

Trial against Senior Khmer Rouge Leader Should Include Crimes at S-21, Prosecution Argues

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The first trial of senior Khmer Rouge leaders Nuon Chea, Ieng Sary, and Khieu Samphan in the Extraordinary Chambers in the Courts of Cambodia (ECCC) was thrown into dramatic disarray earlier this month when the Supreme Court Chamber that the scope of that trial was invalid.² On Monday, February 18, 2013, the Trial Chamber convened a special hearing to address the consequences of the Supreme Court Chamber decision. Throughout the day, and in accordance with the Supreme Court Chamber's directives, the Trial Chamber heard from the Office of the Co-Prosecutors (OCP) and the civil party co-lawyers on the potential ways forward. Defense teams will consult with their clients after hearing the views of the OCP and civil party co-lawyers and report their views at a hearing scheduled for Wednesday, February 20.

The OCP's comments for the day centered around its suggestion that the Trial Chamber proceed on the basis that there would likely be only one trial in Case 002. The scope of this single trial, the International Co-Prosecutor Andrew Cayley strenuously argued, should follow the scope the Trial Chamber had already adopted for Case 002/1 but with one important difference: the addition of the notorious security center located in Phnom Penh – S-21, or Tuol Sleng. Adding S-

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

² The Supreme Court Chamber's decision may be accessed at http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-11%2018:26/E163_5_1_13_KH.PDF (in Khmer), and http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-11%2018:23/E163_5_1_13_EN-1.PDF (in English). Cambodia Trial Monitor's commentary on this ruling may be accessed at <http://www.cambodiatribunal.org/blog/2013/02/expert-legal-commentary-supreme-court-chamber-invalidates-case-002-severance>.

21, in the OCP's view, would greatly enhance the representativeness of the crimes charged in many important respects, including by:

- Allowing further charges identified in the Closing Order, including several grave breaches of the Geneva Conventions and additional elements of crimes against humanity, to be added to the trial; and
- Addressing two further main policies among the five that the Closing Order identified as the basis of the joint criminal enterprise pursued by the senior Khmer Rouge leaders.

The civil party co-lawyers also put forward several comments on these and related issues. In particular, they requested the Trial Chamber's confirmation that in the event that a new Severance Order were issued defining a new scope for the continued trial in Case 002, no civil party should be excluded through that Severance Order.

Additionally, during today's hearing, there was a short debate between the parties concerning whether the Trial Chamber should proceed with the hearing of character witnesses who were scheduled to testify this week in respect of the character of accused person Khieu Samphan. The Trial Chamber decided in light of that debate to reschedule this testimony to a further date to be advised.

Preliminary Discussions Concerning Effect of Absences in the Courtroom

Today's hearings opened before a large audience of over 300 university students from some 10 universities, including the Royal University of Law and Economics, Paññāsāstra University of Cambodia, the Royal University of Phnom Penh, and the Cambodian University for Specialties. They were joined by a small number of villagers from Takeo province. At the hearing's outset, Trial Chamber President Nil Nonn noted that Judge Silvia Cartwright was absent due to personal reasons. As such, the Chamber judges had decided that Reserve Judge Claudia Fenz would take her place pursuant to the ECCC Internal Rules.

Additional absences at the hearing today, Trial Chamber Greffier Duch Phary noted, were the accused Ieng Sary, who was participating from his holding cell, and the accused person Nuon Chea, who remained hospitalized at the Khmer Soviet Friendship Hospital. However, Mr. Chea had indicated that he did not oppose being absent from today's proceedings provided he would be afforded an opportunity to consult with his counsel before responding to submissions made by the OCP and civil party co-lawyers. Accused person Khieu Samphan was also absent today, as was National Co-Counsel for Ieng Sary Ang Udom, although he would arrive later in the day.

At this point, International Co-Counsel for Nuon Chea Victor Koppe was invited to make additional comments concerning Mr. Chea's state. Mr. Koppe said that his team would not be in a position to put forward its comments on the matters under discussion for today until they had spoken to Mr. Chea. Thus, they would give their comments tomorrow.

International Co-Counsel for Khieu Samphan Arthur Vercken added that in his view, the most logical way to proceed was to hear an overall view of the position of the OCP and civil party co-lawyers before addressing the issues about which the Trial Chamber had requested comments, in order to ensure that he was able to obtain the most appropriate instructions from his client.

Relevant Background to Today's Hearing

President Nonn proceeded to provide a background to today's hearing. He first noted that on Thursday, February 7, 2013, the Trial Chamber had announced that there would be no hearings between 11 and 15 February, 2013, due to Nuon Chea's health issues, and would schedule an expert witness, the journalist Elizabeth Becker, to testify from today onwards. The day after that ruling, however, the Supreme Court Chamber issued its decision concerning the scope of Case 002/1. In light of the latter decision, the Trial Chamber first needed to revisit the question of the scope of Case 002/1 and hear all the parties' views on this matter, as outlined in its memorandum dated February 12, 2013.³ This would enable the Chamber to issue a decision in this regard before returning to further evidentiary hearings in the case.



In September 2011, the president continued, the Trial Chamber severed Case 002; he noted that this decision has been taken as practice in international tribunals indicated that Case 002 could otherwise take up to 10 years to be heard. According to the Trial Chamber's Severance Order, the first trial in the severed Case 002 — named Case 002/1 — would address the following factual and legal matters:

- The historical background of the Communist Party of Kampuchea (CPK);
- Communication and military structure;
- Facts on joint criminal enterprise;
- Applied policies on forced transfer phases 1 and 2;
- Roles of the accused;
- Crimes against humanity; in particular:
 - murder up to forced movement phase 1;
 - mass killing phases 1 and 2;
 - other inhumane acts;
 - political persecutions related to forced movement; and
 - forced disappearances limited within phase 2; and
- Forms of responsibility and the characters of the accused.⁴

The OCP appealed the Severance Order in October 2011,⁵ requesting the Trial Chamber reconsider the matter and include nine new crime sites. It argued that Case 002/1, which would likely be the only trial ever heard from Case 002, would otherwise fail to contain representative charges. The Trial Chamber rejected this request.

³ The Trial Chamber's memorandum has the document number E163/5/1/13/1, and may be accessed at http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-15%2010:30/E163_5_1_13_1_KH.PDF (in Khmer), and http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-15%2010:28/E163_5_1_13_1_EN.PDF (in English).

⁴ This is outlined in an annex with the document number E124/7.2.

⁵ The relevant documents have the document numbers E124/1 and E124/2.

In January 2012, the OCP re-appealed, requesting that the Trial Chamber include a reduced list of three additional crime sites within the scope of Case 002/1, namely S-21 and execution sites in District 12 and Tuol Po Chrey. After hearing oral arguments on this matter at a trial management meeting in August 2012, the Trial Chamber rejected on October 8, 2012, the majority of these requests, agreeing to include only the Tuol Po Chrey execution site as an additional crime site on the basis of its relevance to the forced movements already included within Case 002/1.

The OCP appealed this decision to the Supreme Court Chamber in January 2012. The Supreme Court Chamber issued its decision on February 8, 2013, declaring the invalidity of the scope of Case 002/1 and directing the Trial Chamber to reconsider it.

Outline of Today's Hearing

During today's proceedings, the president continued, all relevant parties would be invited to make their comments in relation to nine issues that the Trial Chamber had raised in a memorandum it issued on February 12, 2013. These issues may be summarized as follows:

Issues addressed to the OCP and civil party co-lawyers:

1. Likelihood of all Case 002 charges being tried while accused persons were still alive or competent.
2. Preference between having any timely verdict or a broader array of charges at the risk of no verdict at all.
3. Views on the scope of Case 002 in light of the trial's advanced state and lengthy delays due to the physical frailty of all accused.
4. Additional matters to be included in a new scope of Case 002/1.

Issues addressed to all parties:

5. Scope of questioning for upcoming witnesses, experts and civil parties, and issues concerning all testimony which has already been heard in the Case 002/1 trial.
6. Number of additional witnesses, experts, and civil parties and supporting documents that would be required for any proposed new trial scope, and relevant timelines.
7. Immediate commencement of hearing in Case 002/2 following the conclusion of evidentiary hearings in Case 002/1 (and following a short recess for preparation).
8. Prejudice caused by the lack of a "concrete timetable" for later trials in Case 002.

Issue addressed to defense teams:

9. Impact of annulment of Severance Order on defense rights and recommendations as to appropriate remedies.

Debate over the Format of the Hearing

The first issue that the president asked the OCP to address was whether, in the OCP's view, the entirety of the charges against the accused persons in Case 002 would be able to be tried within the accused persons' lifespans or while each were still fit to stand trial. International Co-Prosecutor Andrew Cayley responded by making the preliminary suggestion that perhaps the process could be expedited by having the OCP address all the issues together instead of one at a time, since the OCP believed the questions were interconnected.

This prompted the Trial Chamber judges to huddle in conference. Judge Fenz was seen gesturing animatedly during this discussion, at times waving her hand from side to side and shaking her head, while the president rested his chin in his hand pensively. The president and Judge Fenz also appeared to be referring to a document — presumably their memorandum providing guidance on today’s proceedings — and occasionally flicking through it.

After several minutes, the president advised that the OCP was to respond to all nine issues in the memorandum. Mr. Cayley clarified that the OCP was certainly going to do that but again suggested that the parties proceed by having the OCP address the nine issues in one address, rather than have all parties speak on each issue in turn. International Co-Counsel for Ieng Sary Michael Karnavas voiced his team’s agreement with this format, in view of his team’s need to consult with their client and relay the OCP and Lead Co-Lawyers’ positions before offering their response. International Lead-Co Lawyer for the civil parties Elisabeth Simonneau Fort also voiced the civil party co-lawyers’ agreement with the OCP’s position.

These responses prompted a second conference between the Trial Chamber judges. After some minutes, Judge Jean-Marc Lavergne left the group and returned to his seat while his remaining colleagues continued to deliberate. Shortly thereafter, the president gave the floor to Judge Fenz to clarify the Chamber’s position. She advised that the Chamber would maintain its current plan to address each question in turn. This was because the Trial Chamber’s memorandum tracked the reasoning in the Supreme Court Chamber’s decision. The Chamber wished to ensure that no issues would be “glossed over,” risking the consequence that the Chamber would fail to address anything the Supreme Court Chamber had required them to address.



Opening Comments from the National Co-Prosecutor

At this point, Mr. Cayley conferred briefly with his counterpart, National Co-Prosecutor Chea Leang. After a short pause, Ms. Leang took the floor. She noted, first, that the consequences of the Supreme Court Chamber’s findings were “actually quite simple and need not cause undue delay.” She added that the OCP was grateful that the Trial Chamber had responded by convening the hearings so quickly.

Ms. Leang conveyed the OCP’s impression that there may have been some misunderstanding about the implications of the Supreme Court Chamber’s decision. She therefore sought to clarify that the decision did not invalidate the entire proceedings in Case 002. However, before she could proceed any further, Mr. Karnavas objected that while the Chamber had seemed to direct the OCP to address each question, the OCP now seemed to be giving an opening statement. Perhaps the OCP could “skip the speech and get to the answer to the question,” he commented.

Ms. Leang advised that the OCP’s plan was for her to offer opening remarks, after which Mr. Cayley would offer specific responses to each question posed by the Chamber. The president

permitted the OCP to make brief opening remarks only, as the Chamber's interest was in the particular answers to the nine issues raised.

Permitted to continue, Ms. Leang advised that the Supreme Court Chamber's decision concerned not what was done but how it was done. With respect to the severance of Case 002, the Supreme Court Chamber had held that the severance of the hearing could only be based on one of two reasons:

- Management of a complex trial, as long as the splitting into sub-trials was planned in advance; or
- A deterioration of the health of the accused persons requiring the hearing of a representative set of charges against the accused.

The OCP continued to believe that severance of Case 002 was in the interests of justice, she stated. The OCP "simply objected and tried to be heard on the form of the severance." Eleven days after the Trial Chamber's Severance Order, Ms. Leang recounted, the OCP had requested the Chamber to consider a broader range of charges and of crimes against humanity, which would more fully reflect all aspects of the joint criminal enterprise that the OCP alleged occurred. The more representative mix of charges that the OCP put forward would have, in its view, been necessary in order to satisfy the agreement between the Royal Government of Cambodia and the United Nations establishing the ECCC. It was the OCP that bore the positive burden of proving the case against the accused. Adducing evidence piece by piece required detailed planning.

Continuing on, Ms. Leang advised that in January 2012, the OCP had requested the Trial Chamber include a reduced number of three additional crime sites: execution sites at District 12 and Tuol Po Chrey and the security center at Tuol Sleng known as S-21. All defense teams opposed this request, while the Trial Chamber left this question open for eight months before it decided that it might be willing to "contemplate a modest extension" to encompass the three sites, duly inviting the parties' submissions on this matter.

The OCP had, at that time, indicated that including these three crime sites would significantly assist the OCP in meeting its burden of proof. The OCP had selected these three crime sites in part because the Chamber would have needed to hear witnesses related to these crime sites in any event, in order to prove the purpose of the April 17, 1975, liberation of Phnom Penh; however, the Chamber seemed to disagree. It disposed of the matter on October 8, 2012, when the parties were "conclusively advised that no further extensions of the scope of Case 002/1 would be entertained." It was for this reason that the OCP believed that an appeal to the Supreme Court Chamber was necessary. Concluding her introduction, Ms. Leang said she believed it was important both for the record and for the public to know what procedural history had transpired in arriving at this point.



Issue 1: Likelihood of Trial on All Charges While Accused Persons Still Alive and Competent

Ms. Leang ceded the floor to her colleague Mr. Cayley to address the first question the Trial Chamber had posed in its memorandum, namely the likelihood of all Case 002 charges being tried while the accused persons were still alive and competent. Mr. Cayley advised that as the OCP had consistently argued, it was “highly unlikely” that the accused persons would indeed still be alive or competent to be tried against all Case 002 charges. That is, the OCP did not disagree with the Trial Chamber’s proposition in this regard; the issue, it felt, was the scope of the case they were confronting on the basis that this would be the only trial.

For the purpose of the public, Mr. Cayley said, it was important that it be set out what guidance the Supreme Court Chamber had offered to the Trial Chamber in reconsidering the scope of Case 002/1. In particular, it directed the Trial Chamber to be clear about whether it was adopting severance due to the manageability of several trials, or due to the remoteness of the possibility of more than one trial. If there were to be multiple trials, he said, it was necessary for the Chamber to consider an overall plan. If there were to be only one trial, there was a need for the Trial Chamber to define the standard for representativeness or charges. “Representativeness is absolutely critical; it is at the heart of why we are here,” Mr. Cayley concluded.

Ms. Simonneau Fort took the floor, opening with a few general comments on the civil party co-lawyers’ position. The Supreme Court Chamber’s decision, she said, echoed matters that the civil party co-lawyers had already raised 16 months earlier. The civil party lawyers were of the view that all charges needed to be heard. “How could it not be otherwise?” she contested.

Having said this, she stated, the civil party co-lawyers believed that it was impossible to ignore the past 16 months of hearings. The Trial Chamber was correct to point out in its memorandum that it would be difficult to recall witnesses to comment on additional issues; indeed, she commented, the Civil Party Co-Lawyers believed it to be impossible. The Supreme Court Chamber’s decision came far “too late” and issued an order not even requested by the OCP; its decision was “too abstract,” Ms. Simonneau Fort opined, as it was “impossible to cover the totality of crimes and facts.” This trial, however, was far from abstract, she concluded; thus, the Civil Party Co-Lawyers would not seek the opportunity today to reopen the entire scope of the crimes but instead seek a “reasonable” solution.

National Lead Co-Lawyer for the civil parties Pich Ang rose to offer his team’s brief response to the Trial Chamber’s question concerning the specific issue Mr. Cayley had earlier discussed. The civil party co-lawyers were, indeed, “very concerned” that the accused would not survive the trial. It was for this reason that consideration of an appropriate scope for Case 002/1 was so vital, he stated.

Issue 2: Preference between Having Any Timely Verdict or a Broader Array of Charges at the Risk of No Verdict at All

After a short mid-morning break, the president asked the OCP and Lead Co-Lawyers to respond to the second question, namely the parties’ preference as between having any timely verdict or to try the accused on a broader array of charges at the risk of no verdict at all. Mr. Cayley advised that of course, the OCP was of the view that there was a need for more limited charges as this would increase the likelihood of a verdict. However, the OCP’s dispute with the Trial Chamber

was whether the crime sites the Chamber had selected for Case 002/1 were representative of the crimes charged in Case 002. The OCP had long contended that they were not.

Mr. Cayley's preference was for only one trial against the three accused persons. Therefore, that trial and any new Severance Order issued in respect of it should be "reasonably representative," he stated. He noted Ms. Simonneau Fort's earlier comment that the Supreme Court Chamber's decision came too late. While acknowledging its timing, Mr. Cayley said that nevertheless, it was a decision of the Supreme Court Chamber and needed to be respected. Moreover, it was critical that all parties be heard on matters such as severance.

For the civil party co-lawyers' part, Mr. Ang said that they preferred several trials and were relieved to see a shorter initial trial where a verdict would be possible. "Of course," he added, "the trial should be proportionate to the situation of the health of the accused and the financial constraints of the court."

Ms. Simonneau Fort clarified at this point that the Supreme Court Chamber decision was not "too late," since it raised relevant questions; the civil party co-lawyers' issue with it was simply that it was tardy. She also added, to Mr. Ang's comments, that the question on a preference for a



verdict or a longer trial based on more representative charges did not easily lend itself to a yes or no answer. There was a need, she emphasized, for balance. It was unnecessary to include all of charges in the Closing Order; there was simply a need to include certain charges in order to ensure representativeness. Like the OCP, the civil party co-lawyers were not against severance of Case 002, merely how it was done. There was a need for a "delicate balance" between reasonable time limits and the overall representativeness of the trial.

At this point, Judge Fenz sought to highlight for the benefit of the public that the key issue at hand here was the likelihood of a verdict. This could not happen until evidentiary hearings were finished. While Judge Fenz would not speculate on the length of time to write the verdict, she noted that Case 001 addressed one accused person and basically one crime site. The initial trial judgment was issued eight months after the conclusion of hearings in that case, while the Supreme Court Chamber's appeal decision was issued seven months after that.

Issue 3: Views on the scope of Case 002 in Light of the Trial's Advanced State and Lengthy Delays due to the Physical Frailty of All Accused

Next, the president sought the OCP and civil party co-lawyers' views on the scope of Case 002 in light of the trial's advanced state and lengthy delays due to the physical frailty of all accused. Mr. Cayley took the floor again at this point. He first sought to respond to Judge Fenz, noting that while the OCP knew how long it took to write judgments, he felt it was extremely problematic to suggest moving to a second trial while the judgment of a first trial was being deliberated. In addition, the Trial Chamber was speaking in terms of months of time required to write a judgment, whereas the OCP was speaking to the number of weeks required to hear new evidence.

It appeared that a power cut struck the Trial Chamber at this juncture, abruptly shutting off all computers used by counsel. Mr. Cayley continued undeterred, however. He said that the OCP was of the view that the severance of Case 002/1 did not follow international jurisprudence. In addition, it was certainly necessary to take into account and balance the fact that the accused were in increasingly poor health; the OCP's proposal on severance would take this into account, he stated.

Mr. Ang relayed the civil party co-lawyers' view that the length of trial in this case was in any case uncertain. It was difficult for the civil party co-lawyers to accommodate rescheduling. The civil party co-lawyers supported the scope of the trial as determined by the Trial Chamber but also supported the proposal of the OCP to extend the scope to add a few additional crime sites. It was for the Chamber to balance all of these matters, he concluded.

Issue 4: Additional Matters to be Included in a New Scope of Case 002/1

The president requested views as to additional matters to be included in a new scope of Case 002/1. In the question in its memorandum, the Trial Chamber had noted that expanding the case to District 12 execution sites, Tuol Po Chrey and Tuol Sleng:

Would encompass only a limited geographical area, encapsulate only a minor part of the overall victimization in Case 002, and compel the Chamber to re-hear allegations in relation to the only crime site to have been adjudicated before the ECCC to date.

Mr. Cayley responded by confirming that the OCP continued to propose including S-21, or Tuol Sleng, within the scope. The OCP did not agree that hearing evidence about this site in Case 001 precluded its hearing in this case, as the ECCC was a *sui generis* court, and in several international courts, there were multiple trials concerning the same crimes. He gave one particular example of a trial in which both he and Mr. Karnavas were involved, namely the series of cases heard at the International Criminal Tribunal for the former Yugoslavia concerning events at Srebrenica.

The OCP sought to include Tuol Po Chrey and S-21 in the case, he said. Concerning reasonable representativeness, the OCP submitted that in the context of an indictment at the ECCC, this principle needed to be applied. Rule 89*ter* of the ECCC Internal Rules allowed for severance when the interests of justice required it. However, it did not elaborate on what grounds were relevant in considering this. The OCP submitted, and the Supreme Court Chamber agreed, that what was relevant was considering international law.

Common sense and a need for meaningful justice required representativeness to be the consideration here, as the Supreme Court Chamber held, and was enshrined in the Rules of Procedure and Evidence of the ICTY, Mr. Cayley argued. As articulated in the ICTY instrument, reasonable representativeness included certain factors, namely:

- Crimes charged in the indictment;
- The classification of those crimes;

- The nature of those crimes;
- The places where the crimes were alleged to have been committed;
- The scale of the crimes; and
- The victims of the crimes.

Two issues had been added to this matrix through case law, he stated, namely the time period and the fundamental nature or theme of the case.

Mr. Cayley proceeded to address each of these factors in turn in the context of Case 002. Concerning the crimes charged in the Closing Order, Mr. Cayley said, the crimes in the severed indictment should be of the same severity and variety as those contained in the Closing Order, although this needed to be balanced against the age and health of the accused. Adding S-21 to a new Severance Order would “significantly increase the representativeness of the indictment in terms of crimes charged.” S-21 related to a wide range of crimes, Mr. Cayley said, including:

- The crimes against humanity of murder, extermination, enslavement, imprisonment, torture, political persecution, racial persecution, and other inhumane acts through attacks against human dignity; and
- Grave breaches of the Geneva Conventions, including willful killing, torture, inhumane treat, willfully causing great suffering, willfully depriving a prisoner of war of a fair trial, unlawful deportation of civilians, and unlawful confinement of civilians.

Including S-21 within the scope of the current trial also would lead to the incorporation of several crimes that the Trial Chamber would not otherwise have considered at all, the prosecutor continued, namely:

- The crimes against humanity of enslavement, imprisonment, torture, and other inhumane acts; and
- The grave breaches of the Geneva Convention of willfully causing great suffering, willfully depriving prisoners of war of fair trial, unlawful deportation of civilians, and unlawful confinement of civilians.

He also noted that while the grave breach of the Geneva Conventions of willful killing incorporated murder as a crime against humanity, there were also additional elements of willful killing that would render it as a separate crime.

Severance also required the classification of crimes charged to be reasonably representative, Mr. Cayley went on. In the Closing Order, the crimes were classified as genocide, crimes against humanity, grave breaches of the Geneva Conventions, and crimes under Cambodian national law. Including S-21 would enable the classification of Case 002/1 to include grave breaches of the Geneva Conventions.

Regarding the factor of representativeness, he continued, there was a need to consider where there were similarities between crimes in a class. For example, within crimes against humanity, murder and extermination might be similar but these would be very different to imprisonment. Including S-21 would therefore increase the representativeness of the trial.

As for places where crimes were committed, Mr. Cayley said it was necessary for the crimes in the severed case to be geographically representative of the crimes in the original indictment. Adding S-21 would “significantly increase the representativeness of the places where crimes were committed.” Mr. Cayley noted that the Trial Chamber disagreed as it had stated that S-21 had a limited locus. However, in the OCP’s view, while S-21 was in one geographic location, it was more representative of crimes committed across Cambodia than any other location, as victims were brought into S-21 from every zone. The Closing Order supported this proposition, he argued, as it noted that prisoners at S-21 came from all zones and autonomous sectors in Cambodia.⁶ Prisoners would either be collected at their location or summoned to Phnom Penh, particularly by Nuon Chea, when they would disappear,⁷ he argued; thus, S-21 actually had a wide geographic scope.

The scale of crimes charged in a severed indictment need to reflect the full extent of the crimes in the original indictment, the prosecutor continued. Adding S-21 in a new Severance Order would significantly increase the representativeness of the scale of crimes in the indictment. This case was “principally about the untimely death or murder of between 1.7 million and 2.2 million people who perished between 1975 and 1979,” Mr. Cayley said; S-21 better represented the “magnitude and severity” of this than perhaps any other crime in the Closing Order. The Closing Order set out reasons for this significance, including the following:

- S-21 was the most important security center in Kampuchea.
- S-21’s management reported to the highest echelons.
- S-21 conducted activities on a national scale.
- Senior leaders and important cadres were held at S-21.

Concerning the victims of crimes, Mr. Cayley noted that the Closing Order considered the entire population of Cambodia as victims of the crimes charged. Victims were primarily either “internal” enemies, including members of the CPK and the Revolutionary Army of Kampuchea (RAK), or “external” enemies, such as the Cham, Vietnamese, Buddhists, and former members of the Khmer Republic (that is, the Lon Nol regime). However, in the Case 002/1 trial to date, he said, the crime base — namely, forced movements 1 and 2 — dealt largely with external enemies.

In contrast, Mr. Cayley noted, the majority of the victims at S-21 were internal enemies: significantly, members of the RAK and members of CPK cadres. The victims ranged from the very highest to the lowest levels. They also included victims from the offices and ministries of which the accused were alleged to be in charge. On this point, Mr. Cayley noted that at least:

- 209 S-21 victims were from Office 870;
- 113 S-21 victims were from the Ministry of Foreign Affairs; and

⁶ Mr. Cayley cited in this regard Closing Order paragraph 431. The Closing Order may be accessed at <http://www.eccc.gov.kh/document/court/14888> (in Khmer), <http://www.eccc.gov.kh/en/documents/court/closing-order> (in English), and <http://www.eccc.gov.kh/fr/document/court/ordonnance-de-cl%C3%B4ture-dans-le-dossier-002> (in French).

⁷ Mr. Cayley cited in this regard Closing Order paragraph 434.

- 482 S-21 victims from the Ministry of Commerce.

Moreover, victims of S-21 came from across the entire country, with the influx of prisoners shown to be directly related to internal purges around the country. Additionally, other groups of victims at S-21 were:

- Former officials of the Khmer Republic and the United Front of Kampuchea;
- Members of the educated classes (including teachers, professors, students, doctors, lawyers, and engineers); and
- Nationals from foreign countries, including Vietnam, Thailand, Laos, India, and western countries including the U.S., the U.K., and Australia.

Mr. Cayley argued that case law at the international tribunals also suggested that the time period of the charges in an indictment should be reasonably represented in a severed trial, including not only the overall time span but also any key phases in the relevant time span. In this respect, he drew the Chamber's attention in particular to the ICTY case of *Prosecutor v. Stanišić and Simatović*.

Adding S-21 would significantly enhance the representativeness of the time period of Case 002/1, he argued, as opposed to the charges concerning the forced movements of the population. Indeed, it would expand the time period of Case 002/1 to the entire time period of Case 002 as a whole.

Finally, Mr. Cayley said, there was a second relevant factor that had been developed at the international tribunals through case law: namely, that a severed case should reflect the fundamental nature and theme of a case. Again, *Prosecutor v. Stanišić and Simatović* supported this proposition. In this respect, the OCP's view was that adding S-21 "really reflected the heart of this case." The common purpose of the joint criminal enterprise of the senior Khmer Rouge leaders was rapid development of Cambodia through a great leap forward and extermination of enemies by whatever means necessary. However, only one of five criminal policies identified as part of the joint criminal enterprise – namely, forced movement of the population – would have been addressed under the previous Case 002/1 scope. Adding S-21 would expand the representativeness of Case 002/1 by resulting in the case addressing three of the five policies, he asserted.

The heart of the overall Case 002 concerned arrest, torture, and murder at security centers. The co-accused had been charged in relation to 11 security centers; S-21 was one of them and was directly connected to the Khmer Rouge Standing Committee, Mr. Cayley said repeatedly, pressing his palms together for emphasis. He continued to emphasize that S-21 represented a very large portion of the victims of the Khmer Rouge and the geographic range of crimes charged in the Closing Order.



Taking over for the civil parties, Mr. Ang said that the civil party co-lawyers concurred with the OCP on this point. He also stressed that the civil party co-lawyers wanted the Trial Chamber to

adjudicate on crimes committed throughout the period within the jurisdiction of the Court. However, if this was inappropriate, he stated, the Chamber should consider an “appropriate scale-down.” Including S-21 was very appropriate, he concluded, noting that some victims that the civil parties represented were, indeed, former prisoners of S-21. At this point, the Trial Chamber adjourned for lunch 15 minutes earlier than usual.

Ieng Sary Requests to Waive Presence in the Proceedings

Following the lunch break, a new audience of approximately 100 students from the Chamroeun University of Poly-Technology took their seats in the public gallery. First to take the floor after the break was National Co-Counsel for Ieng Sary Ang Udom, who had joined counsel in the courtroom. He advised that due to health reasons, Mr. Sary requested to waive his presence in the hearings on these matters at all and be returned to the ECCC Detention Facility — thus, for the rest of the hearing today and for the entirety of the hearing on February 19.

The president advised that the accused enjoyed discretion over whether or not he wished to participate in the proceedings. He granted Mr. Sary’s request and ordered the security personnel to return Mr. Sary to the ECCC Detention Facility.

Scheduling of Khieu Samphan’s Character Witnesses

At this juncture, the president noted that upon reflection, the Trial Chamber judges had decided that there was no longer any need to hear the parties’ comments on the fifth issue in its memorandum, namely the scope of questioning for upcoming witnesses, experts, and civil parties, and issues concerning all testimony that had already been heard in the Case 002/1 trial. Instead, President Nonn sought the parties’ comments on the scheduling of character witnesses in respect to Mr. Samphan. He noted that these witnesses had initially been scheduled to begin testifying from Wednesday, February 20, 2013.

Given the floor, Mr. Vercken noted that his team had just issued a request with respect to some difficulties it encountered with two of those character witnesses, TCW 665 and TCW 673. He noted that, as notified to the Chamber a long time ago, these witnesses were able to speak to factual allegations against Mr. Samphan and not merely the accused person’s character. The Trial Chamber would be well-advised to hear these witnesses on both matters, Mr. Vercken continued. Thus, he requested that these witnesses’ testimonies be postponed for the moment and that they ultimately be permitted to speak to the factual allegations of this case.

International Assistant Co-Prosecutor Dale Lysak responded that the OCP felt there was no reason to defer the hearing of character witnesses and did not see how their testimony would be affected by the potential shifts in the scope of Case 002/1. Mr. Samphan faced charges from the entire scope of Case 002, he argued, and the OCP found it hard to see how Mr. Samphan’s character changed on the basis of whether S-21 was or was not included in the scope of the trial. Thus, the OCP proposed that the Trial Chamber proceed with these witnesses. If there were new issues raised with respect to these witnesses potentially having new information, the Khieu Samphan Defense Team could make a motion based on this, he asserted; however, the OCP believed this to be unlikely.

By way of reply, Mr. Vercken requested to know how it was that Mr. Lysak could comment on the relevance of these witnesses' testimony to the scope of the hearing, in light of this not being defined at this stage.

Mr. Lysak stood to respond, but before he could speak, Judge Lavergne intervened. He noted that while these witnesses were character witnesses, everyone could agree that these witnesses could have questions put to them with regard to the facts in the Closing Order. One of these witnesses, he noted, was very close to Mr. Samphan and could also provide information with respect to the two other accused persons. This week, the judge continued, it would likely be difficult to ensure the in-court participation of Nuon Chea. Addressing Mr. Lysak, Judge Lavergne advised that the Chamber understood Mr. Lysak's comments that the OCP did not object to questions being put to the witness concerning relevant facts and asked why the OCP had classified these witnesses as character witnesses when they could speak to the facts. Mr. Lysak said that this classification came from the defense's own filing, which did not suggest that the witness's testimony would cause any issue with respect to the issues of severance.



Thanking Mr. Lysak for these comments, the president gave the floor to Mr. Ang. The latter advised that the civil party co-lawyers believed that the hearings should proceed as scheduled for reasons of expeditiousness and that any decision in relation to severance should not affect the hearing of these witnesses.

Requested by the president to put forward his team's views, Mr. Koppe advised that the Nuon Chea Defense Team did not have any comments. They were currently preparing a list of character witnesses for Mr. Chea and would notify the Chamber by this Friday, February 22. Similarly, Mr. Udom advised that the Ieng Sary Defense Team did not have any observations on this point.

Judge Lavergne asked whether the character witnesses for Mr. Chea would also be able to be asked questions concerning Mr. Chea's role; further, would Mr. Chea waive his right to attend hearings of any such witnesses? Moreover, he noted, questions would be able to be asked about the accused and all facts contained in the Closing Order. Mr. Koppe said they would have to discuss this with their client, as they had been taken by surprise by this topic of discussion and would need to report to the Chamber the next day.

Mr. Karnavas added a point of clarification that his understanding of the law and practice was that once a witness took the stand, "all is fair game." Mr. Lysak stated that the OCP agreed with Mr. Karnavas's comments: namely, they agreed that witnesses could be questioned about any issue even if they were called as character witnesses. Judge Fenz advised that the Chamber all agreed that witnesses could be questioned on all relevant questions. However, what was uncertain at this point was the relevant scope, she noted, questioning how would it be possible for the Chamber to proceed without knowing the scope. The Trial Chamber had done its best to avoid delays, she stated, and sought suggestions about how to do so.

In response, Mr. Lysak cited previous situations in which the Chamber had permitted questioning on the entire scope of Case 002, including where expert witnesses had traveled a long way to testify, for instance in the case of Professor David Chandler, or where the witness was of an advanced age. Where the witness might have testimony which might be affected depending on a determination on severance then perhaps, Mr. Lysak said, it would be best to wait for a determination on that. However, he noted, the OCP's view was that with character witnesses, it would generally be safe to proceed as it would be unlikely that they would offer extensive testimony on specific crimes.

Mr. Karnavas sought at this point to "disabuse counsel" of the view that simply proceeding would be possible. The defense and the OCP had differing views on the tactical decisions about whether or not to proceed, he asserted, noting that, at this point, everyone was "back at square one." Calling a witness a character witness was simply a label; if the scope was narrow, then perhaps a decision could be made to limit the witness's testimony to the scope. However, at this point, nothing was limited. Thus, he argued, the Trial Chamber was required at this point not to hear any witnesses until the severance issue was settled. The Trial Chamber was in this position, he reminded the Court, because the OCP had appealed and the Supreme Court Chamber had issued its recent decision.

Briefly adding to this, Mr. Vercken said that it was not only because the OCP had requested the addition of only S-21 that the Trial Chamber had to reconsider the representativeness of the scope of the trial. As Mr. Karnavas said, the Trial Chamber was now returned to "square one."

The president thanked the parties for its comments on this issue, noting there was a need for the Chamber to put into the place all relevant logistical arrangements in preparation for the calling of witnesses. He then directed the parties to return to presenting their comments on issues raised in the Trial Chamber memorandum.

Issue 6: Number of Additional Witnesses, Experts, Civil Parties, and Supporting Documents that Would Be Required for Any Proposed New Trial Scope and Relevant Timelines

Mr. Lysak took the floor again to respond to the sixth issue in the Trial Chamber's memorandum, namely the number of additional witnesses, experts, civil parties, and supporting documents that would be required for any proposed new trial scope, as well as the relevant timelines. As to documents, Mr. Lysak said that the majority of the documents were included in two lists that had previously been submitted to the Trial Chamber:

- **Annex 9, a list of prisoner arrests, interrogations, and executions lists:** This annex contained 337 documents, 297 of which had already been assigned E3 numbers. Thus, some 40 additional documents would need to be put before the Chamber.
- **Annex 10, a list of 308 S-21 confessions admitted by the Trial Chamber:** Much of the documents on this list had also been given E3 numbers. There were approximately 150 documents left to be put before the Chamber.

Thus, the total number of new documents originating from S-21 would be approximately 200, he stated; these were the same types of documents already put by the parties and argued before the



Chamber. In addition, he said, the Trial Chamber noted that the OCP would be tendering some submissions in relation to witness statements and complaints. If S-21 were included, an additional group of witness statements would be added, but these would not be significant in number compared with those being put before the Trial Chamber already.

There would also be a small number of additional documents that the OCP might add, Mr. Lysak said, including photographs. The OCP would be able to marshal these documents at a relatively fast pace, perhaps 10 to 14 days after the Trial Chamber issued an order to this effect. As for the holding of document presentations, the OCP would be ready to deliver a presentation on documents if the Trial Chamber wished to hear from it on this, although the OCP suggested that this hearing not take place until witnesses had already testified.

In an August 3, 2012, Trial Chamber memorandum,⁸ Mr. Lysak continued, the Chamber indicated that it was “unconvinced of the need to hear further witnesses or civil parties to address crimes committed at S-21 or Choeng Ek.” The OCP had already argued that while they agreed much evidence had already been heard on S-21, additional witnesses and evidence needed to be heard, particularly in relation to the operation of S-21. This addition would enable the OCP to meet its burden of proof and enable the defense to contest the evidence relating to this crime site.

On this basis, the OCP had proposed a small number of additional witnesses on S-21. The OCP’s position was that the Court should hear from a representative sample of witnesses on S-21. In addition to recalling Kaing Guek Eav *alias* Duch to provide additional testimony, the OCP believed that four other witnesses should also be heard:

- A surviving S-21 detainee;
- An interrogator from S-21;
- The cadre responsible for documenting prisoners; and
- The cadre responsible for taking prisoners to the Choeng Ek execution site.

He noted that last year, both the Ieng Sary Defense Team and Khieu Samphan Defense Team did not propose calling any witnesses in relation to S-21; the Nuon Chea Defense Team did put forward a long list of proposed S-21 witnesses, however. Four of these were the same witnesses the OCP had proposed, while the others on the list were, Mr. Lysak said, people whom the Chamber might find did not need to be called. They included the two psychologists who questioned Duch and “every name that the defense could come up with” concerning S-21.

One reason why OCP contended that S-21 could be tried very quickly was because the Chamber had already heard extensive testimony on S-21, notably including 12 days of testimony from Duch, Mr. Lysak argued. Regarding the OCP’s time estimates for the new witnesses, Mr. Lysak noted that experience in the ECCC so far showed that crime-based witnesses could testify

⁸ This memorandum has the document number E218.1.

relatively quickly. He noted that 18 witnesses and civil parties had testified on the first forced movement and their testimony was heard in a total of 16 days.

Thus, he continued, the OCP believed that the witnesses could be heard in a relatively short time. For two witnesses the OCP had proposed for Tuol Po Chrey, the OCP believed that these witnesses could be heard in one day each. The S-21 witnesses could be heard in a total of approximately 11 days, Mr. Lysak submitted.

Mr. Karnavas requested one point of clarification at this point, namely whether the OCP sought to submit any transcripts from Case 001, namely witnesses that the OCP sought to “backdoor” into the trial. He sought a definitive answer on whether this was intended. Mr. Lysak said that this issue would be addressed in the OCP’s submission concerning witness statements and complaints. In any case, however, the key witness in Case 001 was Duch, he stated, whom the OCP would call to testify again.

A second point of clarification Mr. Karnavas sought was whether this time estimate presupposed that the Trial Chamber would accept transcripts from Case 001 in lieu of *viva voce* testimony of witnesses already heard in Case 001. He believed that transcripts of witness testimony were also “part and parcel” of a request to know how many witnesses there were. Only after hearing this information would it be possible to have a complete understanding of the additional time required.

Judge Fenz also sought clarification. Noting that Mr. Lysak had mentioned previous testimony by Mr. Chandler in relation to Case 002, she asked whether the OCP proposed to recall him. Mr. Lysak advised that the OCP did not propose to do so.

Next, Mr. Ang advised that there were approximately 128 civil parties related to S-21. The civil party co-lawyers would require approximately 14 days after a hypothetical decision of the Trial Chamber adding S-21 to the scope in order to determine the number of witnesses, civil parties, and experts whom the civil party co-lawyers would seek to propose. The civil party co-lawyers might only require only three to five additional court days, however, for a hearing concerning S-21, he concluded.

Defense Teams Advise of Need to Consult with Clients before Stating Their Positions

Given the floor, Mr. Koppe advised that as indicated this morning, his team wished to consult with their client before responding on this matter. He was unsure that his team would be able to give these submissions on Tuesday, February 19, 2013, as it would require that day to incorporate Mr. Chea’s comments into its submissions. He therefore requested for his team to give its submissions on these matters on Wednesday, February 20, 2013.

Mr. Karnavas indicated that his team was “in the same boat” as the Nuon Chea Defense Team and that Mr. Sary was not himself able to follow the proceedings. Like Mr. Koppe, Mr. Karnavas anticipated that his team would also be in a position to present its comments on February 20.

Likewise, Mr. Vercken reiterated his earlier comments that it was logical for the defense teams to be given some time to properly consult with their clients before offering their response. It seemed, he said, that the morning of February 20 would be the appropriate time to do so.

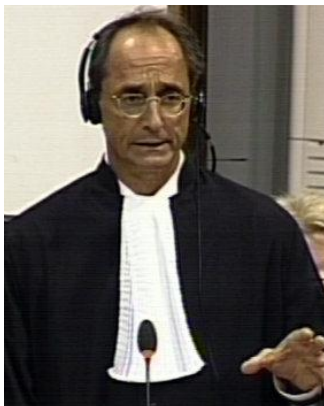
Issue 7: Immediate Commencement of Hearing in Case 002/2 Following the Conclusion of Evidentiary Hearings in Case 002/1

Following a later than usual mid-afternoon break, the final session of the hearing resumed with the president noting that as the defense teams had required time to consult with their clients before providing their comments in response to the Trial Chamber’s questions, the Chamber would not proceed with the scheduled hearing on Tuesday, February 19, in order to give some time for the defense teams to conduct these consultations.

The president then directed the parties to address the seventh issue in the Chamber’s memorandum. Noting Judge Fenz’s comments concerning the length of time it took to issue a judgment in the Case 001 hearing, Mr. Cayley stated that the OCP’s preference was for there to be only one trial in Case 002. The OCP believed there might be “pragmatic technical difficulties” proceeding to a Case 002/2 without a first verdict in Case 002/1. Mr. Cayley noted that in an earlier press release of the Trial Chamber, the Chamber had noted that a first verdict in Case 002/1 would be relevant to Case 002/2. However, the Chamber did not explain how a first verdict would be transmitted to a Case 002/2. Neither had the Chamber provided a general plan concerning how a Case 002/2, or any subsequent Case 002 trial, would proceed.

The necessity of relying upon an earlier relevant judgment was rooted in the doctrines of *res judicata* and prior judicial notice of any relevant adjudicated facts, Mr. Cayley continued. The OCP submitted that the likelihood of moving to a second trial without an appeal decision on Case 002/1 was unlikely. Thus, bearing in mind the age and the health of the accused, the OCP would ask the Trial Chamber to opt for one smaller trial of some portion of the Closing Order, with the scope determined on the basis of the reasonable representativeness of the charges considered.

The civil party co-lawyers completely agreed with the OCP on this point, Ms. Simonneau Fort said. As the first trial envisaged elements that would be relevant for subsequent trials, it seemed to be impossible to do anything other than waiting for a verdict. In addition, the proposal for a second Trial Chamber panel did not seem wise; she noted, in particular, that it would take a new panel a considerable amount of time to familiarize itself with the material already covered.



At this point, Mr. Karnavas requested another point of clarification from the OCP and the civil party co-lawyers: namely, whether it was within the legal right of the Trial Chamber to dismiss any portion of the Closing Order of its choosing. Mr. Cayley said that the OCP was not making this statement, clarifying that it was asserting that part of the case would be severed. There always remained the prospect, “remotely, that one accused may still be fit” to proceed with further trials, he asserted. There might come a point when portions of the case might need to be dismissed, but that point had not yet arrived, he concluded.

Ms. Simonneau Fort indicated that the civil party co-lawyers had not said this either. She also requested to know whether the defense would be deferring their comments to a later date or whether they would also be making their comments now, as this would help the civil parties with their time planning.

Disregarding this request, Judge Fenz instead proceeded to state that, for the avoidance of further confusion, she would read aloud the relevant portion of the Supreme Court Chamber's decision:

It is necessary that the Trial Chamber determine, based on its organic familiarity with Case 002, whether the gist of such severance is in judicial manageability, in which case there is necessity for a tangible plan for the adjudication of the entirety of the charges in the Indictment, and not merely a portion thereof.

Judge Fenz asked whether it felt that a tangible plan would be the determination of a scope for the ongoing portions of this trial and to inform the parties concerning later trials at a later date. Mr. Cayley said the OCP's view was that the Trial Chamber had two options: First, if they believed that the only realistic option moving forward was to proceed with a single trial, then this trial needed to be representative. Second, if the Trial Chamber continued to favor a series of trials, then they would need to propose a more detailed plan, he said.

Issue 8: Prejudice Caused by the Lack of a “Concrete Timetable” for Later Trials in Case 002

The president then directed the parties to give their comments on the eighth issue. As set out in its memorandum, this concerned the question of any prejudice caused by the lack of a “concrete timetable” for later trials in Case 002. Mr. Cayley advised that the OCP appreciated the unpredictable factors that created difficulties in Case 002. He noted that the Supreme Court Chamber stated this at paragraph 44 of their decision:

In violating their right to a reasoned opinion and their right be heard, and in limiting the scope of Case 002/01 in a way that unduly disregards reasonable representativeness of the Indictment, the Trial Chamber thereby caused prejudice to the Co-Prosecutors.

The OCP sought representativeness in this case, Mr. Cayley stated. He argued that unless the Trial Chamber made efforts towards ensuring representativeness, the OCP would remain prejudiced. As to the establishment of a second Trial Chamber panel, which was also contemplated in this question, Mr. Cayley stated that the OCP did not believe this proposition would work at the ECCC for reasons that included budgetary concerns.

Ms. Simonneau Fort stated that insofar as the civil parties were concerned, they had chosen to be civil parties with very particular expectations, such as the advancement of the truth. The civil parties were entitled to an idea of the nature of future trials even if they understood that “random factors,” including financial reasons, meant that these future trials did not happen. The civil parties were owed a certain amount of certainty on this point so as to avoid a miscarriage of justice, she asserted. They needed for their situation be acknowledged by the Trial Chamber and

addressed in future trials. In any case, she concluded, all parties would benefit from having a timetable of future trials, even considering the potential impact of random factors.

Request by the Civil Party Co-Lawyers to Raise Three New Matters

At this point, Ms. Simonneau Fort sought leave for the civil party co-lawyers to raise three additional but related matters. The Trial Chamber judges conferred briefly on this point. The president asked Ms. Simonneau Fort to first provide a brief account of the three points, and the reasons behind the request, so that the Chamber could decide whether to give the civil party co-lawyers the floor. She advised that these issues had been raised by the civil party co-lawyers in its previous submissions concerning the Severance Order, namely:

- Whether the Severance Order could apply to the judicial characterization of crimes;
- The nature of the impact of a Severance Order on the participation of civil parties; and
- A determination of the impact of a Severance Order on the distribution of reparations and the award of reparations.

Permitted to proceed, Ms. Simonneau Fort noted that the first point related to judicial characterization of crimes. This was possible only after the facts had been adjudicated upon, she said. It was “entirely reasonable” that the outcome of the proceedings could provide a characterization such as persecution on religious grounds. However, in the Severance Order, the Trial Chamber expressly excluded those two grounds. This was “unfounded” and could not apply to the judicial characterization of crimes, she argued.

Next, Ms. Simonneau Fort turned to the impact of the Severance Order on the participation of civil parties. The civil party co-lawyers believed that the consolidated group of civil parties and their participation as an entire party foreclosed the possibility of determinations of individual impact. When the Internal Rules were amended in February and September 2010, Internal Rule 23(3) was clear that at the pre-trial stage, civil parties participated individually, she stated, although at trial stage, they formed a consolidated group whose interests were represented by the civil party co-lawyers. She asserted that no exclusion from the consolidated group was therefore possible. The civil party co-lawyers believed it was inconsistent with civil parties’ rights to participate as a consolidated group without affording them full-fledged rights; these notably included the right not to be excluded individually.

The notion of a consolidated group of civil parties was a particular one that emerged at the ECCC, the counsel continued; it was unique and without precedent in any Romano-Germanic system in the world, with no jurisprudence on this issue. Civil party participation might be a “repulsive idea for some,” she commented, but was an “incontestable notion” that applied at the ECCC. Thus, no civil parties could be excluded from the trial, with or without severance. The Trial Chamber needed to state a clear and categorical position from the Chamber, she asserted; given outreach and reparations underway, such a position would enlighten the public and observers who had questions and doubts over this.

Finally, Ms. Simonneau Fort turned to the impact of the Severance Order on the distribution and award of reparations. As set out in Internal Rule 23*quinquies*, the reparation must relate to the harm suffered; therefore, she asserted, if the harm was suffered collectively, a consolidated group

of civil parties was entitled to reparations as a collective. Reparations also must relate directly to the facts being associated and the crimes being tried; for example, she said, it might require a day of commemoration of the occurrence of forced transfers. All civil parties had to benefit from any eventual reparations, she argued.

Concluding, Ms. Simonneau Fort informed the Chamber that the civil party co-lawyers requested its assurance that no civil party would be excluded through any eventual new Severance Order. It was unacceptable for the civil party co-lawyers to “continue to operate under a cloud of uncertainty,” she opined.

After a brief conference with the Trial Chamber judges, the president adjourned the hearings for the day. He noted that with regard to the hearings of character witnesses of Mr. Samphan initially scheduled for Wednesday, February 20 and Thursday, February 21, these witnesses would be deferred to a later date.

Hearings in the ECCC will resume at 9 a.m. on Wednesday, February 20, 2013, with the defense teams’ comments concerning the issues raised in the Trial Chamber’s memorandum.