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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 TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

CONFIDENTIAL

Case File N° 001/18-07-2007-ECCC/TC

11 June 2009, 0921H

Trial Day 27

TRIAL MANAGEMENT MEETING

CLOSED SESSION

Before the Judges:

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

Lawyers for the Civil Parties:

HONG Kimsuon
MOCH Sovannary
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Elizabeth RABESANDRATANA
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Alain WERNER

Trial Chamber Greffiers/Legal Officers:

DUCH Phary
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Alina BRIOT

For the Office of Administration:

Mr. Tony KRANH
Mr. Knut ROSANDHAUG
Mr. Tarik ABDULHAK
Ms. Michelle KEATING

For the Office of the Co-Prosecutors:

William SMITH
SENG Bunkheang
PICH Sambath
Stuart FORD

For Defence Support Services

Mr. Richard ROGERS

For Court Management Section:

The Accused:

KAING Guek Eav

UCH Arun

Lawyers for the Accused:

KAR Savuth
François ROUX
Heleyn UÑAC

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. HONG KIMSUON	Khmer
MR. KAR SAVUTH	Khmer
MR. KONG PISEY	Khmer
MR. TONY KRANH	Khmer
JUDGE LAVERGNE	French
MS. RABESANDRATANA	French
MR. ROGERS	English
MR. ROUX	French
MR. SENG BUNKHEANG	Khmer
MR. SMITH	English
MS. STUDZINSKY	English
MS. TY SRINNA	Khmer
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	French

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

2 [09.21.12]

3 MR. PRESIDENT:

4 Next, my greetings to all the participants in this Trial
5 Management Meeting.

6 Pursuant to 79(7) of the Internal Rules, which states that in
7 order to facilitate the functioning and the fair proceedings
8 expeditiously, the Trial Chamber can discuss with the concerned
9 parties by having a Trial Management Meeting, and the meeting is
10 in camera.

11 Through our management and experience and leading in the trial
12 proceedings since the opening of Case 001, starting from the 31st
13 of March 2009 until the 10th of June 2009, the Trial Chamber has
14 observed that there have been many instances that the Chamber
15 needs to discuss and consult with the concerned parties and with
16 the relevant units, especially the Office of the Administration,
17 which involves directly with the administration who need to lend
18 support to the Chamber. Those issues might obstruct or delay the
19 proceedings.

20 Therefore, the Trial Chamber wishes to take this opportunity to
21 hold a Trial Management Meeting, and on behalf of the Trial
22 Chamber I would like to welcome the participation of the Director
23 and Deputy Director of the Administration Office and all the
24 relevant parties from the Office of the Co-Prosecutors, the
25 lawyers for the civil parties and the defence counsel.

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1 This meeting is also an opportunity for us to discuss and
2 exchange opinions between the concerned parties and the relevant
3 units to facilitate and resolve the following matters.
4 One is the estimations on the duration of the trial and,
5 secondly, the availability of the lawyers in the trial and the
6 support from the staff of the administration; the number of days
7 and the times of the sitting hours; the recesses due to the
8 national and international public holidays; and on the days the
9 Pre-Trial Chamber holds their hearings in this Chamber or when
10 there is a plenary session by the ECCC; the instruction on the
11 implementation of Rule 87, especially 87(3) and 87(6), which the
12 Trial Chamber has proposed for an amendment in a plenary session
13 which will be held in early September 2009; and the allocation of
14 times for the civil parties to make their presentations before
15 the Chamber as requested by the lawyers for the civil parties; as
16 well as other matters which the administration or any party or
17 the Chamber or any Judge of the Chamber deems necessary for the
18 fair and expeditious proceeding.

19 [09.25.35]

20 The Trial Chamber strongly hopes and relies on you that your
21 participation would assist the Trial Chamber to proceed smoothly
22 and resolve those matters jointly as mentioned in the agenda.

23 I would like now to declare this Trial Management Meeting open.

24 As I have just said regarding the agenda as proposed for this
25 meeting, the first item on the agenda is the estimation of time

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1 for the duration of the trial from now until December 2009
2 because through our experience in the time management, the
3 Chamber has discussed and we propose a joint plan for the
4 scheduling of the time. Initially, we thought it would finish by
5 November for this 001 case, however, through our observations,
6 there have been numerous matters which delayed the proceedings.
7 First is the objections raised during the proceedings, especially
8 the listening to the testimony of the expert, Dr. Craig Etcheson,
9 at which time there had been strong objections regarding the
10 procedure mentioned in Rule 87 on the examination of evidence,
11 including documents, either by reading or by making a brief
12 summary.

13 [09.28.16]

14 And then it also regards the times and the large volume of the
15 documents that we have, and we also have a lot of controversies
16 that the Chamber had to return for deliberation and discuss, and
17 also because of the objections to the proceedings that we have
18 had, and it is appropriate because it is stated so in the
19 Internal Rules as well as in the domestic law. So based on our
20 compromise, we could resolve those matters. Anyway, the schedule
21 has to be delayed.

22 And, secondly, during the confrontation or discussion, there had
23 been a delay in technical issues or due to repetitive
24 questioning, or long questioning which required a long answer, or
25 because when the question is asked the accused needs to take time

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1 in order to explain before he responds to the question. Because
2 of his nature as a mathematics teacher, his understanding -- this
3 is through my observation -- is rather different, so he uses his
4 strategy to explain by raising examples to reflect his idea in
5 order to show his response, so it takes a longer time. So we
6 need to discuss on these matters.

7 And, finally, because of the long discussion -- and yesterday
8 actually we planned to listen to the two testimonies regarding
9 the armed conflict but they have postponed to an undetermined
10 later date, so this is our practical issue.

11 And another issue is the strict adherence to the rules that the
12 Chamber has to adhere to. When the Chamber notices the
13 objection, it needs to be considered. It is the obligation for
14 the Chamber to find appropriate and legal solutions in order for
15 the proceedings to move on.

16 For that reason we have to withdraw ourselves to deliberate and,
17 due to the complexity of the case, sometimes it requires us more
18 than one hour, one-and-a-half hours. So this is also the
19 experience that the Chamber has observed.

20 So for all these reasons, the Chamber also has its own difficulty
21 in providing instructions or declarations, and they have to spend
22 time on the discussions in making decisions, as well as those
23 decisions need to be translated. That is the reason that I put
24 all these issues before the meeting for our joint discussion on
25 the duration of the time, and I would seek your opinions on this

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1 duration or time. So that is the first point of the agenda.

2 [09.31.57]

3 Also, for the information I received from His Excellency Kong
4 Srim, in conjunction with State Deputy Director of the
5 Administration, he provides his observation and suggestions to
6 the Trial Chamber to move the schedule of the hearing to make it
7 quicker for July and August. This would facilitate the
8 international staff -- I am not sure whether it is customary for
9 the international staff, but usually the international staff
10 would take a break in July and August, but the need is for the
11 Trial Chamber is to continue our trial hearing without taking any
12 recess because of the pressure that the Trial Chamber has
13 received regarding the delay, because the external pressure
14 regarding the delay, regarding just working to get the salary
15 which has been rumoured -- and it's been a headache for the Trial
16 Chamber.

17 In order to make it clearer, I will give the floor to the Judges
18 of the Bench if they would like to make any further comment on
19 what I have just said.

20 JUDGE CARTWRIGHT:

21 Thank you, Mr. President. I would greatly appreciate some
22 comments from the parties and from the administration on some of
23 these matters, and perhaps if I could summarize them.

24 First, the President has indicated that our current estimate for
25 the remaining testimony will take us through to December at the

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1 earliest to complete, so we need some information from the
2 parties.

3 First of all, by an indication the other day, a lawyer for one of
4 the civil party groups spoke of the difficulties over
5 availability of lawyers for a lengthy trial. So we would
6 appreciate knowing of any particular difficulties that counsel
7 have so that we can take that into account in our planning.

8 [09.34.58]

9 Secondly, we appreciate that the administration will have
10 concerns over issues such as staff leave and resources, and there
11 may be other matters, so we would appreciate any comments that
12 they have.

13 As the President has said, we have not scheduled any trial recess
14 for the July-August period because we need to keep moving with
15 the trial, but we appreciate that counsel -- this may be
16 difficult for some counsel and we would like to know about any
17 such difficulties.

18 I should add that if the trial does indeed go into December, it's
19 already been agreed, tentatively, that there will be a leave
20 period over the traditional Christmas break.

21 The President has also mentioned that we've been very concerned
22 about repetitive questions and questions on topics that are yet
23 to be covered. The Trial Chamber has agreed that we will not
24 permit these practices to continue. Having said that, the Trial
25 Chamber notes the efforts made yesterday to shorten the time for

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1 questions and thanks the lawyers for those efforts.

2 The Trial Chamber will ask the lawyer for each party to state the
3 length of time needed for questioning and will stop the
4 questioning when that time has been reached. I should also add
5 that the Trial Chamber would greatly appreciate it if the accused
6 would listen carefully to the question and answer it as briefly
7 as possible.

8 There is one other factor that the President has mentioned, and
9 that is the time that the Chamber itself needs for deliberation,
10 decision, writing of decisions and translation. The Trial
11 Chamber is under enormous pressure to do this around sitting
12 hours and it does tend to cause some delays in the start of
13 proceedings, for example.

14 So the Chamber is considering bringing into being a practice
15 which would have it sitting three days in each alternate week, so
16 that it has more time to complete the decisions on requests and
17 other matters that it must determine. We appreciate that this
18 adds to the length of the trial but this is all work that has to
19 be done nonetheless. I think it would be fair to say that the
20 Trial Chamber would probably be flexible in this approach and
21 would announce what it was planning to do for the next week or
22 two weeks.

23 [09.39.24]

24 So those are the matters that the President would like comments
25 on, and I don't know how you want to do this, Mr. President, but

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1 maybe we should hear from the administration first on any issues
2 that they have, and then from the parties after that.

3 Would that be acceptable to you, Mr. President?

4 MR. PRESIDENT:

5 You take the floor.

6 MR. KONG PISEY:

7 Could I make just a very brief comment, thank you, Mr. President.

8 I would like to also request that if the Administration Office
9 has the schedule for each public holiday -- for example, the
10 holiday falling for the national public holiday or the
11 international public holiday, so that the civil parties are
12 informed of when the international staff will have holidays and
13 the national staff have such holidays. It would be appreciated
14 if it can be shown.

15 MR. PRESIDENT:

16 We would like the Director -- Acting Director and Deputy Director
17 of the Office of Administration to respond to the request by the
18 civil parties concerning the public holidays of both national and
19 international staff because we have observed that, as
20 recommended, that international staff will have holidays in the
21 month of June or August, and also during Christmas holidays that
22 the international staff will leave the Court.

23 So if we know for sure when the international staff take leave
24 then we can adjust the schedule accordingly, and because we so
25 far observe that only the national lawyers have not been informed

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1 of such public holidays at the Court. That's why he raises this
2 issue, so that he is informed of when staff, both national and
3 international sides, have such holidays. I think the other
4 parties have been notified about the public holidays. I don't
5 know why the civil parties have not been circulated such public
6 holidays.

7 [09.43.38]

8 Also, when you calculate the public holiday, we should also
9 calculate the holiday that falls on the weekend which needs to be
10 substituted the next day accordingly. So it is stated in the law
11 here in Cambodia that whenever the public holiday falls on the
12 weekend then substituted days will be replaced, and then we
13 should also count them in.

14 MR. KRANH:

15 Thank you, Mr. President. Regarding the public holiday, I may
16 seek your leave to be brief.

17 I think the priority is to make sure that the Court proceedings
18 are expedited, and regarding the public holiday of our staff at
19 the ECCC, especially at the Office of Administration, we will do
20 our best to adjust ourselves accordingly to the smooth
21 proceedings of the ECCC. So they do not really lose their rights
22 to have public holidays, although we really prioritize the
23 expeditious proceedings of the ECCC as a whole.

24 MR. PRESIDENT:

25 I think in July or in August you may have not had any difficulty

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1 in adjusting the priorities, but what about the December public
2 holidays? Have you got any clear idea whether staff will take
3 leave on those days? Otherwise we will have problems calculating
4 our sitting days because the staff are to visit their families,
5 and I think in European countries Christmas is the biggest event
6 of the year. They have to go home and reunite with their
7 families.

8 [09.45.52]

9 MR. KRANH:

10 Thank you, Mr. President. I think I have observed that what I
11 have been discussing here is about the month of December. So
12 here the Cambodian side and the international side have agreed a
13 common principle that we can estimate that there will be public
14 holidays, of course, during the late month of the year. I mean
15 by the end of December. So staff are due to take leave during
16 such a period of time, and I think if you allow, I think my
17 colleague Mr. Knut Rosandhaug would be able to also give comment.

18 MR. PRESIDENT:

19 I think we are now discussing about the month of December in
20 which we want to sit on the first week or on the second week. So
21 if we want to sit both weeks on December, we are afraid that the
22 international staff would not be able to leave Cambodia for their
23 home town because the journey might last longer than expected,
24 and that's why we have to adjust it accordingly because last year
25 I observed that by the end of December there were less people at

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1 work, especially at the international side of the Court during
2 such Christmas holidays.

3 I think it is possible that we can only sit on the first week of
4 December and then leaving the rest of the weeks that we are not
5 sitting, for example, to leave way for the international staff to
6 be able to enjoy their Christmas holiday.

7 That's why we know that although it is criticized by the public
8 that we should not really take a lot of holidays, but we have
9 been doing our best to expedite the proceedings and according to
10 the magnitude -- of the complexity of the case file that delays
11 our proceedings. It's not because of the public holiday.

12 Judge Silvia Cartwright, you take the floor.

13 [09.48.29]

14 JUDGE CARTWRIGHT:

15 Thank you. Thank you, Mr. President.

16 I'm not sure that it came through clearly in the English
17 translation anyway that the Trial Chamber is going to honour all
18 of the public holidays that are currently scheduled for various
19 festivals and commemorations during this coming year, and also
20 that it will be sitting for two days only in the week in July
21 when the Pre-Trial Chamber needs to share the courtroom with us.
22 And, finally, that there is a plenary between the 7th and 11th of
23 September. So those are currently the dates that the Trial
24 Chamber will not be sitting for the rest of the year.

25 And with the President's permission, perhaps I should just

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1 emphasize that our estimate of time for the completion of the
2 testimony of December of this year relates only to the completion
3 of the testimony. We are not sure that there will be time in
4 December for closing submissions and certainly not for the
5 verdict. So that would be in the New Year. So that hopefully
6 will give you a better appreciation of the true length of the
7 trial. Thank you.

8 [09.50.26]

9 MR. PRESIDENT:

10 Mr. Alain Werner, you take the floor.

11 MR. WERNER (Speaking in English):

12 Would it be possible for Your Honour, Judge Cartwright, just to
13 again tell us exactly which days in July; that we can at least
14 take note of that. And you mentioned something else. If it can
15 be specified because it was -- we were not sure if it was the
16 whole week or not. If you know, if we could be told, we would be
17 grateful.

18 JUDGE CARTWRIGHT:

19 I'm just asking for those days. They were the Monday and Tuesday
20 of the week that is currently scheduled for the Pre-Trial
21 Chamber, that this Court will be sitting the Monday and Tuesday,
22 and the Greffier will give me the actual dates in a moment.
23 The plenary is the 7th to the 11th of September and all the other
24 dates for public holidays you have already -- thank you, Natacha
25 -- we will be sitting on the 27th and 28th of July. The

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1 remainder of that week the Pre-Trial Chamber has the courtroom
2 allocated for its purposes.

3 Is that now clear?

4 MR. WERNER(Speaking in English):

5 Very clear, thank you.

6 [09.52.00]

7 JUDGE CARTWRIGHT:

8 Thank you.

9 MR. PRESIDENT:

10 The Director of the Office of Administration, just now the civil
11 party lawyers would like to get a copy of the public holidays.

12 Do you think you can really circulate it to the civil parties? I
13 think the Chamber have already obtained the copies.

14 The civil party lawyers are also reminded to refer to the decree
15 concerning the public holidays, and you should also verify it
16 against the calendar to see when should be the substitute days
17 for such public holidays although, for example, if the holiday
18 falls on Sunday, it's obvious that Monday will be substituted
19 because Sunday is already a holiday. So then you also calculate
20 accordingly Monday is another day off, obviously.

21 The Co-Prosecutors, would you wish to make any observations
22 concerning the schedule of the hearings?

23 MR. SENG BUNKHEANG:

24 Thank you, Mr. President, for giving us the opportunity to share
25 our comments concerning the scheduling for the Trial Chamber.

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1 The prosecutors have noted the difficulties the Trial Chamber has
2 encountered, however, frankly, we see that it takes rather long
3 now to -- that we would like to suggest that this duration should
4 be cut short as much as possible if the Chamber can manage to do
5 so.

6 [09.54.30]

7 The Co-Prosecutors would suggest that the proceedings of the case
8 should not proceed October 2009 -- I mean, should not proceed
9 beyond that month because we have observed that the proceedings
10 for Case File 001 has been long already and it has affected the
11 feelings of the international community and the audience who
12 actually are observing the Court; that they wish that the
13 proceedings move more expeditiously and quickly so that the
14 offences -- also that the accused is convicted.

15 Having taken into account the hearings that started from the 31st
16 of March 2009 until now -- until the speculated date stated by
17 the Chamber, we noticed that it will be seven months to finish a
18 case and I think it is appropriate that the case is finished
19 within that timeframe. So the prosecutor would wish that it
20 would be best if the proceedings regarding Case File 001 finished
21 by the end of October 2009. By doing so, the Co-Prosecutors
22 believe that we gain the credibility and expeditiously move the
23 proceedings and also we are able to, in due course, tell the
24 Cambodian public about what has happened at S-21 in which the
25 accused was then the Chairman, and also in order to find justice

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1 and searching for the truth for the victims.

2 So the prosecutors think that -- we know that it is not very easy
3 taking into account the magnitude of the complexity of the case
4 file, however, we really believe that the Chamber may be able to
5 proceed more expeditiously and by that month. And my colleagues
6 would probably have some comments also to make.

7 MR. PRESIDENT:

8 The Co-Prosecutor, you can take the floor now.

9 [09.57.37]

10 MR. SMITH:

11 Thank you, Mr. President. Thank you, Your Honours. Good
12 morning, parties.

13 Your Honour, we do very much appreciate the opportunity that
14 you've given us today to think of perhaps some solutions which
15 need to be put in place in order for this trial to be completed
16 effectively and fairly in a reasonable period of time.

17 And I think, Your Honours, it's fair to say that everyone in this
18 courtroom understands the pressure of much of the public, much of
19 the international community, to have this trial completed in a
20 fair but expeditious manner. And in a lot of respects, no matter
21 how we rationalize why a trial will take X number of months of
22 years, we still at the end of the case are facing the public, the
23 international public and the national public, as to whether or
24 not the proceedings are achieving what they were set out to
25 achieve.

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1 [09.58.48]
2 And, obviously, the public will be looking -- and when I talk
3 about public I'm talking about the civil community, national,
4 international, the legal community and also the governments --
5 they will be looking at this Court's ability to be able to deal
6 with a second case, a second case which is a lot more
7 complicated, a lot larger, and I think we will be judged on our
8 ability to deal with this one swiftly and fairly, and on that we
9 will be judged as to whether or not perhaps we may be allowed to
10 continue on to Case File 2.
11 That, Your Honour, in my respect, is the reality that confronts
12 all of us at this Court. And I appreciate Your Honours noting
13 that the way that the trial has proceeded to date, if it
14 continues in this manner, we will not be finished by next year,
15 by after Christmas -- 2010, and even then we may be looking at
16 March or April 2010.
17 When this -- Your Honours, perhaps if I just might say in
18 response to the agenda today, it seems to me that the agenda
19 items all wrap up into one point and that point being when would
20 this trial realistically finish and how could it be done?
21 If I can just have 10 or 15 minutes to explain our position on
22 the points -- I won't go to them in any detail -- at least we'll
23 have on the table the position from the Prosecution Office and
24 then, if needs be, of course we could go in particular matters as
25 further in the agenda, but I'd like to get the prosecution

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1 position on the table.

2 When this tribunal first began, when this Court first began, all
3 members of the staff had a training session -- from Judges,
4 prosecutors, investigators -- and it was put forward by a
5 well-recognized civil law Judge in this Court that the
6 investigation phase should be 80 percent of the time in a civil
7 system and the trial phase should be 20 percent. It is looking
8 like the trial is going to be longer than the investigation,
9 which appears to be completely at odds with what the civil system
10 is meant to offer this Court and, in that sense, obviously we
11 encourage the proper use of the civil system be made.

12 [10.01.46]

13 Having said that, Your Honours, the prosecution are well aware of
14 the complications of setting up this Court and gaining consensus
15 and gaining practices in an incredibly new environment, different
16 capacities, different experiences, and in that light we
17 understand that what normally would be the time, perhaps extra
18 time needs to be added to it. But be that as it may, the trial
19 is looking like it's going to be longer than the investigation,
20 which really is not what is considered, I believe, by the system.
21 Having said that, I must say that it's all parties. We all
22 contribute to the length of the trial. We, perhaps, in many ways
23 can be put to blame for particular points; maybe objecting too
24 much, maybe not thinking of a better technique or a better line
25 of questioning. So in that sense, as I believe and I speak on

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1 behalf of the Co-Prosecutors Office, we all have a responsibility
2 to somehow contribute to an effective and quick finishing of this
3 case.

4 In light of that -- and, Your Honour, I do take your point that
5 today is very much a closed session where you've invited the
6 parties to be full and frank so that ideas can be put forward,
7 and certainly we are not saying that any ideas that are put
8 forward by the Co-Prosecutors should be instituted in full, but
9 they are ideas for consideration, perhaps for the Trial Chamber
10 and for the parties to consider as we go.

11 Before I briefly get into some methods in which I think we can
12 finish this trial by the 30th of October, as maybe unrealistic as
13 it sounds at the moment, I would just like to go back to a rule.
14 I know it's not a legal submission now, but I think the most
15 fundamental importance for this Court is to make sure that the
16 trial is fair and expeditious under Article 33 new of the
17 statute.

18 [10.04.27]

19 I think it's also important to understand that interpreting the
20 statute we must interpret the rules in a way that makes this
21 Court work, that makes it fair and makes it expeditious. And
22 however that interpretation be, it should bring us to that end.
23 So when we look at rules like -- and I won't go into too much
24 detail now -- but Rule 87 or any other rule, the only account
25 this Court will be held to, or the only judgement that will be

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1 looked at in relation to this Court is, "Was the trial fair and
2 was it expeditious?" Of course, it's in the civil system and
3 we're working within that context, but they will not look at this
4 trial and say, "They adopted a rule from a place in France or a
5 place in Australia or a place in Germany and it was important
6 that particular sub-rule was adopted". No-one will be
7 considering that; they'll be looking at whether the trial was
8 fair and expeditious.

9 And in that light, Your Honours, I would like to briefly quote
10 Article 33 new:

11 "If these existing procedures do not deal with a particular
12 matter or if there is uncertainty regarding their interpretation
13 or application or there is a question regarding their consistency
14 with international standards, guidance may be sought in
15 procedural rules at an international level."

16 So, Your Honours, my submission is in determining a method or a
17 way in which the procedure should carry on from now, in light of
18 the fact that it seems like no-one in this courtroom is happy
19 with the way that procedure has gone so far because of our
20 particular involvements -- and we've all got a hand in that --
21 then I ask that we go back to this and maybe look at what we can
22 do in order to make sure this trial is expeditious and fair.

23 I think the other matter to take into account is that other
24 international courts -- the Rwanda Court, the Yugoslavia Court,
25 the Sierra Leone Court -- they have had a lot of practice in

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1 these types of cases before. There's been a lot of trial and
2 error to get to where they've got today. And even having said
3 that, there are a number of practices in those courts that still
4 don't work so well. They're not perfect courts, but they have
5 dealt with matters or cases of this complexity, of this size, and
6 I think it's fair to say that when these courts started out, they
7 started out with a set of rules which became, over time, quite
8 clear they were not going to fully work.

9 [10.07.29]

10 And so if you look at the amendment history of any of these
11 courts, particularly the Yugoslavia Tribunal, you will see that
12 the Court had moved from this perhaps common law-style basis
13 towards a civil law approach of having documents accepted and
14 brought to the attention in a very swift manner and taken into
15 account.

16 But having said that, I think it's also fair to say that courts
17 in France, courts in Germany, in other civil systems, they do
18 deal with matters more swiftly in terms of the presentation or
19 the admission of documents than we have been doing here.

20 I think it's fair to say -- and we can provide Your Honour with a
21 brief of this -- the French cases, the German cases that show
22 that they do not read out every statement in court; they do not
23 summarize every statement in court. Any modern court does not do
24 that. It's a question of efficiency.

25 [10.08.31]

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1 Documents are brought to the defences, the civil parties, the
2 judge's attention, through lists that can be deemed to be read.
3 There are all sorts of mechanisms that are used in France, in
4 Germany, in the civil system, that doesn't require this reading
5 out of documents.

6 And one can only think about large fraud cases, computer crimes
7 cases, and all of these types of cases. It would be -- cases
8 would never end if the documentary records were read out in the
9 way.

10 So the international standard, both civil law and both
11 international law, which Your Honours are encouraged to look at
12 by the statute, deal with the methods in a different way.

13 And I would like to state that we are very much encouraged with
14 the rule -- the proposed rule of 87(3) because, Your Honours,
15 that appears to be in conformity with international standard as
16 to how to deal with documents.

17 The next point, briefly and importantly, and perhaps it's
18 reflected in that rule, is that these trials shall be public and
19 open. And so the prosecution understands quite clearly that it's
20 important that justice must be done and it must be done properly
21 for the accused, whatever the outcome, but it's also important
22 the public sees it.

23 [10.10.05]

24 And so we understand there needs to be some recognition of that
25 evidence somehow but not in a way, if I can put it frankly, that

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1 might bore them and tune them out after we read out document
2 after document after document. It will have the opposite effect
3 of, perhaps, what one aspect of that rule is, is to keep the
4 public informed. It will make them not want to stay informed
5 because it, quite frankly, would be viewed as boring, document by
6 document.

7 I'll move to a proposal of interpretation about how we can deal
8 with groups of documents and, in fact, it was mentioned by the
9 defence in relation to one certain group of documents, about how
10 we can interpret the rule now to allow us to deal with documents
11 swiftly whilst we're waiting for the amendment.

12 I think there's no point talking about -- and I'll get off the
13 law at the moment, Your Honour -- about Article 35 new, which
14 really is -- talks about, you know, the accused's right to be
15 tried without delay, and it talks about the accused's right to
16 know the evidence that you will be relying on in your judgment.

17 But the accused's right to know is quite different to reading out
18 a document verbatim or a summary verbatim, but I'll move to that
19 in a moment.

20 But in light of that, Your Honour, and the public -- the broader
21 public expectation about whether or not this Court will be seen
22 to be a success or not and whether or not we might effect the
23 future of this Court in the way that we deal with this trial, I
24 would like to -- as Your Honour has invited -- just put forward a
25 couple of methods or practices which Your Honours have all

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1 referred to and, in fact, they have been adopted by the other
2 international courts that have been dealing with the same problem
3 that Your Honours are dealing with now.

4 [10.12.11]

5 Firstly, my suggestion though -- the prosecution's suggestion is
6 that an end date is picked for this trial -- an end date. The
7 prosecution -- and I just concur with obviously my colleagues
8 remarks and these are the remarks from the Co-Prosecutors --
9 believes that the trial must finish by the 30th of October for
10 many reasons. Regardless of that, I think a date has to be
11 picked, and once the date is picked then I would ask that these
12 suggestions and solutions and practices which will be put forward
13 be put into place in a way that the parties think is fair, and if
14 the parties believe that the allocation of time is fair, then if
15 that is proposed to Your Honours then perhaps maybe a different
16 solution can be reached rather than one finishing in January or
17 2010.

18 And the first one, Your Honour, is interpretation of Rule 87(3).
19 I think that can be interpreted -- and I'm not saying creatively
20 but I think it can be interpreted in a way that it can work more
21 for this Court. It won't offend the rule until such time that
22 the rule is amended, but it certainly won't offend the main
23 obligation of this Court of being fair -- the trial being fair
24 and expeditious.

25 And basically, in short, the first interpretation, which Your

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1 Honours may not be with, but I should put it there, is that
2 certainly in the English literally it says the evidence can be
3 taken into account if the content has been summarized or, or read
4 out in court. And so on that interpretation alone, Your Honours,
5 it appears that the rule on a literal reading allows for the
6 information to be summarized and that summary not read out in
7 court.

8 [10.14.32]

9 The second way of interpreting the rule I've put forward, Your
10 Honours, is that -- and if documents need to be summarized, which
11 they do need to be under the rule, that documents be summarized
12 in a group. Say, for example, a proposal was put forward by the
13 defence that the international media articles -- perhaps they
14 could be summarized in a group, which is -- so one of those
15 booklets that Your Honours -- that were distributed. We could
16 summarize in one page what those documents purport to be, the
17 date of the first article reporting the armed conflict, the date
18 of the last article, the types of articles they are.

19 We could do a summary in a minute or two minutes, a summary that
20 the public will find interesting, to a point, and certainly
21 enough to afford or to comply with the rule saying that documents
22 must be summarized, and if they must be summarized in court, that
23 summary can be done within a group. Of course, a summary is a
24 relative term. We can have a summary that's as close as the full
25 document or we could have one very brief.

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1 That's one particular other proposal. Perhaps we can get back to
2 that later.

3 Your Honours, just briefly, the understanding -- and Your Honours
4 would know better, certainly better than me -- the purpose of
5 that rule amendment that documents be summarized or read out in
6 court. But when we first saw that rule amendment we were pleased
7 to see it, and the reason why we're pleased to see it -- not the
8 one that you're proposing now but just even this one -- where it
9 said that it should be summarized or read out in court. We were
10 pleased to see it because this case file is so big, it's so
11 large, and it operates as a filter so that the defence is aware
12 and the prosecution is aware what you are considering in the
13 case. So it identifies quite clearly the evidence that the
14 accused would be judged on.

15 And what has happened in the other international tribunals, over
16 time they have created these filters too in a very different way,
17 but filters. They said an exhibit list must be put to the Trial
18 Chamber before the case starts; a statement index must be put
19 before the case starts. So that from all of the masses of
20 evidence that could be called on, that are in the case file, it's
21 limited and identified so that we aren't here forever and a day,
22 and we -- the defendant absolutely knows what he is being judged
23 on. So I thought that rule was important because these cases are
24 so big.

25 The other -- I was told later that the other importance of the

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1 rule was the fact that it was important for the public to hear
2 because under the typical civil law maybe the public doesn't get
3 to hear it because they just have the dossier and not everything
4 is testified in an A to Z form. And so that was important too.
5 [10.17.43]
6 But it would defeat the purpose of the rule, I think, if it was
7 thought that the evidence, a certain amount of evidence whether
8 it be a group of documents, 100 or 200, to prove a particular
9 point. If it was thought it was important, then it wouldn't by
10 reading them out one-by-one, it wouldn't disengage the public
11 which is what, in fact, will happen. But by doing a very short
12 summary in groups would still satisfy the rule, we would submit,
13 and it would engage the public, which is the purpose or perhaps
14 one of the purposes of the rule.
15 Your Honours, if I move on to the next point. If that was done
16 -- if that was done in relation to witness statements as notified
17 and made perhaps in a summary format and we accept the defence's
18 position, the summary; for example, the prosecution witness
19 summaries, those summaries are not evidence and the prosecutors
20 never purported that the witness summaries that were tendered to
21 the Court was evidence. It's a vehicle in which the prosecution
22 has tried to identify to the Chamber the particular parts of the
23 witnesses evidence that supports the closing order -- it supports
24 the indictment. So the summaries are just a vehicle to do that.
25 So, therefore, if the parties have been able to recognize to you

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1 that the documents that they would like take into account or the
2 parts of, through this format, then the testimony can be a lot
3 shorter because if we cannot do that or if those statements
4 cannot be taken into account, then we're left with the situation
5 where the prosecution, who has a duty to prove its case beyond
6 reasonable doubt, we're left with the situation that we must make
7 sure that all relevant pieces of evidence are brought to the
8 Chamber through the testimony, and that's the thing that makes
9 common law trials so much longer than civil law trials.

10 [10.19.59]

11 The irony has actually arisen where this trial, in a civil law
12 form, is taking longer than it would in the common law form. And
13 what I would ask is that we go back to the civil law principles
14 of using the dossier as identified -- the appropriate parts in
15 that dossier as identified and then so when we question the
16 witness we can say, "I would like to talk about this particular
17 area of dispute". And I think it's fair to say that the areas of
18 dispute in this case are very much the accused's level of
19 responsibility. How much did he do; how much did he do at S-21?
20 And so we can concentrate less on proof of the crimes in
21 accordance with the agreed facts. We can concentrate less on
22 that, still understanding the Court's obligation and duty to make
23 sure that these proceedings have a reconciliatory, a
24 truth-finding effect, so that Cambodia can move on.

25 Understanding we have to illustrate some of those aspects of the

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1 crimes for proof would be in the statements, but for the public
2 at the very least, and then we can concentrate -- concentrate on
3 those areas of importance to the case.
4 And then when you talk about how long the parties speak for, we
5 can refine ourselves to those key areas in addition to, perhaps,
6 those illustrations that would be required, but I assume that's
7 what Your Honours would be doing in the first place because
8 obviously you are the prime mover in terms of the testimony of
9 the witnesses. That would certainly cut our time down.
10 In relation to that, Your Honours, we would submit that each part
11 of the case now -- we looked at the witnesses last night.
12 There's 49 witnesses left and 29 of them relate to the main part
13 of the case, which is S-21 functioning and Choeung Ek, in
14 addition to the Prey Sar witnesses. We would ask that you
15 allocate specific times, say for example, the accused's testimony
16 on S-21 and Choeung Ek.
17 It's the prosecution's submission that this really is the central
18 material of the case. All those other matters had to occur in
19 order to put it in context, in order to prove jurisdictional
20 elements, but now we are at the central aspect of the case, how
21 S-21 functioned and Choeung Ek. And I would submit that maybe
22 the accused's testimony on that area and the questioning may, in
23 fact, take two-and-a-half weeks because it's the central area.
24 It's the only time the parties really have an opportunity to
25 question him on the central area of the case regardless of the

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1 time limit, which maybe could be discussed, we allocate a time
2 for that.

3 [10.23.13]

4 With the witnesses, with the S-21 witnesses and Prey Sar, on our
5 calculation there's 29 witnesses to be heard on those points.
6 Firstly, we would ask that Prey Sar and S-21 not be split. And
7 the reason why we say perhaps it should not be split is that many
8 of the witnesses that are coming in relation to S-21 and Choeung
9 Ek, many of them worked at Prey Sar as well. And also the reason
10 why we ask that it not be split is that it appears from the
11 testimony today, and I certainly don't want to prejudge the
12 defence's position, that the accused didn't attend Prey Sar on
13 numerous occasions. It appears to be the case. I'm not sure,
14 but we obviously will find out. And if that's the case, perhaps
15 he is not going to have a lot to say other than his knowledge
16 from S-21.

17 So in that way, when we question the accused -- when the accused
18 is questioned on Choeung Ek and Prey Sar, then we've dealt with
19 the accused's testimony on the rest of the case other than his
20 character and his psychological and sociological state, which is
21 very much familiar to, I think, most of us, that's something
22 that's dealt with moving towards the sentencing phase of the
23 case.

24 [10.24.39]

25 Then in relation to that, we would submit that we would have a

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1 rule, one day, one witness.
2 Now, if we look at how the Court has -- I'm saying the Court --
3 the parties, how we have proceeded to date, bearing in mind it's
4 the beginning and it's important that a lot of issues are aired,
5 we can't -- we couldn't do it in one day because it hasn't
6 transpired like that. But if we take into account that approach
7 to Rule 87(3) where the documents are in -- those identified
8 documents are in through the appropriate form of summary, then I
9 think we can do one day per witness. Maybe some witnesses are
10 more central and more important and that person would be two days
11 or two-and-a-half days, but then maybe someone else will be half
12 a day.
13 And, Your Honours, from the prosecution's bench, we can advise
14 Your Honours that if the questioning is done and the prosecutors
15 have listened to the Trial Chamber's questions and we feel that
16 there's nothing more to say, there is no other angle or approach
17 that we need to elaborate on, then we will be very brief. We
18 will be very brief, which is exactly what Your Honours have asked
19 us to do, to listen to what you're doing and what you're saying
20 and then if it's done, it's done. But if there is -- of course,
21 it's very hard to think of everything, and so we would likely
22 pick-up on some angles, but we will listen intently and tailor
23 our submissions. That would be a very different approach,
24 perhaps, to where -- to date.
25 So a day a witness, one witness takes two, one witness takes half

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1 a day, then we have 29 days. Your Honours -- and just to finish
2 on the point because it's a point I want to get across and then I
3 don't need to continue on too much with the other sections -- if
4 we had -- if the statement is on file -- if the witness statement
5 is on file and is taken into account and we're not doing ERN
6 number after ERN number after ERN number referring to a line in
7 the statement, if we can -- if the prosecution had 10 questions
8 to ask of a witness and you told us we only had 10 based on that
9 statement, those 10 could be very powerful questions knowing that
10 the evidence from the statement is in, subject to any particular
11 challenge of an aspect of that statement which, of course, the
12 accused or civil parties could ask -- could ask the witness.
13 If we knew it was in, we wouldn't have to worry about A to Z. We
14 wouldn't have to worry about the conditions. We wouldn't have to
15 worry about the population. We wouldn't have to worry about all
16 of these aspects.
17 Now, of course, one view is that it could be cured by the fact
18 that there are these agreed facts and in that sense, yes, that
19 does help us, but it doesn't help us in the sense that the case
20 must be proved beyond reasonable doubt, and the accused agreeing
21 to something that he didn't see or perhaps didn't see every day,
22 day in and day out -- you know, maybe he did.
23 That's a question of testimony, but it's -- you know, it's
24 unlikely from the case file so far that the accused was present
25 every day, seeing the conditions every day. And if that's not

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1 the case, it's very hard in terms of legal integrity for him to
2 say -- to give evidence of the prevalence of those conditions on
3 an on-going basis. He's making an assumption on the involvement
4 that he has seen, and a fair assumption at that.

5 [10.28.39]

6 So in terms of the proof and the integrity of the proceedings,
7 which will be the final judgement on this trial, I would ask that
8 if the statement is in then we can confine ourselves to a very
9 few questions concentrating on the liability, the responsibility,
10 the activity of the accused and, perhaps, to some illustration.
11 That's my point.

12 And then if we move to the civil parties, how long would they
13 get, the civil parties, to speak themselves? Maybe it's four or
14 five days. You know, they will say what the length of the time
15 is for victims or relatives to say how they felt. With
16 character, I would suggest that could be 13 witnesses, that could
17 be four days. With sentencing, that's four witnesses, I suggest
18 that could be four days if the documents are on file or taken
19 into account. And with the closing statements I would suggest
20 three days. If there are strict time limits, Your Honours, for
21 each part of the case and if the parties know they only have one
22 hour or half-an-hour to question a sentencing expert, then I can
23 almost guarantee to Your Honours the quality of the questions
24 will increase dramatically.

25 In relation to a particular witness, say if we say a day a

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1 witness, then how could you divide the day up? How could you
2 divide that time up? What would be fair? We looked at some
3 numbers last night and we thought maybe, of course, the Trial
4 Chamber's examination should be the longest because that's your
5 primary duty. Maybe that's two hours. Maybe the prosecution
6 gets allocated one hour, maximum. Maybe the civil parties,
7 maximum one hour. Maybe the defence, one-hour-and-a-half. I'm
8 putting those proportions out there to try and get some sort of
9 reasonable balance.

10 [10.30.49]

11 One other matter which -- and we certainly support the idea, Your
12 Honours, of time limits; time limits for questioning, time limits
13 for the different parts of the case.

14 One other suggestion we would put to Your Honours is the -- what
15 perhaps can become a little bit circular in relation to maybe the
16 public, how they may view it -- is the re-questioning of the
17 accused after the witness has testified. My submission is that
18 the Rules here, they allow for the accused to testify first, and
19 one would expect -- if Your Honours didn't break up the case like
20 you did -- that the accused would have testified completely at
21 the beginning and then the witnesses would have come. But we
22 thought it was quite a good and appropriate idea to break up the
23 case as you did because it allowed for focus on those particular
24 areas.

25 But now that we've moved to the central part of the case, other

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1 than the sentencing character/psychology part, I would ask -- a
2 suggestion could be that once the accused has testified on S-21
3 and Choeung Ek and Prey Sar -- we submit, together -- then
4 obviously he's questioned by the parties.
5 Then the witnesses come, and when they come they get questioned
6 by Your Honours and the parties follow the questioning and then
7 within the defence's questioning, that allocated time for them,
8 if they would like the accused to confront the witness, let him
9 confront the witness either through his counsel or directly, then
10 after that point not have that second round of questioning by the
11 parties of the accused, or the Chamber and the parties of the
12 accused, because it seems to me that we're having two rounds of
13 questioning on basically the same topic.
14 I think that second round of questioning of the accused after
15 that witness has testified, that adds a great deal in terms of
16 time in this case. That's a suggestion. I'm not sure whether
17 that second round of questioning of the accused is legislated
18 for, certainly in the Rules, so I think Your Honours have an
19 ability -- bearing in mind that you should be looking at if
20 there's international standards as to how we can expeditiously
21 finish this trial -- think about not having that second part of
22 questioning by the parties and the Chamber, but still affording
23 the accused the opportunity to directly confront the witness
24 within the time allocated to the defence, whatever that be.
25 [10.33.58]

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1 I'm finishing, you might be pleased to know. Some other methods
2 we would suggest would be, what is difficult for these witnesses
3 -- and sometimes I forget and we forget -- is that they're coming
4 here after 30 years to remember back, and I think the accused is
5 very unusual in that regard in that he does have a very good
6 memory, but for many of these witnesses and for many people to
7 remember back 30 years is actually a very difficult thing to do.
8 To come into the courtroom for the first time and be confronted
9 with a series of questions without having some refreshment of
10 taking the witness back to that time, it's actually very
11 difficult, and the problem is -- I think is that that first
12 half-an-hour or an hour is an awakening of those memories and
13 they will start to say the first things that they remember, but
14 then as the memory comes back, then they start -- it becomes more
15 accurate, it becomes refreshed. Photographs are produced,
16 documents are produced, and the memory becomes better.
17 So the difficulty is that first part of the testimony is not as
18 effective in terms of finding the truth as perhaps it could be.
19 One suggestion to make that the testimony, if it's cut down
20 shorter along the lines that we have put forward, is that perhaps
21 a legal officer from the Trial Chamber meet the witness maybe a
22 day before, produce the statements to the witness, allow the
23 witness to read those statements because they are statements made
24 by the witness, to refresh their memory. Not much discussion has
25 to be had. Advise the witness of the method of the Court and the

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1 way the Court progresses and how the parties operate, but allow
2 the witness to refresh themselves, not be told what to say as
3 some people could think that -- "Witness, come in and say this,
4 that and the other" -- not that, of course, but to just take
5 themselves back to when they were at S-21.
6 So that when they come to the Court they're refreshed and, to put
7 it practically, they're able to perform a lot better, which is
8 going to make the use of time and the ability to ascertain the
9 truth more effective. That is just a suggestion.
10 [10.36.55]
11 Another brief suggestion is that, regardless of the position Your
12 Honours take -- and we would like or we would hope, or we would
13 respectfully submit -- it will speed the trial up if the
14 documents of the witnesses can be accepted through --
15 identification through either a summary or a list by the parties.
16 The night before, say by 6 o'clock or 7 o'clock the night before,
17 if a party wants to use another document, say another photograph
18 or some other thing from the case file that is not centrally
19 their statements which perhaps are before the Chambers and can be
20 taken into account, that they send an email -- they send a group
21 email to all the parties to say, "Well, I'm going to use this
22 document, this document, this document, this document tomorrow"
23 just so that parties are not grappling for documents and looking
24 for ERN numbers, so we can be well prepared and the testimony
25 move more smoothly. Because as Your Honours have mentioned, a

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1 lot of time is wasted in terms of trying to -- people finding out
2 which document we're talking about, have we got a translation, et
3 cetera.

4 [10.38.18]

5 And moving to the end, we appreciate -- and if we're all against
6 -- quickly -- we still appreciate the idea of objections being
7 ruled on quickly. And a question of whether deliberation is
8 required or whether delegation on objections on particular days
9 for particular judges could be considered, the dealing with the
10 objections certainly does speed the process up.

11 Perhaps I'll finish on maybe my most unpopular remark this
12 morning, and that is in relation to holidays. Your Honours, the
13 prosecution's position is the holidays that are already provided
14 for -- that's Pchum Ben and national holidays, UN holidays, are
15 enough for us to be able to continue with and finish this trial
16 expeditiously.

17 As Your Honours do, we take on this responsibility of being
18 involved in this case very seriously and we understand what is
19 resting on the outcome of this case and how it will be viewed by
20 the public. And certainly in relation to holidays, from the
21 prosecution's viewpoint, we would not be requesting any holidays
22 other than those ones allocated already.

23 And also, certainly the whole issue of the Christmas holidays,
24 subject to Your Honours views of all the parties and the
25 suggestions, if we opted to try to finish by the end of October

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1 with this perhaps new mechanism, new technique or new approach,
2 then certainly Christmas holidays won't be a point of
3 consideration.

4 However, in terms of the writing of the judgment, I think all
5 parties understand after the final submissions have been made
6 that the judgment takes quite a while to come out, but in the
7 public's perception the case is over and the international
8 community's perception in terms of using the Court time well.

9 [10.40.48]

10 As far as final submissions from the parties, I am not sure, of
11 course, of other parties views, but certainly a closing address
12 from the prosecution, we would submit, it would be appropriate to
13 have three hours and no more than that. The opening was two
14 hours. We've heard all the evidence. We think three hours is
15 appropriate. If Your Honours came back and said, "You can't have
16 three hours, you have two hours" then we would also accept that.
17 What the prosecution is looking for, and from my experience at
18 other international tribunals, it seems to be that unless Your
19 Honours provide absolute strict time limits in terms of parts of
20 the case, in terms of time for witnesses and questioning time,
21 it's very, very difficult to control the end of the case. And
22 however those times impact on the prosecution in terms of what we
23 can say and what we can do in Court, we quite accept that because
24 we understand that you need to control these proceedings and make
25 sure that they finish in a short period of time. And I think --

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1 we think that it can be done by the 30th of October.
2 Again, Your Honours, if I could just go back, they are
3 suggestions. They are suggestions. And they are suggestions
4 based on your ideas, the defence's ideas, in part, and
5 international practice and practice before civil jurisdictions in
6 France, in Germany, in other places in cases of this size.

7 [10.42.34]

8 As far as any particular discussion about any legal issue or
9 problem with the Rule or something like that or how it could be
10 interpreted, obviously, we remain here to answer any questions on
11 that.

12 Thank you.

13 MR. PRESIDENT:

14 Thank you, the International Co-Prosecutor and National
15 Co-Prosecutor for raising good positive comments with the
16 intention of expediting the Trial proceeding.

17 This is also our attempt, and probably the plan that you have
18 raised is also the plans of the Chamber that we will determine to
19 see whether it can be done by the 31st of October.

20 The reason I raised the issue that it might move until December
21 because of the long delay that we have experienced so far; that
22 is two weeks delayed. So as you have seen in the schedule that
23 has been distributed earlier, the scheduling has been delayed and
24 we actually calculated strictly the scheduling and the timing of
25 each segment of the proceeding.

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1 And yes, we thank you very much, because we all are facing the
2 challenges, and especially the Chamber for the pressures and the
3 criticism from the national public, and because I have known to
4 -- by many people, including the Cambodian lawyers, and so in
5 comparison to the domestic practice, I have been criticized for
6 the delay. I have received phone calls every day, the criticisms
7 on the delay of the proceedings, but in practice it is apparent
8 we have tried very hard. We never give like five or 10 minutes
9 idle without doing anything.

10 But for other matters, I think with our spirit of responsibility
11 and the concepts proposed by the prosecution can be put into
12 implementation, and other parties should also understand the
13 intention of our approach.

14 And the Chamber also wishes to try to do as said by Judge
15 Cartwright. It is our time to propose amendments to Rule 87(3)
16 and a new Rule 87(6) with the intention to expedite the
17 discussion in the proceedings, including the examination of the
18 evidence and the agreement on the facts.

19 [10.45.57]

20 However, I would like to remind you that our view and
21 understanding, in general everybody tries to supersede one
22 another and tries to expedite the process. I recognize that.
23 And I think each party has tried their best to exercise their
24 rights and their responsibility. However, that might be in
25 contradiction to what we attempt to do and sometimes we try to

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1 interrupt, for example, the Co-Prosecutor's response and then we
2 receive by the objection from the Co-Prosecutor regarding the
3 presentation of evidence before the Chamber with that reasonable
4 doubt.

5 So sometimes we have a bipolar view on what we mean in order to
6 achieve our goal in the trial proceedings. So this is also
7 another issue, but today I am glad to receive such positive
8 comments and with our best effort, I hope other parties also have
9 a similar proposal or comments.

10 Judge Cartwright, do you have any comments or we shall take a
11 break now?

12 I think now we can have a break for 17 minutes and we will resume
13 at 11 a.m. to continue our meeting.

14 So our tentative plan is to finish it in one morning, however, so
15 far it's almost half a morning and it's only the Co-Prosecutor
16 spoke, and we still have other parties and a number of agendas to
17 be discussed.

18 Thank you, we can now have a break.

19 (Judges exit courtroom)

20 (Court recesses from 1047H to 1108H)

21 (Judges enter courtroom)

22 MR. PRESIDENT:

23 Please be seated. We now continue our discussion.

24 Before the break, the Co-Prosecutor just finished his comments
25 and suggestions, so I would like now to give the floor to the

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1 defence if you have any comments to make regarding what we have
2 discussed. I notice the observation of Alain Werner.

3 MR. ROUX:

4 Thank you, Mr. President, but just one question concerning the
5 organization here.

6 Could we invite to these proceedings the head of the defence
7 office? I think that the head of the defence office is concerned
8 by this discussion and, in particular, by budgetary issues. It
9 was never planned in the budget to have such a long trial. I
10 think, therefore, that it is important that Mr. Richard Rogers
11 come to this discussion and provide the Chamber with information
12 regarding this.

13 MR. WERNER:

14 Mr. President, because I do have a request that follows with
15 this, would it be possible to remind the two gentlemen from the
16 Administration -- because I believe that you've understood part
17 of our concerns that do indeed involve the budget, and we would
18 like the Chamber to question the two members of the
19 Administration, and I didn't understand that they were going to
20 leave after the break. So, therefore, we would appreciate it if
21 you could ask them to come back so that they can continue
22 following this discussion. Thank you.

23 MR. PRESIDENT:

24 The floor is yours, Judge Cartwright.

25 [11.10.46]

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1 JUDGE CARTWRIGHT:

2 Yes, thank you, President.

3 On that second point, I'm wondering if the two senior members of
4 the administration are in a position to provide any information
5 as needed or obtain it quickly, to save bringing the acting
6 director and the deputy director back?

7 MR. ABDULHAK:

8 Yes, Your Honour, we can do that.

9 MR. WERNER:

10 Okay, we agree with this.

11 MR. PRESIDENT:

12 Judge Lavergne, the floor is yours.

13 JUDGE LAVERGNE:

14 I, personally, am not at all opposed to this; quite on the
15 contrary. I believe that it is indeed a good idea to have the
16 head of the defence unit participate in these discussions.

17 (Deliberations between Judges)

18 MR. PRESIDENT:

19 The Chamber approves the request made by the defence for the
20 invitation of the heads of the defence unit to participate in
21 this discussion.

22 The Greffier, or Natacha, can you make an arrangement to invite
23 the head of the defence unit to participate?

24 I notice the presence of the lawyer for the civil parties. The
25 floor is yours.

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1 [11.12.58]

2 MR. KONG PISEY:

3 Thank you, Mr. President, Your Honours and participants of this
4 meeting.

5 I would like to provide some comments regarding the timing and
6 the scheduling of the Trial. In fact, I would want to propose
7 this before the break so we get consistent with what has been
8 proposed by the international Co-Prosecutor.

9 What has been raised by the international Co-Prosecutor is
10 appropriate and I would like to add two words for the
11 consideration of the entire Chamber. In the English language,
12 it's called "efficiency" and "effectiveness". So if we expedite
13 the trial proceeding, I agree, but it has -- these two words have
14 to run in parallel, have to be consistent.

15 Efficiency itself is that if we spend less time, less human
16 resources and less resources, the proceeding is effective. That
17 is, we use less time, less resources and less human resources.
18 Then the proceeding is going to be effective. But the question
19 is, if we try to shorten the time, whether it is efficient or
20 not, then how can we cope with these two words? And to put for
21 your consideration, I would like to raise some difficulties that
22 we have experienced so far.

23 First, regarding the interpretation. This morning, for example,
24 I think it is efficient because the interpreters did not object
25 to the fast pace of the presentation, but during the trial then

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1 the interpreters will sometimes request for -- request the
2 speaker to slow down a bit. This is going to effective, but that
3 is not efficient because it means we get the results but it's
4 going to take a longer time.

5 [11.15.26]

6 And the second issue that I would like to raise is that
7 previously our proceeding is a mixture of the common law system
8 and the civil law system. It means everybody can ask questions
9 and we have spent quite a lot of time, and then we do not know
10 the balance of each party's questioning. So sometimes we try to
11 -- I do not mean to offend the accused or the defence --
12 sometimes we try to ask short questions but then the answers are
13 long, so it's very hard for us to control the responses of the
14 accused. For example, my question is probably going to take like
15 half-an-hour or one hour, but if I do not take the consideration
16 of the responses of the accused then it's hard for me to
17 calculate the exact time required.

18 So this is the issue of the estimation of time. And another
19 example is that when I ask a question to a witness and the
20 witness is going to take one day to answer all the questions of
21 the parties, and if we think of the hours it means for one day's
22 sitting it is six-and-a-half hours. But then we do not deduct
23 the break times -- twice; one in the morning and one in the
24 afternoon, so it means 20 minutes each. Then we only have five
25 hours and 50 minutes of the proceeding and, in addition to that,

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1 some parties request the document or evidence to be shown on the
2 screen, and this is without taking into account the objections
3 raised by the defence or any other parties.
4 And sometimes then we had to take also into account the time
5 taken for the Chamber to withdraw and for the deliberation.
6 Another issue for example, today, the meeting is for Trial
7 Management, but everything this morning, actually we spent like
8 half-an-hour or so for the judicial officer and the investigator
9 to be sworn in. So this also has an impact on the overall time
10 management.
11 Also, in regards to the questioning -- or the examination or the
12 cross-examination of witnesses then, for example, in the English
13 term they use the word "cross-examination", and I don't think it
14 is -- it has been used appropriately. For example, someone wants
15 to ask a question, but in order to ask that question that person
16 would make a description of an event for five minutes, and then
17 ask the accused whether he agrees or not agrees to it. So this
18 method of questioning, it means the descriptive nature of the
19 question and in order to answer the question is problematic.
20 Another issue that I would like to raise is about the agreed
21 facts. So if the facts are agreed, shall we rest the issue of
22 those facts that we discuss again? Because if not, then any
23 party would like to submit evidence to support those agreed
24 facts.
25 [11.19.31]

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1 Also, the presentations on the screen. It is very hard to do any
2 cross-examination and, in fact, the presentation on the screen of
3 any evidence is probably in the form of impeachments for the
4 accused because it means the document exists and whether the
5 accused agrees to it or not. And I think this is time consuming
6 as well. And when we spend time on all these things, then the
7 Trial proceeding is not efficient, but if we don't do it, then we
8 lose its effectiveness, and this is the issue.

9 So how can we expedite the Trial proceeding? We have to take
10 into account all of these factors for our consideration.

11 Another example, for a witness to spend five-and-a-half hours to
12 be questioned on what facts; let's say on the implementation of
13 the CPK Policy at S-21. So after taking out the breaks - both in
14 the morning and afternoon - the total hearing tallies five hours
15 and 15 minutes.

16 So how the time can be allocated to each party? Sometimes two
17 Judges would ask the questions, sometimes two Co-Prosecutors, and
18 four lawyers for the Civil Parties, and then the defence. So if
19 each of us spends more than half-an-hour then it would exceed one
20 hour, and sometimes one person might spend one hour to question,
21 so this is not effective. Actually, we tried to expedite the
22 process but it is not as efficient as we thought.

23 [11.21.40]

24 Also, I believe that criticisms could not be avoided because
25 people view that our proceedings have been delayed, arguably.

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1 However, things -- we have the media, the reporters and then we
2 have mechanisms to publicize the information concerning the
3 proceedings, the public should have been informed. And I don't
4 know whether such mechanisms have been well put in place or that
5 it is well circulated to the public. And I think it is more
6 about effectiveness and efficiency.

7 That's all, thank you.

8 MR. PRESIDENT:

9 Thank you, Mr. Lawyer, for sharing your comments concerning the
10 matters at issue. I would like to invite the lawyer for another
11 civil party.

12 MS. RABESANDRATANA:

13 Mr. President, first of all concerning the duration that was
14 brought up, the expected duration until December and the
15 Co-Prosecutor's proposal to end in October, I would like to say
16 that we would not like to discuss this. We understand the
17 Chamber's necessities and the work that it's facing and,
18 therefore, I believe it's not up to us to start discussing how it
19 is better to proceed for you, but we understand perfectly well
20 the desire that this Trial be finished quickly and the
21 Co-Prosecutor's suggestion for the end of October, but what we
22 would like, however -- without voicing any opinion concerning
23 dates -- what we would like to indeed -- would be to establish a
24 deadline.

25 [11.24.1]

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1 Even if this deadline, of course, is not respected because things
2 are not set in stone, but at least if we had a date this would
3 allow us -- and allow us in our practice because we are
4 volunteers and, as you know, while we're here our practices must
5 continue, so this would allow us at least to have an idea of how
6 things will be organized.

7 And I also believe that in relation to the Trial itself, this
8 would allow the Trial to take on a certain energy. We know that
9 things are not set in stone and, of course, justice will be
10 rendered fairly with the necessary amount of time but we would
11 like to have at least an idea of where we are going. So this
12 proposal of having a deadline, I believe that it is indeed a good
13 initiative.

14 Concerning now the time limits for questioning, this would
15 require maybe more preparation ahead of time, but I would say
16 that this seems to me -- it seems to me indeed healthy to give
17 ahead of time a duration knowing that, of course, depending on
18 what happens here, this duration can only be something that is
19 somewhat of a guess, but we will do our best indeed to honour
20 this deadline. I believe that the Chamber has noted that we do
21 not -- we are not abusive with questioning and that, indeed, I do
22 not believe the fact of having shorter questions would make the
23 proceedings less energetic; on the contrary. So this is what I
24 have to say concerning the time limits for questions.

25 Now, concerning the fact of focussing on S-21, I believe that we

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1 agree because this is indeed the core of the Trial, and I believe
2 that we really have to -- that things have to be said and that we
3 go in-depth, of course while following rules.

4 And concerning the modification proposed for Rule 87 concerning
5 the production of evidence, we agree with this, obviously. This
6 indeed facilitates -- this indeed allows the Trial to move ahead.

7 [11.26.35]

8 The fact of summarizing documents ahead of time, well, we do not
9 see any problem with this. We don't have any specific opinion
10 about this but, however, concerning the general development of
11 the proceedings and I'm -- concerning this will of accelerating
12 it, we agree entirely with this and we would say we are aware of
13 this.

14 But however, however, it is out of the question that this be
15 detrimental to the civil parties, and concerning this I have two
16 observations to make.

17 We cannot shorten the -- and I believe we all believe this -- we
18 cannot shorten the victims' statements. First of all -- well,
19 there are two reasons behind this. The first reason is that you
20 have in each one of our groups we have survivors who are going to
21 come testify, and these are unique elements. These are -- this
22 is historical material which I would say is useful not only for
23 the Cambodian people but also for the entire world, and I believe
24 that the value of the testimony of a survivor cannot be
25 shortened. That is the first point I want to bring across. So

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1 we indeed have to dedicate the necessary time to absorb this.
2 And there is another category of victims, of course, are people
3 who are going to come from the Western world, who are going to
4 come from France, and these people have things to say. They have
5 very close relatives who suffered here and they can shed light in
6 relation to what happened -- in relation to all the efforts they
7 did over the past 30 years to find the truth. And there are
8 certain things that they can explain that might be able to shed
9 light here and that might be useful. So I believe that we have
10 to be concerned with not trying to shorten and trying to reduce
11 the power of the victims' words.

12 [11.28.56]

13 And the last point that I would suggest -- because as was
14 explained concerning the witnesses, and I'm thinking about
15 certain survivors here -- the fact of coming here to testify is
16 really something that is very traumatic. So justice should not
17 add to this.

18 So concerning then when the dates would have been set, I believe
19 that we cannot take the liberty of having them wait in the
20 hallway right next door and say, "Well, I'm sorry. You will come
21 another day" or whatever. For them this would be -- they already
22 have trouble understanding how justice works and this could be
23 very badly interpreted by them. They will feel that they are
24 kind of just -- that the Court doesn't even have the time to
25 listen to them. So I think we have to respect once the dates

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1 will be set, well, we should stick to these dates in order to
2 respect these victims.

3 And these are the few observations that I wanted to share with
4 the Chamber today. Thank you.

5 MR. PRESIDENT:

6 Thank you, Mrs. Lawyer, for your impressions.

7 I think there are two issues being discussed here. As raised by
8 the Co-Prosecutors, they would wish that the Trial Chamber
9 determine the ultimate date for the hearing which he proposed
10 would be end of October 2009. However, according to your
11 suggestions, it is not part of the proposed request by the
12 prosecutor because you would prefer that the survivors of the
13 Khmer Rouge regime are given the opportunities to express their
14 grievance inside the courtroom and to the outside world also.

15 [11.31.18]

16 And I really appreciate what you would propose, but it is not
17 really consistent, I'm afraid, to the comments made by the
18 Co-Prosecutors that we would like to have the proceedings ended
19 by the end of October 2009. By way of understanding your
20 comments, it is that you would wish that survivors can have an
21 opportunity to -- enough time to express their sufferings here in
22 the Court also.

23 And you mentioned about the civil parties -- the testimony of the
24 civil parties and the survivors of the Khmer Rouge regime and I
25 think these two groups of people also should be separate because

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1 I have been working for 16 years as the Chairman of the Courts
2 and I determined all the timelines for such proceedings. I think
3 Mr. Hong Kimsuon is quite familiar with my determination in
4 concerning the allocation of times. In my experience, I had very
5 minimal room for error in calculating such a timeline.
6 However, when we use these kinds of methods to calculate and to
7 apply at the Court here, it proves that it's difficult because we
8 already assessed how we could hear the testimonies of the
9 survivors of the regime, the civil parties and people who have
10 the rights to be heard and also because of the translation issue,
11 because of the cultural differences, because of other matters.
12 For example, even the speakers and the rates, like for five
13 minutes, and then only ask the question to the accused, for
14 example, to say yes or no. So I think it is really difficult to
15 calculate it.

16 [11.33.44]

17 However, I think so far as I know, we have done our best that we
18 would like to have the proceedings ended by October 2009 is not
19 the case because now, although we are now planning to reschedule
20 the proceedings to end by sometime later this year, and still we
21 practically can feel that if we have not followed what has been
22 suggested by the Co-Prosecutors, for example, to expeditiously
23 and efficiently proceed our proceedings then maybe the ultimate
24 scheduling of the proceedings to late December would not be met
25 after all.

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1 When we discussed about the agreed facts, you should be familiar
2 that this public is quite new to the Cambodian judges, however,
3 we are grateful for your comments, and also we appreciate the
4 comments that the proceedings should end sometime by the end of
5 October 2009. So we will do our best to make sure that the
6 proceedings end then, however, it is only part of the proceedings
7 that should also -- should be included by the end of October
8 2009.

9 But the other matters, including the preparation of the
10 judgement, will take further time. So the Trial Chamber is
11 working our best to actually find the best solution to proceed
12 more expeditiously and we always appreciate all kinds of comments
13 the parties to the proceedings would wish to share with us, so
14 that we can find justice and make sure that the Court can move in
15 a more fair manner.

16 Mr. Co-Prosecutor, you take the floor.

17 [11.36.16]

18 MR. SMITH:

19 Thank you, Mr. President. I'll be very brief.

20 In the calculations that we put forward earlier, we appreciated
21 the specific significance of the survivors that were at S-21 and
22 they should be given the same amount of time as one of the other
23 witnesses at the very least. So with that calculation -- I just
24 don't want it to be misunderstood. That was taken into account
25 in this sort of proposal of scheduling.

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1 But I suppose what we wanted to say was that there is a
2 difference between someone who survived at S-21 and has some
3 evidentiary information to give to the Court on the particular
4 issues and perhaps a relative. Both are extremely significant
5 for the process, but a relative perhaps could be briefer than one
6 of the survivors who was at S-21. And so that other group, the
7 relative group, I think they can make their statements in a
8 briefer format than the survivors, but definitely the survivors
9 need the time to explain.

10 MS. STUDZINSKY:

11 Mr. President, I would like to make a suggestion for the time
12 until lunch.

13 The head of the defence section arrived and of course other civil
14 party lawyers would like to take the opportunity to add
15 suggestions and so on. But now I think we would agree upon if
16 first the head of the defence section takes the floor and maybe
17 then this issue can be finished until lunch, and we would
18 continue after lunch then with our proposals and our comments.

19 Thank you.

20 MR. PRESIDENT:

21 You take the floor, Mr. Hong Kimsuon.

22 MR. HONG KIMSUON:

23 Thank you, Mr. President.

24 [11.38.36]

25 I would like to make a few comments to clarify the position.

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1 What we would wish to have today in such a meeting is to make
2 sure that we have the more expeditious proceedings and to find
3 justice in a fair manner to the victims of the regime.

4 My apologies, Mr. President; I think I will be brief because as
5 proposed by Ms. Studzinsky, that we should voice our concern
6 after lunch.

7 Since the beginning of the trial from the 31st of March we have
8 been discussing on quite a few topics, and the prosecutor already
9 mentioned that he would like the proceedings to move more
10 expeditiously, and it would envisage that the proceedings would
11 be better finished by end of October.

12 However, when it comes to the agreed facts we should also refer
13 to Rule 87(3) and to read the content of the rule whether what
14 would be the possible way to present our evidence. For example,
15 should we present the evidence and then only ask the accused to
16 briefly agree or disagree? However, I will raise this more after
17 lunch.

18 MR. PRESIDENT:

19 Regarding the proposed amendment in Rules 87(3) and 87(6) new,
20 proposed by the Trial Chamber to the Rule and Procedure
21 Committee, and also to be discussed in the plenary session in
22 September, the content of which has already been laid out, and
23 our judge of the Trial Chamber will discuss this matter further,
24 and this is only an attempt to amend these subparagraphs.

25 [11.41.26]

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1 And we also can challenge such a proposal because the
2 implementation of such an amended rule will be envisaged after
3 September 2009 because it's still being discussed. So only after
4 they have been adopted that we can really apply the rules.
5 However, you can share with us what caused the delays of the
6 proceedings and then we are now discussing to find ways to reduce
7 such interruptions or distractions, for example that can delay
8 the proceeding, and by way of finding the other alternate
9 solution to move forward more expeditiously.
10 The Trial Chamber also would like parties to support the
11 Co-Prosecutors comment when they wish to have the proceedings end
12 by the end of October 2009. But please tell us how could we
13 really end by that time, because we have calculated precisely but
14 after all we still fail to reach our milestone? And so that's
15 why we are meeting today, and we really welcome all comments to
16 make sure that we can really find the best common solution. And
17 of course the magnitude of the complexity of the case is
18 tremendous that calculation can fail at any time.
19 (Deliberation between judges)
20 MR. PRESIDENT:
21 Upon request by the defence counsel and lawyer Studzinsky
22 concerning the invitation of the head of the defence section,
23 defence support section, so we would like now to give the floor
24 to him to give his overview concerning the budget issues, because
25 budgeting issues can really affect the smooth operation of the

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1 Chamber.

2 [11.44.46]

3 So to be clear, I think we would like to give the floor to Judge
4 Silvia Cartwright to put some questions or to ask the defence
5 support section head for further clarification.

6 The floor is yours.

7 JUDGE CARTWRIGHT:

8 Thank you.

9 Thank you very much for coming to this Trial Management Meeting
10 at the Chamber's request.

11 The matter under discussion, as you have gathered, is the
12 duration of the trial. Currently the President has calculated
13 that at our present rate the testimony will continue until
14 December at the earliest. That means that it would not be until
15 2010 that closing addresses would be made, and of course the
16 verdict after that.

17 We've asked the various actors to discuss ways that we can
18 improve on this and a number of suggestions have been made, such
19 as putting a time limit on the trial and redesigning all of the
20 times so that it fits within that allocated period. The current
21 proposal is 30 October.

22 [11.46.20]

23 There is also a proposal, which we have yet to go into in any
24 detail, for a rule amendment on Rule 87, and the Trial Chamber
25 will be inviting the parties to accept guidelines based on that

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1 rule amendment because it can't come into force until after the
2 plenary in September.

3 So, in summary, that is what we are discussing. And the civil
4 parties suggested that you be invited, because you may have some
5 comments to make on budgeting or other issues affecting the
6 defence. But if you have any other questions please don't
7 hesitate to ask.

8 Thank you.

9 MR. ROGERS:

10 Thank you, Your Honour.

11 MR. PRESIDENT:

12 Mr. Francois Roux.

13 MR. ROUX:

14 A point of order, President; I would not want anyone to take it
15 for granted that we have agreed on the date of 30th October, as
16 suggested by the Co-Prosecutor. At any rate, not before the
17 defence has been asked for its proposal.

18 I can tell you straight away that the defence does not agree on
19 the date of 30th of October, which for us is too far away in
20 time. It is too late. Consequently, we don't want any
21 discussion on either 30th December or 30th of October prior to
22 the defence having voiced its own proposal. Both those dates
23 seem to us to be much too remote, much too far away in time, and
24 we shall explain why. Thank you.

25 [11.48.18]

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1 MR. WERNER:

2 Mr. President, just very briefly to tell you that my group of
3 civil parties representing 40 civil parties, we too have
4 something to say about the date. We too believe that that date
5 is too far away in time. Consequently, the date of end of
6 October, in our opinion, should not be the proposal under debate
7 or the proposal that is accepted by all because that is not so.
8 Consequently we associate ourselves with the defence. Thank you.

9 MS. STUDZINSKY:

10 And Mr. President, of course I normally didn't want to speak now
11 but, to make it clear, we also do not agree with this date, and I
12 would like to explain it later on, but only to make this clear
13 that it's not the case.

14 MR. SMITH:

15 And Mr. President, I'm not going to not agree with what I said
16 earlier, but that is the latest date that the prosecution put
17 forward that the trial should end. It can and we encourage it to
18 end at an earlier date, but 30th of October we would put forward
19 as the latest date.

20 MR. PRESIDENT:

21 Judge Cartwright, you take the floor.

22 [11.49.34]

23 JUDGE CARTWRIGHT:

24 Thank you, Mr. President.

25 Perhaps I was not clear enough. That is a proposal from the

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1 prosecutors. It is not a decision of the Chamber.

2 And at the rate we're going today, with everyone popping up when
3 they've not been invited to, we will not finish this Trial
4 Management Meeting today.

5 So perhaps we could ask the Defence Support Section if it has any
6 comments on budgetary matters before resuming the Trial
7 Management Meeting and inviting the parties to comment on the
8 proposals that have been made to date.

9 MR. ROGERS:

10 Thank you, Your Honour.

11 I had an opportunity to speak to the Chief of the Budget and
12 Finance and he gave me perhaps a long and painful version that
13 only UN budget people would understand, but I also have a short
14 easy version that's perhaps more suitable for this forum.

15 The lawyers have been contracted by the UN to represent the
16 accused until the end of the case, which includes the appeal. So
17 the UN has an obligation to pay the lawyers for the length of the
18 trial and also for any appeal.

19 [11.51.02]

20 So, in short, if the trial is longer than anticipated that
21 doesn't present a problem so long as there is money in the
22 general budget. The finance section will simply allocate more
23 funds to the legal aid scheme.

24 Of course, there are limits on the number of lawyers that we can
25 pay but that's a matter of discussion between the DSS and the

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1 defence team, and between the DSS and the Budget and Finance
2 Section. But so far as I understand, there will certainly be
3 funds to pay the core team, which is two co-lawyers, one legal
4 consultant and one case manager. Thank you.

5 [11.52.13]

6 JUDGE CARTWRIGHT:

7 I suppose the question is now whether the defence wishes to
8 comment at this point or whether the civil party lawyers should
9 comment first, as they have started to do.

10 Maître Roux, do you have any view on that? Do you want to speak
11 last after the civil parties?

12 MR. KAR SAVUTH:

13 Mr. President, for me, I believe that what has been raised by the
14 international Co-Prosecutor to expedite the proceedings and that
15 it should be envisaged that it should end, at the latest, the
16 31st of October 2009. However, if you look at the details of one
17 step to another in the proceedings it is so complicated. It
18 could not be faster. Therefore, I think nothing can be finished
19 before October 2009.

20 So I would like to appeal to the Chamber to set a date of
21 December 2009, the ultimate date to end the proceedings of this
22 case.

23 If you said 31st of October of 2009 and then the proceedings
24 cannot really be fulfilled or finished at that time, can the
25 Chamber or the President of the Trial Chamber be criticized or be

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1 able to be criticized by the public because you set the date and
2 then you -- we cannot really fulfil our promise? So if we set
3 the date to the end of December 2009 and then we can proceed more
4 expeditiously, and we could manage to end before the set date,
5 then it would be free from critics.

6 [11.54.35]

7 Number two, I think of course everyone is doing their best to
8 expedite the proceedings, but I think it is best to consider that
9 the expeditious manner had to be balanced with the search for
10 justice.

11 And I would like the Chamber to also take into account the health
12 of the accused, because at 11 p.m. -- or 11 a.m. every day that
13 the doctor would prescribe some medicine to him because he has
14 been bombarded by all kinds of questions from all parties to him
15 alone. So at any moment he would feel confused because of so
16 many questions being thrown toward him, and I'm afraid it also
17 can affect justice-seeking, and also violate the rights of the
18 accused himself.

19 And I think we should not restrict time limits for anyone to
20 speak or to take the floor, but we should restrict the questions,
21 especially repetitious questions. They should not be encouraged
22 to ask questions, although questions sometimes are long. But the
23 questions are significant to be asked, but if the questions are
24 useless I think it would be even worse if it is longer and
25 useless. So it should be avoided.

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1 So I think at the beginning of the meeting I really requested
2 that we should only sit three days in a week; first, to take into
3 consideration the health of the accused and to leave some (no
4 interpretation) but then the Chamber decides to sit for four days
5 a week, and if we had the alternate sitting days of three days
6 per week that would be great. Thank you.

7 [11.57.12]

8 JUDGE CARTWRIGHT:

9 Yes, I understand that Maître Roux has nothing to add, at least
10 at this point.

11 Mr. President, I think that indicates that he would be happy for
12 the civil parties to speak, though it's nearly lunch time.

13 MR. ROUX:

14 Yes, Your Honour, I shall speak after the civil parties. You
15 interpreted me correctly.

16 MR. PRESIDENT:

17 I think I'm rather confused to hear what Mr. Kar Savuth has
18 expressed earlier because the Chamber is trying to expedite the
19 proceedings, and in each month we would like to sit in every
20 week, and we attempted to sit, for example, like four days a week
21 and then three days a week. That's what we had planned, and I
22 think the lawyer has been informed already. In order to expedite
23 the proceedings, we are trying to reduce the sitting time, but
24 not to affect the smooth functioning of the proceeding.

25 Actually, we only try to work out the best way to sit in the

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1 proceedings. For example, some weeks we would be sitting for
2 three days, while the other weeks we are sitting for four days,
3 to leave some time for the Chamber to efficiently discuss the
4 remaining matters. And, of course, we are working our best to
5 make sure that we can proceed more expeditiously.

6 Don't be confused. What the Co-Prosecutor has proposed is just
7 their proposal and suggestion, so it is not the decision by the
8 Chamber. So whether the parties would like to add further
9 comment to support such a comment by the Co-Prosecutors, we are
10 -- we appreciate such comments. Then the Chamber are happy to
11 receive further comments so that we can find the best solutions
12 to move forward more expeditiously.

13 [12.00.10]

14 So please don't even just say that we want expeditious trial, but
15 through your actions, you know, people try to take longer than
16 expected. So, please, I believe that it is important to also
17 show your intention that we would like to move expeditiously and
18 also behave in a more expeditious way.

19 So the Trial Chamber is welcoming all kinds of comments to move
20 fairly and efficiently and effectively.

21 Soon it is time to take an adjournment for lunch, so the Chamber
22 will now take that adjournment and resume the meeting at 1.30
23 p.m.

24 (Judges exit courtroom)

25 (Court recesses from 1201H to 1337H)

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1 (Judges enter courtroom)

2 [13.34.17]

3 MR. PRESIDENT:

4 Please be seated. The meeting is back in session and our intent
5 is to move quickly and now we are talking about expeditious
6 proceedings, but now even the procedures in the meeting itself is
7 slow already, so we can see how frustrated we are.

8 So we would like now to give the floor to the civil parties to
9 make your comments, and could you please be straightforward to
10 the points you would like to raise? And once again the parties
11 are reminded that comments made by the Co-Prosecutors are just
12 their comments, and parties can now express their opinion
13 regarding the proposal made by the Co-Prosecutors, and the
14 Chamber may make the final decision after all.

15 [13.39.13]

16 Anyone can wish to have the proceeding end tomorrow but, after
17 all, it is the Chamber who will make sure how we can achieve it.
18 We have already received comments from the Administration Office
19 to support, without any condition, the proceedings throughout the
20 year 2009, so we have already been notified that we can proceed
21 without any problem since we received strong support from the
22 administration.

23 Now it is the matter of the Trial Chamber to adjust the schedules
24 accordingly, so the Chamber will sit four days in two weeks, and
25 then three days in two weeks in each month. So it can form a

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1 kind of formula: three days and then four days, and three, four.
2 So it can be three, four, three four; or four, four, three,
3 three. So I think this is just the information that we are now
4 planning regarding the sitting schedules.
5 We have received some criticisms from outsiders regarding the
6 calculation of the hours the Court is sitting. We appreciate the
7 critics anyway but sometimes it is very difficult that we had to
8 spend even longer hours or longer time to discuss or to
9 deliberate on some certain matters, although we would say that
10 the matters would be dealt with in 10 to 20 minutes but after all
11 they could be longer.
12 And now we are working to find out more from the opinions of the
13 parties to see how we can proceed more expeditiously and
14 efficiently. We want both justice and efficiency.
15 The civil party lawyer, you take the floor.
16 [13.42.15]
17 MS. STUDZINSKY:
18 Thank you, Mr. President, Your Honours.
19 I would like to make short preliminary remarks, what the Chamber
20 should take whatever decision will be made -- take into account.
21 It is the view of civil parties who do not want only an
22 expeditious trial but who also want to know the truth, and who
23 are sitting here in the courtroom to know more and to know
24 details. That means that the Chamber should take into account
25 this interest, and I would say not only by the civil parties but

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1 also by the public and by all Cambodians.

2 Second, this is the first trial before the ECCC and there is no
3 precedent. That means the Chamber needs, as you have already
4 said, Mr. President -- needs a lot of time to determine for the
5 first time how to deal with evidence, how to put evidence before
6 the Chamber, and so on and so on.

7 And I think it would be better understandable for the public, why
8 does it need so much time, to explain more that all these
9 decisions must be taken if the Court wants to be a Court in a
10 post-conflict country and wants also to be a Court that is a
11 model and shows that it follows the rule of law.

12 And the third preliminary remark addressed to the prosecution is
13 maybe a wrong understanding of civil proceedings, or proceedings
14 in civil law systems.

15 It is not the case that they are, in principle, very short. And
16 there are a number of large scale cases which last years because
17 evidence must be presented and testimony orally in the court.

18 Although, of course, as I have already told the last -- in
19 November or October, in our first meeting, that there are
20 provisions how to deal with a lot of documents and how to
21 facilitate it.

22 Therefore, after this remark that it is not -- and maybe the last
23 preliminary remark is I would like to please the Chamber to leave
24 aside personal arguments from parties who have other commitments
25 and are pushing and pushing forward, and maybe with the result

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1 that evidence get lost and without being presented in an
2 appropriate way before the Chamber and discussed here in court.
3 [13.43.37]
4 Now, I would say that everybody agrees upon that this trial
5 should be expeditious, as well civil parties -- but in some --
6 let's say, to a certain extent.
7 I fully -- and will not go into details, and support the
8 prosecution's view on how to deal with documents and would also
9 suggest really to summarize large-scale documents, thousands of
10 media articles on one page. I would appreciate if this could be
11 in a manner to not be repetitious and however to introduce this
12 evidence.
13 Concerning concrete time limits for parties to speak is a
14 position that I do not share. I think I would prefer to call on
15 a soft discipline of everybody, now since we are talking today,
16 and I would say really of everybody.
17 And as I would like to remind this morning the International
18 prosecutor announced to speak 15 minutes. I didn't look but it
19 was more than 15 minutes. That is not the problem for me but
20 please to announce a time. And this suggestion this morning made
21 by Judge Cartwright to ask parties, and I think we started in the
22 last days already to announce how much time do we need, estimated
23 time, and then really to keep on what we have said or to ask for,
24 let's say, another five or 10 minutes if it couldn't be
25 finalized.

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1 And in this context I also would like to call on the accused to
2 respond more concretely and precisely. Then this would also save
3 a lot of time.

4 I find it a problem -- I want to continue here and say only I
5 would suggest first to continue like this, self-discipline and
6 self-control in the system before the Chamber decides to set time
7 limits for parties for questioning.

8 [13.48.45]

9 I would like to comment proposals made by the prosecution which I
10 find problematic; that is the suggestion that witnesses are
11 informed by legal officers about their prior statements. I think
12 that if they were provided or are provided with their former
13 statements that should be discussed in which manner their legal
14 officer may take an influence. I think this should be an extra
15 matter to be discussed here. But I find, first hand, it might
16 cause a problem and to have really witnesses who can talk without
17 any suggestion or influence.

18 A next point, interesting point which I would all like to pick up
19 is that -- to develop further is how to avoid the re-questioning
20 of the accused after a witness appeared in Court. I appreciate
21 this approach by the prosecution, but if this approach will be
22 taken it should be allowed, of course, to ask and confront the
23 accused while he is for the first time questioned on one issue,
24 to confront him already with -- or perhaps of the written
25 statement of a witness. If not -- which is now not allowed,

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1 because the witness will appear at a later stage but, however, if
2 there are contradictions and there are a few witnesses which are
3 really contested -- really contested by the accused. And there I
4 would suggest to allow parties to confront him already before the
5 witness appeared, according to the written statement, or
6 otherwise we should continue with the re-questioning, insofar
7 there are contradictions between witness statements in Court or
8 -- and the accused's statement.

9 I would further suggest that this may be less a measure to save
10 time in the -- during the hearing, but which would save resources
11 of the Court; that is, the point that I would invite the Chamber
12 to allow parties to make oral statements on whatever legal issues
13 should be discussed, more than to set short deadlines during a
14 week, please submit on this or this issue within two days, a
15 position not more than two pages, because this is for the
16 translation -- for CMS translation office and for us of course
17 when we are sitting the whole day in the Court really very
18 difficult to fulfil. That we know in advance to take a position,
19 opinion on such -- on any legal issue, it could finally save
20 resources and avoid to submit something in written.

21 [13.53.03]

22 In principle, I do not suggest to look at this trial with certain
23 deadline, the proposed deadline, 31st of October, or the other
24 one by the end of this year, because my point of view is that
25 justice, and of course with enough self-discipline of all parties

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1 must be done and must be seen, and therefore this deadline might
2 or could lead to a rush through the evidence that must be
3 discussed here in Court. That would not serve the purposes of
4 this Court.

5 What I would suggest is to make another Trial Management Meeting,
6 let's say, in one month, to look if this appeal or call on
7 everybody to focus on relevant points and to focus questions if
8 this appeal or if this call is followed, and if there is really
9 an amendment or change in the proceedings, and to make another
10 Trial Management Meeting to review the last weeks if there is a
11 change.

12 I would like to comment now on the suggested or proposed rule
13 amendments and the guidelines that the Chamber would like to
14 suggest, as I understand, before the rules could be approved in
15 September.

16 JUDGE CARTWRIGHT:

17 Do you mind if I just interrupt at this stage, Ms. Studzinsky?

18 MS. STUDZINSKY:

19 No, please.

20 [13.43.143]

21 JUDGE CARTWRIGHT:

22 Because we have yet to reach that item on the agenda and there's
23 more explanation to be given about the rule change.

24 MS. STUDZINSKY:

25 Okay, okay.

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1 JUDGE CARTWRIGHT:

2 Thank you.

3 MS. STUDZINSKY:

4 No problem. I can postpone this.

5 Then I come back to another point that was mentioned by -- or
6 that is on the agenda before the rules are appearing there; that
7 is availability of lawyers and staff. I can say for our group we
8 are available the whole time without any deadline, and based in
9 Phnom Penh. I do not know if this is also on this item. We only
10 would like to get a view, maybe at a later stage, to our really
11 problematic working conditions for civil party lawyers, which are
12 really not acceptable, and to get the view of the administration.
13 Maybe I can seek your guidance when we could discuss this? It is
14 under A or B or -- I don't know.

15 JUDGE CARTWRIGHT:

16 I'm shaking my head because I don't think it's relevant to the
17 Trial Management Meeting today.

18 [13.57.04]

19 MS. STUDZINSKY:

20 Okay, but it is -- it means, okay, also availability of lawyers.
21 That means can we work; isn't it possible? But it has been
22 raised a lot of times and complaints are pending, and maybe I can
23 leave it at this stage like this and call on the administration
24 to provide us immediately, let's say yesterday, with enough
25 facilities really to work because the current situation is not

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1 acceptable.

2 I would like to suggest for trial recesses, which has been

3 discussed, the following because I am not a friend of this

4 deadline proposed by the prosecution; that, however, the Chamber

5 plans and takes into consideration a longer trial than this end

6 of October, and plans at least to have a Court recess because I

7 know that a lot of staff here in the Court -- that concerns in

8 the administration, in the Court, for the translation and so on

9 -- that it is really very, very hard to work so long time and if

10 we really need until the end of the year that is hard to work

11 without any longer recess, and I do not speak of holidays or

12 normal international and national holidays, which do not allow

13 really to have the necessary time to come back and be able to

14 work, and there are really staff here in the Court who had a long

15 time no holidays.

16 However, I would like to add, the Chamber already in advance

17 includes that this trial could last longer than the proposed date

18 and includes in its consideration, in advance, a Court recess.

19 If this is not needed or if we see we are, by the end of October,

20 nearly at the end of course then it is not necessary, but

21 included -- to include it right now in the planning that goes

22 beyond the end of October, because I estimate that of course

23 other problems, procedural problems, will arise in this Court

24 which must be resolved that need its time. So that it is not

25 only the calculation, five hours for this witness to be heard.

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1 There are a lot of things that should be resolved by the Chamber.

2 [14.00.17]

3 I would say I have covered so far all what I would like to
4 comment and to suggest, and a last sentence: I would like to get
5 some guidance. How does the Chamber -- not for today but to
6 consider it at a later stage -- how does the Chamber want that
7 requests for reparation will be presented, submitted to the
8 Chamber? Like the rules do not provide anything, only civil
9 parties may request reparation, but I would like to get some
10 guidance of what your idea is. How, in which manner should it be
11 presented and put before the Chamber, and how detailed and so on
12 and so on? Do you have any ideas on this -- which does not need
13 a response, of course, today or tomorrow.

14 Thank you.

15 MR. PRESIDENT:

16 Thank you, Ms. Studzinsky, for raising your concerns and your
17 analysis regarding various points. And I would like to inform
18 you that the Chamber has considered all those points in the
19 overall calculation of the rescheduling, and we also take into
20 account of doing the scheduling for a two-month period or a
21 three-month period, and we also do an overall scheduling of the
22 trial. And all these matters of course do fall into our
23 consideration.

24 When we initially set the schedule we did not think of all those
25 issues. However, now we have all these matters for our

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1 consideration and we might have to meet again before we reach
2 that stage, because there are certain matters that need to be
3 discussed; for example, regarding the final submission.

4 Next, I would like to invite any lawyers for the civil parties if
5 you have any suggestions or comments to make regarding our
6 current agenda.

7 [14.03.25]

8 MR. WERNER:

9 Thank you, Mr. President.

10 Your Honours, first and foremost I would like to thank you for
11 giving us the floor and for seeking our opinions. You will, I am
12 sure, quickly understand that there are certain views that I
13 can't share with my colleagues so I can't concur. However, we do
14 appreciate the fact that our opinion is being sought and that you
15 are careful -- you are wishing to understand our situation.

16 I shall take a maximum of 15 or 20 minutes of time and I would
17 chiefly like to refer to three points, and for each one of these
18 points I shall take a few minutes to explain each one of these
19 points.

20 Firstly, a very important point. As you know, civil parties have
21 waited 30 years, some of the accused or the persons charged,
22 well, they're ailing if not dead, so time is a factor. So for
23 our civil parties there is a measure of urgency. I would very
24 much like to hear this message and to take this on board, seeing
25 a civil party die and seeing the shock in their community after

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1 30 years that these people have been waiting to come to this
2 Court, it has been for us a very painful spectacle. I would not
3 like to see other civil parties departing very soon.
4 When Karim Khan, Ty Srinna and myself in October, 2008 agreed to
5 represent 40 percent of the total of civil parties -- at the time
6 I was also working at the trial of a head of state in The Hague
7 -- we agreed at that time to come here, and in this institution
8 everybody, even the Victims Unit, told us at the time that the
9 Trial would last three-to-four months. And our condition was to
10 come, of course, on a volunteer basis. Some of our friends here,
11 our colleagues, are paid by certain organizations but at that
12 time, in October 2008 when Karim Khan came to finalize our
13 participation here, with my agreement, our agreement between
14 ourselves and this Court was on the basis of a trial for three to
15 four months. And we were fully committed to acting as
16 volunteers; volunteers across the board under those conditions.
17 [14.05.01]
18 I'm not expressing any kind of a threat, but it's a fact, it's a
19 fact that beyond the summer of this year, after 11 months of
20 participation by our team in these proceedings, we shall no
21 longer be in a position to take part in the representation of 40
22 percent of the civil parties on a volunteer basis.
23 Another point is that we believe this Trial should be finalized
24 by end of September; 30th of September is our deadline, the
25 deadline that we are suggesting. We support most of the points

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1 made by the Co-Prosecutor, but I would like to tell you a little
2 bit more about the very concrete proposals which in our opinion
3 would make it possible for this Trial to be finalized at the end
4 of September and not end of October and even less so end of
5 December.

6 [14.07.10]

7 First point. Our civil parties -- and since this is a closed
8 meeting and in view of your decision of last week, I need not
9 mention any names however -- our civil parties are ailing, are
10 getting old if not departing. Suon Sieng is 70 years old and she
11 is ailing. Man Saut is 74 years old. Sman Nob 76 years old and
12 sick. Men Lay is 78 years old. Man Malymas, 84 years old. Our
13 civil parties are sick, most of them are elderly people and these
14 people are very anxious, desperately anxious, to see this Trial
15 come to its final fruition. Nobody is responsible, I'm not
16 putting the blame on anyone, but the point is that there is a
17 measure of urgency.

18 My second point now, and I'm sorry to reopen this issue. You
19 will understand that both times when we mentioned this issue this
20 was an in camera session. The media have been seeking our inputs
21 and we have been extremely discreet, but the truth is that in
22 October of last year, we gave our agreement to come and represent
23 a 40 percent of the civil parties in this Trial because we were
24 assured that the Trial would last three-to-four months. We were
25 assured by all about that timeframe, and it is on the basis of

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1 that timeframe that we agreed to come and work here on a
2 voluntary basis -- on a volunteer basis.
3 So for us it is already extremely complex and this is June now.
4 If we were sure that this Trial would be over by the end of the
5 summer, we would somehow find the way and the ways and means to
6 be able to continue providing legal representations, but beyond
7 the end of August we simply can no longer operate like this. And
8 for this reason we wanted the presence of administration's
9 representatives here because it's scandalous that there had been
10 no money made available to the civil parties. We work on a
11 volunteer basis, but there are P2, P3, P4, P5 positions which are
12 being offered for Case 2; nothing for Case 1.
13 It is now, I believe, part of your responsibility to get
14 responses from the administration, why did we never get any
15 money? When will whatever money become available? And, three --
16 I'm only referring to a fact and not voicing any kind of threat.
17 It's just a fact that by the end of the summer, if there is no
18 money for us, we will not be able to continue. We are trying to
19 speak in a constructive spirit coming up with concrete proposals.
20 We have heard the proposals of the Co-Prosecutor this morning and
21 we do believe that it is possible to complete this Trial within a
22 reasonable timeframe without jeopardizing anything, without
23 avoiding hearing all the evidence. We do believe that we can
24 expedite this Trial and it can go much faster than end of
25 December.

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1 [14.09.32]

2 We would like you to accept all the proposals of the
3 Co-Prosecutors, in particular the International Co-Prosecutors'
4 proposals. They are extremely reasonable, in particular as
5 regards to the procedural rule regarding the flexibility,
6 regarding interpretation of the internal rules; we fully concur
7 with the Co-Prosecutor on this. We do believe that all these
8 proposals, or at least most of them, are definitely worthy of
9 being approved and I need not dwell on them any further.
10 Furthermore, we -- and I can say on behalf of my group -- that we
11 accept the -- we can concur with the idea of a limit on the
12 speaking time. We can't -- want to have an expedited Trial and,
13 at the same time, have complete freedom to speak as much as we
14 want. We need to be reasonable and we wish -- we shall try to
15 co-operate amongst ourselves, amongst the four groups of civil
16 parties, in order to be able to manage time better. We accept --
17 we can accept the limitation on speaking time if it is fair, if
18 it is fairly distributed, and if, Your Honours, you see to it
19 that each and everyone abides by these limits. We do wish to
20 respect the principle of such a rule because it is a
21 pre-condition for the Trial to be expedited.

22 [14.11.08]

23 One single difference of opinion between us and the
24 Co-Prosecutors, we would like to seek from the Co-Prosecutors the
25 following, the list of witnesses. Well, we knew at the time more

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1 -- we couldn't really know what witnesses would say, and we
2 needed a long list. Many witnesses are summoned, but we do hope
3 that once you will have heard the first, second, third witness,
4 by then the Co-Prosecutor may be satisfied, will have the
5 evidence required, we will be satisfied that proof has been
6 established and as in all other jurisdictions, we find -- we
7 think this would be very highly possible for the Co-Prosecutor to
8 re-visit the list of witnesses every fortnight, say?
9 The Co-Prosecutor can turn to the different parties in private
10 consultation or in camera to check with the different parties and
11 to take stock of the list of witnesses that are still required
12 for the purposes of the Trial. If the Co-Prosecutor himself
13 seeks as much as possible to reduce the list of witnesses, in
14 particular regarding the functioning of S-21 which is going to
15 take up a lot of time, we do believe that this can help expedite
16 matters.
17 There's another point now that has not yet been said and I would
18 like to insist upon it. The problem is not only that people are
19 asking too many questions, let's be absolutely frank and candid,
20 the issue is -- and I'm not putting the blame on anyone, just
21 facts -- just factually speaking, I do believe there hasn't been
22 enough of an intervention by the Bench.
23 This Trial began on the 30th of March, today is the 11th June.
24 From 30th March to 11th June, 11 weeks; 11 weeks out of 11 weeks.
25 How many weeks have we actually sat in a full week of hearing --

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1 that's to say from Monday to Thursday -- only five weeks; the
2 first week, only three days; then there was a week of holidays;
3 then sometime in May more holidays or a recess; last week, 1st to
4 4th June, no hearing; today we're having no hearing on substance
5 once again.

6 So this is also a fact of reality that there are -- there aren't
7 enough limits on speaking time. It's also that we're not sitting
8 in a sufficient number and a sufficient duration of hearings.
9 There is not enough time for the hearings, as such.

10 So in this respect we support the Co-Prosecutors. Perhaps we
11 could skip certain recesses. I saw that last week, 18th of June,
12 we're not supposed to sit because there's some kind of royal
13 holiday or something. We would like to request the hearing to
14 continue on certain holidays. We're absolutely against the idea
15 of sitting every other week and only three days. We would like
16 to suggest very much to the contrary.

17 [14.04.54]

18 I'm probably speaking too fast. Yes. Apologies, apologies.
19 We agree with the Co-Prosecutor to have hearings even on public
20 holidays. We would like to ask you not to reduce the number of
21 days of hearing; on the contrary. If in August, for instance, we
22 discover that we're not moving fast enough let us try and have
23 hearings on Friday morning. Perhaps you can get the
24 administration to provide temporary support and assistance. But
25 I find we are not having enough time in the hearing room, and we

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1 definitely need to find solutions to that problem.

2 As regards now the testimony of civil parties, here again we need
3 to make a commitment. The commitment has to be a shared burden
4 for all. We, representing the civil parties, make a commitment;
5 we shall do our utmost to see to it that survivors, victims,
6 relatives of victims, et cetera, would speak in the most succinct
7 way possible. We shall explain to them that this is not the kind
8 of place where they can speak for hours and hours to offload
9 whatever they have on their chest; the point being that we would
10 request only six of our civil parties to be able to take the
11 floor.

12 In relation to your agenda, I would like to say that we had
13 already some time ago given an approximate idea of the time we
14 would require, half a day for our six civil parties, for each one
15 of them. And I believe that if each one of them has time to
16 express themselves this will be enough.

17 Your Honours, I would also like to ask for you to be stricter.
18 Sometimes people take the floor without having been given the
19 right to take the floor.

20 [14.07.25]

21 MR. PRESIDENT:

22 Your time limit has run out already because the 15 minutes as
23 requested has already been satisfied. So it is time the Chamber
24 is strict now so the other persons, the other lawyers can take
25 the floor.

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1 Mr. Hong Kimsuon, how much time do you expect to speak your
2 comments? And yes, I will be strict. I will use my discretion
3 as the President because patience has run out.

4 MR. HONG KIMSUON:
5 Thank you, Mr. President.

6 I may not be in the position to promise how much time I would
7 need, so I will be brief and I will respect the time limit
8 restricted or determined by the President. If Your Honour thinks
9 that my comments are not falling into the topic being discussed
10 then you, of course, can stop me.

11 So of course everyone would like the proceedings to be
12 expeditious but how? This is the question. So it is, of course,
13 our idea to share with you -- we have to estimate the energy.
14 For example, like, let's say about riding a bicycle, so we even
15 balance our energy how we can really ride that bicycle to the
16 destination we want to go.

17 So I think so far, regarding the discussions or the testimony of
18 the experts, lots and lots of questions have been put to the
19 experts. And in my observation, I think if we look at the list
20 of the witnesses and the victims, the civil parties who would
21 wish to give their oral statements concerning the operation of
22 S-21, for example, I think they are more relevant.

23 [14.21.15]

24 So I think there are more witnesses who would like to come before
25 the Court to testify regarding the operation of S-21.

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1 And I don't know how many other experts will be called, for
2 example, Mr. David Chandler; Dr. KA Sunbaunat, for example. So
3 we don't know when they are called. So I think the sooner
4 they're summoned, the better. Because in the questioning of
5 those experts, if you feel that any particular pages of the
6 expert statements that are relevant to the facts at issue and
7 that the President feels that it is best to focus on those
8 particular sections, then restrict to that section; we can save
9 lots of time.

10 Regarding the identification of the witnesses, especially those
11 former subordinates of Kaing Guek Eav at S-21 and Choeung Ek, I
12 think we probably cannot shorten the time to hear their
13 testimony, but I think it would be best if we can actually just
14 put questions to the accused to accept whether the statements
15 made earlier by the witnesses are true.

16 And I think the witnesses or the victims are satisfied after
17 hearing how people were taken away to be killed, for example.
18 That's all. And like Mr. Kong Pisey stated earlier, the victims
19 would be happy to express their grievance or their suffering
20 right before the Chamber to take something out of their chest
21 that have been with them for long. So this is important for
22 those people.

23 [14.24.05]

24 But I think the testimony is shorter for people who are not
25 survivors of S-21, because people who are survivors of S-21 may

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1 have more or longer testimony. But now how can we actually
2 shorten the time to hear their testimony regarding the witnesses
3 at S-21 or Choeung Ek?
4 I think we have very just few of them who will be testifying
5 regarding their work at the locations, and then, in my opinion,
6 it is good that we ask questions whether the witnesses' testimony
7 is agreed as true by the accused. I think it would be short if
8 we do that. For example, if the people then were blindfolded and
9 uploaded and smashed, and then by explaining this, so we know
10 that the person was killed and had been subjected to tortures,
11 for example, before they were killed. That would satisfy the
12 people's sorrow and suffering.
13 So then after such statements it is just good to ask the parties
14 whether they agree with such assertions, so I think that's part
15 of my comment.
16 [14.25.53]
17 MR. PRESIDENT:
18 Thank you, Mr. Hong Kimsuon.
19 I'm sorry; I forget to thank you, Mr. Alain Werner, when I
20 stopped you short.
21 So to be less confusing regarding the time when the Trial Chamber
22 did not sit during the past -- I mean, due to the fact that the
23 Pre-Trial Chamber had already booked the courtroom for the
24 hearing. They booked the courtroom for like one year in advance,
25 but unexpectedly we did not see that the Pre-Trial Chamber

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1 conducted any hearing, but they actually booked those days for
2 such hearings.

3 So we actually negotiated with the Pre-Trial Chamber and then
4 when we learned that the courtroom would be occupied, then we
5 adjusted our schedule accordingly. So the reason we did not sit
6 in those days, because the PTC did not conduct the hearing. And
7 you would ask the question, "PTC has the PTC courtroom. Why
8 should not we conduct the PTC hearing in the PTC small
9 courtroom?" But look, we are having problems with the resources.
10 Interpreters; let's put it this way. We do not really have
11 interpreters to answer to the demand for such accumulative events
12 at the same time.

13 So we are working very hard to make sure that we can really
14 adjust our schedule, so we have been doing our best. And we
15 cannot really sit during the public holiday determined by the
16 law. We do not want to violate the labour law by working on the
17 day when everyone is expected to have a holiday, for example on
18 the 18th. And I thank you very much that you even suggested that
19 the hearing should be conducted five days in a row each week. I
20 think it would be possible but when there have been some kind of
21 objections the matters were complicated and solutions needed
22 immediately to solve the matters, and we had to balance and
23 compare the national laws against the international standards so
24 that we can really proceed our proceedings expeditiously and
25 fairly. So I think it is easier said than done.

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1 [14.29.03]

2 And of course we have been working very hard all together, and
3 the officials who are entitled to work more enthusiastically and
4 to make sure that we have energy to proceed our work, I don't
5 even think that we can work during the public holiday when it is
6 stipulated by the law that everyone should enjoy such holiday.

7 Now I would like the defence counsel to make any comment, if you
8 would like to do so. The floor is now for the lawyer for the
9 civil party.

10 MS. TY SRINNA:

11 Thank you, Mr. President. I would like to make some comments
12 regarding the duration and the time.

13 Since this morning until now it is my observation that in
14 relation to the expedient proceeding, I see the main focus is
15 only on the civil parties, the witnesses and the experts as to
16 whether the questions to be put to the accused or to the
17 witnesses take longer time, and the questions are long and
18 repetitious. However, I did not see that all the parties raised
19 the rights of the accused in responding to the questions. From
20 my observations the accused usually takes longer times to respond
21 to a question. Sometimes it takes him 15 to 20 minutes just to
22 answer a question. So this is one issue which causes the delay
23 of the proceedings.

24 [14.31.24]

25 So I would just like to get opinions or instructions from the

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1 President and Your Honours to find a solution to this issue; that
2 is, regarding his right to respond. As we all observed, for
3 every response that he made to the parties' questions he
4 sometimes tries to beat about the bush before he comes to the
5 point. So I would like to ask the President, regarding this
6 right, which party -- or whether it's the Chamber or the party
7 who puts the question has the right to interrupt him, to tell him
8 to answer to the point in order to avoid the delay in the
9 proceedings?

10 I'd like the President to provide instructions or guidelines on
11 this matter, and it's only us, the civil party lawyers, who are
12 the main focus but now everybody seems to ignore the behaviour of
13 the accused. We and the Co-Prosecutor try our best to expedite
14 the proceedings and, as requested by the Co-Prosecutor, he has
15 put a lot of suggestions in order to quicken the procedure and
16 shorten the time. For example, the shortening of the list of
17 witnesses for them to provide the testimony, so this is one of
18 the processes taken -- initiated by the Co-Prosecutor. However,
19 we also have to look at the defence side to look at the response
20 of the accused.

21 MR. PRESIDENT:

22 Thank you for raising a very positive point. However, I
23 personally have considered this matter and I have received a lot
24 of comments on this. I have weighed the right of the defence, of
25 the accused. There is no law to say, "Answer to the point."

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1 There is no such law. The defence has his rights of defence.
2 Whether the answer is to the point of the question or not, it is
3 the discretion of the Chamber to decide. This is a very
4 technical issue.
5 [14.33.57]
6 Of course it is true that in some cases, as I've said this
7 morning, through our observation certain matters, because of his
8 nature as a mathematic teacher, he likes to provide a response
9 with examples. How can we limit that if what he said is
10 reflecting what he wants to show in his response?
11 And another issue; for example, yesterday he responded that he
12 did not know but then he gave the reasons that he didn't know;
13 because he was busy doing another work or that he did not listen
14 to the radio broadcast. Then we had to consider his response as
15 well, but if his response to the question -- this is his strategy
16 to defend himself. This is his right. How can we limit his
17 right? There is no law to say so.
18 So it is my understanding, through my experience, that we are not
19 required; all the accused are not required to answer to what is
20 asked and whether such a language can be used in a courtroom.
21 For example, in the international courts these matters have been
22 raised as well, but the international court and tribunals think,
23 okay, this is probably what has been the practice in the local
24 courts and it should be improvised; it should be prohibited in
25 the international courts.

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1 So I have actually considered on these matters and I have
2 received a lot of comments on these matters as well, but I cannot
3 take my own discretion on this. The Chamber will consider and
4 decide what needs to be done appropriately in his response and
5 his rights to defend himself.

6 [14.34.51]

7 So there are a lot of issues to be taken into account, and the
8 question has to be clear as well. And I myself, I asked him a
9 lot of questions as well, but the questions and the responses are
10 short. Or maybe my questions are so simple; I'm not sure.

11 Because yesterday I asked a number of questions and it did not
12 take that long. I don't know, but maybe because I asked in the
13 Khmer language and the interpretation might be different.

14 I give the floor to the defence.

15 MR. KAR SAVUTH:

16 Thank you, Mr. President.

17 In our discussion can the accused be involved? Can he provide
18 his response? I would like the accused to make his proposal to
19 the President.

20 MR. PRESIDENT:

21 Mr. Kaing Guek Eav, do you have any proposals for the meeting?

22 THE ACCUSED:

23 Mr. President, thank you for allowing me to express my opinion.

24 First, I would like to provide to the Chamber on my political
25 nature to the witnesses. As has been seen and observed by Your

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1 Honour and the parties, of the witnesses who were brought here
2 into the Chamber there were three of them from M-13. From the
3 first one I made a wrong recognition of him. I realized it's not
4 him, but then after he spoke and expressed his sorrow I had to
5 recognize his sorrow. That is the first witness. It's KW-30.

6 [14.38.18]

7 And for the second witness I knew because of the documents that I
8 read. He was a false or fabricated witness. I just saw his -- I
9 could say he's a clown witness and he just responded based on the
10 records of the trial Judges. As Your Honours asked the questions
11 he just responded to that. So this is my observation of the
12 second witness.

13 And the third witness, yes, he was my former subordinate. I
14 recognized him.

15 MR. PRESIDENT:

16 Now we talk about trying to find means for expeditious
17 proceedings. If you would like to share your comments,
18 suggestions; for example, it has to stick to the agenda that we
19 have been discussing. What has been raised by the lawyer of the
20 civil parties is regarding your response. Beating about the
21 bush, that's what it is, or it's a long response which should
22 have been short.

23 So can you give a response to the question, talking about your
24 rights, or whether it's your habit in doing so? So this is the
25 issue that you can contribute to the discussion.

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1 So if the lawyer says that if the trial has to sit longer time or
2 sit more days then it might affect your health or your status,
3 and as for Alain Werner, he wants to have the sitting day even on
4 a public holiday or even on Friday morning. So this is all
5 related to the trial proceeding and expeditious proceeding, and
6 if you can make a comment on this you are allowed.

7 [14.41.10]

8 THE ACCUSED:

9 Mr. President, thank you. Let me continue.

10 So the first point is about the witness. Some witnesses are
11 easy. They tell the truth to the Chamber, so it's quick. But
12 some other witnesses, for example like KW-31, it is extremely
13 difficult. It is very hard to find the documents to counter him.
14 So it requires to know in advance the documents and the
15 witnesses.

16 For example, some documents shown by the Co-Prosecutors regarding
17 the lists of those Khmer people, I immediately recognized it.

18 It's the S-21 document. And another document, 159/10, I never
19 saw that document. However, once I saw my own handwriting I
20 acknowledged it.

21 So the thing is if I had the documents in advance, if I prepared
22 a document in advance, that would be good for me and it's
23 efficient for the proceeding. And if a clown witness is shown in
24 the Chamber then it's going to be difficult, it's going to delay
25 the proceeding. So I would request a document that I might have

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1 to have in order to defend myself or to counter the testimony of
2 a witness. This is my task. So in conclusion ---

3 [14.42.50]

4 MS. STUDZINSKY:

5 Mr. President, I would like to interrupt at this point. I heard
6 in the English translation "a clown witness" and I think it is
7 not up to the accused to consider witnesses in such terms and,
8 please, Mr. President, could you remind the accused to come down
9 with his -- with the terms he is using to indicate or talk about
10 witnesses?

11 MR. PRESIDENT:

12 Thank you, Ms. Studzinsky. It is true the accused was
13 over-excited and used inappropriate language.
14 So use only appropriate words in the Chamber. Try to avoid any
15 words which are degrading somebody else.

16 THE ACCUSED:

17 If I am well prepared in advance then I can defend myself
18 properly. Everything is based on documents. If I have a
19 document in advance then I can show to the Chamber it is true.
20 And if the document is not true then I also have to be in a
21 position to counterclaim the testimony. And if I do not know in
22 advance then how could I find any document contradicting the
23 testimony of such document?

24 And this is the most worrying things that I have heard; for
25 example, regarding those few Khmer people who went abroad.

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1 So to summarize, one, in order for the expeditious proceeding, I
2 would -- everybody is to put their best effort, especially from
3 the prosecution. Please provide me with sufficient documents on
4 what you would like to ask. Sometimes it just happened, like the
5 other day, but when I recognized my own handwriting then I
6 acknowledged the document. Because we are all here trying to
7 find the truth to what level of the criminal responsibility that
8 I have had, so to expedite the proceeding I would like to have
9 sufficient documents and sufficient time to read and to examine
10 those documents.

11 For example, the movie that was shown yesterday and the
12 impression was about the tile on the floor and the background
13 image, so if everything is concrete then I can respond straight
14 to the point immediately, and that is the fact. But sometimes
15 things are involved in politics. I don't want to respond to Ty
16 Srinna, but like you said about the two people fighting each
17 other, then I need to provide a little bit of historical
18 background on that.

19 [14.45.45]

20 So again, in conclusion, please try to provide me with sufficient
21 documents and enough time to read. And it is up to the Chamber's
22 discretion how many days per week to hold a hearing, and if my
23 health is a concern then I will inform the Chamber at a later
24 stage.

25 MR. PRESIDENT:

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1 Thank you, Mr. Kaing Guek Eav, for your observation.

2 And I think he also understands the matter, and sometimes the
3 document is introduced immediately and expectedly into the
4 Chamber.

5 Now the floor is open for the defence.

6 MR. ROUX:

7 Thank you, Mr. President.

8 I will not try to speak beyond what the prosecutors and the civil
9 parties have shared with us. I think that this represents a
10 total of about an hour and a half if you bring the prosecutor and
11 the civil parties together. And if I subtract the time of Mr.
12 Kar Savuth, I probably have one hour left for myself. But please
13 be assured I will not speak for a whole hour.

14 [14.48.17]

15 So of course I have a few observations to make, and especially a
16 few suggestions. I would say, first of all, that a trial that
17 goes on and gets bogged down, as ours sometimes, is a bad signal
18 and a bad message sent to the Cambodian people and also for the
19 international community. And you know that beyond Cambodia our
20 trial is also being followed by the international community, and
21 in particular by jurists from other international criminal courts
22 and these jurists are following very closely the way our Chamber
23 is going to manage to judge the first accused within a reasonable
24 time span.

25 And I'm just saying this to remind you that we are not here

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1 isolated. We are not alone here on earth. We are one of the
2 international criminal courts that is functioning, and each one
3 of us we look at each other and we try to draw conclusions in
4 order to make this major work of justice move ahead, and to which
5 we are all participating; which is, as I say again, international
6 criminal justice.

7 So we have also here, regarding international criminal justice,
8 the obligation to succeed and to have -- and to come to a
9 successful conclusion of this trial. And I would like to remind
10 you that the more that this trial drags on, the more that we will
11 be facing a problem regarding the provisional detention of the
12 accused.

13 I would like to remind you that we requested his release and that
14 the Chamber has not yet been able to settle on this issue, and
15 therefore now we have gone beyond the threshold of 10 years, 10
16 years of provisional detention, and today this trial is
17 unfortunately contributing to the extension of this provisional
18 detention. So we should not lose sight of this.

19 [14.51.53]

20 And before I present a few concrete suggestions I would like to
21 make one other observation, which agrees with what my esteemed
22 colleague Alain Werner presented to us. Yes, indeed, he is right
23 in saying that we have all been told that we would be involved in
24 a trial that would last three months at most, and we all were
25 basing ourselves on this idea. And a certain number of us have

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1 taken commitments because we were guaranteed that after more than
2 one year of investigation it would no longer be necessary to have
3 more than three months of trial.

4 And since we are in camera, Mr. Werner -- and I'd like to thank
5 him for this -- brought up indeed the issues that the civil party
6 lawyers are facing, and the civil parties, and I completely can
7 support the request he made to the administration. I find it
8 absolutely abnormal that within this same courtroom people are
9 being paid for their work while others are obliged to work on a
10 volunteer basis. I find this completely abnormal.

11 But for saying -- and since we are in camera, well, I would like
12 therefore to bring up my own personal situation. When in July
13 last year I was called upon to manage the defence unit for the
14 court in Lebanon in July last year, I would like to remind you
15 that back then we were speaking about a trial that was going to
16 start in October and that was going to end in January, and on
17 this basis I accepted, therefore, to be nominated to come here at
18 the beginning of March, knowing that this trial would be over.

19 But you know what the situation is, of course, and right now you
20 can see that I'm in a very uncomfortable situation and therefore
21 I have to manage on one side the tribunal in Lebanon and, on the
22 other side, this trial.

23 So concrete suggestions, as I said -- concrete suggestions that
24 we have brought up all together here, and by the accused himself
25 in fact. When he says that, "I would like to get to know the

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1 documents that the Co-Prosecutor is bringing up, like to get to
2 know these elements ahead of time", well, what have we been doing
3 during this full year of investigation? We proposed to the
4 accused, we presented him with documents, and he had the
5 opportunity to study them and to provide answers on a serene
6 basis, and all of this in the presence of the Co-Prosecutors.

7 [14.48.42]

8 And I believe that the first solution in order to move ahead in
9 this trial is to get back to what was said and what was done
10 during the investigation. And if we were only -- if we were
11 only focusing on the evidence that was heard adversarially during
12 the investigation, well, we would be gaining a lot of time -- if
13 we were only focusing on this.

14 This is the advantage of an investigation. Judges -- two Judges
15 here -- who have gone over the elements, the statements, the
16 confrontations with the witnesses, the reconstitution at Tuol
17 Sleng; they took all of this and at the end of this year of
18 investigation they produced a document that you all know, Your
19 Honours, that is called an indictment before the Chamber; that is
20 to say, a synthesis of what was done over the course of the year,
21 at the end of which they said, "According to us there exists
22 sufficient amount of evidence in the case file to send before the
23 Trial Chamber."

24 So why don't we work with this, with this matter which you know
25 because you have the opportunity to study this case file? If

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1 only we worked with this. Well, we would go two or even three
2 times faster.
3 Why am I saying three times faster? One single example -- one
4 single example, Mr. Craig Etcheson when he came the other day to
5 testify -- when we were speaking about the letters that were sent
6 by Sou Met and which are included in the case file, well, the
7 Co-Prosecutor wants us absolutely to be debating about nine
8 letters. And his own expert, must I add once again -- his own
9 colleague, I could even say, had selected only three letters and
10 he was saying, "Okay, this is enough for me to state my case."
11 [14.51.59]
12 And this is what the Investigating Judges did at the beginning of
13 the case. The prosecutor provided us with 16,000 documents and
14 the Investigating Judges said, "We do not need 16,000 documents
15 and we're going to take the main documents such as Mr. Craig
16 Etcheson suggested."
17 And in this example with Mr. Craig Etcheson we see clearly that
18 we could very well today ask the Co-Prosecutors Office to give up
19 on two-thirds of these documents. Three letters out of nine,
20 that's what? That's a third so therefore two-thirds were not
21 necessary -- and to give up two-thirds of these documents and
22 therefore to waive two-thirds of these witnesses.
23 But I want to be even concrete. Looking now at this Indictment
24 Order, the Office of the Co-Prosecutors, as you well know,
25 offered us a particular job of taking up the order paragraph by

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1 paragraph. It took us three months, involving work with the
2 accused, and paragraph by paragraph the accused said, "Yes, I
3 agree." You know that I often recall, as was also recalled by my
4 colleague from the Co-Prosecutors Office, I often recall that
5 here we are in a civil law procedure. However, if we were to be
6 operating under a common law procedure, this trial would have
7 lasted eight days. It would have lasted, at the most, eight
8 days.

9 Looking at the facts as submitted to the Chamber, using
10 jurisprudence from the international tribunals, the Chamber would
11 check out on three criteria whether the guilty plea was offered
12 freely and voluntarily; second criterion, whether it was offered
13 in a fully informed fashion; and third criterion, is it
14 unequivocal?

15 And once the Chamber has checked for these three criteria then it
16 takes onboard this guilty plea, accepts it, and then you may need
17 to give one or two days to work out the sentencing, and for that
18 witnesses are heard, general on character issues and on
19 extenuating exculpatory factors.

20 [15.02.05]

21 So there I would definitely say that there is a distinct
22 advantage in favour of common law procedures, a second advantage
23 that we might see today in favour of common law. And my
24 colleague Bill Smith very correctly reminded us of this today, at
25 international criminal jurisdictions which are much more governed

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1 by common law, in trial where there is just one accused.
2 I can give you the example of the case in which I've been
3 recently involved; three weeks for the Co-Prosecutors' provision
4 of evidence. Second, suspension usually for one month, then
5 three weeks for the part of the defence, and that's the end of
6 the trial. So initially it is correct to say that initially
7 common law trials in international jurisdictions were very long.
8 It is also correct to say that nowadays they are much more
9 expeditious. So are we now in the process of demonstrating that
10 a civil law trial is much longer than a common law trial? This
11 would definitely be a contradiction of all our received wisdom.
12 Now, how could this Chamber immediately take on board the
13 recognition of facts in order to save not just weeks but also
14 months of proceedings' time. Let me remind you that there is no
15 need for you to await the production of a new amendment. You
16 have fullness of jurisdiction and at any point in time you are at
17 liberty to make your own decisions.
18 Let me give an example coming from the Rwanda International
19 Criminal Tribunal where I worked with lawyer Luniac (phonetic).
20 We went to Rwanda and we obtained a written statement by a
21 witness. In that particular system we were to do our own
22 investigations. We obtained a written statement by a witness who
23 did not wish to travel to Arusha for security reasons and the
24 rules of ICTR made it possible for written statements of
25 witnesses to be admissible. However, the Chamber took a sui

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1 generis decision on its own authority and it ruled that in view
2 of the fact that this witness statement has been produced and
3 taken in a regular fashion and at least one party state, this was
4 done under French law.

5 The tribunal said this is admissible and this document can be
6 accepted by us as evidence, even though the Internal Rules of the
7 Court did not provide for this. However, following upon this
8 jurisprudential decision, the plenary then validated this
9 approach and correspondingly made an amendment in the Rules. But
10 it was the Bench in the first place that took a decision whereby
11 that particular document under those particular circumstances was
12 receivable.

13 [15.04.24]

14 I can give you another illustration, and this is very much along
15 the lines of my usual advocacy on what I call necessity. This
16 has nothing to do with our case. I'm just giving you an
17 illustration. When I talk about a situation of necessity in a
18 national jurisdiction, I keep recalling that in French law this
19 notion -- this idea did not exist. It is the Bench; it is the
20 Judges in those jurisdictions who created this idea and
21 thereafter over time this idea was introduced into the Criminal
22 Code by the legislature. So there is no obligation for you to
23 await the plenary meeting in September to take a decision as
24 regards the acceptance of facts.

25 Now, there are two approaches to find a solution to our problem.

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1 Article 33 of the agreement, I would like to recall, says -- and
2 my colleague Smith said so this morning already -- that where
3 Cambodian law says nothing you can refer to international law.
4 And it is self-evident that Cambodian law as such has nothing to
5 say about guilty pleas. So we need to turn to international law
6 and here I would like to offer that you look at Rule 69 of the
7 International Criminal Court, the agreements regarding evidence:
8 "The prosecutor and the defence may agree that facts adduced in
9 the indictment, the substance of the document, the testimony
10 expected from a witness or any other elements of evidence are not
11 contradicted."

12 JUDGE CARTWRIGHT:

13 But we have not yet reached the part of the agenda concerning the
14 proposed rule amendments, but just to explain to you that we
15 propose issuing guidelines which will put in place the amendment
16 to the Rule before it is adopted by the plenary. And so we are
17 persuaded by your argument already. We have anticipated it and
18 we have indeed followed the provisions that you are now quoting.

19 [15.09.41]

20 MR. ROUX:

21 Thank you, Your Honour. So if the parties, the prosecutors, the
22 defence agree amongst themselves to offer to the Chamber such
23 agreement on facts, then our proposal would be as follows.

24 For you to put questions to the accused regarding facts that have
25 not yet been examined and for the accused to be in a position to

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1 confirm to you in public those points upon which he agrees within
2 the framework of the questions to the accused by the Chamber.
3 Thereafter and thereupon it will be very straightforward to
4 concentrate on whatever is not agreed, whatever facts are not
5 agreed. And there, as I said also, it would be straightforward
6 enough for the prosecutor -- at least I would hope it would be
7 straightforward for him to leave aside at least some of the
8 witnesses and to leave aside some of the documents.

9 I would like to recall that there is a parallel that can be drawn
10 with Rule 85. The President may exclude any proceedings that
11 unnecessarily delay the trial and are not conducive to
12 ascertaining the truth. Consequently, we are equipped. We have
13 all the wherewithal that we need in order to expedite a trial,
14 especially a trial in which 90 percent of the facts with which
15 the accused is charged are accepted by him.

16 [15.11.48]

17 I think earlier on some calculations were produced. I would like
18 us all to be quite aware that if this trial were to last as long
19 as was contemplated this morning -- that is to say up until the
20 end of this year -- this would mean that the Duch trial -- this
21 is to say the trial of a person who pleads guilty -- will have
22 lasted nine months, meaning that Case Number 2 may well require
23 you to sit for 36 months. That's nine times four accused
24 persons. I would then wish you the best of luck and I will no
25 longer be in this Court. We are also here to put across a clear

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1 message.

2 Now, returning to my concrete specific suggestions; if the
3 Chamber were to decide to take onboard in a very clear fashion
4 what is necessary to reassure the Co-Prosecutors regarding the
5 evidence, then what should we do very pragmatically speaking? I
6 would suggest that witnesses whom the Co-Prosecutors will want to
7 retain on their list -- because then I would hope that at least
8 one-half if not two-thirds of the witnesses would no longer be
9 needed.

10 So for that portion of those remaining witnesses who would still
11 be summoned, Rule 90 clearly says that the Chamber, the Judges,
12 put questions as they find necessary to be conducive to ascertain
13 the truth. In this respect they have a duty to raise open
14 questions, be they exculpatory or inculpatory, and here we are
15 fully in a civil law system. As my colleague Mr. Smith said, the
16 duty of the Judges is to put questions both to prove and disprove
17 the guilt of the accused. But after and beyond that should we
18 continue further having examination by the prosecutor, four
19 examinations by the civil parties? Would that be a fair trial?
20 So I do believe that the only truly pragmatic way out would be
21 for us to agree on a very firm and clear deadline that you would
22 set to the parties for the questions that they would ask, and
23 these questions would only be of an additional nature, because
24 the investigation is yours.

25 The examination, exculpatory and inculpatory, is yours. Then it

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1 is up to the Co-Prosecutors to put together some additional
2 inculpatory elements; also up to the civil parties to come up
3 with some; and then it's up to the defence to produce some
4 evidence or elements that may be exculpatory. There is no need
5 to spend hours and hours and hours on all this.

6 [15.10.35]

7 So, Your Honours, once such an interrogation, both exculpatory
8 and inculpatory, would have been performed regarding only those
9 points that would not have been accepted by the accused, on that
10 basis I would suggest that you give the Co-Prosecutor 30 minutes
11 for additional questions, 30 minutes also for the civil parties,
12 all the civil parties jointly, and that you then invite the civil
13 parties to perform a turnover; that's to say for them to agree
14 amongst themselves. And this would result in a fabulous amount
15 of time gained for us all.

16 They would be in a position to agree amongst themselves so that
17 for each round only one of these teams would ask questions on
18 behalf of all the teams and they could take turns. So this is
19 not very difficult to implement. And then the defence will have
20 exactly the same length of time; 30 minutes plus 30 minutes
21 equals one hour. So this, after the questioning that you will
22 have performed, this time allotted to each one of the parties, is
23 ample.

24 So, Your Honours, I think we have a number of very pragmatic and
25 concrete suggestions that take on board all the different aspects

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1 and dimensions of this trial. And in particular, two crucial
2 aspects; one is that we've already had an investigation; it has
3 resulted in an Indictment Order. And furthermore, we also have
4 an accused who has agreed on 90 percent of the facts in that
5 Indictment Order.

6 And now I would like to talk about my particular role. Civil
7 parties made a comment and it is quite obvious that amongst the
8 priorities for this trial we must bear in mind the fact that it
9 is the civil parties that need to be heard. If we allow this
10 trial to drag on and on, and if this results in a restriction of
11 their right to be heard, I don't think that any one of us will be
12 satisfied in any form or fashion. We shall need time to hear the
13 civil parties and we shall give the time that is required to hear
14 them.

15 [15.13.30]

16 I would also like to say that if some of the civil parties
17 unfortunately pass away because time is passing, then the defence
18 too, because of the passing of time, has also lost one of its key
19 witnesses; Professor Henry King passed away.

20 MR. PRESIDENT:

21 The Chamber will take a 15-minute break. It is also time for the
22 changes of the DVD recording. So we have a 15-minute break.

23 (Judges exit courtroom)

24 (Court recesses from 1510H to 1533H)

25 (Judges enter courtroom)

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1 MR. PRESIDENT:

2 Please be seated, and the Court is now in session.

3 And we express our appreciation to the defence counsel, Mr.

4 François Roux, who addressed various experience in an effort to

5 accelerate our Trial in the future. And we take notes of that

6 information and we obtain sufficient information, and we can take

7 these for our consideration.

8 Another topic is of a special agenda for the meeting in

9 consideration of the acceleration of the Trial.

10 [15.34.14]

11 MR. ROUX:

12 Would you need some more minutes to express your comments?

13 I think -- of course, I have observed that the people would like

14 things to move expeditiously, but pragmatically they tend to

15 speak longer.

16 MR. ROUX:

17 Thank you, Mr. President.

18 I said that I would take less than one hour and indeed I will

19 speak for less than an hour but I will indeed finish up in five

20 minutes, however, Mr. President.

21 I wanted to conclude, Mr. President, by saying that we are maybe

22 here at a crux, at a crucial point in our trial, at a positive

23 moment, thanks to this Trial Management Meeting that the Chamber

24 was kind enough to organize for us, and therefore I would like to

25 insist, so that I may conclude, on the three suggestions that I

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1 am presenting.

2 [13.35.23]

3 First of all, the Chamber should make a decision to accept the
4 acknowledgment of the facts. This will be, in terms of
5 international criminal law and in terms of civil law, an
6 extremely important contribution and I would be very happy about
7 this in terms of this trial.

8 And second of all, concerning all of the discussions that will
9 remain concerning the points that have not been acknowledged by
10 the accused, I therefore suggest that the Chamber limit the
11 speech time and ask the civil parties to follow this turnover
12 that I was speaking about earlier. I think that we will all gain
13 time from this.

14 And third of all, I would like to remind -- and that's how I
15 started, in fact -- that I said and I will repeat that our
16 proceedings are being observed by jurors from the entire world.
17 We are the first tribunal to include civil parties, so please
18 let's make sure that this is done in the best conditions possible
19 and not at the end of a trial in which everyone will be exhausted
20 by the length of the proceedings. We should have a short,
21 dynamic trial that goes to the points, the facts that are held
22 against the accused, and the word of the victims. That is the
23 core of what we should be working on. And of course at the end,
24 after this, we will then discuss and then we will consider the
25 sentence, and indeed the defence will also contribute then.

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1 So I want to conclude, Mr. President, by saying that can we
2 improve the system? Yes.

3 MR. PRESIDENT:

4 Next I would like to give the floor to Judge Silvia Cartwright to
5 explain to the meeting concerning the proposals for the amendment
6 by the Trial Chamber regarding the implementation of Rule 87(3)
7 and 87(6).

8 The floor is yours.

9 [15.38.29]

10 JUDGE CARTWRIGHT:

11 Thank you, Mr. President.

12 Yesterday we informed the parties that there are two proposals to
13 amend Rule 87 which will be considered at the plenary between the
14 7th and 11th of September next. I'm not going to repeat the
15 amendments because I believe everyone received them adequately
16 yesterday, but I want to make some very brief comments.

17 First, if the Rule is adopted it will not enter into force until
18 approximately the 20th or 21st of September. That means that the
19 Trial Chamber has decided to issue guidelines which will put the
20 Rule amendments into effect immediately. I'm asking the parties
21 today not to comment on the guidelines unless they need some
22 clarification or have some major issue with them.

23 The guidelines are intended to improve the efficiency of the
24 trial; the very topic that we have been discussing all day today.

25 First, in regard to the proposed amendment to Rule 87(3), the

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1 words "appropriately identified" are to be added to that subrule.
2 Appropriate identification might include the title of the
3 document, the document number and the electronic reference
4 number. The Trial Chamber will reserve its right to ask any
5 party putting a document before the Court in this manner to give
6 a summary or read it out in Court. However, this mode of
7 identification is the preferred one for the Trial Chamber. Where
8 a document has annexures, those annexures will be considered part
9 of the document.

10 [15.41.27]

11 Secondly, in relation to new subrule 6 concerning agreement on
12 alleged facts contained in the indictment the parties are asked,
13 where there is an agreed fact, to identify a maximum of three
14 documents which they consider vital to support each agreed fact,
15 and to put these documents before the Court. The Chamber will
16 then indicate if it considers the fact proven. The Chamber
17 wishes to emphasize that on request to it such an agreement on
18 facts can be revoked at any time before the end of the trial. It
19 is not laying down an absolute rule. This is a guideline only.
20 Now, I would like to know if any party seeks any clarification or
21 has any major objection to these guidelines.

22 Prosecutors?

23 MR. SMITH:

24 Thank you, Your Honour.

25 The amendment to Rule 87(6), or the new 87(6), the addition of a

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1 maximum of three documents which is vital to support the agreed
2 fact, that amendment, I think the prosecution may have concern
3 that a maximum of three documents to support one particular point
4 in the agreed facts may not really be enough to have the matters
5 found beyond reasonable doubt.

6 [15.44.05]

7 But when I look at the amendment to Rule 87(3), Your Honour has
8 stated in the guidelines the parties may put documents, and I
9 think it's in the prosecution's submission that the prosecution
10 shouldn't be limited to three particular documents for one fact
11 it should be allowed to put forward a number of documents to
12 support that fact to be able to establish it beyond reasonable
13 doubt. It's very -- a lot of these facts are complex facts,
14 they're not simple facts. They relate to the conditions at S-21;
15 they relate to the population at S-21; they relate to torture.
16 For example, there is agreed fact that torture was widespread at
17 S-21. If we just have three documents to say that three acts of
18 torture occurred, it may fall well short of the proof that's
19 required in order to find these facts beyond reasonable doubt.
20 And the prosecution's concern would be that the conviction at
21 this Court, bearing in mind he's pleading guilty to a certain
22 level of these crimes, that it won't have the weight or the legal
23 integrity that it should have bearing in mind the prevalence of
24 the acts that support one particular agreed fact. I think it
25 would be a lot simpler in a case that was one incident and didn't

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1 involve multiple transactions and multiple behaviour. So as long
2 as, I would submit, the prosecution and not prohibited from
3 putting forward statements in support of a particular fact that
4 may well be more than three, we would not object.

5 [15.45.43]

6 Your Honours, I think because of this particular amendment, I
7 think the prosecution would like to consider this amendment over
8 the maximum of three documents because when it was read out
9 yesterday, we didn't get the full amendment. And we would like
10 to look at what we think the effect of that would be in terms of
11 the level of proof that Your Honours would have before you to be
12 able to find facts beyond reasonable doubt. So perhaps if we
13 could reserve our opinion on that particular point.

14 JUDGE CARTWRIGHT:

15 Well, perhaps I could say here, Mr. Smith, that this is a
16 guideline. The Chamber anticipates the fact that the prosecutors
17 or indeed, though less likely, other parties may need to refer to
18 more than three documents. However, the benchmark is three
19 documents, and if more are needed a brief submission to that
20 effect would be entertained by the Trial Chamber. So it is a
21 guideline of three documents.

22 (Microphone not activated)

23 JUDGE CARTWRIGHT:

24 A civil law colleague reminds me that it doesn't mean that only
25 three documents are available for the Trial Chamber to base its

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1 decision. It can itself refer to other documents from the case
2 file.

3 [15.48.54]

4 MR. SMITH:

5 Thank, Your Honour, and with that qualification and that
6 explanation, I think the concern is if, for example, the Chamber
7 decides -- and I think it's a good suggestion that's been put
8 forward by the defence that the questioning is reduced or
9 concentrated on areas of dispute.

10 And I'd like to add in addition to that, I think it's obviously
11 very important for this Court that there are illustrations of
12 what occurred at S-21 because it was just left to areas of
13 dispute. There would be no truth-telling function of this Court
14 because it's simply the accused saying "yes that happened, yes
15 that happened, yes that happened" and, of course, the accused
16 wasn't present every time these acts occurred. So as long as the
17 questioning will allow for illustrations of that, and as long as
18 the prosecution can propose other -- more documents to support
19 the particular facts, then we have no further objections on it.

20 JUDGE CARTWRIGHT:

21 Thank you, Mr. Smith.

22 It's necessary to say that a number of valuable suggestions have
23 been made today, but it's premature for the Trial Chamber to
24 indicate which of those it might incorporate into its guidance to
25 the parties.

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1 Are there any comments from the civil parties? I revise that.

2 Is there any clarification sought or major issue? One, two,
3 three civil parties reach for their microphones.

4 Ms. Rabesandratana, you got there first.

5 [15.51.10]

6 MS. RABESANDRATANA:

7 Thank you. It's just a clarification. It's not at all an
8 objection, just a clarification I'm seeking.

9 When you're speaking about three documents, well, there's already
10 the investigation filed that includes a certain number of
11 documents so, therefore, these three documents that you're
12 mentioning, these documents according to you, do you believe that
13 they're only documents within this existing investigation file or
14 could they be new elements? Because the -- we all know the
15 existing investigation file, but I think what would be
16 interesting would be able to put forth three documents that are
17 new, so that they could shed a new light and a more updated light
18 in relation to what was done during the investigation. Did I
19 understand correctly or is your suggestion other?

20 JUDGE CARTWRIGHT:

21 Thank you. The Trial Chamber has not had the opportunity to
22 discuss this, but I will give a personal indication.

23 This is not intended to restrict the rights that parties already
24 have under the Rules to introduce new material. This is my
25 version only; it may be revised.

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1 Now, it was even heat between Ms. Studzinsky and Mr. Werner.

2 We'll try Ms. Studzinsky next.

3 MS. STUDZINSKY:

4 I'm thinking first, for clarification, that is the last -- or not
5 the last, but you have mentioned that the Chamber can refer to
6 any document from the case file when -- not wrong? My question
7 is, does it mean you can base your decision on any document or --
8 document let's say, from the case file which has not been put
9 before the Chamber, or am I wrong? It's only for clarification
10 because maybe I didn't get it right.

11 [15.53.57]

12 JUDGE CARTWRIGHT:

13 My understanding is that the Chamber itself refers during
14 questioning to documents. Those are considered put before the
15 Court for comment, even for objection. I am referring to an
16 additional three documents maximum, to be introduced in the same
17 way by each party who questions.

18 MS. STUDZINSKY:

19 Yes, thank you for this.

20 Another clarification that I am seeking is these three documents
21 you have mentioned they can be submitted like you indicated for
22 Rule 87(3) by document, title and so on. Am I right?

23 And next clarification that I'm seeking is the status of that
24 line -- of a guideline. It is like a recommendation because it's
25 not part of the rule or if you could clarify on this?

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1 [15.55.29]

2 JUDGE CARTWRIGHT:

3 Being a native English speaker, guideline means precisely that.

4 The Trial Chamber is guiding you as to how you will conduct the

5 presentation of documents before the Chamber. If you choose to

6 ignore those guidelines I'm sure that the Trial Chamber will draw

7 your attention to that.

8 MS. STUDZINSKY:

9 Thank you for this.

10 And now I would like to suggest that in the interest of

11 contributing -- I rephrase. This Court has not only duty to try

12 the accused, this Court should also contribute to the truth, that

13 is not only an 80 percent, as you have said, or who agreed on a

14 lot of facts but not all facts, even those agreed facts should be

15 elaborated somehow. And, therefore, I suggest to include into

16 this proposal a way that allows also to, if deemed necessary, in

17 the interest for the civil parties to know more, as I said, and

18 the public, the Cambodians, however to compile for example a

19 number of documents, and to grant however this possibility. And

20 I think talking as well about the agreed facts and in a broader

21 manner than only, "Yes, I agree or I do not contest". This does

22 not bring colour picture on what happened in S-21, and I think

23 this is part and task of the Trial Chamber here to do so.

24 JUDGE CARTWRIGHT:

25 Thank you, Ms. Studzinsky. The Court will take those comments

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1 into account.

2 Mr. Werner?

3 [15.58.33]

4 MR. WERNER (Speaking in English):

5 Thank you, Your Honour.

6 Just to indicate that everything is clear first. I just wanted

7 to tell you that. Thank you.

8 JUDGE CARTWRIGHT:

9 Thank you very much.

10 Is there anything from Mr. Kar Savuth or Maître Roux?

11 MR. ROUX:

12 Thank you, Your Honour.

13 I must admit that I have a little bit of trouble understanding

14 the concern of the Co-Prosecutors. Why are they so reluctant?

15 You know about the plea agreement approach. I've already dealt

16 with such plea agreements in international jurisdictions and

17 usually there is no document. The accused acknowledges the facts

18 and this, in itself, has probative value.

19 I would like to refer you to Rule 87(5), which is an existing

20 stipulation here. Confession is to be given the same

21 consideration by the Chamber as any other form of evidence.

22 So if for each fact you have the guilty recognition and three

23 documents and you are afraid that this still might not be enough,

24 as far as I am concerned, I absolutely concur with the proposal

25 that we have in this paper. It would be much too much. In a

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1 plea agreement under common law you would never have to come up
2 with extra documentation if you have prior agreement with the
3 accused. Here you have three extra documents in addition to the
4 guilty plea. So I do believe that these extra three documents
5 are plenty.

6 Consequently the Co-Prosecutors might usefully work pragmatically
7 towards reducing the time required. It's not enough to say that
8 we want to reduce the time we take and then not adopt practical
9 measures thereto, to that effect.

10 [16.00.50]

11 Now, the defence would like to ask what would be the status of
12 witnesses if we were to adopt this directive or this guideline if
13 the Chamber wishes to hear witnesses on certain points which are
14 not contested, which are not challenged?

15 I think the civil parties earlier on already referred to this
16 point, saying that perhaps one or two witnesses could be summoned
17 because of the publicity of this trial, because it's important
18 for the public to be informed. And on this we agree, of course,
19 but to go over and beyond this, I think, would be too much. It
20 would make the debate far too long without contributing any
21 further to the manifestation, the establishment of truth.

22 Consequently, I think that in this guideline it would be useful
23 also to point out that a maximum of two or three witnesses may be
24 heard on whatever facts have been agreed. And in principle, if
25 I'm not mistaken, under common law at any rate, it is said that

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1 one testimony is deemed sufficient if it is corroborated by
2 another testimony. So we would, in fact, in this setup here, we
3 would simply need one piece of testimony to come and confirm the
4 guilty plea of the accused.

5 Thank you.

6 [16.02.27]

7 JUDGE CARTWRIGHT:

8 Thank you very much.

9 And, again, the Trial Chamber will take into account those
10 comments.

11 Mr. President, there is one remaining item on the agenda. Do you
12 wish me to read out our question on this?

13 Mr. Prosecutor?

14 MR. SMITH:

15 Mr. President, Your Honours, if I can just make one brief remark
16 in relation to this new amendment or the new guideline, Rule
17 87(6)?

18 The prosecution does have a concern, I think, about placing a
19 number of three documents for an allegation that has been agreed
20 to be considered proven beyond a reasonable doubt. And because I
21 think it's quite a significant guideline, and of course it would
22 be a significant rule amendment limiting evidence to three
23 documents on a particular point, I would ask that the prosecution
24 be given some time to consider that and file a written submission
25 on that particular aspect of the guideline.

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1 [16.03.52]

2 JUDGE CARTWRIGHT:

3 Well, thank you, Mr. Smith.

4 Certainly the Trial Chamber is aware of your concerns and
5 certainly the Chamber would wish to take into account any further
6 submissions you have, but the consequence of a written submission
7 from the prosecutors means written submissions in response from
8 the civil parties and from the defence, and time needed for the
9 Trial Chamber to issue a decision. I don't want this to turn
10 into a counterproductive exercise. I think what you have said
11 thus far has given us food for thought and if the Trial Chamber
12 thinks that it's essential to seek more comment from you then it
13 will certainly do so.

14 Mr. President.

15 MR. PRESIDENT:

16 We have another item on the agenda which has not yet been
17 discussed. That is the allocation of time for the civil parties
18 who have been selected to make their presentation before the
19 Chamber as requested by the lawyers for the civil parties. I
20 don't think we have dealt in detail into this problem and we only
21 have 15 minutes left. I would give the floor to Judge Cartwright
22 to explain and to seek your opinion on this matter.

23 [16.05.43]

24 JUDGE CARTWRIGHT:

25 Thank you very much, Mr. President.

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1 This is a question that the Trial Chamber wishes to put to the
2 civil parties which they may wish to discuss amongst themselves
3 before coming back with an answer for the Trial Chamber. It's a
4 very simple question.

5 The civil parties have been allocated, tentatively, a total of I
6 believe five working days for their presentation during the
7 trial. The question is, can civil party groups allocate that
8 time among the civil parties without intervention from the Trial
9 Chamber? So you can simply come back with a "yes" answer next
10 week.

11 MR. WERNER (Speaking in English):

12 Sorry, Your Honour, maybe I am the only one who is confused here,
13 but when you said that tentatively you have allocated five days,
14 is that just what you are informing us now or is it something
15 that -- because if it has been a decision or any kind of
16 communication, then we are not aware of that. Could I seek some
17 clarification on that?

18 JUDGE CARTWRIGHT:

19 The ever-efficient greffier refers you to document E57. So
20 having referred to that, we don't expect an answer immediately.
21 We are simply asking that the civil parties cooperate amongst
22 themselves without requiring the Trial Chamber to schedule for
23 them. So perhaps you can come back with your confirmation next
24 week or the week after. It's a long way off in the scheduling
25 but it would be very helpful.

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1 [16.08.03]

2 Does that clarify for you, Mr. Werner?

3 MR. WERNER (Speaking in English):

4 We certainly will, Your Honour; we certainly will.

5 JUDGE CARTWRIGHT:

6 Thank you very much.

7 Mr. President, I think the only other matter is other matters,

8 but perhaps we've covered everything now.

9 MR. PRESIDENT:

10 We all seem to be tired and we still have many issues to be
11 discussed. Probably during our proceedings we might have come
12 across various other issues in the next few months. So I think
13 now it's an appropriate time to finish our Trial Management
14 Meeting today.

15 The participants of the Trial Management Meeting, on behalf of
16 the Judges of the Trial Chamber I would like to give high value
17 to your participation for this one-day meeting. The Trial
18 Chamber has observed that the meeting has been actively involved
19 by the Co-Prosecutors, lawyers for the civil parties and the
20 defence counsel, the accused and the Administration Office.

21 [16.09.40]

22 The meeting is surely assisting the Trial Chamber in the
23 management of the trial proceedings from today onwards, and
24 through this meeting we have observed a number of matters that
25 need to be resolved and we have discussed on the issues

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1 pinpointed by the Trial Chamber, and a number of matters have
2 been highlighted and explained by the parties, and also a number
3 of issues have been raised by the parties as well.

4 After the meeting the Trial Chamber will take all the information
5 received and the opinions from the parties and also the opinions
6 from the Administration Office for our detailed discussion in
7 order to set the scheduling for the trial proceedings to make it
8 more precise and to make the proceedings smooth and as
9 expeditious as possible.

10 On behalf of the Trial Chamber I would like to extend our thanks
11 to the Co-Prosecutors, the lawyers of the civil parties, the
12 defence counsel and the officials and staff of the
13 administration, and the security personnel and all the relevant
14 officials who support the meeting, including the interpreters as
15 well, who try their best physically and emotionally to assist
16 this meeting so that the meeting is fruitful.

17 I would like to wish all of you good health, wise (sic) and
18 succeed in your profession. I would like to declare the closure
19 of this meeting.

20 (Court adjourns at 1611H)

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