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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF PROCEEDINGS - "DUCH" TRIAL

CONFIDENTIAL

Case File N° 001/18-07-2007-ECCC/TC

15 January 2009

Trial Management Meeting

CLOSED SESSION

Before the Judges:

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

For the Civil Parties:

YUNG Phanit
HONG Kimsuon
KONG Pisey
TY Srinna
MOCH Sovannary
KIM Mengkhy
Silke STUDZINSKY
Martine JACQUIN
Alain WERNER

For the Trial Chamber:

DUCH Phary
SE Kolvuthy
LIM Suy-Hong
Matteo CRIPPA
Natacha WEXELS-RISER

For Court Management Section:

SANN Rada

For the Office of the Co-Prosecutors:

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Jurgen ASSMANN
PAK Chanlino
SAMBATH Pich

For the Accused Person KAING GUEK EAV

KAR Savuth
François ROUX

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

2 (Judges enter the courtroom)

3 MR. PRESIDENT:

4 Good morning, ladies and gentlemen. Pursuant to Rule 79(7)
5 of the Internal Rules, which reads "In order to facilitate the
6 fair and expeditious conduct of the proceedings, the Chamber may
7 confer with the parties or their representatives as applicable by
8 holding a Trial Management meeting. Such meeting shall be held
9 in camera." The Trial Chamber is holding this meeting for two
10 days, today and tomorrow. On behalf of the Trial Chamber I would
11 like to welcome all of you, including the
12 Co-Prosecutors, the defence counsel for the accused, civil party
13 lawyers, civil parties and representatives of the respective
14 sections of the Office of Administration.

15 This Trial Management meeting is a new concept which is not
16 set forth in the Cambodian Criminal Procedural Code, however, a
17 similar practice is seen in the civil court of Cambodia which is
18 called Preliminary Hearing, aimed exclusively to facilitate an
19 expeditious trial process. Not only does this meeting create an
20 appropriate opportunity for discussion and exchange of comments
21 between all parties to the proceedings and relevant units, but it
22 also helps the Trial Chamber to identify the future hearing
23 schedules.

24 [9.03.31]

25 The Trial Chamber is optimistic that it will be substantially

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1 supported by the participants in the meeting in which some common
2 solutions to the listed issues in the agenda will be jointly
3 found, the significance of which will be conducive to having a
4 smooth upcoming trial.

5 May I announce that the meeting now commences. I would
6 like to give the floor to Ms. Sy Kolvuthy to announce the
7 composition of the participants during this morning session.

8 MS. SE KOLVUTHY:

9 Good morning, Your Honours and the participants. Today we
10 have Mrs. Chea Leang the
11 Co-Prosecutor, Mr. Robert Petit the Co-Prosecutor, Mr. Yet --
12 sorry, Mr. Pak Chanlino, and for the civil parties, we have Mr.
13 Hong Kimsoun, Mr. Kong Pisey, Yung Phanit and Kim Mengkhy and Ms.
14 Moch Sovannary and Silke Studzinsky, Ms. Ty Srinna, Alain Werner
15 and Sibylle Dischler. Civil parties include Mr. Bou Meng, Chum
16 Mey, Toch Monin, Seang Vanndi, Khuon Sarin and Meas Keth.
17 Lawyers for the accused, here we have Mr. Francois Roux.

18 THE INTERPRETER:

19 And I think the interpreter would like to apologise that we
20 cannot really actually follow Mrs. Se Kolvuthy.

21 [9.06.09]

22 MS. SE KOLVUTHY

23 For the Public Affairs Section we have Mrs. Helen Jarvis.
24 And the Court Management Section we have Mr. Tony Krahn, Tarik
25 Abdulhak, Wendy Lobwein, Claude Bouchard, Mr. Kong Sophy,

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1 Michelle Keating, Scott Bywater, Sann Rada, Uch Arun, Kauv
2 Keoratanak, Charles Muraya, Christopher Fry, Nhem Samnang, Phann
3 Sochea, Norng Utara, Keut Sokha. We have
4 Richard Rogers from the Defence Support Section and Pauline
5 Baranes.

6 MR. PRESIDENT:

7 Is the accused present?

8 MS. SE KOLVUTHY:

9 Yes, he is here.

10 MR. PRESIDENT:

11 Next, before we come to the main item of the agenda of this
12 meeting, we would like to make sure that now the co-foreign
13 lawyer are recognised, so this shall be conducted in a small
14 ceremony.

15 Pursuant to the Internal Rule that requires that the
16 co-foreign lawyer be introduced so that he is recognised, I would
17 like to invite the colleague to do so.

18 MS. TY SRINNA:

19 Good morning. My name is Ty Srinna, a national lawyer who
20 has just been recognised by the ECCC on the 6th of January 2009.
21 We have our co-foreign lawyer, we have Mr. Karim Khan, another
22 lawyer, and this lawyer has already been listed in the lawyer
23 list but he has not yet taken an oath. There has been a delay.
24 But Mr. Alain Werner and Brianne have already registered but they
25 have not yet taken an oath and they believe that they will take

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1 this oath next week. So in our team we have four people,
2 including myself.

3 MR. PRESIDENT:

4 The introduction of international lawyers by the national
5 lawyer has already been conducted but because it is not yet
6 completed as prescribed in our Internal Rules, I would like to
7 leave this behind for some time so that we can give the floor to
8 the second step in which more foreign lawyers will be introduced.
9 [9.10.54]

10 Next, I would like the national lawyers for group number two
11 to seek recognition from the Chamber for his group.

12 MR. HONG KIMSOUN:

13 Your Honour, the President of the Trial Chamber and the
14 Bench, I am Hong Kimsoun, the national lawyer for the civil
15 parties, and my colleagues include Mr. Yung Phanit and Kong Pisey
16 and we are in case number one, and I would like to inform you
17 that we have Ms. Silke Studzinsky who is in the same case file.

18 MR. PRESIDENT:

19 Thank you Mr. Hong Kimsoun. I would like to invite Ms. Silke
20 Studzinsky to rise to show your appearance actually to the
21 meeting.

22 Now, the Trial Chamber has already recognised you for the
23 purpose of the proceedings before this Chamber, so according to
24 this recognition, you are entitled to the same rights as the
25 other co-lawyers, the national co-lawyers. So now I would like

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1 to give the floor to the team of lawyers for lawyer group number
2 three, and we have here Mr. Mengkhy and Ms. Moch Sovannary, so
3 any one of you can actually arise to introduce your team.

4 MR. KIM MENGKHY:

5 Your Honours, in our group we are from Avocat Sans Frontieres
6 and we have two national lawyers, I myself Kim Mengkhy and Ms.
7 Moch Sovannary. And we have two foreign lawyers,
8 Mrs. Martine Jacquin and another person who is not present today,
9 Mr. Phillippe, and another lawyer is pending for admission and
10 she will also be taking part in this case 01 soon.

11 MR. PRESIDENT:

12 So Ms. Martine, could you please rise? Thank you. Thank you
13 Mr Kim Mengkhy and
14 Mrs. Martine Jacquin, you are now recognised as a civil party
15 lawyer and for the purpose of the proceedings before this Chamber
16 you will have exercised the same rights as those of the national
17 lawyers.

18 [9.14.23]

19 So next I would like to proceed to group number four, lawyers
20 for the civil party, and I would like Mr. Hong Kimsoun to
21 introduce his colleagues for group four.

22 MR. HONG KIMSOUN:

23 Your Honours, in our group four, we have I myself, Hong
24 Kimsoun, national lawyer, and
25 Mr Pierre-Olivier Sur from France, but today he is absent, so I

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1 would like you to also recognise him in this case file 001 too.

2 MR. PRESIDENT:

3 Because today we have the presence of the national lawyers
4 already, and I of course take your point and will consider it.
5 And I would like you to make sure that you introduce him again
6 whenever he appears before the upcoming trial hearing.

7 Next, I would like to invite Mr. Kar Savuth, the national
8 lawyer for the accused to introduce his colleague, co-defence
9 lawyer Francois Roux, according to the Internal Rules.

10 MR. KAR SAVUTH:

11 To the Presiding Judge and all the participants, according to
12 Rule 22(a), I, Kar Savuth, the national lawyer, would like the
13 request the Trial Chamber in the ECCC to recognise Mr. Francois
14 Roux, the international lawyer as my co-lawyer to defend the
15 accused Kaing Guek Eav alias Duch from this time forward. Thank
16 you.

17 MR. PRESIDENT:

18 Thank you, Mr. Kar Savuth. May Mr. Francois Roux present
19 yourself to the Chamber. Thank you. Please be seated. Mr.
20 Francois Roux, the Trial Chamber recognises you to defend the
21 accused for the purpose of the proceedings before the Trial
22 Chamber. According to this recognition you have the rights and
23 privileges the same as national lawyers.

24 [9.17.18]

25 Now we have completed the process in relation to the

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1 recognition of national and international lawyers, so now we will
2 proceed according to agenda that we have planned. The first
3 agenda is to review the situation of each party in the
4 proceedings including the Defence Support Section, the liaison
5 officer for the detention, the Victims Unit, 1(a). We will
6 examine the health situation and other concerned information
7 relating to the accused. Regarding this issue the Trial Chamber
8 will ask the lawyers for the defence team for their opinion
9 regarding the health status of the accused, especially the Trial
10 Chamber would like to ask the defence lawyers if they can foresee
11 any issues which might prevent him from attending the
12 forthcoming trial. The question is whether he needs to have his
13 health checked during these proceedings.

14 Please, the lawyer Kar Savuth, and Francois Roux, please make
15 your observation.

16 MR. KAR SAVUTH:

17 My respects to the Trial Chamber. For the proceeding and for
18 the forthcoming proceeding, the lawyers agree according to the
19 agenda by the Presiding Judge for the health status of my client,
20 Kaing Guek Eav alias Duch, there is no remarkable concern.

21 Thank you.

22 MR. PRESIDENT:

23 Thank you, Kar Savuth. Francois Roux, do you have anything
24 to add? Francois Roux?

25 MR. ROUX:

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1 I have no additional information to provide at this point.

2 MR. PRESIDENT:

3 So the Detention Liaison Officer rise, if you have any
4 opinion to express.

5 MR. BOUCHARD:

6 I have two points concerning the logistic and the welfare of
7 the accused, for information only. As you know, we have four
8 holding cells on the ground floor, and the holding cells are
9 rooms specially designed for the accused person to stay while
10 waiting to come in the Chamber. And this is where the accused
11 will be waiting before coming to the courtroom. And this is
12 where the accused will be during the coffee break, during short
13 break or during lunch. At this time the holding cells are
14 equipped with furniture so that will allow the defence team to
15 meet with their clients during breaks or during lunchtime.

16 [9.21.24]

17 Also the holding cells are will be equipped with television
18 and a bed, this will allow the accused person to follow or watch
19 the proceeding if he falls sick or for any other reason.

20 Also the lunch will be served in the holding cells to the
21 detainees, during lunch hour. Thank you.

22 MR. PRESIDENT:

23 Thank you, senior liaison officer, for your opinion and
24 information. Next on our agenda, 1(b), is the composition of the
25 defence team. In this agenda the Trial Chamber would like to ask

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1 the defence lawyers to show their composition, whether the
2 defence support lawyers have enough staff and personnel. Mr. Kar
3 Savuth.

4 MR. KAR SAVUTH:

5 Your Honour, our defence team has been prepared to defend our
6 client. Thank you, Presiding Judge.

7 MR. PRESIDENT:

8 Does the representative of the Defence Support Section wish
9 to make any further comments?

10 MR. ROGERS:

11 The two co-lawyers, the legal consultant and the case
12 manager, are all contracted throughout the trial. The Defence
13 Support Section has funds allocated and available for that. It
14 also has limited funds available to pay for an expert consultant
15 to support the team on discrete issues should that be necessary,
16 and I can also confirm that the Defence Support Section will be
17 recruiting two interns and assign those to the defence team for
18 the purposes of the trial. Thank you.

19 MR. PRESIDENT:

20 Thank you, the representative of the DSS who expressed the
21 opinion and the observation. Next, we will discuss point 1(c),
22 requested by the civil party lawyers in this agenda. The Chamber
23 would like to invite the head of the Victims Unit to make a short
24 presentation on the current issue of the applications to become
25 civil parties that this unit has received so far, and the

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1 situation of the civil parties lawyers, and all the establishment
2 of the teams within the civil parties. Madame, the president of
3 the Victims Unit.

4 [9.25.01]

5 KEAT BOPHAL:

6 Good morning, Your Honour, and national and international
7 judges and lawyers and participants in today's meeting. I would
8 like now to update on the civil applications. Regarding the
9 number of civil party applications in this case, we can see that
10 there are 28 civil parties in the case file, all of whom have
11 been forwarded from the Co-Investigating Judges to the Trial
12 Chamber, and we have additional 48 civil party applications that
13 have been seized by the Victims Unit after the Closing Order. Of
14 the 48 new civil party applications, 20 have been forwarded to
15 the Trial Chamber recently, and we are now working to send the
16 rest of the applications of the civil parties to the Trial
17 Chamber next week. So I can say that, altogether, the total
18 civil party applications that we have obtained up to now is 76
19 applications already.

20 And the Victims Unit has also consulted with other NGOs who
21 are supporting the civil parties regarding these new
22 applications, and these NGOs have informed us that they have no
23 new applications recently and that's why I can say that there may
24 not be any new applications as yet, up to now. And we, the
25 Victims Unit have been well-prepared to make sure that we can

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1 review and to comply with the Internal Rules when it comes to
2 receiving additional applications from now on.

3 [9.27.58]

4 And in this opportunity also I would like to be admitted to
5 inform to the President of the Trial Chamber and also the Judges
6 of the Trial Chamber to be informed that the Victims Unit is
7 aware of the lengthy time used to co-ordinate the applications of
8 the civil parties that we have obtained so far, and I think this
9 problem has been contributed to the understaff or the lack of
10 resources in the Victims Unit . And the agreement regarding the
11 funding of the government of Germany so far with the Royal
12 Government of Cambodia, the Victims Unit have now been given this
13 budget for spending to complement the existing budget that as so
14 far been projected to the Victims Unit so that it can fully
15 operational.

16 And the unit itself is now recruiting some more staff to
17 assist us, and so far we have recruited the case file manager and
18 the data input officer -- six people as data input officers and
19 they have already been on board since last week. We are now
20 recruiting more staff, and we are also recruiting legal counsel
21 for this case file 001, because we would like to make sure that
22 we can recruit one legal representative, a national lawyer and
23 international lawyer for assisting the civil parties within the
24 Victims Unit , and I think I have already briefed the information
25 regarding the status of the civil applications.

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1 And regarding the matter of the legal representations of the
2 civil parties I have already elaborated. I just would like to
3 add to make sure how many civil lawyers have been represented by
4 this group of legal teams. There are four legal teams, first
5 team representing 31 victims, and they include
6 Ms. Srinna and three foreign lawyers who are her colleagues, and
7 they have already been registered with the Bar Association of
8 Cambodia but they are waiting to take an oath so that they can
9 really be admitted before the Trial Chamber. And this first team
10 is working together with the civil party participation project of
11 the CSD. And the second group, representing 18 victims, which
12 include Mr. Hong Kimsoun, Ms. Silke Studzinsky, and the national
13 lawyers are now working for the Cambodian Defenders Project, or
14 CDP, while Silke Studzinsky is working with ad hoc.

15 [9.32.05]

16 The third group comprises Ms. Moch Sovannary, and another
17 national lawyer, Mr. Mengkhy and two foreign lawyers from Avocat
18 Sans Frontieres, also known as ASF. The fourth group,
19 representing 10 victims, we have Mr. Hong Kimsoun from CDP who is
20 representing these victims, and we have Pierre-Olivier from
21 France in the team also. And for those who filed their
22 applications to join as civil party are now working to find legal
23 representatives so their application is still pending.

24 Regarding the roles and responsibilities of the Victims Unit,
25 under Rule 23 regarding civil party representation, I would like

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1 to note that for the Victims Unit, when we review the
2 applications of the civil parties, and then prepare these
3 documents to be forwarded to the Trial Chamber, during this stage
4 we also examine whether we should provide some recommendations as
5 to whether the applicants should chose to be represented by a
6 common lawyer or by individual lawyer. And regarding to this
7 point, the Victims Unit also would provide recommendations to
8 these applicants only if the Trial Chamber makes a decision on
9 the status of these applicants first, so that we know the status
10 and the condition of these victims before we can do so. And so
11 far I can see that there is no reason that we should provide any
12 recommendations to the new applicants. Our recommendation to the
13 new civil party applicants is somehow appropriate that they are
14 advised to seek common legal representatives.

15 [9.35.10]

16 MR. PRESIDENT:

17 Thank you very much, the head of the Victims Unit for your
18 detailed explanation to the Trial Chamber, and we can now
19 understand the current status and the numbers of civil parties in
20 this case file 001. And also we can see that the Victims Unit
21 has been in good co-ordination in facilitating these
22 applications. And I also noted that you mentioned that so far
23 the numbers of civil parties that you have mentioned have already
24 been included and forwarded and that there are no more new civil
25 party applications yet, so regarding the Victims Unit update, I

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1 would like to give the floor to the Trial Chamber Judges to put
2 some questions to the head of the Victims Unit if they wish to do
3 so. Judge Jean-Marc Lavergne.

4 JUDGE LAVERGNE:

5 Thank you, Your Honour. I am Jean-Marc Lavergne, a Judge in
6 this Trial Chamber. I have a question for the head of the
7 Victims Unit. Could you possibly tell us whether all the
8 persons having applied for civil party status, are they all going
9 to be represented by a lawyer? Could you also tell us what is
10 the status of recognition pursuant to applications to be a
11 recognised civil party.

12 KEAT BOPHAL:

13 Thank you, Judge, for the question. Let me inform you that
14 regarding the civil parties that we have received in total, there
15 are 76 civil parties, they have been selected lawyers and as I
16 have mentioned, there are about 10 civil parties who haven't yet
17 appointed their legal representatives through the appointment
18 letter, and the personnel of the Victims Unit is on a mission to
19 their residences in the provinces in order to facilitate the
20 victims to select their lawyers from the four teams that we have.

21 JUDGE LAVERGNE:

22 If I understand correctly, out of the 76 civil parties that
23 are recognised to this date, 66 are duly represented by lawyers.
24 Those 66 civil parties -- have these parties signed a power of
25 attorney for the lawyers who are intended to be their

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1 representatives and their counsel?

2 KEAT BOPHAL:

3 Thank you for the question. Let me inform that the civil
4 parties -- amongst the 76 that we have informed to the Chamber,
5 there are 10 remaining civil parties who have yet to appoint
6 their lawyers. So amongst all the civil parties, they have
7 already selected and appointed their lawyers, and those are the
8 lawyers within the list of the Victims Unit that we have, and
9 they have been recognised according to the procedures in the
10 proceedings, and only the first team, which is awaiting to take
11 the oath, and the Victims Unit will facilitate with the BAC for
12 them to be recognised. We will organise this event soon.

13 [9.40.22]

14 MR. PRESIDENT:

15 Thank you for the response to the question.

16 MR. MAAR:

17 Your Honour, I would like to offer some clarification
18 regarding the different powers of attorney issue. Madame Bophal
19 has just mentioned that we have about 10 victims who have not yet
20 completed the whole process. Two victims are in the diaspora,
21 they are in the process of sending us the forms, and the rest of
22 the victims are resident in Cambodia. A mission is now underway
23 across the country in the different provinces to go and discuss
24 with these civil parties to submit to them the names of possible
25 lawyers out of the four teams of lawyers that we now have. They

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1 will make their selection. So within the next few days we shall
2 have some lawyers duly selected and empowered to represent all
3 the civil parties. Thank you.

4 MR. PRESIDENT:

5 Thank you, the representative of the Victims Unit who has
6 responded. May I also add to what the head of the Victims Unit
7 represented regarding the victims who would like to be civil
8 parties, that the remaining 10 civil parties who have yet to
9 appoint their legal representative, and as a result of their
10 attempt, during the last few months we have received
11 (unintelligible) output. Do the Judges have any other questions
12 to ask the head of the Victims Unit? If there is no further
13 question, let me open the floor to the lawyers of the civil
14 parties of the first group to present their technical issue, and
15 if they have any, please take the floor. The representative
16 lawyer of the civil parties, lawyer Hong Kimsoun.

17 [9.43.22]

18 HONG KIMSOUN:

19 Thank you, Your Honour, the President of the Trial Chamber.
20 I am Hong Kimsoun, the national lawyer. I would like to inform
21 to the President of the Trial Chamber that nowadays, the national
22 lawyers that comprise me myself and Mr. Kong Pisey and Yung
23 Phanit who are lawyers in case file number 1, have been national
24 lawyers since the end of 2007 until now, since the head of the
25 Victims Unit did not yet start her office. And we had been

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1 funded by DAD, and this funding is very minimum to assist us.
2 And we, however, could save those funding for one more month
3 work, but now we are no longer funded by any institution, and
4 it's very difficult for us to assist the civil parties in this
5 case.

6 And the problem as I may express here is we find it very
7 difficult to compensate our travels to meet the victims, or when
8 we need translation we know that when the ITP pool is busy with
9 other documents to be translated we have to do the translation
10 with our own money, and here we have Ms. Silke Studzinsky who
11 helps us a lot, also, and we now need a computer and printer but
12 so far this equipment has been provided by Legal Aid of Cambodia.
13 This Legal Aid of Cambodia organisation assists us by providing
14 the meeting facility, when you assist us with other documents
15 also, so once in a while we are working at the information centre
16 downtown, because we find it rather difficult to come all the way
17 to the ECCC, sometimes with this very limited budget for our
18 group.

19 And we are now defending about 80 civil parties and so far we
20 have more than 20 victims who have been recognised by the Court,
21 but our difficulties here are that we are so desperate and we
22 lack almost everything, that's why we would like the Court to
23 assist us by all means so that we can really be fully
24 participating in the proceedings to assist the civil parties.
25 Without any support -- I'm not talking about the salary, I'm

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1 talking about the finance support to our continuity of our work,
2 and without which I'm afraid that we find it so hard to continue.

3 [9.47.37]

4 MR. PRESIDENT:

5 I thank you very much for the explanation and the points you
6 raised, and I hope your comment is well taken, and we believe
7 that there will be solution to the issues at a later date. Next,
8 I would like the other lawyers of the civil parties to make some
9 comments, or if you have any other technical issues, so please
10 the floor is yours.

11 MS. MOCH SOVANNARY:

12 Your Honours, I have a remark which I think would be worth
13 being informed to the Trial Chamber. Our group is now working to
14 proceed the applications of the civil parties and these
15 applications have not been yet forwarded to the Victims Unit.
16 And we, as I will be joined by another two lawyers who have
17 already taken an oath, and we have a lawyer Elizabeth and another
18 lawyer who will assist our team in our effort to defend the civil
19 parties. Thank you very much.

20 MR. PRESIDENT:

21 The Chamber take note of the record by the second team. This
22 is a new issue which is not in our report in the agenda, also not
23 in the Victims Unit report, because they only have another 10
24 remaining civil parties to select their lawyers, and this
25 information is new. So any other lawyers of the civil parties to

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1 express their opinion on any issues that they might have?

2 Please.

3 MS. STUDZINSKY:

4 Yes, Honourable Judges, I would like to inform you that we
5 will forward new powers of attorney of the -- I call them "old"
6 civil parties, who already submitted the power of attorney but
7 including the two additional items that we discussed already, and
8 that you will receive the new powers of attorney soon, or I hope
9 before the trial starts. So to facilitate the delegation of
10 power of attorney to other lawyers, and including the possibility
11 that you can notify only the lawyers of writs or summons or other
12 documents. Thank you.

13 [9.50.58]

14 MR. PRESIDENT:

15 Thank you, Ms. Silke Studzinsky, who has provided the Chamber
16 with this information. Does the lawyers for the civil parties
17 have any further comments or observations on any technical issue?
18 Please. Ms. Ty Srinna, please.

19 MS. TY SRINNA:

20 First, my respects to the Chamber. I am a lawyer who has
21 been recently appointed by the civil parties and has been
22 recognised recently. So I do not fully study the case file
23 number 001 in details, so I would like to put a request to the
24 Chamber to facilitate in this matter. That is the first point.
25 The second point is I have an issue that my civil parties who

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1 have already appointed me as a lawyer for them, and in total I
2 have 31 civil parties, and amongst them there are seven that have
3 been recognised that I have already submitted, and the remaining
4 22 are still intending to become civil parties, so the Chamber
5 has not yet made its decision on this matter, and I want to know
6 when will the Chamber decide for my civil party clients to become
7 civil parties? I want to know the actual date for the
8 recognition.

9 And also amongst all the civil parties who have appointed me
10 as their legal representative, among the seven one has already
11 passed away, on the 26th of December last year, so I would like
12 the Chamber to decide how the deceased still have the status of a
13 civil party, or whether the deceased delegated the power of
14 attorney to his family, and what will the Chamber consider this
15 matter. Thank you.

16 MR. PRESIDENT:

17 Thank you, Ms. Ty Srinna, for providing us this positive
18 information regarding certain issues relating to the civil
19 parties. The first issue is the civil parties who have already
20 submitted to the Chamber and whether the Chamber will recognise
21 them and when. This is in relation to the question that has been
22 asked earlier, and Ms. Silke Studzinsky has asked that, and also
23 in our agenda we have an item where we will discuss to find an
24 appropriate solution to respond to the participants in this
25 meeting, and to other concerned parties, and we will raise this

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1 issue in the following agendas, and then the Judges who will
2 represent me will present the agenda in succession.

3 [9.54.50]

4 And also on another issue that we have received, we take note
5 of the issue that one civil party recently died during the
6 proceedings, and whether the delegation of power can be forwarded
7 through the family, and whether we recognise the families that
8 have received a power of the litigation from the deceased, and
9 this is a technical issue that we will consider. And according
10 to my opinion, there will be a solution to this matter, because
11 in our code of civil procedures, the new code, there is a
12 provision on the deceased of a party during the proceedings, and
13 here we take that code into consideration we will find a
14 solution. But the Chamber will not respond yet, at this stage,
15 but we will find a solution later. Thank you.

16 Next, may the lawyers of the civil parties who have yet to
17 express their opinions please present yours. And we understand
18 that the presentation has been useful to the Chamber, and some
19 issues if we had known earlier we would have tried to find
20 appropriate solutions to expedite the proceedings so that it can
21 be smooth. The floor is still yours, the civil parties.

22 Mr. Hong Kimsoun, I have observed that I see your name has
23 been listed in legal counsel group two and group four, and I
24 don't know whether you have any problem at all with this.

25 MR. HONG KIMSOUN:

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1 So far there is no problem. Everything has been under
2 control, and as I already mentioned, we only need financial
3 support, and without which we will find it hard to assist the
4 teams. However, we will do our best, and we will work with Ms.
5 Silke Studzinsky, and we also have Mr. Pierre, who now is in
6 France. Although he is not here, we communicate with him through
7 email, so we are in good contact. But the problem remaining is
8 only the shortage of financial assistance.

9 [9.57.49]

10 MR. PRESIDENT:

11 Thank you very much. The Trial Chamber has well noted the
12 financial difficulty of the civil parties but the question I was
13 asking was more about how you can assist the two teams at the
14 same time, because other lawyers are working separately for each
15 particular group, but you are working for two teams. So it would
16 be best if you can really management the situation. Thank you.

17 Since this is the rights of the civil parties to choose any
18 lawyer of their own, so it is seen that it is appropriate, so
19 technically we will try to facilitate how you can really assist
20 the proceedings, and because we try to make sure that you do not
21 really make a mistake by representing one group and then
22 mistakenly testify for another group, for example.

23 Does any one of the civil parties want to make further
24 comments? The reason I'm asking again and again -- it is more
25 about a technical issue, and this morning we have obtained very

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1 good information also from the civil parties, and we have just
2 got this information only during this meeting and through the
3 presentation and the comments made by the civil parties. So the
4 Trial Chamber will try our best to co-ordinate with the Victims
5 Unit, so that we can facilitate the applications of the civil
6 parties as expeditiously as possible in order to avoid any delay.

7 Without any further inputs or comments, the next item of the
8 agenda is about the discussion on paragraph 9 of the agenda.
9 According to Rule 23(4), to be admissible, civil party
10 applications must be filed within the Victims Unit at least ten
11 working days before the Initial Hearing. Regarding this matter,
12 I would like to ask the Victims Unit head whether he or she has
13 already announced to the public regarding this matter. The floor
14 is yours.

15 [10.00.57]

16 KEAT BOPHAL:

17 Thank you, Your Honour. So far, Victims Unit has already
18 announced to the NGOs who are the intermediaries regarding this
19 rule, and the time limit for civil party applications and ask
20 them to urge any civil party or an applicant to file their
21 application before the deadline. And we have also organised
22 meetings with victims and other groups of victims who have been
23 in good contact with the Victims Unit although they are living
24 abroad now, and especially we have briefed them on this time
25 limit or deadline for the applications. And in order to assist

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1 -- I think the deadline set in the rule itself is helping the
2 Victims Unit and civil party applications also when it comes to
3 the expeditious application, because the victims may have been
4 well informed of this deadline so that they can really speed up
5 their applications.

6 And victims have been working through the intermediaries and
7 also the Victims Unit and so far this communication has been
8 co-ordinated, but the deadline itself is not fully informed to
9 the victims, so I wish that we see the clear deadline so that we
10 can actually fully inform our victims and our intermediaries who
11 are supporting the Khmer Rouge Tribunal.

12 MR. PRESIDENT:

13 Thank you, the head of the Victims Unit, for your response to
14 the question. The issue is we haven't yet decided on setting the
15 date, but (unintelligible) information has been implemented but
16 not yet widespread. So it needs further action on this issue in
17 order to provide information on the date to the public, yes.

18 JUDGE CARTWRIGHT:

19 Yes, Mr. President. I would just like to emphasise that the
20 sooner that applications are made the better, because if they are
21 filed close to the deadline, which we cannot yet announce, it's
22 going to create difficulties for the civil parties and for the
23 Court. And so they should not be waiting to hear a final date,
24 they should be working on them now. So some degree of urgency
25 should be communicated. Thank you.

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1 [10.04.31]

2 MR. PRESIDENT:

3 Thank you, the Judge, who has clarified on this issue.

4 Regarding the Victims Unit, the Chamber has another question.

5 Based on the information that the Victims Unit has, whether the
6 Victims Unit expects any new civil parties during and before the
7 proceedings of the trial, which means before the preliminary
8 hearing.

9 MS. KEAT BOPHAL:

10 May I inform the President and the Chamber, as I have
11 represented, we have consulted and discussed with other concerned
12 NGOs who support the victims. The majority of them did not
13 foresee any new additional applications, however a French NGO
14 raised that there may be one or two new applicants for civil
15 parties. We have also learned that there might be a few new ones
16 who will be submitting an application within the next few weeks,
17 but as I have presented, if the Chamber can set the clear date,
18 that would be better for us to facilitate our work and process on
19 those applications, and the numbers of applications that we
20 received. In the case that we receive more applications than we
21 can handle, then there would be a difficulty, and we have to
22 inform to the Chamber to this test, and find any mechanism for
23 our unit to work on the applications.

24 Lately we have a staff who can assist us in this matter, and
25 he has been working for our Victims Unit in putting the data, and

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1 also the process on the applications for civil parties, so that
2 the process can be done effectively. Thank you.

3 MR. PRESIDENT:

4 Thank you, the head of the Victims Unit. Next, the Chamber
5 will provide the floor to the civil parties lawyers, if they have
6 any other further questions to ask the head of the Victims Unit.

7 If you have, please rise please?

8 [10.07.43]

9 MS. JACQUIN:

10 Thank you. We have been working with a team of French
11 lawyers. As counsel Sovannary has said, we have filed
12 applications now, because of the fact that advertising about a
13 hearing has led the French diaspora to contact us, and to file
14 powers of attorney. They are in French; we have to file
15 everything here in Cambodian, and it takes time to do this. I
16 would like to mention to you that the foreign diaspora, the
17 French diaspora in particular, does not really understand or
18 realise that the trial will soon begin, and that these
19 applications need to be filed. I think that specific detailed
20 information in this regard should be sent out. Thank you, Mr.
21 President.

22 MR. PRESIDENT:

23 Thank you Ms. Martine. Please, the lawyer.

24 MS. TY SRINNA:

25 Thank you, Mr. President. For my team, I do not have a

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1 question to ask, but I would like to clarify and provide
2 information to the Chamber, that my working group -- we will have
3 additional civil parties who will be included and submitted to
4 the Chamber. At the moment we are communicating with them,
5 because our team is newly established, so it's not yet operating
6 smoothly. This is just an information for you, Mr. President.
7 Thank you.

8 MR. PRESIDENT:

9 Thank you Ms. lawyer for this information. Next do the
10 Co-Prosecutors have any questions for the Victims Unit? The
11 Co-Prosecutors will have the floor later then if there is any
12 further question from the civil parties. May the lawyer please
13 rise.

14 MR. KONG PISEY:

15 Thank you, Mr. President. Briefly, I would like to request
16 to the Victims Unit that when the civil parties lodge their
17 applications to the Chamber or to the Pre-Trial Chamber through
18 the Victims Unit, when the Victims Unit understand that the unit
19 is recognised by the Chamber, but the unit also has to submit the
20 application to the Chamber for recognition, and then after it is
21 recognised then it's sent back to the Victims Unit and after that
22 then the Victims Unit would send it to the civil parties to be
23 recognised officially. However, there is some confusion, that
24 whenever they can lodge the applications with the Victims Unit
25 they understand that they're recognised by the Court. Why don't

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1 the lawyers ask the applicants to attend the proceedings to
2 understand the process?

3 [10.11.22]

4 MR. PRESIDENT:

5 Thank you, the lawyer. This issue is another technical issue
6 on the proceedings on the applications to become civil parties,
7 and also on the new applications to become civil parties, as I
8 have said, that we have noticed, regarding the issues, and also
9 the issues, we also have some issues on the application. We will
10 notice this issue and we will have further research on this
11 issue. And on the third item on the agenda, we might have a
12 possible solution to this matter. However, it might not answer
13 to the confusion by the applications for the civil parties that
14 they only lodge an application with the Victims Unit and then
15 they thought they would be recognised by the Court, because this
16 is against the Internal Rules that we have applied so far. In
17 order of the civil parties to be recognised it has to be done
18 through the preliminary hearing, and after that we can issue our
19 decision to recognise or to reject their application to become
20 civil parties.

21 So this is an issue, and we also have noted that the
22 difficulty is the time -- the time period to become a civil party
23 is only for 10 days before the preliminary hearing, but if the
24 ability cannot be accommodated, then it will raise an issue to
25 submit the list of witnesses or evidence, for example, for the

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1 Trial Chamber to decide. And also the information on the
2 application to become the civil parties and the evidence, but as
3 I have stated, this issue will be explored further, and to find
4 solutions in the following items of the agenda that we have
5 already planned. So for the following items on the agenda we
6 will explore further in this matter.

7 [10.13.55]

8 I would like to give the floor to the Co-Prosecutors whether
9 you would like to ask any question to the Victims Unit. The
10 floor is yours. Mrs. Chea Leang.

11 CHEA LEANG:

12 Thank you, Your Honours. I have no specific question to the
13 Victims Unit in particular, but it is my concern personally -- I
14 think that in this case there are a lot of victims, and when
15 victims would like to file applications to join as civil party,
16 which is close to the Initial Hearing for example, do you think
17 that it would be better to find a better solution to solve these
18 matters, because it is my primary concern when we are overwhelmed
19 by more applications of new civil parties. Thank you very much.

20 MR. PRESIDENT:

21 Thank you Mrs. Chea Leang for your comments to the Trial
22 Chamber and to all the participants. The Trial Chamber, through
23 its previous meetings, tried to find the possibilities on how to
24 solve these issues, because if we look at the Internal Rules we
25 can see that civil applications have to be lodged 10 working days

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1 before the Initial Hearing, so any applicant that files their
2 application later than the deadline will not be recognised, so we
3 addressed these matters already. And this issue has been well
4 shared by the civil party, and the Victims Unit regarding the
5 pronouncement of the disclosure of information regarding the
6 deadline for civil party applications.

7 And as I already mentioned the concerns of the Trial Chamber
8 is that the Internal Rules determines that the Trial Chamber is
9 bound to review only civil applications who have been lodged
10 before the Co-Investigating Judges, and the review of decision
11 regarding these applications can only be made during the Initial
12 Hearing, and as the civil parties has already mentioned that
13 additional 22 new applications have not yet been decided yet, and
14 as has been raised I think this matter will be solved in the
15 following items of the agenda. We will respond, also, to the
16 questions made by Ms. Silke Studzinsky as have well been
17 discussed by the Trial Chamber Judges earlier. Would you like to
18 make any further comments? The floor is still yours, the
19 Co-Prosecutors and your team.

20 Now I think we have been discussing at length, and we may
21 have been a little bit tired already, so I think it's best we can
22 really take 15 minute break to relax before we can resume our
23 meeting. Thank you very much.

24 (Court recesses from 1019H to 1045H)

25 (Recording malfunction)

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1 MR. PRESIDENT:

2 Thank you.. Thank you the lawyer. Does the Trial Chamber
3 have any questions for the civil parties or the lawyers? Please,
4 the Judge.

5 JUDGE CARTWRIGHT:

6 Thank you Mr. President, I would like to ask Mr. Hong Kimsoun
7 whether he sees any possibility of a conflict of interest between
8 the two groups that he is representing?

9 MR. HONG KIMSOUN:

10 Thank you, Mrs. Judge. For the second team, first the
11 international lawyer, Silke Studzinsky, doesn't have any concern
12 of conflict of interest, if there is any conflict of interest
13 between the second and the fourth team, between Mr. Pierre, he
14 also doesn't have any concerns because generally in our internal
15 meetings, both the national and international lawyers inform each
16 other and exchange ideas. Although there is an initial hearing
17 before we participate we will hold a meeting together to discuss
18 and share our opinions. Thank you.

19 MR. PRESIDENT:

20 Thank you the lawyer for your response to the question.
21 Judges, do you have any questions? If there is no questions we
22 will continue with the next item on our agenda. It is
23 "Composition of the
24 Co-Prosecutors team". The Trial Chamber would like to ask the
25 Co-Prosecutors of their team composition, whether their

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1 composition to participate in the hearing, who are they? Please,
2 the
3 Co-Prosecutors?

4 [10.47.42]

5 MS. CHEA LANG:

6 Thank you. For the Office of the Co-Prosecutors, we have
7 prepared and ready to participate in the forthcoming trial and
8 the composition is both international and national
9 Co-Prosecutors, the deputy prosecutors, and the senior assistants
10 within the Office of the Co-Prosecutors. I would also like to
11 clarify that for the senior assistants who participate in the
12 hearing because there is an agreement from the United Nations for
13 them to have the rights to attend the trial. And for the
14 national side I have requested to the Supreme Magistracy for
15 their approval, so the senior assistant has full rights to
16 participate in the hearing.

17 So for the Case number 001 I might not have to read the whole
18 text, I think myself and my colleague, Mr. Robert Petit, and Yet
19 Chakriya, Mr. William Smith, the Co-Deputy Prosecutors and Mr.
20 Tan Senarong, Mr. Alexander Bates, the Senior Assistant on the
21 international side, and the rest we have Jurgen Assmann, and Mr.
22 Sambath to prepare for the documents, and also the Greffier who
23 will also participate in the forthcoming trial. So on my side we
24 do not have any issue concerning the composition for case file
25 number 001. thank you

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1 MR. PRESIDENT:

2 Thank you for the information for the whole Chamber. Any
3 other Judges have any further questions regarding the issue, the
4 composition of the Co-Prosecutors team? If we do not have any
5 question, we will continue with the next item on the Agenda.
6 Please, Mr. Lawyer.

7 MR. ROUX:

8 Mr. President, it is more a comment than a question that I
9 would like to make it is at this stage. The defence notes that
10 it will have, in front of itself, across the room, four teams for
11 the civil parties which comprise each of several lawyers, and one
12 team from OCP which will have at least eight lawyers in it, while
13 defence on its side, it has been said before, we only have two
14 court lawyers and two assistants, with maybe two interns. So I
15 leave it up to you to consider if there is a balance in the means
16 of the different parties. Thank you.

17 [10.51.32]

18 MR. PRESIDENT:

19 Thank you to the lawyer for your comment, and the Trial
20 Chamber will take this into account and put in the record for
21 further consideration. Next is the discussion on the second
22 agenda, the related issues related to the witness list with WESU
23 and the Court Management Section. I would like to inform the
24 participants, ladies and gentlemen, in this agenda I would like
25 to provide the floor to Judge Silvia Cartwright, the

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1 international Judge to facilitate and present on behalf of me,
2 the President of the Trial Chamber. And there are three items
3 in the agenda, it's 2(b) and 2(c). May the Judge please take the
4 floor.

5 JUDGE CARTWRIGHT:

6 Yes, thank you, Mr. President. My name is Silvia
7 Cartwright. The first item under this part of the agenda relates
8 to the protective measures regime and logistics for witness
9 testimony at trial, and the Chamber would like to invite the head
10 of the Witness Expert Support Unit to present a brief update on
11 the preparation for the commencement of the trial, and the
12 logistics for transportation of witnesses to the courtroom, and
13 for their testimony, as well as on the specific resources
14 available for the implementation of protective measures as
15 necessary.

16 I ask that Ms. Lobwein use no more than 20 minutes for this
17 presentation, and after it is concluded the Chamber may have some
18 questions to her, and the parties will be permitted also to ask
19 questions. Ms. Lobwein.

20 MS. LOBWEIN:

21 Thank you Your Honours. I am pleased to say our preparations
22 for the transportation and presentation of witnesses is in very
23 good order. We have a principle, which is to try and ensure that
24 the court time is used to its maximum capacity, so our goal is to
25 have always witnesses standing by in close proximity to the court

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1 so they can be called to fill any available court time. Now,
2 there is a balance with this of course, which is for those
3 witnesses who need to be away from their homes, that we're not
4 keeping them for unduly long periods of time to cause
5 difficulties for their families.

6 [10.54.37]

7 For this reason, for the Witness section is that the schedule
8 of the "Schedule of Witnesses" in order of appearance is
9 extremely useful, if we have this we can start individually
10 contacting the list in order of appearance, and we will learn if
11 there are events in the lives of the individuals that will
12 interfere with their availability for the Court. That kind of
13 thing is kind of like scheduled surgery or a big family wedding
14 or some other event that we can alert the Chambers about early
15 and restructure the list. Now there are always unexpected events,
16 a sudden illness or a sudden death in the family that can upset
17 the order of appearance, so we will endeavour to have the
18 witnesses following each other in a very well prepared manner so
19 they can come in that kind of event.

20 As the way we're looking at our witnesses is that we have two
21 groups in one sense, those that reside here in Cambodia and those
22 that reside internationally. For those that reside in Cambodia
23 we've sub-divided into three groups. Those that live within
24 greater Phnom Penh; we have a travel time of two hours,
25 approximately to get them to the Court. A second group would be

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1 those who live within one days travel, those that we can collect
2 and have here at the Court within one day or who can travel
3 independently within one day to be present at the Court.

4 The third group of those that reside within Cambodia are
5 those who live within two or more travel days from Phnom Penh.
6 They're the group we are most likely to consistently collect
7 ourselves to ensure that they are available and they're the ones
8 who are vulnerable to weather or traffic difficulties and they're
9 also the ones who are most likely to stay longer here in hotel
10 accommodation with us. We have at this stage organized with the
11 General Services Section to have a full time driver and vehicle
12 assigned to the Unit, in addition another a full time set of car
13 and driver available to us as we need it.

14 [10.57.03]

15 For those witnesses who reside overseas, then we are
16 dependent on flight schedules, so for all witnesses, the earlier
17 notice the better. These witnesses travelling from overseas,
18 generally are required to be present longer in Phnom Penh longer
19 than witnesses that live in Cambodia, so they need more advanced
20 time for planning. What I would generally expect to find is that
21 if we have international witnesses who can't appear on the
22 scheduled date because other witnesses haven't finished their
23 testimony that I would recommend to the Chambers that the
24 international witness be interposed rather than to continue to
25 keep them here.

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1 For your information on a daily basis is, dependent on a
2 court schedule, but with an example of a court starting time of
3 8.30 it is our intention that all the witnesses for the day will
4 be brought to the court between 7.30 and 8 pm (sic). They will
5 travel in a vehicle directly to the two witness waiting rooms
6 inside this building where their security screening will take
7 place and they where they will be assisted by Witness Unit staff
8 to settle into the waiting rooms awaiting the next proceedings
9 such as the taking of the oath.

10 In addition to those two waiting rooms we now have a third
11 witness waiting room which is just -- the section of the
12 building, outside, past the corridor where the witness entry is.
13 So that is a suitable place and a nearby place for witnesses who
14 are currently testifying to be kept during recess or keep them
15 easily accessible to the Court.

16 For those witnesses who are accommodated by us here in Phnom
17 Penh we have a number of hotels available to us in a range of
18 different locations varying on geographical area and location to
19 the Court. For those who stay, unless we are advised by the
20 Chambers, by the parties, or at our own decision, we will try to
21 keep them in groups in the same hotel. Now, we will have staff
22 available to those hotels 24 hours per day who can regularly
23 remind the witnesses not to discuss the case with each other. We
24 will also ensure that any witnesses testifying on one day will be
25 separate from each other here at the Court and that any witness

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1 at the conclusion of their testimony departs from Phnom Penh
2 immediately. Sometimes, though, resources or hour of the day may
3 prevent it from being immediately after the testimony.

4 [10.59.55]

5 If I think that's all I can say at the moment on logistics.
6 I will move briefly to protection measures, all the Court's
7 technical capacity for implementation of protection measures is
8 in place and operational. This includes, now, for those witnesses
9 who are testifying with an order for non-disclosure to the
10 public, whose face or voice maybe distorted in signal to the
11 public gallery, will be clean to the parties inside the Court and
12 are also able to be clean to the interpreters in the
13 interpretation booth to assist with their translations.

14 From what I can asses at this preliminary stage, and I'm not
15 aware of all the witnesses, but it seems to me that all witnesses
16 will be testifying from the courtroom, not from the remote
17 witness room, I'm not anticipating any requests for closed
18 sessions. So what I can see to date that the Chambers may be
19 asked to consider is that a request for non-disclosure to the
20 public, which would mean the use of face and voice distortion to
21 the public gallery, the use of a pseudonym instead of a name,
22 with the curtains closed for the witness's entry and departure
23 from the courtroom, and the screen surrounding the witness stand
24 during their testimony. So any specific requests are yet to made
25 to the Judges, I think, from some of the parties.

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1 [11.01.33]

2 I would like to mention, too, support services, which was not
3 on the agenda but is also another area of our responsibilities.
4 Our witness section is assisted by a group called the
5 Transcultural Psychosocial Organization here in Phnom Penh, and
6 through a memorandum of understanding, we have an agreement to
7 use their staff to assist in support and counselling services to
8 witnesses on the day of their of their testimony and any
9 follow-up they may require. Unless advised by the Chambers or
10 recommended by the parties or at the request of the witness or at
11 our own decision we will introduce those staff to the witnesses
12 each day. So please, a reminder to advise me if there are any
13 reasons you feel that that introduction should not take place.

14 And likewise for logistic protection support for all parties
15 who may know of any particular special need, that a person they
16 may be proposing as a witness will have. Requesting protection
17 measures, a request to testify by video link, any special
18 disabilities or advanced age, any issues with mobility, please
19 advise me as early as possible. It's much easier to cancel any
20 arrangement than to have to quickly put them in place if it's
21 needed for a witness. Thank you, Your Honours, that ends my
22 presentation.

23 JUDGE CARTWRIGHT:

24 Thank you very much, Ms. Lobwein. Before the various
25 parties' lawyers are given the opportunity to ask more specific

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1 questions, Chamber wants to indicate that, on request by WESU or
2 proprio motu, the Chamber will allow a representative of WESU to
3 sit by certain witnesses during their testimony. Obviously this
4 representative will not be allowed to discuss any trial-related
5 issues with the witness during the testimony, and will provide
6 any support to the witness only as required by the Chamber. Now,
7 Mr. President, do you wish to give opportunity to the other
8 parties to ask questions?

9 MR. PRESIDENT:

10 I do not have anything to add.

11 JUDGE CARTWRIGHT:

12 Yes, I think you've covered in general terms the procedures
13 for transportation, but I wonder if you can explain the practical
14 procedures for the notification of summonses to appear to a
15 witness, and particularly whether and when WESU is prepared to
16 notify directly a witness resident outside
17 Phnom Penh, your two categories of one to two days travel away.
18 Thank you.

19 [11.05.03]

20 MS. LOBWEIN:

21 Thank you, Your Honour, this is an important issue, and I'm
22 pleased to be able to report that the Court Management Section
23 has made some negotiations with Cambodia's Judicial Police
24 authorities. We've asked them could they assess their capacity
25 to deliver summonses to the witnesses of this Court. Their

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1 indications are that they do have the resources to do this, and
2 that they have the willingness to do this, so in the coming weeks
3 Court Management will have completed the drafting of standard
4 operating procedures, which will be passed to the Judicial Police
5 for review, with the move to using their assistance in those
6 cases of witnesses without protection measures.

7 They have the capacity to deliver summonses all over the
8 country regardless of the travel time. So I think given Rule 41
9 specifically talks about being able to use the Judicial Police
10 that that would be the most efficient and resource saving way to
11 do that. Now the Witness Section will, however, deliver the
12 summonses, or request authorisation for that purpose, for any
13 witnesses with protection measures, to minimise the number of
14 persons involved in that witness's participation with the Court.

15 One of my thoughts is that it will be difficult for the
16 Chamber to issue its summons with a clear and specific date for
17 appearance, and I think that it might be useful for the Chamber
18 to consider when alerting the witness by summons, to give a
19 longer period of time, a week or a month, or between certain
20 dates, to prepare themselves for testimony, and to inform that
21 more specific information will be conveyed by the Witness Unit
22 for their exact date closer to the event. Thank you.

23 [11.07.07]

24 JUDGE CARTWRIGHT:

25 Yes, thank you. The Trial Chamber will advise WESU on those

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1 matters in due course. The Trial Chamber also wants to inform
2 the parties of the arrangements concerning the administering of
3 the oath, particularly taking into account specific requirements
4 for Buddhist witnesses and considering any protective measures in
5 force. Unless as otherwise provided for in the Internal Rules,
6 all witnesses appearing before the Court will be asked to take an
7 oath prior to giving their testimony. This is regardless of
8 whether they have already taken an oath at previous stages of the
9 proceedings.

10 All Buddhist witnesses will normally be sworn in each morning
11 prior to their testimony at trial, between 8 am and 8.30 am,
12 except for those witnesses subject to protective measures, for
13 which special arrangements will be made, the oath ceremony will
14 take place in front of the iron genie. Representatives from the
15 parties will be informed of the schedule, and allowed to attend
16 the oath ceremony provided that they inform WESU in advance. All
17 other non-Buddhist witnesses will be sworn in directly in the
18 courtroom prior to their testimony. Now does WESU have any
19 comment or any additional matters to raise with regards to the
20 oath taking procedure?

21 MS LOBWEIN:

22 Just to inform Your Honours and the parties that we will have
23 appropriate religious texts available should non-Buddhist
24 witnesses taking oaths in the courtroom wish, and we will make
25 sure we have the resources available between 8 and 8.30 to assist

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1 the greffier in the oath taking for Buddhist witnesses.

2 JUDGE CARTWRIGHT:

3 Thank you, Ms. Lobwein. Do any of the lawyers for the civil
4 parties have questions to ask WESU concerning any of these
5 matters? Ms. Studzinsky?

6 [11.09.48]

7 MS. STUDZINSKY:

8 Honourable Judges, I would like to give one information that
9 you might and WESU might not have, about a document or an
10 interview, a statement of witness in case 2 that was on the case
11 file I would say on 5 January, and I would like that this
12 document should be transferred and also notified to WESU, because
13 this witness talks about different -- I will keep it very
14 general, because it is in case 2 -- but is talking about
15 approaches by people to his family and also approaches, direct
16 approaches to the witness.

17 And so with the result that this witness said "I was
18 instructed", and I would like that WESU considers and
19 reconsiders, again, the question of protective measures, having
20 this background of this testimony. I can give you the document
21 number, and maybe I would like to include this in the future
22 decisions -- and the decisions that were already taken by WESU.
23 Thank you.

24 JUDGE CARTWRIGHT:

25 Judge Lavergne.

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1 JUDGE LAVERGNE:

2 Would it be possible for us to know more clearly whether this
3 witness is to be heard also in the context of case number 1.

4 MS STUDZINSKY:

5 As far as I know not, but it is a general issue of security,
6 of course, if a witness was heard some months ago and was
7 approached. And I think it could be relevant of course also for
8 witnesses and/or civil parties as well in case 1, even if this
9 person was not named by the Prosecution, and I think neither by
10 the parties to be heard in case 1.

11 [11.13.09]

12 JUDGE CARTWRIGHT:

13 Yes, thank you Ms Studzinsky. I suggest that you give the
14 information to Ms. Lobwein and she can consider the matters that
15 you have raised. Thank you. Now, are there any other questions
16 that lawyers for civil parties wish to put to the head of WESU?
17 No other questions. Do the
18 Co-Prosecutors have any matters that they wish to put to WESU?
19 Mr. Petit?

20 MR. PETIT:

21 Good morning, Mr. President, Your Honours. Two questions.
22 One, of a more general nature for perhaps purposes of
23 information, who advises the witnesses of the possibilities --
24 the general framework of protective measures? And if it is WESU,
25 could the parties be informed, again, very generally, of what is

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1 told to the witnesses? Second of all, as we all know, testifying
2 in open court about events such as the subject matter of these
3 cases can be very traumatic for witnesses. Is there in place any
4 measures by which WESU will familiarise the witnesses prior to
5 their testimony to what they can expect on the day of hearing?

6 In other words, will they be brought before when there is no
7 session, shown the Court, told what they're expected of them, et
8 cetera, et cetera. Thank you.

9 JUDGE CARTWRIGHT:

10 Do you wish to respond to that now, Ms. Lobwein?

11 MS. LOBWEIN:

12 Yes, thank you, Co-Prosecutor. In the matter of advising
13 witnesses on the protection measures, there's a number of ways
14 that they can obtain the information. A personal engagement or
15 explanation by WESU should be the last opportunity to hear.
16 Witnesses should hear about the nature and scope of protection
17 measures much earlier. There are some community initiatives,
18 particularly through the Khmer Institute of Democracy, who have
19 published material detailing the kinds of protection measures
20 that are available here at the Court.

21 [11.15.42]

22 We would request, and do request, all investigators from the
23 Office of the Co-Prosecutors as well as the Office of the
24 Co-Investigating Judges, for those witnesses that they interview,
25 to ensure that they're informed about protective measures and to

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1 ask a series of short questions to give some indication of
2 whether the witness self-assesses as having security risks.

3 Now, upon request of the parties, WESU will attend to any
4 witness interview or meet any witness specifically for that
5 purpose. Because we're not directly involved in the
6 investigative stages, we are dependent on the interviewers,
7 investigators, alerting us to any particular support logistic or
8 protection concerns of the witnesses. And then in conjunction
9 with the investigators, or independently after discussion, we
10 will then brief the witnesses in relation to whatever the matter
11 is, including protection measures.

12 So in summary, what do we tell witnesses about protection
13 measures? They're notoriously difficult to convey, the witness
14 protection measures of a Court such as this, so one of the things
15 we're looking for is to understand from the witness where they
16 see the potential threat, or where their areas of concern are,
17 and then we look at developing some kind of individual plan that
18 meets their security. So it may be, for some witnesses, security
19 is being met outside their village because they don't want the
20 people who live in their village disturbed by our vehicles. And
21 if it is as simple as that, we can easily take measures to ease
22 that concern.

23 So we will explain the measures, we particularly explain that
24 they're dependent on an order by the Chambers, and then if we're
25 requested by the parties at any stage, or the Chambers, we will

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1 do a more detailed assessment of what the nature of the concern
2 is, and some measurables on what the likelihood of risk is to
3 that person and provide it.

4 For your second question, yes, this is something that WESU
5 will take up, I believe, which is assisting witnesses to
6 understand what will happen on the day of testimony. So we're
7 proposing a brief outline about the procedures here which will
8 include a visit to the courtroom to just see how it looks, and
9 which way they will enter the courtroom. This is the kind of
10 activity, though, that can sometimes be lost if there's a quick,
11 rapid turnover of witnesses. So we're certainly going to
12 endeavour to do that, but we have no lawyers -- we will give no
13 legal advice to witnesses. Any questions like that from a
14 witness we'll refer to the greffiers. Thank you.

15 [11.18.55]

16 JUDGE CARTWRIGHT:

17 Thank you, Ms. Lobwein. Are there any other questions from
18 the Co-Prosecutors? No? Thank you. Now, do any of the lawyers
19 for the accused person have any questions or comments to WESU?

20 Mr. Roux?

21 MR. ROUX:

22 Thank you, Your Honour. I wanted to take the floor on the
23 issue of witnesses visiting these premises. I do believe it is
24 absolutely crucial, as in all major court cases, that the Witness
25 Unit enable each and every witness to come and pay a visit to

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1 this room at the time of breaks, in order for the witness to feel
2 familiar with the locale, with the place, prior to testimony.

3 The defence has also informed the Victims Unit that at least
4 one, if not several of these witnesses, will no doubt wish to
5 submit their testimony via video devices. Consequently I do
6 believe that at this stage that I can note that the benches and
7 the seats for the various parties are probably lacking video
8 screens. I believe it would be necessary to take note of the
9 need for a greater number of video screens in the various places
10 where we shall all be positioned. In particular for testimonies
11 being taken by means of video conferencing. And I shall have
12 further questions later on witnesses, but I shall come back in on
13 that at a later stage in our discussion. Thank you.

14 JUDGE CARTWRIGHT:

15 Thank you, Mr. Roux. Does any member of the Trial Chamber
16 wish to put any questions to the head of WESU? Judge Lavergne.
17 [11.21.28]

18 JUDGE LAVERGNE:

19 You mentioned the possibility of witnesses needing
20 psychological, moral or other types of support. Witnesses who
21 might have mobility difficulties, they may be physically
22 challenged. Are there particular statements or comments on this?
23 Or do you have any specific requests in this connection in terms
24 of what you need to support those witnesses?

25 MS. LOBWEIN:

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1 Thank you, Your Honour. Yes, I know there is discussion for
2 some kind of mechanical assistance for the stairs, this could be
3 very important for witnesses. From a cursory understanding
4 already of the witnesses for this trial, I do know that there's
5 some who suffer quite debilitating and chronic illnesses. Now,
6 we have some assistance now with a third waiting room, that we
7 can bring people in stages to that room, but I probably don't
8 need to tell the persons in this room the importance of the
9 proximity to a bathroom in times of anxiety and stress. And
10 unfortunately that room is not close, it requires a stair climb
11 to use the closest bathroom. So we have spoken with a medical
12 service that we have here, an agreement to assist witnesses as
13 required from their medical staff, but ease of access to the
14 building is something that we're looking forward to.

15 JUDGE CARTWRIGHT:

16 Are there any other questions from the Judges? Thank you.
17 Now, we'll now move to the issues relating to the list of
18 witnesses, and the logistics concerning that.

19 [11.23.30]

20 The Chamber acknowledges receipt from the Prosecution of
21 lists of witnesses and experts they intend to have summoned at
22 trial in accordance with Rule 80 of the rules, together with
23 additional materials as ordered by the Chamber on the 11th of
24 December 2008. Pursuant to Rule 80bis of the rules, the Chamber
25 will consider these lists, as well as any additional lists,

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1 during the Initial Hearing. However, for the purposes of fair
2 and expeditious conduct of the proceedings, the Chamber, having
3 reviewed the list, as well additional materials filed so far by
4 the parties, in order to assess formal compliance with the order
5 of this Chamber on the 11th of December.

6 Concerning the Co-Prosecutors' list and additional materials,
7 the Co-Prosecutors filed their proposed list on the 19th of
8 December in Khmer and English. In addition, the Co-Prosecutors
9 also filed summaries of the facts to which each proposed witness
10 and expert is expected to testify, and the list of new documents
11 they intend to offer in the case. The defence has been notified
12 of the French version of the witness list, and additional
13 materials.

14 The Co-Prosecutors state that they're not intending to offer
15 any exhibit, namely any tangible objects, other than the scanned
16 documentary evidence currently available on the case file, which
17 includes photographic and video material. The Co-Prosecutors
18 also state that at this stage, they're not in a position to
19 indicate the legal issues that they intend to raise at the
20 Initial Hearing, but following this meeting today they will be
21 able to notify the Chamber of any outstanding issues that they
22 wish to raise.

23 The list filed by the Co-Prosecutors contains 35 proposed
24 witnesses who they intend to summon at trial. Two of these are
25 identified as experts. In this regard, the Chamber would like to

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1 stress that it would be preferable to have a clear distinction,
2 in future, between witnesses and experts in accordance with the
3 provision of Rules 24 and 31. Two of the proposed witnesses are
4 currently civil parties in the proceedings, and from information
5 received from the Co-Prosecutors, they have been included in the
6 list in case they decide to abandon their civil party claims.

7 All proposed witnesses are identified by their names as well
8 as by pseudonyms. Currently, as we are still in the process of
9 consulting with WESU to assess the need for protective measures
10 for any of the proposed witnesses, whether with regards to the
11 public or any party, for ease of reference and pending the
12 finalisation of this consultation with WESU, in the meantime all
13 witnesses and experts will be referred to by their given
14 pseudonyms.

15 [11.27.14]

16 The Co-Prosecutors indicate that the order in the list is the
17 suggested order in which proposed witnesses and experts should
18 appear during the trial. In total, the Co-Prosecutors estimate
19 that a minimum of approximately 40 trial days will be required
20 for the testimony of these witnesses and experts. The estimated
21 length of the trial proceedings will be further discussed
22 tomorrow, or later in the agenda, under a specific agenda item.
23 And I stress that this 40 trial days accommodates only the list
24 given so far by the Co-Prosecutors.

25 There is a matter that the Chamber would like to raise with

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1 the Co-Prosecutors. It notes a small discrepancy between the
2 spelling of the names of proposed witnesses. I will read these
3 out slowly. KW03, KW11, KW12, KW14, KW19, KW22, KW28 and KW30.
4 And that discrepancy is between various witnesses heard by the
5 Co-Investigating Judges during the investigation phase, for which
6 the record of interviews has been placed on the case file. So we
7 need to clarify that we're talking about the same people. So
8 could the Co-Prosecutors, as soon as possible, indicate that
9 these are the same individuals, and confirm also that these
10 witnesses to which I have referred, have already been heard
11 during the investigation phase. Are you able to respond to that
12 immediately?

13 MR. PETIT:

14 Thank you, Your Honour. I'm not able to respond specifically
15 to each concerns. As you know, from having been consulting the
16 case file for months now, there is a lot of different spellings,
17 a lot of different iterations of the same names. We can
18 certainly, and will within a day or two, file to this Chamber,
19 for dissemination, perhaps the correct ERN numbers of the
20 statements of each witnesses. That is not a major technical
21 issue. And that will specifically identify each of the
22 witnesses. I hope that is of assistance.

23 [11.30.21]

24 I have a further matter to raise, if you want me to at this
25 stage, or later on, in terms of additional evidence that will be

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1 filed.

2 JUDGE CARTWRIGHT:

3 Well, perhaps while it's on your mind you could refer to it
4 at this stage, Mr. Petit.

5 MR. PETIT:

6 Thank you. I just want to advise the Chamber, and eventually
7 the parties, that we will request a waiver of the delay to file a
8 response to the Trial Chamber's order, because after the expiry
9 of that deadline, we came into possession of evidence that we
10 think would be very useful to this Trial Chamber to assess the
11 evidence, to assess the case. More specifically, as has been
12 reported in the media, DC-Cam, a local NGO, came into possession,
13 a few days ago, of films purported to be of the era, and again,
14 purporting to show, the whole to be weighed, of course, by you,
15 the location of S21 barely a few days after the previous tenants
16 had vacated it. To our knowledge this footage has never been
17 seen before, and we deemed that it would be very useful to the
18 Trial Chambers, to the parties, and indeed to the witnesses, to
19 be able to view that footage, to put themselves almost right back
20 into the setting at the time.

21 As I said, we had no knowledge of the existence of that
22 footage, and we learned of its presence in Phnom Penh through the
23 media. We immediately sought to obtain copies, viewed the
24 material and identified I think it's a total of perhaps less than
25 20 minutes of video. As I said, it provides a very interesting

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1 view of the locations involved. We will therefore, hopefully
2 this week, file before you a request to file after the expiry of
3 delays under 39(4)(b) so that this video could be placed into the
4 case file for all parties to view. Thank you.

5 [11.32.55]

6 JUDGE CARTWRIGHT:

7 Yes, thank you, Mr. Petit. So that's two matters that you
8 will file very shortly. That brings me to a further issue
9 concerning spelling. The Chamber wants to indicate that where
10 different spellings exist for the names of proposed witnesses and
11 experts, it would be helpful that all spellings are referred to
12 in each party's witness list. The Trial Chamber also notes that
13 the witness list indicates that proposed witnesses and experts
14 KW02, KW05, KW25, KW26, KW33, KW34 and KW35, respective dates and
15 places of birth, as well as some of their addresses, are unknown.
16 It is obvious that in some cases that information must be readily
17 available. The Chamber would like to ask the Co-Prosecutors to
18 review the information in their possession and where possible
19 integrate this into their proposed lists. Thank you.

20 Finally, on this section of the agenda, according to the
21 Co-Prosecutors, the defence had the opportunity to confront 11 of
22 the proposed witnesses during the investigation phase. Can I ask
23 the defence to confirm this information? That was, the
24 opportunity to confront 11 of the proposed witnesses during the
25 investigation phase. Can you confirm that?

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1 MR. ROUX:

2 Thank you, Mr. President, Your Honours, that is correct. The
3 Co-Investigating Judges organised, with the consent of the
4 parties, first of all a reconstitution on location, that is at
5 S21 and Choeng Ek, and in the days that followed this the
6 Co-Investigating Judges also organised a confrontation with some
7 of the witnesses. I do not have the list in front of me, but I
8 can confirm that indeed the confrontations took place, and this
9 with the consent and agreement of the parties. And this in
10 agreement with the proceedings that had been established by
11 Co-Investigating Judges in civil law proceedings. Thank you.

12 [11.36.08]

13 JUDGE CARTWRIGHT:

14 Thank you, Mr. Roux. Could you, in due course, confirm that
15 you've had the opportunity to confront the number that the
16 Co-Prosecutors have indicated. If there is any discrepancy, the
17 Trial Chamber would appreciate information concerning that.

18 MR. ROUX:

19 Yes, Your Honour, we shall comply.

20 JUDGE CARTWRIGHT:

21 Thank you. Now, are there any comments by the defence or the
22 civil party lawyers with regards to the summaries of the facts to
23 which each proposed witness is expected to testify that have been
24 filed by the Co-Prosecutors? Do you have any comments on the
25 Co-Prosecutors' summaries of the facts? Mr. Roux?

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1 MR. ROUX:

2 Thank you, Your Honour. The defence did not receive the
3 translation in French -- only received the translation three days
4 ago, and this means that we have not been in the position to work
5 thoroughly on the list, and that is why we have not yet filed our
6 own list. However, our first reaction would be as follows:
7 planning to have 40 days for the Co-Prosecutors is excessive,
8 especially as several of these witnesses have already been heard
9 during the judicial investigation, and especially as we are not
10 governed by a system that will have examination and
11 cross-examination. That is the first initial comment I would
12 like to make at this stage.

13 With your leave, Your Honour, I would also like to react to
14 the fact that the Co-Prosecutors intend to file additional
15 evidence that an NGO has allegedly -- and I will use the word
16 "allegedly" knowingly - - has just allegedly obtained. The
17 defence is somewhat surprised. This same organisation, for which
18 we have the greatest respect, I would like to say, mentioned two
19 months ago that they had additional information, more
20 specifically 177 S21 survivors, and this is after one year of
21 investigation, when this non-governmental organisation did not
22 feel it was necessary to provide this information to the
23 Co-Investigating Judges, and yet one of the members of the
24 Co-Prosecutors had worked for this NGO for several years.

25 [11.40.03]

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1 And now I see that we are in a similar situation which is
2 basically taking place a few days only before the trial begins,
3 at a time when the Co-Prosecutors had, as one of their
4 consultants, a former consultant of that NGO, and now we are
5 being informed that a very important video has been found. I am
6 somewhat surprised, I am very unpleasantly surprised. I would
7 like to invite the Office of
8 Co-Prosecutors to disclose this material to the defence, and then
9 we will be able to say what our position is, and we shall file
10 our position with the Trial Chamber, but I wanted to state right
11 here, right now, my concern and my disapproval of this way of
12 proceeding.

13 JUDGE CARTWRIGHT:

14 Perhaps, Mr. Petit, you would like to respond to that last
15 request for disclosure.

16 MR. PETIT:

17 I'm sorry, could you repeat? I lost it in the translation.

18 JUDGE CARTWRIGHT:

19 Yes, I'm sorry. Would you like to indicate that you will
20 disclose this additional information that you wish to have
21 included in the case file to the defence?

22 MR. PETIT:

23 Of course, as I thought I had mentioned, we intend to file
24 before this Chamber, and therefore before the parties, a motion
25 which will explain the circumstances of the Office of the

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1 Co-Prosecutors coming into possession of this material. Now, I
2 can address the further comments of my learned friend if the
3 Court wishes it, to clarify further the matter, or can leave it
4 to the written pleas.

5 [11.41.58]

6 As to the numbers of days that we anticipate, as we all know
7 this is always a guesstimate -- I'm not sure how the translation
8 is going to handle that -- but this is an estimation that we put
9 forward so that there can be some planning. This is obviously
10 not set in stone, because, more importantly, you are the
11 judicator of this. However, based on our experience in previous
12 settings that are akin to this one, we estimated that this is the
13 minimum -- the maximum, rather, of days, that these witnesses
14 will take up with the Court, so it can have as thorough and
15 substantive an idea of the case, as well as the public, which we,
16 of course, are all mindful. Thank you.

17 JUDGE CARTWRIGHT:

18 Thank you, Mr. Petit. Do any of the civil party lawyers wish
19 to make any comment concerning the summaries of facts filed by
20 the Co-Prosecutors? Thank you. Well, finally, in this part of
21 the agenda, the Co-Prosecutors have inquired about the procedure
22 concerning the testimony of witnesses, specifically whether the
23 witness will testify first and then be questioned by the Chamber
24 and by the parties. In brief, the Chamber concurs with this
25 procedure, and would like to refer in particular to the specific

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1 provisions in the Rules, Rules 85 and 91. No, are there any
2 other matters that the defence, the civil parties or the
3 Prosecutors would wish to raise at this point in the agenda
4 before we move to the next stage? Mr. Roux?

5 MR. ROUX:

6 Thank you, Your Honour. The defence would like to inform the
7 Trial Chamber that it has contacted the Office of Co-Prosecutors
8 in order to suggest a procedure that could be followed for one of
9 our witnesses who is very old, and this is of course without
10 prejudice to what the Trial Chamber may decide. I agree with my
11 learned friend from the Prosecution with respect to the
12 examination and cross-examination of this witness, whereby this
13 could be filmed and then the film could be shown to the Trial
14 Chamber. This is not a factual witness, this is an expert
15 witness, who is very old, who lives very far away from here. His
16 testimony is very important for the defence, and we have some
17 concerns with respect to his current state of health.

18 [11.45.32]

19 Therefore, as a precaution, what we would like to do is that
20 in the days to come, we would like to have the witness examined,
21 and we would like a video recording made of this examination and
22 cross-examination, and this video following the adversarial
23 process would be then shown to the Trial Chamber. And of course
24 we remain open to hearing your comments, and we hope to obtain
25 your consent.

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1 JUDGE CARTWRIGHT:

2 Can I inquire, Mr. Roux, if you have received agreement from
3 the Co-Prosecutors as a preliminary matter? Mr. Petit, have you
4 agreed to this procedure?

5 MR. PETIT:

6 To the procedure, yes. Under the premise, obviously, that
7 this is not first of all prejudging your decision on the
8 testimony itself nor on our ability to comment on the
9 appropriateness of such a witness being part of the defence list
10 of witnesses. It is a fact that the defence has approached us a
11 while ago to inform us of their desire to have this witness heard
12 in one way or the other. He is a rather old man, and information
13 that I have recently obtained does indeed raise some worries and
14 concerns about his health, and unfortunately, continued survival.
15 We thought, again, you know, under the reserve of your decisions,
16 that this would be an adequate procedure. However, knowing this
17 Court and its limits, budgetary and otherwise, we dearly hope
18 that you will give us guidance on this so that we may use this
19 guidance as an argument. Thank you.

20 JUDGE CARTWRIGHT:

21 Judge Lavergne.

22 [11.47.43]

23 JUDGE LAVERGNE:

24 If I have understood your proposal correctly, you do not wish
25 to have testimony in the classical sense, as it is provided for

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1 in the Internal Rules. What this is is that it is more of a
2 document. With respect to the examination, would it be possible
3 for the Judges to examine this witness, or for the civil parties
4 to send questions? Have you considered this, or have you thought
5 about how we might proceed with respect to this?

6 JUDGE CARTWRIGHT:

7 Mr. Roux?

8 MR. ROUX:

9 Thank you. From the very beginning, we had hoped to have the
10 witness testify remotely via video conference, because of his
11 age. However, but also because of his current state of health,
12 and the delay that has taken place with respect to the beginning
13 of the proceedings, which is due, inter alia to the appeal of the
14 Co-Prosecutors, we wanted to ensure that the words of this person
15 be heard, as they are very important for the defence. We
16 therefore suggested this way of proceeding, but of course we are
17 open to any other way of proceeding, but we are of the view that
18 it is extremely important that this person be given the
19 opportunity to be heard before the Trial Chamber in one way or
20 another.

21 JUDGE CARTWRIGHT:

22 Well, I think it would be very helpful, Mr. Roux, if you
23 could give the Chamber some brief details in writing concerning
24 this witness so that we can give you our ruling as soon as
25 possible. And at this stage, of course, I can't indicate what

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1 the ruling would be. Thank you.

2 Now, are there any other matters that any lawyer would wish
3 to raise in relation to this item of the agenda? Ms. Studzinsky?

4 MS. STUDZINSKY:

5 Yes. Your Honours, related to the last issue raised by the
6 defence, I only want, even without knowing which kind of witness
7 this is, that I would like to -- that it is guaranteed that civil
8 party lawyers may ask, however organised however, but may have
9 the opportunity to ask this witness. Thank you.

10 [11.51.19]

11 JUDGE CARTWRIGHT:

12 Unless there are any further questions, that is the end of
13 this agenda item. Mr. President.

14 MR. PRESIDENT:

15 Thank you very much for your facilitation in the last main
16 items of the agenda, and I really appreciate your good
17 co-ordination skill, and we have already covered those matters.
18 And since it is due time for lunch break, we would like to take a
19 break so that the participants can have their lunch, and our
20 meeting will resume at 1.30 in the afternoon. So I wish you a
21 good lunch, but make sure you can come back at 1.30. Thank you
22 very much.

23 The security officer please take Kaing Guek Eav alias Duch to
24 the waiting room in the basement and then take him back before
25 1.30 this afternoon, if he wishes to attend this afternoon

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1 session. If he wishes not to come back then he can be taken back
2 to his detention facility. Thank you very much. Enjoy your
3 lunch.

4 (Court adjourns from 1153H to 1332H)

5 MR. PRESIDENT:

6 Please be seated. Good afternoon. We shall now resume our
7 meeting as scheduled.

8 Regarding item number 3, Rules of Evidence, with CMS, in this
9 agenda there are five sub-items. 3(a) is the procedures for
10 filing documents in accordance with Rule 87(2) and 3(b) is about
11 the notification to the party who request to submit new
12 documents. And 3(c), how to deal with new witnesses who are not
13 in the Closing Order or the case file, and this item of agenda
14 has been proposed by the civil parties. 3(d) is the deadline for
15 the submission of witness and exhibit lists for new civil
16 parties, and this item also requested by the civil parties; and
17 3(e) is the scheduling of the hearing of selected civil parties
18 as proposed by a civil party lawyer.

19 I would like to give the floor to Judge Lavergne to chair
20 this event on behalf of me myself. So the floor is yours.

21 JUDGE LAVERGNE:

22 Thank you, Your Honour. The first item we have to deal with
23 this afternoon relates to the procedure for the submission of
24 evidence, pursuant to Rule 87(2) of the Internal Rules. Now Rule
25 87(2) provides as follows: "Any decision of the Chamber shall be

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1 based only on evidence that has been put before the Chamber and
2 subjected to examination. Where the Chamber makes its decision
3 based on evidence from the case file, it shall ensure that such
4 evidence has been expressly put before the parties during the
5 hearing. Evidence from the case file is considered put before
6 the Chamber if its content has been summarised or read out in
7 Court. The Chamber may reject a request for evidence where it
8 finds that this evidence is (a) irrelevant or repetitious, (b)
9 impossible to obtain within a reasonable time, (c) unsuitable to
10 prove the facts it purports to prove, or (d) not allowed under
11 the law."

12 The Chamber recalls that it held an informal meeting with the
13 parties on 28th October 2008, during which guidance was sought on
14 the operation of the provisions of Rule 87(2) in particular with
15 regards to who has the duty to proceed with the summarisation or
16 the reading out of the evidence in question. On that occasion,
17 the Chamber indicated that, being in charge of the conduct of the
18 proceedings, it would have the primary role in introducing
19 evidence during the hearing. However, where a party or parties
20 wish to refer to a particular piece of evidence which has not
21 been introduced by the Trial Chamber, this evidence could be
22 summarised or read by that party or parties.

23 [13.37.52]

24 When introducing a particular piece of evidence under Rule
25 87(2) of the Internal Rules, the Chamber will announce its

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1 intention to do so. It will indicate the initial reference of
2 the document in the OCIJ case file. For example, D5. The
3 Chamber will then either summarise the document or read the
4 document itself, or sections of that document, from any of the
5 available working languages available. This can be done by the
6 President or any Judge or greffier mandated by the President to
7 do so. After the Chamber has introduced the evidence it
8 considers should be put before the parties for the purpose of
9 Rule 87(2), it will give the opportunity to the parties to do the
10 same.

11 A party or parties who wish to introduce evidence for the
12 purpose of Rule 87(2) should announce that intention to the
13 Chamber, and follow the same procedure for putting evidence
14 before the Chamber. Such party shall also preliminarily liaise
15 with CMS in order to fulfil all other technical requirements from
16 CMS for the proper accomplishment of this procedure. For
17 instance, preparation of hard copies, indications of portions of
18 documents to be referred to, et cetera. The fact of summarising
19 or reading evidence for the purpose of Rule 87(2) will have the
20 effect, in a purely practical way, of placing such evidence in a
21 new folder in the case file. Such piece of evidence will receive
22 a new document number, and according to the Practice Direction on
23 filing of documents, such evidence will be placed in folder E3,
24 and will become public as soon as the greffier will have
25 completed and filed the written record.

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1 This will be done in accordance with the information
2 contained in the written record. This concerns the assignment of
3 a new document number as well as the level of confidentiality, if
4 any, given to the said document.

5 MR. PRESIDENT:

6 Thank you very much, Judge Jean-Marc, for the presentation.
7 Next, I would like to give the floor to parties concerned,
8 especially to anyone who would wish to ask any question regarding
9 these matters, so I would like to ask the civil parties if you
10 would like to make any comments concerning this presented
11 subject. The floor is yours.

12 [11.41.36]

13 MS JACQUIN:

14 (No interpretation)

15 THE INTERPRETER:

16 There seems to have been a little technical problem, the
17 microphone was not on.

18 MS JACQUIN:

19 Thank you, Your Honour. So the question I was raising was
20 that of the deadline. Which would be the deadline for the
21 parties to announce their intention to put up evidence, either
22 through summarising or reading out that piece of evidence? I
23 think that the conduct of the hearing and the statements from
24 witnesses may lead this kind of need to arise, and parties may
25 not necessarily know that need a few days in advance. Thank you.

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1 MR. PRESIDENT:

2 Judge Jean-Marc.

3 JUDGE LAVERGNE:

4 Yes, thank you, Your Honour. I think there is a certain
5 latitude in this matter. Some parties may wish to file in
6 advance a list of documents that it would like to be discussed at
7 the hearing. So no specific deadline has been set, the principle
8 I think here is that the hearing may be conducted in a flexible
9 manner and in an efficient manner. So if we can anticipate this
10 kind of request the better, and that should be possible because I
11 think you will know in advance which witness will be heard on
12 what day, and you may prepare questions. You can also prepare
13 documents that you may want to put up to the witness. However,
14 maybe -- in the light of what's going to happen concretely that
15 we may give a more specific answer, but ideally it should be done
16 before the document should be put up.

17 MR. PRESIDENT:

18 (No interpretation)

19 MS STUDZINSKY:

20 Can you please repeat?

21 [13.45.53]

22 MR. PRESIDENT:

23 I would like to give the floor to other civil parties who
24 would like to make further comments, so the floor is yours.

25 MS STUDZINSKY:

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1 I have a question, and I would like to know if this procedure
2 you have presented now concerns also new documents that are not
3 yet in the case file.

4 JUDGE LAVERGNE:

5 I think other questions have been raised concerning new
6 documents, and we could come back to your question in the light
7 of that discussion on the more urgent question of new documents.

8 MR. PRESIDENT:

9 Next, any lawyers for the civil parties who wish to express
10 their opinions, or ask questions regarding this current
11 proceeding. If we don't have any questions, may I ask the
12 Co-Prosecutors if they have any questions or issues regarding the
13 presentation. Please rise.

14 MR. PETIT.

15 Thank you, Your Honour. We may need to read again the
16 transcript of the meeting today to understand more clearly the
17 procedure that has just been presented, but with the
18 understanding that either on motion of the Chamber or on motion
19 of the parties, the parties may submit in advance a list of
20 evidence which they want to be discussed. I don't think that
21 this should be the source of any major problem if there is some
22 flexibility in the way we conduct the hearing.

23 [13.48.36]

24 I would also like to note that we may use the services of
25 CMS in order to distribute copies of documents, that is more

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1 problematic. It is more difficult to manage during the hearing,
2 because as my colleague said, it may be possible that during the
3 debate, the hearing, documents are produced in a rather
4 unpredictable manner. So if everything functions like it should,
5 and we are not in an ideal world, all the evidence in the file
6 are currently filed in digitised form, electronic form. And I
7 believe that the goal is that the party, or the Chamber, does not
8 have to produce paper copies of all the evidence in the case file
9 -- again, if the system that was put in place functions like it
10 should.

11 However, there may be a problem with the summaries that the
12 parties would like to submit for discussion. Those summaries
13 will not be part of the case file, and they will not be available
14 in the electronic format, and they themselves may be debatable,
15 because the summary established by one party is not necessarily
16 agreed by the other party. So I would like the Chamber to think
17 about a specific procedure for the summaries that would be
18 produced or submitted by the parties, if only to prevent
19 technical problems linked to the necessity of producing those
20 documents during the hearing. That were my comments on this
21 issue, thank you.

22 MR. PRESIDENT:

23 Thank you, the Co-Prosecutor. Next, the co-defence lawyers
24 of the accused. Do you have any comments, or do you have any
25 remarks you wish to make regarding the current proceeding?

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1 Please rise.

2 MR. ROUX:

3 Thank you, Your Honour. First, I heard you read the agenda
4 as a, b, c, d, e -- on our own agenda we don't have that
5 indication of small a, small b, small c, small d, so I'm afraid
6 that we do not have the right translation of the agenda that was
7 established initially in Khmer, and I'm afraid to be a bit lost.
8 That's a question of order. As to the new evidence to be
9 produced, I think that indeed we have to think about a set of
10 rules, but at the same time it is clear that it is according to
11 the debate in the hearing that we're going to fine tune this
12 procedure, and the only thing I would request at this stage is
13 obviously that the principle of examination of evidence be
14 complied with, which means enough time for the defence to be able
15 to examine any document, any new evidence and prepare a response.
16 And I'm talking here about the evidence that would be produced
17 during the hearing.

18 [13.53.04]

19 We may need to discuss, later on, about the list of new
20 documents, that OCP already wishes to file. That's a list that
21 we received three days ago. I said this morning -- it was
22 actually not three days ago, it was yesterday morning in its
23 French translation. So since yesterday morning we are aware of
24 the new documents, additional documents that OCP wants to file in
25 this case, and here the defence would like to make submissions,

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1 but since I do not have small a, small b, small c, small d, small
2 e on my agenda, I leave it to the Chamber to tell me when we
3 should speak on this topic, that is the additional documents that
4 have been announced by OCP. Thank you.

5 MR. PRESIDENT:

6 Please, Judge Jean-Marc, the response.

7 JUDGE LAVERGNE:

8 Little b is indication, guidance from the Chamber concerning
9 the evidence that the parties intend to have examined at the
10 hearing, but that is not new evidence, this is evidence in
11 general. And I'm not sure that there is an item actually linked
12 specifically to the new evidence. Small c is the following:
13 issues relating to additional witnesses who are not mentioned in
14 the case file, and are not included in the Closing Order. Small
15 d is the deadline for the submission of witness and exhibit lists
16 for "new civil parties". And small e is scheduling of the
17 hearing of selected civil parties.

18 MR. PRESIDENT:

19 Please, the lawyer.

20 MR. ROUX:

21 Thank you, Your Honour. So my question of order was fully
22 justified, and I respectfully ask the translation unit to give us
23 translations in that right order. In our French text, small a
24 and small b that you just read out are under 3, which small c,
25 small d and small e are under item number 2. That makes it a bit

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1 difficult for us to work. This is just a technicality.

2 [13.56.33]

3 JUDGE LAVERGNE:

4 I'm not sure that this is a translation issue. I think that
5 we all have the same agenda in the different languages. So in
6 this case there was no victimisation of the French speakers.

7 MR. ROUX:

8 This is not what I was implying.

9 MR. PRESIDENT:

10 Thank you, the lawyer. Do you have anything else to add
11 regarding the remark or the proceeding or the agenda or the 3(a)?
12 If we don't have anything further, then may I invite Mr. Lavergne
13 to present the further points of the items on the agenda?

14 JUDGE LAVERGNE:

15 Thank you, Your Honour. The next item is about guidance from
16 the Trial Chamber on notification of the evidence that the
17 parties intend to have examined during the hearing. Indeed, the
18 Co-Prosecutors have inquired whether and when they shall notify
19 the Chamber of evidence they believe should be examined during
20 the trial, and how you should proceed. The Trial Chamber notes
21 that under Rule 92, any party may make written submissions up
22 until the closing statements. Notification of evidence a party
23 considers should be examined is to be considered a written
24 submission in the sense of Rule 92.

25 Therefore, and although such notification is not required,

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1 the parties may file a notification of what evidence they wish to
2 have examined, and the Chamber notes that, for translation
3 purposes or for purposes of the conduct of the hearing, the
4 earlier such documents is received, the more useful it will be.
5 The Chamber would also like the parties to check in advance and
6 indicate in which working language those documents are available.

7 [13.59.10]

8 MR. PRESIDENT:

9 Thank you Mr. Lavergne for your response on item number 3.
10 Regarding the item in the agenda, any other concerned parties
11 have any questions or remarks to be made. First of all I would
12 like to give the floor to the lawyers for the civil parties.
13 Please, Ms. lawyer.

14 MS. STUDZINSKY:

15 Yes, thank you, Mr. President. We would like to know how the
16 Trial Chamber intends to deal with the following different
17 options. First option is new witnesses that are not part of the
18 case file, and of course not included in the Closing Order,
19 report and account on existing counts and existing facts. Second
20 option, new witnesses appear and account about existing counts
21 but new facts that are not part of the Closing Order. And third
22 option, witnesses who are mentioned in the case file but who will
23 not be interviewed but are mentioned -- for example, in a press
24 release or in another manner -- and those witnesses account new
25 facts that are not included in the Closing Order. And maybe the

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1 same question should be discussed on how to deal with related
2 documents, but first of all we would like to know how the Chamber
3 intends to deal with these options related to new witnesses, and
4 also to respond if this could be a case of Rule 93 or finally,
5 how to deal with this. Thank you.

6 MR. PRESIDENT:

7 Please, Jean-Marc to respond on what has been raised by the
8 lawyer. Thank you.

9 JUDGE LAVERGNE:

10 I figured this question would be covered under item c, which
11 concerns issues related to additional witnesses not mentioned in
12 the case file and are not included in the Closing Order. The
13 Chamber has looked into the possible response as follows. The
14 list of proposed witnesses as referred to in Rule 80 may include
15 all persons that the filing party intends to have summoned at
16 trial to give evidence in relation to facts contained in the
17 indictment, regardless of the legal characterisation of such
18 facts.

19 [14.03.40]

20 Amongst such proposed witnesses, some may already have been
21 heard during the investigation phase, and others may never have
22 been heard. On the other hand, it is immaterial whether their
23 names are mentioned in the indictment or not. What is important
24 here is the facts submitted to the Chamber, and these are the
25 facts that are listed and mentioned in the indictment or the

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1 Closing Order.

2 MR. PRESIDENT:

3 Mr. Jean-Marc responded to the question by the lawyer
4 regarding the remark by the lawyer. Next, may the lawyers for
5 the civil parties who might have any remarks and wants to express
6 those remarks regarding the current proceeding. If you don't
7 have any further questions, I would like to give the floor to the
8 Co-Prosecutors, if the Co-Prosecutors have any remarks to make or
9 questions to ask regarding the current proceeding, item 3 on the
10 agenda, 3(b). Please, Mr. Petit.

11 MR. PETIT:

12 Thank you, Chairman. I think the position of the Chamber is
13 to regulate the issue of witnesses. I think we still need to
14 discuss little d, which has to do with documents. However, in a
15 more generic way, I would like to ask the Chamber possibly to
16 consider that a party, after months if not years of involvement
17 with the file, may discover a piece of evidence that this party
18 finds to have such importance and relevance that it should be
19 produced in Court, and there should be some kind of way in which
20 the party can explain why this was not produced earlier, in order
21 to avoid any kind of disturbance to the proper conduct of the
22 procedure.

23 [14.06.34]

24 Of course we are all well aware of the difficulties and risks
25 in this procedure, but also the precedent that we inherit from

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1 other courts and trials, but I think this is on the whole my
2 response on this particular issue regarding the list of
3 witnesses. Thank you.

4 MR. PRESIDENT:

5 Thank you, Mr. Robert Petit. I would like now to give the
6 floor to the lawyer of the accused, whether you wish to add any
7 comments regarding the matter.

8 MR. ROUX:

9 Thank you, Mr. President. Thank you, Your Honour. I do
10 concur with what has just been voiced by my colleague from the
11 Co-Prosecutors' Office. And I would very much urge that he apply
12 this rule to himself. I was saying that the defence has a number
13 of comments to voice, as of today, on the point of new elements,
14 new pieces of evidence that the Co-Prosecutors' Office has
15 conveyed to us via the document received by us yesterday. I
16 would right now, as early as now, like to express very forcefully
17 my reservations, in particular regarding document number 8, which
18 we are informed about in paragraph 12, and document 29, as is
19 foreshadowed in paragraph 13. Document 8 appears to contain
20 confessions annotated by witness Mam Nai, document 29 reputedly
21 does not have an original version.

22 MR. PETIT

23 Apologies, I have to interrupt you, sir. I would just like
24 to recall the decision of this Court as regards the use of
25 pseudonyms in reference to witnesses.

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1 MR. ROUX:

2 Apologies. Document 29, the Prosecutor tells us that we have
3 no original for this, and there is only an English translation of
4 this. The defence has very clear reservations about this, after
5 a whole year of investigation, during which there Co-Prosecutors
6 have had very positive style of co-operation, what is the point
7 of the coming up with the filing, or the producing of new such
8 documents? I think this goes against the very principles that I
9 very much agree with and which my distinguished colleague has
10 just recalled for us.

11 [14.10.22]

12 Concerning witnesses, I would like to take this opportunity,
13 Judge Cartwright, to pick up the question that you raised this
14 morning. We have looked into this during the break, and it does
15 appear that the eleven witnesses plus two who are civil parties
16 have indeed had a confrontation with the accused as a charged
17 person during the investigation phase. And on the issue of
18 witnesses still, Judge Lavergne you were referring to people who
19 were witnesses of facts. The defence would like to say that as
20 far as we're concerned, the defence has asked that investigating
21 judges provide for the hearing of witnesses to personalities, and
22 in order not to delay the proceedings, it would, we were told, it
23 was during the trial that it would be up to us to request this.
24 So we concurred with this, we agreed with this, in the interest
25 of not delaying the proceedings.

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1 Consequently, in our list of witnesses, and our list includes
2 a maximum of more or less 15, I believe, amongst these we have a
3 few witnesses who are not witnesses of facts, they are witnesses
4 of character, and we have mentioned this to the Co-Prosecutors'
5 Office. We also have expert witnesses who are not witnesses or
6 facts, who are not witnesses of character, but they do have
7 something to say on a particular topic that is of direct
8 relevance to the situation of the accused, and this has to do
9 with the judgment, with the sentence. Those were the overall
10 explanations that we wished to provide. Thank you.

11 MR. PRESIDENT:

12 I would like to invite Judge Lavergne to continue.

13 JUDGE LAVERGNE:

14 These were comments rather than questions, I believe,
15 referring to the fact that witnesses would be witnesses of facts,
16 of character, or of providing expert opinions. This enables the
17 Court to start preparing a plan, schedule, a general scenario for
18 the hearings, which I think is also very useful. If there are no
19 further comments I would like to move on to sub item d, which has
20 to do with a deadline for the submission of witness lists and
21 exhibit lists for new civil parties.

22 [14.14.08]

23 From a strictly practical point of view, it would appear to
24 be possible to classify civil parties under two headings. One,
25 we would have the so-called existing civil parties, those civil

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1 parties that have already been recognised during the
2 investigation phase, and who've received notification of their
3 civil party applications and the confirmation from the
4 Co-Investigating Judges, and this is according to Rule 23(3).
5 And on the other hand, we have so-called new civil parties, those
6 who will have applied after conclusion of the investigation,
7 pursuant to Rule 23(4) and their applications have to be further
8 considered at the Initial Hearing pursuant to Rule 83(1).

9 Now, new civil parties whose applications are prima facie
10 admissible will be notified in writing of a status of interim
11 recognition. Such interim or provisional recognition will be
12 performed by the greffier of the Trial Chamber prior to the
13 Initial Hearing. This notification will also include the lists
14 filed by the Co-Prosecutors. Such civil parties with interim
15 recognition will file provisional lists of witnesses, or
16 exhibits, or of new documents, within 15 days of such
17 notification. On the same subject of new civil parties, those
18 who will not have received an interim recognition notification
19 and who are declared admissible only at the stage of the Initial
20 Hearing, such new civil parties will have 15 days from the
21 notification of their admissibility decision to file additional
22 lists. However, the Trial Chamber emphasises that such new civil
23 parties may explicitly waive their right to file such lists;
24 however, if lists are produced, other parties will receive
25 notification of these lists and will be given a limited

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1 opportunity to respond in writing.

2 These explanations, Your Honour, are perhaps a little bit
3 dry. I'm not sure they will be clearly and well received.

4 MR. PRESIDENT:

5 Thank you very much, Judge Jean-Marc, for your explanation to
6 the meeting regarding item 3(d). In relation to this agenda, I
7 would like to give the floor to all parties concerned to make
8 their comments or pose some questions should they wish. I would
9 like now to give the floor to the civil party lawyers first to
10 make such a comment concerning the subject as presented by Judge
11 Lavergne just now. Please, the floor is yours.

12 [14.18.19]

13 I have noticed that there is no comment from the civil
14 parties, so I would like to give the floor now to the
15 Co-Prosecutors, so would you wish to make any comments concerning
16 that explanation? Without any comments I would like to move the
17 floor to the defence counsel of the accused. So the floor is
18 yours.

19 MR. ROUX:

20 Thank you, Your Honour. The defence would like to ask the
21 lawyers of the civil parties present in this room whether they
22 already have any inkling, or any idea of the number of witnesses
23 they would like to produce? That's my first question. And
24 second question, do the lawyers of the civil parties consider the
25 possibility for their clients to speak, to produce testimony?

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1 JUDGE LAVERGNE:

2 Perhaps I can speak to that point. On the last part of the
3 question by Mr. Roux regarding the hearing of clients. This is a
4 question that we have on our agenda just after this one, so just
5 bear with us. We shall cover that point in a few moments.

6 Regarding the possible number of witnesses, I think we can
7 perhaps ask the civil parties lawyers to take that point now.

8 MR. PRESIDENT:

9 Thank you, Mr. Jean-Marc. I would like to give the floor to
10 the civil party to address this matter.

11 MS. JACQUIN:

12 From our side, we would like to produce a limited number of
13 witnesses. Something like two to four witnesses in our present
14 scenario. We would like to reserve the right to produce further
15 witnesses on further cases. But once again, a very limited
16 number of witnesses. And likewise a very limited participation
17 of our civil parties, no more than two or three civil parties.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you very much for your clarification. Is there any
21 other participant who would wish to add further comment regarding
22 the point raised by Judge Jean-Marc? I think it is now time for
23 another break. I would like participants of the meeting to break
24 for 15 minutes, and we will resume at 2.40 pm. Thank you very
25 much.

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1 (Court adjourns from 1422H to 1446H)

2 MR. PRESIDENT:

3 Now let me continue our proceeding of the meeting, according
4 to the agenda that we have planned. Before I give the floor to
5 Judge Jean-Marc to continue his presentation on the agenda, I
6 would like to make some remarks that the presentation by Mr.
7 Jean-Marc on point e regarding the questions that the lawyer of
8 the civil parties have asked, and his response to the questions
9 based on the (14.47.10) of the 3(e) for his presentation, his
10 response. But there was no time for other parties to provide
11 their remarks on that item, the 3(e).

12 So I would like to go back a bit to the point, and I would
13 like him to make a further presentation on the item on the
14 agenda, and then we will proceed further to the last item, 3(e),
15 and then I would provide the floor to the parties and other
16 concerned units to present their remarks or questions or other
17 comments regarding our agenda. Please, Mr. Jean-Marc, the floor
18 is yours.

19 [14.48.02]

20 JUDGE LAVERGNE:

21 Thank you, Your Honour. The agenda item 3(e) is about the
22 scheduling of the hearing of selected civil parties. On this
23 item, the Chamber would like to clarify that according to the
24 reading of Rule 91, the Chamber has the power to hear at trial
25 any civil parties as well as witnesses and experts in the order

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1 and at the time which it considers useful for the proper conduct
2 of the proceedings. And in this regard, at this stage the
3 Chamber indicates that it will carefully assess whether and when
4 to schedule the hearing of a certain number of civil parties. In
5 so doing, the Chamber will take into consideration various
6 factors, such as the relevance to the facts of the case of a
7 particular civil party, and then the nature of the civil party
8 action, as well as the need to schedule and manage properly the
9 trial proceedings in the limited time available.

10 In order to facilitate the scheduling of the trial, the
11 Chamber would appreciate receiving submissions as soon as
12 possible, concerning when civil parties seek to be heard,
13 together with suggested dates during the trial at which the civil
14 parties would like to be heard.

15 MR. PRESIDENT:

16 For the parties, I would like to clarify that my remark is
17 that the 3(d) point has not yet been presented clearly by Mr.
18 Jean-Marc, because his presentation is in response to the
19 question raised by the lawyer of the accused. I would like to
20 make further comment on 3(d) before we proceed further and open
21 the floor to the parties for their remarks. Because point 3(d)
22 is important, and we actually skipped the remarks for the parties
23 regarding the agenda of the item 3(d). May Mr. Jean-Marc please
24 make presentation on item 3(d).

25 JUDGE LAVERGNE:

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1 Would you like me to give the explanation again? I gave an
2 explanation concerning two categories for very practical purpose.
3 There would be existing civil parties and there would be new
4 civil parties. The existing civil parties are those which joined
5 during the instruction, and new civil parties are those which
6 came after the closing of the investigation in application of
7 Rule 23(4). So civil parties will have to be examined during the
8 Initial Hearing as that is foreseen at Rule 83(1). So the new
9 civil parties who prima facie will be admissible will be notified
10 in writing, provisional recognition of their quality of civil
11 party. And that notification, which is provisional, will be done
12 by the greffier of the Trial Chamber before the Initial Hearing.

13 [14.52.12]

14 This notification will also include the notification of lists
15 filed by the Co-Prosecutors and the civil parties thus notified
16 will have to submit their own lists of witnesses and evidence as
17 well as additional documents in a deadline of two weeks, which
18 means that the deadline for the filing of additional lists will
19 be the notification of the lists filed by the Co-Prosecutors.
20 That's the time when the deadline starts for the civil parties.

21 However, for the new civil parties who did not receive this
22 provisional interim recognition and who are declared admissible
23 during the Initial Hearing, they will have, as the other parties,
24 they will have 15 days from notification of the admissibility
25 decision to file their own additional lists. And the Chamber

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1 indicated that these civil parties may also waive their right to
2 file such lists, but this waiver must be done in writing, and if
3 lists are filed they will also be notified to the other parties,
4 that is to OCP and to defence, which will then be given a limited
5 opportunity to respond in writing. I have to remind you here
6 that at the Initial Hearing the Chamber is supposed to decide on
7 the lists of witnesses, and thus we need to have all the
8 submissions by the parties, all the lists filed by the parties,
9 and all the comments by the parties, for us to make a decision.
10 So I hope I have been exhaustive in my reply to your query.

11 MR. PRESIDENT:

12 I think there is a confusion on the point 3(d) -- actually,
13 it's 3(c), it's not 3(d). I think there is confusion. Mr.
14 Jean-Marc responded to the question regarding the lawyer, the
15 civil parties, where the question was on 3(b) but the response
16 was on 3(c), so there was no opportunity for the concerned
17 parties to express their remarks concerning agenda 3(c). I would
18 like to take this opportunity to invite Mr. Jean-Marc to make an
19 additional presentation on item 3(c), not 3(d) -- issues relating
20 to additional witnesses not mentioned in the case file, because
21 the purpose of this point is for all the concerned parties in the
22 hearing today to make their observations or remarks regarding
23 these proceedings because they did not have the opportunity to
24 express their remarks on the item 3(c).

25 [14.55.48]

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1 JUDGE LAVERGNE:

2 I think that comments have been made after a question that
3 was raised by one lawyer for a civil party, but I can wrap up so
4 that would be clear for everyone. So 3(c) is about the issues
5 relating to additional witnesses who are not included in the case
6 file, or not included in the Closing Order. And what the Chamber
7 suggests is the following: that the list of proposed witnesses
8 referred to in Rule 80 may include all persons who the filing
9 party intends to have summoned at trial to give evidence in
10 relation to the facts contained in the indictment, and that
11 regardless of the legal characterisation of these facts. Such
12 proposed witnesses could be witnesses who have already been heard
13 during the investigation phase, as well as other persons who have
14 not so far been heard. It is also not important that the name of
15 the witnesses be mentioned or not in the Closing Order.

16 MR. PRESIDENT:

17 Thank you Judge Jean-Marc for the response regarding this
18 item on the agenda. Also it is now a presentation on point 3(c)
19 and also the opportunities for the concerned parties to express
20 their remarks or observations on this specific item in the
21 agenda, especially 3(c). And I would like also to say that this
22 is the opportunity for us to discuss and exchange opinions, and
23 also for the concerned units to facilitate and co-ordinate the
24 process of the proceedings so that it's fair and quick. So I
25 would like to give this opportunity, but before that I would like

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1 to explain to the concerned parties before they make their
2 remarks on the specific item in the agenda, the last two items
3 that have been raised. Thank you. And first I would like to
4 invite the lawyers for the civil parties to express their remarks
5 if they have any concerns regarding the two specific items, or
6 whether there are any other items on the agenda, this is the
7 opportunity for the lawyers. Please rise.

8 [14.59.01]

9 MR. KIM MENGKHY:

10 Thank you, the President. I have some questions regarding
11 the selection of the working language in the notification, which
12 is the Khmer and the French, and I opt to choose the Khmer and
13 the French languages for the notification. So I would like to
14 ask the time limit, the deadline for any language that needs to
15 be used. For example, the language that I choose, which are the
16 Khmer and the French languages. I mean to ask that what is the
17 setting for the deadline after the notification -- from the
18 notification of the French or the Khmer language? Thank you.

19 MR. PRESIDENT:

20 Thank you the lawyer. I would like to give Mr. Jean-Marc to
21 respond to the question.

22 JUDGE LAVERGNE:

23 I think that in the Practice Direction on the filing of
24 documents it is specified that parties may choose in which
25 language they want to be notified documents, so it is clear for

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1 me that as long as the translations in the requested languages
2 are not available, notification cannot be done. This is why it's
3 sometimes difficult for us to be as efficient as we would wish
4 because it's difficult to translate everything in due course.

5 However, I would like to emphasise one thing here: the more
6 the parties can anticipate on the translation request, the easier
7 the work of the Court and of the translation unit will be easier.
8 So if you have documents that you want to produce, please send
9 them as early as possible to the translation services.

10 MR. PRESIDENT:

11 Thank you, Mr. Jean-Marc, for the response to the question.
12 May the Co-Prosecutors express any opinions or remarks on the
13 relevant items on the agenda, if you have any?

14 [15.01.40]

15 MS. CHEA LEANG:

16 I do not have any question, but I am not clear on the
17 schedule of the agenda, because it's jumping up and down so I'm a
18 bit confused. First we talk about the new witnesses not
19 mentioned in the case file or not mentioned in the Closing Order,
20 but later we talk about the new evidence, so there is a jumping
21 backwards and forwards, and I'm a bit confused. So I am not sure
22 whether the schedule that I have is the proper current agenda, so
23 it's a bit difficult for me to follow. On my remarks that for
24 the presentation by the Judge I do not have any concern, and I
25 think it's appropriate and it has been mentioned in the

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1 regulations.

2 MR. PRESIDENT:

3 Thank you, Co-Prosecutor. I would like to remark that there
4 are technical issues, not only for you but also for me. The
5 setting of the additional agenda is within a short period of time
6 for this meeting. We really had a very short period of time, but
7 for additional items to be included in the agenda proposed by the
8 Co-Prosecutors, and for the lawyers for the civil parties. So
9 due to the limited time period we had discussion during the last
10 few days, and only yesterday afternoon at 4.30 or 5 when we
11 finished the meeting and we continued to work on this in the last
12 minute. That's why there might be some confusion on the
13 additional items in the agenda. And I also acknowledge the fact
14 that I was concerned the lack of the presentation on the point
15 3(b), and then the lawyer of the civil parties ask questions
16 regarding 3(c), and then Mr. Jean-Marc responded to the question
17 on 3(c), it means then he continued on from 3(c), and there
18 wasn't an opportunity for the concerned parties to express their
19 idea on the 3(d).

20 So first we have been continuing on many points, and the
21 response to answer to the additional agenda, but I don't think
22 the issue is as serious as what we thought, in order to find a
23 solution. So this is the practical issue due to the timely meet
24 and the additional items for the agenda. In order to complete
25 the agenda, and in order to respond to the request for additional

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1 items to be included by concerned parties.

2 [15.05.06]

3 Finally, I would like to invite the lawyers of the accused,
4 if they have any question or remarks to be made on the last item
5 of the agenda.

6 MR. ROUX:

7 Your Honour, thank you. On the very last point, that's to
8 say the hearing for selected civil parties, we have no comment.
9 However, since we have re-opened the debate on previous points,
10 perhaps I could also supplement the information that I was
11 mentioning earlier regarding the witnesses that the defence would
12 like to have heard. We would also like to obtain the projection
13 of a video film which will be transcription of a hearing held at
14 the international tribunal for ex-Yugoslavia. It will be a short
15 film, an extract, but this could be treated as either a document
16 or a witness, it could have witness status. It would be useful
17 to have the projection of this small video from the ex-Yugoslavia
18 tribunal. Thank you, Chairman.

19 MR. PRESIDENT:

20 Thank you, the lawyer of the accused, for his remark. Now
21 any other individual or participant has any concerns or remarks
22 or questions?

23 MR. KONG PISEY:

24 Regarding the witnesses the defence counsel requested to be
25 filmed and projected at the hearing, I think it is really

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1 important but how can actually this witness be cross-examined in
2 the hearing, because we can only see the video footage of the
3 witness with his testimony, so he cannot be cross-examined or
4 questions cannot be raised to such a witness, so I think this is
5 just my comment.

6 MR. PRESIDENT:

7 Thank you very much for your comment. Mr. Francois Roux.

8 [15.08.05]

9 MR. ROUX:

10 Thank you, Your Honour. As a document we wish to submit the
11 judgment in the Obrenovic case. Rather than actually filing the
12 judgment, or the sentence, we would prefer the projection of part
13 of the hearing. It's exactly the same thing except it's more
14 alive than just a document. Of course if we show this video of
15 course you will not be able to contradictorily investigate,
16 examine either the judge or the witness, but you will be getting
17 both the sentence and the part of the hearing, and your
18 information -- you will benefit from completeness of information.
19 Thank you.

20 MR. PRESIDENT:

21 Mr. Jean-Marc.

22 JUDGE LAVERGNE:

23 I would like to revisit the question posed this morning by
24 the civil parties regarding a civil party who passed away after
25 recognition of its quality as civil party. Mr. President, this

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1 morning you said that we would take note of this situation,
2 however I think it's important that we ask the lawyer concerned
3 to perhaps submit a request for clarification in writing, and to
4 provide any additional clarification that might be useful. I
5 think at this point in time we are not in a position to make a
6 useful decision, but we could collect everything we need towards
7 making a useful decision. Thank you, Chairman.

8 MR. PRESIDENT:

9 Thank you, Mr. Jean-Marc. I think if there is no further
10 comments, I think we have already covered the items of the
11 agenda, and now we have already discussed the matter in a quicker
12 manner than expected, and I would like to also ask the CMS
13 section, the people who are from the CMS, and as you know that
14 your presentation would be scheduled tomorrow, and since we have
15 covered significant items of agenda already the Trial Chamber
16 reserves its right to modify the agenda. So we believe that the
17 rest of the items of agenda will be inclusively covered just for
18 the whole morning tomorrow, and I think that we believe that they
19 will be well covered.

20 So people who are scheduled to give such presentation should
21 be prepared and then do so in the morning session. So I can see
22 that once again that we have covered the main items of the agenda
23 and I can say that we can really break now and the meeting is
24 adjourned and it resumes tomorrow at 9 am, and we deserve to
25 break earlier since we have covered significant points already.

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1 So please be ready to be here again in our meeting tomorrow at 9
2 am as I have already informed, and I would like to announce that
3 the meeting is adjourned.

4 And security official please take the accused to the
5 detention facility and then bring him back tomorrow before 9 am,
6 and if he wishes to come back to the meeting then he could do so.
7 If he doesn't want then he can stay in his detention facility.
8 Thank you very much.

9 (Court adjourns at 1513H)

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