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

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ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Supreme Court Chamber

TRANSCRIPT OF APPEAL PROCEEDINGS - KAING GUEK EAV "DUCH"
MANAGEMENT MEETING - IN CAMERA
Case File N° 001/18-07-2007-ECCC/SC

23 March 2011, 0902H
Proceedings

Before the Judges: KONG Srim, Presiding
Motoo NOGUCHI
SOM Sereyvuth
Agnieszka KLONOWIECKA-MILART
SIN Rith
Chandra Nihal JAYASINGHE
YA Narin
MONG Monichariya (Reserve)
Florence MUMBA (Reserve)

Lawyers for the Civil Parties:
TY Srinna
MOCH Sovannary
HONG Kimsuon
Silke STUDZINSKY
Elisabeth RABESANDRATANA

Greffiers/Legal Officers:
SEA Mao
Christopher RYAN
PHAN Thoeun

For Court Management Section:
UCH Arun

For the Office of the Co-Prosecutors:
CHEA Leang
Andrew CAYLEY
SENG Bunkheang

The Accused: KAING Guek Eav

Lawyer for the Accused:
KAR Savuth
KANG Ritheary

Closed Session

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. CAYLEY	English
MS. CHEA LEANG	Khmer
MR. HONG KIMSUON	Khmer
MR. KANG Ritheary	Khmer
MR. KAR Savuth	Khmer
MR. KORM CHANMONY	Khmer
JUDGE KLONOWIECKA -MILART	English
JUDGE NOGUCHI	English
THE PRESIDENT (KONG Srim, Presiding)	Khmer
MS. RABESANDRATANA	French
JUDGE SOM Sereyvuth	Khmer
MR. RYAN	English
MS. MOCH SOVANNARY	Khmer
MS. STUDZINSKY	English
MS. TY SRINNA	Khmer
MS. VO	English

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1 (Judges enter courtroom)

2 MR. PRESIDENT:

3 We shall now commence our meeting. The Supreme Court Chamber of
4 the Extraordinary Chambers in the Courts of Cambodia notes that
5 the Judgment of the Trial Chamber in Case 001 dated 18 July 2007
6 against the accused Kaing Guek Eav alias Duch was appealed by the
7 Co-Prosecutors, the accused, the civil parties group one, two and
8 three. They are collectively called the appellants.

9 The Supreme Court Chamber has set the date of the appeal hearing
10 to be conducted from the 28th through the 30th of March 2011. A
11 full day of 31st March is reserved for hearing as well, if
12 required. We have notified all parties of the date on the 4th of
13 March 2011. Pursuant to Rules 104 bis and 79 of the Internal
14 Rules, in order to facilitate the fair and expeditious conduct of
15 the proceedings, the Chamber wishes to convene today meeting to
16 allow exchanges between the Co-Prosecutors and co-lawyers who are
17 present here to facilitate the setting of the date of the
18 hearing, and to review the status of the case and issues that
19 might be raised in relation thereto as indicated in the annex
20 circulated by the SCC on 4th March 2011.

21 The Bench consists of myself, Kong Srim, the President; two,
22 Judge Motoo Noguchi; three, Judge Som Sereyvuth; four, Judge
23 Agnieszka Klonowiecka-Milart; five, Judge Sin Rith; six, Judge
24 Chandra Nihal Jayasinghe; seven, Judge Ya Narin. And we have two
25 reserve Judges, Judge Mong Monichariya and Judge Florence Mumba.

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1 [90.06.15]

2 We have the greffiers, Mr. Sea Mao and Mr. Christopher Mark Ryan,
3 and Phan Thoeun. The parties present during today's meeting, and
4 for that I would like to invite the greffier to make the
5 announcement.

6 THE GREFFIER:

7 Good morning, Mr. President. The parties are the following: the
8 Co-Prosecutor, Chea Leang; and the international Co-Prosecutor,
9 Andrew Cayley; Mr. Seng Bunkheang, the deputy Co-Prosecutor, and
10 Mr. Pich Sambath, the senior assistant; Ms. Colleen Gilg and
11 Phann Sochea, the greffier from the Office of the Co-Prosecutors.
12 For the defence team, we have Mr. Kar Savuth, lawyer for the
13 defence, Mr. Kang Ritheary, and Mr. Im Vibol, legal consultant,
14 and Mr. Chan Ravuth, the case manager. Lawyers for civil parties
15 group one, Ms. Ty Srinna, Mr. Karim Khan is not present; Ms.
16 Silke Studzinsky, lawyer for civil party group two; Mr. Hong
17 Kimsuon, also civil party group two's lawyer; Ms. Elizabeth
18 Rabesandratana for group three civil party, and Ms. Moch
19 Sovannary, civil party group three lawyer.

20 For the Court Management Section, we have Ms. Ly Sophal, the
21 transcriber, and Mr. Uch Arun, the Court Officer. Thank you, Mr.
22 President.

23 MR. PRESIDENT:

24 We have the agenda for today's discussion, and I believe you all
25 have the agenda with you. The items of the agenda is the

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1 following. One is the introduction that I just made, and item
2 number two is the timetable for the appeal hearing. The third
3 item is the formalities of the appeal hearing, including a, the
4 regulations, b, timekeeping, c, attendance of civil parties, and
5 d, the presentation by the ITU. And the fourth item is the
6 request for additional evidence by the accused and by the civil
7 parties. And the last item is other matters, including the
8 request for the lifting of the protective measure, and the
9 questioning of the Judges of the Bench.
10 So there are five main items of the agenda. We shall now move to
11 the second item, that is the timetable for the appeal hearing.
12 And you all have been notified by the Supreme Court Chamber
13 already of the scheduling hearing, and we would like to open the
14 floor for discussion.
15 [9.11.35]
16 MR. CAYLEY:
17 Good morning, Mr. President, Your Honours. It seems everybody's
18 a little shy to speak, so I'll open the discussion. It's a
19 fairly modest point, and that is in respect of Tuesday 29th of
20 March, where the second thematic session begins at 9 o'clock in
21 respect of crimes against humanity. The Co-Prosecutors, indeed
22 my learned friend and I have divided subject matter between us,
23 this is a subject matter that's been allocated to me. I am
24 dealing with crimes against humanity.
25 If you look at your own scheduling order, you'll recognise in

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1 paragraph 3 that you have asked both the co-lawyers and the
2 Co-Prosecutors to comment on three areas of the Co-Prosecutors'
3 appeal. I won't rehearse them, they're clear from the order, and
4 if you look at the timetable for the schedule, you'll give the
5 Co-Prosecutors thirty minutes in which to make submissions, and I
6 would respectfully request if the Co-Prosecutors could be given
7 another 15 minutes in which to make those submissions, in
8 accordance with the order that you've given, whereby you've
9 requested that we concentrate on those matter that you raise in
10 your question, and not repeat wholesale all of the written
11 submissions already made, and I respect that, but there are a
12 number of issues that arise because of these questions that you
13 are putting to the Co-Prosecutors.

14 So I would, therefore, be grateful for an extra 15 minutes.

15 Thank you.

16 (Deliberation between Judges)

17 [9.14.15]

18 MR. PRESIDENT:

19 If I am not mistaken, the international Co-Prosecutor would like
20 to request to submit your brief on the 29th for an additional 15
21 minutes. So your request for time extension is only for that
22 particular day? That is from 9.10 to 9.40, with the additional
23 request for 15 minutes. We shall decide upon hearing the
24 requests or comments from other concerned parties, and we will
25 notify you.

5

1 MR. CAYLEY:

2 Obligated, Mr. President, thank you.

3 MR. PRESIDENT:

4 Counsel, you may proceed.

5 MS. STUDZINSKY:

6 Thank you, good morning, Mr. President, good morning Your
7 Honours. I'm speaking on behalf of group two of the civil
8 parties. We observe that on day three, 30th of March, which is
9 the day for the civil parties' appeals, that all groups, that
10 means three groups, have 40 minutes to make submissions on the
11 appeals. We note that group one submitted only an appeal against
12 the admissibility decisions. Group two submitted, as well, an
13 appeal against the reparations order. Therefore, we submit that
14 we would appreciate if the Supreme Court Chamber could allocate
15 us 15 minutes in addition to make submissions on both of our
16 appeals.

17 And I think, as I said, compared to the allocated time for group
18 one, which is only on one appeal, and one subject matter, I think
19 there would be a basis to grant us 15 more minutes to make
20 submissions on our appeals. Thank you, Your Honours.

21 MR. PRESIDENT:

22 Counsel Kar Savuth, you may proceed.

23 MR. KAR SAVUTH:

24 Good morning, Mr. President. We are the defence counsel for the
25 accused. During the appeal proceeding by the Supreme Court

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1 Chamber we are allocated 90 minutes to make a presentation on the
2 jurisdictional issues. We would request an additional 90
3 minutes, at least extra 60 minutes for us to discuss on the
4 personal jurisdiction issue. That is the first request.

5 The reason is that we need more time to present our discussion.
6 If we try to speak too fast then we will be alerted by the
7 Translation Unit, so to speak slower means we require more time,
8 and we would be obliged to be granted extra time by Your Honour,
9 at least 60 minutes.

10 [9.18.50]

11 The second point is that we would like the Supreme Court Chamber
12 to decide on the issue of merit by issuing a judgment on the
13 personal jurisdiction. Once the debates are concluded, we would
14 be obliged the Supreme Court Chamber to make a decision on this
15 personal issue, and the reason is the following. We are the
16 defence counsel, we made an appeal on the personal jurisdiction,
17 and not on the subject matter jurisdiction, and if the Supreme
18 Court Chamber considers my client is outside the personal
19 jurisdiction, that is the end, there is no need to further review
20 the subject matter jurisdiction. Thank you.

21 (Deliberation between Judges)

22 [9.20.35]

23 MR. PRESIDENT:

24 The counsel for the civil party, you may proceed.

25 MS. RABESANDRATANA:

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1 Mr. President, ladies and gentlemen, I speak on behalf of group
2 three. Group three responded with regard to the issue of
3 personal jurisdiction of the Tribunal, and on Monday the 28th of
4 March we were allotted 30 minutes to present the remarks of the
5 defence. If I understand correctly, I hear that the defence is
6 requesting additional 60 minutes on the preliminary objections,
7 which are important. So we would also request additional time in
8 order to be able to complete our remarks on this issue of
9 personal jurisdiction.

10 [9.22.03]

11 MR. PRESIDENT:

12 The national Co-Prosecutor, you may proceed.

13 MS. CHEA LEANG:

14 Good morning, Mr. President, good morning everyone. As raised by
15 my colleague, Andrew Cayley, the Co-Prosecutor would need to
16 respond to each of the points raised in the appeal, and I would
17 like now to point to the first day of the hearing, that is on the
18 afternoon of the 28th, that the Co-Prosecutor is allotted 60
19 minutes time. We agree to the time allocation, however it is
20 much dependent on point number 4, that is the request for
21 submission of new materials which could include several
22 documents, and to me it is rather unclear because some documents
23 have already been submitted.

24 [9.23.15]

25 If the Supreme Court Chamber recognises that those document are

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1 considered new documents, then the Co-Prosecutor would seek
2 additional time to submit additional materials. However, we can
3 discuss the issue related to the submission of the request for
4 new additional materials at a later stage. If we agree on that,
5 then we can maintain the allotted time for the Co-Prosecutors
6 without seeking additional time. Thank you.

7 MR. PRESIDENT:

8 Judge Milart, would you like to take the floor? Thank you.

9 JUDGE KLONOWIECKA-MILART:

10 Good morning everybody. I have a question addressed at all
11 parties, to some effect, but first one concerns the prosecutor's
12 request for additional 15 minutes, and in connection with the
13 representation made by counsel Kar Savuth regarding the scope of
14 the defence's submission at this appellate hearing.

15 Since the prosecution is requesting an additional 15 minutes, I
16 would like to ask the defence if we are to understand that the
17 defence is not going to argue substantive issues regarding crimes
18 against humanity on day two, and such time could be then allotted
19 to the prosecutor without upsetting the whole schedule. I am
20 just asking clarification whether this is how we understand your
21 representation made this morning.

22 [9.25.15]

23 And the second question I would have to the civil parties.

24 Perhaps I will just ask it now, and the answers will follow in
25 the orders granted by Mr. President. Because I'm also

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1 Co-Rapporteur on civil parties issues. I was wondering, because
2 since group one is mostly stressing the question of admissibility
3 of civil party claims, and the reparations sought by group one
4 appears to be focused on having this recognition in the Judgment,
5 and other forms of reparations do not seem to be pursued, whether
6 there is a possibility of reaching an agreement among the civil
7 party groups as to the time that they want to commit to arguing
8 questions of admissibility, versus questions of specific
9 reparations, and perhaps the time might be shared among the
10 groups.

11 If there is a chance of such an agreement, we will accommodate it
12 gladly. In practical terms, if there is a chance that civil
13 party group one will present questions of admissibility that
14 other groups agreed with, then group two and three may commit
15 their time to arguing specific reparations. That's just a
16 suggestion that the Judges of this Chamber were contemplating
17 yesterday, for your consideration. Thank you.

18 [9.27.00]

19 MR. PRESIDENT:

20 You may proceed.

21 MR. KAING RITHEARY:

22 Good morning, Mr. President, good morning everyone. I am the
23 defence lawyer for Mr. Kaing Guek Eav, alias Duch, and I would
24 like to reply to your query. Regarding the issue of the crimes
25 against humanity, this issue shall be debated after the Supreme

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1 Court Chamber issues a decision on the personal jurisdiction. If
2 my client is considered outside the personal jurisdiction, then
3 there is no point to discuss the issue of crimes against
4 humanity.

5 Regardless, we are willing to respond to the issues raised by the
6 Co-Prosecutors regarding crimes against humanity, or on the issue
7 of res judicata, if it is considered that the Chamber has
8 personal jurisdiction on my client, then the issue of crimes
9 against humanity would need to be raised. And of course, we
10 would seek additional time to discuss on this issue. Thank you.

11 [9.28.35]

12 JUDGE KLONOWIECKA-MILART:

13 Counsel, upon a quick connection with my colleagues, I think I'm
14 authorised to say that it is unlikely that we will decide right
15 away, that's why we scheduled the session for three days. So I
16 believe the counsel should be prepared to argue on issues that
17 may be relevant to the case if this is what the defence wants.
18 But I don't think the parties should expect that the appellate
19 judgment will be furnished after day one.

20 MR. PRESIDENT:

21 Allow me to clarify that the Supreme Court Chamber Judges will
22 discuss on these issues raised by the parties, and at the
23 meantime we have already scheduled the appeal hearing already,
24 and the three day hearing will be conducted to hear all the
25 related matters and issues concerning the jurisdictional issues

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1 and other relevant matters.

2 Crimes against humanity or crimes themselves also are part of the
3 topic of the hearing, followed by the issues of the civil
4 parties. So during this three day period, all of these matters
5 will be well covered, and only in the aftermath of this three day
6 hearing that a judgment will be rendered.

7 We would like to make it clear that the Chamber would wish to
8 stick to the schedule as planned. We do take into account your
9 suggestion, but as our colleague already indicated, we would like
10 you to be prepared to address all the relevant issues, for
11 example in relation to the crimes against humanity, and that you
12 should not wait until after the judgment on the jurisdictional
13 issue that you prepare to address this matter.

14 So it is a good idea that you should have been prepared by now,
15 and that address them all in that hearing.

16 [9.31.40]

17 MR. KANG RITHEARY:

18 Thank you, Mr. President, for your clarification on the road map
19 regarding our upcoming hearing, but may I again insist that we
20 should look at the internationally recognised procedures, the due
21 process, because it is true that the consolidated hearings is
22 time saving, but in the contrary it can violate the rights of the
23 accused regarding the principle of presumption of innocence. And
24 that's why I would like to make sure that the upcoming hearing is
25 transparent and well recognised by both national and

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1 international communities which cannot compromise our risk saving
2 time by infringing the rights of the accused.

3 We observe that these important issues, for example,
4 jurisdictional matters and crimes against humanity and other
5 related issues, are to be discussed during the upcoming hearing,
6 but as I indicated, it is really important that the
7 jurisdictional matter shall be adjudicated first before we jump
8 to the crimes and the guilt of the accused, otherwise we fail to
9 really follow or respect the rights of the accused.

10 And I would like to appeal as well to the Co-Prosecutors to take
11 my suggestions seriously and make sure that the due process is
12 well observed. Thank you.

13 JUDGE NOGUCHI:

14 In response to the comments from the defence counsel, I would
15 like to clarify the Chamber's position. We have noted exactly
16 what the defence counsel pointed out now, and that's why we have
17 set the jurisdictional issue in the very beginning of the first
18 day. And we have allocated, in our view, plenty of time during
19 the limited three days. So as President and Judge Milart
20 indicated, the Chamber wishes all the parties to make possible
21 professional efforts to present oral arguments in their limited
22 allocated time.

23 [9.34.50]

24 If we try to extend time allocation according to the requests
25 from the parties, I'm afraid that we will have a week or two

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1 weeks hearings in the end. That's not what we wish to pass
2 through here, because we already have very detailed written
3 discussions through written submissions. We have fully examined
4 them all.

5 So I think we have fully recognised the limited time, and again
6 we would expect you to think about how you could best utilise
7 your allocated time. We don't expect you to repeat all the
8 arguments which you submitted in your written submissions. We
9 would like you to just select the most important points, in your
10 view, and according to the questions raised by the Chamber in the
11 Scheduling Order. So you could select issues to be emphasised,
12 and that's what the Chamber wishes to hear. Thank you.

13 [9.36.35]

14 MR. PRESIDENT:

15 As Judge Noguchi already indicated, the Supreme Court Judges have
16 convened several meetings already regarding the preparation for
17 today's hearing, or meeting. It is very important that our
18 effort is to make sure that the arguments raised by parties will
19 be done in the three day hearing, and that only the key issues
20 are raised. We don't expect to hear the repetition of what you
21 have already indicated or stated in your submissions.

22 We need further clarification and explanation on top of what you
23 have already submitted in writing, and it will be serving as the
24 ground for our deliberation, and the Supreme Court Chamber also
25 expect to put some questions, inquiries, to you so that you may

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1 be able to shed light on some of the concerns or the inquiries
2 the Supreme Court Chamber would wish to put to you.

3 And if you would like to make any further comments on this
4 suggestion, you may now still proceed. Mrs. Chea Leang, you may
5 now have the floor.

6 MS. CHEA LEANG:

7 Mr. President, I would like to add a little bit more concerning
8 the request by the parties. And times have already been well
9 allocated in the Scheduling Order, and I am of the opinion that
10 to save our time, may I suggest that the Supreme Court Chamber
11 first consider on the submissions that have already been put
12 before the Chamber. And the second point is that we should also
13 look into what the Trial Chamber has already ruled on, so that we
14 can really have them discussed all together.

15 And it is good that some of the points that are repetitious
16 should not be brought within this hearing, because it is a waste
17 of time to really discuss the same issues that have already been
18 addressed, otherwise it will be time consuming. Thank you.

19 MR. PRESIDENT:

20 Mr. Kar Savuth, you may now proceed.

21 MR. KAR SAVUTH:

22 Thank you, Mr. President. My opinion or comment is different
23 from that of the Co-Prosecutor. To me, I believe that the appeal
24 hearing is very vital to the Cambodian people and the world that
25 we are now finding, we are now serving justice for both the

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1 accused and the victims, and that it is not really a big deal
2 that time will be wasted, because we should not be too stingy to
3 time allocation when it comes to this very important moment.

4 Thank you very much.

5 MR. PRESIDENT:

6 Ms. Silke, you may proceed.

7 MS. STUDZINSKY:

8 Thank you very much. I would like to respond to Judge
9 Klonowaiscka-Milart, and we have already considered if this could
10 be a possibility to put general issues together that only one
11 group elaborates on these issues, but the problem, what I see, is
12 what we prepared already, this is very much related to our
13 individual clients, and there the situation is, I would say for
14 each of them, different. And that is to isolate the cases of the
15 individual clients from the reasons of the rejections that seems
16 to me very difficult if not impossible, and perhaps
17 understandable for those who have read the appeal submissions, if
18 they follow parallel, but I think for the public impossible to
19 submit in this manner.

20 And therefore I would respectfully request and uphold our
21 request, which is really modest, I think, elaborating on complex
22 and, for the first time in such kind of courts, the matter or
23 reparation, where we have no precedent, and this is a unique
24 court in this regard. And I think also for the international
25 community it would be good to have, also in public, a discussion

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1 on this and not to restrict too much the parties. And as I see
2 all parties have modest requests for additional time, and
3 therefore I respectfully would ask to grant us 15 more minutes.

4 Thank you.

5 (Deliberation between Judges)

6 MR. PRESIDENT:

7 Would you wish to add any further comments concerning the
8 scheduling of the hearing? Counsel, you may proceed.

9 MR. KANG RITHEARY:

10 I agree with the scheduling, but I would like to make comment
11 concerning the points that we should not raise the same issues.
12 While accepting that it is a good idea that repetitious matters
13 should not be raised, but I believe that some repetitious issues
14 are sometimes important as well, because they are important to be
15 raised again with the supporting arguments. There are some case
16 laws and jurisprudence that need to be readdressed concerning the
17 application of customary law, and for me, we have already stopped
18 using the customary law norms, but our learned colleagues seem to
19 be in favour of resorting to using these applications.

20 But I would not like to really raise this now, I will wait until
21 the appeal hearing. However, may I indicate again that we should
22 not be so unkind to time allocation. Please be more generous to
23 this, because it is the opportunity to really find justice for
24 the victims and the accused, and that we do not see that saving
25 such time would make any benefit to them all. Thank you.

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1 [9.46.15]

2 MR. PRESIDENT:

3 I can see that there is no further comments concerning the
4 scheduling of the hearing, and to address the responses and the
5 suggestions made by parties we may now retire to the deliberation
6 room for ten minutes, and we will resume the session afterwards.

7 Thank you.

8 (Judges exit courtroom)

9 (Court adjourns from 946H to 1022H)

10 (Judges enter courtroom)

11 MR. PRESIDENT:

12 We are now back in session.

13 The Supreme Court Chamber has just deliberated the request by the
14 Co-Prosecutors, the counsel for civil parties group one, two and
15 three, and the requests by the defence team. For the first day
16 of the hearing, the defence team is granted an additional 20
17 minutes. So again, 20 additional minutes for the defence team,
18 for day one, on the personal jurisdiction, and ten minutes
19 additional time for the civil party. And as requested by the
20 Co-Prosecutors, an additional 15 minutes is granted. For civil
21 parties group two and three, each shall be granted an additional
22 15 minutes.

23 Also in regards to the scheduling of the hearing, the Chamber
24 would inquire from the defence team for day one, there is one
25 issue regarding the time allocation from 9.20 to 9.25 for the

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1 accused. And then later on, the response from the accused is
2 allocated for 30 minutes. And we would like to inquire whether
3 the accused wishes to make his statement as allocated in the
4 Scheduling Order, this is optional for the accused. If the
5 accused does not wish to make a statement, he's not compelled to
6 do so.

7 So please give us your understanding on this issue.

8 MR. KANG RITHEARY:

9 Through our direct communication with our client, Mr. Kaing Guek
10 Eav alias Duch, it is likely that he will take that time to make
11 his statement as allocated by the Supreme Court Chamber.
12 However, it is dependent on him whether he will require
13 additional time or not.

14 MR. PRESIDENT:

15 Actually, the Bench have discussed extensively on the time
16 allocation, and of course we would like to provide additional
17 time, but then we also have to consider other parties as well.
18 We cannot extend the hearing time to 5 pm each day. And thank
19 you for your clarification.

20 We can now move to the next item of the agenda, that is the third
21 item, and it is in regards to the formalities of the appeal
22 hearing, and point a is the regulation, and b timekeeping, and
23 three, the seats for the civil parties, and then number four is
24 the presentation by the ITU. And I would like to open up the
25 floor for discussion on this item. Thank you.

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1 Regarding the regulations of the hearing, we have drafted the
2 regulations already that need to be enforced during the hearing,
3 and I believe our legal officers already sent you a copy of the
4 regulations that we drafted.

5 In general the regulations for the hearing is almost similar to
6 the ones adopted by the Trial Chamber. However, for the first
7 point, for individuals who would like to participate, who needs
8 to be participated in the hearing shall arrive at or before 8.30.
9 The Judges of the Supreme Court Chamber discussed this issue
10 yesterday, and that is the agreed time for the parties to arrive
11 in the Chamber.

12 I think to make it clear I would like to read the regulations.
13 Number two. People who need to be in the courtroom shall appear
14 and dress properly and all the recording equipments, video or
15 photograph, is prohibited except authorised by the Chamber.

16 Four, no smoking is allowed, no food or water is allowed. Five,
17 no weapon of any kinds is allowed except authorised by the
18 Chamber for the security officers.

19 Six, no mobile phone is allowed, and no recording by those mobile
20 phones is allowed. Seven, no unnecessary moving from one seat to
21 another. Number eight, no applause is allowed, or making noise
22 to disrupt the proceeding. Number nine, no walking freely within
23 the courtroom during the proceeding. Enter into the courtroom is
24 checked and allowed by the security officer. Number ten,
25 children under 16 years or age are not allowed. Children from 16

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1 to 18 years of age are allowed if they are accompanied by their
2 parents, and if they are to be participated as civil parties or
3 witnesses.

4 Anyone who violates the regulations shall be disciplined by the
5 Supreme Court Chamber according to the Internal Rules of the ECCC
6 and the regulations and law of the Kingdom of Cambodia. That is
7 the summary of the regulations totaling 11 main points. And we
8 open the floor now for any comments or feedback. I observe there
9 is no comment on these draft regulations. Let me now approve on
10 it.

11 [10.31.44]

12 We move to the (indistinct) item, that is on the timekeeping.
13 Regarding timekeeping, it is done by the legal officer, and I
14 would like Mr. Chris to make a brief presentation on the issue of
15 timekeeping.

16 MR. RYAN:

17 Thank you, Mr. President, good morning. What we, the greffiers,
18 can do from our position is to communicate using chat software
19 that the parties can log into, and we can communicate using that
20 software, that your time, for example, you have five minutes
21 left, or one minute left. That's one thing we can do.

22 What we can also do is we can hold up a sign indicating the
23 number of minutes left. We will also ask for your cooperation if
24 someone from your teams can monitor the time allocated, and can
25 inform the speaker that his or her time is near to expiration or

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1 has expired. Now, at this point, we're open to feedback on that,
2 so if you have any suggestions we're all ears.

3 And on the issue of the chat software, if you arrive at 8.30 on
4 Monday we will assist you with logging in to the software, and to
5 show you quickly how to use it.

6 [10.34.20]

7 MR. PRESIDENT:

8 The international Co-Prosecutor, you may proceed.

9 MR CAYLEY:

10 Thank you, Mr. President. Just an observation on what's being
11 proposed in respect of timekeeping. I do think -- I certainly
12 think that self-regulation is what I'm used to, taking my watch,
13 putting it on the podium next to me. I think the chat software
14 is a very good idea, and it's something that's very helpful. I
15 do think that sort of holding up a sign, you know, ten minutes
16 remaining, five minutes remaining, is perhaps not appropriate in
17 a courtroom. So I think it's better done through colleagues
18 actually assisting each other through, perhaps, the chat
19 software, through self-regulation. But I would respectfully
20 suggest that holding up a sign in a courtroom is perhaps not
21 appropriate, particularly when we have members of the public
22 watching us.

23 MR. PRESIDENT:

24 Yesterday the official working on the computer software made a
25 presentation. I think there is also an alert on the screen for

22

1 the time allocated to you when the time is almost expired, then
2 the greffier can type in your name and it shall appear on your
3 screen how many minutes remaining. And this issue is not alerted
4 to the public, and I believe it can be done without any
5 interruption or interference to the proceedings.

6 If we have a clock in front of you, that would be ideal so you
7 can regulate yourself to the time allocated to you during the
8 presentation.

9 [10.36.40]

10 JUDGE NOGUCHI:

11 Yes, I'd just like to request the parties co-operation in keeping
12 your presentation within your allocated time. The President
13 announced partial grant of your request for time extension. You
14 know that now we have put many things in one day to the full
15 extent, 5 pm is latest possible for hours for the staff to be
16 working for the Chamber. So obviously if you look at this
17 schedule, if your presentation goes beyond your allocated time,
18 it means that you are killing time allocated for other parties.
19 So I would request you to exercise your professional skills in
20 keeping your presentation in allocated time. I'm not sure if
21 this special software, Lotus SameTime is fully dependable for
22 everybody, because some of you may not simply be used to work on
23 that. And I observe that if I am not touching this computer for
24 15 minutes, it's automatically log off, so maybe person who is
25 speaking cannot address this computer, and his screen is off. So

23

1 I note the comments from the international Co-Prosecutor, and the
2 Chamber would pay due respect not to embarrass the speaker, like
3 flagging like this, you are running out of time. We don't do
4 that.

5 But sometime we may take more modest approach to just, for
6 example, slide the slip, very in a quiet way just to remind that
7 you are running out of time, etcetera. So all of this is just to
8 maintain that everybody is given enough opportunities which the
9 Scheduling Order expects, once you extend your time it will mean
10 that you are killing others' time. Thank you very much.

11 MR. PRESIDENT:

12 Ms. Studzinsky, you may proceed.

13 [10.40.15]

14 MS. STUDZINSKY:

15 Thank you. If this is correct, what you just said, that this
16 software is linked to Lotus, then I would like to inform you that
17 all the civil party lawyers who are not employed with the court
18 have no UN, and therefore no Lotus access. So I think I would
19 not need it, or we would not need it, we can control ourselves,
20 but I think if there is no other possibility to install it
21 without Lotus, then we can't make use of this system. Thank you.

22 MR. RYAN:

23 My understanding from ICT is that the Lotus SameTime software can
24 be installed and used without having the Lotus email program.

25 However, if your choice is not to use the software, then we do

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24

1 not need to install it.

2 MR. PRESIDENT:

3 Thank you for all your comments. We hope everyone strives to
4 stick to the time allocation, that's on professionalism of our
5 profession for the proceedings. Let me now move to the other
6 sub-item, that is the seating for the civil parties. And I would
7 like Mr. Chris, again, to make a presentation regarding the seats
8 reserved for the civil parties during the appeal hearing.

9 MR. RYAN:

10 Thank you, Mr. President. The Chamber has a document indicating
11 which civil parties would like to attend on the three days. For
12 March 28th, we have eight civil parties would like to attend, on
13 March 29 the same number, and also the same number for March 30,
14 Wednesday. So the purpose of this agenda item is for the lawyers
15 to please confirm that.

16 [10.43.15]

17 MR. PRESIDENT:

18 Ms. Studzinsky, you may proceed.

19 MS. STUDZINSKY:

20 Yes, thank you. I can confirm that for each day of the hearings,
21 eight civil parties will be in the courtroom. There was,
22 yesterday, a change of the names, but I don't know if you have
23 the last updated version, which is from yesterday, maybe
24 afternoon or so. But this concerns not the number, only the
25 names, there were some changes. But I think I can inform you

25

1 about the names if this is necessary. No problem. Thank you.

2 MR. PRESIDENT:

3 Regarding the seating for the civil parties, we would like the
4 lawyers for the civil parties to make a clear confirmation as
5 which civil parties and how many shall attend on each day, so
6 that our legal officer can designate the seating and for the
7 record keeping. If there is no further issues regarding the
8 seating of the civil parties, let me now move on to another
9 sub-item, that is the presentation by the ITU unit (sic).

10 MR. KORM CHANMONY:

11 Good morning, Mr. President, good morning Your Honours, good
12 morning everyone. To date, ITU has endeavoured to provide
13 translation and interpretation to all parties to meet their
14 request. I would like to make a brief presentation regarding the
15 translation, and for the interpretation service, Ms. Susan Vo
16 will make a brief presentation after my conclusion.

17 [10.45.45]

18 For translation, ITU provides priority to case 001, and for
19 urgent additional requests for documents to be translated for
20 case 001 we would seek your cooperation from all parties that
21 they need to inform us in a timely manner, so that we can
22 allocate translators to do those requests.

23 Due to the size of the request for translations, ITU has sought
24 various other mechanisms to fulfill their demands. For instance,
25 the mechanism to hire short-term contractors or to outsource

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1 certain documents. For the outsource of translations, they have
2 been revised by our national and international revisers before
3 they are placed in the case file. And now for the interpretation
4 service I would like to give the floor to my colleague Ms. Susan
5 Vo.

6 [10.47.15]

7 MS. VO:

8 I beg your pardon. Good morning, Mr. President, good morning,
9 Your Honours. Ladies and gentlemen, my name is Susan Vo, I am an
10 interpreter with the Interpretation and Translation Unit, and I
11 appear today on behalf of Ms. Michelle Keating who is our senior
12 coordinator of the ITU. As requested, I am going to make a brief
13 presentation about the provision of interpretation services at
14 next week's hearings. We will be prepared to answer any
15 questions either on the interpretation services or translation
16 afterwards.

17 To begin, similar to the hearings of the trial for case file
18 number 1, the ITU will provide simultaneous interpretation into
19 and from three languages, French, English and Khmer. However,
20 there is one noteworthy difference this time. It is that our ten
21 interpreters, working in the booths that you see behind you at
22 the back of the public gallery, will be able to provide direct
23 and simultaneous interpretation in five language combinations,
24 that is to say, English and Khmer, Khmer English, French English,
25 English and French, and this time French into Khmer -- Khmer into

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1 French, rather, is going to be provided through relay.
2 What this means is that what is originally spoken in Khmer will
3 have to be firstly interpreted from Khmer into English, and then
4 English into French. Before I address some considerations that I
5 am sure parties have already been reminded of, to facilitate both
6 relay and simultaneous interpretation, I will also draw your
7 attention to another component of our courtroom service, which is
8 the liaison interpreter, who is at the disposal of the Bench for
9 quick consultations.
10 [10.49.20]
11 Obviously, if the Supreme Court Chamber wished to withdraw and
12 deliberate further, the Bench would withdraw to another room, and
13 we would ask one of our interpreters in the booths to come and
14 provide that level of service.
15 Our first consideration is something that is certainly oft
16 repeated. That is, we respectfully remind all parties to speak
17 slowly. This is for the sake of complete and accurate
18 interpretation. What this means is observing a deliberate yet
19 natural pause at the end of sentences, or at logical points in
20 your comments. We ask that you wait until the interpreter either
21 doing simultaneous or relay has finished speaking, and that you
22 mark your pause sufficiently so that the interpreter has time to
23 catch up. Now, if you are a particularly fast speaker, we kindly
24 ask you to be particularly mindful of taking longer pauses.
25 Now, you will note that interpretation into any language is often

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1 longer than the original. When someone stops speaking, the
2 interpreter will continue. Especially in the case of relay
3 interpretation of Khmer into French, the words are interpreted
4 from Khmer into English, and then English into French, and the
5 French speaker will be in a position to have to wait for as long
6 as ten to 30 seconds before they are in a position to respond.
7 And this makes the issue of marking a sufficient pause especially
8 important.

9 If speed does become an issue for the interpreter, this will be
10 communicated. It can also be notified either through the court
11 officers, or by the Honourable President of the Chamber.

12 [10.51.30]

13 This takes me to my second and practical issue, that is, only one
14 speaker can be interpreted at a time. Now, you will surely have
15 already noticed that interpreters identify who the speaker is,
16 and when there is a change of speakers, especially if it is not
17 obvious. For example, when a Judge speaks in Khmer, and hands
18 the floor over to Madame Co-Prosecutor, who continues to speak in
19 Khmer, the interpreter will identify that there has been a
20 change. This is for the ease of listeners, and for the ease of
21 participants, but more importantly, it is for the purpose of
22 recording the transcripts, so that the spoken words are
23 attributed to the right person.

24 Therefore, if two people are either a, speaking at the same time,
25 b, choosing to interrupt each other, or c, speaking at an

1 excessively rapid pace, or if there is an overlapping exchange of
2 comments, the interpreter will have to turn off the microphone.
3 Clearly, it is impossible to interpret two people at the same
4 time.
5 I will briefly touch upon my third point, which is the use of
6 video. If participants wish to show video footage during the
7 hearing, with the expectation that interpreters will provide
8 simultaneous translation of the audio, the position of the ITU is
9 as follows. We are prepared to interpret the video if, and on
10 condition, we are able to view the video the day before.
11 Therefore you can provide the video either through DVD or a link,
12 so that firstly, we can make sure that the sound is clear enough;
13 secondly, we can make sure that the contents can, indeed, be
14 translated, and thirdly, we'll be able to identify any technical
15 difficulties such as parasite sounds or very fast speaking paces.
16 [10.53.35]
17 Now if the interpreters have not been given advance one day
18 notice for any reason, and if we are taken by surprise, we may be
19 in a position to have to ask for an adjournment during the
20 hearing in order to view and to prepare.
21 Since interpreters take their cues from speakers, from all of the
22 participants here, we cannot be expected to read out just
23 anything. Now, in all circumstances, the party that produces a
24 document, or the greffiers who read out one document in one
25 particular language will be translated by the interpreter in the

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1 other official languages of this Court. However, related to this
2 point, allow me to remind all parties that if you are going to
3 read out a document, please begin by citing the document number,
4 followed by the page number, and please make sure that all ERNs
5 are read out very slowly for the sake of accuracy.

6 [10.54.50]

7 The fourth and final issue I wish to touch upon is the importance
8 of preparation in the work of our interpreters. Interpreters
9 prepare very diligently by reviewing all related documents in the
10 case file and accessible through Zylab. However, if participants
11 are able to provide speaking notes in advance, our interpreters
12 can focus their preparation on the hearing specifically. This
13 will further heighten the quality of service. Therefore the ITU
14 is strongly encouraging all parties to provide material documents
15 relevant to the hearing, and especially speaking notes.

16 Let me reassure you once again that these documents will be dealt
17 with in strict confidentiality, as always. Your material can be
18 handed over in hard copy, which we will be happy to return
19 afterwards, or electronically. We ask that you provide any
20 speaking notes, even in bullet form or telegraphic form by the
21 25th of March, that is by this Friday, and we shall of course
22 await any updated version next week.

23 Let me emphasize that receiving documents on this type of ongoing
24 basis is far more preferable than receiving nothing until the
25 last minute. You can send all updated material electronically as

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1 well, either to our team leader, Mr. Nareth Muong, or to Michelle
2 Keating, or to myself. If you put a time and date stamp on your
3 documents, our interpreters will always know what is the latest
4 version.

5 [10.56.45]

6 I will simply conclude by saying, and insisting on the fact that,
7 the more time we have to prepare, the better our interpretation
8 will be. So that, Mr. President, concludes my presentation and
9 we are open to any of your questions.

10 MR. PRESIDENT:

11 Thank you, Ms. Vo, for the presentation. I would like now to
12 hear from the parties to the proceedings whether they would wish
13 to have any questions. Counsel Kar Savuth, you may now proceed.

14 MR. KAR SAVUTH:

15 Mr. President, and colleagues. As a counsel for the accused
16 person, I have no other options but to respect or follow the
17 rules and instructions, but the mission to find justice for the
18 accused has been hamstrung by time allocations, because normally
19 the defence counsel, or parties to the proceeding, are advised to
20 really speak during the allotted time, but the ITU representative
21 asked us to speak slowly, and pause at some points, for example,
22 like 20 to 30 seconds, if I'm not mistaken.

23 And this is really difficult. And that when I speak in Khmer
24 then my statement will be rendered into English and then the
25 French interpreter will take the relay from English into French,

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1 which is very time consuming. So I think by this it is really
2 difficult. And as the accused wishes, he wants his counsel to
3 speak all the best he could do, and in a more transparent manner,
4 and we hope that through interpretation this message will be well
5 rendered, and I would like the Chamber to also take this
6 seriously.

7 MR. PRESIDENT:

8 Counsel Kang Ritheary, you may proceed.

9 MR. KANG RITHEARY:

10 Thank you, Mr. President. I have fully understood the ITU
11 situation. We observe that there have been doing their best.
12 Our work is also very difficult as well, as a person who tend to
13 speak fast myself, and our work for the defence counsel is
14 voluminous. I mean, we have a lot of points to raise. Several
15 articles of the rules and codes of Cambodian law will be cited,
16 and at the same time as ordered by the Supreme Court Chamber the
17 defence counsel will also need to address to the response by the
18 Co-Prosecutors. And we, for that reason, may not be able to
19 speak rather slowly because of the limit time allocated.
20 When it comes to the access to information, may I suggest that
21 these notes, for example, the speaking notes by the defence
22 counsel be put into the case file as documents, part of the case
23 file, so that interpreters can also access to them, but so far as
24 I have already been notified, such documents should not be filed
25 in the case file. And I think that this is really a dilemma

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1 already.

2 We know that -- we would like to help the ITU, and that we would
3 like to submit the speaking notes so that the interpreters can
4 make use of them during the hearing, the upcoming hearing, if the
5 President allows.

6 MR. PRESIDENT:

7 If I'm not mistaken, what you wish to submit during the hearing
8 on the 28th, and that you already prepared your notes, and you
9 would like to file it before the Chamber. Is that correct?

10 [11.02.40]

11 Counsel for the civil party, you may proceed.

12 MS. RABESANDRATANA:

13 I would like to make a few remarks, in light of the experience we
14 acquired in the first case. I must say that we used three
15 languages in this courtroom, English, French and Khmer, and there
16 is no direct translation from Khmer into French. During the
17 first case, that was something that complicated matters for us,
18 because on several occasions we felt the need to request
19 corrigendum or clarifications of the interpretation, because
20 there were subtleties of meaning that were lost. Particularly in
21 interpretation into English and into French.

22 With all due respect, I would like to point out to the Chamber
23 that pauses are absolutely necessary, particularly when questions
24 are being taken, because when the interpretation of responses
25 arrive in French after relay in English, we may often find

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1 ourselves dealing with this next question without having had the
2 French translation of the previous question. So I am quite aware
3 of the time constraints raised by the defence.

4 [11.04.45]

5 But it is absolutely necessary to observe a pause between each
6 question and the next, in order that interpretation into French
7 is complete, and that we should refrain from speaking when the
8 interpretation has not ended. And this remark arises from my
9 experience in case number 1, and we have had to interrupt
10 proceedings because of this particular problem.

11 MR. PRESIDENT:

12 Direct interpretation from Khmer into French is of course a
13 matter of constraint, because the interpreter have not been able
14 to be located, that's why in the hearings normally the
15 interpretation will have to be done from English into Khmer and
16 not directly from Khmer into French, but Khmer into English and
17 then the relay from English into French. And I understand that
18 some people have the habits of speaking quickly, or fast, and
19 when you ask them to speak slowly, then it is rather frustrating,
20 because of their own nature.

21 However, may I humbly suggest that we change our habit a little
22 bit. I do admit that I myself is a person who tend to speak
23 rather fast, like the President of the Trial Chamber. However, I
24 will do my best to make sure that I speak rather slowly, and I
25 think, little by little, we can get used to this habit.

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1 [11.07.05]

2 And I know that now I speak rather slowly, because I have already
3 changed the way I speak, but I am feeling difficult as well,
4 because speaking rather slowly makes me thinking rather slowly,
5 that's why it sometimes hampers my speech. But again, we should
6 really do our best so that the quality of interpretation is
7 heightened.

8 And the observation of some pauses would be very beneficial to
9 the work of the interpreters, and I of course would like to
10 apologise that I may interrupt you every now and then if I got
11 any notification from the interpreters that you are speaking
12 rather fast, and I think you should bear with us that it is done
13 in good faith and not really with ill-intention when we interrupt
14 you to speak rather slowly.

15 Would you wish to make any other comments?

16 (Deliberation between Judges)

17 MR. PRESIDENT:

18 Judge Milart, you may now proceed.

19 JUDGE KLONOWIECKA-MILART:

20 As we discussed in the Chamber, while we do not expect of course
21 any further submissions in writing from the parties, we would
22 welcome if the parties so wish the annexures to the appellate
23 hearing record, if the parties would wish to file the summary,
24 bullet points or even full text of their speeches, as annexures
25 to the appellate hearing record, we would accept those.

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1 [11.09.20]

2 And the parties may want to consider whether to make those
3 available to the translation beforehand, to facilitate the proper
4 conveyance of their messages. Thank you.

5 MR. PRESIDENT:

6 Mr. Cayley, you may proceed.

7 MR. CAYLEY:

8 Thank you, Mr. President. The subject matter of the appeal next
9 week will inevitably involve reference to jurisprudence from
10 international courts around the world, and the importance, I
11 think, of ensuring that counsel, when they are referring to case
12 law from a particular tribunal, bearing in mind, as we've already
13 discussed, we're being translated, each of us, into two other
14 languages, and sometimes through relay, may I make the suggestion
15 that when a case is referred to from a particular court, so that
16 Your Honours, when reviewing the transcript later and identify
17 what is being referred to, that counsel actually spell the name
18 of the particular case, and also give a clear reference to
19 paragraph number, page number of the particular judgment, and the
20 date of that judgment, the year and month that judgment was
21 heard.

22 I think even if counsel do not provide speaking notes as an
23 annex, that will be extremely helpful. Certainly, from my
24 background and jurisdiction, the difficulty I have is that we're
25 not trained to essentially speak from a prepared text. We do it

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1 more -- it's more on your feet, and relying on notes that perhaps
2 wouldn't be of much use to the courtroom, but certainly I think
3 you will find, in the terms of my argument, that the transcript
4 will be very clear.

5 But if I can certainly make the suggestion that counsel identify
6 very clearly the cases that they're referring to, and the
7 references, so that Your Honours can find and locate those cases
8 after the hearing. Thank you.

9 JUDGE NOGUCHI:

10 Concerning the comments by the international Co-Prosecutor, I'm
11 wondering if the same goal is achieved by referring to the number
12 of footnotes in your previous submissions if you already
13 mentioned international jurisprudence. I guess in most cases
14 what you would refer to next week has been already mentioned in
15 your previous submissions, and as long as this applies, perhaps
16 you could simply mention the title of your document, appeal brief
17 etcetera, and footnote number, instead of spelling out in full in
18 details.

19 Do you think it works?

20 MR. CAYLEY:

21 I think it could work to a degree, Your Honour. I can certainly
22 try and do that. But recall that the Chambers put certain
23 questions to the parties which may actually give rise to,
24 perhaps, cases that may be linked to those that are referred to
25 in the documents, but they may not have been directly referred

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1 to. But certainly, to ease reference, I can look through our
2 submissions, our written submissions, and try and find references
3 so that I can do both.

4 Because of the time constraints, anyway, I can reassure you,
5 Judge Noguchi, that I will be keeping these kinds of references
6 to an absolute minimum. Thank you.

7 [11.14.25]

8 MR. PRESIDENT:

9 Since we do not have any other comments in relation to ITU, we
10 may proceed to next item, item number four, the request for
11 additional evidence, and the parties who are of these issues are
12 the defence counsel and the civil parties.

13 The Supreme Court Chamber has already discussed in relation to
14 the additional request for evidence, but our decision has not
15 been finalised, and we would like to notify all the parties that
16 within this week the decision on the request for additional
17 evidence will be rendered. So we promise that it will be
18 rendered within this week. If you would like to have any
19 questions or comments regarding this additional evidence, you may
20 do it now.

21 Mr. Counsel, Kang Ritheary, thank you.

22 MR. KANG RITHEARY:

23 Thank you, Mr. President. I concur with what you have indicated
24 concerning the request for additional evidence. The defence
25 counsel have submitted two pieces of evidence before the Supreme

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1 Court Chamber for review. These pieces of evidence are very
2 important because they are exculpatory evidence that have been
3 failed to submit by the Co-Investigating Judges and
4 Co-Prosecutors.

5 [11.16.25]

6 And I would like to remind that this new evidence provision can
7 be referred to Article 539 of our code, and we would like to
8 request also that it is, we would like the notify that it is
9 really the responsibility of the Co-Prosecutor to request for, or
10 to respond to this motion rather than by the civil parties.

11 MR. PRESIDENT:

12 Mrs. Chea Leang, you may now proceed.

13 MS. CHEA LEANG:

14 Thank you, Mr. President. Good morning again. What I have noted
15 recently that the President indicated about the decision of the
16 Supreme Court Chamber on the request for additional evidence. I
17 have exchanged with my colleague, and we anticipated that ideas
18 would be raised during this hearing on this particular matter,
19 however, since the Supreme Court Chamber indicated that the
20 decision on this would be made later, the Co-Prosecutors would
21 like to submit our written submission in relation to this matter
22 in the very near future, in particular during the appeal hearing,
23 because we would wish to explain, or to give our insight in
24 relation to the request for this additional evidence by the
25 defence counsel. I thank you very much.

40

1 [11.18.20]

2 MR. PRESIDENT:

3 Generally, I have observed that when a party submits a request,
4 such a request could have been submitted, or notified, or sent to
5 other parties immediately. For that reason, we believe that the
6 parties could have already been informed, and that they could
7 have time to respond to the request, and we would like to ask
8 that parties take this opportunity to submit whatever your
9 submission would be before us now, rather than later.

10 MS. CHEA LEANG:

11 May we know when exactly your decision will be ruled on,
12 concerning the request for additional evidence?

13 MR. PRESIDENT:

14 As I already indicated there are requests from the civil parties
15 and the defence counsel regarding the request for additional
16 evidence. Such a decision will be rendered in the form of order
17 whether evidence will be admissible or rejected, and this
18 decision will be made before the 28th of March, I reassure you.
19 And for that reason, if you would wish to submit any submission
20 then you should do so before that date.

21 Counsel Studzinsky, you may proceed.

22 MS. STUDZINSKY:

23 Yes, thank you very much. I would like to draw your attention to
24 the document F20, which is the order scheduling the appeal
25 hearing, and which states under item 5, for the civil parties,

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1 under a, "the groups of civil parties requesting the submission
2 of additional evidence are invited to explain why the additional
3 evidence was not available at trial." That is quoted from the
4 order. And according to this order, which was notified, or maybe
5 -- at least, is from 4th of March, according to this order, we
6 prepared our submission, or are in the process of preparing our
7 oral submissions.

8 And of course we also want to explain, or to follow the
9 invitation by the Chamber. Therefore, when I now understand that
10 you decide already by the end of this week on the admissibility,
11 which is related, of course, if the evidence was available at
12 trial or not, and then I'm wondering how this is consistent,
13 then, with the invitation in the order.

14 [11.21.35]

15 And finally my request, because we try to abide, of course, by
16 the order, and therefore I respectfully request to follow the
17 order, to listen what we would respond, and then afterwards to
18 take a decision. Thank you very much.

19 JUDGE NOGUCHI:

20 On this issue, the Chamber had deliberations yesterday, and, yes,
21 as pointed out, we originally invited civil party to clarify on
22 the additional evidence, but after we issued this Scheduling
23 Order on 4th of March, we have received detailed explanation by
24 way of written submission, and I think now the Chamber is fully
25 informed on the intention and necessity of additional submission.

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1 This is one sort of change of situation, and what we really
2 thought about is the necessity for the parties to know in advance
3 whether your additional submission of new evidence is admitted,
4 or granted, or not. If you don't know it beforehand, you may
5 need to spend a lot of time in your limited time to justify the
6 new evidence what you are trying to submit.
7 If you know the decision of the Chamber in advance, that time
8 could be saved. Also, if the Chamber could decide in advance, we
9 would not hear any unnecessary arguments on the evidence that
10 will not be rejected, for example. So now that we have more a
11 difficult schedule to accommodate the extension of time from the
12 parties, to extend your speaking time. The Chamber hopes that
13 the decision rendered by the Chamber before the start of hearings
14 next week on new evidence will help to have ample time on the
15 substance, rather than to clarify the necessity of new evidence.
16 So the Chamber considers all the pros and cons of the timing of
17 this decision, and has decided that the benefit of issuing the
18 decision on new evidence overrides this advantage. That's what
19 the President tried to mean.

20 [11.25.50]

21 MS. STUDZINSKY:

22 Thank you, Mr. President. I would like to inform you that only
23 group 1 and group 3 of the civil parties were invited by the
24 Chamber, or through the greffiers, to make or submit their
25 request that additional evidence is admitted. We ask, then, if

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1 there is a mistake, if we, group 2, are also invited and
2 requested to submit such kinds of explanations, and I got the
3 response, I can look for the emails if this is necessary, I got
4 the response, no, at that time after proceedings it is not, we
5 are not invited, group 2, but the Chamber will address, according
6 to the Order, will address and ask us, or expect submissions on
7 this point during the hearing.

8 And this happened in the last two weeks, this exchange of emails,
9 and therefore we have now very, on the last days, or eve, nearly,
10 of the hearing, and for group 2 at least, it is a surprise to
11 hear now that we are finally today, it's Wednesday, I can say
12 excluded from this opportunity that we were granted through the
13 Order, and I try to clarify if this continues, and this was
14 confirmed.

15 Although I understand that advantage that it could have to know
16 in advance, before the hearing starts, if evidence is declared
17 admissible or not, or to save time, or to not elaborate on such
18 kind of evidence, but however, in our particular case, I would
19 really like to request the Chamber to consider that we were
20 excluded from a submission in this regard, although other groups
21 were invited to do so. Thank you very much.

22 JUDGE KLONOWIECKA-MILART:

23 With Mr. President's permission I will reply to this submission
24 by counsel Studzinsky. Madam Studzinsky, I have to admit that we
25 confused the parties to some extent within the issuance of the

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1 Scheduling Order and then trying to decide earlier than this, and
2 please excuse any confusion on our part. And how about if we
3 address your issue in such way, that in the case -- not to put
4 you in disadvantage compared with other civil parties, that in
5 case our decision be negative, we will wait until the hearing.
6 In case we can grant your request, based on the written
7 submissions, we will proceed. Thank you.

8 MS. STUDZINSKY:

9 I think that is fine for us, as solution. Thank you very much.

10 MR. PRESIDENT:

11 You may proceed.

12 MS. MOCH SOVANNARY:

13 Thank you, Mr. President. I would like to put a request to the
14 Supreme Court Chamber for the submission of new evidence in the
15 cases where the new evidence is granted or accepted by the
16 Supreme Court Chamber. Due to the importance of informing the
17 public and to facilitate the presentation of new evidence, I
18 would like the Supreme Court Chamber to provide assistance in
19 providing the new evidence through the court officer, so that
20 that public can understand and know about the new evidence. That
21 is all, Mr. President. Thank you.

22 MR. PRESIDENT:

23 Regarding your request to assist you through the court official I
24 don't really understand what you mean. Can you clarify on that
25 issue? What do you want the Supreme Court Chamber to do?

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1 MS. MOCH SOVANNARY:

2 The assistance that we would like to seek from the Chamber
3 through the court officer, for instance, in my group we submitted
4 new documents and photos, for instance, and we would like the
5 court officers to present those documents through the equipment
6 in the room here so that the general public can see the new
7 evidence and material, so they can have a further understanding
8 of the case. And then we can provide explanation to them how
9 important the new evidence is. Thank you.

10 MR. PRESIDENT:

11 You would like our legal officer of the Supreme Court Chamber,
12 that is during the proceeding, to project the new evidence
13 through the equipment here to the general public. Is that what
14 you mean?

15 The defence counsel, you may proceed.

16 MR. KAR SAVUTH:

17 Thank you, Mr. President. Good morning everyone. The President,
18 just then, requested the Co-Prosecutors to submit new evidence as
19 soon as possible. On the defence team, we would like the
20 President to look at subrule 7 of rule 108, the last two
21 paragraphs. In subrule 7, states, other parties dealing with the
22 case can respond within 15 days from the date of the notification
23 of the request.

24 And our party, the defence team, submitted a request on the 25th
25 of February and on the 28th of February 2011, the English version

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1 was submitted to all parties. And for that reason I would like
2 the President to consider, from the date of the notification to
3 the date of the submission, whether it's more than the 15 days
4 period set out in the rule.

5 MR. PRESIDENT:

6 We all have to review the expiration of the deadline for the
7 submission. We received a document for review, it doesn't mean
8 we accept it and then we approved or grant it. And the
9 submission has to be done within the timely manner. If it is
10 submitted beyond the time allocation, then we will also take
11 action on that. So that is in response to your questions and
12 submissions by the defence team and the response from the
13 Co-Prosecutors. Of course the Supreme Court Chamber will review
14 that.

15 You may proceed, the counsel.

16 MS. TY SRINNA:

17 Thank you, Mr. President, good morning everyone. I would like to
18 get a clarification from the President on one issue, if I am
19 mistaken or not. The President just said that the Office of the
20 Co-Prosecutors can submit new additional evidence. Is that the
21 case, or am I mistaken? If that is the case, I would like to put
22 a further question, whether that is only for the Co-Prosecutors
23 or for all the concerned parties who submit additional evidence
24 or documents before the Supreme Court Chamber decides on the new
25 evidence submitted by other parties.

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1 Thank you, Mr. President.

2 MR. PRESIDENT:

3 Could you please identify yourself when you are on your feet, and
4 which civil parties you represent, because we are new here, and
5 so we do not know everyone. We do not know whether you represent
6 civil party group 1 or 2 or 3.

7 MS. TY SRINNA:

8 My apology, Mr. President. My name is Ty Srinna, lawyer for civil
9 party group 1.

10 MR. PRESIDENT:

11 Regarding the request by the Co-Prosecutors, that is in relation
12 to the request by the defence team to submit additional evidence,
13 and the civil parties also would like to request to submit
14 additional evidence. And for that reason, the Co-Prosecutors
15 requested that they haven't yet submitted any new additional
16 evidence in response to the request to submit new evidence by the
17 defence team.

18 And then they would like to submit their response to that request
19 by the defence team to file additional evidence. This does not
20 mean that the Co-Prosecutors submit additional materials, or
21 evidence. So I would like you to be clear on that. And if you
22 are not clear, ask further questions.

23 [11.37.45]

24 MS. TY SRINNA:

25 I am clear on that issue now, thank you, Mr. President.

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1 MR. PRESIDENT:

2 Madam Chea Leang, you may proceed.

3 MS. CHEA LEANG:

4 After my observation of the comments by other parties, I seem to
5 get lost. What I said earlier is based on the agenda in hand. I
6 do not intend to submit any new evidence, but I'd like to make
7 our observation. For example, if the defence team would like to
8 submit five new evidential materials, then we would need to make
9 comments on that, and I would like to wait for the time for the
10 Co-Prosecutors to provide our comment or observation.

11 So I think we need to be clear on that, that we do not intend to
12 put a new request, because what has been said by the defence team
13 was not clear, whether they would like to provide, to submit new
14 additional evidence or not? Because we have already submitted
15 those evidence, and if they would like to provide new additional
16 material, then we need to make our observation on that.

17 [11.39.30]

18 So it is at the discretion of the Supreme Court Chamber to decide
19 on the request but we are obliged to provide our observation on
20 such a request. Thank you.

21 (Deliberation between Judges)

22 MR. PRESIDENT:

23 Mr. Ryan, you may now proceed.

24 [11.41.05]

25 MR. RYAN:

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1 Thank you, Mr. President. So I've been asked to share the dates
2 of when the requests for new evidence were filed and notified.
3 The accused's request for additional evidence which is document
4 F2/2, F2/2. The Khmer was filed on 25 February, but it was not
5 notified until 9 March. I'm sorry, I'm having some feedback
6 here. And the English was filed on 28 of February, and it was
7 notified on 11 March. And pursuant to Rule 108(7), there are 15
8 days to respond to that request, 15 calendar days.
9 The parties will be aware that the Practice Direction revision 6
10 entered into force on March 2nd, but some of the parties did not
11 receive the revision 6 until March 9, so I can inform the Chamber
12 that the Chamber has not yet decided, in this particular case,
13 when the 15 days will begin, whether it's on the date the Khmer
14 was notified or whether the 15 days begins on when the English
15 was notified.
16 [11.43.05]
17 If the Chamber wishes, I can also share the information with
18 respect to the civil party requests.
19 (Deliberation between Judges)
20 MR. RYAN:
21 Mr. President, if I may also add, if the 15 days does begin on
22 March 11, when the English was notified, then the OCP has until
23 March 28 to respond.
24 (Deliberation between Judges)
25 MR. PRESIDENT:

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1 Mr. Kar Savuth, you may proceed.

2 MR. KAR SAVUTH:

3 Mr. President and the Bench, may I request that Mr. President

4 review the Practice Direction adopted recently on article 8.4.

5 If the prosecutors submit any material in relation to the request
6 for additional, request for evidence, then the defence counsel is
7 entitled another five days actually to reply, so we have the five
8 day to reply to the response of the Co-Prosecutor, but I'm afraid
9 that since the hearing is on the 28th, the five day has already
10 been taken for granted.

11 MR. PRESIDENT:

12 We are now discussing with my fellow Judges of the Supreme Court
13 Chamber regarding this timing, and of course the material
14 submissions can be put, and the Supreme Court Chamber Judges will
15 review them. It doesn't mean that they will be admissible, or
16 inadmissible, at the beginning. We need to work on them. And
17 now we would like to hear from the prosecutors when exactly you
18 would like to submit your response regarding the request for
19 additional evidence.

20 MS. CHEA LEANG:

21 I would like to make sure that the submission is expeditious,
22 expeditiously submitted, because we would like to make sure that
23 the Supreme Court Chamber can also take the advantage of our
24 response when deliberating on the decision, and we would like it
25 to be done some time this week, but we have been hamstrung by the

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1 translation of the document into two languages. The materials
2 have already been drafted, and that I wished to even make such
3 comments in relation to the issue here within this hearing, or
4 the meeting, but since the Chamber would like only written
5 submissions, then we will make sure that our notes will be
6 well-drafted into the finalised written forms, but they need to
7 be translated. And of course we reassure you that we will do it
8 in due course.

9 MR. PRESIDENT:

10 I have observed that in the Scheduling Order of the Supreme Court
11 Chamber the hearing shall be held on Monday 28 March, and that
12 date has been definitely set. So to that effect we suggest that
13 the prosecutors now submit their response any time before 28
14 March so that we can really consider them, otherwise we will
15 proceed right away with the hearing, regardless of the submission
16 by the prosecutors.

17 [11.50.15]

18 Since there is no further comments on the additional request for
19 new materials or evidence we may proceed to the other item which
20 is other matters. A, the request to withdraw the protective
21 measure, and another point is about the questions from the
22 Judges. May I also inform that the civil party lawyers group 1
23 made the request to the Supreme Court Chamber to withdraw the
24 protective measure of civil party E2/62. The Supreme Court
25 Chamber Judges have already discussed on this issue, although the

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1 decision has not yet been finalised, and we hope to render
2 decision in conjunction to the decision on the request for
3 additional evidence. If you would wish to make any further
4 comments on this, you may now do so.

5 MR. PRESIDENT:

6 Ms. Chea Leang, you may now proceed.

7 MS. CHEA LEANG:

8 I would like to have a question to the Supreme Court Chamber,
9 because the submission of additional evidence is relevant to the
10 hearing on Monday, so the prosecutors would like to make sure
11 that we can expedite our response to the request for additional
12 evidence as it is important to the appeal hearing on Monday.
13 So we will do our best to make sure that the response is
14 finalised and submitted by Friday, however we also would insist
15 that the Supreme Court Chamber make a decision on this matter as
16 soon as possible, because since the hearing is on Monday, then we
17 would like to hear the decision very soon.

18 JUDGE KLONOWIECKA-MILART:

19 It appears that the time is too short to have the full exchange
20 on the responses, and especially if reply would have been sought
21 by the defence, so perhaps even though we tried to expedite the
22 process it would not be really helpful, and perhaps we'll just
23 wait until Monday and hear oral submissions and decide. If the
24 prosecution insists on filing a response. In this way we may
25 save the translation resources and the time of all of us.

1 (Deliberation between Judges)

2 JUDGE NOGUCHI:

3 Under these circumstances, what the Chamber wishes to suggest is
4 on one hand we appreciate Co-Prosecutors to submit their response
5 as soon as possible, hopefully during Friday, and hopefully
6 during morning time, and we would, the Chamber would make best
7 efforts to quickly examine the submission and decide on the issue
8 during Friday afternoon.

9 However, just to make absolutely sure that all parties are
10 informed on the decision, the Chamber will read out the decision
11 in the beginning of the Monday hearing, so that all the parties
12 will, without doubt, understand the decision on new evidence
13 before your oral presentation starts. If this is acceptable,
14 perhaps we could proceed along these lines.

15 MR. PRESIDENT:

16 Counsel Kang Ritheary.

17 MR. KANG RITHEARY:

18 Thank you, Mr. President, for allowing me to respond to the
19 prosecutors. May I suggest that we end it all here now, although
20 we know that the Office of the Co-Prosecutors have the right to
21 respond to the request for additional evidence by the defence,
22 but they can do so with the risk of infringing our right to
23 reply, the five day given period to the defence counsel will be
24 deprived of if such submission would be submitted on the 28th.
25 So may I request that let's forget this response.

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1 MR. PRESIDENT:

2 The Supreme Court Chamber will take this matter into
3 consideration. Now we may proceed to the next item about the
4 protective measures. The Supreme Court Chamber, as I already
5 indicted, has discussed, and that the decision will be translated
6 and rendered in due course.

7 Regarding the questions by the Supreme Court Chamber Judges, we
8 would like our fellow Judges of the Supreme Court to make any
9 comment concerning this, if you would wish to do so.

10 JUDGE KLONOWIECKA-MILART:

11 In order to accommodate the request for additional time for
12 virtually all the parties, I was thinking that perhaps instead of
13 taking the floor and consuming the parties' time during the
14 question time on the appellate hearing, I could give my questions
15 now, so that the parties may address the relevant parts in their
16 submissions without then engaging into an exchange.

17 And again, apologies if it was not put in the Scheduling Order
18 right away, but it's not that all the issues were as clear --
19 they are still not clear, that's why we have the hearing. But
20 our questions are not clear. Questions from me would be in
21 addition to those in the Scheduling Order.

22 They are already in the Scheduling Order, the accused at the
23 Co-Prosecutors were invited to explore the nexus issue, whether
24 it was a requirement during the temporal jurisdiction of the ECCC
25 to have the nexus between the crimes against humanity, and what

1 we put in the Scheduling Order is an armed conflict. But what we
2 meant, of course, is the nexus to war crimes or crimes against
3 peace. Clearly in relation to the definition of crimes against
4 humanity that is most likely to be considered in this case as
5 resulting from the Nuremberg charter.
6 So nexus not to armed conflict as in war crimes, but nexus to
7 other crimes under the jurisdiction of this Tribunal, as
8 confirmed by the General Assembly as the Nuremberg principles.
9 So with this respect we would like to hear the parties' comments
10 on the nexus issue.
11 Secondly, we invited the accused and the co-prosecutors to
12 explore whether rape was an autonomous crime against humanity
13 during the temporal jurisdiction -- it's already in the
14 Scheduling Order. But I would also like to hear from the parties
15 whether the crime of persecution, or the notion of persecution,
16 was crystallised sufficiently during the temporal jurisdiction of
17 the ECCC.
18 As regards sentencing, we have invited, in the Scheduling Order,
19 the parties to -- especially the Co-Prosecutors -- to elaborate
20 on the lex mitior, on the more favourable law issue, with respect
21 especially to the penal code that entered into force in between
22 the rendering of the judgment of first instance and this hearing.
23 But my question would be especially pertaining to what is
24 mentioned in paragraph 127 of the prosecutors' brief, which is
25 the question of speciality, where the Co-Prosecutors submit that

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1 the ECCC law is *lex specialis*, and as such does not yield to any
2 changes introduced by the penal code. And my question with this
3 respect would be to ask the appellants to demonstrate how the
4 provisions of penal code that pertain to the penalties for crimes
5 against humanity, war crimes and genocide, specifically crimes
6 against humanity, are special compared to the provision on
7 penalty in the ECCC law. In article 39new, how the provisions
8 of the code are special when compared to the provision for seeing
9 penalties in ECCC law.

10 Now two questions regarding the enslavement are as follows.

11 Firstly, the appellants are invited to comment about the apparent
12 discrepancy between the scope of the Closing Order referring
13 enslavement to a group of detainees, and the present appeal.

14 Maybe it's a misunderstanding, but at least I would like a
15 comment from the prosecutors' office how they approach the
16 phrasing of the enslavement charge in the Closing Order.

17 Whether they consider that it is limited to the group of
18 detainees only, or whether it's just an appearance.

19 Also in relation to enslavement I would like to ask the
20 appellants to explain how, on the facts of the case before us,
21 they discern between factual elements of extermination and the
22 factual elements of enslavement. Not in abstract terms of the
23 definition of crimes, but on the facts of the case.

24 So these were the questions for the Co-Prosecutors and the
25 defence for the -- and the defence, so far as they wish to

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1 respond.

2 For the civil parties, I would like to ask specifically to

3 address the question of the appropriate standard of proof, and

4 what legal basis to the civil parties invoke for the standard of

5 proof that they claim should have been applied in the case. And

6 what kind of notice would they expect from the trial court to

7 give them on the same. This is, too, in relation to the impugned

8 decision of the Trial Chamber on the basis that the Trial Chamber

9 applied too high standard of proof when requiring the

10 substantiation of the civil party claims both in respect to their

11 legitimacy as civil plaintiffs and the reparation. So where the

12 basis for the standard of proof, and what kind of notice would

13 the appellants expect of the trial courts to have been given.

14 And last, the appellants from group 2 and 3 are kindly invited to

15 assist this Court in proposing what kind of disposition they

16 would like to have contained in the judgment in case their

17 request be granted. How do they envisage that the disposition of

18 the judgment be phrased in order for it to be lawful and satisfy

19 the request. These are the questions that I would ask in the

20 appellate hearing, but I believe that asking them now in advance

21 will assist everybody and will save the time during the hearing.

22 JUDGE SOM SEREYVUTH:

23 I am in charge of jurisdiction matter with my fellow judge, Judge

24 Jayasinghe. I have a few questions to the parties. First, to

25 the counsel for the defence and the prosecutors and the civil

1 parties.

2 We would like you to enlighten us in relation to the terms of
3 'senior leaders of the DK and those who were most responsible for
4 the crimes', and we would like you to elaborate further whether
5 the definition defined by the Co-Investigating Judges are proper.
6 And the second question, for the defence counsel, we would like
7 you to explain the relevance of the principle of legality in the
8 appeal brief of the defence counsel, for example, paragraph 14,
9 61, 62 and 67, 95 and 100, and the reply of the defence counsel
10 as well.

11 We have another question, question number 3, to the defence
12 counsel. We would like you to explain the relevance of document
13 F.15 paragraph 15. Another question is also for the defence
14 counsel, regarding the relevance of the request of paragraph
15 101(b) of F.14. Thank you very much.

16 JUDGE KLONOWIECKA-MILART:

17 Mr. Cayley and crew, the paragraph of the Closing Order is 135.
18 That deals with enslavement. Thank you.

19 MR. PRESIDENT:

20 Counsel Moch Sovannary, you may proceed.

21 MS. MOCH SOVANNARY:

22 Thank you, Mr. President, we would like Judge Milart to confirm
23 the final question put to the civil party group, please.

24 JUDGE KLONOWIECKA-MILART:

25 Groups 2 and 3 requested different means of reparation. Group 2

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1 said, in their appellate brief, that it's on the decision maker
2 to decide the final form of the reparation in a creative way.
3 And we are asking the appellants to be more precise and to give
4 us - to narrow down their requests to a specific wording that
5 they would like to see included in the appellate judgment, in the
6 event their request were granted.

7 MR. PRESIDENT:

8 I observe that there is no further comments. Mr. Hong Kimsuon,
9 you may proceed, and followed by Mr. Cayley.

10 MR. HONG KIMSUON:

11 Thank you, Mr. President. My name is Hong Kimsuon, I am the
12 counsel for civil party group 2 and 4. Since civil party group 4
13 has not been involved in this appeal against the judgment I am
14 now talking on behalf of civil party group 2.

15 In practice, for example as a party to the proceeding, and that
16 when a judgment of the Trial Chamber is appealed, parties in the
17 proceedings, although have not filed an appeal against such
18 judgment shall remain the parties to the proceeding until the
19 final judgment is rendered. To that effect, may I request, and
20 of course I obtained this request from the Victims Support
21 Section who obtained this note from the Public Affairs Section.
22 I have read the email from the Victims Support Section and
23 learned that our request to allocate some seats for civil parties
24 group 4 who would like to attend the appeal hearing to observe
25 the proceedings, although the group have not filed an appeal

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1 against the judgment of the Trial Chamber. So our observation
2 through the email is that such civil parties will not be allowed
3 to be seated in the courtroom during that appeal hearing.

4 So I can conclude that such a rejection is not appropriate,
5 because civil parties group 4 have already been granted the
6 status as the civil parties, and they still enjoy this status
7 until the final judgment is rendered, so we believe that they can
8 also remain -- they can really attend the upcoming hearings as
9 well should they wish to do so.

10 So may I ask that the Supreme Court Chamber allow the civil
11 parties group 4 to be part in the upcoming appeal hearing in this
12 courtroom, or in the public gallery should the Chamber allow them
13 to do so.

14 Thank you very much, Mr. President and the Chamber.

15 (Deliberation between Judges)

16 MR. PRESIDENT:

17 Indeed, for civil party group 4, they have not filed an appeal
18 against the judgment, for that reason they are not envisaged to
19 be part of the upcoming appeal hearing, and the fact is that the
20 courtroom is rather small, that it cannot accommodate a lot more
21 people. However, during the appeal hearing the public will be
22 welcomed to observe the proceedings, and that including the civil
23 parties group 4, if they would wish to observe the whole
24 proceeding on the 28th through 30th of March 2011 they can notify
25 the Public Affairs Section so that they can be allocated some

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1 seats at the public gallery, so that they can observe the
2 proceeding.

3 The reason I say that you should ask the Public Affairs Section
4 to notify them of their presence because seats have already been
5 booked, and without any prior notification to the Public Affairs
6 I'm afraid they will not have remain seats for reserve.

7 MR. HONG KIMSUON:

8 Thank you, Mr. President. However, the time to notify the Public
9 Affairs has already been belated, because it's too late now to
10 inform them. And I do not think it would be any problematic
11 having them seated in the public gallery, but the problem I have
12 learned from the email quite recently is that even the lawyers
13 are not envisaged to be in this courtroom because the seats have
14 already been well allocated to other lawyers within the
15 courtroom.

16 But the least I can do is to request the Chamber to allow the
17 civil party group 4 to be seated in the public gallery.

18 MR. PRESIDENT:

19 May I inform the counsel that the legal officers of the Supreme
20 Court Chamber will liaise with the Chief of the Public Affairs
21 Section to see about it, whether we can really accommodate five
22 more people. So you have only 5 people from the civil party
23 group then I think that we will of course make sure that the
24 Public Affairs can entertain the request.

25 And we will notify you as well after our legal officers have

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1 contacted this section.

2 MR. HONG KIMSUON:

3 Thank you very much Mr. President, for your consideration.

4 MR. PRESIDENT:

5 (No interpretation)

6 MS. STUDZINSKY:

7 Thank you, Mr. President. I will be brief. I only want, for
8 clarification, read out the email that says, coming from VSS,
9 that says that Public Affairs does not allow the presence of the
10 lawyers of group 4. The lawyers. In the public gallery. And
11 that is a matter of concern, unless the civil parties who are
12 allowed their 90 seats reserved for civil parties, that means all
13 civil parties and applicants, to be clear in the language, are
14 allowed, or can have a seat in the public gallery.

15 But the lawyers of group 4 are not. At least according to this
16 email. I don't know if this reflects the advice from Public
17 Affairs. Thank you.

18 MR. PRESIDENT:

19 Could you please clarify how many lawyers are there in group 4
20 and who would like to sit in the courtroom?

21 MR. HONG KIMSUON:

22 Thank you, Mr. President, I may need to clarify a little bit.
23 Not only the lawyers for group 4. Group 4 includes I myself, Mr.
24 Olivier-Sur and Mr. Kong Pisey, however only Mr. Olivier-Sur
25 would want to take part in the upcoming proceeding, and since I

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1 am representing two groups I shall be present anyway.

2 MR. PRESIDENT:

3 So if I understand correctly, only Mr. Olivier-Sur would need a
4 seat as well during this upcoming hearing.

5 As to the lawyers who would wish to take part in the proceedings,
6 we would like our legal officers to communicate with Mr. Reach
7 Sambath to allocate some seats for them and we also may see that
8 they can also be seated in the public gallery to observe the
9 proceeding if all things fail. Thank you.

10 MR. CAYLEY:

11 Thank you, Mr. President. In busily scribbling down all the
12 questions that Judge Milart is putting to the parties, I'd
13 actually like to try and clarify with you, Your Honour, the first
14 question, to ensure that I've actually understood it.

15 My understanding is you don't wish to be, or to hear submissions
16 any longer on the nexus between crimes against humanity and armed
17 conflict during the temporal jurisdiction of this Court, but what
18 you would like are submissions on the relationship between war
19 crimes and crimes against humanity under the -- please, I mean,
20 if you could clarify it would help me enormously. Thank you.

21 JUDGE KLONOWIECKA-MILART:

22 Sure. What we put in the Scheduling Order was an elaboration on
23 the issue of the requirement for the nexus between crimes against
24 humanity and an armed conflict, and in doing that we were
25 overlooking that the requirement resulting from the Nuremberg

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1 laws was not the nexus to armed conflict as such, but the nexus
2 to other crimes under the jurisdiction of that tribunal, which
3 meant war crimes, or crimes against peace.
4 And since the nexus issue was litigated recently before the PTC,
5 and the decision was issued discussing this in that, and there
6 are some doubts whether the crimes against humanity have retained
7 these nexus requirements during the temporal jurisdiction of
8 ECCC, we would welcome the prosecutors' position on this
9 particular aspect. Whether there was nexus requirement, having
10 in mind that if we are speaking of the nexus, we refer it to the
11 nexus as confirmed by the UN General Assembly as Nuremberg
12 principles. And that nexus is not nexus to armed conflict, but
13 it's a nexus to war crimes, and crimes against peace, which in
14 the Nuremberg -- of course Nuremberg jurisprudence, and ensuing
15 from jurisprudence is often treated as co-terminus as nexus to
16 armed conflict, because the whole armed conflict had been started
17 as an aggressive war.
18 That's why it's not as important to link it to crimes when it
19 comes to Nuremberg and post-Nuremberg jurisprudence, but taken
20 strictly, the nexus required is nexus to other crimes, and not
21 just to an armed conflict as such.
22 MR. CAYLEY:
23 Thank you, Your Honour.
24 JUDGE KLONOWIECKA-MILART:
25 Thank you, sir.

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1 MR. PRESIDENT:

2 Counsel Kang Ritheary, you may proceed.

3 MR. KANG RITHEARY:

4 We would like to have a question as well to Your Honour. The
5 question is why are you interested in this matter, because the
6 General Assembly of the United Nations has linked crimes against
7 humanity to the war crimes, but so far as I know, that such nexus
8 has already been dropped by the same General Assembly. It only
9 applied in Nuremberg tribunal, for example, when such nexuses can
10 be applied. And in the Cambodian code, the Penal Code of
11 Cambodia of 2009, when it comes to crimes against humanity there
12 has no mentioning of war crime, and there is no nexus established
13 in that code, and I would like to seek your clarification why you
14 are interested in this. Thank you.

15 JUDGE KLONOWIECKA-MILART:

16 Counsel, the submissions will be heard on the 28th and following
17 days. Now I just wanted to put the parties on notice what is the
18 focus in this Chamber. And the interest of the Chamber, or mine
19 as rapporteur, results from the fact that the case is before us,
20 and this is the case charging war crimes and crimes against
21 humanity, and the trial Judgment found the accused guilty of
22 both. So of course it's incumbent upon this Court to find out
23 whether, indeed, the convictions are appropriate, giving the
24 crimes against humanity issue was appealed by the prosecution.
25 And what we are still seeking clarification, the defence raised

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1 the general issue of the legality, although without further
2 elaboration on it, and we already put in the Scheduling Order
3 that we were curious to know what the defence meant by it. So
4 obviously the interest of this Chamber in the crimes against
5 humanity results from the fact that the case before us pertains
6 to the conviction of crimes against humanity.

7 MR. PRESIDENT:

8 During the whole morning session, several exchanges have been
9 made, and some of the issues have already been well dealt with,
10 and the purpose of having this meeting today is of course to make
11 sure that the proceedings are well organised and expedited. May
12 I finally express our profound thanks to the parties and the
13 meeting is adjourned. Thank you.

14 (Judges exit courtroom)

15 (Court adjourns at 1233H)

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Closed Session