedite the process of  
22 recruiting additional staff?

23 [10.36.01]

24 And another point: It is also my concern that when new staff  
25 arrive and work in my Office, it's going to be rather difficult

43

1 because this case is of tremendous volume, even for the case  
2 manager or for other relevant support staff, they have to study  
3 the case files thoroughly. And even if a new deputy prosecutor is  
4 appointed, it will take more than one month for those people to  
5 study the case file.

6 What kind of priorities shall we take in order to save some time?

7 A new judge or a new staff may require more than three months to  
8 study all those case files either in paper or in ZyLAB.

9 So, my question to you is: What is the mechanism for the  
10 recruitment of the support staff and how long will it take?

11 MR. KRANH TONY:

12 We have been working together for five or six years, so staff  
13 recruitment is dependent on the current proceedings by the  
14 personnel section. However, that is for a regular post. So it  
15 requires some time, but it's not going to be excessive. And since  
16 the announcement is for 15 days, then the interview will take  
17 place and it may require some more days. We have to follow those  
18 processes. However, if actually needed, consultants can be  
19 recruited in the blink of an eye. It's easier to do and to pick  
20 them in the current market situation.

21 [10.38.00]

22 MS. CHEA LEANG:

23 Thank you for your response.

24 And as we are a party to the proceedings, we will wait for the  
25 decision by the Trial Chamber whether the Reserve Judges will be

44

1 used for the establishment or new judges will be requested. And  
2 of course, upon such a decision, I will immediately request  
3 assistance from the Office of Administration for the support  
4 staff. And if we have sufficient funding – and without the human  
5 resources, we cannot function.

6 And also the Office of the Co-Prosecutors is unique because we  
7 deal with the case from the Trial Chamber up to the Supreme Court  
8 Chamber. So we deal with all these judicial chambers and, of  
9 course, sometimes we have disagreements, for instance, in Case  
10 003 or 004 cases. We still need the human resources to look into  
11 those cases. So human resources are of great importance for our  
12 Office and without that we cannot function effectively and that  
13 is our grave concern. And, of course, we cannot overuse our  
14 staff. We have, for example, to let them rest on the national  
15 holidays or the weekend, and once again we will abide by any  
16 decision by the Trial Chamber and we will seek your assistance  
17 immediately after that. And we hope that you will assist us  
18 fully.

19 [10.39.52]

20 And I have another request in regards to the appointment, and as  
21 indicated by the President of the Trial Chamber, I am a member of  
22 the Supreme Council of the Magistracy in Cambodia. Judges can  
23 only be appointed with a Royal Decree by the King. All judges and  
24 the prosecutors who are appointed to the ECCC are appointed by  
25 the Royal Decree of the King. Even if just to change the function

45

1 of a Reserve Judge to a sitting Judge, a Royal Decree is  
2 required, and I believe this consistent practice will be applied  
3 for future appointments.

4 And I hope that this is not going to be an obstacle to interfere  
5 with the smooth and expeditious proceeding in this case. Thank  
6 you.

7 MR. PRESIDENT:

8 Thank you, Madam Prosecutor.

9 The time is now appropriate for a short break. We will take a  
10 20-minute break and resume at 11 a.m.

11 Thank you.

12 (Trial Management Meeting recesses from 1041H to 1104H)

13 MR. PRESIDENT:

14 Please be seated. We will now resume our meeting.

15 Judge Cartwright, you may proceed.

16 JUDGE CARTWRIGHT:

17 Yes. Thank you, President.

18 First, thank you to the Prosecutors for their comments and  
19 questions.

20 I have a couple of matters that I would like to explore a little  
21 more with either or both of the Co-Prosecutors.

22 The first relates to the Administration's proposal that the  
23 President, if he considers he has the legal authority to do so,  
24 can appoint judges to a second panel from Reserve Judges.

25 I'd just like your comments, please, on the fact that, amongst

46

1 the five Reserve Judges mentioned, they come of course - one from  
2 the Trial Chamber, from the Supreme Court Chamber, from the  
3 Pre-Trial Chamber, and also from the Office of the  
4 Co-Investigating Judges and the Office of the Prosecutors.

5 What would your reaction be, were your Reserve Judge appointed to  
6 such a Panel? Would you cooperate or would you find it a little  
7 difficult?

8 [11.06.36]

9 MS. CHEA LEANG:

10 Thank you, Judge Cartwright, for your question. I'll allow my  
11 international colleague to respond in terms of the legal  
12 implication. However, I'd like to clarify one thing regarding the  
13 Reserve Judge - that is, Judge Chuon Sun Leng.

14 Chuon Sun Leng is now in a poor health condition and he cannot  
15 function as a judge. He is being treated at home, as he is half  
16 paralyzed at this stage. So this is just an information for the  
17 Chamber.

18 The Office of Administration counted the five Reserve Judges,  
19 including Judge Chuon Sun Leng.

20 And as for the recruitment for a reserve judge to replace him,  
21 the issue will be considered by the Supreme Council of  
22 Magistracy. That is the matter on the national side. And now I'd  
23 like to give the floor to my international colleague.

24 Thank you.

25 [11.07.40]



1 MR. KOUMJIAN:

2 Thank you.

3 Your Honour, as I'm sure you are aware, there is at the moment no  
4 International Reserve Co-Prosecutor. So, practically, this is not  
5 a possibility that the judge appointed be the Reserve  
6 International or National Co-Prosecutor. In any event, of course,  
7 if the prosecutor had had any involvement, there'd obviously be a  
8 conflict of interest. But since there is no one available among  
9 the Co-Prosecutors - Reserve Co-Prosecutors - this is purely an  
10 academic question.

11 JUDGE CARTWRIGHT:

12 And a follow-up to that: Do you have any views on the President's  
13 jurisdiction to appoint what is left of the Reserve Judges that  
14 were listed by the Acting Director and Deputy Director?

15 [11.08.34]

16 MR. KOUMJIAN:

17 Your Honour, I did note in paragraph 74 of the second decision by  
18 the Supreme Court on severance. They state that the Supreme Court  
19 Chamber emphasizes there is no obstacle against the convening of  
20 a second panel within the Trial Chamber where it is necessitated  
21 by the interests of justice. I don't think that completely  
22 answers your question. If the President believes it's necessary  
23 that the Reserve Judges from other Chambers be approved by the  
24 Council of Magistracy, then an order should be made to the  
25 Administration to present those names. And that process will

1 begin.

2 I think it should not, from what we've heard, be a lengthy  
3 process. The process can't begin until we get an order. So, on  
4 this question and many others, I think what we need is to make  
5 decisions and make orders. If the President believes it requires  
6 approval by the Council of Magistracy, let's make that order to  
7 the Administration to present those names to the Supreme Council  
8 of Magistracy. Thank you.

9 [11.09.51]

10 JUDGE CARTWRIGHT:

11 Yes. And I suppose you would acknowledge that it's not a simple  
12 matter for the President to determine. It will take a little time  
13 to make this decision. I hope you acknowledge that. It's not  
14 something he'll be able to announce today, for example. Will you  
15 acknowledge that it will take a little time, Mr. Koumjian?

16 MR. KOUMJIAN:

17 Your Honour, in my view, this is a matter that can be decided  
18 rather expeditiously. The Chamber can decide if - the President  
19 can decide whether he can simply appoint them or needs to present  
20 their names to the Council of Magistracy. If there's a doubt,  
21 let's present the names. I suggest that the President present the  
22 names to the Council of Magistracy.

23 [11.10.44]

24 What we hope to avoid is that, because some decisions are  
25 complicated, that we just simply move that decision to the future

1 without making any progress on actually starting this trial. So,  
2 in general, in answer to all of the questions, our view is: the  
3 sooner decisions are made, a plan is made to begin the trial, the  
4 faster that the Administration can act and the rest of us can act  
5 to get that plan in motion.

6 I recognize the trial can't start tomorrow or in the very near  
7 future. We certainly recognize that. But we think these kinds of  
8 decisions need to be made as soon as possible so that the  
9 planning can take place. So that if we need to bring new judges,  
10 that they know that they're coming and that they make their own  
11 plans to be available for the trial.

12 JUDGE CARTWRIGHT:

13 Just stay, Mr. Koumjian. I have some other questions.

14 So perhaps you see a very expeditious decision by the President,  
15 with reasons to follow in a couple of months' time, as seems to  
16 be the practice in these Chambers. That would suffice for you,  
17 would it?

18 [11.11.57]

19 MR. KOUMJIAN:

20 Yes. What we're concerned about is results, and the reasons may  
21 follow.

22 JUDGE CARTWRIGHT:

23 Now, I want to ask on another topic, if I may - and this was  
24 something that you raised.

25 You seem to be proposing that, rather than a second panel - and,

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1 indeed, you have resiled from that view in your submissions to  
2 the Chamber in advance of this Trial Management Meeting. Clearly,  
3 the prosecutors do not want a second panel to be appointed; they  
4 want this panel to continue with case 2 (sic), and they want it  
5 to be started as soon as possible - yesterday, preferably.  
6 So, in that context, you are saying that one way of achieving  
7 this is for extra legal staff to be appointed urgently. So, you  
8 envisage five, seven legal staff being appointed, and as we've  
9 heard from the Administration, that can be done very quickly;  
10 they have the funds, they say, the process will allow for it.

11 [11.13.11]

12 Have you taken into account the time that the Judges would need  
13 to invest in this process, in - at a time when they are involved  
14 totally on the verdict in the first part of Case 002? Let me just  
15 give you some examples: the time it will take for interviews; the  
16 time it will take to brief and guide new legal staff; the time it  
17 will take to assign priorities to new legal staff. Indeed, even  
18 the time to find space for them to sit. Have you taken into  
19 account that, in your views, that this will be pretty much a walk  
20 in the park for the Judges to achieve while writing the verdict?

21 MR. KOUMJIAN:

22 Your Honour, the figures about five international staff that I  
23 put to the Office of Administration I took from the Chamber's  
24 memorandum about this - the agenda for this meeting. We never  
25 said that the work of Your Honours is not extremely complicated,

51

1 and extremely taxing. It's a very complicated process. What we've  
2 pointed out - and attempt to point out - is that there are many  
3 other examples of judges who are engaged in a second trial while  
4 they're writing a judgment. For example, in the Special Court for  
5 Sierra Leone, the CDF and the RUF trial were being - the  
6 judgement for CDF was being written while the RUF trial was  
7 ongoing.

8 [11.15.04]

9 We also point out that delaying the start of the trial has its  
10 own financial implications. While the Court is not active in  
11 trial, the costs go on. Our goal is to finish the work - this is  
12 a temporary court - to finish the work as expeditiously as  
13 possible, for a number of reasons.

14 One of those reasons, which is quite extraordinary, which Your  
15 Honours have pointed out many times, is the age of the Accused.  
16 First, we're talking about crimes that occurred 35-some years  
17 ago, and the Accused are elderly. This is, in our view, more  
18 reason to advance as expeditiously as reasonably possible the  
19 beginning of Case 02/02, which we view as being the very reason -  
20 the very heart of why this Court was created, and the very reason  
21 why the Court was created.

22 We understand that interviews will take some time, but we also  
23 understand that in a judgement such as this, the last several  
24 months - it's my understanding - there's a lot of fine-tuning of  
25 a judgement. In a case of a tribunal such as this, where

52

1 translations are taking place, time is being taken for

2 translations.

3 [11.16.30]

4 So, yes, it's demanding, but we believe that it is possible for

5 Your Honours, being very, very capable Judges, to balance the two

6 and to go forward on both cases. And not only do we believe it's

7 possible; in our view, this is an obligation of all of us. Case

8 02/02, which contains the remaining charges, all of the security

9 sites, the executions, the genocide, the rapes and forced

10 marriage. This Court was set up to deal with those crimes, and a

11 plan must be made – Your Honours may not accept our plan – but we

12 suggest a plan must be made as soon as possible to how we are

13 going to deal with those charges so that we can go forward.

14 If we simply put off the decision until after the judgement is

15 written and put off the planning, everything will be delayed. The

16 costs will go up. The chances of ever completing the trial will

17 diminish, and the victims will be waiting another year for

18 justice, after waiting 35 years already. So, I certainly

19 understand the very practical demands that this plan – of

20 additional staffing, for example, and the fact that Your Honours

21 would have to do interviews – would involve. We believe, frankly,

22 that it's manageable.

23 [11.18.09]

24 JUDGE CARTWRIGHT:

25 In your submission, which you made public, so the public now

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1 anticipates that the next trial will start by the end of  
2 February, you have – well, today, you have proposed a second  
3 panel of staff to be appointed. I'm assuming that you do not  
4 anticipate that new staff can be available, prepared, and ready  
5 for the end of February. Can I make that assumption, or not? And  
6 then I have some other questions.

7 MR. KOUMJIAN:

8 I believe that we could have staff here by the end of February,  
9 and the end of February is our proposed date. We understand that  
10 there are other parties, and Your Honours will ultimately decide.  
11 Lawyers propose and judges dispose.

12 [11.19.07]

13 But we certainly believe that they can be here. They certainly  
14 can be guided by the staff that you do have – the very capable  
15 staff that's currently there. I understand they're not going to  
16 be familiar with the case at that point. I would point out – just  
17 add one thing from my own experience, having recently come from  
18 other international tribunals – because of the downsizing of so  
19 many tribunals, the Special Court for Sierra Leone terminating,  
20 the ICTY about to close, the ICTR having closed, there's a great  
21 deal of experienced legal officers available at the moment  
22 looking for work. So I do think that it would be – it is a time  
23 where the marketplace is such that new staff could be brought on  
24 very quickly, although I recognize Your Honour is absolutely  
25 correct that they won't be familiar with this very complicated

54

1 case the moment they come on.

2 JUDGE CARTWRIGHT:

3 And because they won't be able to contribute very much, because  
4 they don't know the case - and I fully accept your submission  
5 that there are legal staff - experienced legal staff - available.  
6 But that is one thing. They have to be familiar with this case,  
7 which is - which takes a great deal of time, as you yourself will  
8 appreciate, to read and to understand.

9 [11.20.36]

10 Because of that, our existing legal staff will, in effect, be  
11 doing both jobs. So do you also acknowledge that this will mean -  
12 not just the legal staff, of course - somehow there's a view that  
13 judges do nothing unless they're sitting in court. And your  
14 experience will confirm that that is completely incorrect. Being  
15 in court is the smallest part of a judge's responsibilities. So  
16 do you accept that, if we set up a second panel and start a  
17 second trial while the verdict in the first trial is being  
18 written, inevitably the verdict will be delayed? And do you find  
19 that acceptable?

20 MR. KOUMJIAN:

21 I'm not sure if Your Honour's question is addressing a second  
22 panel of completely new judges, or my-

23 [11.21.35]

24 JUDGE CARTWRIGHT:

25 Just staff. Your-



1 MR. KOUMJIAN:

2 Yes, staff.

3 Our view is that the writing of the judgement would get priority.

4 We have proposed – in our proposal, we have recognized that,

5 because the Chamber will be engaged in the writing, a more

6 flexible – a less demanding schedule for the trial could exist in

7 the beginning – three days a week – or Your Honours may decide

8 one week on, one week off. So we don't seek to delay – we

9 obviously don't seek to delay the judgement in Case 02/01. Our

10 proposal is to start the trial at the end of February, which is

11 four months after the closing argument. And, again, we recognize

12 that at end of the writing of a judgement – while still there's

13 very important work to do – it's – fine-tuning and translation

14 are taking up some of that time.

15 And I'd also point out that one of the things we have to look at

16 is: What is the alternative?

17 The Supreme Court has said, very clearly, that waiting eight

18 months before beginning Case 02/02 is not acceptable. And then we

19 run the risk of the release of the Accused because the trial is

20 not proceeding.

21 [11.23.01]

22 What we've offered is one plan – there may be others – to begin

23 the trial more expeditiously. We certainly think that is

24 preferable to the release of the Accused. And once the trial is

25 started, as Your Honour knows – once the ball is rolling, it's

1 much easier to proceed. If there has to be adjustments in the  
2 schedule, they could be made. But until a plan is made for when  
3 the trial begins, it's hard, I'm sure, for the Office of  
4 Administration to secure staff, to secure funds. It's hard for  
5 the Defence to keep their staff fully on board, to keep the same  
6 people who are knowledgeable.

7 The alternative to waiting until after the judgement raises  
8 another issue about time, and that is the extreme demands on the  
9 parties that will exist at that time for the appeal. Once the  
10 judgement is issued, the parties are going to be under time  
11 deadlines to prepare the appeal. We certainly don't propose - and  
12 I hope Your Honours would not consider - waiting to start 02/02  
13 until after the appeal.

14 [11.24.12]

15 There's also another very fundamental issue of planning that, I  
16 think, needs to be resolved. And that is: Our preference is that  
17 Your Honours - these Judges - Your Honours remain as the Judges,  
18 because you know the case. Because of all of you won't have to  
19 read in to what happened in Case 02/01. But we don't really know  
20 that that's possible, because we don't know if all of you are  
21 available for the next two or three years that would be required  
22 to complete that trial. If you are not available, or do not  
23 anticipate it, I think we need to start planning now for a  
24 Chamber that will be available for two or three years to complete  
25 both the evidence and the writing of the judgement - the trial

57

1 preparation, the evidence, and the writing of the judgment.

2 So, while we recognize that our plan has many barriers, there's

3 many hurdles we have to get over, we suggest we start running,

4 and we deal with those as we come up with them, because the

5 alternative of simply making no decision, making no plan – as we

6 say in my language, Mr. President, "kicking the can down the

7 road". It's an expression that comes from a little boy walking

8 down the road. He kicks a can a few metres, he walks up to it, he

9 kicks it a few more metres, and the can is just slowly moved

10 forward. That's what we're trying to avoid.

11 Whatever plan you decide is feasible, we suggest that we make

12 that plan as soon as possible, so that the trial can begin. If we

13 don't – if we delay – new problems will occur in six months or

14 eight months that we'll have to deal with then.

15 [11.26.05]

16 JUDGE CARTWRIGHT:

17 Two small matters, Mr. Koumjian.

18 I understood you to suggest that the next trial might take two or

19 three years, but that contradicts what your proposal is – that we

20 will explore in more detail later on. And your proposal was that

21 it would take 12 to 18 months – in your publicly disseminated

22 document.

23 MR. KOUMJIAN:

24 Correct. And when I say "two or three years", we recognize that,

25 first, there's – we're not beginning tomorrow, even under our

1 plan - so there's pre-trial - we also recognize there's the  
2 writing of the judgement, and of course we also recognize that  
3 there's always contingencies outside of our control and Your  
4 Honour's control, such as the health of the Accused, that could  
5 delay it. So we can't promise that this trial will be over in 12  
6 to 18 months. We believe the plan that we have put forward  
7 realistically could be done, if there are no disruptions for  
8 things like the health of the Accused, within 12 or 18 months -  
9 and that I'm talking about just the presentation of evidence  
10 would be 12 or 18 months.

11 [11.27.13]

12 JUDGE CARTWRIGHT:

13 Just to sum up, then, the prosecutors suggest that the Trial  
14 Chamber recruit and put in place a second complement of staff;  
15 that we start the trial - the next trial as quickly as possible  
16 while keeping to our own schedule that we have indicated with our  
17 verdict. In other words, all the work comes on to the Trial  
18 Chamber. The pressure comes on to the Trial Chamber to get the  
19 verdict out in the time that we have said, but as well as that,  
20 to start a second trial. Now, even this Trial Management Meeting  
21 delays us in writing the verdict, and this Trial Management  
22 Meeting is directed only to the start of the next trial.  
23 So are you suggesting that we're not moving fast enough?

24 MR. KOUMJIAN:

25 Well, we appreciate this Trial Management Meeting. What - we're

59

1 simply making suggestions for how - what the next step is.

2 [11.28.25]

3 We're saying that now that you've had this meeting, we urge Your  
4 Honours to make decisions - a concrete plan for how to begin Case  
5 02/02. This is in the interest of justice, it's in the interest  
6 of the victims, it's in the interest of the Accused, who have a  
7 right to a speedy trial. And it's in the interest of the donors -  
8 both international and national - that we have a plan so that we  
9 can terminate or finish our work. Because as long as we keep  
10 going, more money is needed by the donors: both national  
11 taxpayers of Cambodia and international taxpayers.

12 So, we recognize that there are many problems and hurdles. We're  
13 going to have to be dealing with, probably at the end of this  
14 year, closing submissions in 3 and 4 and appeal, and we hope,  
15 this case. We recognize that we're going to be engaged in three  
16 or four simultaneous activities. It's not ideal, but we  
17 understand that that's our obligation.

18 MR. PRESIDENT:

19 Judge Lavergne, you may proceed.

20 [11.29.39]

21 JUDGE LAVERGNE:

22 Thank you, Mr. President. I'd like to put a question to both of  
23 the prosecutors.

24 A little later on, in this meeting, we're going to be looking at  
25 questions concerning the start of the trial and the problems that

60

1 that raises, and also the possible foreseeable duration of  
2 hearings. However, right now we're talking about a second Panel  
3 of Judges. And tell me if I am wrong, but my understanding is  
4 that the annex that you appended to your recent submissions in  
5 which you gave timelines for a trial. All of this is based on the  
6 assumption that the Panel of Judges will not change. That this  
7 will be the same set of judges who will continue to hear the  
8 case, in the spirit of continuity with all of the previous  
9 hearings.

10 [11.31.00]

11 So, my question is this: Do you - broadly speaking, do you have  
12 an idea of the impact that the appointment of a new Panel of  
13 Judges would have on the timeline suppositions that you have  
14 given us? It seems to me that if this is the case, we're not  
15 talking about one year or 18 months, but a considerably longer  
16 period of time. You are of course aware of the need for us to  
17 wisely spend the money of the contributors. But the question  
18 arises also of: What would the interest be in starting a new  
19 trial as soon as possible with a new Panel of Judges, if in  
20 actual fact the few months that would have been gained would lead  
21 to a trial that would in fact be longer by several months if not  
22 a lot more, under the other hypothesis.

23 Thank you.

24 MR. KOUMJIAN:

25 Thank you very much. And I appreciate the chance to clarify this.

61

1 Just to be clear, what our proposal is, that we think is critical  
2 to efficiently do in Case 02/02, is that all of the evidence from  
3 02/01, which is from the same Closing Order, the same indictment,  
4 that was tested by the Accused – the Accused and their counsels  
5 cross-examined all of these witnesses – that that evidence be  
6 considered already on the record for Case 02/02.

7 [11.32.55]

8 And you're absolutely right, that's essential to our timeline  
9 because we are assuming that all of this evidence, particularly  
10 the linkage – the positions of the Accused, who they were, the  
11 powers that they had – is already admitted, and we don't have to  
12 recall that evidence and put it on all over again.

13 That is also why we strongly support that the current Trial  
14 Chamber continue and do Case 02/02. The alternative – we  
15 recognize that, you know – if that's not possible. If the current  
16 Trial Chamber can't continue and do this, then a second – new  
17 judges are necessary. However, it will delay – the delay will be,  
18 in our view, that they will have to read in to the evidence from  
19 02/02. And I can give you some approximate figures of how much  
20 reading that is – or at least for the public. I believe that  
21 there are a little over 24,000 pages of transcript. So reading  
22 1,000 pages a week would take 24 weeks, without interruption.

23 [11.34.05]

24 There – also on the record are documents that our estimate is are  
25 206,000 pages in total length.

62

1 So we do think it's much more efficient if the current - if the  
2 Trial Chamber remains the same or as close to the current  
3 composition as possible so that we can proceed with 02/02 not  
4 from the beginning, but recognizing that this is a continuation  
5 of the same trial from the same Closing Order, with the same  
6 counsel and Accused, that we pick up, and in 02/02 we deal with  
7 the implementation of those policies that results in all of the  
8 crimes charged.

9 I hope I've answered your question.

10 MR. PRESIDENT:

11 Thank you, International Co-Prosecutor.

12 I would like to have just a few questions for you.

13 Listening to your response, you said that the problem of not able  
14 to appoint a second Panel of Judges from selecting the reserve  
15 judges from the OCP-- and you don't have the reserve  
16 International Co-Prosecutor. And the reserve Co-Prosecutor is  
17 also sick; he could not perform the function.

18 [11.35.44]

19 And another point is that there might be a conflict of interest.

20 And the Supreme Court Chamber indicated and pointed to me that I  
21 could invite or select the national and international reserve  
22 judges at the ECCC to form a second Panel of Judges.

23 And my question for you is that: If I call the reserve national  
24 judges and international judges from the Co-Investigating Judges'  
25 Office and from the Supreme Court Chamber, that they - that those



63

1    reserve judges participated in the investigation or in the  
2    process of hearing, and some of them deal with the decision at  
3    the Pre-Trial Chamber and also the Trial Chamber, etc.; the  
4    question is that, if I invite them to sit in the second Panel of  
5    Judges, in accordance with the recommendation of the Supreme  
6    Court Chamber at the ECCC, will there be any problem or any  
7    conflict of interest, especially as regards to the International  
8    Co-Prosecutor – the Reserve Co-Prosecutor?

9    [11.37.48]

10   MS. CHEA LEANG:

11   In fact, conflict of interest and – as regards the International  
12   Co-Prosecutor, I'm not quite sure at the international level. But  
13   at the national level, even he or she who serves as a prosecutor  
14   at the current time – if the Trial Chamber invites him to sit in  
15   a second panel, there will be no problem, because it is possible  
16   that, under our law – which authorizes that appointment. However,  
17   my statement or my suggestion that our Reserve Co-Prosecutor is  
18   now sick – the Trial Chamber may request any reserve judges or  
19   reserve Co-Prosecutor to sit in the second panel. But we need to  
20   look into the conflict of interest of those people. If a second  
21   panel is constituted or established, the United Nations may not  
22   need to send the Reserve Co-Prosecutor. The U.N. may designate  
23   someone as a judge for the second panel. But we need to look at  
24   the one who has no conflict of interest in the second panel.

25   [11.39.57]

64

1 But if you select to have a person who is not knowledgeable in  
2 the case, it might be – cause some delay to the expeditious  
3 function. Because we need Case 002/02 to be – move forward as  
4 quickly as possible, as my colleagues have just addressed  
5 earlier.

6 To me, I think that point number 1 is that the Trial Chamber – it  
7 is my proposal that the Trial Chamber issue a decision for an  
8 initial step, whether to establish the second panel of the  
9 judges. If so, the Administration should proceed with the  
10 process. And we need to check whether we can select from the  
11 existing reserve judges for that purpose. But we need also to  
12 look at other difficulties at other Chambers in which those  
13 reserve judges are functioning their duty.

14 Can we appoint those judges? Because it may affect their  
15 performance at those Chambers. For example, at the Supreme Court  
16 Chamber, they need to deliberate and make decisions – if we  
17 assign one reserve judge from that Chamber, it may affect their  
18 day-to-day performance.

19 [11.41.51]

20 Talking about the OCP, even though the Reserve Co-Prosecutors are  
21 not involved very closely in the case – but for other Chambers,  
22 it might be affect the day-to-day performance, because they are  
23 engaged in doing their jobs. So the question is that: Do we need  
24 to create a second Panel of Judges? And based on our submission  
25 earlier and on the 10th of December 2013, we proposed to the

65

1 Trial Chamber as regards the planning for the TC to set the  
2 timeframe. In our proposal, we keep the Trial Chamber informed of  
3 our timeframe. And other parties may introduce their timeframe.  
4 So my first proposal is that: Will you decide to have a second  
5 panel? But after our TMM today, based on the Administration – and  
6 we heard that – they said there will be no problem for the  
7 establishment of a second panel. And we are talking about five  
8 national and five international judges. But I feel not  
9 comfortable with this, because unless we prove that we need it  
10 very much for the purpose – and then we can have our proposal  
11 entertained. So on the International Co-Prosecutor – if my  
12 colleagues would like to add something, he could do so.  
13 [11.44.12]

14 MR. PRESIDENT:

15 My question for you is that – and I don't mean that the  
16 International Co-Prosecutor could sit in the second panel because  
17 I heard from both of you that you don't have reserve  
18 Co-Prosecutors and the Reserve National Co-Prosecutor is sick.  
19 But under our domestic legal system, there will be a  
20 contradiction. And you cannot do that because if the  
21 Co-Investigating Judges work on the case, he or she could not be  
22 sitting in a Trial Chamber to try the case. And also the  
23 Investigative Chambers who involve – the members who are involved  
24 in those Chambers could not participate in any trial of the case,  
25 which has been under those Chambers. For example, the Reserve

66

1 Judges at the Supreme Court Chamber who participated in  
2 deliberation or discussion on the case or the appeal against any  
3 decision by the Trial Chamber. So we have a conflict of interest,  
4 and also incompatibility.

5 [11.45.52]

6 So, in this situation, is it possible that I, as the President of  
7 the Trial Chamber – to appoint him or her to be a sitting judge  
8 in a second Panel of Judges? So I would like to hear from you on  
9 this matter, as a legal point of view, as the urgent point, so  
10 that we can find any possibility that will allow me, as the  
11 President of the Trial Chamber – based on the legal problem –  
12 administrative, financial problem – do I have the authority or  
13 capacity to form or to create a second Panel of Judges?

14 Personally, I could not say that I can do that. That's why I need  
15 to hear from you, from the Office of Administration, and the  
16 other parties. So I need to hear from every one of you so that I  
17 can consider and I can make a proposal or a request to the  
18 Supreme Council of Magistracy for our purpose of creating the  
19 second Panel of Judges, including the appointment of any staff to  
20 work for the second Panel of Judges. This is our possibility or  
21 our feasibility discussion.

22 So, the International Co-Prosecutor, could you share any of your  
23 comments on this issue?

24 Thank you.

25 [11.47.52]

1 MS. CHEA LEANG:

2 Before I give him the floor - he will discuss on the conflict of  
3 interest - my views on this, especially in this tribunal, the  
4 Reserve Co-Prosecutor had the right to give consultation, but not  
5 to vote on any decision. And it is the same for the reserve judge  
6 at the Supreme Court Chamber. And then we'll look at the reserve  
7 judge at the - Co-Investigating Judge. I don't think he  
8 participated in the investigation and the decision of the OCIJ.  
9 So it will depend on your consideration - whether to select the  
10 one from the OCIJ, or so - OCP. And we need to look further into  
11 their involvement into other processes, and then you can make the  
12 decision.

13 MR. PRESIDENT:

14 I would like to inform you again that the Supreme Court Chamber  
15 gives me the power to select and to appoint the judges for the  
16 second panel, based on the current existing fund as we have now.

17 [11.49.36]

18 MR. KOUMJIAN:

19 Mr. President, trying to address your issue about whether Judges  
20 from other Trial Chambers would be qualified to sit on a second  
21 Trial Chamber panel, I think the correct terminology - I used the  
22 word "conflict of interest", but I think the correct test under  
23 international law is whether a reasonable person would believe  
24 that there's an appearance of bias on behalf of the Judge that  
25 would disqualify him from sitting on the Trial.

68

1 And, thinking about what you've just said, I do think that there  
2 is a difference between the Office of Co-Investigating Judges and  
3 the other Trial Chambers. The mere fact that a judge has made a  
4 decision on a case – because that is the role of judges, to make  
5 decisions – does not mean, in my view – and I think under the  
6 case law it's quite clear – mean that there's an appearance of  
7 bias. So the fact that the Supreme Court, for example, has ruled  
8 on various interlocutory appeals would not mean that a judge who  
9 participated in those decisions would be disqualified. It  
10 wouldn't show a bias any more than the fact that Your Honours, of  
11 course, during a trial make all kinds of decisions. That doesn't  
12 mean that you can't participate in further decisions. In every  
13 trial, for example, in international courts, at the end of the  
14 prosecution case, the defence has the right to challenge the case  
15 – whether it should proceed, whether the evidence is sufficient,  
16 that a reasonable trier of fact could find the charges true  
17 beyond a reasonable doubt – the fact that judges deny that motion  
18 doesn't mean they're disqualified from hearing the rest of the  
19 case.

20 [11.51.29]

21 So I think the Pre-Trial Chamber and the Supreme Court – any  
22 decisions they made didn't go to the ultimate issues on this  
23 case, which is whether or not the evidence shows beyond a  
24 reasonable doubt the guilt of the accused for the particular  
25 charges. However, I do think there's a distinction if a judge

69

1 participated in the Office of Co-Investigating Judges in the  
2 Closing Order. Because the Closing Order is an indictment. In  
3 that case, the Judge would be ruling on whether his own  
4 indictment was proven, and I do see that there would be – some  
5 reasonable observers would question whether there's an appearance  
6 of bias on that. So I don't think there's an appearance of bias  
7 for the Supreme Court or Pre-Trial Chamber. There may be for a  
8 judge who participated in writing the Closing Order.

9 [11.52.24]

10 MR. PRESIDENT:

11 Thank you very much for your comments.

12 Our concern here is that, if the President looked and I found  
13 that it is impossible for me to do so – and before doing – before  
14 sending the proposal to the Administration and to the Supreme  
15 Council of Magistracy to increase the judges – it seems to me  
16 that it is contrary to Article 3 of the Agreement between the UN  
17 and the Royal Government of Cambodia, which indicates clearly  
18 that a proposal for the appointment by the UN of seven judges,  
19 two as reserve judges for the Trial Chamber, and nine Judges for  
20 the Supreme Court Chamber. And the number here seems to me – that  
21 is very specific. And the Supreme Council of Magistracy  
22 deliberates and makes the decision. And if we need more judges,  
23 we need to have new people other than those in the previous list.

24 [11.54.03]

25 And do we need to have an amendment to the Agreement between the

70

1 UN and the Government, especially to identify the capacity or any  
2 jurisdiction of the judge who could attend in the second panel?  
3 And also we look into the law on the establishment of the ECCC.  
4 So we have a fairly – discussion on this and we look further  
5 possibility to move forward with this regard.  
6 And next I would like to give an opportunity to the Lead  
7 Co-Lawyers to ask question to the Acting Director and Deputy  
8 Director, if you have any further question to ask them. If you  
9 have some question, you may do so. Thank you.

10 MR. PICH ANG:

11 Good morning, Mr. President, Your Honours, ladies and gentlemen.  
12 I have a few questions to ask in relation to the topic discussed  
13 this morning.

14 There were some clarifications, but we are still not clear,  
15 especially the timeframe for the appointment of the new Judges  
16 for the ECCC. And, as for the National Judges, how long could it  
17 take to make the appointment? And also, how long it will take to  
18 appoint the International Judges? So, can you indicate in which  
19 month of next year? Is it possible to say that in March or April  
20 of next year?

21 [11.56.26]

22 MR. KRANH TONY:

23 As I mention earlier, in practice we need to send a proposal to  
24 the Supreme Council of Magistracy, so the average is – was that  
25 less than one month. So, in practice – it is our civil practice;



71

1 it is not more than one month to complete the process.

2 MR. PRESIDENT:

3 You may proceed to pose more questions if you have further.

4 MR. PICH ANG:

5 I have to refer my question to also the Deputy Director.

6 MR. PRESIDENT:

7 Deputy Director, do you have any comment or response to the Lead  
8 Co-Lawyer who asked you just now?

9 MR. ROSANDHAUG:

10 No. This question on the Supreme Council of Magistracy falls  
11 within the domain of the National Authority, so I trust the  
12 statement made by my Director.

13 [11.58.02]

14 MR. PICH ANG:

15 Maybe my question is not clear for you, to the international -  
16 especially to the Deputy Director.

17 In order for the appointment of the International Judges to sit  
18 for the second panel - and I would like to know how long it will  
19 take for that appointment, because it related to the appointment  
20 by the Secretary General of the UN. And could you give me an  
21 estimate of timeframe from your commencement to send request,  
22 proposal, and how long that you could have a chair to sit for the  
23 panel?

24 Thank you.

25 MR. ROSANDHAUG:

72

1 Thank you.

2 On the terminology, the appointment is done by the Council –  
3 Supreme Council of Magistracy, like the National Judges. What the  
4 Secretary General of the UN is doing is to nominate candidates.

5 As I have said earlier, there is an existing list of candidates  
6 with the nominating authority, and upon a request to do so, they  
7 will then solicit availability from these candidates and convey  
8 that to the Supreme Council of Magistracy. So that's the process.

9 [11.59.30]

10 Timelines. What I have said is that this will be given highest  
11 priority. The Office of Legal Affairs and the Executive Office of  
12 the Secretary General are both aware of the process, as we speak,  
13 and they have said that they will give it the highest priority. I  
14 cannot commit to a certain number of days because that's very  
15 relative.

16 Thank you.

17 MR. PICH ANG:

18 Thank you very much for your response.

19 Mr. President, the Lead Co-Lawyers have no more questions to ask  
20 to the gentlemen. Thank you.

21 MR. PRESIDENT:

22 It is now time for a lunch break. The Trial Management Meeting  
23 adjourns for this morning, and we will resume this afternoon, at  
24 1.30. So, please, all parties and the public attend this  
25 afternoon as stated.

1 Thank you.

2 (Trial Management Meeting recesses from 1200H to 1331H)

3 MR. PRESIDENT:

4 Please be seated.

5 Let us resume our meeting. We haven't yet finished the first item  
6 this morning and we will continue. And I will give the floor to  
7 the defence teams to put questions to the Office of  
8 Administration representatives.

9 [13.32.49]

10 However, in order to clarify the issue further, I'd like to make  
11 some remarks.

12 Based on the existing resources, can I, as the President of the  
13 Chamber, invite national and international judges from all the  
14 Chambers who have already been appointed by the Magistracy and  
15 based on Article 536 of the Code of Criminal Procedure regarding  
16 the disqualification request, it is only applicable to the  
17 sitting judges. When a judge or assistant to a party to a  
18 proceeding or if a judge takes part in a case or participates in  
19 a decision-making in the court of the first instance or in the  
20 appeal process or expressed his or her opinion or given legal  
21 advice, then such a judge is not allowed.

22 So I would like to draw your attention to this particular issue  
23 regarding the existing resources that we have at the ECCC, and  
24 whether they can be assigned to the second panel. I mentioned the  
25 issue this morning and I'd like to add that to what has already

1    been raised.

2    [13.34.57]

3    In reference to the Agreement between the United Nations and the  
4    Royal Government of Cambodia, in Article 3, the compositions of  
5    the trial judges comprise three trial judges on the national side  
6    and two international judges. For the Supreme Court Chamber,  
7    there are four National Judges and three International Judges.

8    In paragraph 5, the Secretary General of the United Nations will  
9    forward the list of the nominees – at least seven nominees – and  
10   from that list the Supreme Council of the Magistracy will appoint  
11   five judges in the two Chambers. The Supreme Council of the  
12   Magistracy will draw the list – will draw the names from the list  
13   forwarded by the Secretary General.

14   And, of course, we have two reserved judges at each respective  
15   Chamber, one national and one international.

16   [13.36.19]

17   And I'd like to get your further opinion on this issue, as we  
18   already have the regulations and the process of sending the list  
19   to the Supreme Council of Magistracy by the Secretary General.

20   And for the first option – or if this, due to the  
21   incompatibilities or the conflict of interest, then we should  
22   look at the second option – that is, to select new judges to form  
23   the second panel. And for that, will there be any legal  
24   implications in relation to all the rules and regulations that I  
25   have just read? So, please, consider that.

75

1 And I'd like now to give the floor to Nuon Chea's defence if  
2 there are questions to be put to the Acting Director and Deputy  
3 Director of the Office of Administration.  
4 You may take the floor.

5 MR. KOPPE:

6 Thank you, Mr. President. Good afternoon, Your Honours. Good  
7 afternoon, Counsel.

8 Mr. President, we have two questions which we would like to pose  
9 to the Acting Director and Deputy Director. It's two questions  
10 relating to two concerns that the Defence has.

11 [13.37.55]

12 The first question is the following: We have had indications - or  
13 it was told to us, rather, by the Chief of the Defence Support  
14 Section - that in the event a second trial would begin after the  
15 judgement, and therefore we would be not having any trial in the  
16 first six or seven months of next year, that such an event would  
17 have adverse implications or negative implications on the budget  
18 of the Defence.

19 Now, we have been told that this is just a beginning of a  
20 discussion; no decision has been made yet.

21 Nevertheless, we would like to ask the question to both directors  
22 that in the event the Trial Chamber would decide a second trial  
23 would start after judgement, whether there's a substantial risk  
24 for having negative implications on the budge of our defence?

25 That would be the first question.

1 My second question would be related to the period in time  
2 probably somewhere in the summer or in the fall of next year  
3 where we are both hearing evidence in the second trial, and at  
4 the same time preparing arguments for a possible appeal.

5 [13.39.37]

6 As I think everybody in this courtroom will appreciate, there  
7 seems to be - at least for the Defence - an almost impossible  
8 task to successfully do in the light of our present facilities.  
9 My question would be - I heard you speak earlier about a  
10 contingency plan - contingency money in respect of the  
11 international side. It is my understanding that the Defence is -  
12 also the national lawyer is paid from the international side -  
13 whether it would be in theory possible, if necessary, to also  
14 apply for extra funds specifically for this period in time where  
15 two parallel projects - things are happening at the same time -  
16 should apply for money coming from this contingency plan?  
17 So these are the two issues in question form I would like to  
18 raise.

19 MR. ROSANDHAUG:

20 Thank you.

21 Since this is correctly stipulated that the whole Defence  
22 portfolio is on the cost of the United Nations, I will answer  
23 both questions.

24 So, there is no distinction between national staff and  
25 international staff, it's international funding.

77

1 [13.41.09]

2 For the first question, there has to be made a distinction  
3 between what's in the budget and what is the work plan. So, there  
4 is an assumption that there will be no additional trial in  
5 parallel with the verdict writing. So then, the head of DSS will  
6 have to address work plans, as is the normal standard procedure  
7 for all defence teams at all point in time. But in the budget,  
8 it's no change. The budget caters for full teams - the two teams  
9 in full - throughout the year. So, on the money side, they're  
10 okay, but in practice, this has to be justified.

11 For the second question - when we get to a double track, if the  
12 contingency is available also to Defence? Yes. As answered to  
13 OCP, everyone who will then have an additional cost will request  
14 so, and the requests will be addressed.

15 Thank you.

16 MR. PRESIDENT:

17 Thank you.

18 I would like now to give the floor to Khieu Samphan defence to  
19 pose your questions.

20 Counsel for Nuon Chea, Son Arun, you may proceed.

21 [13.42.55]

22 MR. SON ARUN:

23 Thank you, Mr. President; and good afternoon, Your Honours and  
24 everyone.

25 I also have two questions to put to the Acting Director and

78

1 Deputy Director.

2 My first question is the following: I am unclear on this point  
3 and I'd like it to be clarified by the Office of Administration  
4 so that I and other people are clear on this issue.

5 Through the Chief of the DSS, it is understood that by 2013 some  
6 DSS staff will be reduced, including some legal staff. If that is  
7 to apply, will it take effect by the end of this year or whether  
8 all staff will be maintained due to the proceedings in 002/02  
9 that will be - commence soon, and that the staff will utilize all  
10 their resources to prepare for the possible appeal to the Supreme  
11 Court Chamber as well as to prepare themselves for the  
12 proceedings in 002/02? This is my first question.

13 And I'd like to put a second question to you.

14 [13.45.00]

15 Through your responses this morning to the Chamber, both the  
16 Acting Director and the Deputy Director said the funding is  
17 flexible based on the needs of individual or respective units  
18 within the ECCC. In real situation, salaries for national staff  
19 had been delayed for three or four months, and that is part of  
20 the reason that the proceedings cannot be expeditious. And when  
21 you refer to this flexible fund, how real is it? How flexible is  
22 it? As I understood, the international side has its contingency  
23 funding, and I'd like to know more whether such a situation also  
24 applicable to the national side?

25 MR. KRANH TONY:



1 Thank you, Counsel, for your question.

2 As your first question shall be answered by my colleague, Knut  
3 Rosandhaug, as DSS is funded by the international side. I'd like  
4 to respond to your second question.

5 Once again, what I stated this morning is that the proposed  
6 funding will be adopted by the principal donors soon. They are  
7 now reviewing our proposal, and we made the presentation to them  
8 last month.

9 [13.47.11]

10 When I refer to the flexibility of funding, I mean that on paper,  
11 budget is based on what we foresee in the forthcoming year - that  
12 is, 2014 and 2015. Flexibility also refers to the technicality of  
13 making funding proposal as it takes the view of all the action  
14 plans and activities. And we also have other emergency packages,  
15 for example, the fund package for the consultancy service. And  
16 that's what I refer to as the flexibility of funding.

17 We also have a lack of cash flow, and when the funding is  
18 approved, then action plans can be put into action. But the lack  
19 of cash flow is due to the lack of funding from the principal  
20 donors. And for that, there is a delay in issuing the salary and  
21 that affects the national side since 2008. And if we think that  
22 we shall quit our work due to the delay of the salary, then we  
23 would not be here today, because that issue actually started in  
24 2008. But overall, once the funding proposal is adopted, then of  
25 course there will be a cash flow, although there might be some

80

1 delay. And that is the reality at ECCC.

2 Thank you.

3 [13.49.22]

4 MR. ROSANDHAUG:

5 Maybe on the first question, the DSS, as I said, is fully funded  
6 by the United Nations, and there's never been any delay in  
7 payment of salaries by the United Nations. So, in that sense,  
8 your section is not affected by the past experience on the  
9 national side.

10 I think there is an overlap between your question and the  
11 previous question.

12 The assumption is the ongoing debate within DSS is work plan  
13 driven. So, if there is no work, there has to be a reduction on  
14 the support staff. There is no question about the co-lawyers.  
15 But you said that the second trial will start soon. If that is  
16 the case, there will be no change.

17 And then there is a question later on, when the appeal process  
18 starts, if there's an additional requirement, but that we will  
19 address when we get there.

20 Thank you.

21 MR. PRESIDENT:

22 Now, Khieu Samphan's defence, you may proceed.

23 [13.50.42]

24 MS. GUISSÉ:

25 Thank you very much, Mr. President. Good afternoon, first and

81

1    foremost, to Your Honours and to all parties.

2    The crux of my comments will be based on the law. We are a  
3    tribunal here; therefore, there are legal issues that must be  
4    discussed. And as my colleague has just talked about the DSS and  
5    some of our working restrictions, which is – if I'm to understand  
6    correctly – there are no restrictions on our budget because it  
7    has been approved. I believe that the Administration's message  
8    remains rather unclear for me.

9    The substance has been approved. However, we are in a position to  
10   have to justify our work plan. Sir, is that indeed the case?

11   [13.51.40]

12   MR. ROSANDHAUG:

13   I assume I'm the "sir".

14   In principle, yes, but there is no change in practice. This is  
15   standard operating procedure since the outset of the Court. Work  
16   plans have to be provided to the Chief of DSS. So we are not  
17   changing any practice.

18   MS. GUISSÉ:

19   The practice does not change; however, based on what we were told  
20   – we were told that there was a reduction in budget before we  
21   were even able to talk about the work that we were to carry out.  
22   Perhaps to echo the words of Judge Cartwright, our work will  
23   manifest during the evidentiary hearings, during the preparation  
24   of the appeals and during the preparation of Case 002/02, because  
25   the work doesn't commence when the trial begins, there is an

1 upstream process and therefore the work has to begin now. And  
2 this must be known publicly if we are to hold future discussions  
3 and understand that the work of the Defence, like that of all  
4 parties and teams and Chambers, does not restrict itself to  
5 simply showing up for Court hearings.

6 [13.53.22]

7 And my second point – as I said that I would be speaking on the  
8 law – you stated pursuant to your memo – and this question is for  
9 the Deputy Director – in the memo that you sent to the Supreme  
10 Court asking for clarification on the legal basis for convening a  
11 second Panel of Judges, that you did not receive an answer. And  
12 given the lack of a response from the Supreme Court – since this  
13 morning we've been discussing extensively about the establishment  
14 of a second panel – just based on my own interpretation of the  
15 Law, I have trouble understanding how the President will actually  
16 be able to exercise the discretion to strike a second panel  
17 unless he were to call upon the reserve judges. Can it be done on  
18 an ad-hoc basis, on a case-by-case basis based on Article 3 of  
19 the Agreement?

20 It is stipulated that the alternate judges or the reserve judges  
21 may temporarily replace a judge to sit on a trial panel. But in  
22 the scenario that we do establish a second panel, which is the  
23 heart of today's discussion, we're not seeking to replace a judge  
24 but replace – or rather call an entire new Panel of Judges.  
25 Therefore my question is: Legally speaking, are there clear and

1 unequivocal legal foundations?

2 [13.55.18]

3 If you asked to the Supreme Court to answer the question, I

4 suppose that you yourself were rather unsure. But from a legal

5 standpoint, since the United Nations in New York has to take the

6 decision, well, have they indicated whether the Supreme Court is

7 to issue a decision or is it the President of this Trial Chamber

8 that must propose amendments to the current legal text, which as

9 I understand it, does not provide for the possibility to strike a

10 new panel?

11 Are you anticipating a response from the Supreme Court as you had

12 originally asked? Do you expect to be receiving instructions from

13 New York? Is this a decision to be made exclusively by the

14 President of the Trial Chamber since this is not clearly

15 stipulated in the Agreement?

16 Therefore, those are my questions pertaining to the legal aspect

17 of this matter.

18 MR. ROSANDHAUG:

19 Thank you.

20 On the first question – basically summarized, when do the work

21 commence? – that's fully within the autonomy of the Chief DSS.

22 Work plan is approved by him, not me. This is – this is

23 traditional work in DSS; it has been like this since the outset

24 of the Court. It is up to the defence teams to stipulate when and

25 how much resources they need and get that endorsed by the Chief

1 DSS.

2 [13.56.52]

3 What I said about the budget is that it takes into account a full  
4 team throughout next year. Now, is there a need for that? That is  
5 up to DSS.

6 Second question, what the memo represents is a viewpoint from my  
7 Office. In addition, I have asked at that time in the process,  
8 for clarification, if the Supreme Court intended to request an  
9 amendment of the Agreement. If so, I needed to alert the parties  
10 to the Agreement. So, that's the sole intention of that first  
11 memo.

12 The second memo emphasizes that we have looked into the  
13 administrative and logistical implications of a potential second  
14 panel and we concluded that – the two of us – that we are ready  
15 and able to support such a decision or a continuation of the  
16 present Chamber. So, that's basically, you know, the summary of  
17 the two memos.

18 I do not have – and neither do United Nations – have a viewpoint  
19 on the way forward. That is the sole responsibility of the  
20 judicial authorities of this Court.

21 Thank you.

22 [13.58.28]

23 MR. PRESIDENT:

24 Judge Lavergne, you may proceed.

25 JUDGE LAVERGNE:

1 Thank you, Mr. President.

2 This question is addressed more to counsel Guissé rather than the  
3 members of the Administration.

4 I understand that there are a certain number of legal issues  
5 relating to the appointment of a new Panel of Judges.

6 Could we envisage the appointments of judges who would comprise a  
7 second panel? As this would have an impact on the commencement of  
8 the hearings, as there could be requests for the review of  
9 whether or not the Judges have been legally appointed could have  
10 an impact on the unfolding of the proceedings.

11 [13.59.43]

12 MS. GUISSÉ:

13 Since this morning, everybody understands that we have to move  
14 forward. The Co-Prosecutor is suggesting that we can start in  
15 February, and the Defence is ready, and the Trial Chamber has  
16 given all parties a chance to speak, and there's general  
17 consensus to move expeditiously. And during a previous TMM, there  
18 is agreement that we must move swiftly, but we cannot make any  
19 mistakes.

20 Yes, we must move quickly, but we must know what direction we're  
21 heading in. And as I want to know where I'm going, when a  
22 question is being put on the possible establishment of a second  
23 panel, I am not the one responsible for the possible appointment  
24 of the judges, but I am a lawyer and I have to rely on the law.  
25 And before I can even contest or object to what it says, I have

86

1 to understand what the state of affairs is. If I am to take for  
2 granted the explanations that we're being given, then I cannot  
3 make any objections, but I am seeking to delve further into these  
4 legal aspects.

5 If we are to be found before a new panel – you've talked about  
6 appointing reserve judges, you've talked about appointing judges  
7 who may have served within the OCIJ, or even members of the OCP –  
8 you are fully aware that I am a defence lawyer and I'm here to  
9 defend my client's rights. And if there's even a possibility for  
10 someone from the OCIJ or from the OCP to sit on the bench of  
11 judges to try my clients, well I cannot be worthy of the name of  
12 a defence lawyer.

13 [14.01.50]

14 I'm looking to understand what the possibilities are for  
15 appointing a second panel, but firstly, I wish to determine  
16 exactly what the legal foundations are.

17 You've understood that throughout the proceedings we have  
18 launched objections and grievances and we have challenged  
19 decisions with which we do not agree. But we are here to make law  
20 and we have to look at the Constitution and we have to understand  
21 what the agreements are and what laws apply if a second panel  
22 were to be convened. And if I look at other international  
23 criminal tribunals, well, I think it's entirely consistent with  
24 what is foreseen in Article 3 where there is a possibility to  
25 strike a new chamber and designation. However, I've been given no



1 legal guarantees or guarantees that my client's rights will be  
2 protected. Now, I understand that on the Co-Prosecutors' side  
3 they want to have all of the evidence from Case 001 admitted, but  
4 does that also mean that all of the decisions from the first  
5 trial will also stand and be considered facts, or will they still  
6 be subject to appeal before the Supreme Court if the new judges  
7 are to count on the principle that all evidence is admitted?

8 [14.03.28]

9 Well, when you will have issued your judgement, will you continue  
10 with the second trial and the newly appointed judges and the new  
11 support staff will have their duties terminated?

12 As a defence lawyer, I'm perfectly entitled to ask such  
13 questions, what is going to happen if there is no definitive  
14 decision? This new Chamber comprised of new judges, we're talking  
15 about a second panel, but really it is a second Trial Chamber,  
16 let's call a spade a spade, if it's new it's an entirely new  
17 entity, it is a new Chamber and if there are to be new judges who  
18 will adjudicate, obviously we will undertake the necessary – and  
19 this is not a matter of wasting time, we are just simply making  
20 sure that my client is given a completely fair trial.

21 What are the legal bases for the establishment of a second panel?

22 I think this has been discussed extensively but there's been no  
23 reference to the law. We understand the position of the  
24 Administration, but is it indeed the body of that may issue a  
25 legal stance or is there a higher authority? And perhaps the

1 other parties could ask the same question.

2 [14.05.06]

3 And, again, I just want to understand the crux, the essence of  
4 the matter. Just on what basis, on what legal basis - in text, in  
5 law - can such a panel be established? And if it is created, what  
6 are its powers, what are its restrictions? And what is the status  
7 of the decisions that will have been, or have been, issued by  
8 your honourable Chamber? What about the severance of several  
9 smaller trials, the types of witnesses we can call, the types of  
10 questions we can ask them? Those are matters that have to be  
11 resolved before we can start a second trial. It makes up the  
12 legal basis.

13 And, thirdly, from the point we start, because the Co-Prosecutor  
14 seemed to want to convince us that we can start in February and  
15 they are quite eager about this. Well, on what basis can we start  
16 02/02? Well, according to the Co-Prosecutors - or, rather, who is  
17 going to decide on this matter? Is it you or is it going to be a  
18 new panel?

19 [14.06.21]

20 And that this is unclear, and we want to make sure that it is  
21 crystal clear. We're not seeking to cause any delays and this has  
22 to be decided upon before a second panel is convened and before a  
23 second trial begins. If this is just for cosmetics and to please  
24 the donors and show the public that we are moving swiftly, well,  
25 if there's no substance behind that then the exercise is

1 completely futile. I am a defence lawyer. I know that I may not  
2 be everyone's best friend but I am here to practice law; that is  
3 my job.

4 What are points of reference? Our client is the person who is  
5 going to be judged. I know that there are some administrative  
6 contingencies, but – third point, I'm very happy to hear that  
7 it's DSS that's going to be taking the decisions because our  
8 debates and discussions will be facilitated in the coming days  
9 but I, nevertheless, need to remind you that even to prepare  
10 preliminary hearings and to decide upon the scope, that's the  
11 work of everybody, all the parties.

12 [14.07.48]

13 Now, I cannot speak on everybody's behalf, on behalf of the civil  
14 parties or the Co-Prosecutors, but when we are told that we're  
15 going to cut down – and we have been told that there are going to  
16 be cuts – and people who have to organize their daily lives are  
17 wondering how they are going to be employed in the future because  
18 if you're not sure that you've got a job, then obviously you seek  
19 one elsewhere. And that has an effect on the way that we are able  
20 to prepare our positions.

21 If you have people who are impregnated with the case and who then  
22 go elsewhere because they have heard that the teams are going to  
23 be cut down over a few months, or during a few months, then I  
24 rather sympathize with them.

25 If the most ambitious statements of the Co-Prosecutors are that

90

1 we ought to be ready by the end of February, well, I can tell you  
2 quite simply that no, I won't be ready. And this is in no way any  
3 kind of delaying tactic. Whether this is at the national,  
4 international level on the defence side, we started these trials  
5 at the end of 2011. We never asked for any delays. We did  
6 absolutely everything we could with the resources we had  
7 available to us and, now, if we have a chance of just working in  
8 a normal kind of way, fine. The National Co-Prosecutor talked  
9 about public holidays. Goodness me, how many weekends have gone  
10 by without my team having had any holidays whatsoever?

11 [14.09.34]

12 Preparation of a trial doesn't start one month before the trial  
13 starts, it starts right now, and it is the same thing with the  
14 appeal. You can't launch an appeal while you are also carrying  
15 out hearings. And this is just the tip of the iceberg. And it's  
16 very important that we talk about this publicly because it might  
17 acquaint the public and the donors that it's not just a matter of  
18 turning up to hearings from 9 to 4 in the afternoon but that  
19 there's an enormous amount of background work that goes with it  
20 and which never really ceases. Thank you.

21 MR. PRESIDENT:

22 Judge Cartwright, you may proceed.

23 JUDGE CARTWRIGHT:

24 Yes. Thank you very much, President. I just wish to explore  
25 further with Ms. Guissé some of the comments that she's made.

1 [14.10.32]

2 In summary, I think everybody in this courtroom understands that  
3 the work related to a trial is ongoing even when the Court is not  
4 sitting. That is true for the Defence, it's true for the  
5 prosecutors and the Lead Co-Lawyers and, of course, it's true  
6 also for the Judges. So I don't think there's any divergence of  
7 opinion there. Perhaps the public and some commentators don't  
8 understand that but, as I said earlier, sitting in court is the  
9 least of our work in the sense of the time invested in it.

10 However, I have not been very clear about the defence team for  
11 Khieu Samphan's views on the legal issues surrounding the  
12 appointment or otherwise of a second panel. You have raised a lot  
13 of questions, but one of the reasons that we are holding this  
14 meeting, which in a sense is moving us all up onto a second path  
15 other than completing the verdict in the case of the Trial  
16 Chamber and preparing for the second trial in the case of all of  
17 us. We've had to move off onto a second path, but we have to do  
18 this. The Supreme Court has made this clear to us and we want to  
19 make sure we get all the information so that we can make - or  
20 particularly in the case of a second panel - the President can  
21 make an informed, legally based decision.

22 [14.12.06]

23 So it would be very helpful if you could give us your legal  
24 views/submissions on what is open legally to the President in  
25 this issue of the appointment of a second panel, and the Nuon

1 Chea team can also do the same. It would really help us to speed  
2 the process and assist the President in making a decision. Thank  
3 you.

4 MS. GUISSÉ:

5 Your Honour, Judge Cartwright, I think you're being very hard  
6 with me because you are asking me to answer a question which I  
7 thought the Supreme Court, in its decision that it handed down  
8 about six months after the appeals made by the parties which had  
9 been announced earlier, I thought that we would have the answer  
10 to that question from the Supreme Court. Unfortunately, all I  
11 have are questions to ask.

12 [14.13.16]

13 I can say that if the foundations behind this second panel -  
14 well, for me, Article 3 of the Agreement - Article 3 of the  
15 Agreement only provides for the possibility of appointing reserve  
16 judges in addition to those that sit normally. For me, this only  
17 refers to exceptional circumstances and it cannot be the basis  
18 for the establishment of a second panel.

19 Now, if in the Supreme Court and if in New York that's the  
20 position taken, I will look at the other texts, but on my initial  
21 reading, that's my interpretation. If that's the textual basis we  
22 are working on, then I'm afraid I'm not moving along the same  
23 road as the Administration. I see limits in that.

24 Now, going to extremes rather beyond the letter of the text, one  
25 might say that the implications of the second panel on the

1 guarantees of the Defence rights regarding the basis for the  
2 second panel and how it will be defined, can it be said that it's  
3 a second chamber? Well, I think that all of these legal points  
4 are things that we must all make submissions on because, as far  
5 as international jurisprudence goes, I haven't seen this anywhere  
6 else, or national for that matter.

7 [14.15.15]

8 And since the Supreme Court has not given us any further guidance  
9 and not been very precise, then obviously we will have to submit  
10 our views to you in writing and right now as I stand I have no  
11 immediate solution to offer you.

12 MR. PRESIDENT:

13 Thank you.

14 Judge Cartwright.

15 JUDGE CARTWRIGHT:

16 Yes. Thank you.

17 Ms. Guissé, I think – I certainly speak for myself and probably  
18 for the entire Trial Chamber – we do not want to spend any more  
19 time on the legal and other issues surrounding the appointment of  
20 a second panel. We do not want to ask for written submissions. We  
21 do not want to have another Trial Management Meeting. This is, as  
22 I have said, a diversion from the work of everyone in this  
23 courtroom. You have indicated your legal views on Article 3.8. Is  
24 there any other matter you would wish to raise? And also can I  
25 just summarize what you said earlier?

1 [14.16.28]

2 The Chamber is certainly not asking you to promise that you won't  
3 appeal or seek the disqualification of any judge, not asking  
4 that, but the indication at the moment from you is you don't know  
5 yet what your – what course of action you will take and, of  
6 course, if it's in the interests of your client to seek the  
7 disqualification of any or all the judges then that will  
8 inevitably mean a delay, which is not your responsibility, that's  
9 just the way it is.

10 But have I summarized that part correctly and is there any other  
11 legal issues surrounding the appointment of a second panel that  
12 you would wish to raise now because this is your best and  
13 possibly only chance?

14 MS. GUISSÉ:

15 With reservations of other observations that may be submitted by  
16 other parties, Judge Cartwright, for the moment the only legal  
17 issue that I wish to bring forth here on the question of the  
18 second panel is this Article 3 and so that is what I am making  
19 observations on. If other elements come up in the course of our  
20 discussion, I may wish to respond to those, but that is all for  
21 the moment. Thank you, madam.

22 [14.17.52]

23 JUDGE CARTWRIGHT:

24 The Nuon Chea team, do you have any legal issues you wish to  
25 raise in relation to the appointment of a second panel?



1 MR. KOPPE:

2 Thank you, Judge Cartwright. We can be very short on this. Our  
3 view is that there – our preliminary view is that there are no  
4 legal obstacles against the establishment of a second panel and  
5 our only avenue in approaching this matter is once new judges are  
6 appointed, whether there are issues of appearance of bias, but  
7 that's an issue within, I would say, the trial itself. But going  
8 back to the very beginning, we don't see any objections, any  
9 legal objections, to the appointment of a second panel.

10 JUDGE CARTWRIGHT:

11 A follow-up. I think Judge Lavergne may also have some questions.  
12 You've raised the issue of the appearance of bias. Of course,  
13 this is a matter that was initially raised, I think, without any  
14 party raising it. It was initially raised by the Supreme Court  
15 but has not been raised again in its second Decision.  
16 Do you see that there is any significance in that omission in the  
17 second Supreme Court Decision?

18 [14.19.25]

19 MR. KOPPE:

20 Not necessarily. To us, it depends on who, ultimately, are going  
21 to be the five possible new judges. If we feel that with one or  
22 more judges there might be issues in respect of appearance of  
23 bias, then we will raise it. Right now, if we don't know the  
24 names of the potentially new judges, then we have no problems to  
25 raise, and the fact that the Supreme Court Chamber didn't address

1 it any more is, for us, not an issue.

2 MR. PRESIDENT:

3 Judge Lavergne, you may proceed.

4 JUDGE LAVERGNE:

5 Thank you, Mr. President.

6 From what I understood from the explanations given by Counsel  
7 Guissé, I would have to express a certain number - she has a  
8 certain number of reservations about the legal framework  
9 surrounding the appointment of the second Panel of Judges, and I  
10 understand that such reservations come from the fact that one may  
11 well wonder if the President will be appointing reserve judges or  
12 titular judges.

13 [14.20.51]

14 It is quite true that 3.8 only refers to reserve judges. It is  
15 also true that in the legal agreement, there is only one single  
16 Trial Chamber provided for and that is composed of five titular  
17 judges, and not 10. Am I, more or less, in step with your  
18 comments there, Counsel?

19 And another question to the Nuon Chea team, please. Do you  
20 believe that the President should be appointing reserve judges or  
21 should he be appointing titular judges and setting up a second  
22 Chamber? You say there is no problem for you, but is this a  
23 second Chamber of titular judges or reserve judges, please? And  
24 then perhaps subsequently we can hear the views of other parties  
25 on this point as well. Thank you.

1 [14.21.56]

2 MR. KOPPE:

3 Judge Lavergne, to us, it's completely equal. I can understand  
4 there is much to be said to the appointment of Judge Fenz into a  
5 new Trial Chamber because she has extensive knowledge as to the  
6 case file. We even could contemplate the possibility of not  
7 appointing reserve judges but judges from other chambers who are,  
8 in fact, now active.

9 At the end of the day, for us, it's only important who are the  
10 judges sitting and dealing with the matters of importance to our  
11 client. How you - how the avenue is, that is of less concern to  
12 the Nuon Chea defence team. We don't see any legal obstacles to  
13 the appointment of reserve judges, titular judges, or even judges  
14 from other chambers who are presently active. Our only framework  
15 of reference is the appearance of possible bias once appointed.  
16 That is, I think, how we should see it.

17 JUDGE LAVERGNE:

18 So, all of this is on the basis of discussion within the  
19 framework of Article 3. For your reading of Article 3, this is  
20 how it would go?

21 [14.23.24]

22 MR. KOPPE:

23 To be honest, to be part of a discussion of which judges will  
24 deal with the case of my client, it's very unusual for me.

25 Normally, I end up at the beginning of a trial and I see who the

1 judges are and if I, for some reason, think that one of these  
2 five judges or more could be potentially biased because of  
3 earlier decisions, then I will raise the issue. Before that, to  
4 be honest, I don't really have that much to say as to the avenue  
5 that the trial - that the President of the Trial Chamber is  
6 taking.

7 I would not go so far as it's of no concern to us, but basically  
8 that is what it boils down to. We'll see - we'll cross the bridge  
9 when we get there. How you get there, that is up to you. If  
10 there's an appearance of bias once appointed, then we will raise  
11 the issue. But, of course, we can say upfront if it's going to be  
12 judges who have had no interference whatsoever with any previous  
13 decisions that the chances of us raising the issue of bias are  
14 very - are going to be smaller and maybe even non-existent.

15 [14.24.47]

16 MS. GUISSÉ:

17 Mr. President, with your permission, sir, there is a point I  
18 perhaps omitted just now. The question of whether or not there is  
19 a second panel also reflects our position, which is that I don't  
20 think that there can be a second trial without their being a  
21 final verdict. And I have to recall - well, I do think that we do  
22 have legal interpretations of a certain kind of variable  
23 geometry, but at one point in time the Prosecution had the same  
24 position, that before starting the 002/02 there was no question  
25 at all of a second Panel of Judges because we needed a final

1 verdict. Why? Because things would go faster, because there are  
2 certain number of central elements concerning modes of  
3 responsibility that have to be resolved and which will have an  
4 impact on the way the second trial will unfold, the questions  
5 that will be put and the final scope of it. These are highly  
6 legal issues and I do not know if we should continue on this  
7 legal path or if we are ceding to certain political contingencies  
8 in this general discussion. Thank you.

9 [14.26.25]

10 MR. PRESIDENT:

11 Counsel, you may proceed.

12 MS. YE:

13 Thank you, Mr. President. Good afternoon. My name is Beini Ye. I  
14 speak today on behalf of International Lead Co-Lawyer, Élisabeth  
15 Simonneau-Fort, who is not here today.

16 I would like to briefly convey the position of the civil parties  
17 on the question whether establishment of a second panel is  
18 necessary or not. In our view, a second panel is not necessary  
19 and we do not support the establishment of a second panel.

20 First of all, on the authority of the President to appoint  
21 judges, be it from reserve judges or be it new judges for such a  
22 second panel, in our view the interpretation that the Supreme  
23 Court is taking on Article 3 of the ECCC Agreement is highly  
24 doubtful.

25 [14.27.23]

100

1 But even if we follow this interpretation of a wording, which is  
2 very clearly only speaking about a chamber of five judges, as has  
3 been raised before by Judge Lavergne and the President – even if  
4 we follow this reading and assume that the President has the  
5 authority to appoint a second panel, the Supreme Court still  
6 grants the President a discretion to do so where it is  
7 necessitated by the interests of justice. And in our view, the  
8 interest of justice does not call for the creation of a second  
9 panel, because it would not allow the second trial to proceed in  
10 a more expeditious or a more efficient way.

11 First, according to what we heard this morning, the recruitment  
12 of judges and support staff for such a second panel would need a  
13 considerable amount of time. For the national judges, we heard  
14 that even if they were to be recruited from a pool of reserve  
15 judges, a Royal Decree would be necessary. For the international  
16 judges, it would have to be ensured that the candidates on the  
17 list of nominees that is currently in the hands of the Secretary  
18 General are available and, again, a Royal Decree would be  
19 necessary.

20 [14.28.55]

21 For the support staff, the full recruitment process would be  
22 required, from announcement, over the interviews, to the  
23 positioning. And on this point we do not believe that hiring  
24 interim support staff, as suggested by the Office of  
25 Administration, that can allow for a shorter recruitment process

101

1 is not a valid option because if you do so, the old staff that  
2 would come back in after this interim support will leave, would  
3 have to process what had been happening in the meantime, which  
4 also can cause delay and interruption. So, in all, it would not  
5 be any more expeditious to try to establish a second panel.

6 Secondly, it would also not be more efficient because the second  
7 panel would need to familiarize itself with the extensive  
8 material that has been presented in Case 002/01 as has been  
9 pointed out by the International Co-Prosecutor. This would slow  
10 down the process considerably even if such a second panel could  
11 be established maybe just a short time before the verdict is  
12 finished and the current Trial Chamber can already continue to  
13 work on the Case 00/02 (sic).

14 [14.30.23]

15 So, in summary, the position of the civil parties is that in – we  
16 do not need a second panel. We rather prefer the continuation of  
17 Case 002/02 by the current Trial Chamber as soon as possible. In  
18 our view, "as soon as possible" would mean to start the  
19 preparations of the trial, including defining the scope, defining  
20 the lists of civil parties, witnesses and experts, etc., before  
21 the issuance of the judgement and start with the hearings  
22 themselves following the issuance of the judgement.

23 I hope this position is clear. Thank you.

24 MR. PRESIDENT:

25 Thank you, Counsel.

102

1 And Counsel Kong Sam Onn, you may proceed.

2 MR. KONG SAM ONN:

3 Thank you, Mr. President, and good afternoon, Your Honours and  
4 everyone. I will be brief.

5 Regarding our position on the establishment of the second panel  
6 and based on your request for us to look at the existing and  
7 current resources, I believe it is not possible for the creation  
8 of such a panel. There is no law that gives the legal authority  
9 to Your Honour, the President, to appoint the existing judges  
10 from other chambers, for instance from the Supreme Court Chamber  
11 or the Pre-Trial Chamber, to form part of the second panel. It is  
12 likely that the President can do so without looking at the  
13 current or existing rules, laws and regulations. Only after the  
14 amendment to such rules or regulations, it could be the President  
15 or the Supreme Court Chamber or, with the political will, such  
16 appointment can be made.

17 [14.32.34]

18 If the right of my client is affected, then, of course, we would  
19 object to such an establishment. If amendment to the current laws  
20 and regulations is needed, then there would be a proper  
21 procedure, put a request to the stakeholders or to the National  
22 Assembly to amend such law. Our position is that that is beyond  
23 the responsibility of my defence team.

24 I also heard the clarification by the Office of Administration  
25 that there is no financial or administrative impediment for such



103

1 establishment. I still have doubt on that. And when it comes to  
2 the ability to amend the Agreement or the existing ECCC Law, it  
3 is not that easy to proceed. All major stakeholders, including  
4 the United Nations, the Royal Government of Cambodia and the  
5 Assembly, needs to participate fully.

6 And if a request is made through the Assembly for amendment, it  
7 will take some time. And if we think of the time that this – the  
8 current Trial Chamber can proceed in 02/02, which is likely to  
9 take place in June next year, then what is the point of the  
10 establishment of the second panel? And can the second panel be  
11 established in May 2014 or as early as January 2014? So you had  
12 to weigh this kind of advantage of establishing the second panel.  
13 And it is my opinion it's not that beneficial to us.

14 [14.34.58]

15 MR. PRESIDENT:

16 Thank you, Counsel, for your comment and opinion.

17 The time is now appropriate for a short break–

18 The Prosecutor, you may make a brief remark.

19 MR. KOUMJIAN:

20 I would ask Your Honours to seek a clarification from my  
21 colleagues as to their position. Perhaps you can do it after the  
22 break, but I can briefly state the questions I have.

23 For the Khieu Samphan defence, they've indicated that they don't  
24 believe the trial should continue – Case 02/02 – until a final  
25 judgement. In their view, is a final judgement a trial verdict or

104

1 an appeal judgement?

2 [14.35.39]

3 And, secondly, I believe they've discussed the issues of Judges  
4 who took part in prior decisions. Can they indicate that if the  
5 trial judgement goes against their client – for example, finds  
6 that Khieu Samphan was part of a joint criminal enterprise to  
7 commit these crimes – that they will not then seek the  
8 disqualification of these – of Your Honours and then seek to have  
9 a whole new trial panel eight months from now? So, what is their  
10 position on those two points?

11 And as to the civil parties, when they indicated that the trial  
12 in their view should start after the judgement, how do they  
13 reconcile that with the Supreme Court Decision saying that eight  
14 months – we cannot wait eight months for a trial judgement before  
15 beginning. And that to do so would call into question the  
16 continued detention of the Accused, what is their position on  
17 that? So I would ask the parties, my colleagues, if they could to  
18 clarify that.

19 MR. PRESIDENT:

20 Counsel Kong Sam Onn, can you respond to that question?

21 [14.36.58]

22 MR. KONG SAM ONN:

23 Thank you President.

24 It is our position to have a final judgement before we continue  
25 is Case 002. And that is the point that we have raised earlier.

105

1 And my previous response is to focus on the establishment or the  
2 possibility of establishment for the second panel. Our - Khieu  
3 Samphan's defence team - that is, our position in 002/02 remains  
4 unchanged. But we also look at the interest of justice and to see  
5 whether 02/02 carry more weight of a better benefit when a new  
6 Panel of Judges is established. We also look at the timeframe for  
7 the establishment of the second panel and to us it seems that it  
8 will take quite some time to make it happen. It doesn't happen  
9 quickly and even if it can be established, our request to  
10 guarantee the right of our client, Khieu Samphan, remains  
11 unchanged.

12 [14.38.39]

13 MR. PRESIDENT:

14 Counsel and the representative of the Lead Co-Lawyer, would you  
15 respond to the question?

16 MS. YE:

17 Thank you, Mr. President.

18 Just to clarify what I just said, in the position of the civil  
19 parties, we favour the start of the preparation for the trial as  
20 soon as possible, which means during the writing of the judgement  
21 and then to continue with the hearings after the judgement is  
22 finished writing. Because during the preparation phase, there  
23 will be also considerable time allotted to the parties to prepare  
24 their lists of documents, to prepare their lists of witnesses and  
25 civil parties and experts, which would allow us to start working

106

1 on the second case already. So, if I understand it correctly,  
2 this would be within the eight months that is requested by the  
3 Supreme Court.

4 [14.39.37]

5 MR. PICH ANG:

6 Good afternoon, Mr. President, Your Honours, and everyone. And  
7 I'd like to add what has been said by my colleague regarding our  
8 position for the commencement of the trial in Case 002/02 - that  
9 is, the substantive proceeding.

10 Beini Ye has already raised our position that the substantive  
11 hearing can be started after the issuance of the judgement. There  
12 is also another possibility through our extensive discussions  
13 with other civil party lawyers is that, if it is possible, the  
14 substantive hearing can also commence before the issuance of the  
15 judgement; for instance, if a judgement is issued in June, then  
16 the substantive hearing can start earlier than June, if it's  
17 possible.

18 MR. PRESIDENT:

19 Thank you all for your comments and opinions.

20 We will take a break now and resume at 3 p.m. to continue our  
21 meeting.

22 (Trial Management Meeting recesses from 1441H to 1503H)

23 MR. PRESIDENT:

24 Please be seated.

25 Judge Lavergne, you may proceed, please.

107

1 JUDGE LAVERGNE:

2 Very briefly, Mr. President, just to make sure that we are all  
3 entirely clear about what was said just now from the Khieu  
4 Samphan defence team, they stated that they did not see how it  
5 would be possible to begin a new trial until 002/01 had not been  
6 given a final judgement. So that everything is clear because  
7 perhaps all the legal officers in this room do not necessarily  
8 adhere to the same system, so could you please tell us what you  
9 mean when you say having a final judgement?

10 MS. GUISSÉ:

11 Yes. A final judgement is a judgement that has been through the  
12 appeal phase and once that is completed, we will take it that it  
13 is final. In other words, all of the essential questions on the  
14 issues such as modes of responsibility, which my team is  
15 particularly interested in, have been finally adjudicated upon.  
16 Thank you.

17 (Judges deliberate)

18 [15.05.47]

19 MR. PRESIDENT:

20 Thank you.

21 Now, I would like to come to item 2 on the: Discussion of the  
22 administrative aspects of trial management in Case 002.

23 The second item on the agenda concerns the administrative aspects  
24 of the trial management in Case 002 and the Chamber directs its  
25 question to the ECCC Acting Director and Deputy Director of the

108

1 Office of Administration. These questions will assist the  
2 President of the Chamber to identify the range of possible  
3 options for the appointment of the second panel. The Chamber also  
4 notes that the defence teams for Nuon Chea and Khieu Samphan have  
5 previously indicated that they have some concerns relating to the  
6 funding available to the Defence.

7 [15.06.49]

8 I would like to invite the Acting Director and Deputy Director of  
9 the Office of Administration to briefly describe the ECCC budget  
10 structure for the biennium budget 2014-2015 and the progress  
11 concerning its approval status. More particularly, could the  
12 Director and Deputy Director please discuss the funding situation  
13 of the ECCC, including the pledges and contributions already  
14 made, and the current and future fundraising efforts made by the  
15 Court to ensure that the required funding is made available?

16 MR. KRANH TONY:

17 Thank you, Mr. President, and good afternoon.

18 In relation to the procedure of adopting the budget – and we  
19 draft a budget for every two years – the ECCC drafted its budget  
20 following its consultation with the section and the Chambers at  
21 the ECCC. The drafting of the budget has been made in  
22 consultation and we made together with the international side and  
23 we forwarded the draft budget to the principal donor groups and  
24 it was pending their review and we hope that we will have it  
25 approved in the near future and it is now pending the review –

109

1 review by the donors' countries.

2 [15.09.12]

3 The pledge - regarding the pledge, I cannot tell you we have any  
4 - any pledge at this time. Some countries told us that they could  
5 not make any pledge or any commitment by this time because in  
6 their countries, there were an effort and a programme to help  
7 prepare their own budget. And Excellency Keo Remy, representative  
8 of the Royal Government of Cambodia, who briefed to the meeting  
9 on the achievement of the Court, who said to New York that the  
10 Government will remain support the counterpart fund by the  
11 Government for the Court.

12 In addition to that, the current and updates of this process, we  
13 are waiting for the announcement by the donor country, especially  
14 the principal donors. In connection with that, in responding to  
15 your question number 2, as the ECCC is working on the voluntary  
16 fund by donor, especially the national side experience a  
17 shortfall in cash flow and then the UN proposed to have a new  
18 mechanism to ensure that we will have provision or additional  
19 fund to respond to the cash flow problem at the ECCC.

20 [15.11.24]

21 Cambodia supported this new mechanism to ensure the  
22 sustainability of the operation at the ECCC and it is now being  
23 discussed at the United Nations at the Fifth Committee of the UN  
24 and I would like to give the floor to Knut Rosandhaug to add  
25 more, especially on the mechanism whereby the Fifth Committee of

110

1 the United Nations have been reviewed – are doing the review on  
2 that.

3 MR. PRESIDENT:

4 Please go ahead, Mr. Knut.

5 MR. ROSANDHAUG:

6 Thank you very much.

7 Two issues have been tabled: One is the budget process; the  
8 second issue is the funding situation. So let's distinguish  
9 between two of these subjects.

10 First, on the budget: The budget is, as said, a consultative  
11 process, both between the Office of Administration and the units  
12 within the Court. That process is completed, and the Office of  
13 Administration has presented a budget proposal, a draft budget,  
14 in New York in November, and currently that proposal is being  
15 debated among the principal donors.

16 [15.12.59]

17 There is ongoing questions and answers between the Office of  
18 Administration and the donors. At times, the Office of  
19 Administration seeks clarifications from the units affected by  
20 the complete questions. So, that's where we are on the budget  
21 process.

22 The reading that the two of us got from the Pledging Conference  
23 in New York in November and the meeting with the principal donors  
24 is that the donors stay committed to the Court, they are  
25 supportive, and they are actively engaged in their articulation



111

1 of the budget. So they are very much committed. Now, there has  
2 been no concrete, tentative feedback on how much they are - they  
3 are going to come on board with.  
4 It's also important to understand that when we have an approved  
5 budget, we have to do fundraising because we are, as you probably  
6 know by now, volunteer funded. So it's not similar to our  
7 siblings in The Hague, which is on the assessed budget. So, when  
8 you have a budget, you also have the cash supporting it. So we  
9 have to go fundraising when we have an approved budget.

10 [15.14.25]

11 So that leads me to the second issue of funding. Just to let -  
12 what you say - "the rabbit out of the basket" immediately, how is  
13 the funding looking like as we speak? I will talk about the UN  
14 only. The Acting Director can address the national side.  
15 We expect, with the firm commitments made during the Pledging  
16 Conference in November and the time since then, to have an  
17 available balance, on the 1st of January 2014, of 2.7 million  
18 dollars. That has resulted in an extension of the staff contracts  
19 on the UN side for the first coming three months, and that  
20 process is now ongoing as we speak - the process of extending the  
21 contracts.  
22 In addition, we have firm commitments for an additional 4 million  
23 in the beginning of next year. So that is the 2.7 plus the 4. So  
24 that's the cash at hand.  
25 Now, one other fundraising activity is alluded to by the Acting

112

1 Director, namely the Secretary General's request for subvention  
2 to the General Assembly. So this is a fundraising activity; this  
3 is not the budget. It's like asking any other Sovereign State for  
4 funding.

5 [15.16.08]

6 That process is cumbersome. It is, basically, three stops on that  
7 process. One is a group of experts, which is named ACABQ,  
8 Advisory Committee for Budgetary and Management Issues. They have  
9 addressed the subvention request and they have recommended it to  
10 the Financial Committee of the General Assembly, and the  
11 recommendation is, from the outset, to provide 12.4 million  
12 dollars to the ECCC, at the discretion of the Secretary General.  
13 Yesterday, there was a meeting in the Fifth Committee, which the  
14 ACABQ reports to. These are Member States of the General  
15 Assembly, and they are currently, as we speak, discussing the  
16 request for subvention. The Representative of the Secretary  
17 General, the Controller, repeated the request for full  
18 subvention, namely the totality of the budget being funded in the  
19 interim by UN funds, to be replenished by volunteer funds if and  
20 when received.

21 The Fifth Committee has not concluded on its debate and they will  
22 continue debating this tomorrow, New York time, which is tonight,  
23 our time. So, this process is very ongoing and hopefully, we will  
24 have a positive outcome anytime soon.

25 [15.17.55]

113

1 Now, if that happens, if the recommendation is approved, we will  
2 have minimum 12 million dollars available, which obviously, with  
3 an operational cost of around 2 million dollars per month for the  
4 UN side, will lead us well - well into next year. So, if the full  
5 subvention is approved, we clearly have full funding for the -  
6 throughout next year for both sides.

7 There are technicalities around this which I'm not presenting.  
8 For instance, that subvention here will come with caveats: this  
9 is a credit line to dip into when needed, and the principle of  
10 volunteer funding is not abolished. So the UN will - and the  
11 Government, for that matter - will still have an obligation to do  
12 active fundraising to replenish the UN money. But that's  
13 secondary for the purpose of this Management Meeting.

14 Thank you.

15 [15.19.05]

16 MR. PRESIDENT:

17 Thank you.

18 Judge Cartwright, you may proceed.

19 JUDGE CARTWRIGHT:

20 Yes. Thank you very much, President.

21 Thank you both to the Acting Director and the Deputy Director.

22 I think the Trial Chamber is well aware that there are the two  
23 processes that we are discussing in this part of the Trial  
24 Management Meeting: one is the budget process, and the other is  
25 the - what we call the subvention document and the processes

114

1 under that.

2 I want to ask just a couple of questions about the budget  
3 process.

4 You have made it clear that the budget – draft budget proposed by  
5 the two of you has not yet been approved; it's still going  
6 through the normal processes, and that involves the principal  
7 donors' group approving it and checking it, no doubt, on a line  
8 by line basis, as they have done always in the past.

9 [15.20.13]

10 Can I just ask you about one question that you addressed to the  
11 Trial Chamber, which related to what staff – where can you make  
12 savings within the – in general, where can you make savings  
13 within the Trial Chamber? Because the principal donors' group  
14 wants a 2 million dollars reduction in your draft budget. Were  
15 you able to identify – because it was clear to us that it wasn't  
16 just from the Trial Chamber, were you able to identify savings  
17 from other chambers or offices of the Court that would amount to  
18 2 million dollars and have you put that to the principal donors'  
19 group? That – that's the first issue.

20 MR. ROSANDHAUG:

21 Thank you.

22 Yes, as said, the debate is ongoing, and there is a request from  
23 the principal donor group to try to achieve another 2-million  
24 reduction in the totality of the budget on both sides. We have  
25 not given the final feedback to that issue; the debate is still

115

1 ongoing within the Court. Will we be able to reach 2 million?

2 Most likely not. But will we be able to produce some cuts? Yes.

3 [15.21.38]

4 JUDGE CARTWRIGHT:

5 Thank you.

6 Now, subject to the ongoing discussion over the budget, you have

7 told us that you have firm commitments for the 1st of January

8 next year and other commitments for later in the year which will

9 amount to 6 million – 6.7 million dollars.

10 When you say "firm commitments", sadly, it's been the experience

11 of the Court in the past that firm commitments sometimes don't

12 translate very quickly into money, but what do you – what exactly

13 do you mean by "firm commitments"? Do you have the money in the

14 bank? Do you have the cheque post-dated, the – or is this a

15 pledge which may or may not translate into cash?

16 Oh, and I need to say that the reason that these – these

17 questions are being asked: Because the Trial Chamber fully

18 acknowledges the Supreme Court's concerns that we are descending

19 – apparently, by the use of the word "profanum" in the Supreme

20 Court Judgement – into issues of finance. But the reason we feel

21 obliged to ask some of these questions is that we have actually

22 experienced disruptions in the current trial due to lack of money

23 and we need to build this into our planning for the rest of the

24 Trial 002/01 and then for future planning, whatever panel

25 undertakes that. So that is the reasoning.

116

1 So I just want to know, what do you mean by "firm commitments"?

2 Have you got the money in the bank?

3 [15.23.27]

4 MR. ROSANDHAUG:

5 "Firm" - sorry. "Firm commitment" means that it is a stated

6 promise from the giver - from the State. It's not money

7 transferred to the United Nations, but I have no doubt whatsoever

8 and there is no experience in the past that firm commitments have

9 not been honoured. All money promised has been transferred.

10 I may add that the previous experience at this Court on cash

11 disruption has never occurred on the United Nations' side. It has

12 always been on the national side, and there has been no firm

13 commitment, at the time when these occasions happened, presented

14 by donors. So it is not linked to the promises made by donors.

15 They have always delivered on their promises.

16 JUDGE CARTWRIGHT:

17 And the next matter before we move to the second issue, which is

18 what I call the "subvention document". Both you and the Acting

19 Director have assured us today that there are contingency funds

20 to cope with the ups and downs of the trials as they progress -

21 for example, to allow for the appointment of the second panel and

22 its support staff; also to allow for the reasonable work load of

23 defence counsel, at least for the first six months of next year.

24 [15.25.02]

25 Are those contingency funds funds that are currently available to

117

1 you or are they funds that have to be approved, as yet, under the  
2 budget process that is ongoing? And how much is in your  
3 contingency fund for both sides of the Court?

4 MR. ROSANDHAUG:

5 The contingency funds is part of the budget process, so it is  
6 articulation in the budget that there are "unforeseens" next  
7 year, which is not "plannable", and we have a lump sum for that  
8 purpose.

9 Directly, how much? For the UN, it's 1.8 million for '14 and 1.6  
10 for '15.

11 JUDGE CARTWRIGHT:

12 So, obviously, you are expecting that to be approved, but it is  
13 not yet approved because the budget process has not yet been  
14 finalized.

15 MR. ROSANDHAUG:

16 Correct.

17 [15.26.04]

18 JUDGE CARTWRIGHT:

19 President, if I may move briefly to the issue of subvention -  
20 that is, a proposal for a new process for funding for the Court.  
21 It is very helpful to learn that the ABCAQ (sic) has recommended  
22 this and that it is now being debated in the Fifth Committee of  
23 the General Assembly. That's news - so that we're very grateful  
24 to hear that.

25 The subvention document, however, does not deal with all of the

118

1 problems. A full subvention or even partial subvention were  
2 granted, it does not deal with all the problems that we might  
3 have in avoiding any future disruptions to the trial.

4 I have to emphasize that only the International Judges have been  
5 able to go through this document because it's only available in  
6 English, but I would like to ask you about paragraph 42, where  
7 the documents says:

8 "The Secretary General would therefore propose that he be given  
9 the discretionary authority to draw on the subvention in order to  
10 loan to the national component, on a reimbursable basis, such  
11 funds as are needed to ensure the funding of national staff  
12 salaries, excluding those of judicial officials."

13 [15.27.48]

14 Now, so far, there have been many disruptions because of staffing  
15 - failure to pay staffing salaries for extended periods. But what  
16 my national colleagues on the Bench would not want to raise  
17 themselves, but which I feel obliged to raise is that they, too,  
18 have not been paid, and indeed, their salaries were not paid for  
19 a significant period after national staff salaries were paid. It  
20 appears that it is intended not to pay them at all in the future  
21 unless the Royal Government of Cambodia decides to do so outside  
22 of this subvention process.

23 Is either the Acting Director or the Deputy Director able to  
24 reassure me that there will be no disruption because judicial  
25 salaries are not being paid?



119

1 MR. ROSANDHAUG:

2 Well, let me first, maybe, address why the Secretary General is  
3 articulating the request as he is, and then the Acting Director  
4 can address Article 15 of the Agreement putting this obligation  
5 to the Government.

6 [15.29.11]

7 It is – the Secretary General is of the viewpoint that Article 15  
8 overrides the request for subvention when it comes to judicial  
9 officials. They are officials of the Government, hence – the  
10 subvention money is not intended for the judicial officials,  
11 which is seen to be closer to the Government's responsibility  
12 than project staff.

13 On the other hand, in the Fifth Committee, the representative of  
14 the Government of Cambodia has presented to the Fifth Committee a  
15 proposal to include the judicial officials in our subvention  
16 decision. So we do not know the outcome of that issue.

17 Thank you.

18 MR. KRANH TONY:

19 In fact, the Office of the Administration made a request to the  
20 Fifth Committee to remove that phrase, but we do not know what  
21 the outcome will be.

22 [15.30.36]

23 JUDGE CARTWRIGHT:

24 One follow-up question if I may.

25 The subvention document specifically refers to judicial

120

1 officials, which is the Trial Chamber's concern lest there be any  
2 disruptions to the trial - the current one or any future trials.  
3 But are any other officials who are - for whom the Royal  
4 Government is responsible, in terms of salary - are there any  
5 other officials within the Court, for example within the Office  
6 of the Administration, who have been affected by the same problem  
7 and who may themselves find themselves without salary in the  
8 future? Because that, too, might have a disruptive effect on the  
9 smooth administration to support the trials.

10 MR. KRANH TONY:

11 Could you please repeat your question? I did not fully get it.

12 [15.31.48]

13 JUDGE CARTWRIGHT:

14 I'm very sorry. I'll repeat - repeat it.

15 In this subvention document - and, indeed, it appears in the  
16 discussion before the Fifth Committee - the notion that the new  
17 method of funding would not apply to the National Judges has been  
18 raised.

19 What I want to know is: Are there any other officials in the - in  
20 the Administration who would not be paid or who haven't - or who,  
21 in the past, have suffered from non-payment of salaries, or is it  
22 just limited to the Judges? Because if in the Administration  
23 there are officials who are not being paid because the United  
24 Nations considers this to be the Royal Government's  
25 responsibility, then this, too, could have a serious impact on

121

1 the smooth functioning of the Administration, whose primary job  
2 is to support the Court and its processes, including the trials.  
3 So are there any other officials than the National Judges who  
4 might be affected?

5 [15.33.23]

6 MR. KRANH TONY:

7 Thank you, Your Honour.

8 Regarding the non-payment to the Judges or legal officers, it  
9 only happened this year – four or five months ago – due to the  
10 lack of cash flow to pay the salary to the national staff. Both  
11 the national and international sides agreed for the loan to deal  
12 with the issue and to my knowledge, the loan is insufficient and  
13 the UN itself requested that the payments shall be made to the  
14 lower-wage staff and leave aside the judicial officials. And to  
15 my understanding, that is due to the lack of the funding or the  
16 lack of the total amount of the loan.

17 Regarding paragraph 42 to be submitted before the Fifth  
18 Committee, I refer to the subvention document, the subvention is  
19 requested in such a way that the judicial officers shall be paid  
20 to, as needed, if I can recall, and there is also an official  
21 request to remove the exclusion of the judicial officials for  
22 this subvention request.

23 [15.35.30]

24 JUDGE CARTWRIGHT:

25 Perhaps I – I'm sorry.

122

1 MR. KRANH TONY:

2 And at that time, the Office of the Administration - and to  
3 respond to your questions, there is no staff in the  
4 Administration who is affected by this.

5 JUDGE CARTWRIGHT:

6 From that last answer, do I infer that no staff in the  
7 Administration have gone unpaid for any length of time. Is that  
8 what you're saying? So it's the only the National Judges who are  
9 at risk?

10 MR. KRANH TONY:

11 In 2013, we have sufficient money to pay for all the staff  
12 including the judicial officials, and they have been paid those  
13 few month's salary that we owed them and they have been paid in  
14 full, including the judicial officials and the Judges. And also,  
15 we have the money to pay for the December salary.

16 [15.36.50]

17 JUDGE CARTWRIGHT:

18 Thank you.

19 I fully appreciate that it's not your decision, who to pay and  
20 who not to pay, but the issue of our Judges is a far more  
21 fundamental one even than legal officers, for whose situation we  
22 have the utmost concern and sympathy. It goes to the independence  
23 of the judiciary and their ability to function without worrying  
24 about money or being forced to find other means to support their  
25 families.

123

1 Has that issue been raised internally, in the Administration, or  
2 externally, to the donors or to the Royal Government, which the  
3 UN says is responsible for their payment?

4 MR. KRANH TONY:

5 No. In general, the salary for the national staff is paid, and  
6 sometimes, when there is a shortage of cash flow, we try our best  
7 to deal with the payment of the salary.

8 [15.38.13]

9 And the issue of excluding the judicial officials, the idea was  
10 suggested by those who provided us the loan and, of course, we  
11 had an emergency funding from the Royal Government of Cambodia to  
12 supplement the shortfall. So, in fact, there is no discrimination  
13 at all for the judicial officials and it was not subject to  
14 discussion because the salary has to be paid without any  
15 discrimination on anyone.

16 JUDGE CARTWRIGHT:

17 Yes. Thank you.

18 Perhaps the Deputy Director could comment on the issue of failure  
19 to pay Judges has some impact on their independence. Would you be  
20 able to assist us in way in this regard?

21 MR. ROSANDHAUG:

22 On the last question, I don't know, but I will try to give a  
23 comment.

24 First of all, it's very unfortunate that the judicial officials  
25 are not paid salary they are due. So let that be absolutely

1 clear.

2 [15.39.35]

3 Secondly, there has been no subvention in the past. So, though  
4 there is a reference to subvention and articulation in the  
5 subvention request, that has not been the scenario in the past.  
6 This is the first subvention. What was the scenario in the past  
7 was that there was no donor coming forward to the national side,  
8 and the Government was not footing the bill according to Article  
9 15, so you have a cash flow problem which then led to salaries  
10 not being paid.

11 The UN then requested donors, on its side, to re-direct funding  
12 which was initially earmarked for the UNAKRT staff at the Court -  
13 to re-direct these funds to the national side as an interim  
14 measure. Those donors approached, they concurred, and the money  
15 was then forwarded to the national side on the instructions of  
16 those donors, with the caveat that the judicial officials would  
17 not be included in these funds. And judicial officials, I think -  
18 I take it from the top of my head now - was broader than the  
19 Chambers; I believe the Co-Prosecutor was also not paid for the  
20 similar time period. So, it's all judicial officials.

21 [15.41.01]

22 Also, my colleague next to me was also not paid for a duration of  
23 time because one of the condition on the second loan was -  
24 priority was given to the lower ranks, and the second priority  
25 was given to P-5s and above. So only when the money sufficed you

125

1 could go beyond P-4. So those on P-5 and D-1 also suffered then  
2 for a period of time.

3 Now, you may have learned that when it was sort of clear to the  
4 Government that no volunteer funding was coming forward, the  
5 Government did honour its obligation and did transfer 1.8 million  
6 to the Court, which then facilitated the payment of the arrears  
7 and until the end of the year. So that's how that issue was  
8 resolved. Unfortunate, clearly; but I choose not to have an  
9 opinion on the independence of the judiciary.

10 MR. PRESIDENT:

11 Thank you.

12 And Judge Lavergne, you may proceed.

13 [15.42.38]

14 JUDGE LAVERGNE:

15 Thank you. Mr. President.

16 Firstly, I just want to summarize the current state of finances;  
17 not talk about the forecast for next year but talk about the  
18 current fiscal year, talk about the budget as it stands today.

19 If I understand correctly, based on the information that has been  
20 given to me, it would appear that for the international side, the  
21 sum of voluntary contributions from the states, has been  
22 completely spent. I would like to know exactly where the funds  
23 that are currently financing the operations of the ECCC are  
24 coming from and do these funds come from the United Nations and  
25 do they form part of the subvention that is currently in

126

1 discussion in New York. I just want to have an idea of the  
2 figures, the concrete numbers - that is, the funds allocated  
3 which do not come from the state voluntary contributions.  
4 [15.44.12]

5 MR. ROSANDHAUG:

6 Okay. So - thank you.

7 On the national side, there is no UN money. On the national side,  
8 it's donor money and the money from the Government. That brings  
9 the national side to the end of this year - and beyond, I  
10 believe.

11 For the United Nations, we have, as I articulated earlier, firm  
12 commitments for the current year, which will end the year in  
13 surplus. Now, on request, I said that this is not necessarily  
14 money in the bank account because the money has to be transferred  
15 and the banks use whatever time they use to transfer money. So,  
16 if need be, the UN is advancing cash from its own cash, and then  
17 it's replenished by the volunteer funds when received. That is  
18 only - that is only an issue at the end of the month, when the  
19 salary is due.

20 JUDGE LAVERGNE:

21 You have told us that the subvention request was part of a fund  
22 raising exercise, is this something that is distinctive from the  
23 budget approval process? Nevertheless, can you please tell us,  
24 within the documents that are currently being examined in New  
25 York, is there any mention of the expenditures that would relate



127

1 to the establishment of a second Panel of Judges?

2 [15.46.13]

3 MR. ROSANDHAUG:

4 No.

5 JUDGE LAVERGNE:

6 From a budgetary standpoint, is it possible to proceed with the  
7 requirement of a second Panel of Judges when such expenditures  
8 have not been approved and unless I'm mistaken when the entire  
9 budget has not received approval? Can you please tell us when the  
10 budget is going to be approved and once approved in its current  
11 state it doesn't foresee the appointment of a second Panel of  
12 Judges? And would this not give rise to a certain number of  
13 difficulties vis-à-vis the appointment of new judges or the  
14 recruitment of support staff to assist the second Panel of  
15 Judges?

16 MR. ROSANDHAUG:

17 Okay. This is about the budget; it's not about the subvention.

18 In the budget, as said, there is a line called "Contingency". And  
19 for the national side it's called "General Technical Assistance",  
20 GTA, as a lump sum.

21 [15.47.27]

22 When we receive a request to do unforeseen activities, which is  
23 not "plannable", we will have to go back to the owners of those  
24 money - basically, the principle donor group - and ask to be  
25 allowed to use that contingency amount for this specific purpose.

128

1 So we have alerted them to the need of an unforeseen funding, but  
2 we have obviously not told them what this unforeseen activity is,  
3 because we do not know.

4 JUDGE LAVERGNE:

5 Let's get down to the number crunching and more concrete matters.  
6 Are you telling us that the current cost of the operations of the  
7 Trial Chamber? Can we please have an idea of what the cost is  
8 because if a second Panel of Judges is indeed designated we  
9 should foresee a relatively equivalent budgetary item? What is  
10 the scale of the expenditures for the establishment of a second  
11 Panel of Judges?

12 [15.48.54]

13 MR. ROSANDHAUG:

14 The Office of Administration do not scale the second panel; we  
15 react to a request. We do not know the composition of a second  
16 panel, we do not know how many support staff is needed by that  
17 panel or current panel; we have not quantified or "costed" any of  
18 those activities.

19 JUDGE LAVERGNE:

20 Unless I am mistaken, it would appear to me that you undertook a  
21 rather in-depth assessment in order to answer the Supreme Court.  
22 And so you are telling me that you have absolutely no idea  
23 whatsoever of what cost will be incurred?  
24 Now, even if you don't have an idea, can you please tell us: What  
25 is the current cost of the operations of the Trial Chamber with

129

1 the Judges and with the staff supporting the Judges?

2 MR. ROSANDHAUG:

3 I can, but I do not have the expenditure table with me; I have  
4 the budget with me. And I will have to answer you later on that  
5 concrete amount, on what the current cost of the Trial Chamber  
6 is.

7 But I may add that we have never been informed by the Chamber  
8 that we need to double up. The composition of the alternative  
9 process is not known to us.

10 [15.50.24]

11 JUDGE LAVERGNE:

12 Now, again, unless I am mistaken, in the context of the review  
13 that you undertook to respond to the Supreme Court, you did not  
14 consult the Trial Chamber. Now, I also gather, unless again, I am  
15 mistaken, that the contingency fund hovers around 1.8 million  
16 dollars for the next financial year. Can you please tell us if  
17 1.8 million dollars will allow us to cover all of the expenses  
18 that would entail the establishment of a second Panel of Judges?

19 MR. ROSANDHAUG:

20 Okay. First, maybe a factual correction: I did consult with the  
21 Trial Chamber on the establishment of a second panel, as  
22 articulated in the memo to the Supreme Court. We met with the  
23 President of the Trial Chamber for this purpose, and it's spelled  
24 out in the memo that we did so.

25 [15.51.37]

130

1 Secondly, 1.8 million represent the percentage of the totality.  
2 It is not quantified in any other way; it's a percentage of the  
3 total cost. Now, yes, I believe that is sufficient to finance any  
4 alternative at the minimum in the interim, which will allow us to  
5 get back to the principal donor group and ask them for a revision  
6 of the budget to accommodate a potential higher need. So at least  
7 this will not hold up any commencement of an alternative process.

8 JUDGE LAVERGNE:

9 Does this contingency fund – are these contingency funds  
10 available? Are they subject to any approval process? What can you  
11 tell us about the current status of this contingency fund?

12 MR. ROSANDHAUG:

13 I believe I have addressed this earlier by saying that the budget  
14 is not approved, hence the contingency fund is not available.  
15 Is it just to dip into? No. Any activity which is not planned  
16 will have to go back to the principal donor group, who owns this  
17 money, and we will have to ask for their permission to use it for  
18 this purpose. So it's not available to – at the discretion of the  
19 two Directors.

20 [15.53.31]

21 JUDGE LAVERGNE:

22 It's rather late in the hour, and perhaps I'm having trouble  
23 understanding, but I believe that you said – you talked about the  
24 date on which the budget would be approved so can you just tell  
25 us where we are at? I understand that the budget was approved

131

1   rather late this year, yet approval for the next budget has  
2   already begun, can you please provide us a few comments on that?

3   MR. ROSANDHAUG:

4   I think it must be rather late in the evening.

5   The budget is not approved.

6   JUDGE LAVERGNE:

7   That was not my question; I wanted to know: When do you think it  
8   would be possible to see a decision for approval of the budget?

9   Now, I understand that the budget has not been approved. I want  
10   to know: When do you believe that it will be possible to receive  
11   a decision approving the budget allocated for the ECCC?

12   [15.54.45]

13   MR. ROSANDHAUG:

14   That is at the discretion of the principal donor group. I cannot  
15   speculate in a date; it's fluent. The ongoing discussion is  
16   mature, we are at the end of that process, and it can happen  
17   anytime soon.

18   JUDGE LAVERGNE:

19   Just as an indication, however, can you please tell us when the  
20   most recent budget was approved – the budget for the current year  
21   and the next year – if you are in a position to tell us?

22   MR. ROSANDHAUG:

23   The current budget is the second year of the previous – you know,  
24   the last budget period, which was approved two years ago. The  
25   next – the budget we are now debating with the donor group is for

132

1 the next two years, '14 and '15, and both years are proved in the  
2 same package.

3 JUDGE LAVERGNE:

4 I think we have a problem of understanding each other.

5 Can you please give us an illustration, some sort of indication  
6 as to when the budget – the previous budget was approved? Was it  
7 in July, February, March of this year or the previous year?

8 [15.56.12]

9 MR. ROSANDHAUG:

10 The current budget was approved two years ago, so clearly not  
11 this year.

12 JUDGE LAVERGNE:

13 And when exactly – when exactly was that budget approved? Was it  
14 in the month of January or in the month of September of that  
15 year?

16 MR. ROSANDHAUG:

17 I have to take this from my memory; I obviously don't have that  
18 date here. I can give it to you later on. but I believe it was in  
19 February, two years ago.

20 JUDGE LAVERGNE:

21 Thank you very much, Mr. Deputy Director.

22 [15.57.02]

23 MR. PRESIDENT:

24 Thank you.

25 I think the time is appropriate for an adjournment. It's rather

133

1     taxing today for everyone.

2     And before we adjourn, I would like to inform all the parties  
3     that for tomorrow's meeting, tomorrow morning the Chamber will  
4     give the floor to the parties to put questions to the Acting  
5     Director and Deputy Director regarding the administrative aspects  
6     of trial management in Case 002, before the Chamber continue on  
7     to another item - that is, item number 3, the scope of Case  
8     002/02.

9     And we will adjourn today's meeting now And we will resume  
10    tomorrow morning, commencing from 9 a.m., and I would like to  
11    invite all of you once again to attend it. Thank you.

12    And security guards are instructed to take Khieu Samphan back to  
13    the detention facility and have him returned to participate in  
14    the meeting before 9 a.m. tomorrow. Please bring him to the  
15    holding cell downstairs and arrange for the connection of the AV  
16    so that he can follow the meeting remotely.

17    (Trial Management Meeting adjourns at 1558H)

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