



**ឯកសារដើម**  
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 CMS/CFO: Sann Rada

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

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

**អង្គជំនុំជម្រះសាលាដំបូង**

Trial Chamber  
 Chambre de première instance

TRANSCRIPT OF PROCEEDINGS  
 PUBLIC SESSION

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

28 October 2014  
 Trial Management Meeting

Before the Judges:

NIL Nonn, Presiding  
 Claudia FENZ  
 YA Sokhan  
 Jean-Marc LAVERGNE  
 THOU Mony  
 YOU Ottara (Absent)  
 Martin KAROPKIN (Reserve)

Accused:

KHIEU Samphan

Lawyers for the Accused:

SON Arun  
 Victor KOPPE  
 KONG Sam Onn  
 Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy  
 Maddalena GHEZZI

Office of Administration:

KRANH Tony  
 Knut ROSANDHAUG  
 Charles ZAMA  
 Lars OLSEN  
 Isaac ENDELEY

For the Office of the Co-Prosecutors:

Nicholas KOUMJIAN  
 William SMITH  
 SENG Bunkheang  
 SENG Leang  
 SONG Chorvoin  
 SREA Rattanak  
 Vincent DE WILDE D'ESTMAEL  
 Dale LYSAK  
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Lawyers for the Civil Parties:

PICH Ang  
 Marie GUIRAUD  
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 TY Srinna  
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For Court Management Section:

UCH Arun

**List of Speakers:**

Language used unless specified otherwise in the transcript

| <b>Speaker</b>                      | <b>Language</b> |
|-------------------------------------|-----------------|
| MR. ENDELEY                         | French/English  |
| JUDGE FENZ                          | English         |
| MS. GUIRAUD                         | French          |
| MS. GUISSÉ                          | French          |
| MR. KHIEU SAMPHAN                   | Khmer           |
| MR. KONG SAM ONN                    | Khmer           |
| MR. KOPPE                           | English         |
| MR. KOUMJIAN                        | English         |
| JUDGE LAVERGNE                      | French          |
| MR. LYSAK                           | English         |
| THE PRESIDENT (NIL Nonn, Presiding) | Khmer           |
| MR. PICH ANG                        | Khmer           |
| MR. ROSANDHAUG                      | English         |
| MR. SENG BUNKHEANG                  | Khmer           |

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

2 (Court opens in Public Session at 0903H)

3 MR. PRESIDENT:

4 Please be seated.

5 As the President, and on behalf of my fellow Judges of the Trial

6 Chamber, allow me to welcome the Co- Prosecutors, the Lead

7 Co-Lawyers for the Civil Parties and counsels for the Defence.

8 I also welcome His Excellency, the Acting Director of

9 Administration; the Deputy Director of Administration, and other

10 staff members from the administrative section.

11 Pursuant to Internal Rule 79.7, this Trial Management Meeting is

12 held in-camera for the time being. Parts of this Trial Management

13 Meeting might be made public afterwards.

14 [09.05.02]

15 I note that Judge Ottara, You, is absent today. In accordance

16 with Internal Rule 79.4 - and after consultation with the other

17 sitting Judges, I have decided to designate reserve Judge Thou

18 Mony to sit in the place of Judge Ottara for today's TMM.

19 Ms. Se Kolvuthy, could you report the attendance of the Parties

20 to today's Trial Management Meeting.

21 GREFFIER:

22 Mr. President, for today's Trial Management Meeting, all Parties

23 and individuals to today's meeting are present.

24 Khieu Samphan is also present in today's meeting.

25 Nuon Chea notifies that he does not intend to participate in

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1 today's TMM.

2 [09.06.09]

3 MR. PRESIDENT:

4 Thank you.

5 Last week on Tuesday, 21 October 2014, the Trial Chamber held a  
6 Trial Management Meeting to discuss:

7 First, the issue of resources provided by the Office of  
8 Administration in light of recent submissions by Khieu Samphan  
9 defence; and second, the legal and critical consequences of new  
10 disclosures from the Office of Co-Prosecutors.

11 The Director and Deputy Director and other representatives of the  
12 Administration were invited to provide information with respect  
13 to available resources.

14 [09.07.01]

15 Despite being directed to attend the TMM, both Defence teams  
16 failed to appear without providing any valid justification.

17 On 24 October 2014, therefore, the Trial Chamber issued an  
18 official warning to both Defence teams pursuant to Internal Rule  
19 38. In the same memorandum, the Trial Chamber ordered the Parties  
20 to attend today's Trial Management Meeting in order to form a  
21 complete view of the issue of insufficient resources raised by  
22 Khieu Samphan. For this reason, the Director, Deputy Director and  
23 other representatives of the Administration have again been  
24 invited to attend this TMM.

25 I remind the Khieu Samphan's defence that this will be the last

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1 opportunity to discuss the issue of resources with the Trial  
2 Chamber.

3 The memorandum also informed the Parties that they will be  
4 provided an opportunity to discuss the Co-Prosecutors' request to  
5 assign amici curiae counsel and advance proceedings; a courtesy  
6 copy of which was distributed on 22 October 2014.

7 [09.08.47]

8 Finally, the Chamber informed the Parties yesterday by email that  
9 they would have an opportunity to respond during today's TMM to  
10 the International Co-Prosecutor's proposed procedure for the use  
11 of confidential material filed on 22 October 2014.

12 Before I hand the floor to Judge Lavergne to pose certain  
13 questions in relation to resources issues, I would ask the Khieu  
14 Samphan team to address the following two points, and before -  
15 then, I would hand the floor to Judge Lavergne.

16 JUDGE LAVERGNE:

17 Thank you, Mr. President. I, indeed, have a number of questions  
18 to ask essentially to the Khieu Samphan defence team.

19 [09.10.00]

20 My first questions have to do with clarifications of instructions  
21 that have been given by the accused person, Khieu Samphan, to his  
22 counsel. I would like to recall a number of statements made by  
23 Mr. Khieu Samphan during the 17 October 2014 hearing. These  
24 statements are on pages 90 and 99 of the transcript. During that  
25 hearing, Khieu Samphan stated that he wished to fully exercise

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1 his right to appeal the Judgment of the 7 of August issued by  
2 this Chamber and to develop all submissions before the Supreme  
3 Court.

4 During the hearing of the 7 of October, this is what he stated:

5 "My counsel have told me that they cannot attend the hearing" -  
6 that is, the hearing on the merits in Case 002/02 - "without  
7 having had the Appeal resolved" - that is, the Appeal of the 7th  
8 of August. And he continued by saying:

9 "That is why I have to ask my counsel to concentrate on the  
10 Appeal. My counsel will not be able to take part in the hearings  
11 of Case 002/02, because, if they take part in that trial, they  
12 will not be able to participate in the Appeal."

13 And he goes on to say that:

14 "After due consideration and after consulting with my lawyers, I  
15 have decided to choose the Appeal because the current proceedings  
16 are less important than the Appeal."

17 [09.12.18]

18 Let me press on with the quotation:

19 "I would therefore wish to respectfully inform the Chamber that,  
20 both myself and my defence team will be happy to participate in  
21 the proceedings when we shall have prepared our Appeal properly."

22 The other reasons that were given, I will not deal with those  
23 today, but I am talking about statements concerning the  
24 proceedings in Case 002.

25 I would like also to recall the contents of an application that

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1 was filed before the Chamber by the Deputy Director of  
2 Administration. That request was dated the 8 of October 2014, and  
3 that request had been sent by the Defence Support Section to the  
4 Deputy Director of Administration. That request was aimed at  
5 obtaining - or, is aimed at obtaining redeployment of funds and a  
6 temporary increase of the remuneration allotted to the Nuon Chea  
7 and Khieu Samphan defence teams, and this is for the period from  
8 the 1st of October to the 31st of December 2014.

9 [09.13.58]

10 According to what is stated in the document we received, the  
11 Defence Support Section filed a request, pursuant to a memorandum  
12 of the 7th of October 2014, which was co-signed both by the Nuon  
13 Chea and Khieu Samphan defence counsels. And in that memorandum,  
14 the request was made for an increase in the number of working  
15 hours, as well as an increase in the remuneration allotted to  
16 members of those defence teams. The justification provided in  
17 support for that application was that, the increases were  
18 necessary to enable them to carry out the additional work over  
19 the next few months, during which work they would have to  
20 discharge very significant additional obligations, including, on  
21 the one hand, the preparation of the Appeal brief; and also,  
22 preparing fully for their participation in Case 002/02.  
23 Mr. Khieu Samphan, I have a question for you: Can you tell us  
24 whether you were aware of these applications for increases in  
25 remuneration sent by your counsel to the Deputy of Administration

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1 and whether you were informed that those requests for financial  
2 increase - funds increases were meant to assist lawyers in  
3 preparing for - in drafting the Appeal brief and also to enable  
4 them to prepare for Case 002/02?

5 [09.16.14]

6 MR. KHIEU SAMPHAN:

7 Good morning, Mr President. Good morning, Your Honours.

8 I clearly know that my team is trying their best to work on my  
9 Appeal per my instructions and they have been working day and  
10 night and I know this very well because I have almost daily  
11 communication with my team. You can refer to my log book and the  
12 log of my telephone conversation. Although I may not know the  
13 small details of the processes of working, to my knowledge, they  
14 are working their best pursuant to my instructions to them. Thank  
15 you.

16 [09.17.33]

17 JUDGE LAVERGNE:

18 It appears that there may be some incoherence between saying that  
19 one cannot participate in the Case 002/02 proceedings and to  
20 prepare for the Appeal; and also making an application for an  
21 increase in financial assistance to enable counsel to prepare for  
22 these proceedings, and for the Appeal.

23 I would give the Khieu Samphan defence team the floor to make any  
24 further clarifications they may have.

25 MS. GUISSÉ:



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1 Yes, Your Honour. Good morning to the Chamber and the Parties. We  
2 would like to make a few clarifications. I think there is some  
3 misunderstanding on the part of the Chamber of the submissions we  
4 made.

5 First of all, to respond to your questions, let me point out  
6 that, all that we have said so far doesn't stem from the issue of  
7 resources. The requests that were made were meant to enable Mr.  
8 Khieu Samphan to fully participate in his defence regarding the  
9 memorandum.

10 [09.18.57]

11 Let me point out that we had a problem with the printing, because  
12 the Khieu Samphan team did not sign any document to the effect  
13 that they would participate fully in the proceedings of 002/02  
14 and the Appeal. What we said in the memorandum sent to the  
15 Administration was to point out that, we have the decision of the  
16 Chamber scheduling Case 002/02, and in any case, since the  
17 Judgment has been issued, we had to work on both the proceedings  
18 and the Appeal and there were applications made to that effect  
19 and a lot of work was done. I would like to address these issues  
20 since we are talking about housekeeping matters. It is important  
21 for us to address these issues.

22 At the hearing of the 21st of October, it was suggested - or,  
23 insinuated - I don't know what word to use - that our application  
24 for additional resources in the event of the two proceedings  
25 proceeding - the two proceedings being held. Let me say that, for

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1 the Administration, the matter has always been very clear.  
2 Perhaps there were no Chamber decisions fixing a specific date  
3 for the commencement of the second mini trial, there was never an  
4 issue providing additional resources.

5 [09.20.31]

6 The memorandum that we filed in October 2014 stems from a  
7 correspondence from the Defence Support Section in line with your  
8 Order of the 19th of October: "Since we now have a date for the  
9 second trial segment, you can file your request for additional  
10 financial resources."

11 Let me point out that the memorandum of the 21st of October was  
12 not aimed at requesting additional resources to enable us to  
13 participate in the second trial in Case 002/02, but during the  
14 first trial segment, we received additional resources and the  
15 public and Parties should not imagine that we are asking double  
16 the resources we have. We were asking for resources to enable us  
17 to draft the documents – the Appeal documents; and as part of  
18 002/02, we increased – we received a 7 per cent increase for our  
19 team, particularly to draft our closing arguments.

20 [09.22.05]

21 The memo of the 21st of October 2014 is along the same lines; we  
22 are not asking for additional resources. And you would imagine  
23 that the Defence – since the very beginning – given the timeline,  
24 we had to file our brief before the Appeals Chamber. We had  
25 started our work and it was not only a few weeks to filing of

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1 that brief that we would have had to reorganize ourselves and  
2 recruit additional staff, whereas we had already organized our  
3 work based on the resources that we had estimated.

4 Since I have the memo before me - that is, the memo of the 21st  
5 of October 2014 - since - Judge Lavergne has referred to it. In  
6 paragraph 5 - now we have to quote in English, so please, I crave  
7 your indulgence for my accent - this is what is stated in that  
8 paragraph - it indicates:

9 "Between October and December 2014, the Case 002 Defence is  
10 required to undertake workload significantly exceeding their  
11 usual already full workloads. Most particularly, in this period,  
12 the Case 002 Defence must prepare substantive appeals to the Case  
13 002/01 Judgment. This task is not only a critical importance, but  
14 also extremely lengthy and highly complex."

15 [09.24.01]

16 Paragraph 18 of the same memo - and I am quoting again in  
17 English.

18 "The Case 002 Defence, therefore, takes the view that the  
19 temporary budget increase would be justifiable on the sole basis  
20 of the work required to finalize its Case 002/01 substantive  
21 appeal briefs, and that this would be consistent with the reason  
22 for which the budget increase was granted between August and  
23 October 2014. However, in this instance, the Case 002 Defence  
24 will also need to undertake substantial additional work on top of  
25 the Case 002/01 appeal, work which includes: preparation for

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1 substantive hearings in Case 002/02; preparation-"  
2 Judge Lavergne, I see you shaking your head. It was for - we  
3 prepared documents for Case 002/02. That is indeed true, and I  
4 will continue quoting in English.

5 "(inaudible) would need to be undertaken between October and  
6 December 2014, regardless of whether the Case 002/02 substantive  
7 hearings begin on 12 October 2014 or are postponed."

8 [09.25.53]

9 To answer your question, therefore, Judge Lavergne, in this memo,  
10 it was envisaged that we will prepare for hearings whether they  
11 were scheduled or not as of the 7th of October because it is  
12 obvious and that is the problem we face that, although we are  
13 focusing on the Appeals and the drafting of a very complex Appeal  
14 brief, there are, indeed, issues - and there are applications and  
15 we have to respond to those applications in a timely manner. In  
16 any case, we cannot rely on this memo to say that we are trying  
17 to obtain additional funding - funding that is particularly  
18 significant. In view of the fact that the application was made  
19 based on the application that had been made previously in terms  
20 of preparing for the second trial segment and the 7 per cent  
21 increase was granted to enable us to prepare for those  
22 proceedings - I want the Chamber to bear this in mind and it  
23 should be very clear to all the Parties - once again, I am  
24 responding to this question because it is an issue that has come  
25 up in public hearings and you find that it is particularly

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1 important, and in my submissions and the statements made by our  
2 clients. There are some points that are extremely important that  
3 we should not lose sight of. Basically that, at this point in  
4 time - at this stage - 28 October 2014 - we have a very short  
5 time to prepare our documents.

6 [09.27.45]

7 Mr. Khieu Samphan's is participating in this hearing. It is very  
8 difficult sometimes to appreciate the workload that we have. When  
9 you have been sentenced to life you have to prepare for your  
10 appeal and for us that appeal is the most important thing we have  
11 to prepare for.

12 That said, Judge Lavergne, I will give the floor to whoever  
13 wishes to make any further remarks. To say that we are asking for  
14 additional resources to double our team, that is not possible. We  
15 couldn't have made any application without taking into account  
16 what the Chamber had already envisaged. And it's something that  
17 we had clearly understood on this side of Defence and it's  
18 something that the Defence Support Section understood very well  
19 and we work in a privilege relationship with the Defence and we  
20 knew fully well that the Defence Support Section came back to us  
21 and said you can try again to seek supplementary resources.

22 [09.29.00]

23 In any case, today on the 28th of October, we are facing a  
24 situation with a very short timeline and we have to deal with  
25 very complex issues and as I said, a while ago, I was expecting a

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1 bit more understanding from the Chamber regarding this issue: the  
2 fact that the two proceedings are simultaneous, going on  
3 concurrently. And it is also in line with Mr. Khieu Samphan's  
4 wish to fully participate in these proceedings because he is also  
5 preparing for the appeal.

6 [09.29.36]

7 And that is why we expected the Chamber to show proof of more  
8 understanding because in the hearing of the 12th of December  
9 2013, Your Honourable – the Honourably Judge Lavergne, said that  
10 starting the second trial segment was a matter which had to be  
11 initiated quickly because we needed to gain time. In the  
12 transcript E1/238.2 at fourteen hours this is what you stated:  
13 "From a personal prospective, I note that, during hearings it is  
14 very difficult to concentrate on hearings and – so – at the same  
15 time, concentrate on a judgement which is something very  
16 technical: you cannot work both ways. It is not only a question  
17 of having additional staff; it is a question for the Judges to be  
18 able to concentrate in an in-depth manner on very thorny issues  
19 that require time."

20 End of quote.

21 Well, I would like to respectfully submit, Your Honours, that Mr.  
22 Khieu Samphan also needs to concentrate on very thorny issues  
23 that have far reaching repercussions. We are only asking for  
24 resources to be able to concentrate on very thorny issues that  
25 require time, and bearing in mind that we have fixed deadlines

1 and that the Accused has been sentenced to life imprisonment,  
2 that hasn't confirmed.

3 [09.31.09]

4 Mr. President, Your Honours, Mr. Khieu Samphan, who has  
5 participated actively in his defence in his case from the very  
6 beginning, taking notes, pointing out certain evidentiary  
7 matters, working in concert with his counsel, similarly, Mr.  
8 President, he has told you that he cannot do both things at the  
9 same time at this very crucial time in his defence. This is a  
10 very important matter. I don't know why, what he said, seems to  
11 have fallen through the cracks. I think it is very essential and  
12 it is at the very centre of Mr. Khieu Samphan's application. He  
13 is here present and he can confirm that he also said, before this  
14 Chamber, that he would appear before the Chamber if he was forced  
15 to appear, if he was coerced to do so, but that he would instruct  
16 his Chamber to continue working exclusively on his Appeal because  
17 that was what he considered as most important. And perhaps - and  
18 this is something that may come up again because we don't have  
19 the same views on this issue with the Nuon Chea's defence team -  
20 let me remind the Chamber that there are accused - two accused  
21 persons in these proceedings. It is a trial of several accused  
22 persons, we don't have a common defence, Mr. Nuon Chea has his  
23 defence team and they are free to choose their means of defence  
24 as they deem necessary and they are also free to defend their  
25 client as they wish in a manner that is different from our own

1 approach.

2 [09.33.13]

3 So, we raise many other arguments we did not only talk about  
4 resources we also talk about the possibility of ensuring that Mr.  
5 Khieu Samphan fully participates in his proceedings and it was in  
6 our application, E314/5/1 on the 3rd of October, and in that  
7 application we explained the reasons why we considered that it  
8 was important for Mr. Khieu Samphan's to work on the appeals, why  
9 we thought it was necessary for you to reconsider your order  
10 scheduling the proceedings, why it was important for us to  
11 properly prepare these documents, that is the thrust of the  
12 matter. The matter is not one of asking whether we can just  
13 defend our client as if it's window dressing. It's a matter of  
14 defending our client to the best of our means you also - we also  
15 said why having the two proceedings concurrently would jeopardize  
16 the defence of our client and we have deadlines and we cannot do  
17 all the work required at the same time in that application we  
18 required - we recalled the  
19 ICTY relevant jurisdiction, recalling Mr. Khieu Samphan's right  
20 to fully participate in his proceedings as he wished. We pointed  
21 out the medical issues involved; you have the report from the  
22 detention facility. Mr. Khieu Samphan said with the resources he  
23 had he's working all day long in his case.

24 [09.35.10]

25 You may think that this is not important and that this is



1 something that you can ignore, but we are dealing with an accused  
2 person who has been sentenced to life and the least he can do is  
3 to fully participate in his defence and to give his defence the  
4 resources to work on his Appeal. Let me point out that Mr. Khieu  
5 Samphan has never said that he did not want to participate in his  
6 proceedings, he has never said that he does not want to  
7 participate in the second trial segment, but he wouldn't do so if  
8 his Appeal is not properly handled by his defence counsel. Let me  
9 also say that we are not being capricious here. We are being  
10 taxed with foot dragging; could someone explain to us how an  
11 accused person who has been sentenced to life would want to waste  
12 time.

13 [09.36.09]

14 Mr. Khieu Samphan has not been released, he is in prison at this  
15 point in time, he is in prison and he wants to work on his  
16 Appeal's brief. And again, I want to go back to the issue of  
17 resources; and to again reiterate what I felt as insinuations  
18 that we wanted to stall the proceedings or we that we had to  
19 waste the Court's time.

20 Your Honours, for the three years of proceedings against Mr.  
21 Khieu Samphan, I wonder, what is the basis for this sudden  
22 challenge of our approach, we have been professional. Our  
23 professionalism has been challenged. Why do you think we just  
24 want to bother others, whereas all we want to do is to advance  
25 the course of our defence and to be able to properly defend our

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1 client in line with his instructions and these instructions are  
2 not unreasonable. These instructions, that we can only agree with  
3 because we are – we are all agreed, on 17 October 2014, my  
4 counsel has said so and Mr. Khieu Samphan himself has said so.  
5 The Appeal is very important because you are the ones who issued  
6 the Judgement and it is up to you to conduct the proceedings in  
7 the second trial segment if there is no decision that is  
8 favourable to our application for recusal.

9 [09.37.46]

10 And that is why, in answer to this question regarding the  
11 resources, I would like to point out again that we should not  
12 waste time on issues that are not important. The issue of  
13 resources could have been resolved well before. Now, because the  
14 Administration did not agree with us, and again I am talking on  
15 the behalf of the entire team as well as the Nuon Chea's defence  
16 team, we wish to concentrate on the Appeal and to make sure that  
17 everything is clear because it is possible that what was said was  
18 not very clear regarding the schedule.

19 All we are saying is that, we want to be allowed to appear before  
20 this Chamber and to do so effectively, and if the time limits  
21 that were requested before the Supreme Court for drafting this  
22 complex Appeal brief – that would mean that we would prepare our  
23 brief in French, in December – 29th of December at the latest –  
24 if the request we made before the Supreme Court Chamber is  
25 granted, under these conditions, under these circumstances there

1 is no unreasonable request on the part of Mr. Khieu Samphan and  
2 as you pointed out last time, on the 17th of October, our  
3 objective is not to stall the proceedings, we cannot even stall  
4 the proceedings.

5 [09.39.25]

6 If you wish to continue with the proceedings by forcing Mr. Khieu  
7 Samphan to appear before the Chamber, he cannot do otherwise he  
8 would appear and he would appear and would not be able to do what  
9 he would like to do, which is to work on his Appeal. However, as  
10 a lawyer - as lawyers we will not be able to appear before the  
11 Chamber if we have the view that working on the Appeal is in his  
12 best interest and as I said, what is his best interest.

13 Let me rephrase what I am saying, what is less important as  
14 required - what is less important is working on the second case.  
15 What is most important is working on his Appeal. I think in his  
16 response to the Co-Prosecutors application we will - when we talk  
17 about that application, we will talk about the code of ethics  
18 that we adhere to and again the impression I have is that we want  
19 to view the problem as if it is only a problem of resources that  
20 is not the crux of the matter today. I have responded to the  
21 question on - regarding time limits, it is very clear.

22 [09.41.53]

23 Today, when you ask us to respond to the issue whether we agree  
24 with proceedings in Case 002/02, when you ask us to attend this  
25 trial Management Meeting to talk about the second trial segment,

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1 unfortunately that is something we wouldn't want to do, we  
2 wouldn't want to spend time working on second trial segment,  
3 because our objective is to defend our client and to prepare his  
4 Appeal brief, but that is the most important task before us.

5 JUDGE LAVERGNE:

6 Counsel Guisse, I think my question was rather restrictive and  
7 limited, I was simply concerned with the information that was  
8 provided to Mr. Khieu Samphan based on which he made his  
9 instructions. In the future, I would be most appreciative if you  
10 were to directly answer the question I am posing.

11 [09.42.02]

12 With respect to the necessary time for preparation of Case  
13 002/02, could you please inform the Chamber if, in light of what  
14 has been prepared since the end of closing arguments to the time  
15 that Judgement was issued, unless I am mistaken, as the defence  
16 team for Mr. Khieu Samphan and Mr. Nuon Chea, you were given  
17 additional financial resources that is equivalent to the  
18 appointment of full time lawyer to join your team. Therefore,  
19 what work was achieved during practically nine to ten months?

20 MS. GUISSSE:

21 Exactly, Judge Lavergne, this is the point that we've reached. As  
22 the DSS has explained to you, Your Honour, in relation to our  
23 work as a defence team, we are consistently and regularly  
24 outlining the work we do on the monthly basis. Judge Lavergne, I  
25 believe it was at the Initial Hearing that certain time lines

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1 were given to the Defence teams to submit their witness lists,  
2 their evidence list, and the team for Khieu Samphan was the only  
3 team to respect the deadlines and we undertook that work, we  
4 accomplished that work in relation to Case 002/02 and we also  
5 garnered information that would be useful for the Appeal as well  
6 information on Case 002/02. We started that work as all others  
7 defence teams and all other parties.

8 [09.44.04]

9 However, I would call attention to some caution and refrain from  
10 casting both Defence teams in the same category because the  
11 defence team for Nuon Chea would like to start the second trial  
12 based on certain conditions and restrictions, but once again we  
13 are two distinct Defence teams, with two distinct strategies,  
14 with two distinct lines of defence. Since you worked on the  
15 Judgement of Case 002/01, you will understand that defence for  
16 Mr. Khieu Samphan is not identical to that of Mr. Nuon Chea,  
17 there are significant and factual nuances between the two teams  
18 they are rather considerable and worth highlighting.

19 [09.44.55]

20 I am not saying that Mr. Nuon Chea's defence arguments are less  
21 important but the method by which the Judgement was drafted based  
22 on certain facts, for instance concerning his participation in  
23 the decision to evacuate, well, those pose very specific problems  
24 on which Mr. Khieu Samphan wishes us to focus. I respect the  
25 choice of Mr. Nuon Chea to carry out his particular strategy.

1    However, it must be understood that the two separate choices made  
2    by the Accused and the two strategies must be understood and  
3    respected.

4    JUDGE LAVERGNE:

5    Very well, you have stated that the issue of insufficient  
6    resources were not the only factor that led to your decision to  
7    not participate in Case 002/02. I don't know what the answers  
8    will be in response to the requests that you have made, requests  
9    that you have put to the Court's administration through the  
10   Defence Support Section, but can you please tell the Chamber if a  
11   possible favourable response from the Administration would have  
12   an impact and what would that impact be? And you as counsel for  
13   the Accused person, Mr. Khieu Samphan, are you likely to become  
14   more available; do you have any other professional obligations  
15   under way?

16   [09.46.54]

17   MS. GUISSÉ:

18   As I explained earlier, if there were to be an increase  
19   consistent with our - or an increase of 16 per cent which would  
20   allow our teams to work even more than they are working now and  
21   to make sure that the rights of Mr. Khieu Samphan are preserved,  
22   well, it would not change the position of Mr. Khieu Samphan to be  
23   both in the detention cell and to work on the Appeal and to be  
24   present here in the courtroom. If we are - if we are to prepare  
25   for evidentiary hearings, Case 002/02, we cannot work on the

21

1 Appeal arithmetically speaking; that is just not possible.

2 [09.47.44]

3 JUDGE LAVERGNE:

4 Indeed. If you are preparing applications to not participate in  
5 Case 002/02, well indeed, that will give rise to a certain number  
6 of problems. Now in the month of October, aside from the hearing  
7 of the 17th of October, there was absolutely no evidentiary  
8 hearing in Case File 002/02. In November the hearings were only  
9 likely to resume on the 12th of November, but as the Chamber had  
10 already indicated for the time being, the hearings were only to  
11 take place three days per week. Therefore, that would have  
12 tallied nine days in November.

13 For December, given the judicial recess before the end of the  
14 year, the Chamber had only envisaged sitting nine days; that is  
15 to say three days per week. Now we've heard your arguments; now  
16 aside of all of those arguments, I will ask you once again, do  
17 you have any suggestions to make to the Trial Chamber with  
18 respect to those proposed number of days of sitting?

19 [09.49.05]

20 MS. GUISSÉ:

21 Yes, if you were to ask for my suggestion Judge Lavergne, we  
22 would say that yes indeed those very few days are actually quite  
23 significant for us in terms of preparing the Appeal of Mr. Khieu  
24 Samphan and if we were to benefit from nine days in addition to  
25 the three weeks or the time that would be allotted by the Supreme

1 Court, every single hour and day is indispensable to the team for  
2 Mr. Khieu Samphan. Talking about days of hearings is not just  
3 about window dressing here in the courtroom. Those nine days of  
4 hearing entail cross-examination of witnesses, of preparation of  
5 cross-examinations and aside from the Initial Hearing, the – as  
6 Judge Cartwright had said, showing up at the hearings is only the  
7 tip of the iceberg in terms of the workload required.

8 There is the preparation time and if you believe that the number  
9 is not important, I can tell you that in terms of the preparation  
10 for the Appeal, each day and every single hour is important.

11 [09.50.24]

12 JUDGE LAVERGNE:

13 Counsel Guisse, can you please answer the question that I've  
14 asked you, when I asked you if you would be more available or if  
15 you had any other professional obligations, can you just answer  
16 that question?

17 MS. GUISSÉ:

18 Currently, my professional engagements are committed to the  
19 defence of Mr. Khieu Samphan and to his Appeal.

20 JUDGE LAVERGNE:

21 Let us return to the clarification concerning the date at which  
22 the defence for Mr. Khieu Samphan believes that it would be  
23 possible for him to participate in hearings for Case File 002/02.  
24 I would recall that the Parties filed their Notices of Appeal on  
25 the 29th of September and this was after the timeline or the



1 deadline to file the Notices of Appeal was extended. According -  
2 when pursuant to the provisions of Internal Rule 107.4, the  
3 appeal brief must be filed within the 60 days following the  
4 filing of the Notice of Appeal, that is to say, before the 28th  
5 of November.

6 [09.51.46]

7 We are fully aware, however, that the Parties have already  
8 applied for an extension of the filing of the appeal briefs. I  
9 believe that the Co-Prosecutors, as well as the defence team for  
10 Mr. Nuon Chea, have requested an extension until the 29th of  
11 December. Now, I understand, now correct me if I'm wrong, that  
12 the defence for Mr. Khieu Samphan has asked for an extension that  
13 would enable it to file an Appeal Brief within 174 days following  
14 the date of the Notice of Appeal, therefore an Appeal Brief that  
15 would be eventually filed at the end of March 2015.

16 MS. GUISSÉ:

17 Yes, Judge Lavergne, I believe that I anticipated your question I  
18 answered previously. The difference between the extensions asked  
19 by Nuon Chea and Khieu Samphan is that we have factored in  
20 translation times which would condition when the timeframes start  
21 running for the replies, but we have calculated 174 days because  
22 that would mean the end of the drafting in our working language  
23 and for us, the lack of ability of a translation, would mean that  
24 the final filing would only be in March 2015.

25 [09.53.39]

24

1 This includes translation timeframes and following the replies  
2 given to the Co-Prosecutors, but we agree that the 29th of  
3 December is the deadline for the French drafting of the Appeal  
4 brief of Mr. Khieu Samphan.

5 JUDGE LAVERGNE:

6 Now, if I understand correctly, the 29th of December is the date  
7 that you have indicated as the date on which you would be able to  
8 participate, once again, in Case 002/02?

9 MS. GUISSÉ:

10 Perhaps not on the day of filing itself, in French I would  
11 specify, but certainly the start of January following the Appeal.  
12 That would be a possible resumption date for Case 002/02.

13 [09.54.35]

14 JUDGE LAVERGNE:

15 I'm not here to plant any ideas, but just to make a  
16 clarification; it is possible that there could be responses or  
17 replies to the appeal briefs. I'm not sure how the Supreme Court  
18 will organize that, but the time that you will allocate to the  
19 responses of the Appeal would certainly influence your capacity  
20 to participate in Case 002/02 and you would find yourselves in a  
21 position, once again, to postpone the hearings in Case 002/02.

22 MS GUISSÉ:

23 In theory, Judge Lavergne, I would say no, the essential point  
24 for us is that we be committed entirely to the Appeal of Mr.  
25 Khieu Samphan as we have envisaged to date. It is abundantly

1 clear that the amount of work in a mere reply is not the same as  
2 the amount of work that goes into an appeal brief that elaborates  
3 on all of the grounds of appeal and that cannot be raised after  
4 the deadlines.

5 [09.55.45]

6 So, to answer your question, the real problem, the crux of the  
7 matter is really to concentrate on the appeal of Mr. Khieu  
8 Samphan, that is up until the filing of the Appeal brief on the  
9 29th of December, if the Supreme Court grants our request.

10 JUDGE LAVERGNE:

11 You have stated that you were in contact with the Administration  
12 during the certain period of time and that you had made some  
13 requests. So that things were perfectly clear, can you please  
14 state, if officially you have made any request before the  
15 Administration that have not been revealed or referred to in the  
16 previous Trial Management Meeting? And at this stage in the  
17 proceedings, in terms of translation, do you believe that it  
18 would be worthwhile to reformulate those requests in order to  
19 address the matter of resources so that the situation may be  
20 improved?

21 MS. GUISSÉ:

22 Judge Lavergne, I can only acknowledge what was said at the last  
23 Trial Management Meeting by Mr. Charles Zama and his explanations  
24 on the delays regarding translations. I gather that there are  
25 some recruitment drives that are underway; I believe that

1 everything is under control.

2 [09.57.22]

3 The team has already indicated which priority translations must  
4 be done and we will see over time. However, I believe that Mr.  
5 Zama has already answered at the last hearings, those questions.  
6 For now, unless we were to double check, I believe that there may  
7 be some requests that are outstanding and there are attempts to  
8 provide us courtesy copies, and we greatly appreciate those, but  
9 we understand that at a certain time the ITU was quite overloaded  
10 and that there was a bottleneck. But we understand, like you,  
11 that there has been an improvement and I think this is an  
12 important factor because in terms of our own filings, there are  
13 sometimes issues with the English translation, which is rather  
14 unfortunate for other Parties and for the Trial Chamber who may  
15 not be entirely well versed with our arguments.

16 JUDGE LAVERGNE:

17 To summarize the situation, and please correct me if I've  
18 misunderstood anything, but I gather that you are not willing to  
19 make any compromise before the Chamber aside from the fact that  
20 you may be in a position to resume next year. However, until  
21 then, it is not possible for you to participate in the hearings  
22 until that point.

23 [09.59.05]

24 MS. GUISSÉ:

25 There's no - Judge Lavergne, there's no compromise possible with

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1 the defence of our clients, if that's how you wish to summarize  
2 matters. Yes, it is a priority of importance to concentrate on  
3 the appeal of Mr. Khieu Samphan.

4 JUDGE LAVERGNE:

5 For the record, I wasn't talking about a compression of time; I  
6 was talking about a compromise.

7 I have no further questions to put to the defence team for Mr.  
8 Khieu Samphan. Mr. President, over to you.

9 MR. PRESIDENT:

10 Judge Fenz, you may proceed.

11 [09.59.58]

12 JUDGE FENZ:

13 Thank you. I have two short questions to Mr. Khieu Samphan  
14 following up on what he said in the beginning and then one final  
15 question to the Defence. I'll start with Mr. Khieu Samphan; you  
16 said in the beginning, among other things, that you had almost  
17 daily communication with your counsel. Now, my question refers to  
18 this; "almost daily" obviously means not daily. So may I ask you  
19 how often have you've seen your counsel, let's say in the last 2  
20 weeks?

21 MR. KHIEU SAMPHAN:

22 Yes, I have stated that I have a constant telephone communication  
23 with my defence team, namely Socheata on - who is sitting on my  
24 right and Marie on my left and usually these two go together to  
25 meet me in my room in the Detention Facility for clarification in

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1 relation to my case file, so that they can work effectively on my  
2 Appeal. There are many, many, many points for them to respond and  
3 to put in - in the Appeal. You can actually view the log book of  
4 their visits at the Detention Facility then you will see by  
5 yourself. Thank you.

6 [10.01.52]

7 JUDGE FENZ:

8 Obviously I can consult the log book, but for the record, can you  
9 give us an idea on how often, in the last two weeks you have seen  
10 members of your defence team and how long these meetings took; or  
11 phoned members of your defence team?

12 MR. KHIEU SAMPHAN:

13 The duration of the phone conversation varies; sometimes I would  
14 make a phone conversation in reference to the documents used in  
15 other documents. That's one thing and the other thing is usually  
16 I would call them to come and pick up the documents that I typed  
17 so that they can be used by Marie and Socheata.  
18 And it happens almost every day; you can check my phone log book.  
19 And sometimes Marie would come to visit me to ask for  
20 clarification of the documents that I write or that I typed and  
21 that happened every week of the month.

22 [10.03.30]

23 JUDGE FENZ:

24 I take it that this is as much information on that as we will get  
25 today. So - sorry - my next question is to the Defence. Actually-

1 MR. KHIEU SAMPHAN:

2 I actually instruct Marie to inform my lawyer in Paris; so even  
3 if my counsel is in Paris, they have constant communication and I  
4 can see that clearly.

5 JUDGE FENZ:

6 My question to the Defence, but before I ask the question, I want  
7 to and at least to try to sum up what has been said over the  
8 last, I don't know, 30 minutes or so.

9 [10.04.27]

10 And I'm really just trying to distil the gist of it, so we  
11 understand where we are. And before I do that, I want to remind  
12 everybody, specifically the Defence, that it is not this Chamber  
13 who is trying to, or not only this Chamber, who is trying to move  
14 ahead. The Supreme Court has told us in basically every decision  
15 over the last year, that Case 002/02 has to start as soon as  
16 possible with one Chamber or the other, but there was never any  
17 question as to the need to go ahead as soon as possible. And  
18 again, this is the Supreme Court.

19 Having said that, if I understood you correctly, Counsel, what  
20 you are saying is: "this is not an issue of resources; this is an  
21 issue of us as counsel not being able to do both things at the  
22 same time; Appeal and Case 002/02 with the diligence we consider  
23 necessary."

24 Now, the obvious question is why can the Nuon Chea team do it,  
25 and since you have raised it, you're answer was somehow they have

1 a different strategy.

2 [10.05.48]

3 I'm still a bit at a loss on how this answers the issue of  
4 organizing your work and what else you – and the third thing you  
5 are saying is: "our client is unable, as we are, to do these both  
6 things at the same time." Can I first ask you, if I got it  
7 correctly, and please short, because we have heard all the long  
8 arguments, but is this correct, not an issue of resources; issue  
9 of personal inability or unwillingness to do both things at the  
10 same time and both, on behalf of yourself and your client; is  
11 that correct?

12 MR. KONG SAM ONN:

13 Good morning, Your Honours, and good morning everyone and I'd  
14 like to respond to the question raised by Judge Fenz.

15 The issue on our focus on writing the Appeal brief rather than  
16 attending the hearing and we have informed the Chamber earlier  
17 that we cannot do both things in parallel and that is in the  
18 interest of our client.

19 [10.07.14]

20 We think of the effectiveness of our defence. Of course we can do  
21 both things in parallel, but in the end it is just symbolic; it's  
22 just to fulfil the procedure without any effectiveness in our  
23 defence. And, for that reason, it's going to contradict our  
24 profession, our conscience as counsels. As a professional  
25 counsel, we are barred from doing things just for the sake of



1 doing it, but we are to defend the interest of our client and  
2 that of justice. If our client's interest is affected, then the  
3 justice is so affected. For that reason, it is important for us  
4 to put our concentration fully on one particular task, in order  
5 also to raise the image and the quality of this Court and that is  
6 (inaudible), positive legacy for Cambodia and for the world. And  
7 for that reason, we urge you to postpone to the hearing and every  
8 time our proposal or request was rejected.

9 Regarding our communication with our client, we actually set our  
10 time to meet our client weekly, two times per week. However, not  
11 only I was the one who meet our client, we also have staff  
12 working in our team and also our International counsel.

13 [10.09.08]

14 It is not possible for us to meet our client freely because there  
15 are times that we cannot meet them and there are holidays or  
16 sometimes weekend that we cannot have access to our client. And I  
17 heard the question put to my counsel – my counterpart by Judge  
18 Lavergne, and she responded in detail, about her work and about  
19 the sole work that she is doing at the moment – that is the work  
20 at this Court.

21 We have two accused in this Court, but our work is different.

22 Although we work in the same building, we have different offices  
23 and my counterpart usually is based in Paris. For that reason the  
24 communication is by electronic means, mostly; however, this is  
25 not an issue.

1 We all have our work besides the work at this Court, because I do  
2 not work full-time for this Case. I work based on the number of  
3 hours; I get paid for the work here at this Court. So, we try to  
4 manage our time to the best as we can and that is on the issue of  
5 consultation with our client and receiving his instructions. So,  
6 we need time to have this constant communication with our client  
7 besides the hearing days. And if you set three hearing schedules  
8 per week, it does not mean we only work for these three days  
9 because when an issue arises we have to have a consultation with  
10 our client and we have to have discussion within our team and  
11 with our client.

12 And sometimes the issue cannot be solved just for one visit and  
13 that is the difficulty that we are having at the moment because  
14 this is a purely a teamwork result, not a personal work.

15 [10.11.45]

16 JUDGE FENZ:

17 Thank you. Yes, understood - I'm sorry - I have understood that  
18 you are saying we can't do both at the same time. I think an  
19 important question is, should capable and diligent counsel be  
20 able to do both at the same time? But you have clarified my  
21 question as to where exactly your arguments are and I just have  
22 one more question which pertains to an issue you have raised  
23 frequently, the difference to the Nuon Chea defence team.  
24 Now, we all know the Judgment; it would appear on first sight  
25 that the burden on both defence teams when it comes to the Appeal

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1 and preparation of Case 002/02 is pretty equal.

2 [10.12.42]

3 I don't understand the reference to strategy, because we are  
4 talking an issue here of - of organizing your work, so, in case  
5 you wish (inaudible), can you give me any, or point any  
6 substantive difference between the two teams, beside their  
7 methods of organizing themselves, that would account for the Nuon  
8 Chea team apparently not having a problem with organizing itself  
9 and your team having these problems?

10 MS. GUISSÉ:

11 I observe with certain unease that there is re-examination of Mr.  
12 Khieu Samphan's capacity to participate. I cannot answer on  
13 behalf of the team for Mr. Nuon Chea; they are free as lawyers to  
14 organize themselves as they wish. They are free as they wish to  
15 split their team in half and dedicate one to the Appeal and the  
16 other to Case 002/02; that is their choice. That is entirely  
17 their prerogative.

18 [10.14.00]

19 However, our choice is to commit all of our forces on what is the  
20 most significant and most important issue for us; which is the  
21 Appeal. So you are asking us for an opinion on the methodology of  
22 Mr. Nuon Chea's team and I will not comment on that. We are a  
23 distinct team and on behalf of our team, on behalf of our client,  
24 the instructions are very clear. We can only answer on our own  
25 behalf.

1 MR. KONG SAM ONN:

2 I'd like to add to what my counsel just said. I think it is not  
3 difficult to understand, if you look at Khieu Samphan; of course,  
4 you can see clearly that his name is different from Nuon Chea's  
5 name and if you refer to the facts put before this Chamber, the  
6 facts are different from the facts alleged against Nuon Chea.  
7 So, that is the - the difference; and even today Khieu Samphan is  
8 here attending the meeting, but Nuon Chea is absent. So they have  
9 different strategies, different motives and you may ask Nuon  
10 Chea's defence on their grounds or their ability to - to do so  
11 and why Khieu Samphan defence cannot do it; it's a different  
12 matter.

13 [10.15.37]

14 MR. PRESIDENT:

15 Thank you. Judge Lavergne, did you have anything more to add? If  
16 so, yes, please proceed.

17 JUDGE LAVERGNE:

18 Yes, just a clarification to make sure that I fully understood  
19 what was said by counsel for Khieu Samphan. They have told us  
20 that they are in a position to file their Appeal Brief in French  
21 by the 29th of January, as the speaker says, and they would need  
22 until the end of March in order to have the translations  
23 completed. Is that correct?

24 MS. GUISSÉ:

25 As you said Judge, yes, it is in fact the 29th of December, if

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1 the Supreme Court grants our request for an extension of  
2 timeline.

3 [10.16.33]

4 MR. PRESIDENT:

5 Thank you, Khieu Samphan's defence, for your response. The  
6 Chamber would like to ask the Deputy and the Acting Director of  
7 Administration if you have any things or comments to make  
8 regarding the resources issues raised by Khieu Samphan's defence  
9 just then.

10 MR ROSANDHAUG:

11 Good morning, Chamber, good morning Parties. Since the defence  
12 falls under the portfolio of the Deputy Director I will answer  
13 this question. I have heard nothing today which is actionable at  
14 my end. I heard a statement saying that the issue of language and  
15 translation is under control and the situation is improving. So I  
16 have nothing further to add.

17 [10.17.43]

18 MR. PRESIDENT:

19 Thank you. And the Co-Prosecutors, do you wish to make any  
20 observations or comments to make, regarding the response and  
21 clarifications from Khieu Samphan's defence?

22 MR KOUMJIAN:

23 No, not on this issue of - of what the questions that have been  
24 asked of them today.

25 MR. PRESIDENT:

36

1 And the Lead Co-Lawyers for Civil Parties, do you wish to make  
2 any observations or comments regarding the responses and  
3 clarifications made by Khieu Samphan's defence?

4 MR. PICH ANG:

5 Good morning, Your Honours, the Lead Co-Lawyers do not wish to  
6 make any comments or put any questions. Thank you.

7 [10.18.49]

8 MR. PRESIDENT:

9 Thank you. And, what about Nuon Chea's defence; the Chamber notes  
10 that you may wish to raise issues regarding this issue or other  
11 issues during this time. Can you clarify your status?

12 MR. KOPPE:

13 Good morning, Mr. President, good morning, Counsel. I don't think  
14 we have much to add to what has been said this morning. I think  
15 our position has always been crystal clear. We were ready to  
16 start with the second trial already in March of this year, and we  
17 are still ready, very ready as a matter of fact. There's only one  
18 thing that I would like to say, and that is also looking at the  
19 Chief of the Defence Office and the Deputy Director at the same  
20 time, and that is in relation to the memo of 7 October, that we  
21 sent, in which we request additional resources in terms of extra  
22 hours for both Co-Lawyers and for the Consultants.

23 [10.20.15]

24 The moment it was clear that we would have a second trial, we  
25 approached the Chief of the Defence Office and asked for the

1 possibility of extra resources, because everybody knows that once  
2 these two things would go simultaneously extra resources would be  
3 needed. It was, however, made clear from the very beginning, that  
4 we would only be allowed to ask or to get any resources the  
5 moment that there would be a Scheduling Order for trial, for the  
6 second trial. So even, let's say the formal start of - of Case  
7 002/02 with the decision in April on the severance, that time we  
8 already approached, informally, the Chief of the Defence whether  
9 we would have an opportunity to get extra resources. We were told  
10 don't bother there's no room for that in the budget.

11 [10.21.26]

12 The Initial Hearing, maybe the official start of the second  
13 trial, was another moment that we asked would it be possible to  
14 get extra resources. And again we were told no chance for that.  
15 Another moment was the actual judgment and the very start of the  
16 work on the Appeal, and again at that time it was made clear to  
17 us that there was no chance of getting extra resources. Only at  
18 the moment that the Scheduling Order came out we were told: OK,  
19 now it's a time, now is the time, the appropriate time to file a  
20 request and possibly we will get extra resources.

21 So, I just want to make very clear that this last memo is not  
22 because all of a sudden we thought, oh we are having a heavy  
23 workload now. No, we were on this from the very beginning but we  
24 were told and I would like to ask, to say this in a question  
25 form, whether that is correct; that only once you issued a

1 Scheduling Order, would then, for the Administration, be the  
2 appropriate time to consider our request for additional  
3 resources?

4 Which of course to us doesn't make any sense because being in  
5 Court is one thing, but preparing the evidence, reading the  
6 evidence, preparing for witness testimonies, probably much more  
7 work than the actual presence in Court. However, that is how we  
8 understood the situation and that's the rationale for the  
9 relatively late filing of this memorandum requesting for  
10 additional money.

11 [10.23.26]

12 JUDGE FENZ:

13 I would like to [microphone not activated]. I would like to take  
14 up Mr. Koppe's suggestion to verify the accuracy of what we have  
15 just heard with whoever wishes to answer. My understanding is  
16 that this first communications were informal.

17 MR. ROSANDHAUG:

18 Thank you, Your Honour. I will start and then I will lead, lean  
19 on - on the Head of the DSS as this debate probably occurred  
20 within his office. I would just mention that at the Time  
21 Management Meeting in December the issue I understood was, from  
22 Defence, was not to reduce available resources compared to what  
23 was in the budget. The whole debate was about no reduction, and  
24 there has been no reduction in available resources for the  
25 Defence from January through this year. Now the request for



1 topping up that, for the individuals already on board, I will  
2 have to refer to the Head of DSS.

3 [10.24.49]

4 MR. ENDELEY

5 Good morning, Your Honours. Good morning, Prosecutors, good  
6 morning, Defence Counsel, Civil Parties, Directors. Mr. Koppe's  
7 recollection of the facts is quite accurate, and so was Ms. Anta  
8 Guisse's summary of the events as well. As the Deputy Director  
9 has stated, at the Trial Management Meeting, in this very  
10 courtroom last December, the issue of resources came up. On the  
11 one hand, the Defence teams needed reassurance that the budget  
12 for 2014 would not be reduced, compared to the budget for 2013.  
13 The Deputy Director gave such an assurance here. He also did say  
14 at that meeting, I reviewed the transcripts, he also did say -  
15 there was a question about whether there could be extra  
16 resources, he said, "Well if there is double tracking that may be  
17 considered." As he had said, we have a very finite budget. Within  
18 the limits we couldn't give an open-ended increment to the  
19 Defence teams unless we had a clear time frame. That is why we  
20 had to wait until there was a clear and precise Scheduling Order  
21 that tells them when the double tracking - we knew of course that  
22 they were doing both tasks, we receive their action plans every  
23 month and we're quite aware that they do two things at the same  
24 time.

25 [10.26.15]

40

1 However, for budgetary purposes, we couldn't leave the  
2 remuneration question open, open-ended. So, once there was a  
3 clear Scheduling Order on 19th September, I personally,  
4 proactively approached both the Nuon Chea and the Khieu Samphan  
5 teams and advised them that they could now make a formal request  
6 and we were hoping it could be acted upon.

7 And the memorandum that you received is the product of that  
8 consultation. So yes, I support what they have both said. It's  
9 quite accurate.

10 JUDGE FENZ:

11 Thank you. I have no further questions.

12 MR. PRESIDENT:

13 We still have two more items on today's meeting's agenda. And we  
14 still need the presence of the Acting Director and Deputy  
15 Director of Administration. We shall take a short break and we  
16 will resume at twenty to eleven.

17 (Court recesses from 1027H to 1045H)

18 MR PRESIDENT:

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

20 The discussion on the resources and related issues has now drawn  
21 to a close. The Chamber will now move to a discussion on the  
22 Co-Prosecutor request to assign amici curiae counsel and advance  
23 proceedings. The Chamber has already informed the Acting  
24 Director, the Deputy Director of the Administration, as well as  
25 the Chiefs of DSS and ITU already, that they are invited to

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1 remain for this part of the discussion as well. I now give the  
2 floor to the Co-Prosecutors in relation to the request to assign  
3 amici curiae counsel and advance proceedings. You may now  
4 proceed, Mr. Co-Prosecutors.

5 [10.46.48]

6 MR. KOUMJIAN

7 Thank you, Mr. President, Your Honours. The information that  
8 we've learned this morning, I think, is very important and  
9 assists us in talking about our proposal. And I'd like to talk  
10 about our proposal both as to the Khieu Samphan team and the Nuon  
11 Chea team. The situation, that Your Honours face, is that the  
12 Court, after hearing from the Parties and taking into account  
13 various submissions, made a decision to proceed on this trial  
14 while the Appeal was pending, with reduced schedule of Court  
15 hearings. As was stated by Judge Lavergne this morning, I think  
16 there were 18 days scheduled left this year, Court hearings, in  
17 total there were 24 back in, when, Your Honours, first made the  
18 schedule, there were 24 days of evidentiary hearings scheduled  
19 and we've already lost six of those. The Defence has simply  
20 decided that they disagree with the rulings of the Court and they  
21 will not obey, according to their clients' informed instructions,  
22 the orders of the Court.

23 [10.48.10]

24 So, taking them separately, I'll begin with the Nuon Chea  
25 position as I understand it. Nuon Chea's position is that they

1 will not participate in the trial proceedings until the  
2 disqualification motion, pending, is resolved. And I do think  
3 it's important, it's too bad Mr. Nuon Chea is not here today, to  
4 absolutely clarify that the position of the Nuon Chea and his  
5 team is that, if the motion is decided against him - in other  
6 words if the disqualification is denied - that then his boycott  
7 will end and he will be here. Because, as far as the time of the  
8 boycott, that obviously is a very important consideration.  
9 But this is simply Nuon Chea deciding, after being informed of  
10 all the consequences by his counsels, to defy the Court rule, the  
11 Court ruling, under Rule 34 the Court is entitled to sit when a  
12 disqualification is pending. That's a clear rule in this Court  
13 and it's been utilised I believe in several, in this trial, in  
14 several disqualification motions. I recall at the opening  
15 statements in 2011, counsel for Nuon Chea announced at that  
16 hearing that the defence had a disqualification motion pending  
17 against one of the judges and then immediately Nuon Chea made his  
18 opening statement.

19 [10.49.55]

20 There was no boycott because a disqualification was pending. In  
21 fact, even back in the pre-trial proceedings on the 1st of  
22 February 2008, there's a Defence filing from the Nuon Chea team,  
23 it's document C1124, and it relates to a application for the  
24 disqualification of one of the pre-trial Judges. In that motion,  
25 in paragraph 2, the Nuon Chea defence wrote, as noted by the OCP,

1 the hearing can proceed and pursuant to Rule 34.5, Judge Ney may  
2 either continue to participate in the proceedings pending a  
3 decision of the application or decide to step down voluntarily.  
4 So the Defence clearly recognises that the law of the ECCC  
5 provides an option for the Trial Chamber or any Judge who is  
6 disqualified to continue to sit while that motion is pending. And  
7 in fact they'd never even tried to establish any prejudice from  
8 Nuon Chea participating while this is pending. Obviously if the  
9 disqualification were granted the effect on any proceedings that  
10 had gone on prior to that would be up to the new Trial Chamber to  
11 decide.

12 [10.51.28]

13 So there's no basis for Nuon Chea to decide to instruct his  
14 counsel not to come to Court and participate in these  
15 proceedings. It's simply a defiance of a Court order. There's  
16 absolutely no guarantee that in future proceedings when the  
17 Defence, either Khieu Samphan or Nuon Chea, doesn't like a ruling  
18 they will again utilise this tactic if it is rewarded. So we  
19 urge, Your Honours, to recognise that what this amounts to is an  
20 informed waiver by Nuon Chea of his right to have his counsel  
21 present in Court. He has counsel that has been provided by the  
22 Defence, both teams. We've also heard this morning from both  
23 teams that there's no issue of resources, complaints about  
24 resources. Khieu Samphan team also made it absolutely clear their  
25 boycott is not based on resources, lack of resources. So the

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1 right of Nuon Chea and Khieu Samphan to counsel and sufficient  
2 resources for counsel has been respected by the Court. They have  
3 them; they are choosing not to use them. And it's good that the  
4 Administration is here because, what is the effect on that - of  
5 this?

6 [10.52.50]

7 Well first of all and most importantly the effect is to delay  
8 justice that's been too long delayed.

9 And secondly, the other clear effect, is to prolong the life of  
10 this, not only trial but institution, and the cost. So, I think  
11 it would be interesting to ask the Administration, if this trial  
12 is extended let's say, one month, what is the cost involved in  
13 extending this trial one month? The total cost; an estimate.

14 Now the Khieu Samphan team has taken a very different situation,  
15 a different approach and excuse for not appearing. They've  
16 decided we can't work on two cases at one time. Well this is very  
17 interesting since we also hear counsels saying: well we all have  
18 other cases outside of this Court. And of course all of us know  
19 as lawyers it's very rare occasion that lawyers are only working  
20 on one case at one time. In the case of the Co-Prosecutors, we're  
21 working on this case, Case 002, we'll be working on the Appeal,  
22 we'll be working on the trial, we'll be working on Cases 003 and  
23 004 also. So we're quadruple-tracked in our work and we'll be  
24 responding not to one appeal, but to two appeals - to double the  
25 amount of writing required.

1 [10.54.25]

2 So again, Khieu Samphan has simply made the decision, well we've  
3 decided, or my client has told us, don't work on the trial. That  
4 is a waiver of his right to have counsel. He has counsel provided  
5 by the Court and the Court would be perfectly within its rights,  
6 I believe, to simply proceed with the trial with Khieu Samphan  
7 and Nuon Chea present with no counsel, since they are the ones  
8 who have ordered their counsels not to come. But the Prosecution  
9 suggests it would be even better to appoint an amicus lawyer, to  
10 make - to represent - to be a friend of the Court, to make sure  
11 that the Defence is - the Defendant's rights are preserved. And  
12 this has been done in other instances in international  
13 jurisprudence, quite a lot, in cases like Milosevic where the  
14 court appointed an amicus. The amicus does not replace counsel,  
15 because in this case, as Milosevic was self-represented, in this  
16 case Nuon Chea and Khieu Samphan are represented. They have their  
17 lawyers. The amicus is there to make sure for the Court's benefit  
18 that if these lawyers are not doing their jobs, that still, the  
19 rights of the Accused Persons are protected.

20 [10.55.58]

21 Now, it's unfortunate that this would mean additional resources,  
22 costs. But again I'd ask, Your Honours, to compare that cost and  
23 ask the Administration to compare that cost to the cost of delays  
24 in the trial. There's no guarantee, again, that if this boycott  
25 is rewarded that it will not be repeated. It wasn't clear to me

1 whether the defence for Khieu Samphan, for example, is saying  
2 that they will be able to prepare for oral arguments on the  
3 Appeal at the same time they're doing the trial, although they  
4 couldn't prepare for the written arguments at the same time.

5 In summation, Your Honours, we believe that this unfortunate  
6 situation is completely due to the choices of Khieu Samphan and  
7 Nuon Chea after consulting with their lawyers to disrespect and  
8 to defy the orders of the Court. That shouldn't be rewarded.  
9 We're asking for the trial to go forward and we believe that the  
10 appointment of amicus counsel will ensure the integrity of these  
11 proceedings as it goes forward.

12 [10.57.16]

13 MR. PRESIDENT:

14 Thank you, Mr. International Co-Prosecutor. I now give the floor  
15 to the Civil Party Lead Co-Lawyers for any comments in relation  
16 to the assignment of amici curiae counsel and advance  
17 proceedings. You may now proceed, Mr. Co-Lead Lawyers.

18 MS. GUIRAUD:

19 Thank you, Mr. President. I would like to make some brief remarks  
20 in support of the Co-Prosecutor's application to have amicus  
21 curiae assigned by the Chamber to assist Mr. Nuon Chea and Mr.  
22 Khieu Samphan in Case 002/02. Yesterday we filed an application  
23 in support of that motion and I would like to say a few words in  
24 that regard.

25 [10.58.12]



1 For introductory purposes, I would like to say, and I have  
2 already said before, that we endorse the fundamental rights of  
3 the Accused to actively participate in their defence. I do so  
4 understand because we are auxiliaries of justice, officers of  
5 court and also lawyers, and it is very important to us, Civil  
6 Party Lawyers, that the Accused should fully participate in their  
7 defence.

8 This said, we are of the view that the Co-Prosecutor's  
9 application would help harmonise respect for the Accused rights  
10 to participate in their defence and the rights of those who  
11 represent - that is, the Civil Parties, to have a trial without  
12 undue delay. And that is why we support the Co-Prosecutor's  
13 application and it is in that perspective that we are speaking  
14 here. We do not represent the public, we represent 3877 victims  
15 of the Democratic Kampuchea Regime and Ang Pich and myself have  
16 to synthesize the interests of all those persons. And it is in  
17 the direct interests of that group that this trial should proceed  
18 as expeditiously as possible for the following reasons.

19 [11.00.00]

20 The persons we represent are aging as well. They also have health  
21 problems, they have problems related to their memory, and the  
22 Chamber is aware of that. They are also frustrated by the length  
23 of the proceedings and you have seen that the civil parties speak  
24 about such frustration whenever they take the floor. We are aware  
25 of it because we represent those persons and we are minded to

1 articulate those interests. You, the Chamber, have to strike the  
2 balance between the fundamental rights of the Defence and the  
3 rights of the victims who are keen to make sure that the  
4 proceedings move forward quickly. And that is why we have decided  
5 to support the Co-Prosecutor's application because that motion  
6 combines all the interests you have at heart; the interests in  
7 making sure your decisions are adhered to. You have the means to  
8 compel Nuon Chea and Khieu Samphan to appear before you, and you  
9 even have the right to use force to compel them to appear. And  
10 for us, the Civil Parties, it is of the utmost interest to make  
11 sure that these Accused are represented by their lawyers in order  
12 that their interests are fully respected and their fundamental  
13 rights are adhered to.

14 [11.01.45]

15 MR. PRESIDENT:

16 Thank you, International Lead Co-Lawyer for Civil Parties. The  
17 Chamber would like now to ask Nuon Chea's defence if you wish to  
18 make any observations or comments.

19 MR KOPPE:

20 Thank you, Mr. President. There are two preliminary issues I  
21 would like to raise before possibly answering the submissions of  
22 the Prosecution and the Civil Parties. The first preliminary  
23 question is relating to the Civil Parties, especially to the  
24 lawyers of the Civil Parties and maybe also to the Civil Parties  
25 in the back, no there aren't any.

1 My question is the following. Yesterday I read in the Cambodia  
2 Daily a report called: "ECCC warns Defence teams for misconduct."  
3 And in this report of the Cambodia Daily I read the following:  
4 "Civil party, Pen Soeun, a member of a victims' association that  
5 has recently come together to demand cash reparations from the  
6 ECCC, said he fully supported the defendants' boycott.  
7 'We civil parties are not angry and do not have a bad reaction  
8 against the Defence teams of the two Accused, but we think they  
9 have done the right thing', he said."

10 [11.03.26]

11 Now, who is this Mr. Pen Soeun? In another report in the Cambodia  
12 Daily of October 25, Mr. Pen Soeun is quoted on the action of the  
13 Civil Parties during the opening of the substantive hearings. And  
14 it seems that his actions or his protests are supported by a  
15 lawyer called Lor Chunthy. The Cambodia Daily report says that  
16 he's a lawyer from Legal Aid of Cambodia which represents 1217  
17 civil parties. Now my question is, preliminary question to the  
18 International Co-Lead Lawyers for the Civil Parties, who is she  
19 representing? Is she talking on behalf of all civil parties or  
20 just a few? That would be my first preliminary remark.

21 My second preliminary remark would be about the status of this  
22 hearing. Maybe it is wise, or maybe it seems appropriate to have  
23 an introduction to Cambodian Law in response to International  
24 Co-Prosecutor's words. I might remind International Co-Prosecutor  
25 of Article 12 of the Law on the Establishment of the

1 Extraordinary Chambers. Article 12 says the procedure shall be in  
2 accordance with Cambodian Law.

3 [11.05.21]

4 Article 316 of the code – of the Criminal Code of Procedure in  
5 Cambodia, a law adopted by Parliament, signed by the King in  
6 accordance with, apparently, the wish of the Cambodian people, as  
7 opposed to the Internal Rules that we are speaking of. This

8 Article 316 says:

9 "Trial hearings shall be conducted in public. However, the Court  
10 may order a complete or partial in camera hearing if it considers  
11 that the public hearing will cause a significant danger to the  
12 public order or morality. The Court shall decide by a written  
13 decision separate from the judgement on the merits or by special  
14 section within the judgement on the merits."

15 The same provision you can find in the Internal Rules. In  
16 principle, any hearing of the Trial Chamber is held in public.  
17 When I look at the Internal Rules specifically relating to Trial  
18 Management, Article 79, paragraph 7:

19 [11.06.48]

20 "In order to facilitate a fair and expeditious conduct of the  
21 proceedings, the Chamber may confer with the Parties or their  
22 representatives as applicable by holding a Trial Management  
23 Meeting. Such a meeting shall be held in camera unless the Trial  
24 Chamber decides otherwise. The purpose of this meeting will inter  
25 alia be to allow exchanges between the Parties, to facilitate the

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1 setting of the date of the initial or of the substantive  
2 hearings, and to review the status of the case, by allowing the  
3 Accused to raise issues in relation thereto, including his or her  
4 mental and physical conditions."

5 [11.07.25]

6 Now, having sketched the legal framework, my question is, and  
7 that's a preliminary question, why are we having this very  
8 fundamental discussion on whether we should have amicus curiae at  
9 this Court, something that doesn't exist in the Internal Rules,  
10 by the way? Why are we having this in camera? Why am I not  
11 wearing my robe, making a proper argument in front of the public?  
12 So, these are the two preliminary questions I would like to  
13 raise. I think they should be answered before we answer to the  
14 merits of the submissions of the Prosecution.

15 MR. PRESIDENT:

16 (No interpretation)

17 MS. GUISSÉ:

18 Mr. President, I would like to say a word quite simply to support  
19 the submissions of my learned colleague, Koppe, which we referred  
20 to yesterday. Because, we are of the view that the issues we are  
21 discussing today are so important that they should not be  
22 discussed in closed session. These discussions should be in the  
23 public domain. Everything should be public, because these are  
24 very important issues.

25 [11.08.55]

1 MR. PRESIDENT:

2 Do you have any comments or observations to make regarding the  
3 issue at hand?

4 MR. KONG SAM ONN:

5 Thank you, Mr. President.

6 I will not make comments regarding the meetings or hearings held  
7 in camera. I'd like to respond to the International  
8 Co-Prosecutor's statement. We have heard the request made by the  
9 International Co-Prosecutor on the request for the amici curiae  
10 counsel. What is requested by the International Co-Prosecutor is  
11 not in line with any applicable law of the Kingdom of Cambodia.  
12 I'd like to touch upon this issue, in particular on the code of  
13 ethics for lawyers, on the choosing and acceptance of lawyers by  
14 the Accused. As a universal and general principle, the right of  
15 the Accused is recognized by the law in Cambodia and by this  
16 Court.

17 [11.10.22]

18 I'd like, Your Honours, to refer to Article 13 of the Agreement  
19 between the United Nations and the Royal Kingdom of Cambodia,  
20 stipulating the fact on the right of the Accused. I'd like to  
21 only focus on two points. One is the selection of counsel through  
22 his or her own choice, and that is very important in relation to  
23 the request put forward by the International Co-Prosecutors. Nuon  
24 Chea and Khieu Samphan currently have their counsel, and I am the  
25 counsel defending my client before this Court. As a counsel for

1 Khieu Samphan, I do not give away or abandon my client.  
2 Currently, I am the lawyer for my client, and I work together  
3 with my international counterpart.  
4 Secondly, on the right to have sufficient time for the Defence,  
5 that is another right of the Accused mentioned in the said  
6 Article of the Agreement. So, what is requested by the  
7 Prosecution is related to these two rights. If the Chamber forces  
8 the Accused to have a counsel, that is contradictory to his right  
9 to have his counsel of his own choosing. That, of course, is in  
10 violation of his right.  
11 Secondly, in reference to the code of ethics for lawyers of the  
12 Bar Association of Cambodia, please refer to Article 45 on the  
13 substitution and adding of lawyers. If I am a lawyer for my  
14 client, Khieu Samphan, and I do not resign, how can another  
15 lawyer be assigned to replace my position? And that is clearly  
16 contradicting the code of ethics. It's like the later lawyer is  
17 going to grab my seat and my profession with my client, and this  
18 is not applicable.  
19 [11.13.12]  
20 So, to me, I actually do not understand well about the request  
21 made by the Prosecution on the amici counsel. Of course, if there  
22 is consent from the counsel - from the current counsel and from  
23 the client, then that will be acceptable. But in this case, it's  
24 a clear violation of the process. And I'd like to stress on the  
25 time of the working hours, and I have repeated it on several

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1 occasions, that if a decision by the Chamber is not satisfied by  
2 the Accused, Khieu Samphan, or another Accused, and that he  
3 instructs his counsel not to attend, that's going to interfere or  
4 to have a delay on the proceedings in this Court.

5 But you have to look at it from another way: the Accused has his  
6 full right and he is not in a position to accept or to  
7 acknowledge all the decisions made by the Chamber. If that is the  
8 case, there is no need to have the ground of another  
9 participating in the proceedings, or not to have the ground for  
10 his defence. There has to be a legal basis or ground that can be  
11 used to support and to protect the interest of the client.

12 [11.15.11]

13 What we did, it's not actually a boycott, but it is the time  
14 constraint that we had to choose, that we cannot work on two main  
15 tasks in parallel. Thank you.

16 MR. PRESIDENT:

17 Thank you. And, what about the head of the Defence Support  
18 Section? Do you wish to make any comment on the request by the  
19 amici curiae counsel requested by the Prosecution? And before  
20 that, I'd like to give the floor first to Madame Counsel for  
21 Khieu Samphan.

22 MS. GUISSÉ:

23 Yes, Mr. President. When the Co-Prosecutors have time to respond,  
24 unless you want them to respond first, I would like to say  
25 something, following what my learned colleague has just said in



1 response to the Co-Prosecutors.

2 [11.16.20]

3 To support what my learned colleague has said, there are several  
4 issues that were raised in the Co-Prosecutors' application. I  
5 would like to start by saying something regarding his claim that  
6 we are defying the orders of the Chamber, and regarding our  
7 status as Defence counsel before this Chamber. There is indeed a  
8 huge gap between the Co-Prosecutors and the Defence. The concept  
9 of officers of court does not exist in our civil law system. We  
10 are officers of court. It means that we support the justice  
11 system, and we work hand in hand with the judicial officers. And  
12 as I said earlier, it is not a question of stalling the  
13 proceedings.

14 We have pointed out from the very outset that if you wish to  
15 continue with the proceedings, and to force Mr. Khieu Samphan to  
16 appear before this Chamber, you have the right to do so. But the  
17 question is, is this in line with his rights? Will his defence be  
18 effective or not?

19 [11.17.55]

20 When we consider the application by the Co-Prosecutors, Your  
21 Honours, you have been asked not to buttress the rights of Mr.  
22 Khieu Samphan and Mr. Nuon Chea, but to ensure some  
23 window-dressing, the appearance of a defence. The same  
24 Co-Prosecutor, who is telling us to proceed more expeditiously,  
25 is asking us to have amicus curiae. In a motion by the

1 Co-Prosecutors, the prosecutor is asking for additional pages to  
2 respond to the Nuon Chea motion for disqualification.

3 The first point made, to counter that motion, was to allow the  
4 judges to familiarize themselves with the issues. It would take  
5 months for them to prepare themselves.

6 And the Prosecutor is saying that we should designate amicus  
7 curiae to defend the Accused. They would certainly appear in  
8 their robes before this Chamber, but if it would take them  
9 several months for the judges to familiarize themselves with  
10 proceedings of this scope, you would also understand that a  
11 newly-appointed lawyer would also need the same amount of time to  
12 familiarize himself or herself with the proceedings.

13 [11.19.42]

14 Such amicus curiae would not have the approval of Mr. Khieu  
15 Samphan, so that person would not be able to cooperate with Mr.  
16 Khieu Samphan. And the Co-Prosecutor is saying that it would  
17 guarantee the rights of the Defence. It would only be for  
18 window-dressing, it would not provide for effective defence.

19 At this point in time, when we are talking of proceedings, at  
20 first instance and appellate proceedings, you would agree that  
21 our energies should focus on the Appeal. Can you imagine if that  
22 would not tally with Mr. Khieu Samphan's right to properly defend  
23 himself, and that someone would appear simply for  
24 window-dressing?

25 In paragraph five of the Co-Prosecutors' motion, they claim that

1 we are acting in defiance of the proceedings - of the procedures.  
2 What we are doing is to preserve whatever is left of his rights.  
3 And we are doing this in order to defend his interests to the  
4 best of our ability. We have no choice but to do so.

5 [11.21.24]

6 In paragraph eight of the Co-Prosecutors' application, it says  
7 that in Rule 24 we are under a duty to act in such a manner as to  
8 expedite the proceedings, and to be fair. The appearance of  
9 fairness, or acting in such a manner that it is a mere  
10 window-dressing, would not defend the interests of Mr. Khieu  
11 Samphan. The Khieu Samphan team has never acted contrary to the  
12 principle of ensuring that his defence is effective and as  
13 complete as possible, as part of the appeal against the Judgement  
14 in Case 002/01.

15 In paragraph 10 we are told that the delays that the Defence  
16 would cause, by insisting on the approach that they have adopted,  
17 would be cowardly. If defending one's client to the best of one's  
18 ability is not reasonable, if it is not a reasonable ground for  
19 action on the part of the Defence, I don't understand what is.

20 [11.22.59]

21 Mr. Khieu Samphan has never told his lawyers to stop representing  
22 him. He has always asked us to defend him as much as possible in  
23 his defence. Since the code of ethics has been mentioned in the  
24 Co-Prosecutors' application, let me also give some lessons in  
25 ethics by noting the text that exists in this regard, before this

1 Chamber.

2 Since we are before a United Nations Tribunal, and we are acting  
3 according to principles adopted by the Eighth Congress of the  
4 United Nations on the 28th of August 1988.

5 Paragraph 14:

6 "By protecting the rights of their clients, and promoting the  
7 cause of justice, lawyers should try to ensure that human rights  
8 and fundamental freedoms recognized by international and national  
9 laws are adhered to, and that they should act at - every time  
10 freely and with diligence, in accordance with the law and the  
11 norms recognized by the code of ethics of lawyers."

12 Paragraph 15: "Lawyers will always defend the interests of their  
13 client fairly."

14 [11.24.29]

15 Today the Chamber is being asked to assign counsel who would not  
16 only act in violation of the wishes of the client, but would  
17 spend at least a number of months to familiarize themselves with  
18 the case file, because they would not know the case file unless  
19 they do so.

20 Let me quote the Internal Rules of the Paris Bar Association.

21 This document has also been quoted by the Co-Prosecutors in their  
22 motion, but with an extremely partial interpretation. So I'll  
23 quote it in its entirety:

24 "21.2.1.1 The multiplicity of the duties of a lawyer impose on  
25 him or her absolute independence, free from all pressure, free

1 from his own interests or external influence. Such independence  
2 is as important as the impartiality of the judge. The lawyer  
3 should therefore avoid any attack on his or her independence, and  
4 make sure that the code of ethics is not interfered with by the  
5 judges or third parties, or even by his or her client."

6 [11.26.01]

7 The Co-Prosecutors even ask for some sanctions against us. Taking  
8 into account the interests of the clients, we the lawyers took a  
9 decision that is not necessarily in our interests. Because we  
10 have been warned by you, we've taken our decision not to please  
11 you or third parties, but solely in the interests of our client.

12 And I quote again:

13 "Such independence is necessary for both legal and judicial  
14 activities. The advice given to the client by the lawyer has no  
15 value if it's given with complacency or under pressure from  
16 outside."

17 So, we haven't acted contrary to the interest of our lawyer - of  
18 our client, and an appointing counsel who is not approved by the  
19 client will not be in a position to defend the interests of Mr.  
20 Khieu Samphan in their entirety.

21 [11.27.12]

22 And paragraph 21 2.7 of the same Internal Rules:

23 "In the interests of the client, by respecting the rules of  
24 ethics strictly, the lawyer is under a duty to defend his  
25 client's interests to the best of his ability, even contrary to

1 his own interests, or those of his colleagues."

2 Lastly, and this is perhaps at the very centre of our debate  
3 today, since we are being accused of stalling the proceedings,  
4 and defying the orders of the Chamber unreasonably. In that  
5 respect, we are being accused of being incompetent.

6 Paragraph 21.4.3; Respect for Judges:

7 "While ensuring that they are loyal and respectful of the judges,  
8 the lawyer and his client must not take into account his or her  
9 personal interest."

10 No one should therefore tell us on the side of the Co-Prosecutors  
11 that the Code of Criminal Procedure in Cambodia does not  
12 countenance such a situation. Since, in Article 84 of that Code,  
13 mention is made of the need to protect the right to justice, and  
14 the need to be independent and respectful of the judges.

15 [11.28.48]

16 And we are also told that the lawyer is entitled to advance any  
17 arguments, any points, in the interests of the client. In the  
18 code of conduct governing lawyers, it is stated that the lawyer  
19 should make every effort to ensure a genuine fair trial, while  
20 upholding the rules of procedure.

21 And we are being told today that it is important to assign  
22 counsel who would be *amicus curiae*, a friend of court, but who  
23 would not be appointed or endorsed by his or her client, and who  
24 would simply appear and wouldn't defend the interests of the  
25 client.

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1 That is the main thrust of the Co-Prosecutors' motion, which is  
2 supported by the Civil Parties. That person will not fully defend  
3 the rights of the client effectively, and what really matters is  
4 defending Mr. Khieu Samphan's rights effectively, as he wishes,  
5 and fully, before the Appeals Chamber. That is what we are doing.  
6 When we shall have defended his interests fully before the  
7 Appeals Chamber, we can then appear before the Trial Chamber.

8 [11.30.26]

9 Mr. President, Your Honours, that is the only possible appeal  
10 against a judgement that you delivered. It is the only possible  
11 appeal that would enable the Supreme Court Chamber to rule on  
12 issues in the first trial segment. The Supreme Court Chamber is  
13 not cognisant of all those issues. He is not aware of the case  
14 file. And anyone who is not aware of all those issues in the  
15 first trial segment will not be in a position to defend our  
16 client, Khieu Samphan. It would be an error to entertain that  
17 application.

18 Looking at the Co-Prosecutors' interpretation of the situation, I  
19 think we'd face many difficulties if that application is granted.  
20 In any case, the Co-Prosecutors' application is unreasonable in  
21 terms of the timeframes before us. But it would also be a  
22 violation of the rules of procedure.

23 [11.32.03]

24 As I pointed out earlier, our first advisor is Mr. Khieu Samphan.  
25 This morning he has expressed the wish to respond personally to

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1 that application, and that is why he is here present today. May I  
2 therefore request the Chamber to give him the floor?

3 MR. PRESIDENT:

4 You may now proceed, Mr. Khieu Samphan.

5 KHIEU SAMPHAN:

6 Thank you very much, Mr. President.

7 I have read the letter dated on 22nd October 2014. I am very  
8 doubtful, and I am sure that there will be a matter raised in  
9 relation to my rights and my defence team. For this reason I am  
10 here today.

11 So, it is now true that today we discuss this matter. The  
12 Co-Prosecutor requests to assign amici curiae counsel, I would  
13 like to inform the Chamber and everybody that this request is to  
14 dismiss my counsel.

15 [11.33.48]

16 So far, I have been working very hard. I have been in the Court  
17 hearings, and my counsel are all here regularly. So, I do not  
18 have any intention to obstruct the proceeding. If I were outside  
19 the courtroom, I was in the detention - it is my intention to  
20 obstruct the proceedings. But I am here, so what is the interest  
21 to delay the proceeding?

22 So, the assertion, the argument, of the Co-Prosecutor is moot.

23 It's not correct. I have never mentioned that - I have never  
24 mentioned that I dismissed my counsel, so there is no reason to  
25 dismiss my counsel.



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1 And as for amicus curiae, I do not really understand. They may  
2 not understand my case, so how could they defend my case? My  
3 counsels, they have been working with me for three years.  
4 Sometimes, they may come to me and ask for clarification on some  
5 issues. So, I would like to make clarification on this point. In  
6 some cases, my counsel may not understand well some of the  
7 points. They have to come to me and seek my clarification. What  
8 if there are new lawyers? They do not really understand my case,  
9 they just come for the sake of defending. They come to be in the  
10 show trial.

11 So, I want to make clear on this point. I absolutely do not  
12 accept any new lawyers, new counsel. Thank you very much.

13 [11.36.13]

14 MR. PRESIDENT:

15 You may now proceed, Judge Fenz.

16 JUDGE FENZ:

17 This is just an attempt to streamline today's hearing. This is  
18 for the defence of Mr. Nuon Chea. We obviously took note of what  
19 you said in the beginning, and as far as legally relevant, it  
20 appears to boil down to a request to make the results of today's  
21 hearing public.

22 Now, the President has authorized me to assure you this will  
23 happen. Now, my question is - our question is: do you wish to  
24 comment on the substance? Because you haven't done this so far.

25 [11.37.00]

1 MR. KOPPE:

2 Thank you, Judge Fenz. I think, and I apologize for - that my  
3 request maybe wasn't understood well. I think it is our firm  
4 belief that this hearing should be in public. We should wear our  
5 robes. We should have a debate, a public debate, on this very  
6 fundamental issue. Publishing a video of a hearing later is not  
7 the way it is supposed to be done.

8 So this is a very fundamental adversarial issue, which does not  
9 belong on a Trial Management Hearing. It has nothing to do with  
10 trial management. It goes directly to the fairness of the  
11 proceedings, so the request is to stop here, to reconvene at any  
12 appropriate time, with our robes on, and to publicly debate this  
13 issue. That is the request.

14 [Judges deliberate]

15 [11.39.04]

16 MR. PRESIDENT:

17 You may now proceed, Co-Lead Lawyer - Lead Co-Lawyer.

18 MS. GUIRAUD:

19 Thank you, President.

20 Just before you issue your decision on whether this hearing will  
21 be made public, I think it's rather important to address the  
22 opening remark made by my learned colleague from the Defence,  
23 with respect to who exactly we represent on this side of the  
24 courtroom.

25 I simply want to recall what is the foundation of everything,

1 which is the Internal Rules. Internal Rule 12 ter five, states  
2 that we represent the consolidated group of civil parties. The  
3 defence lawyers understand that the civil parties do not  
4 participate individually to the proceedings of evidentiary  
5 hearings, but that they are represented, and they participate, as  
6 a consolidated group.

7 [11.40.04]

8 Ang Pich and myself defend their interests. In concrete terms,  
9 how do we defend the interests of a group that is made up of some  
10 3,867 civil parties? Well, we execute a very difficult daily  
11 task, which is to draw a synthesis of all matters. And we take a  
12 position, a public position, in this courtroom, on behalf of the  
13 consolidated group of civil parties, on whose behalf we speak.  
14 I wish to be perfectly clear, understanding this was validated  
15 once again in the Judgement of this Chamber, issued in - on the  
16 7th of August, and nowhere in the notification of appeal was  
17 there any challenge to how the civil parties are represented in  
18 Case 002/01 or 02.

19 So, two things. The defence for Mr. Nuon Chea raised the issue of  
20 whether or not this was a show trial, and if it was difficult for  
21 us on a daily basis to represent the consolidated group. And I  
22 fully agree with you, my learned colleague, this is a enormous  
23 challenge. But if the objective of my learned colleague was to  
24 underscore something much more systemic, and each time Ang Pich  
25 or myself are to take the floor before this Bench, and if the

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1 Defence are to rise and challenge our legitimacy to speak on  
2 behalf of the consolidated group, well there, I would invite the  
3 Chamber, as I've already done, I would invite the Chamber to make  
4 the necessary clarifications to reassert and reaffirm once again  
5 the role of this consolidated group, and the rights of this  
6 consolidated group as a full-fledged party in the proceedings in  
7 this courtroom. Thank you.

8 [11.42.22]

9 MR. PRESIDENT:

10 I now give the floor to the International Co-Prosecutor. You may  
11 now proceed.

12 MR. KOUMJIAN:

13 Thank you, Your Honour.

14 To begin with, I see it's a quarter to 12, and I initially want  
15 to say that, as we stated, as I stated, at the last Trial  
16 Management Meeting, in which the Defence teams did not appear, I  
17 felt the issue of discussing the defendants' boycott of the  
18 proceedings should be done in public. And again, I reiterate  
19 that, and I would support the Defence motion. I'm completely  
20 indifferent to whether we wear robes or not, but I would ask now  
21 for Your Honours to consider coming back at 1.30 with the doors  
22 open, and in public hearing.

23 If you do not want to do that, then I do have some other comments  
24 to make. So, I first would ask you to consider that, and then if  
25 you instruct me to go on, I will go on now with my further

1 comments.

2 [11.43.27]

3 MR PRESIDENT:

4 Now, I give the floor to Judge Fenz. She will respond to the  
5 comments made by the defence team for Mr. Nuon Chea and also the  
6 comments made by International Co-Prosecutor. You may now  
7 proceed, Judge Fenz.

8 JUDGE FENZ:

9 The Chamber notes that the Trial Management Meeting had various  
10 objectives. Some of them made the Chamber - or the nature of some  
11 of them made the Chamber decide that it should be in closed  
12 session. Now, as I've mentioned before, the Chamber agrees that  
13 the debate on this issue, meaning the issue of amicus curiae,  
14 should be public. There are various ways to achieve this. The  
15 Chamber rejects the request to adjourn and re-open in open  
16 session in the afternoon. It will, however, publish the contents  
17 or the tapes of the Trial Management Meeting.

18 [11.47.38]

19 We wish to point out that this whole debate could very well be in  
20 writing only. There is no absolute need to do this verbally. We  
21 have chosen to do it for expeditiousness' sake. Therefore the  
22 time to make substantive arguments is now and only now.

23 And, may I just - because I think it's easier if the Prosecution  
24 answers once we have everything from the Defence, and so I'm  
25 asking again Mr. Koppe if he wishes to comment on the substance.

1 MR. KOPPE:

2 Thank you, Judge Fenz, members of the Trial Chamber. As indicated  
3 by me earlier, I think this is a very principled issue. We have  
4 received the submissions by the Prosecution only a few days ago.  
5 We have been able to, in a sketchy sense of the word, discuss the  
6 content of that request with our client yesterday.

7 [11.49.26]

8 The position of our client in respect of that request has been  
9 made I think abundantly clear in his personal letter of  
10 yesterday, the same day, to the Chief of the Defence Section, Mr.  
11 Endeley.

12 Nuon Chea will categorically refuse any form of amicus curiae  
13 forced upon him or any other lawyers forced upon him.

14 So that is our very preliminary position. The question is whether  
15 we should and how we should deal with this matter. Again, it  
16 should be in a public hearing, but you have ruled, so I will give  
17 you right now some preliminary remarks that I have.

18 As observed by the Prosecution and other Parties, our position in  
19 this whole matter is indeed different from the Khieu Samphan  
20 team.

21 [11.50.26]

22 It is our firm belief that Cambodian law is very strict on what  
23 judges should do in the matter of requests for disqualification.  
24 I can repeat what I said earlier about how we should interpret  
25 the legal framework within the proceedings, or within the ECCC.

1 Article 560, Article 595 of the Cambodian Code of Criminal  
2 Procedure is very clear, a judge shall step down while a decision  
3 is pending on disqualification. You have chosen to give primacy  
4 not to the law of this country, but to Internal Rules which are  
5 clearly contrary to Cambodian law.

6 It is true, as the Prosecutor said, that in the past we have  
7 chosen not to pursue this issue. However our disqualification  
8 motion, 45 pages, after a judgment in which our client was  
9 convicted to a life sentence, is so fundamental, so principled,  
10 that to me, that to us, that to Nuon Chea, it is incomprehensible  
11 that you have decided to go ahead anyway; that you have issued a  
12 Scheduling Order, in the full knowledge that we were going to  
13 file this request for disqualification.

14 [11.52.16]

15 As a matter of fact, in the previous Trial Completion Report, it  
16 was expressly indicated that this request would come and that  
17 proceedings would be delayed possibly with one or two or three  
18 months. The fact that you haven't done that, the fact that the  
19 Trial Chamber has showed, as we would like to see it, contempt  
20 for the proceedings, contempt for Cambodian law, was the reason  
21 that Nuon Chea took this very unusual decision. A decision which  
22 has never done - which he has never made before. He has always  
23 abided by rules, procedures, etc. in Trial 002/01. But now he has  
24 said "enough is enough".

25 So this is just again to clarify the principled position of our

1 clear - of our client. Now there's many things that I can say  
2 about the very opportunistic way of operating with the  
3 Prosecutions and the Civil Parties in immediately jumping on this  
4 issue by asking for the appointment of an amicus curiae. It's  
5 almost like the child in the schoolyard complaining with the  
6 teacher that the other children are cheating. It feels like that.  
7 It is behaviour, I think, not fitting the Office of the  
8 Prosecution.

9 [11.54.09]

10 Notwithstanding all this, notwithstanding the opportunistic moves  
11 of the Prosecution, we can give a preliminary reaction. I think  
12 the Chief of the Defence Section is perfectly able to tell you  
13 that it would be highly unpractical to even consider this idea. I  
14 believe it was his words of last week's Trial Management Meeting  
15 that it will take up to at least four months to even find an  
16 appropriate counsel. I suspect, but I stand corrected if I'm  
17 wrong, that the qualifications for an amicus curiae will be the  
18 exact same as the qualifications for an amicus curiae. I presume  
19 it will take at least six months for any amicus to get acquainted  
20 with the case file and everything that happened in the last three  
21 years. But I'm sure from a practical point of view Mr. Endeley is  
22 quite capable and authorized to give these remarks.

23 [11.54.57]

24 One other point that I would like to make is just if we have a  
25 look again at the holy grail of the trial proceedings here, the



1 Internal Rules, I don't see any provision in the Internal Rules  
2 that allows the Trial Chamber to appoint an amicus curiae.  
3 We are in a civil law system. Amicus curiae is a phenomenon, that  
4 I think, only exists in common law systems. I myself come from a  
5 domestic system, which is a civil system, almost a copy from the  
6 French system. I can assure you there's never any decision in 160  
7 years of criminal law, criminal procedure in Holland wherever -  
8 whenever an amicus curiae was appointed. I'm sure my French  
9 colleague will confirm this. My Cambodian colleagues can say that  
10 no such thing as amicus curiae exists within Cambodian  
11 proceedings.

12 We're always being accused of using tactics and strategies and  
13 delays and what have you. I think what we're having now, what  
14 we're facing, is tactics and strategies from the Prosecution.  
15 Very opportunistic ones, as I said earlier.

16 The position of our client is still clear. We are waiting for a  
17 decision of the Special Bench. We have no idea when that decision  
18 will come. In my own domestic proceedings, decisions like this  
19 are usually rendered within days after disqualification motion,  
20 so I'm not quite sure why it would take very long.

21 [11.57.34]

22 We have - our client has quoted the spokesperson of this tribunal  
23 saying that it would last at least three months. Whether that is  
24 the case, I'm not sure. But I do anticipate that if we have an  
25 imminent decision or if we have a decision soon, it will be an

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1 unreasoned decision or a decision with reasons to follow. I'm not  
2 sure whether that would satisfy the position of Nuon Chea. But  
3 our position is to take a step-by-step approach in this matter,  
4 especially in the light of the fact that the issues that we have  
5 raised in our disqualification motions go directly to the  
6 independence of National Judges.

7 So it might very well be possible that we will have a split  
8 decision at the Special Bench or maybe a dissenting opinion of  
9 one of the International Judges. But let's cross the bridge when  
10 we get there. Right now, our position I think is crystal clear.  
11 Our client has instructed us not to take part in the substantive  
12 hearings as long as there's no decision.

13 To appoint an amicus now would not only be ludicrous from a  
14 practical point of view, it would violate every principle of  
15 fairness, fair trial, in this case. Thank you.

16 [11.59.40]

17 MR. PRESIDENT:

18 Thank you. You may now proceed, Judge Fenz.

19 JUDGE FENZ:

20 Just two additional questions directly pertaining what you just  
21 said. Did I understand you correctly? I haven't heard about the  
22 idea of a decision without reasons to follow, but since you  
23 raised it: if a decision with reasons to follow came, you are  
24 basically saying, "we might not participate from then onwards  
25 either." And this leads to the obvious last question: what

1 happens if the decision you get is not to your liking - reasoned  
2 decision you get is not to your liking?

3 [12.00.25]

4 MR. KOPPE:

5 Thank you for this question, Judge Fenz, but to be honest there's  
6 only one person who can answer your questions and he is not in  
7 this courtroom. We are acting solely, exclusively on his  
8 instructions. If he tells us this is unsatisfactory, we, as civil  
9 law lawyers are bound by his instructions. We are not officers of  
10 this Court, I cannot repeat that enough. So our ethical rules  
11 will prohibit us from participating.

12 I'm not saying that our client will instruct us as indicated. I'm  
13 not saying it is a given that whatever decision, reasoned or  
14 unreasoned, negative or positive, will be the end of his present  
15 instructions. I'm not - again, I'm not saying that he will. It's  
16 up to him and only him.

17 MR. PRESIDENT:

18 What about the Chief of DSS? Have you got any comments to be made  
19 in relation to the appointment or assignment of amicus curiae and  
20 advance of the proceeding? Advancement of the proceeding, rather.  
21 You may proceed.

22 [12.02.12]

23 MR. ENDELEY:

24 Thank you, Your Honour. Yes indeed I do have a few observations.  
25 First of all, I believe Ms Anta Guisse and Mr. Victor Koppe have

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1 both very properly articulated the main Defence position and the  
2 DSS is one hundred per cent behind them. The reasons that they  
3 have given for the current situation is fully - are fully  
4 supported by the Defence Support Section. So, I'm not going to go  
5 into the details of what they've already said, I don't need to  
6 repeat those.

7 What I'd just like to point out to are first of all, to remind  
8 the Court that in addition to the Accused person's right to  
9 participate fully in their own defence, they also have a right to  
10 be represented by counsel of their own choosing. That's a  
11 fundamental right that's practiced at all the major tribunals  
12 around the world. So having counsel here who do not have the  
13 approval of the Accused, who are unable to consult with the  
14 Accused, who are unable to receive instruction from them will not  
15 actually be representing the Accused. They may be representing  
16 the interests, but not the Accused themselves.

17 [12.03.22]

18 I received yesterday, as Mr. Koppe has just mentioned, I did  
19 receive yesterday, 27 October, a letter from Mr. Nuon Chea. It's  
20 a fairly short letter, I'll just read to you the concluding  
21 paragraph, a quick translation into English.

22 "Today, I have been informed that the prosecutors want the ECCC  
23 to appoint new lawyers. Let me be very clear to you. It is my  
24 absolute stance that I shall not accept, under any circumstances,  
25 new lawyers. I have absolute faith and confidence in Son Arun and

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1 Victor Koppe. If the Court decides to appoint new lawyers, I  
2 shall not accept them, and I shall refuse to come to court. Only  
3 by use of force shall I attend any hearing. I would like to  
4 invite you to my cell so that you can hear my position in  
5 person". End of quote.

6 [12.04.20]

7 Your Honour, the mandate of the Defence Support Section is in  
8 fact to support the Defence, it is in fact to ensure that the  
9 Accused have all the facilities guaranteed by the law - under the  
10 law, to protect their rights, to protect themselves. Having  
11 counsel that is not the counsel chosen by the Accused persons  
12 does not protect that right. Actually it's in violation of the  
13 right. So it will be very hard for the Defence Support Section to  
14 support counsel that are not assigned - that are not chosen and  
15 are not approved by the suspects even if they are imposed by the  
16 Court.

17 I think maybe I should pause there for now, but I'll be ready to  
18 clarify if need be. Thank you, Your Honours.

19 MR. PRESIDENT:

20 Thank you. The Chamber would like to give the floor now to the  
21 International Co-Prosecutor. You may proceed.

22 [12.05.29]

23 MR. KOUMJIAN:

24 Your Honours, I just have one question for Mr. Endeley, if I may.  
25 May I ask a question to the head of the Defence Support Section?

1 Thank you.

2 Sir, in your view, how is defence counsel that you have appointed  
3 pursuant to the choice of counsel- of the Accused persons,  
4 counsel of their choice, who were provided resources by your  
5 office - how do they protect the rights of the Accused if they  
6 don't go to court?

7 MR. ENDELEY:

8 Your Honour, may I? Thank you, Your Honour. I believe one of the  
9 defence counsel earlier quoted from a statement made last year by  
10 Judge Jean Marc Lavergne where he said the work of judges, and I  
11 suppose the work of lawyers, is not only when they are in court,  
12 it's also when they are away, when they are in their offices. We  
13 receive work schedule on a monthly basis from the Defence teams  
14 and we're quite aware of the work that they do to represent  
15 clients, even when court proceedings are not on.

16 [12.06.44]

17 As you know, they read and respond to motions by the other  
18 Parties, they make motions of their own, they prepare to  
19 cross-examine witnesses, they're working on appeals briefs, and  
20 many other things. So they do represent the client even if  
21 they're not sitting in the courtroom. Thank you, Your Honour.

22 MR. KOUMJIAN:

23 I think my question was misunderstood, but I have general  
24 comments and I think rather than pose questions I can make it in  
25 the form of comments.

1 I think there seems to be a fundamental misunderstanding by all  
2 of the defence counsel that have spoken from the letter Nuon Chea  
3 and from what he said in court today, Khieu Samphan, about what  
4 is being proposed by the Prosecution.

5 [12.07.27]

6 We have not proposed at this point to replace counsel, although  
7 that we believe is certainly open to Your Honours, if counsel  
8 continue to instruct proceedings. We have not proposed that. They  
9 have counsel of their choice. The Defence office has appointed  
10 them. The Defence office has provided them with resources. The  
11 Court has invested millions of dollars in the defence of the  
12 Accused persons. And they're here and capable.

13 The issue is, they're not willing to participate in the trial  
14 under the instructions of their clients. So they have counsel,  
15 the Court has provided it, the Court has paid for it, they're  
16 choosing not to use it. Now, the amicus that we are proposing is  
17 not a counsel appointment. He does not represent the Accused.  
18 They have the lawyers already and they can go to court. Any day  
19 they want to, Ms. Guisse, Mr. Koppe can go to court and  
20 cross-examine the witness or do whatever else is required. But if  
21 they're sitting outside of court, they can't do a  
22 cross-examination, they can't object to the Prosecution  
23 questions.

24 So, we propose, while the Court could simply go on with the trial  
25 with no one being present other than the Accused persons, to

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1 further the integrity of the proceedings that an amicus be  
2 appointed who would make sure that the rights of the defendant  
3 are respected; to object to Prosecution questions, to make  
4 submissions, to do cross-examination.

5 [12.09.08]

6 No one is proposing to replace counsel. And since these amicus  
7 are there to ensure the integrity of the proceedings, to ensure,  
8 Your Honours, that Defence interests are protected, they are not  
9 the lawyers for the Accused and they don't need to be chosen by  
10 the Accused. The Accused may choose to cooperate with them and  
11 consult with them, or they may choose not to, but they have their  
12 own counsel. The counsel are here, and it's the only - they're  
13 only saying they will not participate because they disagree with  
14 rulings of the Court.

15 [12.09.43]

16 So, I'd like to also address particularly the Nuon Chea point and  
17 address point that Mr. Koppe put to me, and that is about the  
18 Cambodian law and Rule 38. Now since 2008, motions for  
19 disqualification have been made and I-

20 MR. PRESIDENT:

21 International Co-Prosecutor, please wait. I think we are running  
22 out of DVD recording facility now.

23 [Short pause]

24 [12.11.13]

25 The International Co-Prosecutor, you may resume.



1 MR. KOUMJIAN:

2 Thank you, Your Honours. I may - thank you. I just - sorry I lost  
3 my thought for a moment. So, the point about defence counsel  
4 arguing that Rule 38 is inconsistent with Cambodian law is  
5 something that has previously been put before Chamber and Your  
6 Honours, ruled against it because the law in establishment  
7 allows, when there is a question about the application of  
8 Cambodian rules in the context of the ECCC, that the Court can  
9 look for international standards.

10 [12.11.57]

11 In - the way to challenge a ruling of the Court is in court; to  
12 challenge it with motions to Your Honour, or to challenge it  
13 before the Supreme Court. It's interesting that in the appeal  
14 filed by Nuon Chea, they listed 233 grounds of appeal. They never  
15 listed as a ground of appeal any challenge to Your Honours, in  
16 the past having sat while the disqualification motions were  
17 pending. They've never done that. Also, the rules allowed the  
18 Defence Support Section, or the defence counsel through the  
19 Defence Support Section, to make proposals for rule amendments.  
20 To my knowledge, someone else may know differently, but I don't  
21 believe any effort has ever been made, any proposal, to amend  
22 Rule 38. The procedures that exist here at the ECCC, in my  
23 submission, are more favourable to the Accused than would exist  
24 in Cambodian Law. In Cambodian Law, the issue - Mr. President,  
25 you and your fellow Cambodian Judges know better than me - but I

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1 believe the issue would go to a single judge, the President of  
2 the next higher body, who would decide the issue and this would  
3 have been decided a long time ago. And certainly, we also would  
4 hope this decision's decided as soon as possible.

5 [12.13.17]

6 So, the question, then, is not whether or not defence counsel  
7 agrees or disagrees with rulings of Your Honours. He has a right  
8 to disagree. The question is: does he then have a right to  
9 obstruct the proceedings, or does his client, by saying we don't  
10 like a ruling therefore we will not have counsel participate any  
11 further in the trial? So my question back to him would be: why do  
12 you believe you have a right to obstruct proceedings simply  
13 because you disagree with a ruling of the Court? Wouldn't that  
14 lead to complete chaos; if the prosecution disagrees with a  
15 ruling, we walk out of court and say we will not participate. If  
16 the Defence disagrees with a future ruling of Your Honours, they  
17 announce their trial won't go on; they don't like the game  
18 anymore; they won't participate. So, fundamentally, the Defence  
19 has every right to disagree with Your Honours, but they do not  
20 have a right to then say, because of our disagreement, we will  
21 obstruct the proceedings.

22 [12.14.30]

23 MR. PRESIDENT:

24 Chief of the Defence Support Section, you may proceed.

25 MR. ENDELEY:

1 Thank you, Your Honour. Just to add to the comments I made  
2 earlier. If you recall, at the last Trial Management Meeting a  
3 week ago, I indicated to you that it might take about three to  
4 four months to get a competent, available lawyer on board. I  
5 should add that this does not include the amount of time that he  
6 or she is going to require to get familiar with the case file.  
7 That, in itself, will take very many months because it's an  
8 enormous case file. I also would like to say that before any  
9 amicus curiae can come and participate, he or she should have  
10 knowledge of the case. The Prosecutor seems to be suggesting that  
11 we could just get a warm body to sit in the Defence dock and  
12 listen to the proceedings. That will not be defending the  
13 interests of the Accused person.

14 [12.15.29]

15 We need somebody who can – who knows the case, who has the  
16 approval and consent of the Accused persons, who can adequately  
17 represent the accused persons. It is, after all, the life of the  
18 Accused that is at stake here; they are the ones who have been  
19 sentenced to life imprisonment, so they should have an active  
20 role. As you've heard from Mr. Nuon Chea's letter that I just  
21 read to you, he has no intention of cooperating with any lawyer  
22 other than Mr. Son Arun and Mr. Victor Koppe. And Mr. Khieu  
23 Samphan has just said the same by himself here in court. He will  
24 not accept any other lawyers than the ones that he has already  
25 chosen. So in addition to the time factor, there is also the

1 issue of the inability of any counsel that is appointed by the  
2 Court to come in and effectively represent the clients, the  
3 accused persons of this Court. Thank you, Your Honours.

4 [12.16.26]

5 MR. PRESIDENT:

6 Thank you. The National Lead Co-Lawyer for Civil Parties, you may  
7 proceed.

8 MR. PICH ANG:

9 Once again, good afternoon Mr. President, Your Honours, the  
10 Acting Director and the Deputy Director of Administration and the  
11 representatives from the Office of Administration. I have short  
12 comments to make regarding the amici curiae counsel. I will not  
13 touch upon the issue of the amici curiae counsel because it all  
14 has been let out well by the prosecution, including the - the  
15 procedures as well as the rights to defence by the Accused.  
16 However, what I'd like to state now is that we have heard the  
17 co-counsels for the Accused that the appointment of amici curiae  
18 counsel is contradictory to the Internal Rules of the ECCC, as  
19 well as the applicable law of the Code of Criminal Procedure of  
20 the Kingdom of Cambodia. In fact, there is no clear provision in  
21 the Internal Rule or in the Code of Criminal Procedure of  
22 Cambodia, however, once there is a gap or an absence of a law  
23 applicable, then the -this ECCC can use external measures or  
24 provisions to apply. For instance, during the proceedings, if  
25 there is an issue arising and it is not provided in the Internal

1 Rule, the Chamber or the judges shall make a decision pursuant to  
2 Rule 12.1 of the new – of the agreement or of relevant rules  
3 concerning the Law on the Establishment of the ECCC, namely Rule  
4 – Articles 33 and 37.

5 [12.19.07]

6 It is my understanding that this is a pathway for the Chamber to  
7 appoint a counsel, who is a friend to the Court, although the  
8 Accused may object to such an appointment for the defence of his  
9 rights. I also have a question for the Chief of the Defence  
10 Support Section, although his response and comments he just made  
11 seems to apparently answer to that.

12 I'd like to ask the Chief of the DSS the following question: In  
13 the case that the Chamber instructs or orders the Defence Support  
14 Section to appoint a counsel who is a friend to the Court to the  
15 two Accused, will your Defence Support Section not abide by the  
16 instruction of this Chamber? Thank you, Mr. President.

17 [12.20.27]

18 MR. PRESIDENT:

19 Chief of Defence Support Section, you may respond to this  
20 question.

21 MR. ENDELEY:

22 Thank you, Counsel. In response to that, I'd say, perhaps, unlike  
23 – unlike the defence lawyers, we actually are officers of the  
24 Court so we will abide by any order that comes from the Court  
25 and, as the Deputy Director mentioned at the last Trial

1 Management Meeting, even though we did not make budgetary  
2 provisions for that, his office will do what is necessary if  
3 there is a Court order. My role here is just to highlight to you  
4 the impractical nature of such an order, the difficulties that  
5 will arise and perhaps, down the line, the legal issues that may  
6 arise if we are forced. But yes, if there is an order from the  
7 Court, the Director already said it, we will support, we will  
8 implement as necessary. Thank you.

9 [12.21.22]

10 MR. PRESIDENT:

11 Thank you. Is there any other issue to be raised? Now the  
12 International Lead Co-Lawyer for Civil Parties, you may make a  
13 brief statement.

14 MS. GUIRAUD:

15 Yes, thank you, Mr. President. A very brief remark on the  
16 prevalence of the civil law system in this courtroom and the fact  
17 that we, the Civil Party Lawyers, have the impression that the  
18 system is not a civil law one, but it is a hybrid system in light  
19 of Rule 22, paragraph 4. This is a question I'm putting to the  
20 Defence Support Section Chief. Lawyers are under a duty to  
21 promote justice and efficient and expeditious conduct of the  
22 proceedings. In concrete terms, therefore, this is a very naïve  
23 question that I am putting to you. Don't you have the impression  
24 that this rule somehow amends the system, that we are in a hybrid  
25 system in which the lawyers are different, are not in a, strictly

1 speaking, civil law context, and that they are acting both in -  
2 with reference to the instructions given by their client but they  
3 also have to respect the Court?

4 [12.23.07]

5 MR. ENDELEY:

6 Thank you, Counsel. I think Counsel Anta Guisse has answered that  
7 question in light of their consultations with their bar counsel.  
8 I think the answers given by the counsel for both accused persons  
9 are very clear and I have nothing to add in that regard. Thank  
10 you.

11 MR. PRESIDENT:

12 Thank you. The discussion on the possibility to assign amici  
13 curiae counsel and advanced proceedings has now come to an end. I  
14 wish to thank the Director, Deputy Director of the  
15 Administration, as well as the Chiefs of DSS and ITU for their  
16 contribution. You may now be excused from this meeting.

17 The Chamber would like to inform the Parties that we still have  
18 another item on the agenda for this afternoon's discussions; that  
19 is the proposals by the International Co-Prosecutor on the use of  
20 statements from Cases 003 and 004. I believe we are running a  
21 little bit over time now and that we adjourn today's meeting and  
22 we will discuss this last item of the agenda this afternoon,  
23 commencing from 1.30 this afternoon. All Parties should appear  
24 during this afternoon proceeding and security guards you are  
25 instructed to take the Accused, Khieu Samphan, and bring him back

1 to this courtroom before 1.30. The Court is now adjourned.  
2 (End of public session. Trial Management Meeting recesses from  
3 1225H to 1330H)  
4 (Court will resume in closed session)  
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