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 CMS/CFO: Sann Rada

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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

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

5 March 2015
 Trial Management Meeting

Before the Judges: NIL Nonn, Presiding
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 YA Sokhan
 Claudia FENZ
 Jean-Marc LAVERGNE
 THOU Mony (Reserve)
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 Nicholas KOUMJIAN
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For Court Management Section:
 UCH Arun
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE FENZ	English
MS. GUIRAUD	French
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
MR. KOUMJIAN	English
MR. LYSAK	English
THE PRESIDENT (NIL Nonn, Presiding)	Khmer

1 PROCEEDINGS

2 (Trial Management Meeting opens at 1341H)

3 MR. PRESIDENT:

4 Please be seated. As the President and on behalf of all the

5 Judges of the Trial Chamber, I would like to welcome the

6 Co-Prosecutors, the Deputy Co-Prosecutors, Lead Co-Lawyers for

7 Civil Parties and the Lawyers for Civil Parties, Defence Counsels

8 for Nuon Chea and Defence Counsel for Khieu Samphan for your

9 presence in the Trial Management Meeting this afternoon.

10 According to Internal Rule 79.7, Trial Management Meetings are

11 held in-camera unless the Trial Chamber decides otherwise.

12 The Trial Chamber has received the request from the Nuon Chea

13 defence and the Khieu Samphan defence to open the Trial

14 Management Meeting to the public. The Prosecution and the Civil

15 Party Co-Lead Lawyers have not objected to the request, but

16 emphasise the need to safeguard the confidential on-going

17 investigations in Cases 003 and 004. The Chamber decides that the

18 Trial Management Meeting will be held in open session for the

19 public interest. This ruling is conditional -- that is, the

20 confidentiality of Cases 003 and 004 must not be compromised. The

21 Trial Chamber notes that the Prosecution is in the best position

22 to identify any such potential compromise because it has access

23 to Cases 003 and 004. The Chamber invites the Prosecution to

24 alert the Chamber of any potential breaches of confidentiality

25 during the Trial Management Meeting.

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1 [13.44.07]

2 Yesterday the Nuon Chea defence provided the Chamber and the
3 Parties with a courtesy copy of a motion in relation to the
4 disclosure of statements from Cases 003 and 004. The motion was
5 filed today in both English and Khmer. In the motion, the Nuon
6 Chea defence requested the Chamber, among other things, to
7 schedule a Trial Management Meeting to facilitate the Parties[^]
8 discussion on the on-going disclosure process and the possible
9 way forward, and to postpone the hearing of 2-TCW-803 and
10 2-TCW-809. After briefly hearing the Parties on the postponement
11 of witness 2-TCW-803, the Chamber informed the Parties by email
12 that today that it will not hear the testimony of 2-TCW-803 as
13 previously scheduled and will instead hold a Trial Management
14 Meeting to allow the Parties to fully discuss the on-going
15 disclosure process for statements from Cases 003 and 004. Each of
16 the Parties will have 20 minutes to make submissions. The Chamber
17 now gives the floor to the Nuon Chea defence, as they are the
18 initiators of the request. You have the floor.

19 [13.46.37]

20 MR. KOPPE:

21 Thank you, Mr. President. Good afternoon, Your Honours. Today we
22 filed a motion, as you said, Mr. President, relating to the
23 on-going disclosure of statements from Cases 003 and 004 into our
24 case file. We did so because we wanted to make sure that this
25 Chamber fully understands the situation that we are facing when

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1 you are deciding the best way forward. And we did so because the
2 information the Prosecution^ has provided to you about
3 disclosures so far paints a completely different picture about
4 the impact that these disclosures have had on us. We filed our
5 motion and I am making these submissions today because we need
6 you to understand the extreme challenges and difficulties that
7 the disclosures have created for us and for the trial in general.
8 I have tried to highlight some of these difficulties in our oral
9 submissions throughout the trial segment^. But given that the
10 Chamber has advised that it is now working on a way forward, we
11 want to put this information before you and work together with
12 the Chamber and Parties to come to an appropriate solution.

13 [13.48.02]

14 As I have said earlier, but will say again, we are not trying to
15 obstruct these proceedings or stop them from happening. Our
16 client has always been very clear he wants the proceedings to go
17 forward. But the question is how we can do so in a way that
18 protects his right to a fair trial. Now, Mr. President, it seems
19 from our brief discussion on the matter yesterday that there may
20 indeed be some misunderstanding from the Chamber regarding what
21 has been disclosed to us and when. So I think it would be useful
22 for me to begin by providing an overview of what we have
23 received, at least until today.
24 Since last year we have been receiving witness and civil party
25 statements disclosed to us by the International Co-Prosecutor,

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1 with the permission of the International Co-Investigating Judge,
2 but without the apparent support of the National Co-Prosecutor.
3 We received the first binder of statements in November, 2014.
4 They delivered a few more in late January. However we received
5 approximately 80% of the documents within the last two weeks,
6 including some documents which were dropped off to us only
7 yesterday morning as we were on our way to Court.

8 [13.49.32]

9 Now the International Deputy Co-Prosecutor took pains to point
10 out yesterday that the documents received yesterday were only
11 translation of documents, and sure, he was right. However what he
12 failed to mention was that they included translations of
13 statements into English, which is the language in which I and
14 half our team need to receive evidence so that we can understand
15 it. Now, Mr. President, what is the size of the documents we are
16 talking about? At this point we have calculated that we have
17 received 155 statements which total 2838 pages in English alone,
18 2838, almost 3000 pages. And on top of this the Prosecution has
19 already warned us that the number of disclosed statements will,
20 basically, double, since there are at least another 190
21 statements still to come. And more than this, there may be an
22 unknown number of documents still to come, since the Case 003 and
23 004 investigations are presently still on-going.

24 [13.50.55]

25 Now as you are well aware, you granted us two days to, I quote,

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1 "familiarise ourselves with the statements that we received in
2 February last month". And we calculated that we would have to
3 read all the English statements at the rate of one page per
4 minute over those two days without sleeping, to simply read
5 everything in that time. And it doesn't take into account the
6 fact, of course, that we also need to analyse the evidence
7 contained.

8 Mr. President, Your Honours, the situation for us is extremely
9 concerning. Make no mistake, what we are seeing, I believe, is
10 the International Co-Prosecutor and the International
11 Co-Investigating Judge, dumping large parts of the Case 003 and
12 004 case file, into ours. Probably, and if that's different I'll
13 hear that, in part to ensure that those investigative efforts are
14 not in vain if those cases never go to trial. And more
15 disturbingly though, what these disclosures show us, that
16 critical aspects of our appeal in Case 002/01, remain under
17 active investigation in Cases 003 and 004, while at the same time
18 being tried at first instance and on appeal. Now, Mr. President,
19 to give you just one illustration of this, two of the Case 004
20 statements we received in January were of a witness who appeared
21 here in Court one month later. The investigator -- investigators
22 interviewed that witness in October 2014, at the time when this
23 Chamber was already scheduling the witness to appear in Court.
24 Excuse me.
25 [13.52.54]

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1 Had hearings not been postponed until January I doubt that we
2 would even have received those statements and the critical
3 evidence they contained until the witness appeared in Court. But
4 it's not just about the volume of evidence, although that in
5 itself is overwhelming and beyond our team's resources, as I will
6 discuss a little bit later. There's a more critical issue here,
7 and one that the Prosecution does not seem to understand, and
8 that is the relevance of the evidence in the statements. This is,
9 in our view, fundamentally -- this in our view fundamentally
10 affects the question of when we should be reviewing the evidence
11 and when we should be cross-examining witnesses about that
12 evidence.

13 [13.53.50]

14 Based on what we have been able to review from the evidence it is
15 of critical relevance to our Case, to Case 002/02 overall, and
16 also to issues which are contested and are now being appealed in
17 Case 002/01. And some of the evidence fundamentally affects what
18 evidence we now have on the case file about several key issues
19 which are being contested in this Case and on appeal. And, Mr.
20 President, to avoid any misunderstanding about this, I think it
21 is worth me explaining, just what topics exactly are covered in
22 the evidence without of course going into too much unnecessary
23 detail.

24 [13.54.39]

25 And from what we have read thus far, first of all, witnesses seem

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1 to talk or talk about the existence of divisive internal factions
2 within the CPK. There is testimony that there were four internal
3 factions within the CPK: those affiliated with the Viet Minh; the
4 nationalistic Khmer Rouge; the Sihanoukist Khmer Rouge; and Khmer
5 Rouge from China, including Pol Pot. There's information in the
6 new evidence on factions, especially in the Northwest and East
7 Zones and there is information identifying So Phim^ as the leader
8 of one faction plotting a revolt against Pol Pot. Witnesses also
9 detail the acts and conducts of several CPK leaders, including
10 our client Nuon Chea himself, and also Ta Mok, So Phim and Ruos
11 Nhim^. Witnesses describe events contested across all across all
12 trial segments in Case 002/02, as well as events already
13 adjudicated in Case 002/01, and now on appeal in the Supreme
14 Court Chamber. Witnesses discuss the acts and conduct of
15 witnesses who have testified, who are scheduled to testify, who
16 have been requested to testify or should now be called to
17 testify. Witnesses also detail authority structure and operations
18 in the Southwest and Northwest Zones. And finally, Mr. President,
19 Your Honours, witnesses provide evidence directly relevant to the
20 existence of policies, including forced marriage and the
21 treatment of the Cham and Vietnamese.

22 [13.46.45]

23 Now the Prosecution yesterday tried to dismiss our argument that
24 we should not be hearing testimony of two up-coming leading
25 cadres which were scheduled to testify. And I believe they argued

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1 that of the new evidence we have received there was only one
2 relevant piece of information which was a direct reference to one
3 of two cadres. I also note that in general, the Prosecution has
4 tried to decide which trial segments the statements are relevant
5 to, and then to disclose statements ahead of or during that
6 segment. Excuse me.

7 [13.57.32]

8 However, Mr. President, with all due respect, given it's us and
9 not the Prosecution running our case, the Prosecution's
10 assessments have often been inaccurate and unhelpful, including
11 their assessment from yesterday. Dismissing the potential
12 relevance of evidence to a witness, just because it doesn't
13 contain a direct reference to that specific witness is, I
14 believe, an over-simplistic and not an appropriate way to
15 evaluate the relevance of evidence.

16 As I said yesterday we believe that these two leading cadres will
17 be able to provide potentially critical evidence on authority
18 structure and operations in the Southwest Zone. This evidence in
19 turn, is the essential connection needed to be established
20 between the Zone and Nuon Chea, in order to convict him with
21 respect to events in Tram Kak and Krang Ta Chan. As I also said
22 yesterday, while not having yet been able to read all the
23 disclosures we received in the last two weeks, we were able to
24 identify that they frequently mention the authority structure in
25 relation to Tram Kak and Krang Ta Chan. And as I said yesterday,

9

1 the terms "Sector 13", "Tram Kak district" and "Office 204" are
2 mentioned a total of 324 times in these new statements.

3 [13.59.17]

4 Mr. President, when we look at the disclosure statements more
5 generally we can see that across the board they seem to contain
6 information of critical relevance to multiple aspects of the
7 Defence^ case. Not just specific witnesses and specific events
8 examined in specific trial segments^. Excuse me. And all -- all
9 of this evidence requires further analysis before the current
10 trial segment can proceed.

11 Quite frankly, Your Honours, it is the right of the Accused to
12 have time to process this evidence and consider how it impacts,
13 not only on the events contested in the current trial segment^,
14 but also how it affects our case strategy. It should be obvious,
15 but to be perfectly clear, our overall strategy informs the way
16 we approach every trial segment, and every witness, civil party
17 and expert called to testify in each segment. If we push ahead
18 relentlessly with trial and continue to receive evidence in a
19 slow trickle, this will create further difficulties for us and
20 the trial. It already has. For example, from what we have seen in
21 the statements given to us in the last two weeks, we would have
22 asked different questions to the expert and witness Elizabeth
23 Becker, and possibly to the several Krang Ta Chan prisoners and
24 cadres who already had appeared. And now we may have to request
25 that they are recalled. This may delay the Trial and threaten the

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1 efficient use of the Court's limited resources.

2 [14.01.25]

3 We will also need to submit this newly disclosed evidence to the
4 Supreme Court Chamber as it is, we believe, relevant to our appeal
5 in Case 002/01.

6 [14.01.36]

7 This will also slow down and significantly complicate appeal
8 proceedings and especially the upcoming appeal hearings. Mr.
9 President, it is for all these reasons that we ask that we
10 adjourn hearings for now and alternatively that we finish this
11 segment by hearing all witnesses except for the leading cadres.
12 In addition we propose that if and when we do start with the next
13 trial segment, we choose a segment that is mostly likely least
14 affected by the ongoing disclosures.

15 So a crime site, basically, not in the Southwest Zone or
16 Northwest Zone. And from what we can understand this is probably
17 the segment on the 1st January dam^ . And beyond this, Mr.
18 President, we need adequate time to review the disclosed
19 statements before we can begin on segments that are more
20 affected.

21 [14.02.46]

22 Now, let me turn to another important aspect, which we didn't
23 discuss yesterday at all and that's the evidence on the Khmer
24 Krom. I would like to highlight to the Chamber this theme -- this
25 theme which has been as it seems consistently emerging in the

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1 Case 003 and 004 statements. And that is the distinct focus on
2 the experiences of the Khmer Krom within DK regime. In an earlier
3 hearing this month we already highlighted out concerns about the
4 intended relevance of the Khmer Krom evidence for Case 002/02. As
5 we all know the relevance of Khmer Krom experiences in Case 002
6 has long been contested. The Khmer Krom community has lobbied for
7 the experiences to be prosecuted within the context of Case 002
8 as a genocide and maltreatment^ of a specific group. And these
9 efforts are noted in the media and in filings and other documents
10 on our case file. However, back at the start of Case 002/02, the
11 Co-Prosecutors decided not to include the Khmer Krom as a
12 specific group in the Introductory Submission. Despite the
13 lobbying, they also didn't file a Supplementary Submission^,
14 instead they merely filed a limited request for investigative
15 action. As you'll have been able to see it is detailed clearly in
16 our motion, but at the time ECCC spokesman Lars Olsen told the
17 Cambodia Daily in 2010 that the Co-Prosecutor's failure to file a
18 Supplementary Submission, quote, "was not a mistake", unquote.
19 He's on record when he is saying, and I quote again, "there was a
20 reason why they didn't do it. I know that reason but I can't tell
21 you." End of quote. Maybe we'll hear the reason today.

22 [14.05.19]

23 Because the Co-Prosecutor didn't include the Khmer Krom as a
24 targeted group in their Introductory or Supplementary
25 Submissions^, the result was that the Khmer Krom were not

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1 identified as a targeted group in the Closing Order^, or as an
2 alleged victim of genocide. There are only very limited mentions
3 of the Khmer Krom in the Closing Order at all. And Mr. President,
4 Your Honours, given that the Khmer Krom are not a targeted group
5 on Case 002, then the consistent focus on Khmer Krom experiences
6 in the statements that we receive from Case 003 and Case 004,
7 that deeply troubles us. Specifically, we are becoming more and
8 more concerned that the International Co-Prosecutor intends to
9 effectively expand the scope of Case 002/02 by prosecuting Khmer
10 Krom experiences as those of a, what we like to call,
11 quasi-targeted^ group and a quasi-victim of genocide. What it
12 boils down to is that we are concerned that he is seeking to do
13 this by, if you will allow me to use that word, sneaking the
14 Khmer Krom in through back door, of including their experience
15 within that of the Vietnamese, despite the distinct nature of the
16 two groups and the experience of the Khmer Krom not being
17 specifically charged in the Closing Order^.

18 [14.06.57]

19 It certainly appears that witnesses specific identities as Khmer
20 Krom has been relevant at least to the Co-Prosecutors, the civil
21 party lawyers^ and this Chamber. Indeed, as we also described in
22 our motion, you might recall, that even after one of the
23 witnesses, who recently testified, stressed that he was not a
24 Khmer Krom and had never said he was a Khmer Krom, Judge Lavergne
25 continued to press the witness on whether he nevertheless

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1 considered himself a Khmer Krom. Mr. President, given the focus
2 on Khmer Krom experiences and given the Prosecution's^ track
3 record on Khmer Krom issues, we have requested in our motion that
4 the Chamber assures the Parties that the Khmer Krom will not be
5 included as a quasi-targeted group in Case 002/02.

6 [14.08.05]

7 The following point, Mr. President, I would like to make is the
8 legal status of statements disclosed from Cases 003 and 004. We
9 are concerned about that legal status. We are concerned about
10 what will happen if Cases 003 and 004 do not go to trial. Even if
11 two of the suspects have now been charged in absentia, Prime
12 Minister Hun Sen's recent statements to the international
13 community and the Cambodian government attitude towards the cases
14 suggests that there is a significant possibility that this will
15 ultimately be the case. And if Cases 003 and 004 do fail to make
16 it to trial, we do not know what impact this may have on the
17 validity of statements gathered during their investigation. We
18 don't know how this will affect Case 002/02 and how this
19 situation will be managed. For example, after now trying to make
20 every effort to read the statements, is it possible that we will
21 ultimately be told that the statements are excluded and we now
22 have to unread them? We don't know. We think that at the very
23 least this needs further consideration when we are thinking about
24 how to manage this disclosure process.

25 [14.09.43]

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1 Then another issue, Mr. President, we are also concerned about
2 whether the Case 003 and 004 case files also contain other
3 relevant evidence in addition to witness and civil party
4 statements, for example documents. Frankly we have no business
5 with the International Co-Investigating Judge in Cases 003 and
6 004, just as he, I think, has no business in this courtroom. That
7 is why we have asked that the Chamber order the International
8 Co-Prosecutor to advise you and all of us whether there may
9 indeed be other types of relevant evidence on those case files,
10 and if so we ask the Chamber to order the Prosecution^ to request
11 the disclosure of this evidence as soon as possible. Then the
12 disclosure conditions, we spoke briefly and the civil party
13 lawyer spoke briefly about that yesterday as well. In our motion
14 we have asked the Chamber to exercise its power to maintain good
15 order in the trial by quashing the onerous disclosure conditions
16 that have been imposed on us.

17 [14.11.09]

18 These conditions are, for instance, we cannot receive the
19 statements electronically; we receive only one paper copy of each
20 statement in each available language; only our paid staff can
21 review the statements, our interns cannot, although I note that
22 the Prosecution interns apparently can. For the statements to be
23 word searchable and reviewable by multiple staff members at the
24 same time, we have to scan, print and run electronic text
25 recognition processes on each statement disclosed. Given the

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1 volume of data and information technology constraints this is an
2 extremely time consuming process. And I think these conditions
3 should have never been imposed on the Defence by a party without
4 standing^^ in Case 002. And I believe they are possibly
5 irrelevant now that the International Co-Investigating Judge has
6 laid charges against two suspects in Cases 003 and 004. They
7 should now be removed, these conditions.

8 [14.12.18]

9 Finally Mr. President, my last point, time -- it is about the
10 time and resource constraints on the Defence. Let me just say a
11 very short word about the constraints that we are facing. As I
12 mentioned earlier, we received about 80% of the statements less
13 than two weeks ago, and even yesterday. However in that time you
14 can see that most of the Defence team members have been here in
15 the courtroom for four days a week. This is because -- simply
16 because we have -- because of the limitations we have in the
17 possible size of our team. As I mentioned yesterday, the
18 Prosecution has had at least six International Prosecutors
19 leading examination, and has rotated its support staff. We have
20 just two Co-Lawyers. In effect we have only one additional day
21 per week and our evenings and weekends to review the thousands of
22 pages of disclosures. We have only one day a week to discuss the
23 extensive evidence in the disclosures with our client Nuon Chea,
24 and seek his instructions. Mr. President we have to do all of
25 this along-side daily trial preparation. We have to do it all

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1 without the support of the Defence interns. And it seems we have
2 to do it while at the same time continually having Prosecutors
3 drop off new disclosures to us. And we have given it our best
4 effort throughout Case 002/02 to maintain an understanding of the
5 case file. We have been trying to read these new disclosures even
6 while being in this courtroom full time for four days per week.
7 However it's just not possible. We have not been able to read,
8 let alone properly analyse all of the statements disclosed thus
9 far. It is quite simply physically impossible, despite all the,
10 I'm sure, well intended Prosecutor's suggestions. We don't have
11 the resources or the time, and what limited time we have also
12 gets wasted with the extra time it takes for us to process the
13 disclosures just to make them usable.

14 [14.14.45]

15 I'm finishing, Mr. President, Your Honours, we cannot keep going
16 on like this. If the disclosure process will be continuing in a
17 similar manner, and it seems like it may, then we will be forced
18 to make a request for additional resources just to try to cope.
19 But even if this request were granted, we still need additional
20 time so that the key members of our team have a chance to
21 understand the contents of the disclosures. This is what our
22 professional responsibility as lawyers dictates that we must do.
23 We are now being asked to press on ahead reading new evidence
24 alongside our full time daily work when the Prosecution had at
25 least a head start of several months, probably much longer. In

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1 fact some of the statements are considerably older, dating even
2 back to 2011. So that is a considerable head start they have on
3 us. Obviously, let that be clear, we don't expect to have the
4 same amount of time as that, considering the focus on trial
5 expediency, but we do need time. Thank you, Mr. President.

6 MR. PRESIDENT:

7 Thank you very much, Mr. Koppe. Now, I hand over the floor to
8 counsel for Mr. Khieu Samphan. You may proceed.

9 [14.16.13]

10 MR. KONG SAM ONN:

11 Good afternoon, Mr. President, Your Honours, everyone in the
12 meeting. As for my team, we have the same issue as mentioned by
13 Mr. Victor Koppe. We find it difficult in processing the
14 documents that we have received. As we may be aware concerning
15 the notice of the Co-Prosecutor the statements are in Cases 003
16 and 004 we know. As of now we do not have sufficient time and
17 means to read and prepare the defence for our clients. We indeed
18 need time to examine evidence put by the Co-Prosecutors. In
19 relation to the document -- the documents, we have received
20 voluminous documents. So far we have received 16 binders of
21 documents. As mentioned by Mr. Koppe and the documents consist of
22 almost 3000 pages. And as we know the documents are of very -- of
23 different information and we need time to look at and examine all
24 the information in the documents. And concerning the translation
25 of the documents that we have received, I think it is also

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1 difficult and we have faced challenges. We observe that some of
2 the documents that we have received, some are available in French
3 and some are not available in French, and we need to have the
4 documents translated.

5 [14.18.42]

6 Actually for such huge documents we do not need only time to
7 examine all those documents; we need time to process to analyse
8 those documents. And we need to know what content in the document
9 and how those documents relate to one another. And we need also
10 to consider whether the statements in Cases 003 and 004 relates
11 and reflects what is stated in Case 002. We need a lot of time to
12 examine all these documents.

13 And I invite you all to consider that the documents that we have
14 just received are the documents given by the Co-Prosecutor for
15 our perusal. The documents delivered by the Co-Prosecutors are
16 considered to be evidence as long as they meet the criteria in
17 Internal Rule 87.3 and 4. We need to analyse the documents and we
18 need to bring any preliminary objection concerning the documents
19 which are put by Parties.

20 [14.20.44]

21 Number three: I believe we perhaps do not share our different
22 understandings. I believe that yesterday the Co-Prosecutor
23 mentioned about the documents which they gave to us. We have
24 different grounds, we have different reasons in relation to the
25 defence of our client. So I think that we, the Co-Prosecutor --

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1 we, the lawyer for the client, we have different views from those
2 of the Co-Prosecutor, and even the Defence, the counsel for the
3 two Accused may have different views in relation to the documents
4 we have received after our analysis.

5 Number four: We need to determine and categorise the documents
6 and we need to distinguish between statements of witnesses and
7 civil parties and we need to consider whether the statements have
8 already been testified by the witness. The statement by witnesses
9 who come to testify before the Chamber can be used immediately.
10 And we have to examine every evidence to be testified by those
11 individuals. Some statements cannot be used if there is no
12 decision on admissibility.

13 [14.23.10]

14 Number five: We, the counsel for Mr. Khieu Samphan, we are not
15 the Parties of Cases 003 and 004 and we cannot have access to the
16 case file. Furthermore we find some of the examples concerning
17 the inaccuracies of the documents and we may bring this matter
18 before the Chamber as we can see the statement of Mr. Van Soeun
19 is different from the statement that he gave to the OCIJ. We have
20 to be cautious and mindful of all and every statement because if
21 we do not have time to examine and analyse the statement, we
22 cannot know what is in those statements.

23 MR. PRESIDENT:

24 You may now proceed, International Co-Prosecutor.

25 MR. KOUMJIAN:

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1 First, Your Honour, I apologise to Counsel^, I did not -- I
2 certainly do not want to interrupt him, but if I don't interrupt
3 I am afraid there could be damage. I heard Counsel mentioning
4 names of witnesses and we are, although the gallery is empty, we
5 are in open session. I would just remind Counsel that it's
6 probably better not to mention any names when we're talking about
7 Cases 003 and 004 disclosures.

8 [14.25.10]

9 MR. KONG SAM ONN:

10 Mr. President, I would like to respond to the observation made by
11 the International Co-Prosecutor. This witness has already
12 testified before this Court; this is why I brought his name up
13 before Your Honours.

14 JUDGE FENZ:

15 Generally, as a general rule, avoid mentioning names of
16 witnesses. And Counsel the Chamber is aware of what has to be
17 done with documents. So if you could perhaps concentrate on the
18 relevant issues of this subject.

19 MR. KONG SAM ONN:

20 Thank you very much. I would like to resume my submission. As I
21 said, all the statements by witnesses need to be examined and
22 analysed by us and we need to compare the statements. In addition
23 we need also to verify the written report of the statement with
24 the audio recording, and we have to find out whether there are
25 any errors between the recording and the statement taken by the

21

1 investigators. In the past experience we received huge amounts of
2 documents in Case 002/02. Actually the matter in the previous
3 time concerning the documents which have -- which gave to us in
4 the previous time, may jeopardise the rights of the Accused,
5 Khieu Samphan, so we do not allow this experience to repeat
6 before this Chamber. If the statement is conducive to ascertain
7 the truth, the Parties should request for the appearance of the
8 witness in accordance with the Internal Rules. And I encourage
9 that the rights of confrontation and cross-examination should be
10 respected.

11 [14.27.48]

12 We are trying to find means and time so that we can consider the
13 statements and in the future there may be a request from us to
14 recall certain witnesses if the defence team is not entitled to
15 enough time to examine all those statements submitted or put by
16 the Co-Prosecutor. Now I would like to seek appropriate time and
17 enough time to examine the documents put by the Co-Prosecutor and
18 these documents as we all know are from Cases 003 and 004. As of
19 now we cannot read the documents in detail. So this concludes my
20 submission. Thank you very much Mr. President.

21 [14.29.00]

22 MR. PRESIDENT:

23 Judge Fenz you have the floor.

24 JUDGE FENZ:

25 I would like to address a specific question to both Defence

22

1 Counsels. I don't expect an answer now. The reason why I am
2 asking the question now is to give you time to think while the
3 other Parties make their comments. Specifically, and at this
4 point of time, how much additional preparation time do you need?

5 Thank you.

6 (Short pause)

7 [14.30.00]

8 MR. KOUMJIAN:

9 I apologise. I misunderstood. I was waiting for the Defence
10 response. You said to wait until after our -- excuse me. Your
11 Honours, first of all let me begin by saying that the
12 Co-Prosecutors recognise that this is a difficult issue, that you
13 have ongoing disclosures from ongoing investigations during a
14 trial. It puts a burden on everyone. It puts a burden on the
15 Defence, we understand that; it brings issues to Your Honours'
16 attention, and it certainly puts a burden on the Prosecution. We
17 have been working diligently for many, many months, trying,
18 seeking these disclosures, to have them come forward in as
19 expeditious a manner as possible. But having said that, let me
20 also respond to some of the Defence complaints. Because I find
21 that their motion mixing so many different issues: issues that
22 are properly before the Supreme Court about possible new evidence
23 on appeal; issues that are properly before the Investigating
24 Judges regarding the conditions of disclosure; and contradictory
25 complaints here. They complain that the Prosecution is dumping

1 material on them, the amount of material. They complain about the
2 number of pages. And yet they ask, Your Honours, to order us to
3 do more disclosures, to ask us to investigate all of the
4 documents on the other case files and disclose those.

5 [14.31.30]

6 They also complain that they get these documents late. Your
7 Honour, we have been talking about these issues of disclosures
8 from Cases 003 and 004 for approximately, since well before the
9 start of this trial, since at least approximately this time or a
10 little later last year. The investigations in Cases 003 and 004,
11 the fact that they were ongoing and are ongoing, is public
12 knowledge. The investigative judges have disclosed the locations
13 that are under investigation in Cases 003 and 004. The Defence
14 has known that since long before we started this phase of the
15 trial, Case 002/02.

16 So, the Defence also says that, while they complain about us
17 dumping the material, they say the material is very relevant to
18 them, and very relevant to their defence. So they can't have it
19 both ways. Complain that we're giving them material, that it's
20 too much and then say that they want more and that it's very
21 relevant. We want to work with them and work with you to try to
22 find ways to go forward as expeditiously as possible without
23 disrupting these proceedings. We very much appreciate hearing
24 that the defence teams want the case to proceed expeditiously. So
25 I think it's probably most beneficial to go for the - to the

1 requests for relief from the Defence one by one and to address
2 those issues.

3 [14.32.58]

4 First, regarding the adjournment of the hearings, frankly we do
5 not believe that is necessary. The amount of material that the
6 Defence has talked about, approximately, even a little less than
7 3000 pages, in terms of international criminal law cases,
8 tribunal cases, this is a very small amount of documents. If you
9 look at other cases, Mladic Case or Karadzic Case, you see
10 regularly Prosecution ongoing disclosures of 50,000 pages and
11 higher at a time to the defence teams. So it's not the number
12 itself; in the context of a case this complicated it's not that
13 great. We also haven't seen the Defence actually justify why any
14 of the material would be necessary for the examination of the
15 upcoming witnesses. They've been very, very general and
16 unspecific, simply saying that because these witnesses were
17 leading cadres that they need more time to prepare.

18 [14.34.05]

19 But they haven't said why the material that was disclosed, or is
20 to be disclosed, would be necessary to the examination of that
21 witness. Now we've heard the Nuon Chea defence assert that
22 material that they received recently would have changed their
23 questions for a witness who testified publically, Elizabeth
24 Becker. They haven't explained what that is. Now it's not
25 difficult to think of another question I should have asked a

1 witness. What else could we have asked a witness related to this
2 statement? But the test has to be whether it has a substantial
3 effect, whether it's significant to the testimony of that witness
4 and significant to the Defence. They haven't even tried to
5 explain actually what that is. But, we recognise, that there
6 could be situations where material is disclosed that does
7 substantially affect testimony of a witness who has already
8 completed their testimony. In that case, the procedure would have
9 to be that the Parties make an application -- whichever Party
10 feels that the material is necessary and a further examination of
11 that witness is necessary. And the Court would then weigh whether
12 the real relevance of the disclosure to the testimony of that
13 witness versus the inconvenience and the delay in the trial
14 caused by recalling a witness to testify.

15 [14.35.31]

16 So we think it's possible and the trial should go forward with
17 the disclosures ongoing. We can't do anything about the fact that
18 the investigation is ongoing; disclosures will continue and we
19 have to wait for the Investigative Judges to make a decision --
20 the International Co-Investigating Judges to make a decision on
21 disclosures and that requires a review of the statements by, I
22 presume by his staff, and some of the material that could be
23 sensitive to witness protection and safety is redacted. It's time
24 consuming, and frankly I suspect it will be probably more time
25 consuming now that it's been publically announced that

1 individuals have been charged in absentia, because that means
2 that there will be many more filings from the defence teams on
3 those cases before the Investigating Judges. Which, by the way,
4 we will also have to be engaged in responding to. So our workload
5 will go up exponentially also.

6 [14.36.38]

7 The second request for relief by the Defence was to schedule a
8 Trial Management Meeting, which Your Honours have done. The third
9 request, I'm going -- paragraph 19 -- going through the relief --
10 paragraph C, was to consult with the Defence determining the
11 length of any adjournment needed. Well the Court is doing that,
12 and again it's our position that we should be able to proceed on
13 the current schedule. And then in D, the Defence suggests that
14 the next trial segment be something like the 1st January dam^. We
15 have no problem with that, and we've even suggested another
16 change in the order, that, Your Honours, consider putting back
17 the Trapeang Ta Nam^ (phonetic) dam, a bit further back, because
18 that location will have many, many disclosed statements that we
19 will be expecting to disclose.

20 [14.37.38]

21 Now in paragraph E, the Defence asks, Your Honours, at this
22 point, in the middle of the trial, to assure the Parties that the
23 Khmer Krom will not be included as a "quasi"^^ targeted group in
24 the Case 002/02 trial. Well, Your Honours, the charges in this
25 case are the Closing Order. The charges are the charges. I assume

1 what the Defence is now asking, Your Honours, to do, especially
2 given their objection to Judge Lavergne's question, is to prevent
3 evidence of harm committed against the Khmer Krom people from
4 being admitted as evidence in this trial. And we are absolutely
5 opposed to that. The Khmer Krom people suffered. They were
6 victims, and they were victimised for various reasons --
7 everything from picking up a coconut which you weren't supposed
8 to do -- to the fact that they were seen as perceived enemies,
9 which is a big part of this case. Because they had come
10 originally from Vietnam they were seen as perceived enemies and
11 they were targeted as a group by the Khmer Rouge, there's no
12 doubt about that. Their evidence should not be excluded in this
13 Case.

14 [14.39.01]

15 Paragraph F, the Defence^ asks, Your Honours, to order the
16 International Co-Prosecutors to advise the Parties whether there
17 may be relevant evidence on the case files of Cases 003 and 004,
18 and to request the International Co-Investigating Judge to
19 disclose evidence of this nature as soon as possible. And I have
20 absolutely no problem with, Your Honours, making that order. We
21 understand that is our obligation.

22 [14.39.31]

23 And finally the Defence asks, Your Honours, to quash the
24 disclosure conditions imposed upon the Defence when the
25 International Co-Investigating Judge gave the Defence access to

1 material from the investigations in Cases 003 and 004. I don't
2 have to tell, Your Honours, that by law, here in the ECCC,
3 investigations are confidential. The International
4 Co-Investigating Judge made an exception to the confidentiality
5 recognising the importance on our motion of making sure that,
6 Your Honours, and the Defence and all Parties to these
7 proceedings had relevant information; information that is
8 relevant to issues in Case 002 that comes from the investigation
9 in Cases 003 and 004. As far as the conditions that were imposed
10 on the Defence, I am sympathetic to the Defence about those. And
11 I would suggest that they take that up with the International
12 Co-Investigating Judge. I would gladly support them to ask for
13 some relaxation of that. But of course I think it's also
14 necessary for the Defence, and I think that they can do this, to
15 build up trust; to show that they will respect the
16 confidentiality of that material and use it only as appropriate
17 and under the conditions that the Judge allows. But I certainly
18 would understand that the Defence would want those conditions
19 relaxed; I would hope they would be relaxed; I would even support
20 them to what extent I have any influence, but I would say that
21 publically, I support them gaining a relaxation of those
22 conditions.
23 And as far as addressing some of the more specifics about our
24 disclosure, I would ask that Mr. Lysak be allowed to address you,
25 who is the most familiar with the issues.

1 (Judges deliberate)

2 [14.42.01]

3 MR. PRESIDENT:

4 Deputy Co-Prosecutor, we need to take a break now and we will
5 resume at 3 o'clock. Now we have a break.

6 (Trial Management Meeting recesses from 1442H to 1508H)

7 MR. PRESIDENT:

8 Please be seated.

9 The Meeting is now back in session. Now I hand over the floor to
10 the Deputy International Co-Prosecutor to make further submission
11 or observation if any. You may proceed.

12 MR. LYSAK:

13 Thank you, Mr. President, Your Honours. The Defence have raised a
14 number of issues. We are proceeding on the basis that we will not
15 be filing a written response to this so that we will use this
16 opportunity to make sure we've responded to the extensive and
17 numerous issues that have been raised. One issue I want to start
18 with, the International Co-Prosecutor indicated that we are
19 certainly open to discussion of what order do we on future
20 segments of this Trial.

21 What we are not in agreement with is the suggestion, I believe
22 the Defence is making, that we stopped the current segment, the
23 Tram Kak, because it is part of the Southwest Zone and instead
24 switch to a different zone, the Central Zone and goes directly to
25 the 1st January dam, and let me tell you why that is.

30

1 First, the Defence overlooked that the Central Zone -- the
2 central zone is a major area of investigation in Case 004.
3 Including -- including the security centre that is right next to
4 the 1st January dam. The security centre that is part of the
5 allegations of the 1st January dam section. That security centre
6 is part of the Case 004 investigation along with other Central
7 Zone sites. So far, fortunately, OCIJ has not done a lot of new
8 interviews relating to that security centre or that touched upon
9 the 1st January dam^. So, as we have indicated to you, there is a
10 fairly small number of documents but we do not know what they're
11 going to do between now and the end of the investigation. We also
12 now have suspects who were Parties who will be making
13 investigating requests on their own.

14 [15.11.26]

15 So that is -- that is one issue you need to be aware of. But I
16 think even more important than that, based on the planned order
17 of this Trial^, the International Co-Investigating Judge has
18 given priority to certain disclosures and he has given priority
19 to ensure the disclosure of all documents related to Tram Kak,
20 Krang Ta Chan, Southwest.

21 [15.11.58]

22 He has not yet authorised disclosure of all the interviews that
23 have been conducted relating to the Central Zone. That has not
24 happened yet. So what the Defence^ is proposing here, is that we
25 stop a segment in which they have received disclosure of

1 documents -- the documents relating to Southwest Zone to Tram Kak
2 have been disclosed -- and that we switch to a segment for which
3 disclosure has not taken place. That makes no sense at all and
4 that leads to my next point. The argument they've made that these
5 disclosure are somehow violating their fair trial rights. The
6 exact opposite is true. The purpose of these disclosures is to
7 ensure that the Defence's fair trial rights are respected. To
8 ensure that they have access to relevant statements and evidence
9 that has come up in the Case 003 and Case 004 investigations.

10 [15.13.05]

11 To go forward with a crime site from a zone where all the
12 evidence -- all the statements have not been disclosed, would
13 raise far greater issues than to continue with one where the
14 statements have been disclosed. I think that should be a
15 self-evident proposition.

16 Let me respond to a few discreet issues that have been raised.

17 The question of whether there are other documents in addition to
18 witness or civil parties statements. There are some, we do review
19 those, however, I can tell you that the contemporaneous documents
20 if you will, that are on those case files are largely the same as
21 the ones from Case 002. There are few instances in which the OCIJ
22 has gone to DC-Cam to look, maybe, for additional documents from
23 DC-Cam. Those are publicly available documents, we do review
24 those if it was appropriate we would include them but we're
25 talking about publicly available documents here. OCIJ has not

1 come across, at least to our knowledge, a new batch of previously
2 unknown documents relating to the Khmer Rouge.

3 [15.14.35]

4 The issue of disclosing these documents, piecemeal by segment.

5 Let me emphasize that our initial request to OCIJ made back
6 almost year ago, was to disclose all of the relevant statements.

7 They were unwilling to do that, they have reasons, concerns about
8 their ongoing investigation. So when we came back, at their
9 suggestion, with a new request when the date of Trial^ was set
10 here, we again requested disclosure of all relevant documents and
11 only as an alternative in view of the concerns they expressed,
12 did we give a list of priorities, identifying for them this --
13 the planned order of this trial, identifying for them a subject
14 that the Nuon Chea Defence had raised in the Appeal of Case
15 002/01 as documents they would be interested in.

16 [15.15.47]

17 We did our best to give them a list of priorities in view of the
18 fact that they were unwilling to disclose all documents at the
19 same time. But in the end, and I cannot say this enough, all we
20 can do is make the requests to the Investigating Judges, what is
21 disclosed and when it is authorised is not our decision and when
22 I see motions like this, that continue to suggest that somehow
23 this is our plan that we are conspiring with OCIJ to dump
24 documents on them. That is a hint to you, that this is not a
25 meritorious motion. We are not at all opposed, in the event

1 statements are disclosed later after witness has testified, if
2 they legitimately raise an important issue that was not covered,
3 make that motion, make a specific reasoned motion. They have
4 opportunity as we do, where new witnesses come up in this
5 investigation, to make Rule 87.4 requests and where they are
6 important witnesses that would help the Trial Chamber, my
7 expectations you will -- you will entertain them. There are
8 remedies here. Having a delay is not going to avoid any of these
9 issues. The argument was made here that, give us more time so
10 that we don't have to recall the witnesses. We can't -- that will
11 not be achieved, because these are ongoing investigations. We
12 don't know who is going to be interviewed; we don't know who is
13 being interviewed by OCIJ today. There could be interviewing a
14 trial witness as we sit here and we don't know that.

15 [15.17.51]

16 So, we have to deal with these situations on a case by case
17 basis. We are open to where there is good cause demonstrated. Our
18 belief is that there simply has not been good cause demonstrated
19 here. I've already told you that there are -- of the new group of
20 a hundred, approximately hundred, there are only ten interviews
21 that relate to Tram Kak and Krang Ta Chan.

22 The Defence are certainly entitled to review the others to
23 confirm that and I'm not saying that those other interviews
24 aren't relevant to the overall case, of course they are. That's
25 why we've disclosed them. But this is going to be a long trial.

1 There is time for them to take that into account. My overall
2 submission to you would be, we are nearing the end of this first
3 trial segment. Now is not the time for a delay. We should
4 continue forward, when we finish this segment in a few weeks that
5 may be the time, a better time for a break, it would be a natural
6 time for a break anyway, as we segment to a different part of
7 this trial.

8 [15.19.07]

9 Last, let me just say, on the issue of the disclosure
10 restrictions in terms, let me echo, we don't like them anymore
11 than the Defence, it puts a big burden on us. It is a lot easier
12 to do disclosures electronically than for us to have to make
13 their copies and binders. But that is -- that is the order. Even
14 though they are not a Party, they have an interest, non-Parties
15 have made motions in these investigations they could raise this
16 issue, they need to satisfy Judge Harmon^ that they will respect
17 the confidentiality of these documents and I would make just one
18 point to them in that regard, not very a long ago, they stood up
19 in this Court and said, "why don't they trust us about
20 confidentiality?" When little early a week ago, they announced in
21 this courtroom and to the Press, that they're not subject to the
22 orders of this Court. They're not officers of the Court that if
23 they decide not to obey the orders of the Court, there's nothing
24 they can do. No sanctions, no discipline.

25 [15.20.23]

35

1 When you make statements like that I would suggest to you that
2 perhaps Judge Harmon^ has some reasons to be concerned. And I
3 hope that they can satisfy him that they will respect the
4 confidentiality and we can do the disclosure through the normal
5 electronic means.

6 But there are reasons for concern and I think that is a matter
7 that needs to worked out with the Investigating Judges not by
8 quashing their order. I think I have addressed everything, if you
9 have any questions or anything that I neglected to respond to,
10 we're happy to respond questions.

11 [15.21.11]

12 MR. PRESIDENT:

13 Thank you. You may proceed, International Lead Co-Lawyer.

14 MS. GUIRAUD:

15 Thank you, Mr. President. I will start by explaining our general
16 position, by telling you that what we wish above all and the
17 civil parties have already stated on several occasions, is that
18 the case should proceed. And what we want to discuss with you and
19 the Parties today, is the modalities according to which the case
20 can move forward. What is also very important for us is the
21 manifestation of the truth, quite obviously, and we're convinced
22 that the disclosures that have been done contribute to the
23 manifestation of the truth. And so it is therefore directly of
24 interest to us that as many documents as possible be disclosed as
25 part of Case 002/02 particularly bearing in mind the

1 uncertainties over Cases 003 and 004 in which numerous civil
2 parties are also party. So we are fundamentally in favour of a
3 continuing process of disclosures and that it should continue as
4 broadly as possible.

5 [15.22.37]

6 In this case we have a position which is particular -- peculiar
7 because we support the prosecution of the Accused for the crimes
8 they are charged with and we do so in a completely independent
9 manner. We are Lawyers in a situation that is very similar to
10 that of the Defence Counsel^ and we do understand most of the
11 concerns of the Defence as expressed today. I will address the
12 different subjects that have been raised by the Nuon Chea defence
13 in its motion by telling the Chamber that to be very honest with
14 you, the Bench, we have not been in a position to study and
15 analyse in an in-depth manner all the records of interviews that
16 have been disclosed to us. That is a fact and if we've not been
17 able to study and analyse those records as exhaustively as
18 possible it is mainly because the conditions imposed by the
19 Co-Investigating Judges are impossible for us to comply with. And
20 if we were to comply with all those requirements it would be very
21 difficult for us to do our work.

22 [15.24.00]

23 I don't know whether anyone in the OCIJ is listening to us today,
24 I don't know whether it is appropriate that the Co-Investigating
25 Judges should proprio motu^ decide to broaden the conditions for

1 disclosures. And these conditions that are presented to us and
2 the Defence are impossible to comply with and I must say that I
3 am shocked to see the defiance that they expressed vis-a-vis
4 lawyers who have obligations vis a vis their respective
5 associations, obligations that have to do with the
6 confidentiality and ethics. We are lawyers; we are not acting in
7 a disloyal manner. If you tell us that documents are
8 confidential, it is our duty to respect such confidentialities.
9 So today, whereas two suspects are being investigated I think,
10 the Co-Investigating Judges should make those conditions more
11 flexible to enable us do our work properly. If those conditions
12 are lifted, all the work that we have to do in terms of analysing
13 the documents would be facilitated and as such we would be able
14 to proceed in this case accordingly.

15 [15.25.30]

16 We are ready, and we said that yesterday, to hear witness 803. We
17 nevertheless do not object to the postponement of the examination
18 of that witness according to the modalities proposed by the
19 Defence to enable the Defence to prepare themselves sufficiently.
20 We are not opposed to the postponement of the next segment but
21 having listened to our learned colleague of the Prosecution that
22 it is not necessary, what we need today is to be better informed
23 on the disclosure process so that together we may find a solution
24 to move this case forward. Be that as it may, as I have pointed
25 out, it is imperative for us to move forward and we have

1 confidence in the Chamber that it will find the best solution to
2 make sure that this case moves forward within the respect of the
3 rights of all the Parties.

4 [15.26.39]

5 Two proposals; that we be better informed of the process of
6 disclosures; that we be informed of the conduct of investigations
7 in order to understand what new evidence may be proposed
8 particularly with regard to the segment at hand.

9 Another proposal made by the Defence is that the Chamber should
10 be more involved in the disclosure process and in the control of
11 this disclosure process and we are of the view that the Chamber
12 can explore legal channels that would enable the Judges and the
13 Parties to have better control in this disclosure process.

14 I will now address the different points raised by the Nuon Chea
15 Defence. And I would like to address, very quickly, the issue of
16 the Khmer Krom. I must admit that I have a hard time
17 understanding the position of the Nuon Chea Defence as regards to
18 this point and for the reasons that I'll present shortly. The
19 Chamber is seized in rem, you are seized of facts that are in the
20 annex of the second severance order^, which defines the
21 parameters of this Trial. That annex is document, E301/9/1.1.
22 That annex lists the paragraphs in the Closing Order of which you
23 are ceased. In those paragraphs, paragraph 320, which is under
24 Tram Kak and under the treatment of specific groups, mentions
25 very clearly the issue of the Khmer Krom, you are in fact seized

1 of the manner in which the Khmer Krom were treated in the Tram
2 Kak cooperative.

3 [15.28.45]

4 If you do not consider yourselves seized of that matter it would
5 be a travesty of justice and it would be grounds of appeal for
6 the Prosecution^ that we would support willingly. You are seized
7 of that fact, so you must sure that the evidence relating to
8 those facts should be studied by the Chamber.

9 Regarding the legal qualification or characterisation of those
10 facts, it is up to you to determine that and for the Parties to
11 argue -- to ascertain which crimes are retained. We are of the
12 view that it is particularly interesting that the Chamber should
13 consider the crime of the persecution -- that is, to know how the
14 Khmer Krom were treated in Tram Kak cooperative or whether it
15 would be part of the crime of persecution.

16 [15.29.44]

17 So once again, you are seized in rem you do not have the choice,
18 we do not have the choice, it's not the Prosecutor's choice, you
19 are seized in rem. The evidence on the Khmer Krom issue will have
20 to be heard in this courtroom in Case 002/02, it is impossible to
21 do otherwise.

22 [15.30.05]

23 A comment, finally, regarding the status of the written records
24 -- the records that are under disclosure. The Nuon Chea defence
25 seems to be concerned by the fate of these records and we are

40

1 very, very clear that as long as these records are produced
2 before the Chamber in Case 002, these records become elements in
3 the case and if they're correctly put before the Chamber
4 according to the Rules that govern these proceedings you may use
5 these elements to build your case. Period. There is no point
6 asking any questions on what is going to happen to these records.
7 As long as these records are put before the Chamber they are part
8 of the case and you will be able to use these elements to build
9 your case. For us there is no doubt about that.

10 [15.31.13]

11 And finally I would like to answer or provide our interpretation
12 of the Defence's concerns regarding resources and the
13 possibilities to the different parties to this Trial to work on
14 several different tasks at the same time in particular analysing
15 the elements of this case. And I'd simply like to remind the
16 Chamber, but I know you know it very well but since the TMM^ is
17 public so it is important therefore that the people outside of
18 the courtroom be informed of this, we have, the the Co-Lead
19 Lawyers, an enormous amount of tasks that we have to manage on a
20 daily basis. Consultation with the civil parties, we're managing
21 3867 civil parties that we have to know that we have to speak to
22 them. We manage the issue of reparation which is an enormous
23 task. So, I can really say clearly before the Chamber that the
24 Trial^, the preparation of this Trial and the hearings represent
25 about 50 percent of our work, not more.

41

1 [15.32.23]

2 What is before us outside of this courtroom is colossal so we are
3 also, of course, concerned and worried by the volume of work
4 generated by this trial. And with the restrictions that are
5 imposed to analyse the documents that are disclosed it makes
6 things very, very difficult to carry out all of these tasks all
7 at the same time because we can't depend on our interns to help
8 us. But if the conditions -- if the restrictions are relaxed then
9 we hope that we will be able to manage all of our tasks directly
10 so that the trial can move ahead. I think that I am done and I
11 think that I have answered all of the requests from the Nuon Chea
12 Defence. Thank you very much, Mr. President.

13 [15.33.15]

14 MR. PRESIDENT:

15 Thank you. In fact, before the Chamber handed the floor to the
16 Co-Prosecutors and the Lead Co-Lawyers for the Civil Parties,
17 Judge Fenz put a question to the Defence Counsel as to how much
18 time they anticipate that they need to review those documents so
19 that we can take that into account in our deliberation for the
20 upcoming hearings. You have the floor if you wish to and Judge
21 Fenz, you may clarify this issue further.

22 JUDGE FENZ:

23 No, this is clear enough but I have an additional question which
24 is related and Defence Counsel might wish to answer both at the
25 same time.

1 This only relates to the request to postpone certain witnesses
2 you identified them as those leading positions and specifically
3 mentioned 803 and 809. Now, I'm summing up the obvious. We have
4 two investigations in Cases 003 and 004 that are ongoing, nobody
5 knows when they will be finished. We've just heard that the
6 disclosure out of these investigations will be ongoing and it is
7 impossible to predict on which segments of this current trial
8 they might have an impact. The Prosecution has told us, if I have
9 understood that correctly that they cannot identify any segment
10 of the Closing Order here that would not be potentially impacted
11 by any of these disclosures.

12 Now roughly against this backgrounds and lets, at the moment,
13 presume that the adjourning the hearings until the end of the
14 investigation Case 003 and 004 is not an option, until which
15 point in time do you suggest to postpone these people in leading
16 positions and specifically those two you have identified.

17 [15.35.36]

18 MR. KOPPE:

19 That's a good question. I'm not sure if I'm able to -- to answer
20 this question right now. What I do know is that I think we will
21 have opportunity to continue, for a while, with Krang Ta Chan and
22 Tram Kak. We still have some witnesses to go, we have a possible
23 document hearing maybe we have some additional crime based
24 witnesses, so I don't think there is a necessity to stop
25 immediately. The problem nevertheless remains and you've

1 indicated that wherever we go in the next segment it possibly
2 might be affected. So maybe the solution is that we, as he is the
3 only person who seems to know, is that we have an additional
4 Trial Management Meeting inviting the International
5 Co-Investigating Judge, present him our problem and ask him,
6 these are our crime sites which do you think will have the least
7 impact or the smallest impact on our ongoing trial. Maybe that is
8 a solution, I agree with the Prosecution if they say that the
9 security centre close to the north, the 1st January dam is being
10 investigated. It doesn't make any sense to go to the 1st January
11 dam, I agree, to be honest, we didn't really realise that. So,
12 it's very difficult right now for us to say if we have this time
13 then it will be fine. I'm not sure how we'll deal with that.

14 [15.37.32]

15 In relation to the first question, I remember that the Trial
16 Chamber itself in October last year postponed the beginning of
17 the hearing with a week because we had just received I believe
18 around 500 pages of new documents. I don't think we can read any
19 faster than you can or we would probably read the pages of the
20 statements at the same speed. But if we take that as a guideline
21 then obviously with 3000 pages we would be speaking of six weeks.
22 I realise that is quite a long time. But of course it still
23 wouldn't solve the situation. So maybe why, I just actually
24 thought of that idea when you were formulating the question, why
25 don't we invite the Judge Harmon^ here, present him our problem

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1 and ask him what he would suggest that we do otherwise I don't
2 really see any problem to the solution and--

3 [15.38.43]

4 JUDGE FENZ:

5 Counsel, I'm not expecting you to come up with the solution, I
6 just asked you if you wanted to clarify that. As a first reaction
7 to your suggestion to invite the Investigating Judge, he doesn't
8 know either what the outcome of the investigation will be and
9 what individual witnesses will say to various relevant points.

10 [15.39.08]

11 MR. KOPPE:

12 True, but he determines the focus, he knows which security
13 centres he is investigating. I'm not asking -- we're not asking,
14 I think, details as to what is happening but if he is saying for
15 instance, Au Kanseng^ is part of my investigation then maybe it
16 doesn't makes sense to go there. Maybe there's something that he
17 has just finished, maybe he can present us with relevant
18 statements, I don't know. But we have an expression in Dutch,
19 it's called "mopping the water while the tap is running". That's
20 what we're seeming to do, the water is flowing and we just keep
21 on mopping it but it just keeps on flowing so it doesn't really
22 make any sense. So I don't even know if I have answered your
23 question.

24 [15.39.57]

25 JUDGE FENZ:

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1 Just to clarify, six weeks, you are requesting six weeks, no?

2 MR. KOPPE:

3 No. I'm basing myself upon what you decided in October, based on
4 500 pages.

5 MR. PRESIDENT:

6 Counsel Kong Sam Onn, you have the floor.

7 MR. KONG SAM ONN:

8 Thank you, Mr. President. I would like to respond to Your
9 Honours, questions. In regard to the points that we shall wait
10 for the conclusion of the judicial investigation or not, I would
11 like to respond that in fact the judicial investigations in Case
12 002 concluded since 2010. And the disclosure of documents by the
13 International Co-Investigating Judge in Case 003 and 004 are of
14 the view of the International Co-Prosecutor that they are of
15 interest to this case. As for the Defence teams, we do not have
16 any intention to delay the proceedings in Case 002. However, and
17 here in the middle of the proceedings in Case 002/02 and we have
18 to go through a confrontation on certain facts and that kind of
19 proceedings cannot be done in public due to -- due to the facts
20 that those facts or events are under the judicial investigation
21 by the International Co-Investigating Judge. I think it does not
22 warrant -- warrant the limit set up -- set up or done by the
23 Co-Investigating Judge. And as for the time that we anticipate in
24 reviewing those 16 binders, it is very difficult for us to say. I
25 would say from the outset we need a minimum of six weeks to

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1 reduce the -- those facts and the relevant statements or points
2 that could be used for this current proceeding and in fact even
3 if we are granting -- granted six weeks period it does not mean
4 that we stop everything, we are still proceedings with our usual
5 work but we just need more time to review them and if we are not
6 granted such time then we just won't have the ability to proceed
7 with the current trial effectively in the interest of our client.

8 [15.43.40]

9 I have just heard the observation made by the International Lead
10 Co-Lawyer that she spent roughly 50 percent in the Court
11 proceedings and I would like to tell her that in fact at the
12 moment we are spending 100 percent in of our effort in the trial
13 proceedings. We are here, sitting in the Court four days a week
14 and we only have one day to prepare ourselves for those four days
15 per week. So we just simply do not have any time to spend on
16 reviewing those documents. Thank you, Mr. President.

17 [15.44.35]

18 MR. KOPPE:

19 Mr. President, if you allow me, I would like to briefly react to
20 the issue of the Khmer Krom. The way I understand the words of
21 Civil Party Lawyer and obviously she is coming from the French
22 system is that, if I understand her correctly, it is, according
23 to her, possible that the Chamber at one point in time convicts
24 Nuon Chea either for genocide of the Khmer Krom or for crimes
25 against humanities for instance in the form of persecution of

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1 extermination of the Khmer Krom. In other words, if that is how I
2 understood it, am I -- when I speak to my client, for instance
3 tomorrow, am I supposed to tell him that, that is a real
4 possibility, yes or no, and that is the question. Will you
5 legally from a French procedural perspective be entitled to
6 convict my client for these crimes, these international crimes in
7 relation to the group of Khmer Krom. I don't know the answer, I'm
8 asking clarification, I think my client deserves this
9 clarification and I haven't heard the Prosecution give any
10 reaction to the words of the official spokesperson of this Court.
11 I take it that Mr. Olsen doesn't say anything by himself, that he
12 is instructed or that he gets guidance as to what he says, so
13 that is how we understood all the procedural questions that arose
14 in 2010. If we see it completely wrong, please tell us and then
15 we will think of measures that we should take in relation to our
16 strategy. But right now, I sincerely do not know if that is a
17 possibility.

18 [15.46.48]

19 MR. PRESIDENT:

20 International Co-Prosecutor, you may respond to that.

21 MR. KOUMJIAN:

22 First of all just briefly, Mr. Larsen is a spokesperson for the
23 Court not for the Prosecution. We do not ask him to speak for us
24 or provide him with any confidential information so I think it's
25 obvious to everyone that quoting that remark is absolutely

1 useless. So that's why we didn't address it, because it's clearly
2 on its face has no value.

3 [15.47.27]

4 I would like to address the issue of the delay the Defence is
5 asking for. In all of our discussions this afternoon, what's
6 clear is this is an ongoing process more disclosures are going to
7 be coming. The Defence asking now for a adjournment would set an
8 extremely bad precedent. The Defence can divide up these
9 statements among their staff and have each individual staff
10 members reading parts of those. I understand that they can't have
11 Interns^ but they can have many -- several staff members on each
12 team that can divided it up. Even if they don't get to a
13 statement before the next witness for example, if they find and I
14 don't believe they will but if they find magically that there is
15 in this material something that would be of, would have affected
16 the questions to witness 803, that it would have changed and that
17 they would have a relative question to 803 because of that
18 material that could have had a substantial effect on the trial,
19 then they can make a motion later to have that witness recalled.
20 That's going to be -- we'll have to deal with these in that
21 manner because the disclosures are going to be ongoing, we can't
22 adjourn every time there's a disclosure. Every time the Defence
23 claims -- when we do what they want us to do, give them relevant
24 material then they can't say, "Oh,^ we've just been dumped with
25 relevant material and now we need to stop the proceedings

1 completely." So we would ask, Your Honours, to go forward on the
2 case.

3 [15.49.06]

4 MR. PRESIDENT:

5 Thank you. The International Lead Co-Lawyer, you may proceed.

6 MS. GUIRAUD:

7 ***Thank you Mr. President. I simply wanted to react to what our
8 colleague, Koppe, said about the Khmer Krom and he used the word
9 "genocide". I did not use that -- use that word. I don't know if
10 there was a mistranslation or if my colleague re-interpreted what
11 I said. What I said is that you are seized of the issue of the
12 Khmer Krom at Tram Kak and therefore it will be up to you to
13 decide on the legal characterisation, if there will be a legal
14 characterisation. And among the crimes at Tram Kak, there is the
15 crime of persecution and we have already heard in this trial one
16 Khmer Krom who told us that he had been considered a Vietnamese
17 and that he was treated in a discriminatory way because he was
18 perceived as a Vietnamese. The trial is happening before us, I
19 cannot say more than that but it seems to me that at one point,
20 you are going to have to ask yourself the question, if the
21 treatment of the Khmer Krom as such or as assimilated^^ to
22 another category carries a penal characterisation or not.

23 [15.50.36]

24 MR. PRESIDENT:

25 The TMM today now has come to a conclusion and on behalf of the

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1 Trial Chamber I would like to thank you Co-Prosecutors, the Civil
2 Party Lawyers, the Defence Counsels for the Accused persons and
3 support staff, security personnel, members of the Trial Chamber
4 staff and interpreters for their best effort in facilitating this
5 meeting. The Chamber shall keep under advisement the matters
6 raised during today's meeting and issue relevant decisions as
7 soon as possible.

8 The Chamber will inform the Parties of any change to the witness
9 scheduled for next week by email by the senior legal office of
10 the Trial Chamber tomorrow.

11 The meeting is now closed.

12 (Trial Management Meeting adjourns at 1551H)

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