



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
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12 December 2013
Trial Management Meeting

Before the Judges: NIL Nonn, Presiding
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Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
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List of Speakers:

Language used unless specified otherwise in the transcript

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

1

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

2 (Trial Management Meeting opens at 0902H)

3 MR. PRESIDENT:

4 Please be seated. We now resume our meeting.

5 Before I hand the floor to the parties, the Greffier, could you
6 please report the attendance of the parties and individuals to
7 today's meeting?

8 THE GREFFIER:

9 Mr. President, for today's meeting, all parties and individuals
10 to today's meeting are present, except the counsel, Son Arun, the
11 national counsel for Nuon Chea, who is absent due to his health.
12 Khieu Samphan is present in the holding cell downstairs.

13 Thank you.

14 [09.03.22]

15 MR. PRESIDENT:

16 Thank you.

17 And to begin our meeting today, I'd like to hand the floor to
18 Judge Cartwright to put some questions to the Acting Director and
19 Deputy Director of the Office of Administration concerning the
20 commencement of Case 002/02.

21 Judge, you may proceed.

22 JUDGE CARTWRIGHT:

23 Thank you, President.

24 The Chamber felt it would be useful to make sure that it has a
25 clear understanding of the budget and other technical information

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1 given to it tomorrow. So, on behalf of the President, I would
2 like to summarize our understanding of just some parts of the
3 very extensive discussion that we had yesterday.

4 And this relates to the provision of resources for a second panel
5 and its staff or just for the staff, additional staff to support
6 the existing Trial Chamber. So I will summarize and just check
7 that we have a clear understanding.

8 [09.05.01]

9 First of all, the costs of funding a second panel and its staff
10 or, alternatively, additional staff for the current Chamber would
11 be paid out of a contingency fund which would cover the costs
12 only for the international side; is that correct?

13 MR. ROSANDHAUG:

14 Okay. So, I will - good morning, Judges, everyone. I will answer
15 on behalf of both of us.

16 So, there is a contingency fund on the international budget,
17 which is for any purpose - first come, first served.

18 JUDGE CARTWRIGHT:

19 And that includes payment for a new panel of National Judges and
20 its staff, potentially?

21 MR. ROSANDHAUG:

22 Potentially, yes. Any unplanned activity falls under the
23 contingency.

24 JUDGE CARTWRIGHT:

25 Thank you.

3

1 The contingency fund forms part of the budget that has been put
2 before the Principal Donors' Group for approval, but the budget
3 has not yet been approved. Is that correct?

4 [09.06.34]

5 MR. ROSANDHAUG:

6 It is correct that the budget is not approved, but the donors
7 stand ready to address any request from the Bench on any issue at
8 any time. So a decision on the second panel is not pending the
9 budget process.

10 JUDGE CARTWRIGHT:

11 The contingency fund is part of the budget process which will be
12 approved at an unknown future date, but if history is correct,
13 that will be approximately February of next year; is that
14 correct?

15 MR. ROSANDHAUG:

16 It is correct that it was - the last budget was approved in
17 February.

18 JUDGE CARTWRIGHT:

19 Although the Principal Donor Group stands ready to support a
20 second panel and/or its staff if that is what the President
21 directs, nonetheless it has to have funding; it has to have the
22 money to do that and am I right in my assumption that it is
23 unlikely that the money, the cash would be available before
24 February, approximately, of next year?

25 [09.08.01]

4

1 MR. ROSANDHAUG:

2 The money will be made available at the time when the Principal
3 Donor Group makes a decision to support, and then the cash used
4 will be drawn upon by the cash available currently.

5 JUDGE CARTWRIGHT:

6 That is unlikely to be an overnight decision to provide funding
7 given the complexities of the process of getting together the
8 Principal Donors' Group at this time of year. And, moreover, the
9 time it would take for it to assess the costs and where the money
10 - the funding, the cash might come from; is that correct?

11 MR. ROSANDHAUG:

12 The cash issue is from the bank account of the UN, so that's not
13 an issue.

14 The decision to support such a request, the sooner we get the
15 request across, the sooner they can make a decision. Obviously,
16 if we wait to the 24th of December, they will go on Christmas
17 holidays.

18 [09.09.13]

19 JUDGE CARTWRIGHT:

20 And a request potentially could include funding for both the
21 international and the national sides of the Court; both the
22 Judges and the staff. Is that correct?

23 And would the Principal Donors Group instantly make a decision to
24 fund that and provide the cash, provided a decision reaches them
25 in a timely manner?

5

1 MR. ROSANDHAUG:

2 The Principal Donor Group addresses both sides of the Court, so
3 it's one entity for both sides.

4 I do not know what the final decision of the Principal Donor
5 Group will be and I cannot speculate in that.

6 JUDGE CARTWRIGHT:

7 Until the money is approved, hiring of staff or, indeed,
8 appointment of a second panel cannot start; is that correct?

9 MR. ROSANDHAUG:

10 Yes, that is correct. We will need an endorsement from the
11 Principal Donor Group.

12 [09.10.14]

13 JUDGE CARTWRIGHT:

14 So, if the decision does not come until the New Year - say, even
15 as early as January, if it's just dependent on the Principal
16 Donor Group - hiring cannot start until after the funds are at
17 least promised, if not in the bank; is that correct?

18 MR. ROSANDHAUG:

19 The recruitment process can start as of decision making.

20 JUDGE CARTWRIGHT:

21 But the deployment of staff and/or a second panel of Judges
22 cannot occur until the money is in place; is that correct?

23 MR. ROSANDHAUG:

24 No, that would not be the case. The deployment of the individuals
25 talked about is from the date of the decision.

6

1 [09.11.19]

2 JUDGE CARTWRIGHT:

3 So, in summary, as soon as the President makes the decision, a
4 second panel can be deployed, if that is his decision, and its
5 staff can be deployed if that is his decision?

6 MR. ROSANDHAUG:

7 That decision I'm talking about or I refer to is the endorsement
8 of the donor group.

9 JUDGE CARTWRIGHT:

10 And are you telling me that the donor group would make this its
11 earliest priority following the Christmas break in New York?

12 MR. ROSANDHAUG:

13 What they have committed to is to address a request with the
14 highest priority.

15 [09.12.01]

16 JUDGE CARTWRIGHT:

17 You said yesterday that the time needed for hiring staff would
18 take some weeks. It's the experience of this Chamber and possibly
19 other Chambers as well, that some weeks is usually in the
20 vicinity of at least two months. Do you accept that?

21 MR. ROSANDHAUG:

22 Yes, I have no problem accepting that.

23 JUDGE CARTWRIGHT:

24 And in the case of officials such as the Judges of the Chamber,
25 it could take a great deal longer than that because they would

7

1 have to make themselves available; is that correct?

2 MR. ROSANDHAUG:

3 That would be correct for those who are coming from outside the
4 ECCC. If the Judges are within the ECCC, they, of course, are
5 readily available.

6 [09.13.05]

7 JUDGE CARTWRIGHT:

8 And then the Supreme Council of the Magistracy, if these were
9 Judges that had not already been approved by it, would need to
10 make a decision on that, and that would take a little time, as
11 well?

12 MR. ROSANDHAUG:

13 Yes, that is correct.

14 JUDGE CARTWRIGHT:

15 So, let's use the example of the endorsement of the Deputy
16 Prosecutor on the international side.

17 How long did it take for the Supreme Council of the Magistracy to
18 appoint - to approve his appointment which was announced
19 yesterday?

20 MR. KRANH TONY:

21 Your Honour, to my recollection, as I said, it should take less
22 than one month.

23 [09.14.04]

24 JUDGE CARTWRIGHT:

25 Was that the time it took in that instance or is that your

8

1 estimate of how long the Supreme Council might take in the
2 future?

3 MR. KRANH TONY:

4 Through our past experience, the one month estimation is the
5 quite highest time period. Usually, it will take between three
6 weeks to four weeks.

7 JUDGE CARTWRIGHT:

8 Now I only want to touch very briefly on the subvention process.
9 Am I correct in my summary that currently the subvention process,
10 if approved by the General Assembly of the United Nations, will
11 cover funding for 2014 for the international side, potentially
12 the national side, excluding the Judges of the national side
13 unless the Fifth Committee agrees to the proposed amendment which
14 would include the National Judges?

15 [09.15.40]

16 MR. ROSANDHAUG:

17 Subject to conditions imposed by the Fifth Committee, yes, you
18 are correct.

19 JUDGE CARTWRIGHT:

20 And the subvention process is one, is it not, that requires the
21 agreement or at least the failure to object by every member of
22 the General Assembly. Is that right?

23 MR. ROSANDHAUG:

24 Yes, and all Member States are represented in the Fifth
25 Committee.

1 [09.16.12]

2 JUDGE CARTWRIGHT:

3 So the decision does not have to wait until the next convocation
4 of the General Assembly, which would be late next year?

5 MR. ROSANDHAUG:

6 That is correct. It may – the decision may even happen in
7 December.

8 MR. PRESIDENT:

9 Judge Lavergne, you may proceed.

10 JUDGE LAVERGNE:

11 Thank you, Mr. President, and good morning to everybody. A few
12 follow-up questions, if I may.

13 So, we have understood from what we were told this morning that
14 the Principal Donor Group is interested in the idea of a second
15 panel of judges and the group is ready to examine the request in
16 a relatively expeditious manner.

17 [09.17.23]

18 But can you tell us what information exactly has been provided to
19 the Principal Donor Group and who has been providing the
20 information to them, on the understanding that, hitherto for,
21 there has not yet been any kind of estimate made in terms of
22 figures?

23 MR. ROSANDHAUG:

24 On the terminology, the Principal Donor Group is not "interested"
25 in a second panel. They are aware of the public debate which

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1 includes a second panel – typical, the Supreme Court Decision,
2 talking – discussing it. I have brought to their attention that
3 this debate is ongoing and I have asked them to be available for
4 decision making if need be, and they have offered to be available
5 on a priority base.

6 On your question from yesterday, and you brought it up that no
7 costing has been done, that is correct. But I did costing after
8 we met yesterday. So, if it is of interest, I can present the
9 amounts today. Okay.

10 [09.18.48]

11 So, the current Trial Chamber, as it is currently staffed, is
12 budgeted for 1.1 million for the staff and 640,000 for the Judges
13 on the international side. And the respective amount for the
14 national side is 15,000 – sorry, this is monthly, so I have to
15 multiply. So that's annual for the UN. Unfortunately, my note
16 here only had the monthly for the – for the national, so it's not
17 equal. That's 1.8 million for an annual international side of the
18 Trial Chamber.

19 The similar amount for the national side is 37,000 – or 38,000.00
20 for the monthly cost, but then you have to multiply it by 12, for
21 those who are quick in mathematics.

22 Now, the overlap will then be six months. I understand that the
23 verdict in the first phase is scheduled for the second quarter of
24 next year, so a potential overlap of staffing will be maximum six
25 months from January through June. And then you could, you know,

11

1 do a calculation of that. That will be on the international side,
2 if there is both Judges and staff, equal staffing roughly a
3 million dollars -900,000. And for the national side, for six
4 months, it would be 225,000.

5 Thank you.

6 [09.20.46]

7 JUDGE LAVERGNE:

8 Thank you for those figures.

9 So, the Principal Donor Group has its attention to this issue,
10 being drawn to it by yourself.

11 Now, yesterday at our meeting, a certain amount of information
12 was exchanged, and I suppose that when the idea of a second panel
13 of judges was presented, it was both with the idea that it would
14 be a gain in terms of speed for the trial and that it would also
15 be beneficial in terms of the overall expenditure of the Court.

16 Now, there is a certain amount of information which would suggest
17 that these ideas are at least worthy of discussion. And yesterday
18 the international prosecutor told us that if a new college - a
19 new panel, rather, of judges was established, that would, of
20 course, imply some significant revision of the timelines of the
21 trial.

22 But since you provided this information, is it your intention
23 after this TMM to refer additional information to the main -
24 Principal Donors' Group in New York? Is there going to be a new
25 meeting between them in the near future? How are they going to be

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1 informed of what we are saying to each other here today?

2 Thank you.

3 [09.22.45]

4 MR. ROSANDHAUG:

5 Well, I have understood the Prosecution's proposal is that the
6 current panel continues with the sitting Judges, and if need be,
7 additional staff may be provided. That's how I understood the
8 prosecutors yesterday.

9 On the second part of your question, I have a dialogue with the
10 Principal Donor Group in New York on a routine basis. The conduit
11 is through my Secretariat in New York, which is DESA, the
12 Department for Economic and Social Affairs, and the Special
13 Expert, which is Mr. David Scheffer. So that's the conduit,
14 that's the channel, but I have a routine dialogue with the donors
15 on the ongoing operations of the Court.

16 JUDGE LAVERGNE:

17 So it would be through David Scheffer that the principal donors
18 would be informed about the potential difficulties attached to
19 the establishment of a second panel. At the same time, the
20 Principal Donor Group is asking you to cut the budget submitted
21 by an amount of some 2 million dollars; is that correct?

22 [09.24.26]

23 MR. ROSANDHAUG:

24 David Scheffer is one of many sources for the Principal Donor
25 Group to seek advice from. I am not - he doesn't monopolize my

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1 communication channel with the Principal Donor Group. I also
2 communicate with them through the Secretariat in New York, which
3 is, as I said, the Department for Social and Economic Affairs.
4 The second panel discussion is not linked to the budget process.
5 As I said yesterday, the budget does not contain any reference to
6 a second panel. So that is an ongoing separate matter, and they
7 are trying to make - they are asking us to make the Court
8 proceedings as cost-effective as possible. That has been a
9 standing request from the donors since 2006. So that is a normal
10 debate.

11 The second panel is not debated per se with the donor group
12 because there - no request has been put in front of them. As I
13 said, they have been made aware of the discussion which is
14 happening within the Court and - to make them, you know, informed
15 so that they are ready to make a swift decision if asked.

16 Thank you.

17 [09.25.43]

18 JUDGE LAVERGNE:

19 Thank you.

20 I assume that for the principal donors the question of costs is
21 going to be central to their concerns. Now we're talking here, of
22 course, about the budget but I would like, if we can, to come
23 back to this issue of the subvention. You have talked about
24 collecting funds and saying that the approach is slightly
25 different here. If this proposal for a subvention is adopted,

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1 then expenditure would directly be drawn on the United Nations
2 budget. For the subvention to be adopted, is it true to say that
3 all of the United Nations Member States have to approve; in other
4 words, is unanimity a requirement from all of the Member States
5 of the United Nations in the General Assembly for the subvention
6 proposal to actually be accepted? Thank you.

7 [09.27.13]

8 MR. ROSANDHAUG:

9 On the first half, that cost is a concern for the Principal Donor
10 Group, yes, it is, but the overarching interest of the donors is
11 an expedited process. So they are standing ready to support any
12 initiative to expedite the judicial processes at this Court.
13 On the second half, it's majority vote.

14 JUDGE LAVERGNE:

15 I see, so you need a decision by the majority of members of the
16 General Assembly for the subvention proposal to be adopted; is
17 that correct?

18 MR. ROSANDHAUG:

19 It's within the Fifth Committee, so we're not - just to make that
20 we are not talking about 193 voters. So it's limited to the Fifth
21 Committee and who sits in the Fifth Committee, which is the
22 Finance Committee of the General Assembly. The Member States are
23 represented in that smaller entity. And when we have a vote
24 there, the process is over. It's not like one Member State can
25 veto in over 192 others.

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1 [09.28.38]

2 JUDGE LAVERGNE:

3 And does the decision in the Fifth Committee a majority decision
4 or one that needs unanimity to pass?

5 MR. ROSANDHAUG:

6 I believe it's a majority vote, but now, with this repeated
7 question, you put me on a shaky ground here, so I will, again,
8 get back to you, but my answer today is majority vote, and I will
9 correct myself if need be.

10 JUDGE LAVERGNE:

11 Thank you, Deputy Director.

12 [09.29.26]

13 MR. PRESIDENT:

14 Thank you.

15 Now I hand over the floor to the various parties concerning this
16 second item on the agenda in relation to the administrative
17 aspect of trial management in Case 002 as well as additional
18 questions posed by the InterNational Judges to the Director and
19 Deputy Director of the Office of Administration. Now, I hand over
20 the floor to the Office of Co-Prosecutor to put the question to
21 the Directors if you have any questions for them.

22 You may proceed.

23 [09.30.10]

24 MR. KOUMJIAN:

25 Thank you, Mr. President. Good morning, Your Honours.

16

1 Ms. Chea Leang is unable to attend today because of other
2 commitments. She did ask me to ask a question of the Acting
3 Director, so if I may I first will begin with her question.
4 She indicated to me that based on the budget process, she has
5 already cut two staff members for 2014 – two national staff
6 members – and recently received a request to cut an additional
7 staff member. Her question is that: Given the potential demands
8 on the Office of Co-Prosecutors next year, that is the appeal of
9 Case 02/01, we hope the beginning of the trial of Case 02/02 and
10 we expect request for submissions on cases 03 and 04; will there
11 be funds in the national budget, whether a line item or in a
12 contingency fund, to fund positions that are necessary to
13 complete our work?

14 [09.31.27]

15 MR. KRANH TONY:

16 Good morning, Judges; and good morning to all parties. In order
17 to ensure consistency as well as efficiency in the operation of
18 the Office of Administration, certain positions have not been
19 renewed. It is not confined to the Office of Co-Prosecutor but
20 also to other offices and we have done this in consultation with
21 the respective offices and sections.
22 As for 2013, the budget has already been approved and it has
23 already been implemented.
24 As for the budget for the non-staff – non-regular staff, we may
25 use this budget for the case-by-case needs for 2014. That is done

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1 in reflection of the actual needs for 2014 and 2015.

2 MR. KOUMJIAN:

3 Okay, that's to follow up on her question and also, I have my own
4 follow-up to the very first question that Judge Cartwright asked.

5 It was about whether if additional staff for the Trial Chamber or
6 Judges for the Trial Chamber are needed, could the international
7 contingency fund cover National Judges and national staff, and I
8 believe the Deputy Director answered that that could be used.

9 But I'd also ask: Is there, to be clear, a contingency budget in
10 the national budget? Is there a contingency budget, perhaps
11 called by another name? I understood you have another name for
12 such a budget to cover contingencies and potentially to fund
13 national staff for the Trial Chambers or National Judges.

14 [09.33.56]

15 MR. ROSANDHAUG:

16 Thank you.

17 Since the first part of your comment was related to me, I sort of
18 could answer in its totality.

19 No, the international budget cannot be used for the national side
20 per se, but the donors stand ready to - to address any request
21 from the Court being either side, and it's the same
22 decision-making body. So, in that sense, it's - we are talking to
23 the same people.

24 In the national budget, there is no contingency line, but here
25 under the so-called GTA, general technical assistance, there is a

18

1 description of peaks in the work which may be drawn on, which -
2 you know, when the peaks are occurring. So it's a foreseen
3 increase in workload at times.

4 MR. KOUMJIAN:

5 And just to relate that to the specific issue of whether - if
6 additional staff are needed to fund the start of Case 02/02,
7 could this general technical - I've forgotten the name you used,
8 this line item be used to fund this additional staff?

9 [09.35.25]

10 MR. TONY KRANH:

11 Yes, it can.

12 MR. KOUMJIAN:

13 Thank you.

14 And then just one additional follow-up to the Judges' questions:
15 On the issue of is cash available, should a decision be made and
16 additional staff or additional judges be required, is it - it was
17 my understanding yesterday - please correct me if I'm wrong; this
18 is for the Deputy Director - that there is now - or at least
19 there was yesterday - 2.7 million dollars available and there's
20 an additional, at this point, 4 million in commitments, in firm
21 commitments for funding for the Court which would be available to
22 pay for this staff?

23 [09.36.12]

24 MR. ROSANDHAUG:

25 Thank you.

19

1 Those amounts is related to the international side of the budget,
2 and the balance of 2.7 referred to is the expected balance at the
3 end of the year. And it's correct that pledges have been made for
4 4 million into next year.

5 MR. KOUMJIAN:

6 And is it correct this money would be available next year to fund
7 additional staff for the Trial Chamber if necessary or if
8 necessary - which is not the Prosecution's proposal - additional
9 judges for a new Trial Chamber?

10 MR. ROSANDHAUG:

11 This is cash in the bank account, so, you know, that is available
12 for any purpose.

13 MR. KOUMJIAN:

14 Okay, thank you.

15 I have no further questions, Mr. President, at this time. Thank
16 you.

17 [09.37.00]

18 MR. PRESIDENT:

19 Thank you.

20 Now I hand over the floor to the Lead Co-Lawyer for the civil
21 party. If you have any question to the Acting Director and Deputy
22 Director of Administration, you may proceed now.

23 MS. YE:

24 Thank you, Mr. President. Good morning, Your Honours. Good
25 morning to everyone in and around the courtroom. I just have a

20

1 few follow-up questions - excuse me - to the Acting Director, as
2 well as the Deputy Director.

3 First, I want to follow up on the Co-Prosecutor's question on the
4 commitment to the budget.

5 We heard that there is commitment and there is cash available for
6 the international side.

7 My question relates to the national side. Is there any commitment
8 already available at this point for the upcoming years 2014 and
9 '15 on the national side?

10 [09.38.03]

11 MR. TONY KRANH:

12 As I have informed the Judges and members of the meeting that we
13 - for now, we have to wait for the approval for the joint budget
14 proposal to be approved by the group of interested states and
15 once they approve this budget, they will review the need as per
16 our request.

17 And as for now, only the Royal Government of Cambodia has
18 confirmed that they would commit the same amount of funding to
19 this tribunal. That is the status of confirmation concerning
20 funding for the national side as of now.

21 MS. YE:

22 Thank you.

23 And given that situation - and you mentioned yesterday, also,
24 that since 2008, there were problems with cash flow on the
25 national side - do you foresee the same problems of cash flow in

21

1 the upcoming years as well?

2 [09.39.20]

3 MR. TONY KRANH:

4 We have to wait and see at this moment. To date, the cash in our
5 bank account is only available for the payment of salary of the
6 national side for this month - for the month of December 2013;
7 that is all.

8 MS. YE:

9 Thank you.

10 And as I understand, if national staff would have to be hired as
11 support staff for a second panel as well as National Judges, that
12 would come out of the national budget which means the national
13 side money; is that correct?

14 MR. TONY KRANH:

15 That is correct.

16 [09.40.05]

17 MS. YE:

18 So, in that case, would hiring additional national staff
19 aggravate eventual cash flow problems in the upcoming years if
20 this national budget is not yet committed?

21 MR. TONY KRANH:

22 Well, we have encountered these turbulences since 2009. The issue
23 of budget is - is one thing and the turbulence in the cash flow
24 is - is another thing. We have encounter difficulty paying staff
25 on - regularly, but we have actually paid all the staff even

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1 though we know that it has not been regular and we have to wait
2 for the approval for the budget, but we of course acknowledge
3 that we have encounter some turbulences in the payment, but I
4 don't foresee that that will pose any threat to the recruitment
5 of new staff if need be.

6 MS. YE:

7 Thank you very much. I have no further questions.

8 [09.41.40]

9 MR. PRESIDENT:

10 Thank you, Counsel.

11 Now I hand over the floor to the defence teams.

12 We will begin with the defence team for Mr. Nuon Chea first. If
13 you have any questions to pose to the Acting Director and Deputy
14 Director of Administration, you may proceed.

15 MR. KOPPE:

16 Good morning, Mr. President, Your Honours. We have no questions.

17 MR. PRESIDENT:

18 Thank you.

19 How about the defence team for Mr. Khieu Samphan? Do you have any
20 question to put to the Directors?

21 [09.42.21]

22 MS. GUISSÉ:

23 Good morning, Mr. President. Good morning, Your Honours. Good
24 morning to all parties present.

25 If I may, I do have a question of clarification. Perhaps it's

1 redundant, but I do wish for things to be crystal clear.

2 I would like some follow-up explanations to the comments made by
3 the Deputy Director in which he stated that the budget for the
4 Defence for the next two years have been confirmed based on the
5 current set-up and composition of the defence teams. Now, is this
6 my correct understanding? Has there been confirmation of the same
7 budget for the Defence Support Section for the upcoming two
8 years, which mirrors the last two years that we have just
9 covered; is this correct?

10 MR. ROSANDHAUG:

11 Thank you.

12 Limited to Case 002, that is correct.

13 [09.43.25]

14 MS. GUISSÉ:

15 Thank you very much.

16 Therefore, the announcement that was made according to which some
17 of our teams could be reduced by two support staff; that being
18 the position of the consultant on the international side and a
19 case manager given the explanations that we were provided during
20 this Trial Management Meeting and based on the work ongoing and
21 the potential work required for an appeal of Case 002/02, well,
22 the risk that some of our teams could be reduced is a risk that
23 has been - can be averted; is this still the case?

24 [09.44.22]

25 MR. ROSANDHAUG:

24

1 The size of the defence team is not dependent on the budget; that
2 is dependent on the actual work demand. And I believe that DSS is
3 readdressing the need of the current staff, which was present
4 during the hearing and the closing statements, in the period up
5 to verdict, where, as I said, the second phase of Case 002 is not
6 planned. So we see this as a down time. So that's the backdrop of
7 that request. But I also believe that no decision has been made
8 by DSS on this.

9 MS. GUISSÉ:

10 Therefore, based on your explanations - the risk that our teams
11 may be reduced to two people - reduced to a case manager and an
12 international consultant, based on your assessment of what our
13 operations and work is comprised of; is this a correct
14 understanding?

15 MR. ROSANDHAUG:

16 Yes, that is correct, it's not financially driven.

17 [09.45.39]

18 MS. GUISSÉ:

19 I wish to make a general comment to the Trial Chamber. You
20 understand and can appreciate that these discussions are
21 extremely significant and given what has been announced by the
22 Office of Administration, the possibility to prepare for the
23 upcoming weeks are, in my view, extremely arduous and this is not
24 for lack of will on the part of defence teams, but because of the
25 restrictions that we face and that are simply beyond our control.

25

1 This is a comment that I wish to put on the record and that I
2 sought to add as an item on the agenda.

3 But if we are to make the appropriate filings of submissions and
4 if we are to delve into the issues and the legal issues of Case
5 002/02, as well as the appeal, since the matter of the appeal is
6 not confined to the judgement or the verdict that you will be
7 issuing, but also the fact that we will have to respond to that
8 decision - and this is an extremely important factor that has not
9 been taken on board or taken into consideration, neither by this
10 tribunal nor by external parties. The defence teams will be
11 encountering problems on top of the budgetary problems before
12 those budgetary issues are resolved and I wish to state that for
13 the record during this public hearing.

14 Thank you.

15 [09.47.35]

16 MR. PRESIDENT:

17 Thank you.

18 The International Co-Prosecutor, you may proceed.

19 MR. KOUMJIAN:

20 Thank you.

21 Your Honour, I just wanted to provide some information that my
22 office found that may assist the question that Judge Lavergne
23 asked about the voting procedures for the committees of the UN -
24 the Fifth Committee.

25 We found on the internet that in the UN General Assembly Rules of

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1 Procedures for Committees, Rule 125 [85] states that "decisions
2 of committee[s] shall be made by a majority of the members
3 present and voting".

4 Thank you.

5 [09.48.30]

6 MR. PRESIDENT:

7 Thank you for the information.

8 Now, we move to item 3, item 3 concerning the scope of Case
9 002/02 and future trial segments. The third item on the agenda
10 concerns the scope of Case 002/02.

11 The Supreme Court Chamber has suggested that under certain
12 pre-conditions it might be possible, under the ECCC legal
13 framework, for the Co-Prosecutors to withdraw charges. This would
14 appear to introduce an additional factor in the determination of
15 the scope of any second trial segment. This also raises a number
16 of legal questions that need to be discussed and determined. This
17 could be a matter either for this Chamber - rather this - or to
18 be - a verdict to be appointed for the second panel.

19 The current schedule does not provide sufficient time to debate
20 this complex legal issue at the present meeting. However, an
21 additional discussion of the scope of Case 002/02, including a
22 presentation of the parties' preliminary views on the matter,
23 would benefit the ultimate determination of this issue.

24 [09.50.19]

25 In order to commence this process and to deal expeditiously with

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1 the issue, the Trial Chamber, therefore, will now invite
2 submission from the parties on which charges you consider ought
3 to be included in Case 002/02.

4 In its previous decision on this matter, the Supreme Court
5 Chamber had already given some indications of what charges Case
6 002/02 should include, at minimum, such as charges related to
7 S-21, a worksite, a cooperative and genocide. On the basis of
8 this, could the parties please address which charges and/or crime
9 sites you consider ought to be included in Case 002/02?

10 On the basis of these proposals, can you please provide an
11 estimate of the length of ensuring (sic) proceedings - of the
12 ensuing proceeding rather?

13 Now, I provide the floor to the Office of Co-Prosecutor before
14 other parties to the proceeding. You may proceed.

15 [09.51.56]

16 MR. KO UMJIAN:

17 Thank you, Mr. President.

18 I will ask Mr. Lysak to speak on behalf of the Co-Prosecutors in
19 detail about our trial plan. I would just introduce it by saying
20 the following: We have proposed a plan which we've submitted in
21 writing to cover all of the requirements of the Supreme Court and
22 to go beyond that somewhat.

23 Our proposal is to try in Case 02/02 all of the remaining legal
24 charges; in other words, to cover all of the genocide, all of the
25 counts of the various crimes against humanity and war crimes, to

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1 cover the crimes against each targeted group, to cover the gender
2 crimes; the forced marriage and the rapes, all in this trial, and
3 the plan - the witnesses we suggested, we estimate would take 96
4 Court days to cover all of these.

5 [09.52.57]

6 Now, as Mr. Lysak will explain, our suggestion is in order to
7 expedite these proceedings, that all of the charges will not
8 include every crime site that's covered by the - mentioned in the
9 Closing Order. It would include all of the charges that are in
10 the disposition. So we believe that this will certainly satisfy
11 the Supreme Court requirements. More importantly, it will allow a
12 very efficient trial to be done in a very reasonable period of
13 time to cover the heart of what this tribunal was set up for: to
14 cover the genocide charges, the security centres, the tortures,
15 the forced marriages, and the rapes. And we believe we can do
16 this in a very reasonable period of time.

17 And I'd ask Mr. Lysak to address the specifics.

18 MR. PRESIDENT:

19 Thank you.

20 Mr. Lysak, you may now proceed.

21 MR. LYSAK:

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

23 We did submit our proposal in writing because it is detailed and
24 we believe that would facilitate the Chambers and the other
25 parties review. So I will be relatively brief now, respond to any

1 questions you have and, of course, respond to any comments or
2 issues raised by the other parties.

3 [09.54.37]

4 Let me simply say that a large part of our proposal was mandated
5 by the decision that was released by the Supreme Court Chamber in
6 November. The Supreme Court Chamber ordered two things: one, that
7 evidentiary hearings in the second trial commence as soon as
8 possible; and second, that the second trial comprise - I quote:
9 "At minimum, the charges related to S-21, a worksite, a
10 cooperative and genocide."

11 So in our written proposal, much of it is mandated by what the
12 Supreme Court has ordered; therefore, we have included S-21. We
13 have included genocide of the Cham and the Vietnamese. They have
14 ordered that a cooperative be included; there is only one
15 cooperative crime site in the Closing Order - that is, the Tram
16 Kak district cooperatives. And we have proposed as a worksite, as
17 our first choice, the 1st January Dam; a very large worksite that
18 was representative of the building of water projects, dams,
19 canals, which was a significant part of the forced labour that
20 occurred during the period of Democratic Kampuchea.

21 [09.56.17]

22 In addition, we've proposed a few additional sites on top of that
23 and we made that in view of the second question that arises from
24 the Supreme Court's decision and is indicated in your memorandum
25 which is: Will there be - should we plan for a third trial? Our

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1 answer to that is that we should not; that we should include in
2 the second trial all the remaining legal charges and
3 representative crime sites so that case - the second trial can be
4 the final trial of these two Accused.

5 And that - those are the two foundations, if you will, to the
6 proposal that we've made.

7 And because of that, we have proposed a - a couple of additional
8 security centres and one additional worksite which would ensure
9 that the included crime sites that are tried between cases 1 and
10 cases 2 - or I should say Case 002/01 and 02 - between those two
11 trials, we would have covered crime sites from throughout the
12 country. We would have covered all of the legal charges in the
13 indictment and we would have, to summarize, had - two of the
14 three forced movements would have been tried, three of the six
15 worksites or cooperatives would have been covered in the two
16 trials, five of the 14 security centres or execution sites would
17 have been tried, the four targeted groups that are part of the
18 indictment - all of that would have been prosecuted and tried, as
19 well as forced marriage.

20 [09.58.24]

21 So that is the - was the thinking, if you will, that went behind
22 our proposal.

23 I'm happy to answer any questions you may have at this time and
24 also, of course, to respond to any issues raised by the Defence.

25 MR. PRESIDENT:

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1 Judge Lavergne, you may proceed. Thank you.

2 JUDGE LAVERGNE:

3 Well, there are a certain number of issues that come up here and
4 among these problems; there's a question of duration of the
5 trial, and we have to see what necessary phases will have to be
6 got through before we start the substantive hearings; what is
7 going to have to be done to resolve the issues relating to those
8 different stages.

9 Then we have a problem, perhaps, of terminology or wording
10 because, when I hear you telling us that you are proposing to
11 review in the next trial all of the charges contained in the
12 indictment, what I understand is that it's not all of the crimes
13 because in French, "charges", "chefs d'accusation", can
14 correspond to each specific crime. But when you say "each one of
15 the charges", it is presumably the different categories of
16 specific crimes. Is that what I should understand?

17 Thank you.

18 [10.00.36]

19 I have an initial comment about the timelines involved here.
20 We'll come back to substantive contents in a minute, but can we
21 start - can you start by telling us how you did your calculations
22 for the time that's going to be necessary for each one of the
23 witnesses, experts or civil parties that you are planning to
24 summon because what did strike me on an initial reading of the
25 document that you submitted was that most of the witnesses that

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1 you are proposing are to be heard for half a day or
2 three-quarters of a day? Is this the time that is necessary for
3 you, the Prosecution, to question these witnesses or are you
4 giving us an indication of the time necessary for all of the
5 parties to ask their questions? I'm a little bit surprised.
6 It seems to me that the number of witnesses that the Chamber has
7 heard - once all of the parties have put their questions, the
8 number of witnesses that it was able to hear in less than one day
9 was pretty few. For most of them, it was at least one day for
10 hearing a witness or a civil party. So can you just enlighten me
11 on all of that? Are we talking about the time for the Prosecution
12 or for all of the parties to put their questions?

13 Thank you.

14 [10.02.34]

15 MR. LYSAK:

16 Thank you, Judge Lavergne.

17 Let me start - just in relation to your first comment, let me
18 confirm that your - your observation is correct. When we say that
19 all charges would be tried, we're talking about the legal
20 charges: genocide, the various crimes against humanity and the
21 various specific breaches of the Geneva Convention. So we are
22 talking about the legal charges and we are proposing that the
23 crime sites be reduced.

24 In response to your question about the witness proposal, the
25 times that we propose are the total times. And I would note that

1 what we have tried to do here is distinguish witnesses. Where we
2 are dealing with a witness who we view as a witness who would
3 testify to fairly discreet event, a certain crime, as opposed to
4 a witness who will cover broader issues related to possibly
5 linkage or someone who is a cadre who was involved in more of the
6 operation of say security centre, we have put more time for the
7 latter type of witnesses. But for witnesses who are limit - we
8 view as providing a fairly limited range of testimony; we are
9 proposing that we endeavour to get through the crime-base
10 witnesses fairly quickly.

11 [10.04.26]

12 And I understand your comment about the period of time that was
13 required in the first trial. I'll remind the Chamber that we had
14 a week - or two weeks where we heard from a number of civil
15 parties who came here related their experiences of what had
16 happened to them in the forced transfer, as well as their
17 suffering. And we heard four people a day during that period, so
18 those civil parties were heard in a quarter day each.

19 We're not suggesting a quarter day, but we are suggesting that
20 for many of these witnesses who have fairly limited facts that
21 are pertinent to this, and who have already provided written
22 statements as well, that we endeavour to get through those
23 witnesses quickly. So that is the basis.

24 [10.05.29]

25 And, obviously, other parties may have different views. A defence

1 or another party may say, "We view this person as particularly
2 important, half a day will just not suffice." That's a process
3 we'll have to go through. But that is the - was the thinking
4 behind our witness proposal. It was an attempt to distinguish
5 witnesses who have more complex issues to deal with, from those
6 who have a fairly limited range of facts to testify to.

7 JUDGE LAVERGNE:

8 First question: To draw up these estimates of the time needed,
9 did you talk to the other parties - with the civil parties or the
10 Defence?

11 [10.06.36]

12 MR. LYSAK:

13 Your Honour, we had some consultations with the civil parties in
14 general about the plan, more about the proposed crime sites, not
15 so much in terms of going through witness by witness and agreeing
16 on time proposals. So the answer to your question is we did have
17 some discussions about the scope of the trial, not about time
18 requirements for individual witnesses.

19 JUDGE LAVERGNE:

20 Coming back to the experience that we may already have had with
21 questioning civil parties or witnesses, it's true that we had
22 some civil parties come to testify here within limited spaces of
23 time and that several of them were able to testify within one
24 single day, but they were called to talk about their suffering
25 rather than to bring substantive evidence.

1 [10.07.50]

2 Second, you draw a distinction between witnesses whose testimony
3 might be more general in nature concerning the structures or the
4 responsibilities of the Accused and those witnesses who are going
5 to come and talk about specific crime sites or crimes.

6 Let's take Tuol Po Chrey as an example. Now, it seems to me that
7 this is a specific site. Originally, I think we were planning
8 that we should only hear two witnesses. Now, this turned out to
9 be not quite enough, and other witnesses were called. So, for
10 witnesses on specific sites, if my memory serves me well, I think
11 we spent a good deal more than one day per witness.

12 So I'd like to know if your estimate here is really based on past
13 experience or if you are in fact thinking about radically
14 changing the way we have acted up to now, because I don't quite
15 see how things will fit together otherwise.

16 MR. LYSAK:

17 Thank you, Judge Lavergne.

18 No, we're not suggesting any radical shift. And I think if you
19 look back - look back at the witnesses who appeared related to
20 the forced movement, you will find that many of the people who
21 came to this Court were in and off the stand in less than a day.
22 Not all of them, but many of them.

23 [10.09.43]

24 We were also - for most of the trial you will remember dealing
25 with three defence teams and not two. That's not a major change

1 in how things will operate, but it will affect the timing
2 somewhat.

3 But this is a proposal, Judge Lavergne, if other parties think -
4 or the Chamber thinks it's not sufficient when it reviews these
5 witness statements and it looks at what these witnesses have to
6 say on these issues, people can propose additional time.

7 This is our proposal. We've done it by reviewing the witness
8 statements, assessing what we think this person - the important
9 factual evidence that each of these people would provide to the
10 Court, and giving you an estimate of, for sure, the minimal time
11 that will be needed to hear them.

12 JUDGE LAVERGNE:

13 There was another point that struck me when I was reading your
14 submissions, and that's the comparison that might be made between
15 the trial that just finished, 002/01, it lasted for 220 days of
16 hearings and after those 220 days, we had heard 90 individuals in
17 the courtroom.

18 So, when you say 96 days, can you tell us if you have any idea of
19 the total duration of hearing days that you would need for the
20 second trial?

21 [10.11.48]

22 MR. LYSAK:

23 Well, just to clarify, the 96 days is the time - the total time
24 when you add up the suggested time for the witnesses we have
25 proposed. So the 96 days merely represents our proposal as to how

1 much time we would require for these witnesses. Obviously, the
2 civil parties and the Defence would propose additional witnesses;
3 the Chamber may have additional people it wishes to hear.
4 So, in terms of the comparison to the first trial - I'm glad you
5 asked that - there is a difference, I think, between the division
6 of witnesses or relative allocation percentage of what I would
7 call the "complex" or "linkage witnesses" that we had to hear in
8 the first trial and the number we would have to hear in the
9 second trial. The first trial, you will remember, by your order,
10 was intended to provide the foundation for further trials. And
11 much of the time in the first trial was addressed to some of the
12 more complex witnesses as to how the regime operated, how
13 communications operated, what were the roles of the Accused, what
14 did the various organizations in Democratic Kampuchea do. Those
15 are complex witnesses and they required considerable time.

16 [10.13.26]

17 For this trial, there are much fewer witnesses of that nature
18 that need to be heard because we have heard most of them already
19 in the first trial. And that is a fundamental basis of our
20 proposal, is that we would not repeat evidence that was already
21 heard in the first trial, that that testimony, those documents
22 would become part of the record. So, because of that, there are
23 much smaller body of what I would call the "complex linkage
24 witnesses" who will need to be heard in the second trial, and it
25 will be much more focused on shorter crime-base witnesses. And

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1 that is why, I think, when you compare the number of witnesses
2 and number of trial days required, I expect you will find that
3 the second trial we will hear more witnesses in a shorter period
4 of time.

5 So I hope that answers your question.

6 JUDGE LAVERGNE:

7 During the last trial, we devoted quite a few hearing days to
8 discussion on documents and there were other problems that arose,
9 procedural problems and I think we will come to the issues of the
10 different phases we have to go through before we reach a
11 substantive discussion.

12 But do you have an estimate of the total duration of substantive
13 hearing days that will be needed before we complete the trial?

14 [10.15.25]

15 MR. LYSAK:

16 The estimate that we provided, Your Honours, was that the trial
17 in terms of evidentiary proceedings would require between 12 and
18 18 months. There is uncertainty here because we don't know how
19 many witnesses will be requested by the Defence, how many
20 witnesses or civil parties will be proposed by the Lead
21 Co-Lawyers. So we provided an estimate of the time that these
22 proceedings could be completed based on looking at the 96 days
23 that we've estimated, and taking into account that there will be
24 additional time needed for other witnesses, civil parties and
25 some additional time for document hearings.

1 We do make the point in our filing, Your Honour, that there will
2 be less time needed for document hearings. Again, if our proposal
3 is accepted, that we start from the point that what has been -
4 what was admitted in the first trial is deemed admitted for
5 purposes of the second trial, because the bulk of the documents
6 that were proposed by us for all of Case 002 have already been
7 admitted.

8 [10.16.42]

9 There are remaining documents relating to S-21, relating to Tram
10 Kak District, but again, the majority of the documents that we
11 had proposed for all of Case 002 for both of those locations have
12 already been admitted. The remaining documents are of the exact
13 same type of nature as documents that have already - determined
14 to be admissible.

15 So, in short, what I'm saying is, yes, we will require time for
16 document hearings; our expectation is that it will be less time
17 than what was needed in the first trial, because we have already
18 dealt with many of the documents.

19 JUDGE LAVERGNE:

20 The question about the time that's needed for review or
21 presentation of documents like the question about the time needed
22 for hearing witnesses is going to vary in terms of the
23 composition of the panel of judges that will be on the bench for
24 the next trial. Now, if we have a new panel of judges, from what
25 I understood yesterday, then in reality there's going to have to

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1 be some very serious revision of the necessary duration. Have you
2 thought about this? Have you done any calculations?

3 [10.18.30]

4 Option 1, we keep the same judges. Option 2, there's a new panel.
5 Have you been able to make any preliminary estimates about the
6 duration on the basis of that problem?

7 MR. LYSAK:

8 We haven't done calculations of the scenario of how long the
9 trial would take with a second panel. But we have thought about
10 the issue, and that was very much paramount in the position we
11 took in our filing that it would be far more efficient and more
12 expeditious to the extent that we use the same panel or judges -
13 or as many of the judges who are already familiar with the
14 proceedings. Not just the evidence, but the procedure and
15 proceedings.

16 So, no question, Judge Lavergne, in our view the trial will take
17 significantly longer if we have an entirely new panel of judges.

18 [10.19.46]

19 JUDGE LAVERGNE:

20 I have other questions to put to the Prosecution about the
21 different phases that are going to be involved according to their
22 estimates before we actually reach the evidentiary hearings, but
23 this may not be the moment.

24 Perhaps I should, Mr. President, give the parties a chance to
25 express some general views about the duration of the trial and

1 the other issues connected with witnesses to be called.

2 So perhaps I will cede the floor at this stage, Mr. President.

3 MR. PRESIDENT:

4 Thank you, Judge.

5 And Judge Cartwright, please proceed.

6 JUDGE CARTWRIGHT:

7 Yes. Thank you, President.

8 It's the job of the prosecutors to be optimistic about the speed
9 of the trial in all courts, not just this one, and I want to
10 acknowledge that optimism.

11 [10.20.48]

12 Yesterday, however, the International Co-Prosecutor indicated
13 that maybe two to three years was a more realistic period for the
14 duration - the entire duration of the trial. So let's be clear
15 about that.

16 In your proposal, just the prosecutors estimate that with 96
17 witnesses and a day each, it would be 96 trial days. Obviously,
18 in coming to your calculation that the trial itself would last 12
19 to 18 months, you allowed some time for the Defence and the Lead
20 Co-Lawyers. And did you allow for the 26 national holidays next
21 year, for example?

22 MR. LYSAK:

23 Your Honour, we did. We recognize that there will be holidays,
24 there will be breaks.

25 And just to make something clear, as the International

1 Co-Prosecutor indicated yesterday when he talked about two to
2 three years, two years he was talking about as from the time from
3 now until a judgement would be reached. Three years recognizes -
4 what I think everybody here understands - there is tremendous
5 uncertainty.

6 [10.22.15]

7 Yes, our proposal is based on the assumption that things proceed
8 expeditiously. When we - if we lose several months of hearing
9 time as happened before, then it's not going to be completed in
10 that timeframe. So we do acknowledge that, Your Honour.

11 JUDGE CARTWRIGHT:

12 So you've taken into account the possibility of ill health of the
13 Accused or any other pivotal parties to the proceedings delaying
14 matters. But I looked back in the course of reviewing the
15 prosecutors' list of witness - and I need to emphasize that
16 because in the trial the evidence of which has just concluded,
17 approximately 50 per cent of the additional witnesses, experts,
18 civil parties came from other parties to the proceedings, so
19 potentially we are looking at a doubling of that number, maybe,
20 maybe not. Do you agree with that very rough assessment?

21 [10.23.17]

22 MR. LYSAK:

23 I think my review of the numbers is a little different than
24 yours. I think because the Prosecution bears the burden of proof,
25 if you look at the overall number of witnesses that were heard

1 that were on our witness list, I think it's higher - it is higher
2 than that, and that's not surprising because we have the burden
3 of proof. With each of these crime sites, we have gone through
4 and identified what I think almost everyone would agree are the
5 most important witnesses.

6 So I'm not saying that there won't be other - a significant
7 number of additional witnesses or civil parties who will have to
8 be heard. Whether it will be twice that much is something that
9 remains to be seen and is also largely within the decision of the
10 Judges who will hear this case. They will ultimately look at the
11 other witness - our witness proposals and the others, and decide
12 what is necessary.

13 But I certainly do not disagree that there will be significant
14 additional time to what we have proposed in our 96 days.

15 [10.24.25]

16 JUDGE CARTWRIGHT:

17 Well, I was simply basing my 50 per cent comment on a paragraph
18 in your submission which said: "Ultimately the Chamber heard 92
19 individuals, including 20 proposed by Nuon Chea and 23 by Khieu
20 Samphan."

21 And that is in relation to the trial the evidence of which had
22 just been concluded. Now, that is less than the 50 per cent of
23 the 92, but that was the approximation that I was working on.
24 But I want to go back to Case 001, which was confined only to
25 matters related to S-21, Choeng Ek and Prey Sar. That - the

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1 evidence in that trial took just less than six months just for
2 those parts of the evidence. Now, let's assume we're quicker at
3 it this time, fewer witnesses; it still has to be reheard, all of
4 that evidence, does it not?

5 [10.25.48]

6 MR. LYSAK:

7 Let me say two things.

8 First of all, in regards to the numbers of Nuon Chea and Khieu
9 Samphan witnesses that you quoted, those were not witnesses
10 proposed exclusively by them. Many of them - in fact, a large
11 percentage of them were witnesses that were proposed by both the
12 Co-Prosecutors. So, I think if you look at the number of
13 witnesses who were not proposed on our list at all, it is a much
14 smaller percentage than 50 per cent.

15 In regards to S-21, I think it's hard to compare to the first
16 trial, and keep in mind that a significant amount of time in that
17 trial was the testimony of Duch. We do not need to repeat all of
18 that evidence. Duch testified in the first trial, in Case 002, we
19 propose that he reappear and testify in here. But we do not need
20 to have - and I don't have the number at my disposal - but he
21 spent a significant number of days giving evidence in that Case
22 001 trial, we do not need to repeat that.

23 [10.27.04]

24 There are some issues that I think are different. The focus of
25 this trial is more on the Accused's role - how did the people who

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1 ended up at S-21 get there, who was responsible for that decision
2 - less of a focus on the internal operations within the prison.
3 So I think the comparisons are somewhat difficult, and I would
4 remind - remind Your Honours too that when we initially proposed
5 S-21 be added, Your Honours inquired of us whether it would be
6 possible to hear S-21 with only Duch? So I do think that these
7 crime sites can be tried fairly expeditiously. We understand
8 other people will have proposals and so it will take longer than
9 the 96 days we're proposing.

10 JUDGE CARTWRIGHT:

11 Even so, in the case of Kaing Guek Eav, you've proposed
12 approximately five days for his testimony, that's 25 hours. So he
13 will still be a significant witness and the five days devoted to
14 him means far fewer days to the other witnesses.

15 [10.28.24]

16 But I think you have been quite clear and helpful this morning
17 and I have - for my part, obviously the parties will have their
18 own views - but you acknowledged that this is the proposal only
19 from the prosecutors. It is unknown what additional time, numbers
20 of witnesses will be needed to meet the requirements of the Lead
21 Co-Lawyers and the Defence, and you are not suggesting that a
22 mere 92, 96 days will be required; it is significantly -
23 potentially significantly more than that. And of course, all of
24 this depends on this proceeding before the existing panel, and
25 not a second panel.

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1 By your nodding, you agree with my summary, Mr. Lysak?

2 MR. LYSAK:

3 I do, Your Honour. I'm fully in agreement with those
4 observations.

5 JUDGE CARTWRIGHT:

6 Thank you very much.

7 [10.29.45]

8 MR. PRESIDENT:

9 Thank you, the International Deputy Prosecutor.

10 The time is now appropriate for a short break. We will take a
11 20-minute break and return at 10 to 11.00 to continue our
12 meeting.

13 (Trial Management Meeting recesses from 1030H to 1051H)

14 MR. PRESIDENT:

15 Let's continue our meeting.

16 And before I hand the floor over to the Lead Co-Lawyers for the
17 civil parties, I have some questions for the Deputy International
18 Prosecutor.

19 [10.52.22]

20 I have heard your presentation regarding your submission to the
21 Trial Chamber for the trial of 002/02 some charges and by
22 dropping other charges and that's also mentioned in your written
23 submission, E306/2.

24 In paragraph 63 of the Order by the Supreme Court Chamber, in
25 order to facilitate the necessities and to allow the smoothness

1 and the justice for the indictment of this large-scale trial, the
2 ICTY and the SCSL and the Yugoslavia Tribunal actually amended
3 their Internal Rules to allow their respective trial chambers to
4 invite the prosecutor to reduce or order proprio moto the
5 reduction of the number of counts charged in an indictment. And
6 for the purpose of the implementation of the Law in regards to
7 the Case 002, we follow Internal Rule 79.1, the Trial Chamber is
8 seized of the indictment by the Co-Investigating Judges or the
9 decision of the Trial Chamber, and in the case of Case 002, the
10 Trial Chamber is seized of the case by the - by the order - by
11 such order.

12 [10.54.52]

13 The question to you - that is, to the Prosecution - regarding
14 your ability to drop some charges or crime sites or parts of the
15 charges - and how can you do that, legally speaking? What are the
16 legal grounds for your decision to drop or to remove some of
17 those charges - that is, allowing the Trial Chamber to proceed
18 with those charges that you submit? There has to be legal grounds
19 for that.

20 And, second, the remaining charges that you dropped, we cannot
21 proceed with that; or can we, legally speaking? In the Cambodian
22 legal context, there is no provision for the prosecution to drop
23 the charges. Can you enlighten the Chamber on that?

24 MR. LYSAK:

25 Thank you, Mr. President.

1 The basis for our suggestion is that the Supreme Court in its
2 decision has now recognized that these procedures are available.
3 Now, I understand that there are people who may not agree with
4 that interpretation, but the Supreme Court has now provided you
5 with options.

6 [10.57.00]

7 This is a complicated issue. We have not attempted - and we do
8 not propose at this time that this Chamber make a decision on
9 this. This is something that should be, I believe, briefed, but
10 whether we're talking about severing these crime sites and then
11 determining this complex issue, that is certainly something that
12 this Court can do. This Court can sever the crime sites that we
13 propose to be excluded, but at some point we believe that we do
14 need to address this issue.

15 The Supreme Court has suggested two approaches to dealing with
16 these additional crime sites that would not necessitate trying
17 them. I understand what Your Honour is saying, that it's not part
18 of Cambodian procedure, they're relying on practices at the
19 international level. But that is the basis for our suggestion on
20 this issue - is the paragraphs from the Supreme Court's decision
21 that provide a couple of options. And that's paragraphs 61
22 through 63 of the November decision.

23 [10.58.25]

24 MR. KOUMJIAN:

25 If I could just add, Your Honour, to explain a bit more our

1 position.

2 Again, our position is to – that this trial, 02/02, should cover
3 all of the legal charges. If one looks at the Closing Order in
4 the disposition section, the very end of the Closing Order, all
5 that's mentioned is the actual legal charges.

6 We recognize that it would be, in our view, inefficient to cover
7 every crime site mentioned in the Closing Order. And we don't
8 think that's necessary because what the Closing Order makes clear
9 is that the crimes that are alleged against the Accused occurred
10 nationwide, and this was part of the decision of the Pre-Trial
11 Chamber in its decision on admitting victims who were not named
12 in particular crime sites, that they could participate in these
13 proceedings. The Pre-Trial Chamber pointed out that from this
14 Closing Order what's alleged is crimes that occurred throughout
15 the country.

16 [10.59.38]

17 We're going to prove that. We intend to prove that in Case 02,
18 limiting the examples, as in every international case, to some
19 specific locations because we can't prove every crime that
20 happened in Cambodia during the regime of Democratic Kampuchea,
21 what happened to 6 million or 7 million people. We will give
22 examples that are representative, that show that all of these
23 crimes occurred as part of a national policy of the regime.
24 And additionally, of course, this case is so different from cases
25 that occur in domestic settings whether in Cambodia or France or

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1 anywhere else because of the size of the case and because of the
2 role of the victims. So it's already been decided by Your Honours
3 in earlier decisions that reparations in this case will not be
4 individual, they'll be reparations based on what happened to the
5 group, and participation will - in the proceedings depends simply
6 on being a victim of these crimes throughout the country not on
7 specific sites.

8 [11.00.49]

9 So, in these circumstances, we believe, putting together the
10 Supreme Court decision and international jurisprudence and the
11 unique nature of this case that, dropping crime sites while
12 covering all of the legal charges, would be legal, would be
13 sufficient. And that's why we want to make it very clear; our
14 proposal is that this case, 002/02, terminate proceedings. It
15 will cover all of the charges.

16 We also think that's important for the donors here - both the
17 international donors and the Cambodian Government. Our plan is to
18 finish our work, to do this extremely important case, to cover
19 all of these horrible charges, and to finish in a reasonable
20 period time.

21 Thank you.

22 MR. PRESIDENT:

23 Thank you.

24 What is in my question is the legal grounds that you based. And,
25 of course, I appreciate the selective crime sites and charges in

1 your submission. But legally speaking, how you made your
2 decision? And how shall we proceed when you decide to drop
3 certain charges from the indictment by the Pre-Trial Chamber?

4 [11.02.22]

5 So what I would like you to enlighten us is purely the legal
6 grounds because at the ICTY, it mentioned their decisions - that
7 is, in order to ensure the timely justice, and for that purpose
8 they allowed the prosecutor to reduce the number of counts
9 charged in an indictment or to fix a number of crime sites or
10 incidents in respect of which evidence may be presented.

11 At the ICTY, in order to allow the prosecutor to reduce or to
12 drop the charges, it's stipulated in their amended Internal
13 Rules. However, in our Internal Rules or, in fact, what we are
14 having here in Cambodia, there is no such provision.

15 So what I want you to enlighten us is the legal aspect for the
16 reduction or the drop of the charges. And, secondly, how shall we
17 proceed because this is a big challenge for the Trial Chamber?

18 And what you have stated, of course, will be published in the
19 newspaper. And for us, as a Judge, we cannot speak to the media
20 about that.

21 [11.04.02]

22 MR. KOUMJIAN:

23 Thank you, Your Honour.

24 Well, first of all, we recognize that the proposal that we have
25 is subject to the final decision of Your Honours who have to

1 decide on the exact scope of the trial. But we would point out
2 that the rules and the practice of other international tribunals
3 does form part of customary international law, and that practice
4 has evolved to be quite consistent that in order to manage these
5 extremely complex cases, the Trial Chamber does have the power to
6 reduce, at a minimum, the crime sites; the evidence of particular
7 crimes behind one count.

8 We'd also point out - I understand that the Cambodian rules don't
9 exactly address this situation. The rules of national or
10 international courts, in interpreting those rules one must look
11 at the reasons behind them. It makes sense in a national system
12 where civil parties participate as individuals and seek
13 individual reparations that the crimes covering certain civil
14 parties cannot be dropped unilaterally by the Prosecution, but
15 that's not the situation of how this case has been handled in
16 Case 001 or Case 002/01.

17 [11.05.35]

18 The civil parties are participating, and any reparations will be
19 to the group. And it's already been recognized by the Pre-Trial
20 Chamber - and we believe that decision was absolutely correct -
21 that individuals can participate even if they are not named in a
22 particular crime site or if the harm they suffered didn't occur
23 in a crime site that's covered in the trial or covered - even
24 mentioned in the Closing Order.

25 So the procedures in this Court are already quite distinct from

1 the national procedures, and it shouldn't - you shouldn't
2 automatically, in our view, take a national procedure that's
3 designed for a case where a civil party will seek individual
4 reparations and apply that to this case covering crimes that were
5 inflicted more or less on an entire national population over a
6 period of years.

7 In these circumstances, in the interests of justice, we think
8 it's only reasonable to interpret the rules as allowing the
9 Prosecution to prove this national policy by selective crime
10 sites. Even in - even if we presented every crime site mentioned
11 in the Closing Order, we won't, of course, mention every victim
12 at that crime site; that would be impossible to do.

13 [11.06.55]

14 So, we think that the path that we propose - ultimately up to
15 Your Honours to decide - is sufficient and wouldn't require a
16 change of the rules or a dismissal of any charges because all of
17 the charges are going to be covered. They can be covered with
18 specific examples of where these crimes occur. However, if Your
19 Honours or someone thinks a rule change is necessary, then a rule
20 change could be conducted but the trial can begin before the rule
21 change.

22 The only issue is whether at the end of Case 002/02 something has
23 to be done because some crime sites were not covered or it
24 doesn't have to be done. In our view, nothing has to be done
25 because we propose to prove a national policy, and it also could

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1 occur that one of the victims from one of the crime sites may
2 mention a crime that occurred in another part of the country.
3 This is - in our view, the Closing Order shows a national policy
4 as the Pre-Trial Chamber found. So we believe it's a practical
5 and a legally defensible position that specific crime sites can
6 be dropped.

7 Thank you.

8 MR. PRESIDENT:

9 Thank you.

10 And Judge Lavergne, please proceed.

11 [11.08.21]

12 JUDGE LAVERGNE:

13 Thank you, Mr. President. I do believe that to make headway on
14 this it might be useful to dissociate two separate problems: The
15 first is the one that concerns the scope of the next trial. The
16 second problem is the problem of what happens to the charges that
17 are not included in the trial.

18 To begin with, we could carry on with the practice that we have
19 held so far which is seeing if there is any need to undertake
20 severance measures, and the scope of Trial 002/02 could be set in
21 that way through a severance decision, which would enable all of
22 the parties to discuss what should be within the scope of the
23 trial and what should not.

24 As to the remaining charges, I believe that the Supreme Court has
25 issued some instructions on that, but the President has said that

1 the guidance from the Supreme Court raises a certain number of
2 legal difficulties. "Indictment" in English is not translated by
3 a series of charges but by a decision to refer, and that is a
4 decision that is taken by judges - "décision de renvoi". And so
5 there's a problem of knowing whether a party such as the
6 Prosecution can decide to modify something that already has the
7 authority of res judicata.

8 [11.10.47]

9 There are many problems here, and I don't think today is the
10 right moment to go into this in-depth but just to mention one or
11 two in our Internal Rules. At 101, you have a rule that copies
12 Article 357 of the Cambodian Criminal Code and that rule says
13 what has to be done when a verdict is drafted; what have the
14 judges got to do when they set down to doing this.

15 And in paragraph 3 of this, it quite clearly says that "the
16 Chamber shall examine all counts in the indictment" - and the
17 English, "all counts in the indictment", is even clearer than the
18 French, "tous les comptes (sic)", etc.

19 And there is also reference in the Supreme Court Chamber's
20 document to a certain number of other notions that have to be
21 discussed. For example, they'll talk about "prosecutorial
22 legalism".

23 Now, up to now, we do not have a French translation of the
24 Supreme Court's decision and my knowledge of English is somewhat
25 modest and sometimes I even do some translations myself but, to

1 be perfectly honest, I'm not exactly sure how the notion of
2 prosecutorial legalism should be translated into French. I
3 understand that it may mean that the prosecutors are obliged to
4 try the case, there is an obligation there, or to prosecute.

5 [11.12.45]

6 But if we go back to the Cambodian system, I'm wondering if this
7 actually tallies with Article 40 of the Cambodian Criminal Code,
8 which reflects a notion that is well-known in France which is the
9 timeliness of prosecution. In other words, the prosecutor has the
10 right to make an appreciation of whether or not prosecution
11 should be undertaken at a specific time. These are just a few
12 examples.

13 If we're going to talk about this, I think we should do so
14 in-depth. Perhaps the Chamber will issue its own views on the
15 points of law that should be reviewed by the parties, but the
16 discussion might perhaps take place at a later stage. And perhaps
17 the immediate priority is to decide on the scope of the trial and
18 to make a decision possibly on any severance. I don't know what
19 you think of this suggestion.

20 Thank you, President.

21 [11.14.03]

22 MR. KOUMJIAN:

23 Well, we absolutely agree. The trial can proceed once we know the
24 scope of the trial and the issue of crime sites that we didn't
25 deal with. We have much - as we said, at least 96 Court days to

1 deal with.

2 MR. PRESIDENT:

3 Thank you.

4 The issue that I raised in regards to the scope of the facts to
5 be tried in Case 002/02 means that it is unavoidable that there
6 has to be an extensive debate, as raised by Judge Lavergne. What
7 shall we do with the remaining charges? Shall we sever the case
8 for those remaining charges so that the Trial Chamber is capable
9 to try those charges included in 002/02? This is part and parcel
10 of the case, and we cannot just have it as a stand-alone
11 proceeding. Shall we drop or shall we sever the case? And that is
12 a very complex issue in terms of the legal aspects.

13 [11.15.38]

14 Since the beginning of the first Severance Order by the Trial
15 Chamber, which was subsequently appealed, in particular by the
16 Prosecution because - mainly, that is due to the different -
17 different legal interpretation and whether it is based on the
18 common-law or the civil-law system, and for that I raise that
19 issue. Because you when you drop some charges, you introduce
20 another complexity into the already complicated case. And for
21 that I believe a thorough discussion is warranted, and of course
22 it cannot be done right now. At least, this is some ideas for the
23 parties to consider, as we already faced this issue in our
24 Severance Order.

25 And, of course, we don't want the general public to misunderstand

1 our position, that not every severed case by the Trial Chamber is
2 subsequently appealed.

3 [11.17.00]

4 So we have to be precise on that and consistent on the legal
5 interpretation. And if we already started to disagree on the
6 principle of the law and its interpretation, then it's
7 unavoidable that appeals will be made as a consequence.

8 For instance, for the second Severance Order, it was also
9 appealed, and that was for the same reason. And for that, in
10 order to avoid it being appealed, then we shall discuss it
11 thoroughly before that order is issued. And for that we can save
12 some time to avoid the appeal.

13 And, of course, we don't have much time to conduct several TMMs
14 for this case. Maybe there will be another one, and that will be
15 it, before the substantive hearing starts.

16 And the Chamber would like now to give the floor to the Lead
17 Co-Lawyers for civil parties. You may proceed.

18 [11.18.16]

19 MR. PICH ANG:

20 Good morning, Mr. President, Your Honours, and good morning,
21 everyone in and around the courtroom.

22 On behalf of the consolidated civil parties and in regards to the
23 scope of 002/02, which is the next trial segment, the civil
24 parties agreed to the proposed scope of this trial as submitted
25 by the Prosecution.

1 We are of the view that there has to be a judgement in due
2 course, as we have to take into account the health and the age
3 condition of co-accused. We also had to factor in the victims or
4 the civil parties whose opportunity is slipping away from them,
5 due to their old age, before the judgement can be issued. So, for
6 that, it is vitally important that a judgement is issued and - so
7 that they will know who are responsible for the facts and the
8 crimes that they suffered. So, for that, we fully agree with the
9 proposed scope by the Prosecution.

10 [11.20.01]

11 Additionally, we are also in the view that the proposal by the
12 Prosecution includes the three charges, that is: genocide, crimes
13 against humanity, and war crimes. Among the three main crimes,
14 some selective facts or crime sites which are representative of
15 each crime is selected, and some other charges are set aside.
16 This is my understanding. And the inclusion of those charges are
17 in no way contradictory to our existing Internal Rules or the
18 need to amend our Internal Rules.

19 As for the remaining charges, it is our view - our view is based
20 also on our extensive consultation with our civil parties - is
21 that our clients want to hear and want to be present in this
22 courtroom to hear the trial and the proceeding.

23 It is rather difficult for us to take a firm position as to
24 whether all the charges shall be included or whether we agree to
25 the drop of those certain charges, and I believe that it's the

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1 discretion of Your Honours to make such a decision on the
2 remaining charges which are not proposed to be included in
3 002/02.

4 [11.22.00]

5 As to the time needed to hear the testimonies of witnesses and
6 civil parties, we submit that we will have our own list which is
7 separate from the Prosecution's list, although some names may be
8 repetitive, and of course we will submit our list to Your Honours
9 when the scope of the next segment of the trial is clearly
10 determined.

11 We also want to add that we want the civil parties to be heard in
12 a reasonable amount of - numbers of the civil parties, in
13 particular those civil parties who may express their suffering
14 related to the relevant facts and charges. And, of course, those
15 charges are rather broad as proposed by the Prosecution, so we
16 request that those civil parties to be heard about the suffering
17 for at least eight Court sitting days or more if possible, as in
18 the case of the 002/01. However, due to the time constraints and
19 as we cannot delay the time any further, we opt for the same
20 approach for hearing the civil parties who will talk about the
21 harm and their suffering.

22 And that is our position in regard to the scope of the trial, as
23 well as the list of the civil parties. Thank you, Your Honour.

24 [11.24.16]

25 MR. PRESIDENT:

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1 Thank you.

2 And what about the International Lead Co-Lawyer for civil
3 parties? Yes, you may proceed.

4 MS. YE:

5 Thank you, Mr. President. I just wanted to add one comment on the
6 discussion of what should remain - what should happen to the
7 remaining charges or if charges can be dropped.

8 I think it is crucial to consider what the meaning, the
9 definition of "charges" is. For us, "charges" is legal
10 characterization plus the underlying alleged factual
11 circumstances. So, in this - if that's the case, then charges
12 cannot be dropped.

13 And this is - it's just for your consideration. We'll reserve our
14 right to file written submissions on this point in the future.

15 Thank you.

16 [11.25.09]

17 MR. PRESIDENT:

18 Thank you for your comments.

19 The Chamber would like to give the floor now to Nuon Chea's
20 defence to raise your opinions. You may proceed.

21 MR. KOPPE:

22 Thank you, Mr. President.

23 I think all parties in this courtroom agree there is a very
24 complex legal issue to be decided in respect of the question
25 whether charges can be dropped. There are actually many more

1 issues involving this matter.

2 And to just come back to a point the International Co-Prosecutor
3 raise, the ECCC is, of course, not an international tribunal; it
4 is a court principally ruled by domestic procedure. So whether
5 it's possible, yes or no, I think that it's something to be
6 discussed, we agree, on a later stage.

7 [11.26.16]

8 However, it's also good to take practical considerations into
9 account, and that is the question whether the second trial might
10 be de facto the only trial which is going to happen in the near
11 future. It needs no discussion that our client is old and of
12 frail health, and the possibility for him being present or if -
13 of alive during a third trial, of course, remains to be seen.
14 Now, having said that, having realized that a second trial might
15 be de facto the only trial, I think what is very important to
16 note is the following. What is unclear to us is the question of
17 all kinds of other issues which are being mentioned, which are
18 raised in the Closing Order.

19 Now, if we limit ourselves only to a few crime sites,
20 theoretically it might be possible that many relevant issues will
21 be, again, out of the debate. As you know, one of the main
22 difficulties in the first trial was always the question whether
23 certain questions asked to a witness was within the scope of this
24 specific trial or was without - outside of the scope of this
25 specific trial. One thing I think our defence team has learned

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1 from this experience is that it's a discussion which is,
2 generally speaking, not very helpful in the process of
3 ascertaining the truth and, on the other hand, establishing
4 individual criminal responsibility of our client, as you know.

5 [11.28.16]

6 So, to give you just one or two examples from the Closing Order,
7 one of the things that we, for instance, would like to be able to
8 discuss in a second trial is a matter which is not necessarily
9 related to any specific crime site. That is, for instance, the
10 results laid down in the demographic report of Ewa Tabeau and the
11 question in there: "How many victims have there been in total
12 during the DK period?"

13 Now, this is something which we think is vital, not only to the
14 case, but also to a general understanding of the period in large.
15 So the question, of course, is, when we limit ourselves to only
16 one more trial, would we still be able to discuss this matter
17 although it is not directly linked to any crime site?

18 The other issue is - as you know, and I do not need repeating
19 this - we have a rather different view on the events and the
20 policies established, allegedly, in the DK period than the
21 Prosecution. We do not believe there was a national policy. We
22 believe that there were, in fact, two equally strong opposing -
23 opposing factions within the Khmer Rouge, fighting each already
24 from the very beginning, after 17 April 1975. This is a theory -
25 a defence theory, if you like - which we feel we should be able

1 to develop also in the second trial.

2 [11.30.10]

3 Now, the question arises: If we limit ourselves to the crime
4 sites proposed by the Prosecution, would that disallow us from
5 investigating this alternative theory in respect of the events
6 between '75 and '79? To give you one concrete example, if the
7 defence team of Nuon Chea would be keen on establishing the
8 theory that it was in fact the leader of the Northwest Zone, Ros
9 Nhim, together with the leader of the East Zone, So Phim, who
10 were in fact conspiring against others within the Standing and
11 Central Committee, how would we go about that?

12 If we look at the actual Closing Order, there might be crime
13 sites which would, in theory, allow the Defence to further
14 develop this theory. I'll give you one example. It's a crime not
15 mentioned in the proposal by the Prosecution - that is, the
16 movement - the third movement of population from the East Zone.
17 These would paragraphs 283 until 301. As we understand the
18 Closing Order, the third movement was - has to be seen in the
19 context of purges within the East Zone and all kinds of ideas
20 about treason within the East Zone. Now, typically, that could be
21 - we don't say "it will be", but "it could be" - a crime site in
22 which the Defence would be allowed to further develop its theory.

23 [11.32.02]

24 The same goes, for instance, for the worksites in the Northwest
25 Zone. More specifically, I'm thinking about the Trapeang Thma Dam

1 worksite as discussed in paragraphs 323 up until 350. This was a
2 worksite in the Northwest Zone, a worksite which was not
3 developed in the very beginning of the DK period, but later. All
4 kinds of very interesting issues might have arisen there which
5 might further support the view of the Defence in respect of the
6 DK period.

7 So my question is: Letting aside very complex legal issues as to
8 severance and as to the dropping of the charges, how should we -
9 be bearing in mind that this might be de facto the only trial
10 that we are still having, how are we to address this issues? So,
11 I think the whole debate, apart from the legal issues, is much
12 broader than only the question as to which crime sites and which
13 particular crimes are adjudicated.

14 These are just some preliminary remarks.

15 I think when it comes to the duration of the trial, let me put up
16 front that I believe that this trial is as equally complicated,
17 if not more, than the first trial.

18 [11.33.38]

19 We will be dealing for the first time with the accusation of
20 genocide. I find it difficult to believe that the Prosecution
21 wishes to prove its case of genocide by just hearing a few crime
22 based witnesses. If they're able to succeed in such a way, they
23 will be the first prosecutors in an international tribunal - or
24 tribunal like this to do so. There are many very complex issues
25 relating to the accusation of genocide.

1 The same, of course, goes to S-21. I need not remind the Chamber
2 that the position of Nuon Chea is completely different when it
3 comes to S-21. The position of Duch has been, as we all know, a
4 complete different one than the position of our client. His
5 position as the accusations within the Closing Order is, in
6 general, completely different than the accused in the first
7 trial. So I'm just saying, in a general manner of speaking, I
8 think the Prosecution is not only very optimistic in respect of
9 the duration of the second trial in general, it's also very
10 optimistic when it comes to the actual legal and factual
11 questions involved.

12 [11.35.04]

13 Now, it's not necessary - and I think we agree on this - that we
14 have to debate all these issues at the very beginning. It is very
15 well possible to debate these complex legal issues in the course
16 of the second trial.

17 I may remind the fact that the Supreme Court Chamber has ruled
18 that there are certain minimum amount of charges that we have to
19 deal with. It's perfectly feasible to start with these
20 accusations which the Supreme Court Chamber deems to be minimally
21 adjudicated, and in the course of this trial we can re-evaluate
22 the necessity of adding additional crime sites. It might very
23 well be possible that the development of the Defence theory is
24 perfectly possible within the framework of the accusation of
25 S-21. And if we are able to develop this position while

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1 questioning witnesses in relation to S-21, we might not need any
2 more to have, for instance, the forced movement of population,
3 the third phase, added to this trial.

4 So, having all said that, I think it's not necessarily - it's not
5 necessary in the interest of justice and in the rights of our
6 client to immediately discuss and decide on these issues. We can
7 start, we can go along, and while on the road we can have further
8 discussions on which crime sites should or should not be added -
9 basically the same, I would say, as the Trial Chamber has done in
10 Case 002/01, where there was a discussion 14 months ago which led
11 ultimately to your decision to have Tuol Po Chrey added as a
12 crime site.

13 [11.37.16]

14 So, these are just some preliminary remarks that we have at this
15 stage. And I think we agree that there are some very complex
16 legal issues to be decided, but that should not necessarily stop
17 the commencement of a second trial as soon as possible, as the
18 Supreme Court Chamber has indicated.

19 MR. PRESIDENT:

20 Thank you, Counsel.

21 Now the floor is given to the defence team for Mr. Khieu Samphan.

22 You may proceed.

23 MS. GUISSÉ:

24 Thank you very much, Mr. President.

25 Now, we do not hold the same position as the defence team for Mr.

1 Nuon Chea, with respect to the necessary expeditiousness on the
2 commencement of a second trial until all legal issues are
3 resolved. I think we need to draw a lesson from Case 002/1 to say
4 that it would be preferable to take the time necessary in order
5 to organize in an upstream manner all of the contentious issues
6 at hand to make sure that the trial will unfold in an efficient
7 and effective manner.

8 [11.38.50]

9 The first point is the following - and I shall not be long. I
10 won't be delving into the details of all of the legal issues that
11 I deem significant, but I will recall the position of the defence
12 team for Mr. Khieu Samphan by stating that Case 002/2 must begin
13 following a definitive Appeal Judgement issued by the Supreme
14 Court. It is because we will have resolved a certain number of
15 legal issues in 002/1 which will have an impact on 002/2 and that
16 only then will we be able to act expeditiously on all of the
17 matters raised by the parties; we will be able to decide on the
18 modes of responsibility, and obviously that would have an impact
19 on the number of witnesses to be summoned and how they shall be
20 questioned. That is the first point.

21 I also wish to recall that this position is not excessive, as the
22 Co-Prosecutor seemed to infer yesterday. I will remind Your
23 Honours that there is very little time ahead of us, and the Lead
24 Co-Lawyers for the civil parties and the Co-Prosecutors have
25 acknowledged this. Based on my memory, the OCP's submission from

1 the 3rd of October 2011, E124/22 (sic) states this.

2 [11.40.27]

3 It is also contained in decision E83 (sic) in which the Trial
4 Chamber recalled in paragraph 64 (sic) the position of the Civil
5 Party Lead Co-Lawyers, as well as OCP, in saying that 002/2 could
6 only begin once all decisions subject to appeal had been
7 dispensed. This is why at the time - they had reasoned at the
8 time to come to that position and now have shifted their stances
9 and changed their reasoning based on the circumstances prevailing
10 today or perhaps based on the disposition of the donor community.
11 With respect to matters of law, yes, what is going to happen to
12 the factual allegations contained - all of the factual
13 allegations and the counts contained in the indictment, as Judge
14 Lavergne has underscored. At the very least, we have to collect
15 the opinions of all parties on what to do.

16 I have also heard the Co-Prosecutors present their preliminary
17 list of witnesses and determination of the scope of 002/2.

18 Obviously, the Defence does not share this position. Obviously,
19 we will be submitting in written filings why such crime sites
20 should also be explored and - as well as the eventual withdrawal
21 of certain counts and whether or not the Chamber will dismiss
22 certain charges before an actual decision is taken - consultation
23 must take place.

24 [11.42.45]

25 Representativeness, be it decided by the Co-Prosecutors or the

1 Defence, has to be based on a very clear premise. In a trial
2 several, hypotheses are being challenged.
3 And this leads me to my third point. To allow the Defence to
4 review the entirety of the remaining documents that would support
5 the remaining charges contained in the paragraphs of the Closing
6 Order that still have yet to be adjudicated upon by Your Honours,
7 there's also the issues of the means to allow us to undertake
8 this defence work. As I will state once again, preparation is
9 crucial to the hearings, and if we are not given the proper
10 resources in terms of staff and tools to proceed appropriately,
11 well, we will simply not be able to acquit ourselves of the tasks
12 and fully defend our client, Mr. Khieu Samphan.
13 Those are my preliminary observations that I sought to convey.
14 [11.44.05]
15 Our position remains the same. We believe that a final appeal
16 judgement will expedite the ensuing case of 002/2 in terms of
17 duration and in terms of the availability and resources of the
18 teams. Once you issue your decision in 002/1, there will be a
19 timeframe for the appeal to be launched and to organize
20 ourselves, and this has to be considered while anticipating
21 future hearings.
22 I shall not go on more extensively, but I believe that the legal
23 points that have been raised by Judge Lavergne, as well as Mr.
24 President and the other parties, require that we contemplate in
25 an in-depth and serious manner the way such issues should be

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1 resolved before we even contemplate considering a second trial.

2 MR. PRESIDENT:

3 Thank you, Counsel.

4 I hand over the floor to Judge Silvia Cartwright. Your Honour,
5 you may proceed.

6 JUDGE CARTWRIGHT:

7 Thank you very much, President.

8 First, Madam Guissé, I'm intrigued by your submission that
9 waiting until a final verdict is delivered by the Supreme Court
10 will in fact expedite the process of beginning a second trial in
11 Case 002.

12 [11.45.48]

13 Perhaps a little bit of reality testing. I don't remember the
14 exact timings now, but my recollection is that after this Chamber
15 delivered the verdict in the trial of Kaing Guek Eav, it took at
16 least another year for the Supreme Court's verdict to be
17 delivered. My recollection is approximately the same time as it
18 took for this Chamber to complete the trial and write the
19 verdict, but I may be wrong about that.

20 Had you taken that - the time that the Supreme Court needs into
21 account in suggesting that it would actually expedite this
22 process?

23 And then I have a brief question also for Mr. Koppe.

24 MS. GUISSÉ:

25 Judge Cartwright, I am fully aware of the timeframes necessary to

1 issue a decision, but once again, unless an appeal judgement is
2 issued by the Supreme Court, it can occur - it must occur before
3 002/2 begins - obviously, based on your rulings of modes of
4 responsibility and other issues that we may intervene on. That is
5 to say, if the Supreme Court - and this is our wish - if the
6 Supreme Court were to take a decision that would go against your
7 previous decisions, well, those would be definitive and those
8 would be applicable to all. And it's the only way to allow a
9 proper beginning of 002/2 baring violations of rights.

10 [11.47.52]

11 Now obviously, sometimes, to act swiftly and expeditiously does
12 not lead to the outcome that we wish for. We need a definitive
13 judgement in order to understand the basis on which we will
14 proceed with this second trial. This is a matter of legal
15 certainty, and obviously there will other - there will be other
16 issues that will be up for debate. This is how I interpret the
17 issue.

18 JUDGE CARTWRIGHT:

19 Yes. Thank you.

20 That, of course, begs the question of whether the Supreme Court
21 will be able to conclude its appellate judgement on Case 002/01
22 within a timeframe that enables the defence teams to remain
23 intact and other practical issues to be - to be dealt with.

24 But I turn now, please, to Mr. Koppe.

25 You proposed, Mr. Koppe, a procedure like the one undertaken in

1 Case 002/01: That the Chamber leave open the precise scope of the
2 trial, and we add or maybe even subtract as we go along.

3 Was this not a practise that was trenchantly criticized by the
4 Supreme Court under you advocating that we should not follow the
5 guidance that the Court has given us?

6 [11.49.42]

7 MR. KOPPE:

8 I understand your question.

9 It obviously has our preference to know what the scope of the
10 trial is before we go. My point was that we do not necessarily
11 say that this is something to be done before we start.

12 Now, that's why - I'm referring now to what I started with. What
13 is - what the main point of our criticism was the fact that we
14 were not able to raise issues which we thought was relevant to
15 our theory because of the interpretation as to how does severance
16 worked in practise. If - this would be different in the next - in
17 a next trial. If we would be able, without continued subjection
18 as to the scope of the trial, further develop this theory, then
19 we wouldn't have so much problems in the way it has been done in
20 the first trial. So these are two things which we feel are
21 closely connected.

22 [11.50.48]

23 Our frustration, if you allow me this word, was the fact that we
24 wanted to go a certain way but we couldn't because we were told
25 this was outside of the scope of the trial. Now, if that issue is

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1 solved - not "solved", but if that is - if our concerns are
2 appreciated, then we would have substantially less problems with
3 the way it had been - it has been done in the first segment and
4 could potentially be done in the second.

5 MR. PRESIDENT:

6 Thank you.

7 The International Deputy Prosecutor, you may proceed.

8 MR. LYSAK:

9 Thank you, Mr. President. Let me briefly respond to some of the
10 points that have been brought up by the Defence.

11 Let me start first with the assertion by the Khieu Samphan
12 defence that the Prosecution has changed its position and that
13 the second trial shouldn't start until an appeal judgement from
14 Case 002/01.

15 [11.52.08]

16 First, in regards to the issue you raised, Judge Cartwright, the
17 Trial Chamber's Judgement in Case 001 was issued on July 26th,
18 2010. The Appeal Decision did not come until the 3rd of February
19 2012. So it took about 18 months for an appeal decision.

20 The Prosecution's position has not changed. What we have now,
21 Your Honours, is an order - we have an order from the Supreme
22 Court Chamber that evidentiary proceedings in Case 002/02 must
23 commence "as soon as possible". There is no reason for us to be
24 debating anymore whether we are going to wait until after an
25 appeal judgement or after your judgement. The Supreme Court has

1 made its position on this known. They say - and when they say "as
2 soon as possible", they clarify in paragraph 72 they mean
3 "promptly, following this Trial Management Meeting". So I'm
4 rather surprised to hear lawyers in this courtroom suggesting
5 that we just ignore the Order of the Supreme Court and wait until
6 an appeal judgement in this case. That is not an option that is
7 open here.

8 [11.53.36]

9 In regards to some of the concerns Mr. Koppe has expressed, I
10 would suggest that if they have an opportunity to review in
11 detail the paragraphs of the Closing Order that we have proposed
12 be included, the concerns he's expressed, I think, he will not
13 have them anymore.

14 We're not - when you look at the proposal, this Court will need
15 to include the rather broad allegations about policy, about JCE,
16 that are included in other sections beyond the crime base. That's
17 all laid out in our filing; we specified the paragraphs - the
18 additional paragraphs that we believe would need to be included.
19 And those include very detailed allegations about the purge of
20 the East Zone, to raise one of the examples. So, I think, if you
21 review the paragraphs that would be included in this trial, they
22 will certainly allow the Defence to address that issue and, I
23 think, all the others that they have brought up. And, certainly,
24 the Defence should have time to review our proposal. And I
25 certainly agree that the Defence should be allowed to pursue its

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1 theory, but I disagree very much that we are - with the concept
2 or with the suggestion that we are advocating a very narrow set
3 of allegations limited to some crime base. We make it very clear
4 in our filing that the broad issues related to the policies of
5 the regime that are included in the JCE section - or policy
6 section of the Closing Order need to part of this trial.

7 [11.55.25]

8 The last point I just wanted to make - and this is further to the
9 discussion that we had this morning. I kept notes, at least
10 through May - May of this year, in the trial, and I just want to
11 note that I'm not talking here about the civil parties who
12 testified about victim impact. Even in the list that I kept here,
13 I see that there were seven witnesses who were completed in three
14 quarters of a day and another five witnesses who were completed
15 in half a day. If you look at the crime base witnesses, I kept a
16 chart just to see how long we were taking with witnesses. You
17 will see that the crime base related witnesses were all very
18 short. Most of them - the majority of them - were under a day.
19 So, I just wanted to - I know you had concerns about that and I
20 do realize that - you know, we're suggesting something that is
21 ambitious, but it is based - it is not - there is a precedent for
22 this. Crime based witnesses, if you look at the actual time they
23 took, were heard fairly quickly.

24 Unless you have any other questions, that-

25 [11.57.05]

1 MR. PRESIDENT:

2 Thank you.

3 The Lead Co-lawyer for the civil party, if you have anything to
4 say, you may proceed.

5 MR. PICH ANG:

6 Good morning, Mr. President, and good morning, Judges and
7 everyone. I would like to respond to one point that was raised by
8 the Office of Co-Prosecutor in response to the point raised by
9 Madam Anta Guissé, that we have changed our position.

10 As a matter of fact, I support the position of the Office of
11 Co-Prosecutor. Our position is that we want Case 002 to move
12 along expeditiously. And we also agree with the envision (sic) of
13 the Trial Chamber Judges.

14 And we also expect that the Judgement in Case 002/01 will be
15 handed down soon, given the fact that the Accused are now at
16 their advancing age. And we have to emphasize that it is
17 important. When we start Case 002/02, we have to ensure that this
18 have to be moved forward expeditiously. We share the same concern
19 in relation to the health status of the Accused, as well as the
20 status of health of the civil parties and the victims across the
21 country. So it is imperative that the proceedings on evidence in
22 Case 002/02 commence sooner rather than later.

23 [11.59.22]

24 In response to the point raised by Madam Anta Guissé, as well as
25 the defence team for Mr. Khieu Samphan, if we take into account

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1 the consideration the time period that Case 002/02 that may
2 commence according to them, we have to wait until the appeal
3 judgement or the Judgement of Case 002/01, which will be sometime
4 in the second quarter of 2014. I believe that it is very likely
5 that there will be an appeal to the Supreme Court Chamber, and we
6 will have to wait until - for the decision by the Supreme Court
7 Chamber. That will take a greater period of time. It may take
8 more than one year and half. So, during this period, I believe
9 that we will have to spend time waiting, while we - while there
10 is a possibility of commencing the second segment of trial. We
11 have not - we have to remember that the victims and the civil
12 parties have been waiting for justice, so it has to be - we have
13 to understand that they have been impatiently waiting for the
14 justice, so it is important that Case 002/02 can commence as soon
15 as possible.

16 [12.01.05]

17 MR. PRESIDENT:

18 Thank you, the Lead Co-Lawyer for the civil parties.

19 The time is now appropriate for lunch adjournment. The meeting
20 shall adjourn now and resume at 1.30 this afternoon. I invite all
21 the parties and concerned individuals to attend this meeting this
22 afternoon, before 1.30.

23 The meeting is now adjourned.

24 (Trial Management Meeting recesses from 1201H to 1332H)

25 MR. PRESIDENT:

1 Please be seated. Let's continue our meeting.

2 For the past one and a half day, we have concluded three items on
3 our agenda and we only have two more to cover.

4 Let we now look at item number 4 - that is, "The Tentative Trial
5 Schedule for Case 002/02".

6 [13.33.42]

7 The fourth item on the agenda relates to a Tentative Trial
8 Schedule for Case 002/02. The Chamber appreciates that the
9 Schedule for Case 002/02 is contingent upon a number of other
10 factors, including whether a second panel will be appointed and
11 the determination of the scope of the case. Accordingly, the
12 discussion under this item will be limited to an indication of
13 the parties' availability in the foreseeable future. Could all
14 parties indicate, insofar as you're able to at the present time,
15 if there is anything likely to limit your availability for future
16 Trial Management Meetings or adversarial hearings including an
17 initial hearing over the next 12 month.

18 First, I'd like to hand the floor over to the Co-Prosecutors to
19 respond to this question.

20 You may proceed.

21 MR. KOUMJIAN:

22 Thank you, Mr. President. We understand that we are here to try
23 this case and these charges, these important charges in Case
24 02/02; that's what we want to do. We believe that's our
25 responsibility and our obligation and we're available whenever

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1 the Court decides that that trial should begin.

2 [13.35.36]

3 MR. PRESIDENT:

4 Thank you.

5 How about the response from the Lead Co-Lawyers for civil
6 parties?

7 MR. PICH ANG:

8 The Lead Co-Lawyers for civil parties at this juncture would like
9 to respond to that question as follows: Currently there is only
10 National Lead Co-Lawyer for civil parties and the International
11 Lead Co-Lawyer is overseas and I'm not sure whether there is a
12 replacement for her position. Pursuant to our Internal Rules and
13 the presence of other lawyers for civil parties, I'm of the view
14 that there is no problem at all for us to attend the trials
15 during this period.

16 I'd like to also clarify what I stated this morning; the charges
17 cannot be dropped; however, facts can be dropped and I hope that
18 there is a clear distinction between these two terms.

19 Thank you, Mr. President.

20 MR. PRESIDENT:

21 Thank you.

22 And, yes, the representative of the International Lead Co-Lawyer,
23 you may proceed.

24 [13.37.20]

25 MS. YE:

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1 Thank you, Mr. President.

2 I just wanted to add, on behalf of the International Lead
3 Co-Lawyer, that she is willing and able to work from abroad to
4 fulfil her mandate as an International Lead Co-Lawyer until the
5 judgement and she stays involved in the preparations of the
6 trial.

7 Thank you very much.

8 MR. PRESIDENT:

9 Thank you for your response.

10 We'd like now to inquire from the defence teams.

11 First, Counsel Victor Koppe.

12 MR. KOPPE:

13 Thank you, Mr. President.

14 We are fully available the whole of next year - the full 12
15 months.

16 [13.38.18]

17 If you allow me two small additional remarks in that respect.

18 We have sent to you a letter on Monday indicating that replacing
19 my national colleague, our - one of our consultants might act in
20 Court; he is present here, Suon Visal. I don't know if you have
21 been able to have a look at this - this letter. I don't know if
22 this is the appropriate moment to discuss it. We have done so
23 also partly because of the health of my national colleague. So
24 there will be a possibility that the International - the National
25 Co-Lawyer will be at times replaced by Suon Visal, our

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1 consultant. That is one remark.

2 As it comes to me, I only have one week next year that I am, for
3 personal reasons, not available; that is the first week of June.
4 That's all.

5 (Judges deliberate)

6 [13.39.27]

7 MR. PRESIDENT:

8 Thank you, Counsel.

9 And what about the defence counsel for Khieu Samphan?

10 MS. GUISSÉ:

11 Thank you, Mr. President.

12 On the specific question pertaining to the availability of our
13 team members or any factors that could influence our availability
14 to participate in the adversarial hearings, well, if the
15 objective is to deepen the discussion and talk about the trial of
16 02/2 at a future TMM, well, all I can say is that it will depend
17 on what our team is comprised of and the exact nature and scope
18 of the future hearings. Those are caveats that are beyond my
19 control but that I am obliged to raise because it directly
20 affects our capacity to prepare for the hearings.

21 MR. PRESIDENT:

22 Thank you, Counsel.

23 And Judge Lavergne, you please take the floor.

24 [13.42.02]

25 JUDGE LAVERGNE:

1 Thank you, Mr. President.

2 Very quickly, Counsel Guissé, I understand that you are referring
3 to the possible financial restrictions that would prevent your
4 team from carrying out its duties. However, our question was
5 seeking to understand your availability as well as the
6 availability of counsel Vercken.

7 As of now, do you foresee any problems that would prevent you
8 from being present in the upcoming months?

9 MS. GUISSÉ

10 For now, I can only speak on my own behalf since I do not have
11 Mr. Vercken's diary before me. You understand that we work on a
12 rotating basis and we share the hours that are allocated to the
13 Co-Lawyers. But for now he has indicated that he is available,
14 and there should not be any obstacle, but if our hours are to be
15 reduced, then some problems may occur. But we have always made in
16 such arrangements so that at least one of us is available.

17 [13.43.24]

18 MR. PRESIDENT:

19 Thank you.

20 And Counsel Kong Sam Onn?

21 MR. KONG SAM ONN:

22 Thank you, Mr. President.

23 I have no issue with that. However, as for the judicial
24 procedure, once it is proceeded, then, of course, we will follow
25 it.

1 MR. PRESIDENT:

2 Thank you.

3 As for the three parties, we haven't - or you haven't thought
4 about the initial hearing yet. As requested by the Prosecution,
5 the initial hearing shall commence in February 2014. And
6 immediately proceeded by the substantive hearing in Case 002/02,
7 and we talked in detail about that. And the Prosecution is still
8 on the firm stance that it's possible for us to commence the
9 substantive hearing in late February 2014 and I would like to
10 inquire from other teams whether you are ready to be in lined
11 with the Prosecution's stand.

12 [13.44.55]

13 MR. PICH ANG:

14 On behalf of the lawyers for civil parties, we do not see any
15 remarkable obstacle to that. If the hearing can be commenced in
16 February, then we make ourselves ready for that. Thank you.

17 MR. PRESIDENT:

18 What about the defence teams?

19 Counsel Victor Koppe.

20 MR. KOPPE:

21 Like I said earlier, we are available all year, but I do find it
22 very optimistic to have an initial hearing in February - as a
23 matter of fact, not really realistic at all.

24 Having said that, I think we would agree with the suggestion made
25 by the Prosecution not to have opening statements. We do not

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1 necessarily seek to have opening statements. However, that does
2 not necessarily apply to Nuon Chea himself. He has indicated to
3 us that he wishes to address the Court at the initial hearing and
4 give an opening statement, and considering his age and the
5 possible length of this proceeding, I think - I think that would
6 make sense to do. But it's not - not the desire of us to have our
7 own opening remarks at the initial hearing.

8 [13.46.24]

9 MR. PRESIDENT:

10 Yes, Counsel Guissé, you may proceed.

11 MS. GUISSÉ:

12 Thank you, Mr. President.

13 Obviously, on the part of the Khieu Samphan defence team, we
14 believe that a start date in February is entirely unrealistic.
15 There are a certain number of legal issues that we raised this
16 morning that remain unresolved and we insist on the fact that
17 good preparation for trial of 002/2 is absolutely necessary in
18 order to avoid the mistakes of the first trial as it is the best
19 way to proceed. We maintain the position according to which a
20 trial following an appeal judgement is the ideal scenario, but we
21 do believe that hearings cannot possibly begin until your Chamber
22 has issued a decision on 02/1 and you will have adjudicated upon
23 the facts of 01 before beginning 02.
24 Once again, I underscore that preparation is absolutely crucial
25 so that we can discuss the eventual admission of evidence,

1 factual allegations, and the summoning of certain witnesses. This
2 represents colossal amount of work, and I do believe that
3 sometimes learning is best achieved through repetition.

4 [13.48.15]

5 MR. PRESIDENT:

6 Thank you.

7 And, yes, Judge Lavergne, you may proceed.

8 JUDGE LAVERGNE:

9 Thank you, Mr. President.

10 In order to allow for a serious discussion on a possible start
11 date for substantive hearings, I think we have to talk about some
12 of the prior steps before starting that discussion. And those
13 steps include preparation for trial and, to my mind, obviously,
14 we are going to have to take a decision - or, rather, the
15 President is going to have to take a decision on the appointment
16 or non-appointment of a second Panel of Judges. But an essential
17 step is to define the scope and contours of trial 002/02.

18 [13.49.20]

19 Once again once the decision is made I would assume that we can
20 undertake much more in depth discussions than we have begun
21 today. We have just become apprised of the problems today. Once
22 the decision on the scope of the future trial is made, we will
23 have to discuss the list of witnesses, the list of documents, and
24 we will undoubtedly have to consider some of the preliminary
25 objections that may be lodged at the start of trial 02/02. Even

1 before a possible severance, those are preliminary objections and
2 it would provide a reason to review the situation then.
3 One issue that may be addressed and one issue on which the
4 Defence may provide some indications is the fitness of their
5 clients to stand Trial. Over the course of previous months, we
6 have heard expert testimony from geriatric physicians and we
7 would like to know in light of the observations made by the
8 Defence teams, would it be necessary to reinstate the matter of
9 fitness for trial or fitness to stand Trial. Or do you believe -
10 and this question is for counsel of the Defence, that this matter
11 need not be addressed anew?

12 [13.51.26]

13 MR. KOPPE:

14 As all of you know, I am not a doctor, I'm not a medical expert,
15 so the only observation that I can make is what I - what I see
16 when I speak to my client. I saw him two days ago and I have no
17 reason to assume that his condition has changed comparing with
18 the last time you saw him. So that's all I can say, I think, at
19 this point.

20 JUDGE LAVERGNE:

21 Just a clarification, when I referred to the fitness to stand
22 trial I'm not just referring to his overall capacity to appear at
23 the hearings but also the parameters according to which this
24 trial will have to be organized and set up. Are we to preserve
25 the current arrangement - that is, to sit four days per week? Are

1 we going to have to make very special arrangements? Those are the
2 types of issues that pre-occupy us.

3 MR. KOPPE:

4 That is something that I have to get back to with my client just
5 to ask his instructions. At this point in time, I cannot answer
6 that question.

7 [13.52.52]

8 MS. GUISSÉ:

9 I can provide an initial indication to the Chamber.

10 A few months ago we had submitted a request to extend the lunch
11 hour in order to allow Mr. Khieu Samphan to rest as there had
12 been several disruptions and interruptions. And there had been
13 some extended court hearings. We do not re-iterate the request,
14 but in the long term we would be compelled to introduce, once
15 again, that submission in order to accommodate to Mr. Khieu
16 Samphan's condition. But the four-day consecutive sitting
17 schedule was rather difficult to sustain, given Mr. Khieu
18 Samphan's age.

19 JUDGE LAVERGNE:

20 Yesterday we were informed of Mr. Khieu Samphan's concerns
21 concerning - regarding the issues arising from an appointment of
22 a second Panel of Judges and some of their reservations regarding
23 the legality of the appointment of a second Panel of Judges. The
24 Khieu Samphan team even raised the eventuality of motions for
25 disqualification of certain reserved judges who may be appointed

1 on the second Panel of Judges. However, I wish to draw the
2 attention of the parties on another issue.

3 [13.54.47]

4 In the scenario there is no second Panel of Judges, based on the
5 decision dated the - on the 8th of February 2013, which was the
6 first Supreme Court Decision on the Severance Appeal, the Supreme
7 Court has said the following: "The ECCC must envisage the
8 constitution of a second Panel of Judges before the ECCC in order
9 to achieve an expeditious conclusion of the trial."

10 The Supreme Court also stated that the establishment of a second
11 panel would resolve issues of real or apparent allegations of
12 bias on the part of judges who would be called to adjudicate on
13 the second trial. The Supreme Court had also identified the
14 possibility of receiving motions for the disqualification of
15 judges to sit on the same panel - that is, the panel to oversee
16 the next trial.

17 I think it would be important for the Chamber and for everyone
18 present to know when a possible start date would be and if indeed
19 any party to the proceedings is anticipating a submission of
20 motion for disqualification, based on the knowledge that this had
21 been raised - that this very issue raised initially by the
22 Supreme Court in its first Severance Decision was not reiterated
23 again in E284/4/8.

24 The question is put to all parties, the Prosecutors, and the
25 civil parties.

1 MR. PRESIDENT:

2 The Prosecutor, you may proceed.

3 [13.57.10]

4 MR. KOUMJIAN:

5 Thank you.

6 Mr. President, Your Honours, the Prosecution would not anticipate
7 any motion to disqualify any of Your Honours. Even, let's say
8 hypothetically, the judgement comes down and it's completely in
9 our view unjustified and we oppose the findings of Your Honours
10 in Case 002/01.

11 The fact that a party doesn't like a decision of judges is not a
12 reason for disqualification. The job of judges is to make
13 decisions; disqualification must be made on the basis that a
14 reasonably informed observer would perceive bias on the part of
15 the judge. In our view, the fact that Your Honours have ruled
16 against us or if it turns out that Your Honours rule in some
17 portions against the Defence, would not indicate bias. It
18 indicates you made a decision based upon the evidence and that
19 therefore the same judges can go on.

20 [13.58.12]

21 While it's very unusual to have a series of trials where the
22 charges are severed - that's unusual, but that's the reality we
23 are dealing with here - it's not unusual for judges to make
24 decisions about the evidence during the trial; for example, in
25 almost every case at the end of the prosecution case, the defence

1 makes a motion that the evidence is insufficient to proceed
2 further. The fact that the judges may rule against the defence
3 does not - has never been recognized as showing any bias on the
4 part of the judges. So to answer your question more directly,
5 first of all let me say, we agree that's an essential question
6 because all of our plan, all of the plan that we proposed is
7 based upon the fact that the evidence from Case 02/01 will be
8 part of the record on this case. And based upon that it's much
9 more efficient, as we've stated here and in our written filings,
10 to have the same Judges hear that evidence rather than having new
11 judges read in to that evidence.

12 [13.59.24]

13 That's also why we need to know and it's essential to know if any
14 Judges are leaving - anticipate leaving during the course of Case
15 02/02, because, again, we need to deal with that now rather than
16 months from now. We do not anticipate and do not expect to make
17 any motion to disqualify any of Your Honours and we hope you all
18 serve on Case 02/02.

19 MR. PRESIDENT:

20 The representative of the Lead Co-Lawyer for the civil party, you
21 may proceed.

22 MS. YE:

23 Thank you, Mr. President.

24 On behalf of the civil parties, we also do not anticipate any
25 motions on the appearance of bias, and I fully support the

1 argumentation of the International Co-Prosecutor.

2 I just wanted to add that in our view also the Severance Order
3 did not make any difference on how the trial should be tried by
4 the same Chamber. If you had not severed the case into
5 sub-trials, which makes it more manageable and faster, the same
6 panel and the same Judges would have tried the entire set of
7 facts.

8 Thank you very much.

9 [14.00.47]

10 MR. PRESIDENT:

11 Thank you.

12 How about the defence teams?

13 MR. KOPPE:

14 Thank you, Mr. President.

15 I am sure you appreciate it, from the side of the Defence it's
16 very hard to answer this question. It all depends on the
17 circumstances and the developments in any possible trial.

18 At this moment, there are no such considerations, but of course I
19 do - what I can say is that there will be two moments in time for
20 a possible new consideration, and that is the fact that the
21 decision that S-21 is included and will be tried by the same
22 Judges who have already adjudicated S-21 in Case 001, that could
23 be a moment for consideration.

24 Another moment of consideration could be, of course, the
25 judgement itself, more particularly the way the decision has been

1 phrased and argued or ruled.

2 So, these are two possible moments, but of course I hope you
3 appreciate that it's very difficult for a defence to answer this
4 question at this stage.

5 [14.02.22]

6 MR. PRESIDENT:

7 Thank you.

8 And the Defence Counsel for Mr. Khieu Samphan, you may proceed.

9 MS. GUISSÉ:

10 Thank you, Mr. President.

11 I don't know if really one can put the question in such terms
12 because we don't yet have your decision, you're still
13 deliberating. But the reason why in our team we feel that after a
14 final Supreme Court decision on Case 002/01 - the reason why that
15 would help us see more clearly is that there would still be
16 issues that are unclear about 02/02 and the continuation of
17 debates. It would certainly be logical to have a clear idea on
18 certain legal points that would influence the continuation. So I
19 can't really see it in terms of disbarring or anything like that.
20 But I just view this in terms of having a certain degree of
21 certainty, a clarity about the continuation of discussion.

22 [14.03.57]

23 MR. KONG SAM ONN:

24 Thank you, Mr. President.

25 I think that it may be too early to say that - whether there will

1 be any challenge against the composition of the second panel
2 because we don't know who will be sitting in the second panel if
3 it is established and we do not know as of now whether or not a
4 member of the Bench will appear to be bias or so on the case. So,
5 I think it's still early, and I would like to say that we will
6 have to wait and see the composition of this Chamber first. I
7 cannot comment on this particular challenge issue, and we would
8 like to reserve the right to examine the various procedures
9 concerning the possible challenge against any sitting Judges.
10 Thank you.

11 MR. PRESIDENT:

12 Thank you, Counsel.

13 And Judge Lavergne, you may proceed.

14 [14.05.02]

15 JUDGE LAVERGNE:

16 Thank you, Mr. President.

17 Well, what I note from this exchange is that a certain number of
18 decisions are going to have to be taken. I also note that the
19 decisions in particular those connected with the scope of the
20 trial might be appealed against. I understand that all of the
21 parties do not share exactly the same idea of what should be
22 included in a future trial, which could raise the question of
23 whether it would be - when it would be - whether it would be
24 timely to begin the evidentiary hearings before the Case 001
25 (sic) is finally adjudicated. And there also may be

1 disqualification motion and that may also lead to an appeal.
2 Now, what I would like to know now from the parties is if there
3 are other decisions or other necessary phases, procedurally
4 speaking, that have to be gone through before we can envisage
5 commencing evidentiary hearings. Are there other difficulties
6 that may arise along the way that we ought to be considering at
7 this moment?

8 [14.06.30]

9 MR. KOUMJIAN:

10 Your Honour, the one point that I think is critical to planning
11 at this point is whether Your Honours accept our submission that
12 Case 02/02 would be seen as a continuation of 02/01. And the
13 evidence that was admitted in 02/01, which has already been
14 tested by the Defence, the witnesses have been cross-examined by
15 the Defence, these Accused - not other accused, these Accused -
16 and their lawyers, the documents have been commented upon by
17 these Accused.

18 In our view, it's essential to rule for planning the purposes of
19 that trial, whether that's admissible. Because, frankly, we have
20 an order from the Supreme Court which says the trial must begin
21 immediately or expeditiously following this meeting, following
22 the conclusion of Case 02/01, and it indicates that it cannot
23 wait eight months for the judgement. So, our plan which we put
24 forward is to at least start this half way through that time
25 period in four months, but it is also contingent upon that

1 evidence from Case 02/01 being admissible.

2 [14.08.03]

3 The reason why we could be optimistic and say that this case,
4 phase 02, will take less time than 01 is because it's not really
5 less time. What we're saying is all the evidence that was taken
6 in a year and a half, two years in 01 will be admitted in
7 addition to - an additional year or so of evidence in 02. So, in
8 order to judge the truth of the charges that we'll deal with in
9 Case 02/02, the Court will consider the evidence from the first
10 years of the trial, 02/01, and the additional evidence that we
11 put on in this phase. If that is not accepted - and I've heard no
12 objections from any party to that specifically at this hearing -
13 if it's not objected to, then we can proceed with some planning.
14 If it is objected to, then I suggest that the only alternative is
15 to do what the Supreme Court ordered and that is to form an
16 additional Trial Chamber.

17 Thank you.

18 MR. PRESIDENT:

19 Yes, Counsel, you may proceed.

20 [14.09.14]

21 MS. GUISSÉ:

22 Mr. President, on this point, to echo the example of the
23 Co-Prosecutor about documents tendered into evidence. If it's the
24 same Panel of Judges that make up the Chamber for the second
25 trial, then for us, there is no question that you will resume the

1 weight of the same decisions as in the previous case number 1,
2 which, in turn, would solve the issue of the appeal because if we
3 are called upon to appeal against your decisions, then we will
4 appeal against all decisions that we weren't able to appeal
5 against during the earlier trial. But we will do that as the same
6 time as the appeal on the verdict. The question doesn't arise if
7 we have a final decision on this subject. But if during 002/02
8 the Supreme Court hands down the decision on one of the
9 admissibility decisions under Case 001, that, of course, would
10 rebound on Case 002.

11 Now, I hope that was clear. Let me summarize.

12 [14.10.52]

13 If we appeal the judgement against Trial 001, there would be
14 simultaneous appeal against a certain number of decisions that
15 you have taken in the course of the trial which we weren't able
16 to appeal against at that time so we will appeal at the same
17 time, and among those decisions there are those that concern
18 documents that you have accepted as evidence and against which we
19 made objections. And so in the framework of 002/02, there would
20 inevitably be an effect of the Supreme Court's decision on
21 appeals relating to documents on trial number 2. And so, if you
22 are the Judges who are going to be taking decisions about
23 documents that the Prosecution would like to tender into evidence
24 for Case 002, then there would not be any particular interest for
25 us in contesting these points because you will hand down the same

1 decisions as you did in the previous trial.

2 If on the other hand there is a second Panel of Judges, the whole
3 issue would be different because they would not have been party
4 to the decisions taken in the first trial and would not have been
5 called upon to take decisions of that kind. And if there were not
6 any final decisions, then there would not be any factual

7 background to the decisions that they would need to be taking.

8 And therefore, these would be fresh decisions and there would be
9 debates to be had about them certainly on the Defence side.

10 [14.12.42]

11 Now, I know this is extremely complicated envisaging the
12 different scenarios that might be at work, but if we are not
13 waiting upon a final decision, let me simply say that it is very
14 different whether you have the same panel or a different panel.

15 MR. PRESIDENT:

16 Mr. Kong Sam Onn, you may proceed.

17 MR. KONG SAM ONN:

18 Thank you, Mr. President.

19 I think that we now go back to our initial position concerning
20 the fact that we have to wait for the final judgement before the
21 commencement of the second segment of trial. But if we decide to
22 commence the second segment of the trial, then the evidentiary
23 hearing, as well, should not be considered admissible
24 automatically in the second segment trial because the evidence
25 tendered in the first segment have not yet been final, so it is

1 still subject to examination and cross-examination by the
2 parties, and any conclusion that this evidence will be admitted
3 will make the situation even more complicated in the second
4 segment.

5 [14.14.26]

6 That's why I would to ask Mr. President to enlighten us whether
7 segment 2 in Case 002 is a separate case or it is only part and
8 parcel of Case 002. So I would like the Chamber to enlighten us
9 on this aspect. Thank you.

10 MR. PRESIDENT:

11 Thank you, Counsel.

12 Now I give the floor to the Lead Co-Lawyer for the civil parties.

13 MR. PICH ANG:

14 Thank you, Mr. President, and good afternoon, Your Honours.

15 I think that the rest of the issue have already been addressed
16 and Judge Jean-Marc Lavergne has already enlightened all the
17 parties about that for the preparation prior to the commencement
18 of the evidentiary hearing in the second segment, but I would
19 like to make an observation in response to the comment made by
20 Mr. Kong Sam Onn that the evidence admitted in Case 002/01 should
21 not be considered valid for Case 002/02.

22 [14.15.51]

23 I tend to agree with him on that aspect, but what the prosecutor
24 have made mention before you, Your Honours, it's not that they
25 ask you to consider those evidence valid, but it is only that

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1 those evidence should be subject for our cross-examination and --

2 JUDGE LAVERGNE:

3 I need to be clearer. And I'm addressing the Co-Prosecutors.

4 When you say it would be envisageable to think of starting the
5 trial at the end of February, are you talking about the opening
6 or the beginning of evidentiary hearings?

7 MR. KOUMJIAN:

8 The beginning of evidentiary hearings.

9 JUDGE LAVERGNE:

10 So that would mean that all of the preparatory work had been done
11 and that all of the necessary decisions had been handed down and
12 were final.

13 Okay, I think we have done a tour of the room. And I don't
14 personally have any other questions to put to the parties.

15 [14.17.38]

16 MR. PRESIDENT:

17 Thank you.

18 Now let us move to item 5 on the agenda. Item 5 concerns the
19 identification of issues central to Case 002/02.

20 Before this Trial Management Meeting concludes, the Chamber
21 invites the parties to identify some of the issues they consider
22 to be central to Case 002/02 which have not already been raised
23 during the meeting.

24 The Trial Chamber emphasizes that in connection with the previous
25 items already discussed, the purpose of this meeting is to

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1 address practical and technical issues central to the preparation
2 of Case 002/02. This item will therefore be limited to raising
3 key issues and will not extend to hearing submissions and
4 arguments on these issues. Accordingly, submissions and arguments
5 will be addressed in future adversarial hearings or through
6 written brief.

7 [14.19.03]

8 Now I hand over the floor to the Office of Co-Prosecutors to
9 bring up some of the issues central to Case 002/02 that we have
10 not addressed throughout this Trial Management Meeting, if any.
11 You may proceed.

12 MR. KOUMJIAN:

13 Thank you, Mr. President.

14 Your Honours, we believe we have been given an opportunity to
15 raise the central issues that we see necessary for planning for
16 the beginning and the efficient completion of Case 02/02.

17 The only additional point I would add, which is building upon the
18 extensive evidence that we gained from the Acting Director and
19 Deputy Director, is in regards to the total costs of the various
20 options that are open to Your Honour.

21 One of the options we - is the one that we proposed, which is to
22 keep the same Trial Chamber to begin hearing the evidence, and
23 understanding from your agenda items that additional staff may be
24 needed, that the Office of Administration would fund additional
25 staff.

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1 [14.20.31]

2 That, by far, is the least expensive of the options. We heard
3 from the Office of Administration that the cost of the staff of
4 the Trial Chamber is about 1.1 million. So, in this overlap
5 period - it would be no more than six months - it would be half
6 of that, so it would be about half a million dollars. The cost of
7 bringing in additional judges would be an additional cost, a
8 higher cost.

9 But what we really want to point out is, the most expensive
10 option of all is delaying the start and delaying the completion
11 of Case 02/02, because the entire machinery of the Court, we
12 learned, costs over a million dollars a month. So the options are
13 - if we delay the start of the trial for, let's say, eight
14 months, then it's about an 8 million dollar cost, while our plan
15 reduces it to much less; it's about 500,000 or 600,000 dollars.
16 Bringing in additional judges would be in between; it'll be
17 somewhat more than the costs of simply bringing in additional
18 staff.

19 [14.21.44]

20 So, while the Supreme Court has said that financial matters
21 should not - should not be the crucial factor in your decisions,
22 we certainly think that the financial considerations to the
23 various options available to you would indicate that the best
24 option is the one that we have proposed: To begin with the same
25 Judges, using the evidence from Case 001 as a base to build upon,

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1 to beginning as soon as possible, and to trying this case as
2 efficiently as possible.

3 Thank you.

4 MR. PRESIDENT:

5 Thank you.

6 Judge Jean-Marc Lavergne, you may proceed.

7 JUDGE LAVERGNE:

8 Thank you.

9 One question: Don't you believe that the time necessary for the
10 Chamber to draft its judgement cannot in any way be compressed?

11 [14.23.02]

12 If we start a second trial and, in parallel, we are drafting the
13 judgement for the previous trial, do you really believe that we
14 are talking about a gain in time here, by which I mean, speaking
15 personally, when we have hearings, it's extremely difficult to
16 concentrate both on hearings and on the drafting of a decision,
17 which is a highly-technical process. In other words, you have to
18 swing between one and the other, and I'm not quite sure that this
19 is something that's going to facilitate the drafting of a
20 judgement. It's not just a matter of having additional staff for
21 the Judges; it's a matter of being able to concentrate in depth
22 on rather thorny issues which take time and need time.

23 So, when you say that if we start straight away we will be making
24 savings of about 8 million dollars, I'm a little surprised
25 because whatever the case, we cannot simultaneously be working on

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1 the drafting of a judgement and be fully engaged in hearing
2 evidence in a second trial. At some point, there will be sheer
3 overload, and it can't be solved just by waving a magic wand.
4 Really, I am expressing my personal misgivings out loud when I
5 hear the calculations that you are making.

6 Thank you.

7 [14.25.14]

8 MS. GUISSÉ:

9 With permission, Mr. President, just one more point to pick up on
10 what has just been said by Judge Lavergne.

11 As part of our discussion on the start of Trial Number 2 and the
12 forthcoming hearings, I would recall that if the position taken
13 is to start after the verdict for Trial 002/1, then I would
14 remind you that as soon as you have handed down a decision, then
15 the appeal timeline starts to run and the parties will, at the
16 same time, have to manage that aspect under tight deadlines, with
17 obligations to submit documents in both languages and obligations
18 to appeal on the actual judgement and on other decisions as well.

19 This, in other words, is going to be seriously problematic.

20 If we plan to start 002/2 at the same time as preparation of the
21 appeal, well, I believe that we, on our side - and I think I'm
22 talking for the other parties as well - are going to find it
23 difficult to prepare for the hearings, to prepare questioning
24 witnesses and, at the same time, draft our appeal submissions,
25 which of course are very weighty important as well.

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1 And you have explained your misgivings, and I wanted to draw this
2 particular point to your attention simultaneously.

3 Thank you.

4 [14.27.02]

5 MR. PRESIDENT:

6 Thank you.

7 How about other parties? Do you wish to make any observation on
8 this issue?

9 MR. PICH ANG:

10 Thank you, Mr. President.

11 As for the issues central to Case 002/02, aside from what we have
12 discussed, the Lead Co-Lawyer for the civil party have nothing to
13 add, but we have a small observation concerning the time
14 necessary for Your Honours to prepare the judgement.

15 As what Madam Anta Guissé said earlier, by experience, once we
16 hear the evidence, the parties, both the Prosecution and the
17 defence counsel, tend to submit motions and applications or so in
18 the course of the proceedings, and I also envisage that the
19 defence counsel will do the same. And I believe that the defence
20 team can also increase the number of people in their team in
21 order to speed up the work. And the Prosecution also made mention
22 that in other international tribunals, the judges can draft the
23 judgement at the same time when they conduct the hearing.

24 [14.28.52]

25 I believe that in your legal profession, you may also encounter

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1 this same situation when you are drafting the judgement and, at
2 the same time, you are also setting aside some time in order to
3 handle other cases. And I'm sure that if Your Honours can conduct
4 the substantive hearing, you may probably ask for additional
5 resources in order to support you in order to enhance
6 effectiveness of your work.

7 This is my humble opinion, Your Honours. Thank you.

8 MR. PRESIDENT:

9 Is there any other observation?

10 We would like to only ask the parties to identify the issue
11 central to the case that is apart from what we have discussed.
12 That will be also useful for the Chamber to prepare for the
13 subsequent Trial Management Meetings. We want to hear those
14 issues central to the case so that we can address all the
15 challenges ahead of us.

16 [14.30.24]

17 If there is none, the Trial Management Meeting has come to an end
18 now, and the Trial Chamber would like to inform the parties and
19 the public that the Trial Chamber remains committed to ensuring
20 that Case 002/02 moves forward as quickly as is consistent with
21 the fairness of the trial and the rights of the parties.

22 As the President of the Trial Chamber, I fully endorse the views
23 expressed by the parties, which urge an expeditious start to Case
24 002/02. This Trial Management Meeting was convened with that
25 objective.

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1 The new issue for the Trial Chamber which arose after this Trial
2 Management Meeting was scheduled is the question of whether a
3 second panel of the Trial Chamber should be appointed to hear the
4 case and, if so, what is the earliest possible date that it can
5 start.

6 Other legal and procedural – procedural issues which the Trial
7 Chamber had intended to consider during this Trial Management
8 Meeting will now be deferred to a new Trial Management Meeting,
9 the date for which will be notified to the parties and the public
10 very soon. This is the reiteration of the commitment of the Trial
11 Chamber in order to arrange all the necessary things for the
12 trial of Case 002/02.

13 [14.33.25]

14 Your Excellences, Lok Chum Teav, ladies and gentlemen, and
15 participants in the Trial Management Meeting, in my capacity as
16 the President and on behalf of my fellow Judges of the Trial
17 Chamber, I would like to highly appreciate the outcome of our
18 first two-day Trial Management Meeting in Case 002/02. The
19 Chamber has noted the input and enthusiastic engagement in the
20 discussions by Your Excellences, the Director and Deputy Director
21 of the Office of Administration, the Co-Prosecutors, Deputy
22 Co-Prosecutor, the Lead Co-Lawyers for the civil parties, and
23 counsel for Mr. Nuon Chea and Khieu Samphan.

24 The Chamber will refer to the input at this meeting for our
25 consideration when addressing the issues as indicated in the

1 Trial Management Meeting.

2 The Chamber will in due course notify Your Excellences, the
3 Director and Deputy Director of the Office of Administration, the
4 parties, and public of any action to be taken by the Trial
5 Chamber.

6 [14.34.55]

7 On behalf of the Trial Chamber, I would like to express our
8 profound thanks to Your Excellences, the Director and Deputy
9 Director of the Office of Administration, the Co-Prosecutors,
10 Deputy Co-Prosecutor, the Lead Co-Lawyers for the civil parties,
11 defence counsels, officers and personnel of and under the Office
12 of Administration, and the security personnel, legal officers,
13 greffiers, Trial Chamber staff, and the interpreters who take
14 part in, assist and facilitate the process of the meeting. The
15 great outcome of this meeting could not be made possible without
16 your genuine support.

17 May I finally wish Your Excellences, Lok Chum Teav, ladies and
18 gentlemen, good luck and great success in your endeavour at ECCC.

19 Security personnel are now directed to bring Mr. Khieu Samphan
20 back to the detention facility.

21 The meeting is now adjourned.

22 (Trial Management Meeting adjourns at 1436H)

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24

25