



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 06-Aug-2014, 10:13
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TRANSCRIPT OF PROCEEDINGS
PUBLIC

Case File N° 002-02/19-09-2007-ECCC/TC

30 July 2014
Initial Hearing

Before the Judges:

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

Accused:

NUON Chea
KHIEU Samphan

Lawyers for the Accused:

SON Arun
SUON Visal
Victor KOPPE
KONG Sam Onn
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Robynne CROFT
Russell HOPKINS
CHEA Sivhoang

Lawyers for the Civil Parties:

PICH Ang
Marie GUIRAUD
SAM Sokong
LOR Chunthy
HONG Kimsuon
VEN Pov
KIM Mengkhy
CHET Vanly
TY Srinna
SIN Soworn
Yiqiang LIU

For the Office of the Co-Prosecutors:

CHEA Leang
Nicholas KOUMJIAN
William SMITH
SENG Bunkheang
SENG Leang
SONG Chorvoin
Tarik ABDULHAK
Salim NAKHJAVANI
Andrew BOYLE

For Court Management Section:

SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. BOYLE	English
JUDGE CARTWRIGHT	English
MS. CHEA LEANG	Khmer
MS. GUIRAUD	French
MS. GUISSÉ	French
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
MR. KOUMJIAN	English
THE PRESIDENT (NIL Nonn, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. SENG LEANG	Khmer
MR. SON ARUN	Khmer
MR. SUON VISAL	Khmer

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

2 (Court opens at 0901H)

3 MR. PRESIDENT:

4 Please be seated.

5 Ms. Se Kolvuthy, could you report the attendance of the parties
6 and individuals to the proceedings of the further initial hearing
7 today?

8 THE GREFFIER:

9 Mr. President, for today's further initial hearing, all parties
10 to the proceeding are present.

11 On a side note, Nuon Chea is present in the holding cell
12 downstairs, due to his health.

13 And Marie Guiraud, the Lead Co-Lawyer representing the civil
14 parties, is present to replace Madam Simonneau-Fort, who resigned
15 from her position. And there is also a new international lawyer
16 for civil parties. These two lawyers have been recognized by the
17 Bar of Cambodia but have not been recognized by the Trial
18 Chamber.

19 Thank you.

20 [09.03.31]

21 MR. PRESIDENT:

22 Thank you.

23 We will now make a ruling on the presence of Nuon Chea in the
24 holding cells downstairs due to his health concern, and with the
25 Medical Report by the doctor at the ECCC, who confirmed about his

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1 health issue and that he cannot sit for long in the courtroom and
2 recommends that the Trial Chamber shall allow him to follow the
3 proceedings from the holding cell downstairs. For that reason,
4 the Trial Chamber allows him to do so.

5 A warm welcome to all parties present today.

6 In June 2011 the Trial Chamber held an initial hearing to
7 consider general preliminary matters in Case 002 which concerns
8 the accused Nuon Chea and Khieu Samphan.

9 The Trial Chamber later severed the whole of Case 002 into
10 smaller, more manageable cases. The Judgement in the first case -
11 that is, Case 002/01 - will be delivered next Thursday, the 7th
12 of August 2014.

13 [09.05.28]

14 The purpose of today's further initial hearing is to clarify
15 issues before the start of the Case 002/02. On 4 April 2014, the
16 Trial Chamber issued a new severance decision defining the scope
17 of Case 002/02.

18 Charges related to genocide, forced marriages and rape, treatment
19 of Buddhists, internal purges, targeting of former Khmer Republic
20 officials, four security centres, three worksites, and one group
21 of adjacent cooperatives will form the basis for Case 002/02.

22 The following sites and allegations will be examined: genocide
23 against the Cham and the Vietnamese - excluding crimes against
24 humanity committed by the Revolutionary Army of Kampuchea on
25 Vietnamese territory; forced marriages and rape nationwide;

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1 internal purges; S-21 Security Centre; Krang Ta Chang Security
2 Centre; Au Kanseng Security Centre and Phnom Kraol Security
3 Centre; 1st January Dam worksite; Kampong Chhnang Airport
4 construction site; Trapeang Thma Dam worksite; Tram Kak
5 cooperative; treatment of Buddhists - limited to Tram Kak
6 cooperatives - and targeting of former Khmer Republic officials;
7 implementation - limited to Tram Kak cooperative, 1st January Dam
8 worksite, S-21 Security Centre, and Krang Ta Chang Security
9 Centre.

10 [09.07.46]

11 Yesterday afternoon, the Chamber had received courtesy copies of
12 the English and Khmer versions of the Supreme Court Chamber
13 Decision on the Appeal against the Severance Decision. In its
14 Decision, the Supreme Court Chamber upheld the Severance Decision
15 and declared the stay of the proceedings in relation to the
16 charges remaining outside the scope of Cases 002/01 and 002/02
17 pending appropriate disposal by the Trial Chamber. The Supreme
18 Court Chamber indicated that its Decision is currently in the
19 process of being filed and notified by the ECCC.

20 On 7 July 2014, the Chamber issued an agenda identifying the
21 following items for discussion during today's hearing - that is
22 document E311/1:

23 1) Item 1, the further specification of civil party reparation
24 awards.

25 2) Item 2, the status of preliminary objections and review of

4

1 legal issues relevant to Case 002/02; and

2 3) Item 3, the sequencing of the trial proceedings and initial
3 review of potential witnesses, civil parties, and experts.

4 [09.09.40]

5 As noted in the agenda during this hearing, the Chamber will not
6 hear oral argument in relation to any issue other than those
7 three items just mentioned.

8 The hearing will be conducted in public, but when any party
9 considers that discussion of potential witnesses, civil parties,
10 or experts warrants the holding of some portions of the hearing
11 in closed session, an oral motion may be made to the Chamber. In
12 order not to disrupt the hearing too much, any closed session
13 will be held at the end of the hearing.

14 Additionally, all individuals proposed to be heard at trial
15 should be referred to by pseudonym. On 24 July 2014, the Chamber
16 distributed a list containing the new pseudonyms - that is
17 document E305/15. The parties are to refer to that list for the
18 appropriate pseudonyms. The Chamber reminds the parties that
19 under Article 7 of the Practice Direction on Classification and
20 Management of Case Related Information, witnesses must be
21 referred to by pseudonym or other appropriate means in public
22 hearings and filings submitted prior to the testimony of each
23 witness. This will protect the integrity of the proceedings in
24 subsequent phases.

25 [09.11.37]

5

1 May I now declare the hearing open.

2 First, the Chamber would like to proceed with the recognition of
3 the Lead Co-Lawyer. And the Chamber would like to invite the
4 National Lead Co-lawyer, Mr. Pich Ang, to proceed with the
5 request for the recognition of the new International Lead
6 Co-Lawyer, as well as any other civil party lawyer appearing for
7 the first time before the Trial Chamber, pursuant to Internal
8 Rule 22.2a.

9 Mr. Pich Ang, you may now proceed.

10 MR. PICH ANG:

11 Good morning, Mr. President, Your Honours, and all parties to the
12 proceeding, and good morning, everyone in the main courtroom.
13 Today we have Madam Marie Guiraud and Mr. Yiqiang Liu, a new
14 civil party lawyer. Both have not yet been recognized by the
15 Trial Chamber.

16 Marie Guiraud has been appointed by the Office of the
17 Administration as the International Lead Co-Lawyer replacing Ms.
18 Simonneau-Fort from June 2014 and she has not yet been recognized
19 before your Court. Ms. Marie Guiraud, actually, has been
20 recognized as a civil party lawyer, but not yet as an
21 International Lead Co-Lawyer.

22 [09.13.38]

23 We also have a civil party lawyer from China who has been
24 registered with the Chinese Bar and also recognized by the Bar of
25 Cambodia on the 12th August 2013 and who took an oath before the

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1 Court of Appeal of Cambodia on the 14th of November 2013. Mr.
2 Yiqiang Liu has his national counterpart, Mr. Sam Sokong.
3 For that reason, I request Your Honours to recognize these two
4 lawyers to be before your Chamber. Thank you.

5 MR. PRESIDENT:

6 Thank you.

7 Madam Marie Guiraud, please stand.

8 Madam Marie Guiraud, you are now recognized by this Trial Chamber
9 as International Lead Co-Lawyer, pursuant to Internal Rule 12ter,
10 for the purpose of the trial proceedings before this Chamber. And
11 pursuant to this recognition, you enjoy the same rights and
12 privileges as a national lawyer.

13 Please be seated.

14 [09.15.08]

15 And now, Mr. Yiqiang Liu, please stand.

16 Mr. Liu, you are also now recognized by this Trial Chamber as
17 civil party lawyer for the purposes of the trial proceedings
18 before this Chamber. And pursuant to this recognition, you enjoy
19 the same rights and privileges as a national lawyer.

20 You may be seated.

21 We now proceed to the proceedings for these further initial
22 hearing.

23 Item 1: Further Specification of Civil Party Reparation Awards.

24 I now turn to the first item on the agenda - that is, the further
25 specification of civil party reparation awards.

7

1 First, I note that the Trial Chamber is seized of the civil
2 parties' final claim for reparations in Case 002/01, which will
3 be adjudicated in the Judgement in Case 002/01 in the event of a
4 conviction.

5 [09.16.27]

6 Second, under Internal Rule 80bis.4, the Chamber invites the Lead
7 Co-Lawyers for the civil parties to provide an initial
8 specification of the substance of the awards they intend to seek
9 within the final claim for collective and moral reparation in
10 Case 002/02, pursuant to Rule 23quinquies.3b. This initial
11 specification shall include timeframes for the request and for
12 the action connected with the request.

13 The Civil Party Lead Co-Lawyers have 20 minutes in which to
14 address the Court. The other parties will have no more than 10
15 minutes each to comment on the initial specification.

16 I'd like now to give the floor to the Lead Co-Lawyers.

17 MS. GUIRAUD:

18 Thank you very much, Mr. President.

19 I wish to seize this first occasion that I take the floor to
20 recognize all those who are present in the public gallery and all
21 those who are observing from abroad and externally.

22 [09.17.53]

23 I wish to recall the two topics that you have raised, Mr.
24 President - that is, the timeframes for certain reparation
25 measures, as well as the concrete measures that we intend to

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1 implement in order to fully achieve these reparation measures.

2 These awards will necessitate an explanation of some 10 minutes,

3 and then I shall hand the floor over to my colleague, Mr. Pich

4 Ang, who will give you an overview of all of the projects that we

5 intend to introduce within the context of Case 002/02.

6 As a beginning remark, we wish to emphasize that we are fully

7 aware that the objective of this further initial hearing is to

8 outline the projects that are accomplished pursuant to Internal

9 Rule 23quinquies (sic), but we're also fully aware that the

10 symbolic strength of the measures that the Chamber shall adopt

11 remain of crucial importance. And that's why we wish to recall

12 the provisions of Internal Rule 23quinquies and urge the Trial

13 Chamber to condemn the Accused and to have them bear the cost of

14 the award. But given the indigent status of the Accused and given

15 the rules that we are bound by, the Trial Chamber must recognize

16 the awards that we intend to introduce as a form of collective

17 and moral reparations for these civil parties.

18 [09.19.50]

19 But, once again, we believe that it is of the utmost importance

20 to ensure that if the Accused are to be condemned, that they do

21 bear the cost of these reparations.

22 And on those two points which we have sought to underscore as a

23 preliminary remark, we shall begin with the concrete measures

24 that the civil parties intend to implement. And this concerns a

25 list of definitive measures, this entails the process of

1 consultation that is undertaken on a continual basis and that
2 which was initiated during Case 002/01 in consultation with the
3 civil parties because, after all, these reparations are meant for
4 them and they are in full accordance with the Internal Rules that
5 govern our Tribunal, and these reparations awards must meet their
6 expectations. Therefore, we have consulted these civil parties.
7 And as recently as last week, we held a final round of
8 consultations with the civil parties, which brought together some
9 100 civil parties, as well as representatives for Case 002/02,
10 and we held regional fora that was also coordinated by the VSS in
11 order to consolidate some of the ideas and consultations so that
12 we could put before Your Honourable Chamber the measures that we
13 intend to accomplish.

14 [09.21.34]

15 Obviously, this also concerns external actors, an essential role
16 that we count on, as envisaged by the Internal Rules. And since
17 July we have begun consultations with stakeholders and NGOs, who
18 will continue to be involved in Case 002/02, as well as new
19 partners. And of course we will be in full consultation with
20 donors, who will be fully involved in the implementation of these
21 reparation awards. This process of consultation shall lead to the
22 proposal of concrete reparation measures.

23 And my second observation that I wish to make before handing the
24 floor over to my colleague is to propose a specific timeframe to
25 the Trial Chamber by drawing lessons from Case 002/01.

10

1 During the first case, as everyone is fully aware, we tested a
2 structure and a mechanism that was unparalleled, and we had
3 sought to introduce reparation measures, and it took us one and a
4 half years from the start of the initial hearing of Case 002/01,
5 as well as the listing of priority projects that was finally
6 determined in December 2012. This was identified with the help of
7 partners and fundamental stakeholders, including donors who
8 agreed to finance these projects, bolstered by the lessons we
9 learned in Case 002/01.

10 [09.23.33]

11 We have forged partnerships. And we have turned to the Trial
12 Chamber, and within a period of six months we have finalized a
13 list of projects and reparation awards. We have also provided a
14 list and a description of the projects that will form the basis
15 of our final claim for moral and collective reparations. We have
16 also identified the partners who will be involved in the
17 accomplishment of these projects. We have also provided a
18 detailed, line-by-line budget for some of these awards. We have
19 also identified potential donors who would be financially
20 responsible for these reparation awards.

21 The reparation awards; well, what are they exactly? I will now
22 hand the floor over to my Co-Lawyer, Mr. Pich Ang, who will
23 provide Your Honours with a provisional list of projects and
24 proposals that are the fruit of our first two rounds of
25 consultations with the civil parties, as well as our external

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1 partners. And it is based on that list that we intend to work
2 diligently over the next six months in order to finalize for the
3 Chamber a full overview of the reparation awards.

4 Thank you very much, Mr. President.

5 MR. PRESIDENT:

6 Pich Ang, you may proceed.

7 [09.25.10]

8 MR. PICH ANG:

9 Good morning, Your Honours. Good morning, everyone in and around
10 the courtroom. And I'm grateful, Your Honour, that allow me to
11 mention the initial specifications of the reparation projects
12 that I would include in the final submission for our civil
13 parties.

14 What I will present is the result of our consultations with the
15 civil parties, as well as with our counterparts. It's also a
16 result of our discussions and meetings through various forums
17 that the Victims Support Section and other relevant institutions
18 organized. And we include those points, as well as the written
19 requests by our civil parties.

20 And, first of all, I'd like to present the types of projects that
21 we actually have submitted previously in our initial hearing. And
22 in the second part of my presentation, I will mention the types
23 of projects which are part of the same categories - that is,
24 under the category of the memorial, memorialization,
25 documentation, and education.

12

1 In our previous projects in the first category - that is, the
2 memorial and the memorialization - we intend to construct the
3 stupa according to the religion of the civil parties, and there
4 will be also constructions of buildings for group discussions
5 amongst the civil parties, youth, and the local authorities.

6 [09.27.37]

7 We also have a project to build the statues depicting the
8 activities of the victims or the civil parties during the Khmer
9 Rouge regime, namely depicting forced marriage and the living
10 conditions with the Khmer Rouge.

11 Another type was the - will be the exploration and the
12 maintenance of the remains of the victims of the Khmer Rouge
13 regime, as well as the traditional ceremonies with the
14 participation of the civil parties.

15 In the second category - that is, the rehabilitation - and as I
16 mentioned previously, this includes the treatment of - the
17 support by the psychologists, and the consultation groups between
18 the civil parties or with the participation from the community.

19 There is also a project for the physical health support, in
20 particular for those civil parties who cannot afford it or who
21 are elderly. And that also includes a health centre construction.

22 In addition, some civil parties also wish to request a meditation
23 centre, according to their religion.

24 [09.29.20]

25 In the third category - that is, the document and education - I

13

1 previously mentioned the publication of the full and summary
2 judgement, as well as a book on the participation of the civil
3 parties in our Court proceedings, as well as a summary of the
4 crime sites and the charges within the scope, and the inclusion
5 of a chapter on the Khmer Rouge history in the curriculum, and a
6 webpage about the names of the civil parties at the tribunal, and
7 a documentation centre of the Khmer Rouge regime, as well as the
8 mobile and fixed exhibit; also the scholarship or the training
9 programs for the civil parties' children who were the result of a
10 forced marriage. There is also a project on the consultation and
11 discussion about good governance and the history of the Khmer
12 Rouge.

13 And, Your Honours, we mention these kinds of projects within this
14 category previously, and our civil parties intend the
15 continuation of these projects for the interest of all the civil
16 parties.

17 Besides these existing projects, we also have the - new projects
18 which are still part of the three categories I mentioned above,
19 but they're of different types. It is different from the various
20 project types we have raised before.

21 [09.31.07]

22 Concerning the memorial and memorialization, we will have the
23 types of projects on naming the bridges or roads that we planned
24 to construct in the provinces or in the municipalities. It should
25 be the names for memorialization of people in order to remind

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1 people of the occurrence of the crimes in Cambodia. And we will
2 provide the names for memory purpose to the bridges or roads -
3 now, for example, we say "The Reconciliation Road or Bridge" -
4 and we will invite local authority and people involved in order
5 to inaugurate those bridges or roads.

6 As for the rehabilitation, we may provide support, as well as the
7 empowerment of civil parties to specific groups, for example
8 those who suffered from gender violence or sexual violence, as
9 well as the victims in the minority groups. The support and
10 empowerment of the civil parties is done by the establishment of
11 the Association, and we provide support, as well as the
12 rehabilitation and consultation for the civil parties so that
13 they can participate in mainstream society.

14 [09.32.55]

15 The civil parties also want the certification or any
16 identification for the civil parties so that we can promote the
17 value of their participation, as well as a memory for them - or
18 recognition for them that they have participated in pursuit of
19 justice before this Court. And these identification cards can be
20 also used to receive access to health services if available. And
21 this card may be issued by the Office of Administration of the
22 Court.

23 In order to reconcile, as well as to heal the mental wounds of
24 the civil parties, there have been requests by the civil parties
25 that there should be consultation or conversation between the

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1 civil parties and the convicted - and the convict. And that
2 should be done through the intermediary organization, in order to
3 provide a platform for people to deepen their understanding, as
4 well as to reconcile between the perpetrators and the Accused -
5 the perpetrators and the civil parties. And that will help
6 reconcile (sic) between the civil parties, and also help
7 relieve the tension in the civil party. Following the apology of
8 the perpetrators, the civil parties and the victims, in general,
9 will feel appeased and they can re-integrate in the mainstream
10 society.

11 [09.34.47]

12 The last type of the project is the documentation and education.
13 We may publish certain documents or books. It can be the work
14 authored by the civil parties, which provide the brief summary of
15 the facts concerning the crimes, as well as the various charges
16 brought in - within the scope of Case 002/02. They can bring up
17 the sufferings that they have endured in life. And the accounts
18 brought up by the victims directly will assist in explaining the
19 younger generation of what really happened during the Khmer Rouge
20 period. The publication of a summary of facts of crimes and the
21 charges within the scope of Case 002/02 will help people
22 understand what charges are subject to prosecution and
23 adjudication before this Court.

24 In this last category, we intend to produce discs and we will
25 have the digital exhibition, which we provide VCD, as well as the

1 digital recording of the activities. And we will display in the
2 exhibition concerning the historical background of the Khmer
3 Rouge, the process of finding justice, as well as the
4 reconciliation efforts. And this project will enable the civil
5 parties and people involved to choose the section - or view the
6 section during the exhibition that are relevant to them.

7 [09.36.55]

8 And at the same time there has been request that we produce the
9 video recording the efforts of the civil parties in pursuit of
10 justice before the Khmer Rouge, particularly flagging out the
11 various stages of civil parties' involvement, including the
12 testimony of civil parties and the implementation of reparations
13 by relevant parties.

14 The production of the digital recording will also help the civil
15 parties who want to view that, but we understand that it may be
16 challenging for the civil parties who live in the remote area who
17 do not have the VCD player. But they can be played for community
18 screening and they can also copy those digital recordings and
19 share in their community.

20 Other study projects also include in this category, for instance,
21 the oral history telling by Cambodian women. This particular
22 project will allow the gathering of civil parties, particularly
23 the victims of gender violence. They can talk about their
24 sufferings, and youths are invited to listen to the storytelling
25 so that they would understand what really happened during the

1 Khmer Rouge period, particularly listening to the civil parties
2 who directly suffered from the atrocities, following which the
3 youths would be invited to share their views concerning what
4 happened at the time.

5 [09.38.56]

6 Other projects include group discussions on gender in their
7 respective communities, led by the civil parties. Through this
8 project, some volunteer civil parties will be trained on gender
9 issues and they will be organized into clusters so that they can
10 meet in their community and share their experience concerning
11 gender-based violence in the Khmer Rouge period so that they can
12 together prevent the recurrence of such atrocity.

13 In this last category, I would also like to raise some positive
14 memory of the history. It is a project that will highlight some
15 good culture of Cambodia and that will promote the (inaudible)
16 and positive culture so that they can avoid atrocities. This
17 project will be produced, and we will flag out only positive
18 culture of Cambodia by providing some artistic and musical
19 aspect, sport, as well as storytelling so that the younger
20 generation would see the positive aspect of it.

21 Both existing projects, as well as the new projects that I have
22 just informed Your Honours, are the ones that we have consulted
23 thoroughly, and I think that this will be subject to review,
24 pursuant to Rule 80 of the Internal Rules, in due course.

25 [09.41.00]

18

1 And I would also like to inform the Chamber that there has been a
2 request for the award of Cambodian nationality, which - I have
3 actually indicated it, particularly in the last initial hearing
4 in Case 002.

5 The final point which I would like to inform the Chamber, it is
6 not the project within the scope of the moral and collective
7 reparation, but there has been a consistent request by certain
8 civil parties that - their intention to request the Court for the
9 award of individual reparation and the monetary reparation. And
10 certain civil parties have requested that the financial
11 reparation be provided so that they can organize religious
12 ceremonies to memorize those who died during the period. We
13 understand that - the limitation of the reparation scheme, we
14 understand the collective and moral reparation limitations that
15 have been provided - that have been available at the Court, but
16 on behalf of the civil parties, we - I have the obligation to
17 raise this point for the attention of the Chamber.

18 So, these are the projects, as well as the requests for
19 recognition of this project for the Chamber.

20 And I thank you, Mr. President and Your Honours, for your
21 attention to our further specification.

22 [09.43.00]

23 MR. PRESIDENT:

24 Thank you, Mr. Pich Ang.

25 Now the Chamber gives the floor to the parties to the

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1 proceedings.

2 First, I will hand over the floor to the Prosecution if you have
3 any observation to make. You may proceed.

4 MR. KOUMJIAN

5 Good morning, Mr. President and Your Honours.

6 The Prosecution has no comments to make.

7 We support the civil parties in their request for collective and
8 moral reparations.

9 MR. PRESIDENT:

10 Thank you.

11 Next I hand over the floor to the defence teams, starting from
12 the defence team for Mr. Nuon Chea, if you have any observations
13 concerning this further specifications of reparation that have
14 just been presented by the National Lead Co-Lawyer.

15 [09.44.08]

16 MR. SON ARUN:

17 My name is Son Arun. I am national lawyer for the defence team
18 for Nuon Chea.

19 We do not have any observation or response to the specifications
20 by the Lead Co-Lawyer.

21 MR. PRESIDENT:

22 How about the defence team for Mr. Khieu Samphan?

23 MR. KONG SAM ONN:

24 Good morning, Mr. President. Good morning, Your Honours, and good
25 morning to everyone.

20

1 First, I do not have any objection to the points raised by the
2 Lead Co-Lawyers for the civil parties but I have a small
3 observation which I would like to ask for the attention of the
4 Chamber with regard to the request for the reparation and in
5 relation to the possible sentencing of the - in the future.
6 Concerning the sentencing, we understand that we do not sentence
7 the Democratic Kampuchea; we are now dealing with individual
8 responsibility. And we - for the request for the possibility of
9 awarding moral or mental - moral or collective reparation, it has
10 to be in - reflected in conjunction with the possibility of
11 conviction of individuals - persons charged before this Court.

12 [09.45.57]

13 MR. PRESIDENT:

14 Thank you.

15 The Trial Chamber will deliberate on this request in due course.

16 Now we turn to item 2. This will be - item 2 on the status of
17 preliminary objections and review of legal issues relevant to
18 Case 002/02.

19 Prior to the commencement of Case 002/02, the parties filed
20 numerous preliminary objections pursuant to Internal Rule 89. At
21 the time, the Chamber ruled upon the preliminary objections it
22 considered relevant and necessary to be decided prior to the
23 evidentiary proceedings in Case 002/01.

24 The Trial Chamber recently provided further information to the
25 parties regarding the remaining preliminary objections - E306.

21

1 The Trial Chamber identified two remaining preliminary objections
2 in Case 002 to be addressed at this time:

3 1) Those concerning the applicability of Cambodian Statute of
4 Limitation to grave breaches of the Geneva Convention; and

5 2) The Trial Chamber's jurisdiction over the crime against
6 humanity of deportation.

7 [09.47.56]

8 The Trial Chamber is sufficiently briefed on these objections and
9 will issue written decision as soon as possible.

10 In the Trial Chamber's order to file updated material in
11 preparation for trial of 8 April 2014, document E305, the parties
12 were ordered to provide an indication of any legal issues that
13 they intended to raise at the hearing by 9 June 2014. Only the
14 Khieu Samphan defence team availed itself of this opportunity -
15 document E305/11.

16 As noted in the agenda, the Trial Chamber considers that except
17 for seeking clarification of the notion of Case 002/01 serving as
18 a general foundation for subsequent trials, all other matters
19 raised by the Khieu Samphan defence team are either addressed
20 under other agenda items or not relevant to this further initial
21 hearing.

22 The Chamber reminds the party that the Case 002 case file remains
23 the same for all consecutive proceedings.

24 And we would like the party that they would be given no more than
25 10 - or 20 minutes to make submissions on this issue, and the

22

1 other parties will have no more than 10 minutes each to respond.

2 [09.50.10]

3 MS. GUISSÉ:

4 Good morning, Mr. President. Good morning, Your Honours. On
5 behalf of Khieu Samphan's defence team, I would like to address
6 the issues involved.

7 And for a start let me point out that it is not an easy task for
8 me today to fully address the issue of the clarification of the
9 notion of general foundation because we are waiting your decision
10 envisaged on the 7th of August 2014. I will have to play the
11 balancing act because I am talking about what may happen
12 eventually, without having before my eyes the reasons nor the
13 results of your deliberations.

14 Why do we wish to have you clarify what you mean by "general
15 foundation", since you have indicated that the case of Case
16 002/01 will serve as a general foundation for subsequent cases?
17 You also pointed out that there are a number of common elements
18 which have already been admitted as evidence in Case 002/02, and
19 the issue that arises from a practical standpoint is how we will
20 proceed, procedurally, since we do not have, in the case of
21 002/02, some kind of means of catching up on what wasn't done in
22 Case 001, for instance regarding the role of the Accused, a task
23 which the Prosecution didn't quite establish in the first trial
24 segment and it is now trying to bring in through the back door in
25 Case 002/02.

1 [09.53.04]

2 We would like to have a fair trial; and to be sure that we are
3 working on the basis of a fair trial – that we have the basis for
4 a fair trial, we need to know what we are authorized to do in the
5 second trial segment which we were not able to do in the first
6 trial segment.

7 We have made submissions on legal issues that are subject to
8 dispute and we hope that these issues will be adjudicated as we
9 move forward with Case 002/02. This has to do with laying the
10 foundations for a fair trial, to avoid the situation in which we
11 would just be trying to catch up what we didn't do in Case
12 002/01.

13 Let me point out that the issues that we have identified on the
14 list provided by the Co-Prosecutors and some of what transpires
15 in the list – in the witness list – what we are doing is not
16 irrelevant. We have read attentively your Severance Decision. And
17 the Annex A has the following references: E301/9/1 (sic). In that
18 document, we understood a number of things and we would like you
19 to clarify a number of issues as well. We would like you to
20 indicate as regards the role of the Accused that that role will
21 be scrutinized, but subject to the caveat that it has to do with
22 offences that you have identified as falling within the scope of
23 Case 002/02.

24 [09.55.12]

25 That said, in the meantime, yesterday at 5.30 p.m., we were

24

1 notified of the Decision of the Supreme Court. And the reference
2 is E301/9/1/1/3. And that Decision, even though our request – our
3 appeal is not granted in that Decision, that Decision lists a
4 number of legal issues, a number of procedural issues, as well,
5 that will very certainly have an incidence – a significant
6 incidence on the unfolding of Case 002/02.

7 I would like to draw the attention of the Chamber and the parties
8 to paragraph 85 of that Decision, which partly addresses some of
9 Khieu Samphan defence's questions. If we are not waiting for a
10 final judgment after the decision you will render on the 7th of
11 August, how will the proceedings unfold? And how will you conduct
12 proceedings in Case 002/02 without violating Khieu Samphan's
13 right to a fair trial? In paragraph 85 of that Decision, that is
14 what I have understood.

15 [09.57.00]

16 Let me make a preliminary remark. We received that Decision
17 yesterday, at 5.30 p.m. – and we received it in English – the
18 motion of the Co-Prosecutors regarding the new witnesses and the
19 motion of the civil parties regarding their list of witnesses and
20 experts. So, I am speaking without having an in-depth knowledge
21 of the Supreme Court Decision. I discussed this matter with my
22 learned colleague Koppe. Even those who are used to working in
23 English, which is not my case, also need time to understand all
24 the legal arguments, all the legal issues arising from that
25 Supreme Court Decision and its incidence on Case 002/02.

1 Let me return to paragraph 85 of the Decision of the Supreme
2 Court. My understanding of that paragraph is that it is indicated
3 therein that in the current situation, if there is no new Bench
4 of Judges for Case 002/02 and if a final decision is not rendered
5 on Case 002/01, the Supreme Court points out that the Trial
6 Chamber will not be able to draw the legal conclusions that it
7 would have been able to do in Case 002/01 in order to apply them
8 to Case 002/02. I believe that these pointers by the Supreme
9 Court Chamber map out the manner in which we should proceed in
10 the second trial segment, and it is also clear that this will
11 lead us to discuss with more clarity.

12 [09.59.18]

13 And again, I am aware of the fact that, as I take the floor
14 today, I am unable to go into details because I do not have all
15 your decisions. You have that advantage – the other parties
16 present here. Since you had scheduled this further initial
17 hearing, and I would like to say that as part of the organization
18 of Case 002/02, you had envisaged objections depending on the
19 issues that will arise from witness testimonies. It is necessary
20 to have in black and white the details of what the Chamber would
21 consider as issues that have already been adjudicated or that
22 have not yet been adjudicated, particularly in light of the
23 Supreme Court Decision, which limits enormously that possibility.
24 And we also have to look at the guarantees regarding witnesses
25 who will have to testify before Your Chamber in the second trial

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1 segment. We have to make sure they will not come in through the
2 back door and we should have this clarified - that the
3 Prosecution will not try to do that.

4 My task is a difficult one, and I hope that I have clearly stated
5 the issues that I would like us to address, particularly from the
6 standpoint of Mr. Khieu Samphan.

7 I would like the notion of general foundation to be discussed in
8 an in-depth manner in light of the Supreme Court Decision,
9 particularly following your Judgement.

10 And since it is on the agenda, I wanted to state clearly,
11 squarely, now, the points that we find important - that we find
12 critical for the defence of Mr. Khieu Samphan.

13 [10.01.40]

14 MR. PRESIDENT:

15 Thank you.

16 We would like now to give the floor to other parties to respond
17 to the submission made by Khieu Samphan's defence on the second
18 item of the agenda.

19 And, first, we would like to give the floor to the

20 Co-Prosecutors.

21 MR. KOUMJIAN:

22 Thank you. Thank you, Mr. President.

23 Your Honours, I'm completely confused by what Counsel means when
24 she questions whether the Prosecution will try to bring witnesses
25 through the back door. I think that the Supreme Court Decision

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1 issued yesterday is perfectly consistent with what we've all been
2 saying about Case 002/02 and how it will be handled. We are not
3 seeking and we have never sought to use adjudicated facts from
4 Case 002/01 - from that portion of the trial - in Case 002/02;
5 all issues remain open.

6 [10.03.08]

7 In the trial in Case 002/02, we know already that the composition
8 of the Bench will not be identical. The Chamber will have to
9 decide each legal issue anew. But the basis of the decisions will
10 be the totality of the evidence, including the evidence from Case
11 002/01. This is how - what we proposed originally, I think what
12 the Chamber talked about years ago, or at least a year ago, in
13 discussing the severance of charges.

14 Counsel, I believe, can rest assured that they can argue all
15 issues. All relevant evidence that is probative and not
16 duplicitous (sic) can be brought up in Case 002/02, and the
17 Prosecution will do the same.

18 We certainly understand and agree with Counsel that until we
19 reach - read the Judgement, each of the parties views about what
20 evidence will be most relevant may differ, pending on the
21 Judgement, because that gives us all an insight into how the
22 Chamber is thinking. But the new trial in 002/02 will have a new
23 composition of the Bench, all issues will be decided anew, and
24 all issues are open for new evidence and new debate.

25 MR. PRESIDENT:

28

1 Thank you.

2 The floor is now given to the Lead Co-Lawyers for the civil
3 parties.

4 [10.04.55]

5 MS. GUIRAUD:

6 Thank you, Mr. President.

7 We do not have any observations to make at this particular stage.

8 MR. PRESIDENT:

9 Thank you.

10 And, lastly, we'd like to give the floor to Nuon Chea's defence
11 if you wish to make a response to the submission made by Khieu
12 Samphan's defence.

13 MR. KOPPE:

14 Thank you, Mr. President. Good morning, Your Honours. Good
15 morning, Counsel.

16 At this stage, we also do not have many remarks to make. We do
17 predict, however, that it is going to be quite an important issue
18 in Case 002/02 – the question of the general foundations.

19 We haven't been able yet – we haven't been in a position to study
20 to the fullest extent possible the Decision of the Supreme Court
21 Chamber, but we do have – we have seen some very interesting
22 considerations within that Decision. I think at this stage there
23 is still unclarity as to how we should see, how we should
24 perceive legally Case 002/02. I know that you have at one point
25 called it – the severance, basically, called it a "management

1 tool" rather than a second trial.

2 [10.06.38]

3 If that is true, then, for instance, one of the issues of today
4 seems to be, I think, problematic – for instance, the use of
5 pseudonyms for witnesses that we are going to discuss later on
6 today.

7 I perfectly understand the rationale behind the use of pseudonyms
8 when discussing witnesses, but we all know – to take one example
9 which, I think, is quite, unharmful – we all know that Duch has
10 been questioned quite at length as a witness in the first trial,
11 in Case 002/01; and the question is, are we now forced to refer
12 to Duch as witness TCW-916? Now, that would, I think, be the case
13 if this were to be a second trial. But it is not; it is the
14 continuation, as I understand it, from the first trial.

15 So, there is already one, I think, small issue that seems to
16 contradict the rationale behind the severance and the reasoning
17 that we are in fact talking about a second phase in the whole
18 trial rather than a second trial in itself.

19 And later today, when the National Co-Prosecutor will make its
20 point clear on its objections to certain witnesses, are we bound
21 to refer to these specific witnesses under their TCW number – or
22 their new TCW number, or are we allowed to call them by their
23 names, which we have done very substantially in our closing
24 submissions?

25 [10.08.32]

30

1 So, my point is that this is a small example of the confusion
2 which might arise from the question whether we are dealing now
3 with a second trial or with a second phase in one trial, the
4 first trial in itself.

5 Maybe a suggestion from our team could be that we have one
6 further initial hearing specifically on this issue. We know then
7 - we could know then - by then the reasoning of your Judgement on
8 7 of August, and at that time we would also know what would be -
9 who would be the Judges in the Trial Chamber. We all know that,
10 as the Prosecutor has said, this will not be the same
11 composition. So, maybe sometime in September we could have a
12 further initial hearing dealing specifically with this issue,
13 because I do predict that the issue of general foundations could
14 be a major point of discussion and debate - legal debate in the
15 second trial.

16 MR. PRESIDENT:

17 Thank you.

18 In light of the parties' submissions, the Trial Chamber will
19 deliberate further on this issue.

20 The Defence for Khieu Samphan, you may proceed.

21 [10.10.35]

22 MS. GUISSÉ:

23 I beg your pardon, Mr. President; I simply wish to support the
24 request.

25 I'm not sure if it was abundantly clear, but there will have to

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1 be an additional hearing on this particular matter concerning the
2 issue of a general foundation following the Judgement, once
3 everybody will have been well versed with the arguments and
4 grounds put forward by the Supreme Court Chamber, because truly
5 there are many, many factors and elements that will be at issue.
6 I don't think we have the time today, but I truly believe that
7 there are a significant number of matters related to that matter.
8 Therefore, I simply wish to support the remarks made by my
9 learned friend, Mr. Koppe.

10 Thank you.

11 MR. PRESIDENT:

12 Thank you for your remark. And the Bench will discuss this matter
13 further.

14 The Chamber now invites the parties to state whether at this
15 stage they intent to seek legal re-characterization of any crimes
16 or forms of responsibility in relation to Case 002/02, and each
17 party has no more than 10 minutes in which to address the Court.
18 And first the floor is given to the Prosecution. You may proceed.

19 [10.12.15]

20 MR. KOUMJIAN:

21 Thank you, Mr. President.

22 Your Honours, we do wish to put Your Honours and the Defence on
23 notice that we fully anticipate - although we don't have the
24 Judgement yet, from next week, we fully anticipate that we will
25 be appealing as a matter of law the Trial Chamber's Decision at

1 the start of 002/01 to follow the Pre-Trial Chamber's previous
2 Decision finding that joint criminal enterprise of the third
3 category was not part of international criminal law at the -
4 during the period of time of the jurisdiction of the Court. We
5 think that that's an important issue which will affect Case
6 002/02.

7 So, for - we would be asking then, if successful with the Supreme
8 Court - we know Your Honours have already ruled on it, but we did
9 not have a chance to do an appeal on that, because it would have
10 been interlocutory. We will be asking the Supreme Court to find
11 that joint criminal enterprise of the third category was part of
12 international criminal law in 1975, which is the jurisprudence
13 from other international tribunals - that would be consistent
14 with that.

15 [10.13.39]

16 That means that crimes that may have been outside of the intent
17 of the members of the joint criminal enterprise - not the
18 objectives of the criminal enterprise - but were natural and
19 foreseeable consequences and foreseen by the Accused - that they
20 could be held responsible. And we would view that and we'll ask
21 the Court to consider that as an alternative mode of
22 responsibility.

23 And to give one clear example: rapes - and, I think, a very
24 important example. On the charges of rape in the Case 002/02, our
25 view is, that clearly is a natural and foreseeable consequence of

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1 the other parts of the criminal plan to persecute, to murder, to
2 torture, and to force couples into marriage. So we want to put
3 all parties on notice of our intent to appeal that and ask that
4 during the trial – that the Court consider that mode of
5 responsibility in the alternative.

6 Excuse me. Could I just make a very brief comment on the last
7 matter?

8 I would support the Defence's suggestion that we have a further
9 initial hearing after the Judgement comes out.

10 [10.15.00]

11 And I'll also make one brief suggestion. The Chamber has given
12 new pseudonyms. In some cases, now, witnesses will have two
13 different pseudonyms, and I would urge the Court to consider that
14 for those witnesses that had a pseudonym in the phase of the
15 Trial 002/01, we maintain the same pseudonym. Otherwise,
16 especially when we come to writing the Judgement and arguments,
17 it will be extremely confusing because each witness will then
18 have two different pseudonyms.

19 MR. PRESIDENT:

20 Thank you.

21 We'd like now to give the floor to the Lead Co-Lawyers.

22 MR. PICH ANG:

23 Once again, good morning, Your Honours and Mr. President.

24 At this stage, the Lead Co-Lawyers have had some discussions
25 amongst ourselves on the legal re-characterization of crimes and

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1 forms of responsibility. We have (inaudible) formed concrete
2 evidence on our decision and submission, in particular on the
3 treatment of the new victims - of the New People, who were
4 subject to forced transfer.

5 [10.16.32]

6 And at this specific point in time, we do not have any specific
7 request or submission made before Your Honour and we urge that we
8 shall be allowed to make further submission in the case that we
9 find it necessary.

10 Thank you.

11 MR. PRESIDENT:

12 Thank you.

13 We'd like now to give the floor to Nuon Chea's defence.

14 MR. KOPPE:

15 Mr. President, we have no comment.

16 MR. PRESIDENT:

17 And Khieu Samphan's Defence, you may proceed.

18 MS. GUISSÉ

19 Thank you, Mr. President.

20 On behalf of the defence of Mr. Khieu Samphan, it goes without
21 saying that the Accused will not be requesting any
22 characterization - re-characterization of the crimes. However, we
23 do wish to reserve the possibility, as is customary before all
24 other international tribunals - that is, to make any written
25 submissions for any - over the re-characterization of findings

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1 and also to make any filings should new evidence be adduced.

2 Thank you.

3 [10.18.13]

4 MR. PRESIDENT:

5 Thank you.

6 And we now move to item number 3 - that is, Sequencing of Trial
7 Proceedings and Initial Review of Potential Witnesses, Civil
8 Parties, and Experts.

9 The Trial Chamber notes the Office of Administration's indication
10 during the Trial Management Meeting in December 2013 that it will
11 fully support Case 002/02 in terms of financial and
12 administrative assistance.

13 More recently, the Office of Administration indicated that all
14 relevant support services for the trial proceedings in Case
15 002/02 will be ensured at any time.

16 The Chamber would like to thank the Office of Administration for
17 its efforts and availability.

18 As a tentative indication, the Trial Chamber would like to
19 explore the possibility of commencing evidentiary hearings in
20 Case 002/02 in late September or October 2014.

21 The Trial Chamber now asks the parties to provide information
22 about their availability for the commencement of evidentiary
23 hearings in Case 002/02 during the remainder of 2014 and
24 thereafter.

25 And the floor is now given to the Prosecution. You may proceed.

1 [10.20.15]

2 MS. CHEA LEANG:

3 Good morning, Mr. President. Good morning, Your Honours, and good
4 morning, parties to the proceedings and everyone in and around
5 the courtroom.

6 Pursuant to the Memorandum of Understanding – document E311/1,
7 paragraph 10 – dated 7th of July 2014, requesting the parties to
8 indicate their availability to participate in Case 002/02 – and
9 we are grateful for Your Honours' instructions so that we can
10 respond about our availability to participate in this 002/02
11 Trial.

12 We agree on the importance of this trial. And the Office of the
13 Co-Prosecutors has been awaiting for the commencement of the
14 evidentiary hearing in Case 002/02.

15 Your Honours, the Office of Co-Prosecutors is available to
16 participate in the evidentiary hearing in Case 002/02 for the
17 remainder of 2014 and for 2015. Further, we will try our best to
18 collaborate and to respect the work plan put forward by the Trial
19 Chamber, with the expectation that the evidentiary hearing in
20 this case can commence as soon as possible.

21 I'd like to highlight on one point on the number of days of the
22 hearings in 002/02.

23 [10.22.26]

24 In the case that there is an appeal – this is just a prediction
25 (sic); that is, an appeal against the Judgement in 002/01 – we do

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1 not have any objections to the Defence for the request for the
2 reduction of the number of days during a week for the proceedings
3 in Case 002/02. The reduction of the number of days per week will
4 assist both – the Chamber, as well as the other parties, to
5 engage in their other tasks besides their participation in the
6 trial in this case. Such a reduction of the number of days in the
7 proceedings in 002/02 depends upon:

8 1) The actual situation of the health of the Accused who shall
9 appear before Your Honours; and

10 2) Secondly, it's the possibility of an appeal against the
11 Judgement in 002/01.

12 Therefore, the Co-Prosecutors are of the view that, due to the
13 busy schedule that we each engage in, the Chamber shall (sic)
14 schedule the hearings – the evidentiary hearings of Case 002/02
15 either two or three days per week if necessary, and later on the
16 Chamber can schedule normal and regular hearing days per week,
17 depending on the situation and the health issue of each Accused.

18 And I'm grateful, Mr. President.

19 [10.24.33]

20 MR. PRESIDENT:

21 Thank you.

22 And we'd like now to give the floor to the Lead Co-Lawyers for
23 civil parties. You may proceed.

24 MS. GUIRAUD:

25 Thank you, President.

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1 The civil parties are at the disposal of the Trial Chamber. We
2 are willing and ready to begin hearings as of September or
3 October, as you are planning, and we have absolutely no objection
4 to the reduction of hearing days during the time that the appeal
5 is being finalized.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you.

9 And I'd like to give the floor now to Nuon Chea's defence.

10 [10.25.22]

11 MR. KOPPE:

12 Thank you, Mr. President.

13 The Nuon Chea defence team is and remains available to
14 participate in hearings in 2014 and 2015, and we strongly urge
15 the Trial Chamber - that the Trial Chamber commence - that trial
16 commences as soon as possible.

17 Also with regard to scheduling, the Chamber has previously
18 advised in document E301/11 that our request in relation to the
19 scheduling for Case 002/02 will be taken into account when the
20 Chamber comes to determine that schedule. And we simply, today,
21 wish to reiterate now that our request, as outlined in document
22 E301/7, is that hearings in Case 002/02 commence at 7.30 a.m.
23 every morning and run for the morning hours only. Our client is
24 best able to concentrate on the mornings, so we submit that this
25 scheduling change will affect our client's ability to

1 meaningfully participate in his own trial, which of course, Mr.
2 President, is essential.

3 Thank you.

4 [10.26.50]

5 MR. PRESIDENT:

6 Thank you.

7 And, Madam Counsel for Khieu Samphan, you may proceed.

8 [10.27.00]

9 MS. GUISSÉ

10 Mr. President, thank you.

11 I don't think I will take anyone by surprise by echoing the
12 position of our defence team, which we have stated during
13 previous trial management meetings. Given our personnel, given
14 our human resources on board, and given the amount of work that
15 will be required during the appeal, we certainly cannot be in a
16 drafting phase of the appeal and in the hearings simultaneously
17 if Case 002/02 is to commence, only following the final appeal
18 judgement.

19 That being said, what we have raised as difficulties that arise
20 even prior to the start of evidentiary hearings in Case 002/02, I
21 believe, will take up much time, as they are very, very
22 important. And I gather that there may be a change in the
23 composition of the Trial Chamber, and I think that also will add
24 fuel to the discussion.

25 I shall wait the scheduling for September and October 2014.

40

1 However, as far as the Khieu Samphan defence team is concerned,
2 we believe that this is not manageable at all, particularly if an
3 appeal is to be lodged.

4 We will reiterate this with all the greater strength because
5 there is to be discussion as to what consists of a general
6 foundation for Case 002/02 and subsequent trials, and we must
7 make sure that that concept is crystal clear before Case 002/02
8 can begin.

9 Thank you.

10 [10.28.50]

11 MR. PRESIDENT:

12 Thank you, Madam Counsel.

13 The Chamber will take this information into consideration and
14 will determine the date for the start of evidentiary hearings in
15 due course.

16 The time is appropriate for a short break. We will take a
17 20-minute break, and the session will resume at 10 to 11.00.

18 (Court recesses from 1029H to 1049H)

19 MR. PRESIDENT:

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

21 The Trial Chamber next invites the parties to make submissions on
22 the order of the presentation of evidence with an aim to maximize
23 the efficiency, logistics, and coherence of the proceedings
24 through a clear trial structure.

25 The Co-Prosecutors have proposed that Case 002/02 be divided into

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1 five phases - that is, role of the Accused, security centres,
2 treatment of targeted groups, worksites and regulation of
3 marriage nationwide. That is document E305/6.

4 The Co-Prosecutors have proposed the following order of trial:
5 S-21, internal purges, role of the Accused, JCE witnesses, Tram
6 Kak cooperative, Krang Ta Chan Security Centre, Au Kanseng
7 Security Centre, Phnom Kraol Security Centre, genocide of
8 Vietnamese, genocide of Cham, 1st January Dam worksite, Trapeang
9 Thma Dam worksite, Kampong Chhnang Airport worksite, forced
10 marriage, and overview.

11 [10.51.20]

12 The Lead Co-Lawyers have proposed the following order of trial:
13 S-21, internal purges, role of the Accused, JCE witnesses, Tram
14 Kak cooperatives and Krang Ta Chan Security Centre, treatment of
15 Buddhist, treatment of Vietnamese, treatment of Cham, movement of
16 population phase 2 as it relates to the treatment of Cham, 1st
17 January Dam worksite, Trapeang Thma Dam worksite, Kampong Chhnang
18 Airport worksite, Au Kanseng Security Centre, regulation of
19 marriage, and experts. That is document E305/7.1.4.

20 The Trial Chamber invites the defence teams to comment on these
21 proposed orders of trial. Each team has no more than 15 minutes.
22 And first I'd like to give the floor to Nuon Chea's Defence. You
23 may proceed.

24 MR. KOPPE:

25 Thank you-

42

1 [10.52.44]

2 MR. PRESIDENT:

3 Please wait-

4 MR. KOPPE:

5 (Microphone not activated)

6 MR. PRESIDENT:

7 Defence Counsel, please wait. I think there is one issue.

8 Pich Ang, you may proceed.

9 MR. PICH ANG:

10 Your Honours, I apologize for my interruption.

11 In order to avoid the order of trial proposed by the Lead

12 Co-Lawyers for civil parties, we would like to briefly mention

13 the notion behind our request for the proposed order of trial and

14 we would like to seek also comments and remarks from other

15 parties. I understand the importance of the role of the

16 Co-Prosecutors and their proposal for the order of trial and I

17 believe it is not necessary for other parties to remark on the

18 order of trial proposed by the Co-Prosecutors.

19 MR. PRESIDENT:

20 Thank you for your observations before the floor is given to the

21 Defence.

22 And now, the Defence for Nuon Chea, you may proceed.

23 [10.54.10]

24 MR. KOPPE:

25 Thank you, Mr. President.

1 Concerning the order of presentation of evidence, we note that
2 the Prosecution's and Lead Co-Lawyers' submissions on the
3 different topics that would be heard at trial are based upon the
4 witnesses, civil parties, and experts they propose to call in
5 Case 002/02.

6 We have requested to call several experts and witnesses
7 concerning a topic that is not among those already proposed by
8 the Prosecution and the Lead Co-Lawyers, and that is the
9 existence and character of an armed conflict.

10 The Trial Chamber has included this topic within the scope of
11 Case 002/02 as part of the general factual findings that will be
12 disputed in the trial. It is in fact the only topic among the
13 general factual findings that has not already been heard in the
14 Case 002/01 trial.

15 Mr. President, it is our view that the question concerning the
16 existence and character of an armed conflict is an essential
17 contextual topic, especially since we will argue that there
18 existed an internal - or non-international - armed conflict in
19 parallel, too, and intertwined with the international armed
20 conflict.

21 [10.55.52]

22 The relevant facts in relation to the existence of an armed
23 conflict fundamentally affect the arguments that the parties may
24 put forward in relation to numerous crime sites and crimes, most
25 particularly in relation to the S-21 Security Centre and the

1 internal purges, which both the Prosecution and Lead Co-Lawyers
2 have proposed as the first two topics to be heard at trial. In
3 addition, it is at the very heart of our theory of the case.
4 Therefore, we submit that it is logical that the topic of the
5 existence and character of an armed conflict in the period of
6 '75-'79 be the first topic addressed in Case 002/02 trial.
7 Following the existence of an armed conflict, on that matter we
8 would concur with the Prosecution and the Lead Co-Lawyers'
9 proposal that the next two topics to be heard should be the S-21
10 Security Centre and the internal purges. For us, these topics are
11 also essential to our theory of the case, so much so that the
12 majority of the witnesses, civil parties, and experts we have
13 requested - have been requested, at least in part, for their
14 ability to testify in relation to these very topics.

15 [10.57.25]

16 Unlike either the Prosecution or the Lead Co-Lawyers, the next
17 topics we would propose to be heard at trial are: the genocide of
18 the Vietnamese, then the genocide of the Cham, and then the
19 Kampong Chhnang Airport worksite. We submit that these topics are
20 interlinked with and build on the topics of the armed conflict,
21 the S-21 Security Centre, and the internal purges.

22 The charge of the genocide of the Vietnamese will be affected by
23 submissions in relation to an armed conflict with Vietnam, the
24 treatment of the Vietnamese in the Eastern Zone, and our
25 submissions concerning Vietnam's long-term aggressive posture

1 against Cambodia in general and Democratic Kampuchea in
2 particular.

3 The charge of genocide of the Cham will be affected by
4 submissions in relation to internal disturbances and sabotage
5 actions in the Eastern Zone, which we will discuss during the
6 trial segments on the S-21 Security Centre and the internal
7 purges.

8 The charges relating to the Kampong Chhnang Airport worksite will
9 be affected by submissions concerning policies responding to
10 internal enemies within the Revolutionary Army of Kampuchea, also
11 to be discussed during the trial segments on S-21 Security Centre
12 and the internal purges.

13 Therefore, Mr. President, in our view, it would seem logical that
14 these topics should be the next to be heard at the second trial.

15 [10.59.13]

16 We also submit that the topic of the role of the Accused and
17 joint criminal enterprise be the last topic to be heard at trial.

18 This is because it is our view that parties' submissions
19 concerning the topic depend fundamentally on the submissions made
20 concerning the facts relating to the other crime sites and
21 charges. Thus, in our view, it is logical for it to be heard
22 after those topics.

23 Mr. President, to the last point, we have no other submissions
24 regarding the hearing sequencing for other topics within the
25 scope of Case 002/02. However, we do have a final submission in

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1 relation to sequencing, and this relates to two witnesses we have
2 requested to be heard at trial. As we – as we have noted in our
3 updated witness list – that is document number E305/4.1 – our
4 requested witness T – sorry, 2-TCW-923, he is 96 years old, while
5 our requested witness 2-TCW-946 is 80 years old. And given their
6 advanced age, we request that – these two witnesses to be the
7 very first witnesses to be heard at trial and that, if necessary,
8 their testimony be given via audio-visual link. So, these two
9 witnesses are not necessarily related to the sequencing of the
10 order, but because of their advanced age, we would like to see
11 them as the exception to the proposed sequencing of the trial.

12 Thank you very much.

13 [11.01.18]

14 MR. PRESIDENT:

15 Thank you, counsel Victor Koppe.

16 And, Madam Counsel for Khieu Samphan, you may proceed.

17 MS. GUISSÉ

18 Thank you, Mr. President.

19 I would like to start with the points on which we agree with Nuon
20 Chea's defence team – that is, that we should effectively start
21 with the issue of the armed conflict and end with the role of the
22 Accused, for the reason that he has given. And we find that a
23 logical approach because it will enable us to use all the
24 evidence adduced under those two subjects.

25 Regarding the sequence within those two subjects, we would like

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1 the Chamber to respect the order of the Closing Order – that is,
2 we have cooperatives and worksites, followed by security centres,
3 followed by measures targeting specific groups – with the
4 population movements, which was another aspect but which is
5 coherent – and, lastly, regulation of marriages.

6 [11.02.44]

7 Let me point out that regarding cooperatives and worksites,
8 dealing with this at the very beginning of the trial, after armed
9 conflicts, is very logical, after we will have ended with 002/01.
10 We talked about movement of populations and then proceeded to
11 cooperatives, and we followed a chronological order. As far as
12 the administration of evidence is concerned, this is a more
13 well-adapted approach.

14 So, we also endorse the points developed by Mr. Koppe – that is,
15 armed conflict is essential as we discuss the various topics in
16 Case 002/02.

17 MR. PRESIDENT:

18 Thank you, Counsel.

19 The Trial Chamber would like now to invite the Co-Prosecutors and
20 the Lead Co-Lawyers to respond to the Defence's submissions. They
21 each have 15 minutes to provide their responses.

22 And, first, I'd like to give the floor to the Prosecution. You
23 may proceed.

24 [11.04.20]

25 MR. ABDULHAK:

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1 Thank you, Mr. President. And good morning, Your Honours.

2 In his introductory remarks, Mr. President referred to the need
3 to ensure the coherence of the trial structure and the need for
4 that structure to be clear and logical. It's our proposal that
5 the request by the Co-Prosecutors, and as largely supported by
6 the civil parties, presents such a clear and coherent structure.
7 And I'll explain that in brief terms before I respond to the
8 Defence's proposed changes.

9 [11.05.05]

10 As the President indicated, we've proposed that the trial be
11 conducted by way of a series of segments, for want of a better
12 term, commencing with the role of the Accused, within which the
13 Court would deal with allegations relating to S-21, internal
14 purges, and roles of the Accused. And can I say, generally
15 speaking, that approach in dealing with broad issues that affect
16 the entire case is consistent with the Trial Chamber's management
17 of the first trial.

18 As to why S-21 is included by us and by our learned friends
19 counsel for the civil parties in that group is simply because
20 S-21, as we have submitted on many occasions, is the most
21 representative criminal crime site in this case, as far as the
22 allegations of the joint criminal enterprise, with respect to the
23 targeting of enemies, are concerned.

24 [11.06.11]

25 Of course, it also relates very much to the roles of the Accused:

1 both Nuon Chea and Khieu Samphan. This was a crime site, we
2 alleged and the Closing Order alleges, established by the Party
3 Centre, and the crime site the leadership of which reported
4 directly to the Party Centre; it received prisoners from the
5 entire country and from all administrative, civilian, and
6 military structures of the Khmer Rouge. Here I'm, of course,
7 paraphrasing the allegations in the Closing Order. To deal with
8 internal purges and roles of the Accused within that same topic,
9 in our submission, provides a clear foundation and a basis for
10 understanding, at least at that point, of the joint criminal
11 enterprise and to then build on that with the second segment,
12 which, as Mr. President indicated, covers three security centres
13 - Krang Ta Chan, Au Kanseng, and Phnom Kraol.

14 [11.07.14]

15 In our submission, it is then logical to move on to the issue of
16 the targeting of specific groups - the Vietnamese and Chams -
17 before turning to a separate policy which deals with the
18 operation of cooperatives and worksites, those being the 1st
19 January Dam, Trapeang Thma Dam, and the Kampong Chhang Airport.
20 And following that, we have submitted that forced marriage
21 charges should be heard, given that they relate to allegations on
22 a nationwide basis and are therefore conducive to a separate
23 hearing of evidence on that issue.
24 And, of course, we propose to conclude the trial with overview or
25 expert witnesses.

1 Turning to the Defence's proposal that the international armed
2 conflict evidence be heard first, can I say initially that, of
3 course, evidence of the international armed conflict will be
4 heard throughout this trial; that is of necessity because,
5 pursuant to the Trial Chamber's Severance Order, grave breaches
6 of the Geneva Conventions form part of this trial, and the
7 specific crime sites in relation to which grave breaches have
8 been charged include S-21 and Au Kanseng Security Centre. So, in
9 a way, by following the order which we are proposing Your Honours
10 will in part also address the Defence's wishes that the issue of
11 international armed conflict or evidence on that issue be
12 considered.

13 [11.09.05]

14 We don't think it's useful to have a separate phase of the trial
15 in which evidence only of the international armed conflict is
16 heard because that international armed conflict, whilst very
17 significant, doesn't form the core theme of this case, certainly
18 on any view of the indictment.

19 Can I remind everyone that pursuant to Rule 87.1, the Prosecution
20 bears the onus of proof in relation to all charges.

21 And so, whilst we note, of course, that it is for the Trial
22 Chamber to determine the order in which evidence is heard, we
23 implore the Trial Chamber to follow the proposal we have set out
24 and to enable us to present the evidence against the indictment
25 in the manner in which we say it's most conducive to the

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1 ascertainment of the truth. We don't believe that hearing
2 cherry-picked sites as diverse as genocide of Vietnamese, Chams,
3 and worksites is conducive, particularly not at the start of the
4 trial, to a broader understanding of the charges and the
5 evidence.

6 [11.10.22]

7 And the same remarks I would make in relation to hearing roles of
8 the Accused last. The Trial Chamber, in our view wisely, decided
9 to hear first evidence relating to authority structures,
10 communications, and roles of the Accused in the first trial, and
11 the same logic should follow. Nothing of what my learned friends
12 have said really compels Your Honours to do differently.

13 Can I turn to the issue of the two witnesses that my learned
14 friend Mr. Koppe asked be heard first?

15 The Prosecution does not oppose this request. The Trial Chamber
16 has in the past prioritized the hearing of witnesses which are
17 elderly or whose appearance may become difficult as the trial
18 unfolds. So, provided the Trial Chamber accepts that those – that
19 the evidence proposed from those witnesses is relevant and
20 conducive to ascertaining the truth, we have no objection in
21 particular to them being scheduled in the early stages of the
22 trial.

23 [11.11.34]

24 And, lastly, can I make one practical request, while I'm on my
25 feet, of the Trial Chamber?

1 In the first trial, the Chamber generally proceeded by way of
2 providing advanced lists of witnesses to the parties at each – in
3 each segment of the trial. We think that approach is sound and we
4 would encourage the Chamber, as far as is possible, to consider
5 and make decisions on witnesses to be heard for each segment, in
6 stages, to hear the parties on any further requests that may
7 arise, and to then inform the parties of the witnesses to be
8 heard for each segment. So my proposal – proposal of the
9 Prosecution is that you make decisions on witness selection in
10 segments and then inform parties of your decisions, hopefully
11 with sufficient time for everyone to prepare.

12 Mr. President, unless I can assist you further, those would be my
13 submissions and response.

14 [11.12.52]

15 MR. PRESIDENT:

16 Thank you. You may be seated.

17 And I'd like now to give the floor to the Lead Co-Lawyers.

18 MS. GUIRAUD:

19 Thank you, Mr. President. Just one brief remark regarding the
20 introductory statement made by my colleague, Ang Pich. I want to
21 be clear because the interpretation of what I said in Khmer and
22 in English wasn't very clear.

23 We wish to support the proposal by the Office of the
24 Co-Prosecutors regarding the sequencing of the trial. We are
25 aware of the fact that the Prosecution has a burden of proof, and

1 it's therefore up to them to choose the procedure which is as
2 appropriate as possible - to them as possible.

3 That wasn't clear in the translation I heard in English.

4 [11.13.50]

5 Regarding the last proposal by my learned colleague of the
6 Prosecution, we also support their motion that the Chamber should
7 proceed one segment at a time for each list of witnesses. And as
8 we proceed in this manner, we would wish that the Chamber should
9 decide on which civil parties - which are most relevant, and they
10 can ask that those - the testimonies of those witnesses be
11 revisited given the probative value of the evidence they provide,
12 and this will determine which witnesses and civil parties should
13 be brought before this trial. That would be the most relevant and
14 the most useful approach.

15 MR. PRESIDENT:

16 Thank you.

17 And, Pich Ang, you may proceed.

18 MR. PICH ANG:

19 Once again, good morning, Mr. President and Your Honours.

20 I apologize if my previous statement is unclear, but I believe it
21 has been clarified by my international counterpart, on the order
22 of trial as proposed by the Co-Prosecutors, as they are the
23 initiators of the case.

24 [11.15.17]

25 And the remarks made by the defence teams, in particular in their

1 request to hear – to hear in the order of the facts presented in
2 the Closing Order, in our view, that is not necessary. What is
3 important is that what we can manage so that the trial can be
4 more effective.

5 And in their submission to start with the armed conflict first,
6 it is our view that if that fact is to be started first, it would
7 disrupt the time and the flow of the proceedings, as other
8 parties – for instance, our Lead Co-Lawyer section – to make such
9 a request to hear our civil parties' testimonies or other facts.
10 And for that reason the order of the trial cannot be efficient.

11 And as stated by my learned counsel the prosecutor, the armed
12 conflict issue will be heard throughout the segments of the
13 trial, as this issue is interlinked with other facts.

14 In their submission by Nuon Chea's defence on the hearing – on
15 the advanced age of the witnesses, I believe that it is
16 appropriate, as we can start with the advanced aged witnesses.
17 And likewise, the civil parties who have an advanced age should
18 be heard at the beginning of the trial.

19 These are my submissions, Your Honour, and – thank you.

20 [11.17.46]

21 MR. PRESIDENT:

22 Thank you.

23 The Trial Chamber will decide as soon as possible upon the order
24 of the trial proceedings and will issue a written decision in due
25 course.

1 Before turning to a brief review of the list of potential
2 witnesses, civil parties, and experts, the Chamber would like to
3 provide a brief update on the filing of the list of documents and
4 exhibits.

5 On 8 April 2014, the parties were ordered to file updated lists
6 of documents and exhibits they intend to produce in Case 002/02.
7 That is document E305. And on the 8th of May 2014, the Nuon Chea
8 defence team notified the Chamber that since it did not submit
9 original lists of documents and exhibits, pursuant to the
10 Chamber's order to file material in preparation for trial in
11 2011, it is unable to update any such list. That is document
12 E305/3.

13 [11.19.17]

14 The Co-Prosecutors, Civil Party Lead Co-Lawyers, and Khieu
15 Samphan defence team all filed updated lists, in - pursuant to
16 the Trial Chamber's order. That is documents E305/13, E305/14,
17 and E305/12, respectively. In these filings, the parties have
18 indicated that they will offer the Chamber several thousand
19 documents during the Case 002/02 proceedings. The Trial Chamber
20 is currently reviewing these lists. It appears that several
21 documents were not previously included in the parties' original
22 list.

23 The Chamber again reminds the parties that they must apply under
24 Internal Rule 87.4 for the inclusion of these documents in Case
25 002/02 in accordance with the Chamber's previous rulings. That is

1 documents E305 and E307/1.

2 [11.20.42]

3 On 24 July 2014, the Nuon Chea defence team submitted list of new
4 documents and exhibits. That is document E305/5.

5 Turning now to the list of potential witnesses, civil parties,
6 and experts submitted by the parties for Case 002/02, the Chamber
7 reminds the parties that they may apply for the hearing to enter
8 closed session and that the discussion with otherwise continue
9 with the use of the pseudonyms provided to the parties on 24 July
10 2014.

11 Each party shall have a maximum of 30 minutes to address the
12 Chamber. It is for the parties to decide how they will allocate
13 their time when addressing the following issues.

14 The parties have so far proposed 88 civil parties, 20 experts,
15 and 121 witnesses, totalling 229 individuals. That is documents
16 E305/4, E305/5, E305/6, and E305/7, respectively. Additionally,
17 the Co-Prosecutors have proposed 36 further reserve witnesses. In
18 view of the cumulative size of the parties' lists and the length
19 of time it would take to hear these individuals, the Chamber
20 invites the parties to discuss a possible reduction of their
21 lists.

22 [11.22.54]

23 The Trial Chamber takes this opportunity to again remind the
24 parties of their obligation to ensure that their submissions,
25 including Internal Rule 87.4 requests for the submission of new

1 evidence at trial, are made in a diligent and timely fashion.

2 On 24 July 2014, the Nuon Chea defence team submitted list of new
3 individuals - that is, five witnesses and one expert - to be
4 heard at trial. That is document E307/4.

5 On the afternoon of 28 July, the Co-Prosecutors filed a Rule 87.4
6 motion regarding their proposed witnesses, civil parties, and
7 experts who were not included in their initial list for Case 002
8 filed in 2011 - document E307/3/2. This filing comes 80 days
9 after the Co-Prosecutors filed their updated list of proposed
10 witnesses, civil parties, and experts, and two days before this
11 hearing. The Chamber's preliminary reaction is that such a filing
12 is very late, indeed, and probably too late to be addressed fully
13 at this hearing.

14 The Co-Prosecutors have withdrawn seven witnesses from their
15 recently updated witness list for Case 002/02. They seek to
16 substitute three of them with one reserve witness and another
17 witness from their 2011 list. They also seek to add one more
18 individual to their Case 002/02 list.

19 [11.25.13]

20 The Lead Co-Lawyers submitted for filing their Rule 87.4 motion
21 only yesterday afternoon. The Chamber has been obliged to remind
22 the parties constantly that all steps taken in preparation for
23 trial, including the provision of reasoned submissions in support
24 of requests for the inclusion of new evidence, must be completed
25 in a timely manner; if they are not, the parties risk delaying

1 the commencement or the smooth progress of Case 002/02. The
2 Chamber invites the parties, if they wish to do so, to provide
3 oral responses to the Co-Prosecutors' Rule 87.4 motion but notes
4 that if they do not avail themselves for this opportunity, any
5 written responses to the motion should be filed in accordance
6 with the Internal Rules.

7 Given the timing of their filing, the Lead Co-Lawyers' motion is
8 yet to be notified to all parties at the time of the commencement
9 of this hearing, and therefore no oral responses will be sought
10 to this motion. Any written responses should be filed in
11 accordance with the Internal Rules.

12 [11.25.59]

13 Next, an issue arises pertaining to a request for protective
14 measures. The Co-Lead Lawyers (sic) for the civil parties
15 initially included civil party 2-TCCP-238, previously TCCP-19, as
16 a civil party for whom protective measures were sought. However,
17 they have since indicated that protective measures are no longer
18 necessary and have rescinded their request for protective
19 measures. That is document E305/7/2.

20 The Chamber observes that the submission of unsubstantiated
21 request for protective measures impact upon the preparation for
22 Case 002/02, using both resources and time. The Chamber reminds
23 the parties of the necessity of ensuring that such requests are
24 substantiated and that they may liaise with the Witness and
25 Expert Support Unit to discuss any general matter, including the

1 protective measures framework applicable to the tribunal.

2 The Trial Chamber trusts that in future all parties will comply
3 with their professional obligations.

4 The Trial Chamber will provide the other parties with an
5 opportunity to object to the inclusion of civil party 2-TCCP-238.

6 The Chamber notes that the Co-Prosecutors have also proposed to
7 hear these individuals.

8 [11.29.02]

9 Finally, the Chamber invites the parties to comment on the
10 objections to the list raised by the Khieu Samphan defence team -
11 that is document E305/9 - and the National Co-Prosecutor -
12 document E305/10. The other parties did not avail themselves of
13 the opportunity to comment on the updated witness, civil party,
14 and expert list.

15 The Chamber will also consider the objections raised by the Khieu
16 Samphan defence team to certain individuals proposed in the
17 Co-Prosecutors' updated list and their argument that they do not
18 have sufficient information in respect to certain individuals and
19 the scope of the trial to assess the proposed witnesses, civil
20 parties, and experts.

21 [11.29.59]

22 The Chamber invites the other parties to make submission on the
23 Khieu Samphan defence team's position, before according the Khieu
24 Samphan defence time to respond.

25 The Trial Chamber now invites the parties to comment on these

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1 issues.

2 And, first, we would like to give the floor to the Prosecution.

3 You may proceed.

4 MR. KOUMJIAN:

5 Thank you, Your Honour.

6 I'll briefly address some general issues and then turn it over to
7 my colleague Mr. Boyle to address the specific objections.

8 Your Honour, one point I'd like to make is that what we've tried
9 to do in all of our filings is to assist the Trial Chamber to
10 select the witnesses and the documents that are most conducive to
11 determining the truth. In this case, each of the parties have
12 worked on this case for years, and as time goes on, as we've
13 heard evidence, as we've seen documents, we've had a better
14 understanding - and I'm sure that's true of Your Honours also -
15 of the issues and the evidence. And also some witnesses who were
16 available previously are no longer available. So we have tried to
17 diligently respond to all of Your Honours' orders, including the
18 11 June order regarding the new witnesses, in filing our
19 responses and motions.

20 [11.31.45]

21 In relation to documents that were not on the list in 2011, it's
22 our view and our hope that Your Honours would consider those when
23 the parties attempt to present the documents to the Court,
24 whether or not there is a justification or compliance with 87.4.
25 And I will say this on behalf of the Prosecution, in relation to

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1 any witness or document proposed by any of the other parties: We
2 will not object, in any case, because a document wasn't on the
3 2011 list. We don't feel that we're prejudiced; if it wasn't on a
4 2011 list, as long as we have sufficient notice now of the
5 witness or document.

6 [11.32.30]

7 We also took to heart and considered carefully Your Honours'
8 request that all the parties consider a reduction in the
9 witnesses. We understand the need to make this trial as efficient
10 as possible; again, that's why we've tried to concentrate on
11 selecting those witnesses or documents we now believe are most
12 relevant. We reviewed all of the evidence and, as Your Honour
13 just mentioned, we dropped several witnesses from our proposed
14 list just in the last few days in our recent filing, and we now
15 have proposed 123 witnesses. However, most of these are crime
16 based witnesses and we have estimated that the testimony of all
17 of these witnesses would take approximately 118 court days. Given
18 that the Prosecution bears the burden of proof to prove all of
19 the elements of each crime alleged, at each site alleged, beyond
20 reasonable doubt, we have selected what we thought is the minimum
21 number of witnesses that we can be assured we would meet that
22 burden. And we've cut out many witnesses we would like to call,
23 in trying to make it reach a minimal number of those sufficient
24 to meet the burden of proof.

25 [11.34.04]

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1 So, unfortunately, at this time we cannot cut any further
2 witnesses. There is a possibility as the trial evolves, and even
3 after we read the judgement from Case 02/01, we may have a
4 slightly different view of which witnesses are essential and if
5 so, we will certainly notify Your Honours.

6 Now Mr. Boyle will address other issues.

7 MR. BOYLE:

8 Good morning, Mr. President. I'd like to thank the Chamber for
9 the opportunity to respond to the objections raised by the Khieu
10 Samphan's defence in E305/9 against some of the witnesses,
11 experts and civil parties proposed by the Co-Prosecutors. I will
12 be responding to some of the objections raised by the Khieu
13 Samphan's defence and my colleague, Leang Seng, will respond to
14 the remainder. I will begin by responding to broader categories
15 of objections raised by the Defence, before moving on to
16 responding to objections to particular individuals. At paragraphs
17 18 to 27 of the Khieu Samphan filing, the Defence object
18 provisionally to witnesses and civil parties for whom the parties
19 do not yet have access to all of their statements.

20 [11.35.26]

21 In addition to the witnesses identified by the Khieu Samphan
22 defence in that filing, the Co-Prosecutors note that yesterday
23 the Chamber and the parties were notified of the Prosecutors
24 filing E307/3.2: Co-Prosecutors Rule 87.4 motion regarding
25 proposed trial witnesses for Case 002/02, in which the

1 Co-Prosecutors identified certain proposed witnesses for whom
2 additional statements were obtained in the Case 003 or Case 004
3 investigations.

4 As further described at paragraphs 19–22 of that filing, the
5 Co-Prosecutors have requested permission to disclose these
6 statements to the Trial Chamber and the parties in Case 002. But
7 thus far, the Office of the Co-Investigating Judges has not yet
8 granted us permission to do so because of concerns about the
9 on-going investigations in those cases. The Co-Prosecutors submit
10 that the Trial Chamber should defer ruling on whether to call the
11 affected witnesses and civil parties until such a time as all of
12 the individuals' relevant statements are available to both the
13 Trial Chamber and the parties.

14 [11.36.58]

15 The Co-Prosecutors also note, however, that since the Khieu
16 Samphan defence filed their objections in May 2014, the
17 Co-Prosecutors have uploaded a number of documents to the shared
18 material drive, including many statements by proposed Prosecution
19 witnesses, thereby giving the Defence access to these statements.
20 The Co-Prosecutors informed the Chamber and the parties that
21 these documents were available on the shared materials drive by
22 email on 30th June 2014.

23 I will now move on to address the Khieu Samphan objections at
24 paragraph 39 and 40 of E305/9 to three expert witnesses and one
25 reserve expert witness proposed by the Co-Prosecutors. These

1 experts are 2-TCE-85, 2-TCE-86, 2-TCE-88 and 2-TCE-89.

2 The Co-Prosecutors first note that the Defence's objections in
3 these paragraphs are not to the admissibility of these experts
4 but to the weight the Chamber might ascribe to any testimony they
5 provide.

6 [11.38.28]

7 The Defence argues that these experts would not be impartial and
8 therefore their testimony should be afforded little weight
9 because they were previously affiliated with or worked for
10 organizations focusing on the Khmer Rouge or because they
11 previously worked for offices within the ECCC.

12 Notwithstanding that the Khieu Samphan defence do not, in this
13 section of their filing, object to the admission of these
14 experts. The Co-Prosecutors make the following brief
15 observations:

16 First, the Co-Prosecutors observe that this Chamber in E215,
17 titled "Decision on assignment of experts" of 5 July 2012, stated
18 at paragraph 15 - quote: "The mere fact that an expert has a
19 previous association with an external organization does not
20 disqualify him or her from being called as an expert" -- end
21 quote, and decided - this Chamber decided at paragraph 17 of that
22 decision to consider any specific and reasoned challenges to an
23 expert's testimony, arising from the expert's affiliation with an
24 external organization when evaluating the evidence.

25 [11.39.59]

1 Second, in relation to an expert's prior employment by offices of
2 the ECCC, the Co-Prosecutors note that in E283, titled "Decision
3 on designation of TCE-33", of 26th April 2013, where the Trial
4 Chamber was considering Defence objections to calling Stephen
5 Heder as an expert witness in Case 002/01, both the Nuon Chea and
6 the Khieu Samphan defence objected to calling Stephen Heder as an
7 expert, arguing that he could be neither independent nor
8 impartial because he had previously worked for the Office of the
9 Co-Prosecutors and for the Office of the Co-Investigating Judges.
10 This Chamber, at paragraph 15 of that decision, adopted the
11 reasoning of the ICTY Appeal's Chamber and decided to call Mr.
12 Heder as an expert, noting that any issues of impartiality could
13 be explored while the witness was on the stand and that the
14 Chamber would assess the weight to attribute to the expert's
15 testimony in light of all of the submissions made regarding the
16 expert.

17 [11.41.13]

18 The Co-Prosecutors submit that these proposed experts, should
19 they be called, would provide highly valuable evidence to this
20 Chamber as it searches for the truth in Case 002/02 and, should
21 they be called, would provide their testimony as experts,
22 consistent with their oaths and obligations to provide
23 information with the utmost neutrality and objectivity.
24 Next, I will address the objections of the Khieu Samphan defence
25 at paragraphs 49 and 50 of E305/9 to the expert witness and

1 reserve expert witness the Co-Prosecutors placed under the title,
2 "Overview" in their proposed witness, expert and civil party
3 list. The Co-Prosecutors proposed 2-TCE-85 and, as a reserve,
4 2-TCE-89 in that section. The Co-Prosecutors first note here -
5 that here the Defence have not made arguments objecting to
6 calling these witnesses based on the - or these experts -- excuse
7 me -- based on the particular evidence they would or would not be
8 able to provide or based on their qualifications, but rather they
9 object based on a claim that calling an expert that can testify
10 on a number of different areas would be repetitive and therefore
11 wasteful on the Court's resources. The Co-Prosecutors'
12 explanation of the experience, knowledge and expertise these
13 individuals would bring the Chamber, which was included in the
14 Co-Prosecutors' witness list makes clear that these experts will
15 provide valuable evidence that is not repetitive of evidence
16 provided by other witnesses, experts or civil parties.

17 [11.43.06]

18 Moreover, the Co-Prosecutors' decision not to place these experts
19 under any one issue or crime sites heading is indicative of the
20 wide variety of areas and issues on which they would provide
21 valuable information to the Trial Chamber. The breadth of those
22 areas is further reflected in the specific points of the
23 indictment they would be qualified to provide evidence on, as
24 identified - as identified in the Co-Prosecutors witness list.
25 Indeed, calling one expert witness who would be able to address

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1 so many points is not repetitive but efficient and it is because
2 the expert's testimony would be conducive to ascertaining the
3 truth across such a broad range of issues that the Co-Prosecutors
4 propose they testify at the end of the trial when that testimony
5 could draw together the evidence in disparate areas already
6 presented.

7 [11.44.12]

8 At this time, following on the President's invitation earlier, I
9 would like to propose that we go into closed session to discuss
10 the remainder of the Khieu Samphan defence objections in order to
11 more clearly address the objections to particular individuals
12 without revealing their identity through circumstantial
13 information.

14 MR. PRESIDENT:

15 Could the prosecutor enlighten the Chamber of its justification
16 for your request?

17 MR. BOYLE:

18 Yes, Mr. President. We believe that for the remaining four
19 individuals who the Khieu Samphan defence have objected to and
20 which we would like to respond on, certain details in the
21 discussion of those objections could potentially, despite the use
22 of pseudonyms, reveal who those individuals are and so out of an
23 abundance of caution we propose to go into a closed session.
24 However, should the Chamber prefer to continue in open session,
25 we will of course do so to the best of our ability.

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1 (Judges deliberate)

2 [11.47.55]

3 MR. PRESIDENT:

4 I hand over to Judge Silvia Cartwright. Judge, please proceed.

5 JUDGE CARTWRIGHT:

6 Thank you President.

7 The Chamber wishes to ask for one clarification of your
8 submission that it ought to go into closed session to discuss the
9 remaining witnesses proposed by the Khieu Samphan defence. We
10 simply wish to know if there are any issues concerning protective
11 measures for these four witnesses. Thank you.

12 MR. BOYLE:

13 Judge Cartwright, just to clarify on the premise, these are
14 responses to objections that the Khieu Samphan defence have made
15 to – to individuals proposed by the Co-Prosecutors and I am –
16 there are no protective measure issues in effect.

17 (Judges deliberate)

18 [11.50.46]

19 MR. PRESIDENT:

20 How about the defence team for Khieu Samphan? Do you have any
21 observations to make concerning the request by the Co-Prosecutor
22 for the closed session for the four witnesses in the list of
23 witnesses proposed by the prosecutors?

24 MR. KONG SAM ONN:

25 Thank you, Mr. President; and good morning again, Your Honours.

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1 The request by the Co-Prosecutor to enter into a closed session,
2 I don't think that it is necessary because those witnesses have
3 their pseudonym given by the Trial Chamber so the limitation of
4 the discussion may be confined to the things that can be
5 discussed or heard in public and I don't think that, again, this
6 request should be entertained. Thank you.

7 [11.51.48]

8 MR. PRESIDENT:

9 Thank you.

10 The Chamber would now like to rule on the request by the
11 prosecutor, requesting that we proceed to a closed session to
12 hear the four witnesses. The Chamber does not grant this request
13 because it does not have any effect on the protective measure
14 and, in addition, the Trial Chamber has given pseudonyms to
15 individuals proposed so they should - we should proceed to
16 discuss them based on this basis. Now the Prosecutor can resume
17 your observation.

18 MR. BOYLE:

19 Thank you, Mr. President.

20 [11.52.37]

21 Before I turn the floor over to my colleague, Leang Seng, I will
22 briefly address the Defence's objection to the calling of
23 2-TCCP-237 which they argue would be wasteful of the Court's
24 resources. The Co-Prosecutors submit that 2-TCCP-237, who has
25 been proposed by both the civil parties and the Co-Prosecutors to

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1 appear in Case 002/02 has valuable, unique and extremely detailed
2 evidence to provide regarding the acts and conduct of the
3 Accused, that otherwise would not be admissible due to the
4 operation of this Chamber's decision on evidence of the acts and
5 conduct of the Accused.
6 Additionally, since 2-TCCP-237's renewed indication to the Lead
7 Co-Lawyers that he wishes to provide evidence in Case 002/02 and
8 is not seeking protective measures, the Witness and Expert
9 Support Unit has contacted the civil party by phone and confirmed
10 these facts, as indicated by document E29/461 of 9 June 2014.
11 Therefore, the Co-Prosecutors' request that the Chamber call this
12 civil party to provide evidence because he has important
13 information to offer on the roles of the
14 Accused, he has clarified that he is not seeking protective
15 measures, and therefore there is no reason not to summon this
16 civil party to provide evidence.

17 [11.54.44]

18 Thank you, Mr. President. I will now turn the floor over to Mr.
19 Seng Leang to continue our response
20 to the objections.

21 MR. SENG LEANG:

22 First of all, good morning, Mr. President. Good morning, Your
23 Honours, and good morning to everyone. I would like to respond to
24 three witnesses and experts objected by the defence counsel for
25 Khieu Samphan. These witnesses and experts, I would like to call

1 them: 2-TCE-82; and one more expert, 2-TCE-95; and another
2 witness expert, 2-TCE-93.

3 To begin with, I would like to discuss 2-TCE-82, document
4 D268/3.1, E3/3416. The defence for
5 Khieu Samphan argue concerning the summoning of this individual
6 witness is that she is not qualified as an expert as she does not
7 have concrete research methodology in relation to her book,
8 entitled "Gender-based violence during the Democratic Kampuchea
9 period", and that sources of data collection is not reliable.

10 [11.57.01]

11 If you look at the legal framework applicable before the Court,
12 as well as the Cambodian Law and international practice, she has
13 not demonstrated her qualification. There is no criteria for the
14 judgment of the credibility of anyone to be an expert witness.
15 The former Brdanin and Talic case dated the 3rd of June 2003, and
16 Galic case on the 2nd of July
17 2002, ruled that, in order to be qualified as an expert, there
18 must be a provision concerning training, as well as
19 qualifications, so that that expert can explain the issue at
20 stake. Therefore, the argument raised by the defence counsel to
21 2-TCE-82, who does not possess a Ph.D. - a degree is not
22 necessary. What is important is that, she will assist this
23 Chamber, mobilizing her specialized skill in order to make the
24 event easy to understand; particularly the application of policy
25 on forced marriage and rape in that context. A book written

1 within the context of gender-based violence, or sexual violence,
2 at that period, is very important and relevant to the charges
3 brought against the Accused.

4 [11.58.58]

5 As for the issue raised concerning the case before us, she
6 interviewed some 700 people. She conducted an interview with 100
7 person directly and the staff from the Defenders Project. And she
8 also interviewed with 600 other individuals with 200 student --
9 conducted interviews, with the other witnesses under her direct
10 supervision. And those students were from Panasastra University.
11 And her study in 2006, which was her first study; it was
12 comprehensive and thorough concerning the forced marriage under
13 the Khmer Rouge regime.

14 If you look at the substance of the argument of the defence
15 counsel concerning the methodology of her research, for 2-TCE-82,
16 they argue that it lacks professionalism and it does not
17 demonstrate a very clear methodology. They also question the
18 standard of the research.

19 [12.00.18]

20 As for the question concerning the reliability of data
21 collection, by comparison used to -- the unreliability is
22 unsubstantiated and the necessity of the work depends on the
23 management of the author. And for this reason, I believe that it
24 is important that this person be summoned by the Court and
25 clarify on her research. For the question concerning the

1 reliability of this particular expert, is not well substantiated.
2 For 2-TCE-82, she has been working for 17 years and she has
3 understood the education system in Cambodia very well. She has
4 been a lecturer in university; she has published numbers of
5 documents concerning gender issue in Cambodia. These manifest
6 that she is one of the respected experts in relation to research,
7 as well as the methodology in conducting interviews with
8 witnesses, together with the conclusions she draws from the
9 research. And she has published a number of other documents
10 concerning issues in relation to the gender issue -- and, aside
11 from the publication of the "Gender-based violence during the
12 Khmer Rouge regime", back in 2010.

13 [12.02.07]

14 Other than gender issues in Cambodia, she has been a lecturer --
15 a guest lecturer at Panasastra University, and she has been a
16 consultant on gender issues with the Ministry of Women Affairs in
17 Cambodia.

18 Of course 2-TCE-82 is not the only expert who can enlighten the
19 Court on the gender-based violence during the Khmer Rouge regime.
20 That's why the prosecutor has not objected to the defence counsel
21 for Khieu Samphan requesting the Chamber to summon another expert
22 to testify concerning the forced marriage during the Khmer Rouge
23 regime.

24 Indeed, the two experts have focused on two different areas and
25 they also based on different rationale and sources of data, but

1 these two witnesses are very crucial to enlighten and shed light
2 for the Court concerning forced marriage, the rape, and the
3 policy of the Democratic Kampuchea concerning marriage.

4 [12.03.21]

5 Now I would like to raise another issue which defence team for
6 Khieu Samphan has objected against 2-TCW-95. This document - this
7 witness document -- E3/1822, E3/2653 -- this witness was
8 originally proposed by the Office of Co-Prosecutors because the
9 publication concerning the commission of crimes and treatment of
10 Cham during the Democratic Kampuchea period. This research is
11 relevant and it provides direct account of crime against
12 humanity, as well as genocide against Cham ethnicity.

13 The defence counsel argues based on two grounds: One is the
14 qualification and educational background, because they say this
15 particular witness has no qualification necessary to testify on
16 this issue. And secondly, this person is the victims and also the
17 witness of the Democratic Kampuchea. And she used to work with
18 the Documentation Centre of Cambodia, and now she is also one of
19 the staff members of the Office of Co-Investigating Judges.

20 [12.05.06]

21 Of course the two books received from witness 2-TCE - TCE-W-95
22 (sic) provide sufficient information concerning the treatment of
23 Cham ethnicity during the Democratic Kampuchea. What is important
24 is that this book provides information concerning the witnesses
25 and documents concerning the treatment of the Cham by the Khmer

1 Rouge from 1970, and it also describes the rebellion of the Cham
2 ethnicity, the forced evacuation of Cham, the execution and
3 massacre of Chams in Krouch Chhmar in 1978, the execution of Cham
4 group in S-21, as well as the estimation of Cham executed under
5 the policy of the Khmer Rouge.

6 The research that leads to the publication of the two books on
7 the execution of Cham was included in the list of documents in
8 Case 002, and we believe that this is the credential that --
9 confirmed that the witness is an expert qualified to testify on
10 this issue. And I am sure that these individuals will shed light
11 for the Chamber concerning this fact. And I believe that these
12 are the victims who are the researchers on Cham ethnicity and
13 also the person who conducted investigations and there has been
14 argument that this person will be bias in providing expert
15 testimony. But let us look at the previous ruling of the Chamber,
16 which decided that the protest concerning the impartiality and
17 the independence of a witness is an issue that is relevant to the
18 weight to be given to the evidence. It has nothing to do with the
19 admissibility of the document.

20 [12.07.37]

21 Now I would like to turn to the objection by the defence counsel
22 for Khieu Samphan against another expert witness, TCE-93 (sic).
23 She is one of the witnesses proposed by the Co-Prosecutor and
24 Nuon Chea defence team. She was proposed to testify on the
25 demographic statistics, particularly concerning the people who

1 died during the Khmer Rouge regime, in particular the Vietnamese
2 and Cham. Witness 2-TCW-93, according to the defence counsel, has
3 no knowledge or experience to testify before this Chamber.

4 [12.08.37]

5 Now, if we look at her previous training and education concerning
6 demography, obviously it is clear that she has dedicated her
7 entire life profession into this demographic study. She studied
8 econometrics and she has a master's degree in Econometrics and a
9 Ph.D. in Demographics. She worked in the ICTY, in the Office of
10 Co-Prosecutor (sic) over there, since 2010. Before that, she used
11 to work with the National Democratic Demographic Situation in the
12 Netherlands for some six years and she published a report --
13 academic journal -- a discussion paper, as well as a dissertation
14 and other analytical paper and she has sufficient experience in
15 analysing particular demographic issues.

16 The expert 2-TCE-93 has demonstrated this issue in her report,
17 entitled "Victims of the Khmer
18 Rouge regime in Cambodia from April 1975 to January 1979" --
19 document E3/2413. The objection on the article authored by her
20 concerning the demographic study that is based on the European
21 experience that does not mobilize her skill to conduct the study
22 in demographic situations in other parts of the world. Actually
23 this objection failed to look at the fact that certain experts
24 have received sufficient experience and training and they are
25 flexible and good enough to adjust to situations in other places.

1 So 2-TCE-93 expertise and research is clear that she has
2 sufficient experience and qualifies enough to mobilize her skill
3 to apply in the various contexts relating to the facts before the
4 Chamber.

5 [12.11.36]

6 The objection that the comments of the expert 2-TCE-93 have been
7 criticized in the field, which people may not find it reliable,
8 that was due to the different view expressed by this individual.

9 The Chamber of the ICTY court has thus far rejected certain
10 comments by the expert due to the reliability of the research
11 methodology they have employed.

12 Even though in Simic, the Chamber objected the expert comment,
13 but in Prlic et al, the Chamber accepted her finding. And Lukic
14 case, which was also referred to by the defence counsel, actually
15 the Chamber accepted her view, which was cited by the - in the
16 ruling of the Chamber. According to the report that the expert
17 will provide the testimony, the Khieu Samphan defence team has
18 not provided any explanation or justification that the view of
19 the expert is not acceptable.

20 [12.13.30]

21 I can think of my last response to the objection by the defence
22 counsel that the expert, 2-TCE-93, is biased due to the fact that
23 she was once a staff member of the Office of Co-Prosecutor at
24 ICTY.

25 This was an issue to be decided on the weight to be given to the

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1 evidence, but the actual weight will be assessed based on her
2 testimony in court at a later stage.

3 For the foregoing reason, the Office of Co-Prosecutor would like
4 to request the Chamber that this expert be summoned to testify
5 before this Court. I am sure that these experts are very crucial
6 to assist the Court in ascertaining the truth throughout the
7 evidentiary hearing.

8 Thank you, Mr. President.

9 MR. PRESIDENT:

10 Thank you, Mr. Prosecutor.

11 The time is now appropriate for adjournment. The Chamber shall
12 adjourn now for lunch and resume at 1.30 this afternoon.

13 Security guards are now instructed to take Mr. Khieu Samphan to
14 the holding cell downstairs and have him returned to this
15 courtroom this afternoon before 1:30.

16 The Court is now adjourned.

17 (Court recesses from 1215H to 1332H)

18 MR. PRESIDENT:

19 You may be seated.

20 (Short pause)

21 [13.33.14]

22 The Court is now in session.

23 And we would like to give the floor once again to the Prosecution
24 to continue their presentation on the last item of the agenda.

25 You may proceed.

1 MS. CHEA LEANG:

2 Once again, good afternoon, Mr. President, Your Honours. And good
3 afternoon to everyone in and around the courtroom.

4 We have heard about the request and submissions on all documents
5 in relation to the two accused, Nuon Chea and Khieu Samphan.

6 Actually before our lunch break, my colleague presented our
7 position in regards to the witnesses put forward - opposed by
8 Khieu Samphan's defence. And now I'd like to touch upon a
9 document, E307/4.3, dated 24 July 2014. It's TCW-962.

10 And that was proposed and submitted by Nuon Chea's defence.

11 [13.35.24]

12 We have one observation to make. That is, we'd like to make our
13 objection to this submission for the following reasons: there is
14 no sufficient ground to support this submission, and that is the
15 first ground. The second ground is that what they propose is just
16 the assumption, or the assumptions by the defence, that this
17 witness might - might know about the effects. In fact, this
18 witness has never given any testimony or interviews with the
19 Office of the Co-Investigating Judges, so it is just a prediction
20 of the outcomes by the defence team. And another point is that
21 Nuon Chea's defence failed to prove the relevancy of this witness
22 to their client. If we look at the summary of the testimony of
23 the person as requested by the defence team, it does not give any
24 exculpatory evidence for their client. Our objection to that is
25 that Nuon Chea's defence submitted before your Court new

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1 evidence, which has not been put before you before. Such a new
2 evidence submission at this stage is very inappropriate and
3 cannot be accepted because the Defence failed to submit it in a
4 timely manner. And for that reason the International
5 Co-Prosecutor urges, Your Honour, to reject the request for the -
6 to call this witness 2-TCW-962.

7 I'm grateful, Your Honour.

8 [13.37.46]

9 MR. PRESIDENT:

10 Thank you.

11 And we'd like now to give the floor to the Lead Co-Lawyers for
12 civil parties. You may proceed.

13 MS. GUIRAUD:

14 Thank you, Mr. President. I will start by making a number of
15 general remarks on the issue of the reduction of lists. And
16 secondly, I will respond to the objections of the Khieu Samphan
17 defence regarding the civil parties that would like to call to
18 testify before this Trial Chamber.

19 And lastly, I will give the floor to my learned colleague Ang
20 Pich to respond to objections concerning TCCP-237, the civil
21 party.

22 [13.38.42]

23 I will start, Mr. President, with general remarks to remind the
24 Chamber, the parties, and the public that we are representing
25 here a consolidated group of 3,867 civil parties, and these civil

1 parties, as part of this consolidated group, are in that status
2 because they have a right to participate in this trial on an
3 equal footing with the Accused and the Prosecution. And we are of
4 the view that as far as this is concerned, this issue of civil
5 parties is unique and it cannot be likened to the situation of
6 witnesses and experts.

7 By hearing the civil parties, the Chamber would allow the
8 consolidated group to effectively take part in the trial. But
9 since we are obviously aware of the fact that it is absolutely
10 impossible and unrealistic to hear 3,867 civil parties, we have
11 made considerable effort to reduce the list of civil parties that
12 we would like to call to appear before this Trial Chamber.

13 [13.40.08]

14 We have come up with an initial list, as of April 2011, including
15 172 civil parties. Today, on the eve of Case 002/02, we have a
16 list of 67 civil parties.

17 Now these civil parties offer a double advantage. They are all
18 direct victims of one or the other of the crimes that you will
19 have to adjudicate in Case 002/02. The first advantage is that
20 they are all direct victims. The second advantage is that they
21 will be able to testify as they did in the first trial segment,
22 002/01, on prejudices that they suffered as a result of crimes
23 presumably committed by the Accused. That is the second
24 advantage.

25 [13.41.11]

1 So we are of the view that the efforts we have made to propose a
2 realistic list of civil parties should be recognized by the
3 Chamber on the 13 topics in Case 002/02. We propose two or three
4 civil parties to testify on each of the topics and we are of the
5 view that this figure is absolutely necessary as far as the civil
6 parties are concerned.

7 The only exception is the issue of forced marriages, because you
8 know that it was at our request that you accepted to increase the
9 juridical scope of the issue of forced marriage in order that
10 that subject be determined across national territory.

11 [13.42.06]

12 So we are the ones who proposed that you extend the scope
13 regarding that issue and you did accept - and it is therefore our
14 duty to provide sufficient evidence to support our case. And that
15 is why, on this particular case, we have proposed 13 civil
16 parties for each of the seven zones and three or four autonomous
17 zones of - or sectors of Democratic Kampuchea.

18 For all these reasons, you should consider that the 67 civil
19 parties that we are proposing today are necessary as far as the
20 entire scope of Case 002/02 is concerned.

21 [13.42.54]

22 If, per chance, the Chamber were to consider that it is necessary
23 for us to reduce the list, we would like to request the Chamber
24 to assess the list, one segment at a time and one topic at a
25 time. And in that case we would propose to the Chamber a - some

1 priorities as far as the probative value of the testimonies of
2 the civil parties is concerned, as well as their utility during
3 the proceedings.

4 And that is why we are proposing to the Chamber today that we be
5 allowed to propose a prioritised list of civil parties in view of
6 the different topics on the table.

7 What are the remarks I'd like to make regarding the reduction of
8 lists as a whole? Regarding the objections of the Khieu Samphan -
9 Khieu Samphan defence regarding civil parties proposed for Case
10 002/02, I will - for purposes of user friendliness, refer to
11 document E305/9 and I would like us to look at paragraph 51,
12 which is the part that deals with the reasons. And I will address
13 each of the points in that paragraph.

14 [13.44.38]

15 Regarding the first request by the Khieu Samphan defence that is
16 in part 1a of the defence submission, we are of the view that, in
17 our submissions finalised yesterday, we've provided sufficient
18 arguments to establish the usefulness and probative value of the
19 evidence that will be proposed by the civil parties. So,
20 regarding this point, we would like to refer the Chamber and the
21 Khieu Samphan defence, to refer to that document, which we
22 finalized late in the afternoon yesterday.

23 [13.45.20]

24 As for part 1b, we would like to make some general remarks,
25 because in that part the Khieu Samphan defence objects to the

1 presence of all civil parties who may provide direct testimony on
2 the role of the Accused.

3 We strenuously object to that particular objection and we
4 consider that the issue of the role of the Accused is primordial
5 during Case 002/02. It will also be of cardinal importance,
6 particularly in the wake of the Supreme Court decision, and
7 particularly paragraph 85, which my learned colleague referred to
8 this morning during the proceedings. According to the Supreme
9 Court it is out of the question that evidence be imported from
10 Case 002/01 to 002/02.

11 [13.46.20]

12 So it is up to the Chamber to hear witnesses and civil parties on
13 the role of the Accused. And that is why we are requesting that,
14 by and large, the Chamber should reject the objections of Khieu
15 Samphan defence regarding civil parties who will appear to
16 testify on the role of the Accused.

17 Regarding the specific issue of one of the experts - or rather
18 the experts and civil parties, I believe I will refer to the
19 remarks that have already been made by my learned colleagues of
20 the Office of the Prosecutor.

21 I will now give the floor to my colleague, Ang Pich, to address
22 the situation of a particular civil party and I will then talk
23 about the issue of one of the experts that we have proposed to
24 testify on the issue of forced marriage.

25 [13.47.39]

1 MR. PRESIDENT:

2 Thank you.

3 And Counsel Pich Ang, you may proceed.

4 MR. PICH ANG:

5 Good afternoon, Your Honours, and good afternoon everyone in and
6 around the courtroom.

7 On the objections by Khieu Samphan's defence to call 2-TCCP-237,
8 I'd like to make the following response.

9 In fact, this civil party is concerned about the safety for the
10 person and for the family in the case that the testimony is given
11 on the activities of the Accused himself. And that is the reason
12 the protective measure was requested. Personally, this is a
13 reasonable request.

14 [13.49.03]

15 And in the case that a protective measure cannot be sought, to
16 balance the importance of the testimony to be given before this
17 Chamber, which is conducive to ascertaining the truth, the civil
18 party is of the view that the proceedings and trial in Case
19 002/02 is the only opportunity for the civil party to speak about
20 the activities of the Accused. And, for that reason, he - the
21 civil party puts aside personal reason and personal safety in
22 exchange for the testimony to ascertaining the truth. Such an
23 intention is true and unconditional, as confirmed by the civil
24 party during a forum whereby many civil parties attended. And
25 also, the Co-Prosecutors attended that forum.

1 [13.50.37]

2 As I said, once again, the intention was to testify before Your
3 Honour, and a written request was made through his lawyer and it
4 was forwarded to my Lead Co-Lawyer's section, and I forwarded it
5 to the Victims Support Section, respectively. The Witness and
6 Expert Unit actually contacted the civil party to confirm about
7 the letter and the civil party, yes, confirmed that. And the
8 civil party put aside his personal safety.

9 So it is very clear that the civil party is willing to testify
10 without any hesitation. The reasons and grounds given by Khieu
11 Samphan's defence that the civil party recall is a waste of time,
12 and that they are not sure whether the civil party can be
13 managed, and whether the testimony will be a repetition of what
14 was testified in 002/01, is without any basis.

15 [13.52.15]

16 I can assure you, Your Honour, that the testimony of 2-TCCP-237
17 will highlight the most important activities of the two Accused
18 in relation to their instructions during the training at Borei
19 Keila and about their responsibility, about their ideology
20 depicted through their teaching at those training sessions.

21 [13.53.05]

22 This is one of the critical elements to confirm about their role
23 in the joint criminal enterprise. This is one of the rarest
24 information that other witnesses may have or may possess. Such
25 clarity and the true willingness to testify before your Chamber,

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1 as far as this rare information to be given, combined together
2 becomes one of the essential evidence that needs to be presented
3 before your Chamber. And for that reason I urge Your Honour to
4 consider that.

5 And due to some unforeseen circumstances, we haven't yet
6 submitted the letter given by this civil party and if you need
7 the letter of Mr. Sar Sarin I can submit it to you now or at a
8 later stage pursuant to the applicable internal rule. And of
9 course, I can submit it today if Your Honour wishes it to be done
10 so. And once again, we urge Your Honour to recall this civil
11 party to testify in Case 002/02.

12 Thank you.

13 [13.55.01]

14 MR. PRESIDENT:

15 Thank you, and the International Lead Co-Lawyer, you may proceed.

16 MS. GUIRAUD:

17 Thank you, Mr. President.

18 Some very brief remarks to respond to Khieu Samphan's objections
19 regarding one civil party and one expert that we proposed.

20 Regarding civil party TCCP-268, in respect to which the Khieu
21 Samphan defence team pointed out that since that civil party had
22 already testified and has to testify - and also testified in the
23 first trial segment, that person should be excluded from the
24 second trial.

25 [13.55.51]

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1 And we say that that civil party has extremely important evidence
2 to provide on the role of the Accused and it is therefore
3 important that that person should participate in the next trial.
4 Regarding the issue of experts, may I inform the Chamber that we
5 endorse the Prosecution's arguments generally. With expert
6 witness TCCP-82, we would like to insist on the importance of
7 having this expert appear before you in this courtroom because
8 that expert will contribute his expertise on the issue of forced
9 marriage, which is once again a theme that we proposed as civil
10 parties.

11 [13.56.42]

12 Now, why is that expert particularly important in our view?

13 Because that person is an expert on forced marriage in general
14 and that person is also an expert on forced marriage in Cambodia.
15 That person speaks Khmer – that person is fluent in Khmer. That
16 person lives here – has lived here for the past ten years and has
17 conducted interviews in Khmer with victims of forced marriage.

18 And we are of the view that the fruit of that person's research
19 makes it important for that person to testify before this Chamber
20 when the issue of forced marriage will be discussed. And that is
21 why I would request you to reject Khieu Samphan's objections
22 regarding that expert and to allow expert TCE-82 to testify
23 before your Chamber when the issue of forced marriage will come
24 up. I thank you.

25 [13.57.50]

1 MR. PRESIDENT:

2 Thank you. The Chamber would like now to give the floor to Nuon
3 Chea's defence. You may proceed.

4 MR. KOPPE:

5 Thank you, Mr. President. We do not intend to interfere with the
6 discussion between the Khieu Samphan team and the Prosecution and
7 civil parties on their witnesses, on the objections to those
8 witnesses. But in the meantime we did hear objections from the
9 National Co-Prosecutor on one of our witnesses, one of our new
10 witnesses, TCW-962. I think it makes more sense to react to the
11 National Co-Prosecutor while we are discussing the objections
12 raised by the National Co-Prosecutors on three other witnesses.
13 But that's of course up - up to you, Mr. President, and the Trial
14 Chamber.

15 (Judges deliberate)

16 [14.02.41]

17 MR. PRESIDENT:

18 National Prosecutor, could you clarify witness TCW-962?

19 MS. CHEA LEANG:

20 Mr. President, I don't quite understand the question from my
21 learned counsel concerning the objection of the prosecutor on the
22 list - on one witness. Are you referring to the witness on your
23 proposed list or what?

24 [14.03.32]

25 If I look through this list of witnesses, the prosecutor

90

1 understands the belated submission of the list of witnesses and
2 we have already explained. I do not quite understand what the -
3 what clarification the Chamber would like the Prosecution to do.

4 MR. PRESIDENT:

5 Earlier, the Office of Prosecutor said TC - 2-TCW-962 - you
6 objected to this particular witness. And the Chamber does not see
7 the name of this particular witness in the list that has been
8 circulated to all parties.

9 MR. KOPPE:

10 Mr. President, can I give some clarification maybe? The problem
11 is that there are two debates mixing with each other.

12 [14.04.]

13 There is the debate on the Khieu Samphan witnesses and there is a
14 separate debate - sorry - as separate debate in respect of the
15 National Co-Prosecutor's objection to three witnesses on our
16 original list. And on our last list, last that we filed last
17 week, we have one witness which is probably, because of his
18 background, identical to the other three witnesses that the
19 National Co-Prosecutor has objections to. So my suggestion was
20 not to have the two debates mixed, but that I am allowed to reply
21 to the National Co-Prosecutor's objection in respect of TCW-962
22 while at the same time replying to the objection in respect of
23 the other three witnesses as laid down in your agenda.

24 [14.05.45]

25 MR. PRESIDENT:

1 Well, you may proceed.

2 MR. KOPPE:

3 Thank you, Mr. President. Maybe you'll allow us also to make some
4 general observations first in respect of our witness list, just
5 as the Lead Co-Lawyers of the civil parties have just done,
6 before we come to the issue of the objection of the National
7 Co-Prosecutors.

8 Mr. President, as the Trial Chamber is no doubt aware, we have
9 already made every effort to update and reduce our initial list
10 of 572 witnesses, civil parties and experts proposed in 2011 for
11 all of Case 002.

12 [14.06.44]

13 And now we have reduced that list of 527 (sic) witnesses by more
14 than ninety percent. In addition, last week we have requested
15 only six new individuals bringing us to a total of 43 requested
16 witnesses, civil parties and experts.

17 And as detailed in the witness summaries we filed, we have
18 requested only those witnesses, civil parties and experts who we
19 consider to be truly essential to proving our central theory of
20 the case. We have requested all but one of them on the basis of
21 their ability to provide unique and irreplaceable testimony in
22 this regard.

23 [14.07.35]

24 The sole exception is the proposed expert, 2-TCE-85, who we do
25 not believe is truly able to provide expert testimony, but who we

1 wish to question in order to challenge his prior testimony before
2 the Trial Chamber. Depending on the manner in which the upcoming
3 trial judgment in Case 002/01 treats the evidence of the proposed
4 expert, 2-TCE-85, we may be willing to withdraw our request to
5 hear his testimony, and if so we will duly notify the Chamber.
6 However other than this sole possible exception we are, at this
7 stage, unwilling to contemplate any further reduction of our
8 witness, civil party and expert list.

9 [14.08.32]

10 During Case 002/01 the Chamber agreed to hear testimony from only
11 four witnesses proposed by all defence teams combined and with
12 all this in mind, we urge the Chamber to admit our requested
13 witnesses, civil parties and experts in a more comprehensive
14 manner than in Case 002/01, taking into accounts - into account
15 the positions we have just articulated.

16 We also have a number of additional remarks to make in relation
17 of - to our proposed witnesses, civil parties and experts.

18 First, and as we have already submitted earlier today, giving the
19 advanced age of two of our proposed witnesses, 923 and 946. We
20 would like the Chamber to hear them on an expedited basis as the
21 first two witnesses in the hearing.

22 [14.09.31]

23 Second, with respect to the two civil parties on our list - that
24 is, 2-TCCP-242 and 2-TCCP-246, we wish to clarify that we are
25 requesting these civil parties to testify in the capacity of

1 witnesses and not have them appear as civil parties. So in a new
2 version of the list with pseudonyms, we feel that TCCP-242 and
3 246 need to have witness numbers.

4 Thirdly, Mr. President, we note that our requested expert,
5 TCE-96, has also been assigned the witness pseudonym TCW-101. It
6 seems - maybe I'm wrong - that this is because the Chamber
7 believes that we requested this person as a witness, but we wish
8 to clarify that we had expressly requested TCE-96 as an expert
9 and not as a witness in our new witness list. Therefore, the
10 Chamber's assignment of a witness pseudonym to this expert on the
11 basis on an alleged request by us seems to be an error, Mr.
12 President.

13 [14.11.04]

14 These were our more general remarks. Let me now turn to the
15 National Co-Prosecutor's objection, which was filed without the
16 co-signature of the International Co-Prosecutor, to our request
17 for three witnesses: TCW-831, TCW-878 and TCW-951. And the point
18 that I'm raising now is as a matter of clarification. I
19 understand that the objection we heard just now made by the
20 National Co-Prosecutor is also not supported by the International
21 Co-Prosecutor. And if I'm wrong, then I stand to be corrected on
22 this.

23 [14.11.53]

24 Mr. President, I will shortly cede the floor to my national
25 colleague to discuss our substantive response to this objection,

1 but I would like to first discuss with the Chamber the
2 arrangement concerning these witnesses' assigned pseudonyms.
3 As a preliminary matter, we know that we have previously and
4 repeatedly requested the testimony of these three witnesses and
5 others of a similar nature. Indeed, we made no less than six
6 requests for witness TCW-831, including one as our client's only
7 character witness. During our closing oral arguments in Case
8 002/01, we mentioned the three witnesses' names a total of 44
9 times: 28 times for witness 831, 11 times for witness 878 and 5
10 times for witness 951.

11 [14.12.53]

12 We note, Mr. President, with concern, that the names of these
13 three witnesses and others of a similar nature appear to have
14 been systematically redacted from the written submissions and
15 decisions of the Court. However, we also note that we were
16 permitted to mention the identities of these witnesses in a
17 public hearing in the closing submissions – the oral closing
18 submissions for Case 002/01, to hundreds of members of the
19 public, and a large member – large media and monitoring
20 contingent.

21 [14.13.29]

22 We also note that the Chamber has made all transcripts from our
23 –all closing submissions publicly available, in full, without
24 redacting their names. Therefore, we submit that the Chamber has
25 allowed these three witnesses' identities and their significance

1 for our theory of the case to become a matter of public record.

2 While we contend, and keep contending, that Case 002 has been
3 severed into separate trials, since the Chamber regards severance
4 of Case 002 as a "trial management tool" and that case 002
5 remains one trial, it follows from that position that we should
6 be permitted to continue to refer to these three witnesses by
7 name, and not pseudonym, for the remainder of the trial.

8 [14.14.22]

9 We further note that the use of pseudonyms serves no protective
10 purposes in relation to these witnesses, for whom there are
11 certainly no protective measures sought. On the contrary, we
12 believe that it is in the interest of our client, and justice,
13 that we refer to these witnesses by name and not by pseudonym.
14 Mr. President, accordingly we submit that, given the witnesses'
15 identities are already known, given that this is also an
16 important public hearing and therefore has the same nature as the
17 Closing Submissions Hearings in Case 002/01, and given that the
18 use of pseudonyms would not serve the interests of our client or
19 the interests of justice, we request that the Chamber permit us -
20 permit my national colleague to make a substantive response to
21 the National Co-Prosecutor's objection in the public hearing in
22 which we are, of course, also permitted to refer to these three
23 witnesses and the fourth witness, just mentioned now, by name and
24 not by pseudonym.

25 [14.15.41]

1 MR. SUON VISAL:

2 First of all, my respect to Mr. President, Your Honours, and
3 everyone in the courtroom.

4 We will now discuss our substantive responses to the objections
5 of the National Prosecutor to our request to call witnesses to
6 testify before the Chamber. As my colleague has informed the
7 Chamber, TC - 2-TCW-831, 2-TCW-878, and 2-TCW-951 are all
8 objected by the Prosecutor, and 2-TCW-962 is also objected. With
9 regard to this objection, first of all, I would like to inform
10 the Chamber that the objection by the National Co-Prosecutor -

11 MR. KOPPE:

12 Sorry, Your Honour - Your Honours, Mr. President, we still would
13 like to have a decision on the request not to use the pseudonyms.

14 (Judges deliberate)

15 [14.26.58]

16 MR. PRESIDENT:

17 Now, the Chamber grants leave for the defence team for Mr. Nuon
18 Chea to use the real name of the witnesses, which are - which
19 were controversial earlier on. Now you may proceed, Counsel.

20 MR. SUON VISAL:

21 Due to some technical matters, I would like to now start over
22 again with my intervention, and I will use the real name of the
23 witnesses.

24 [14.26.54]

25 The witnesses whom we have requested the Chamber to testify

1 before this Court include Samdech Heng Samrin, Samdech Chea Sim,
2 and His Excellency Ouk Bunchhoeun. The Prosecutor – National
3 Prosecutor has objected to this request for summoning the three
4 witnesses. First, this objection is without proper legal basis.
5 It is not permitted under either, Cambodian Law, International
6 Law, or the internal rules for a witness to be excused from
7 testimony on the basis that they currently hold position in the
8 government. The matters on which the witness is requested to
9 testify do not relate to the function of their current position.
10 As the Chamber is aware, we have requested that these three
11 witnesses testify in relation to their knowledge, several times
12 already, of matters concerning during the Democratic Kampuchea
13 period between 1975 and 1979.

14 [14.28.16]

15 Particularly of their activities as high ranking CPK cadres in
16 the Eastern Zone and, later, as some of the key defectors who
17 worked together with Vietnam to incite internal division and an
18 armed conflict designed to overthrow the CPK. These matters do
19 not relate in any way to the functions of these witnesses within
20 the present Cambodian government.

21 Your Honours, by virtue of law, everyone is equal under the law.
22 In other words, the law has to apply to everyone, regardless of
23 the position of that individual.

24 [14.29.09]

25 In addition, there is no provision under either, Cambodian Law,

1 International Law, or the Internal Rules for witnesses to offer
2 written answers to questions as an alternative to in-court
3 testimony, and certainly not without the presence of a judge. In
4 fact, under the Cambodian Criminal Code Procedure and the
5 Internal Rules, witness – a witness is only able to answer
6 questions in a written form where the witness is deaf or mute.
7 That was also provided for in Article 361 of the Criminal Code.
8 Even in this situation, these questions must be put to the
9 witness in the presence of the Presiding Judge, and transmitted
10 to the witness in writing by the court clerk or greffier.

11 [14.30.16]

12 It would be fair to say here that the health status of the three
13 requested witnesses is fairly well-known and no witness is either
14 deaf or mute, therefore there can be no legal basis permitting
15 the witness to answer the written question in lieu of testifying
16 in court.

17 Another reason claimed by the Co-Prosecutor is that it will have
18 an impact on the functions of the witnesses due to their senior
19 position. That is also not correct. Indeed, testifying would have
20 – meet the witnesses' current obligations as Cambodian citizens
21 and to help building the country, as stipulated under Article 49
22 of the Cambodian Constitution.

23 [14.31.36]

24 It is crucial that to testify and to participate in the
25 proceeding itself is to help the judicial process, even if the

1 people's representative can also be summoned to be - to appear
2 before the Court. And that would be a good role model for the
3 court and for Cambodia, to ensure the dependence on the
4 judiciary. And it is, in our view, that the testimony is not
5 connected to their role in their current government functions.
6 Also, the Co-Prosecutor fails to mention, if testifying before
7 this court has an impact on their current government functions
8 for that re- and, in fact, such statement should be made by the
9 witness himself or herself if her or his testimony will have an
10 impact on his or her current governmental function. And that
11 point should not even be raised by the Co-Prosecutor. And if the
12 witness is summoned and fails to appear before the court, then
13 the legal measure has to be taken.

14 [14.33.08]

15 As with other witnesses, it seems that the National Co-Prosecutor
16 has a clear intention that she does not want these witnesses to
17 be testified before this court. Under Article 327 of the
18 Cambodian Code of Criminal Procedure, there are grounds on which
19 objections to a witness can be made is - if their statements are
20 not conducive to ascertaining the truth. And we submit that, on
21 the contrary, these witnesses are able to offer the most
22 important testimony of all witnesses proposed in Case 002/02 with
23 respect to ascertaining the truth of the Democratic Kampuchea
24 period and establishing our theory of the case.

25 [14.34.00]

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1 In particular, the witness Samdech Heng Samrin would be able to
2 provide key eye-witness testimony as a high-ranking CPK cadre of
3 issues including, but not limited to: the uprising of the CPK
4 military in the East Zone and the role of So Phim and others in
5 this regard; the alliance with cadres from the Northwest Zone to
6 rebel against the CPK; the armed conflict with Vietnam and
7 long-standing Vietnamese aggression against DK; the alleged
8 genocide of the Vietnamese in East Zone; the treatment of the
9 Cham in the East Zone; and internal purges, as well as other
10 plans to be implemented at various locations throughout the
11 Democratic Kampuchea Regime.

12 [14.35.00]

13 Likewise, the witness Samdech Chea Sim and His Excellency Ouk
14 Bunchhoeun will be able to provide testimony of a substantially
15 similar nature, given that they were also high-ranking East-Zone
16 CPK cadres and, subsequently, defectors.

17 We also presume that the National Co-Prosecutor's objection would
18 also extend to other recent requests, and the International
19 Co-Prosecutor also did not co-sign that request. And, in fact, in
20 2010, the International Co-Prosecutor requested these witnesses
21 to be interviewed alone. And the decision of not summoning those
22 witnesses was issued by the - by another Chamber - that is,
23 document E314/1/2.

24 [14.36.19]

25 As for the witness Pol Saroeun, which the National Co-Prosecutor

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1 claims that his appearance was late and not accepted, that is
2 contradictory to the existing Code of Criminal Procedure – that
3 is Article 321 – which clearly states that all parties are free
4 to present their evidence. And, in Article 334 on the (inaudible)
5 of Evidence, which states that any party can submit evidence to
6 the Bench before the conclusion of the hearing of the case.
7 We believe that we have strong ground to submit new evidence to
8 Your Honours, which are conducive to ascertaining the truth for
9 both the victims and the Accused. Moreover, as we have clear and
10 express grounds that the four witnesses that we proposed are
11 conducive to ascertain the truth and support our theory of the
12 case and, on the contrary the claims made by the National
13 Co-Prosecutor, was groundless.

14 [14.37.47]

15 We have attempted on many occasions to summon these witnesses to
16 appear before Your Honour, but we – but it was without success.
17 And on the principle of equality of arms, I urge Your Honour to
18 reject the objection made by the National Co-Prosecutor and grant
19 our request, so that the three witnesses can be summoned to
20 appear before your Chamber.

21 I am grateful, Mr. President.

22 [14.38.27]

23 MR. PRESIDENT:

24 Thank you.

25 We would like now to give the floor to Khieu Samphan's defence.

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1 MR. KONG SAM ONN:

2 Thank you, Mr. President. Good afternoon, everyone in and around
3 the courtroom.

4 We would like to respond to the objections – to our objections by
5 the Co-Prosecutors and the Lead Co-Lawyers.

6 In relation to 2-TCCP-237, I would like to state that the request
7 for the civil party – to recall the civil party by the
8 Co-Prosecutors and the Lead Co-Lawyers is too late.

9 [14.39.52]

10 This witness actually was called to testify in Case 002/01, but
11 that person refused and demanded the protective measure. And at
12 that time Your Honour deliberated on the scope of Case 002/01 in
13 relation to the willingness to testify by this particular witness
14 in Document E305/7.1.3, in ERN in the Khmer language 00992527,
15 and in English 00986485. I'd like to read a brief abstract from
16 that page.

17 "The civil party was present when Khieu Samphan and Nuon Chea
18 made a political speech in November 1976. He participated in the
19 political training with Ta Phom in a school at K-12. In April
20 1977, he participated in a political training led by Pol Pot,
21 Nuon Chea, and Khieu Samphan at Borei Keila in Phnom Penh. Khieu
22 Samphan made a speech, and he describes the main points on the
23 elimination of the enemies infiltrated inside."

24 [14.42.36]

25 In relation to the points raised by the Co-Prosecutors and the

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1 Lead Co-Lawyers, that this may be the important point of this
2 witness - and, in fact, that was already mentioned and presented
3 in the Case 002/01, which was already concluded - so, I do not
4 see the relevancy of this testimony to Case 002/02. And, even if
5 there is, it is rather too late for this civil party to testify
6 before your Chamber. And, in fact, Your Honour made a severance
7 order to limit the scope for each segment of the trial - that is,
8 002/01 and 002/02, respectively.

9 [14.43.55]

10 And, secondly, in relation to an expert with the pseudonym
11 2-TCE-82, I heard the argument and grounds given by the National
12 Co-Prosecutor on the qualification, or rather, excessive
13 qualification of this expert, and that it is of importance for
14 your Chamber's consideration. Khieu Samphan's defence wish to
15 object this expert as proposed by the Co-Prosecutors and the Lead
16 Co-Lawyers for the following ground. In fact, this witness does
17 not bear sufficient qualification to be categorised as an expert.
18 And the nature of his work as claimed by the Co-Prosecutor - that
19 is, a book entitled "Gender-Based Violence During the Khmer Rouge
20 Regime: Stories of Survivors from Democratic Kampuchea", and this
21 text does not exist in the Khmer language. I urge Your Honour, to
22 review the content of that document written by this individual,
23 as claimed by the Co-Prosecutor as an expert.

24 [14.46.16]

25 In fact, this document bears the number E3/2959. It is a brief

1 document, and is a kind of narrative about the story of
2 survivors. And this story-telling, it could be the result from a
3 minute-taking, and it is possible that this author did not
4 participate in this minute-taking. And, as put forward by the
5 Co-Prosecutor, that students were participating in this process,
6 as such details were not the main focus of the gender-based
7 violence. In fact, they were there to hear the story, as students
8 had to listen to the stories from those who experience during the
9 Khmer Rouge regime, and that is one student had to listen to
10 three stories from three people. And later on those stories were
11 compiled into this 51-page book, but not all the story-tellings
12 in this book.

13 [14.48.06]

14 And the analysis of the text in this book is not that of an
15 expert's nature. The classification is based on the kinds of
16 stories that were told. For that reason, the probative value of
17 this witness and, as claimed by the Co-Prosecutor as a witness,
18 is like listening to a rumour. Because this individual did not
19 know about the actual events that took place, and he also did not
20 conduct the interviews in person, as the interviews were
21 conducted by students.

22 [14.48.57]

23 So, the probative value of this individual is rather low and
24 indeed it would be a waste of time if Your Honour decides to call
25 this person as an expert.

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1 Your Honour can actually review the content of the entire book at
2 a later time, because I don't want to waste Your Honour's time.
3 Regard – however, I'd like to give a brief example from the work
4 of this individual. On page 14, in the document that I gave the
5 number earlier, and I'd like to read it in the English language,
6 as follows.

7 It is on ERN 00421889, paragraph 2.

8 [14.50.26]

9 "Men are god while women are white cloth".

10 I'd like to say that, as a Cambodian, I have never heard such a
11 proverb that men are god and women are white cloth. It may be a
12 misunderstanding, and that kind of value given by the author is
13 very absurd and very inappropriate. In the Khmer saying, we may
14 say "Men are like gold".

15 So, this is just an example to bring to your attention of the
16 kind of work done by this individual, and this very individual is
17 considered an expert and proposed by the Co-Prosecutors. And this
18 is not a fact book, it is a narrative and a story-telling. For
19 that reason, I urge Your Honour to reject this request, as we try
20 not to waste the time.

21 Thank you, Your Honour. And my counterpart would like to continue
22 – add to what I just stated.

23 [14.52.12]

24 MR. PRESIDENT:

25 Thank you.

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1 You may proceed.

2 MS. GUISSÉ:

3 Thank you, Mr. President. I'll try to be brief, since the
4 proceedings took up more time this morning and this afternoon
5 than we had envisaged. So, I will avoid repeating what has
6 already been said.

7 I would like to make one remark regarding the objections we
8 raised regarding certain witnesses. I'd like to start by
9 recalling that the only definitive objections we made have to do
10 with five witnesses. As for the other witnesses, we indicated
11 according to categories that there were issues we did not master,
12 that there were some points we did not have regarding some
13 witnesses. That is my first remark.

14 [14.53.15]

15 A while ago, Prosecutor Boyle pointed out that some of the
16 objections addressed in the 87, paragraph 4, motion filed
17 yesterday, and a courtesy copy regarding your civil party lawyers
18 was also provided so you'd understand, Your Honours, that it is
19 not today in the afternoon after a day's hearings that I will
20 respond to 43 pages of the Prosecution's submissions, as well as
21 the submissions of the Civil Party Lead Co-Lawyers. And that is
22 why we have requested to respond in writing. That will enable us
23 to cross-check all the materials and documents we have not had
24 access to in the past.

25 [14.54.21]

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1 May I therefore request for the Khieu Samphan team some
2 additional time - not because, in principle, we always ask for
3 time extensions. Our list of documents and witnesses were filed
4 in May and June, so I wouldn't want anyone to think that we are
5 asking for extensions at every turn.

6 But, with regard to Case 002/02 we need additional time. We're
7 going to talk about witnesses and we've not had enough time to
8 study the documents, which are not available to us.

9 [14.55.06]

10 To come back to what Prosecutor Boyle said this morning, it is
11 true that there are a number of documents that have been
12 communicated regarding certain witnesses, following our
13 submissions and our objections in May. And that is why, with
14 regard to some witnesses, I would like to point out that we do
15 not have any objections, since we've had access to their
16 statements, and we find that they fall within the scope of Case
17 002/02, and these witnesses are as follows. And I am giving their
18 pseudonyms, of course.

19 I will slow down.

20 [14.55.47]

21 So the witnesses against whom we don't have any objections, given
22 the information we've received, are as follows: TCW-822; TCW-828;
23 TCW-850; TCW-889; TCW-918; TCW-924; TCW-936; TCW-940.

24 As concerns, as I pointed out a while ago, recent materials
25 provided yesterday, I am not in a position to respond. And I

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1 would like the Khieu Samphan team to be allowed to respond in
2 writing. And since our motions are supposed to be 15 pages long,
3 and more than the double for the Prosecution, and double for the
4 Civil Party Lead Co-Lawyers, so we're requesting that, instead of
5 giving us 10 days, we'll be given 20 days in order to respond in
6 an in-depth manner to all those issues. That is a second point
7 which is a motion. If the Chamber would like us to make this
8 motion in writing, we will do so. I just wanted to make these
9 remarks, and point out to the Chamber that we are unable to make
10 any oral submissions today.

11 [14.57.31]

12 Another point, which I believe is important for us to address, is
13 as follows. Since the Chamber is talking of reducing our list of
14 witnesses, the Chamber and the parties should bear in mind that,
15 when we look at the list of witnesses of the other parties, the
16 idea is not to object in principle. We only object when we find
17 that the evidence is not relevant and it doesn't fall within the
18 scope of Case 002/02.

19 [14.58.06]

20 And, furthermore, to avoid the presentation of oral or written
21 evidence which is repetitive, we also object to that. I would
22 like to point out that Rule 85 of the Decision of the Supreme
23 Court has called on us to make certain adjustments, so we have to
24 look at that decision very clearly, very carefully, I beg your
25 pardon. The more so as it is important to bear in mind that the

1 Trial Chamber issued a severance order, and there was an annexe
2 to that severance order, and the reference is as follows:
3 E301/9/1.1. In that decision the topics that are to be considered
4 are clearly specified and, again, the severance cannot have the
5 effect that, with regard to subsequent trials, we should keep
6 repeating the same points and we should provide other evidence
7 with regard to the same matters in Case 002, 003 and so on and so
8 forth. That is important when we look at the role of the Accused
9 in the trial, particularly Case Number 002.

10 [14.59.48]

11 So I think we should bear in mind that, following the decision of
12 the Supreme Court, and the judgement that will be rendered, we
13 cannot afford to talk about everything, to have a hotchpotch of
14 the same thing, whereas we have very specific evidence that would
15 enable us to know exactly what is the scope of the trial in
16 question. This is another point which I thought I should raise,
17 it is important.

18 Thirdly, to respond more specifically with regard to our
19 objections to certain witnesses and experts, I will try to be as
20 brief as possible, because we have expounded on our arguments in
21 document E305/9.

22 [15.00.40]

23 I just wanted to be aware of the fact that we object to witness
24 TCE-95 because we wouldn't like that person to appear as an
25 expert. We are objecting to that status of an expert. And we

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1 cited a decision, a Trial Chamber decision of 5 July 2012,
2 relating to the status of such an expert. The document is E215
3 and in that document we – you, the Chamber, recall that the
4 witness is supposed to testify as objectively and as neutrally as
5 possible, and that that person should not do what a factual
6 witness would do. And for TCE-95 we made certain remarks and
7 there were no specific responses, be it by the prosecutor or by
8 the civil parties, regarding the background of that person, the
9 personal background of that person. That person cannot be
10 regarded as an expert in light of the safeguards which you – and
11 the criteria you spelt in your decision.

12 [15.02.05]

13 Now, if the Civil Party Lead Co-Lawyers would like to call that
14 person as a witness there shouldn't be any problem. But if they
15 want that person to appear as an expert there are a number of
16 criteria that have to be respected, and those criteria have not
17 been met. That is, in the case of TCE-95.

18 Regarding another expert proposed by the co-prosecutors – that
19 is, TCE-93, I will be brief. I have promised to be brief, so I
20 refer you to our document E305/9.

21 [15.02.52]

22 But I would like to say a word about judicial economy and the
23 importance of reducing our list of witnesses. As far as Khieu
24 Samphan's defence team is concerned, we would like to participate
25 in this judicial economy and to reduce the list, so we want the

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1 most qualified persons to appear as experts before this Chamber.
2 And those persons should be in a position to provide useful
3 information as part of Case 002/02 within the scope of the trial
4 that you have defined. All the objections that we have made are
5 final objectives - objections concerning the five witnesses, and
6 our objections therefore fall within that framework. We are
7 looking at statements of those persons and we object to the
8 proposals made by the defence parties for those reasons.

9 [15.03.56]

10 Regarding TCE-93 - that is, the expert witness TCE-93, I refer
11 you to all the jurisprudence that we cited in paragraphs 85 to 88
12 of our objections to certain witnesses. And we pointed out why we
13 are of the view that those persons do not have the necessary
14 qualifications, and that is why we objected to having them appear
15 as experts. And we don't think the Chamber should give those
16 people the time that - which is very scarce. And we are looking
17 at the constraints of judicial economy. So for anyone to appear
18 as an expert, you should have a background, a CV, training that
19 is in line with the demands of expertise before an international
20 court of this status.

21 [15.05.03]

22 So I am referring you to the documents, and I would like you to
23 specify whether we should file a written motion requesting for
24 additional time in order to respond to the - to what the
25 Prosecution and the Civil Party Lead Co-lawyers have stated. If

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1 you so wish, we will do so in writing.

2 (Judges deliberate)

3 [15.06.47]

4 MR. PRESIDENT:

5 The Chamber wishes to respond to the observation by the Defence

6 Counsel for Mr Khieu Samphan. Please be advised that your oral

7 submission is considered enough. You do not need to submit any

8 written submission in furtherance of your oral submission. If you

9 have any observation, you may proceed.

10 First, advise the Chamber if you have any lengthy remark to make

11 or it's going to be a brief remark.

12 [15.07.32]

13 MR. KOUMJIAN:

14 Your Honour, a very brief remark on my part and also on the part

15 of my Co-Prosecutor. On my own behalf, Counsel for Nuon Chea

16 stated the proposition, noted that the objections to certain

17 witnesses, I believe a total of five witnesses on his proposed

18 list, were signed only by the National Co-Prosecutor. And I just

19 wish to confirm that, in fact, that is the case, that on this

20 particular point I have a different position and I have not

21 objected to any of the 70 or so witnesses proposed by either the

22 Khieu Samphan defence or the Nuon Chea defence.

23 [15.08.18]

24 If it be helpful to Your Honours, I could further explain briefly

25 my position on that.

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1 MR. PRESIDENT:

2 No, that is not necessary, Mr. Prosecutor.

3 MR. KOUMJIAN:

4 Very well. My Co-Prosecutor has a brief remark.

5 MR. PRESIDENT

6 Yes. You may proceed.

7 MS. CHEA LEANG:

8 Thank you. I would like to respond very briefly for two or three
9 minutes or so concerning the position of the National Prosecutor.

10 [15.09.11]

11 We maintain our position, as we indicated in our document we
12 filed, E305/10, and we make reference to many other documents.
13 E353/93, E304/32, these are the documents concerning the three
14 witnesses whom we have objected to the argument of the defence
15 team for Nuon Chea.

16 And, secondly, we are of the view that the witnesses who may be
17 able to shed light on the facts as argued by the Defence Counsel,
18 for example, the uprising in the eastern part - eastern zone as
19 well as the treatment of the Vietnamese group, the prosecutor
20 requests to the Trial Chamber to summon other witnesses who can
21 enlighten the Chamber on these facts.

22 [15.10.24]

23 We have actually proposed up to 123, and later 90 plus were
24 witnesses and 18 were the civil parties, and other experts who
25 understand the situation on the ground relating to the facts at

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1 issue. And we are of the opinion that, if we summon the witnesses
2 who may be repetitive in their testimony, we may not be able to
3 make good use of the court time. And we are all aware of the
4 situation of the Accused, particularly their advanced age at this
5 stage.

6 And, finally, I also observe the summary of the document
7 E307/4.3. I refer to that summary. Actually the Defence Counsel
8 for Nuon Chea has failed to present the relevance and the
9 benefits of that.

10 [15.11.33]

11 The Defence Counsel believes that it will be an exculpatory
12 evidence for their client. Of course, we know that these people
13 understand the various events that took place at that time. So,
14 once again, the Prosecutor, think of the interests of time - of
15 the time of the court, as well as the judicial economy and the
16 possibility of repetitiveness of this testimony. That's why the
17 Prosecution maintains our position.

18 [15.12.06]

19 MR. PRESIDENT:

20 Thank you.

21 The International Lead Co-Lawyer for the civil parties, please be
22 brief.

23 MS. GUIRAUD:

24 Thank you very much, Mr President. I shall take only one minute
25 to reply to the request made by the defence of Nuon Chea who

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1 wished to see two of our civil parties, TCP-242 and 246, be heard
2 as witnesses and not as civil parties.

3 I would simply invite the defence team for Nuon Chea to carefully
4 read Rule 23.4 of the Internal Rules, which states that civil
5 parties cannot be heard as witnesses in a same case, and I would
6 invite the defence team for Nuon Chea to read the decision that
7 your Chamber has just issued.

8 [15.13.12]

9 In document E74, in response to the request made by the defence
10 for Ieng Sary, you noted all of the provisions of the internal
11 rules, by indicating that it was impossible for a civil party to
12 be heard in the capacity as a witness.

13 I would, therefore, ask that all parties acknowledge the
14 governing provisions and dismiss outright the request made by the
15 defence for Nuon Chea. Thank you.

16 MR. PRESIDENT:

17 Thank you. Thank you for your observations and comments on this
18 issue. The Trial Chamber will decide as soon as possible upon the
19 witnesses, civil parties and experts to be heard at trial, and
20 will issue a written decision in due course.

21 [15.14.20]

22 Now, the further initial hearing is coming to a conclusion. The
23 detention facility guards are now instructed to take the Accused
24 back to the ECCC detention facility and the Chamber wishes to
25 advise the parties and members of the public that the Chamber

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1 will reconvene on the 7th of August 2014 at 9 o'clock in the
2 morning to issue its Judgement in Case 002/01.

3 I now declare this hearing closed.

4 (Court adjourns at 1514H)

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