



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
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CMS/CFO: Uch Arun

TRANSCRIPT OF INITIAL HEARING
NUON CHEA, IENG SARY, IENG THIRITH, KHIEU SAMPHAN
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

28 June 2011, 0914H

Before the Judges: NIL Nonn, Presiding
Silvia CARTWRIGHT
YA Sokhan
Jean-Marc LAVERGNE
THOU Mony
YOU Ottara (Reserve)
Claudia FENZ (Reserve)
Fabienne TRUSSES-NAPROUS
HONG Kimsuon
Silke STUDZINSKY
Olivier BAHOUGNE
SAM Sokong
TY Srinna
Pascal AUBOUIN
Christine MARTINEAU
Lyma NGUYEN
KIM Mengkhy

Trial Chamber Greffiers/Legal Officers:
SE Kolvuthy
DUCH Phary
Franziska ECKELMANS
Natacha WEXELS-RISER
Faiza ZOUAKRI
Franziska ECKELMANS
Matteo CRIPPA
The Accused: NUON Chea
IENG Sary
IENG Thirith
KHIEU Samphan

For the Office of the Co-Prosecutors:
CHEA Leang
Andrew CAYLEY
CHAN Dararasmey
William SMITH
VENG Huont
Tarik ABDULHAK
For the Accused: SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael KARNAVAS
PHAT PouV Seang
Karlijn VAN DER VOORT
SA Sovan
Jacques VERGÈS

For Civil Parties PICH Ang
Elizabeth SIMONNEAU-FORT
MOCH Sovannary
For Court Management Section:
KAUV Keo Ratanak

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
MR. BAHOUGNE	French
MR. CHAN DARARASMEY	Khmer
MR. HONG KIMSUON	Khmer
MR. KARNAVAS	English
MR. KOPPE	English
JUDGE LAVERGNE	French
JUDGE NIL NONN (Presiding)	Khmer
MR. NUON CHEA (Accused)	Khmer
MR. PHAT POUV SEANG	Khmer
MR. PICH ANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English
MS. STUDZINSKY	English
MR. VENG HUOT	Khmer

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1 PROCEEDINGS

2 (Judges enter courtroom)

3 MR. PRESIDENT:

4 Please be seated. The Chamber is now in session.

5 This is the second day of the proceedings in the Initial Hearing.

6 It is mainly to deal with the preliminary objections and oral

7 arguments on the principle of ne bis in idem which the parties,

8 including the defence team of Mr. Ieng Sary, presented yesterday,

9 as well as the response from the prosecution. Also the lead

10 co-lawyers team responded to the submissions by the defence team

11 yesterday.

12 It is now appropriate time for the defence team of Mr. Ieng Sary

13 to make a reply, if they wish to do so, to those responses.

14 MR. KARNAVAS:

15 Mr. President there's a -- good morning. I see Mr. Nuon Chea has

16 his hand up.

17 MR. PRESIDENT:

18 Mr. Nuon Chea, you may speak.

19 MR. NUON CHEA:

20 My name is Nuon Chea; my respect to Your Honours, Mr. President,

21 and all my compatriot citizens.

22 Since there is no agenda to be discussed in relation to my case

23 and only the discussion focuses on Ieng Sary's defence team, I

24 will walk out and return to my detention facility. Only in the

25 cases where my cases are to be discussed I shall return to

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1 actively participate in the proceeding.

2 MR. PRESIDENT:

3 We have heard the request by Mr. Nuon Chea of his objection to
4 follow the proceeding, and this is the right of the accused and
5 the Chamber decided to grant his suggestion. He can now remove
6 himself from the courtroom and return to the detention facility.

7 [09.18.53]

8 Security guards, you are instructed to bring him back to the
9 detention facility.

10 Mr. Karnavas, you may take the floor.

11 MR. KARNAVAS:

12 Good morning Mr. President, good morning Your Honours, good
13 morning to everyone in and around the courtroom.

14 I do indeed have a reply to the arguments that were made
15 yesterday by the prosecution and by the civil parties.

16 I'm first going to address some of the remarks that were made by
17 the civil parties, and then I'll get to the more substantive
18 arguments that were made by the prosecution. What we heard
19 yesterday from the civil parties effectively, was a variation of
20 an opening statement and a closing argument. It is not proper
21 advocacy when dealing with issues of law. I did not object
22 yesterday. It wasn't because I didn't think of it. It was out
23 of respect given that it's the first day. However, I do submit
24 that when dealing with legal issues, we should stick to the legal
25 issues and there will be a time when the civil parties can vent

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1 their anger towards the accused and proclaim how guilty they may
2 be and what -- and how much they should suffer, but yesterday was
3 not the time.

4 [09.20.32]

5 Now, one of the points that was raised that -- was that they
6 would be deprived of the full truth, the victims would be
7 deprived of the full truth if, for instance, Your Honours were to
8 grant this application. Well, first and foremost, the historical
9 truth will never be found in this courtroom or any courtroom for
10 that matter because courts are not designed for the historical
11 truths.

12 Also because of the temporal jurisdiction of this particular
13 tribunal, we are only dealing with issues dealing from '75 to
14 '79, and perhaps -- other than for contextual reasons where we
15 might be able to bring in evidence as to what may have happened
16 in the '50s, '60s, '70s, '90s, and what have you in Cambodia --
17 the whole picture, the whole truth will never be revealed. But
18 be that as it may, that is not a reason for denying this
19 application. It may be denied for other reasons, but not because
20 the civil parties feel that the whole truth for the victims will
21 not come out. This is not a valid consideration here today.

22 Now, turning over to some of the submissions made by the
23 prosecution, one is considering what the Pre-Trial Chamber found
24 with respect to Article 12 of the Cambodian code of criminal
25 procedure. We submit -- we submitted yesterday, as we had done

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1 in our pleadings, that the prosecution's point of view as
2 expressed yesterday was incorrect. The Pre-Trial Chamber never
3 considered the application of Article 7 of the Cambodian code of
4 criminal procedure alone -- in and of itself that is, and the
5 impression that we received yesterday from the prosecution that
6 this had been done. We submit it had not been done, and thus I
7 think this Trial Chamber should pay close scrutiny and attention
8 when examining the arguments and look at the application of
9 Article 7 alone, and then the application of Article 12, and then
10 perhaps how they interplay and how they interact.

11 Yesterday we heard arguments, it was both from the prosecution
12 and from the civil parties concerning the charges in the 1979
13 trial, that the trial was -- only had one charge which was
14 essentially genocide. Well, as the old adage goes, a rose by any
15 other name is still a rose. When you look at exactly the charges
16 -- I don't wish to take up too much time, I have them printed
17 out. But when you look at the charges you see that it's not just
18 genocide. In fact, when you go through it you cannot come to any
19 other conclusion other than it contains all of the charges which
20 the Closing Order contains today.

21 [9:23:18]

22 Now, during the preliminary motion practice that we engaged in
23 this issue did in fact come up, and we did in fact provide the
24 Pre-Trial Chamber -- which I'm sure you must clearly know of it
25 -- we provided them with a chart where we actually analyzed all

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1 of the elements of the crimes to which Mr. Ieng Sary was charged
2 under the introductory submission with the 1979 charges. And
3 that can be found in Ieng Sary's submission pursuant to the
4 decision on expedited request of co-lawyers for a reasonable
5 extension of time to file challenges to jurisdictional issues.
6 This was dated 7 April 2008, and affixed to this motion was Annex
7 C. At the time it was confidential because of -- we were
8 referring to matters in the introductory submission. And in
9 there, in Annex C, we did a comparative chart between the charges
10 in the introductory submission and the 1979 charges, and we
11 submit, Your Honours, that it may be useful. It may be useful --
12 it may be of some guidance to the Trial Chamber in looking at
13 this particular argument raised both by the prosecution and by
14 the civil parties that what the 1979 trial was only about
15 genocide. We submit it covered everything to which Mr. Ieng Sary
16 faces here today. And the fact that it may have been
17 characterized slightly differently -- different terms may have
18 been used -- when you look at the actual underlying offences --
19 and that's what's important -- substance over style -- you will
20 see that they are the same.

21 [09.26.33]

22 Now, another argument that was raised and that has been used is
23 about the term internationalised, that the ECCC is an
24 internationalised court, it is not a domestic court and no one
25 has dared use the word international, perhaps for political

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1 purposes. But the prosecution pointed out that this tribunal --
2 that this Trial Chamber and the Pre-Trial Chamber and I believe
3 even the OCIJ has come up with this term internationalised and
4 therefore, it is internationalised.
5 And of course, during the course of one of the arguments the
6 prosecution -- and I'll get to that with respect to the ICC
7 jurisprudence that they made reference to -- indicated that the
8 defence counsel provided no authority -- no authority.
9 Now, where is the authority that there is such a concept of
10 internationalised? Where did that come from? Can someone point
11 to me some authority that actually recognizes this concept? It
12 came from -- or it was coined, I should say -- by the special
13 court for Sierra Leone, they coined the phrase. This Trial
14 Chamber then adopted it and said, well it's internationalised.
15 Now, in Sierra Leone you have to look at that particular case for
16 what it was. Sierra Leone wanted an international tribunal.
17 They went to the Security Council and they wanted something
18 modelled after the ICTY and the ICTR. The Security Council did
19 not give them that, but the request was specific and they came up
20 with a hybrid court. That is vastly different than what occurred
21 here, and I'll get to that.
22 But my point is if we're going to be talking about authority
23 simply because one Court in some one distant place comes up with
24 this phrase doesn't make it so. That's not authority in and of
25 itself. Because when you look behind that you'll see that

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1 there's no foundation.

2 [09.28.11]

3 Now, I understand why it's necessary to call it
4 Internationalised. It's a convenient way to get around national
5 law, national jurisprudence when it's inconvenient. And
6 obviously it would be inconvenient in this instance, especially
7 when we get to the next argument which is the royal pardon and
8 amnesty issue.

9 But if indeed there is this concept of internationalised, which
10 is what we're saying is it's international whenever we want it to
11 be. If there is such a concept, then when the issue of
12 corruption came up concerning the ECCC why did the OCIJ, the PTC,
13 and the Trial Chamber deny the request for the parties to see --
14 the defence at least who were making the request -- for the
15 actual report on the corruption based on the arguments which we
16 were making that it effects and it poisons the investigative
17 process and perhaps even this process itself. We were told
18 that's a national issue. The national government asked for it
19 and only the national government can give authorization for that
20 report to be turned over. That may be the case but what is that
21 indicative of? It's a national court.

22 Let me give you another example, when my client goes to get
23 medical treatment and he's in the hospital, I have absolutely no
24 access to him, zero. Why? Because the Ministry of Interior has
25 posted security over there and they've been instructed that no

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1 one, absolutely no one, including his counsel, can have access to
2 him. Why is that? Because the detention centre is run by the
3 ministry of interior; that's why.

4 And I point this as examples to show that this is a national
5 court. It is not internationalised and it's certainly not
6 international.

7 [09.31.13]

8 Now, getting back to the ECCC as being a domestic court, you have
9 to look at, for instance, how it was established. And I don't
10 want to go into the entire history of it due to time. We have
11 extensively covered that in many of our pleadings.

12 But it was made very clear by the Prime Minister and the
13 government that what they wanted was assistance, assistance. And
14 they created the special chamber within the context of the
15 Cambodian court system.

16 And we do say and we do submit that it is a national court.

17 National law and national procedure should be applied with the
18 exceptions provided in the establishment law, but in particular
19 when it comes to procedure, we have argued repeatedly that unless
20 there is a gap, the criminal procedure of Cambodia should apply.

21 [09.32.12]

22 With respect to the Sierra Leone, I believe I've already
23 addressed that. I don't want to belabour the point.

24 The next point I wish to raise is concerning the ICCPR, the
25 International Covenant for Civil and Political Rights. It was

1 raised by, I believe it was, the national Co-Prosecutor. And she
2 mentioned that Cambodia only acceded to the ICCPR in 1992.

3 But we submit that this is completely irrelevant for what we're
4 dealing here today. Today, Cambodia is a party of the ICCPR and
5 Article 31 of the Cambodian Constitution requires, requires, that
6 Cambodia respect international human rights instruments such as
7 the ICCPR.

8 [10.12.18]

9 Now, it doesn't say explicitly ICCPR, but we all understand what
10 that means. And of course, the agreement in the establishment
11 law explicitly have set out that the ICCPR applies to this
12 tribunal. And if we look at it very closely -- and I didn't hear
13 the prosecution say anything about exceptions being found in the
14 agreement or the establishment law.

15 You won't see, for instance, however, concerning Article 14 there
16 is this exception. There is none.

17 [09.33.53]

18 The prosecution would have you believe that yes, with respect to
19 that particular article, that subsection of that article, an
20 inconvenience to these proceedings, does not apply.

21 We submit the entire ICCPR applies. You cannot, as we say,
22 cherry pick, pick what you like, discard what you don't like for
23 the sake of convenience.

24 Now, let's talk about that trial, the 1979 trial itself. Was it
25 perfect? Of course not. Would any of us want to be tried in

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1 that fashion? Absolutely not. And I mentioned that to start
2 with.

3 But my point was, no one ever has come out and said publicly
4 either -- or during the negotiations at the UN Assembly, no one
5 came out and said that the conviction itself and the judgment
6 itself and the sentence itself was not valid and it could not be
7 executed. No one.

8 That shows that that judgment was valid. It also shows that at
9 any point in time had Mr. Ieng Sary been arrested, he would have
10 been executed because that was considered a final judgment.

11 [10.14.26]

12 During the Paris peace talks, nobody had mentioned that.

13 Thereafter, nobody mentioned that. It was for those very same
14 reasons why in 1996 when the two Prime Ministers that were
15 running the country and wanted to co-opt the Khmer Rouge soldiers
16 that were associated with Mr. Ieng Sary why they went to Mr. Ieng
17 Sary and why this pardon was an absolute necessity because that
18 sentence, although he would not have been given the death
19 sentence, hung over his head.

20 But who are the People's Revolutionary Tribunal; because there
21 was some indication that this was not a proper body because it
22 had been established by the executive, by the executive branch.
23 And we all know, at least where the rule of law applies, and when
24 you have two democratic -- a democracy that you have a separation
25 of powers. And I think we agree on that point.

11

1 [10.15.38]

2 But in 15 July, 1979, the People's Revolutionary Tribunal was
3 established by decree ---

4 MR. PRESIDENT:

5 Counsel, you are reminded that you have 15 minutes, and your time
6 is running out. We'll give you a few more minutes to finish it
7 off.

8 MR. KARNAVAS:

9 Yes, Your Honour, but as I indicated yesterday -- and I don't
10 wish to debate the point. I accept your admonition or your
11 warning.

12 [09.37.23]

13 Yesterday I did not use my entire time, and I'd indicated that I
14 would be -- I would not be using it so I could use it for the
15 reply. But if that's not permitted, then I will move it along.
16 The point that I'm making here in this particular -- this
17 tribunal was set up by the People's Revolutionary Council of
18 Kampuchea where you had Heng Samrin as the head of state, Chou
19 Sim(phon.) as the minister of interior and Hun Sen as foreign
20 minister.

21 And when you look at what this body was entitled to do because
22 this was a transitional period, it had the capacity of also
23 establishing legislation.

24 We saw that in Cambodia once again during the UNTAC period. And
25 another very good example is what is happening in

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1 Bosnia/Herzegovina even today. You have the office of the high
2 representative. It's a foreign body. It hasn't been elected,
3 yet the high representative has the capacity of drafting and
4 passing laws, striking down laws that were adopted by the
5 entities or even at the state level.

6 [10.17.32]

7 And so this is not an uncommon practice in places where there are
8 transitional authorities, and so we submit that there was nothing
9 wrong with the establishment of that particular tribunal, and the
10 establishment of that tribunal was for the purpose of
11 establishing guilt or to bring to justice those they believed
12 were responsible for certain events.

13 It wasn't for the purposes of evading justice and we submit, Your
14 Honours, since -- I'll wrap it up, since I'm running out of time
15 -- that this particular principle is to ensure and is to combat
16 impunity, in a sense.

17 [10.18.13]

18 When it was brought out for the first time at the ICTY
19 explicitly, the purpose of this particular principle, *ne bis in*
20 *idem*, was to ensure that Bosnia, Croatia, Serbia did not try
21 individuals, summarily acquit them, and therefore, prevent them
22 from being properly tried.

23 To date, to date, neither in the former Yugoslavia, any of the
24 states, or in Rwanda am I aware of a single case where there has
25 been poor prosecution of an individual and for the ICTY or the

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1 ICTR to request that case to come back to it so the individual
2 could be properly tried.

3 Specifically at the ICTR in Rwanda, what has happened there where
4 many individuals have been summarily tried and summarily
5 executed, that -- it was never invoked.

6 [10.19.18]

7 And my point is, this principle, by and large, was set up to
8 ensure that you would not have bogus trials, false trials where
9 acquittals were handed out in order to promote impunity.

10 And with that, Your Honours, I believe I have nothing further. I
11 appreciate the extra moments provided to me, and if I did test
12 the patience of Your Honours yesterday, I truly apologize. I
13 will try to mend my ways.

14 And yesterday, Your Honours, as I'd indicated, when I'm called I
15 stand up. It wasn't a -- I meant no disrespect, Your Honour, and
16 unless I'm given permission I don't feel free to sit down.

17 Thank you very much for your attention.

18 MR. PRESIDENT:

19 Thank you, counsel.

20 So we now move on to another topic of the agenda, that is the
21 oral argument on statutory limitations in relation to
22 amnesty/pardon. We shall hear the oral argument by the defence
23 team on the effect of amnesty/pardon given by the King to Mr.
24 Ieng Sary at the request of the government at the time.

25 [09.41.52]

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1 This preliminary objection has been raised by Ieng Sary's
2 defence. The Ieng Sary defence has been allocated one hour for
3 the presentation of this preliminary objection. The
4 Co-Prosecutors then have 45 minutes in response, and the civil
5 party lead co-lawyers, 30 minutes. The Ieng Sary defence then
6 have 15 minutes to reply.

7 Concerning the Ieng Sary's defence request for clarification of
8 the Trial Chamber's agenda for the Initial Hearing regarding the
9 royal pardon and amnesty, the Chamber notes that it has already
10 indicated that it is presently most interested in the question of
11 whether, as a matter of law, an amnesty/pardon can expand to
12 crimes of the gravity of those for which the accused, Ieng Sary,
13 is charged.

14 It will consider whether it is necessary to call the witnesses
15 sought by the Ieng Sary defence in support of this preliminary
16 objection at a later stage.

17 The Chamber reminds the parties that it is familiar with all
18 written pleadings filed to date, and urges them not to merely
19 repeat this in oral argument.

20 I would like now to give the floor to Ieng Sary's defence to make
21 their presentation of their preliminary objections.

22 MR. ANG UDOM:

23 Good morning, Mr. President. Good morning, Your Honours.

24 Before I commence my presentation on the royal pardon and
25 amnesty, I'd like to make a request that in order not to

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1 interrupt the flow of the oral arguments the request is that it
2 is for my client, Mr. Ieng Sary, to return to the room downstairs
3 when he needs to go while we make -- or present our argument
4 without interrupting the proceeding.

5 [09.43.45]

6 If Your Honour permits, then my client, Mr. Ieng Sary, shall
7 leave at any time that he needs to. If the Chamber does not
8 allow, then when he needs to then I would seek permission from
9 the Chamber, from the Bench.

10 And I'd like to seek your permission on that, Mr. President.

11 MR. PRESIDENT:

12 First, can you clarify your request? You need to show us the
13 reasons to support every request that you would like to raise
14 before the Chamber, so that we can use it as the ground for our
15 decision; whether to allow it or to reject it.

16 Secondly, what you said according to what you just did cannot be
17 allowed. You need to clearly state your significant when and how
18 with proper reason, then we shall decide.

19 And when you say the words "at any time", and if any problem
20 arises in relation to his health, then the Chamber so decides
21 based on their particular circumstance.

22 As you are aware, another accused, Mr. Nuon Chea, waived his
23 right to participate by providing his reasons as that preliminary
24 objections raised are not related through his case, and that he
25 requests his -- the issues to deal with his case shall be

1 considered.

2 [09.47.08]

3 So with such proper reasons, the Chamber decided accordingly.

4 Therefore, I ask a lawyer, you would need to clarify and make
5 your statement clear.

6 MR. ANG UDOM:

7 Thank you, Mr. President; my apology. I shall now continue with
8 my presentation in relation to the royal pardon and amnesty. In
9 relation to the royal pardon and amnesty, we have three
10 submissions to make before the Trial Chamber.

11 First, the ECCC only has competence to determine the scope and
12 not the validity of the royal pardon and amnesty.

13 Second, even if the Trial Chamber does decide to determine the
14 validity of the royal pardon and amnesty, it is valid at the
15 ECCC.

16 Third, the scope of the royal pardon and amnesty prevents the
17 prosecution of Mr. Ieng Sary at the ECCC, however, as it is
18 important to understand the issues surrounding the royal amnesty
19 and pardon, a brief background is necessary.

20 Background: In August 1979, Mr. Ieng Sary was tried and
21 convicted in absentia for having committed genocide. The
22 judgement condemned Mr. Ieng Sary to death and confiscated all of
23 his property.

24 [09.49.05]

25 On the 15th July 1994, the Cambodian National Assembly

1 promulgated the law on the outlawing the Democratic Kampuchea
2 group, which is referred to as the 1994 law. The 1994 law
3 declared inter alia that the Democratic Kampuchea group and its
4 armed forces were outlaws and that membership in the group was
5 illegal.

6 The 1994 law came about as a comprehensive attempt to end the war
7 and begin the process of national reconciliation.

8 In September 1996 Mr. Ieng Sary and the Royal Government of
9 Cambodia began negotiations for Mr. Ieng Sary's reintegration.
10 Mr. Ieng Sary stated that he would not reintegrate with the Royal
11 Government of Cambodia unless he received an amnesty from any
12 future prosecutions for any alleged acts. This was a
13 non-negotiable condition for his reintegration.

14 [09.51.20]

15 Your Honours, further to the negotiations for Mr. Ieng Sary's
16 reintegration the then Co-Prime Ministers Hun Sen and Prince
17 Norodom Ranariddh approached the King Norodom Sihanouk, the then
18 King, requesting a pardon and amnesty be granted to Mr. Ieng
19 Sary. The co-prime ministers said that Mr. Ieng Sary's actions
20 were very valuable for peace and national reconciliation.

21 The former King agreed to grant a royal pardon and amnesty as
22 long as two thirds of the National Assembly supported it. The
23 National Assembly supported the royal pardon and amnesty as
24 proposed by the two co-prime ministers.

25 At that time Co-Prime Minister Hun Sen stated that it had been

1 easy to collect the signatures from members of the parliament in
2 the 120 member National Assembly. Further, the public also
3 supported the royal amnesty and pardon.

4 Your Honours, next I would like to touch upon the issue of the
5 competence of the ECCC. Moving to our first submission we
6 respectfully submit that the Trial Chamber does not have
7 jurisdiction to consider the validity of the royal pardon and
8 amnesty. The validity of laws promulgated by the King may be
9 reviewed by the Constitutional Council for its constitutionality.
10 The ECCC is not a constitutional court. The agreement and the
11 establishment law authorize the ECCC to determine the scope of
12 the amnesty but do not give explicit jurisdiction to the ECCC to
13 determine its validity.

14 Your Honours, now I would like to move on to submit that the
15 royal pardon and amnesty is valid at the ECCC. Moving to our
16 second submission I will address the validity of the royal pardon
17 and amnesty.

18 [09.57.19]

19 The royal pardon and amnesty was validly granted in accordance
20 with the Constitution. Article 27 of the Constitution places no
21 limits on the authority of the King to grant amnesties or
22 pardons, nor does it place any limits on the scope of any amnesty
23 or pardon granted. It simply states "The King shall have the
24 right to grant partial or complete amnesty". Article 90 and
25 Article 90 new of the Constitution states that "The National

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1 Assembly shall adopt the law on a general amnesty".

2 The King granted the amnesty and the royal pardon and amnesty was
3 approved by the National Assembly by two thirds of its members.

4 As the ECCC must follow Cambodian law it must find the royal
5 pardon and amnesty to be validly applicable at the ECCC.

6 Now, I move onto the scope of the royal pardon and amnesty which
7 prevents the prosecution of Mr. Ieng Sary at the ECCC.

8 Your Honours, I will finally address the scope of the royal
9 pardon and amnesty. The scope of the royal pardon and amnesty
10 prevents Mr. Ieng Sary's prosecution at the ECCC. Mr. Ieng Sary
11 negotiated that he would only reintegrate if he received an
12 amnesty from any future prosecutions for any alleged acts. This
13 was a non-negotiable condition.

14 I do not think the Trial Chamber needs reminding that without Mr.
15 Ieng Sary's reintegration the Cambodian civil war would have
16 continued at full pace and would possibly be still going on today
17 resulting in countless more casualties.

18 [10.01.25]

19 The scope of the 1994 law covers all acts being tried at the ECCC
20 and the scope of the pardon and amnesty prevent Mr. Ieng Sary
21 from being sentenced for the acts that he is being tried for at
22 the ECCC.

23 This concludes my oral submissions. My international co-lawyer
24 Mr. Karnavas will now address Your Honours on these issues. I
25 thank you, Mr. President and Judges, for your courtesy and

20

1 attention.

2 MR. PRESIDENT:

3 Thank you, counsel Ang Udom.

4 Now counsel Karnavas, you may take the floor.

5 MR. KARNAVAS:

6 Good morning again, Mr. President and Your Honours.

7 I'll try not to be repetitive. There may be some overlap only

8 for contextual purposes.

9 As I understand it today we were asked to, as you've indicated,

10 Mr. President, to address certain questions that were of

11 particular importance to the Trial Chamber since these issues I

12 can say with a certain degree of certitude that were briefed by

13 all parties extensively.

14 One of course -- one of the issues has to do with the translation

15 matter; what exactly -- which translation prevails and what

16 exactly was actually offered. That's one of the questions.

17 [10.03.44]

18 The other question is whether the pardon and amnesty granted to

19 Mr. Ieng Sary are in conformity with the Constitution, in

20 particular Article 27 and 90 new of the Constitution and of

21 course to address the Pre-Trial Chamber's decision on these

22 matters.

23 First, let me address one preliminary matter that came up only

24 last Friday, and this was a document that was presented to us by

25 the prosecution, and we wish to thank them for bringing it to our

21

1 attention and the to Court's attention. This was the Decree
2 Number 28, Council of State of People's Republic of Cambodia.
3 Certain aspects of this document were highlighted. First and
4 foremost, when we look at this it does appear to come from 1988
5 -- 20 June 1988. It comes from a period where you had the
6 People's Republic of Cambodia. It predates UNTAC. It predates
7 the current -- the present Kingdom of Cambodia. And, of course,
8 it predates the 1993 Constitution.

9 So to the extent that this particular decree does not provide for
10 any amnesties that issue is irrelevant. I presume, if I can --
11 if I'm reading the tea leaves, as they would say, that the
12 prosecution has presented this document to the parties in order
13 to advance its argument as far as what is the controlling word in
14 Khmer with respect to amnesties or pardons, and as I will discuss
15 later on, this has little value, if any, for the particular
16 discussion.

17 So I bring that to your attention for your consideration. I'm
18 sure we're going to hear more from the prosecution and I'll have
19 an opportunity to reply.

20 [10:06:07]

21 Now, the second issue I wish to discuss is something that deals
22 with context which puts the matter of the Royal Decree -- the
23 royal pardon and amnesty into perspective. We heard a little bit
24 as to what it was but why was it given and what support did it
25 actually receive. And it would appear from publications and from

22

1 the prime minister's -- Prime Minister Hun Sen's own account,
2 that this royal pardon and amnesty brought not only closure to
3 the conflict but also that it was overwhelmingly supported by the
4 people of Cambodia; that it was necessary and that it was
5 appropriate. And I think that is something that is of
6 significance because it doesn't appear that the amnesty was given
7 for purposes of impunity but rather it was given for the very
8 same reason that amnesties are normally given.
9 And, for instance, if I may use something that's very topical
10 today, or perhaps it would have been more topical yesterday or
11 the day before, President Sarkozy of France, who in France is a
12 permanent member of the Security Council, as we all know, with
13 respect to Gaddafi, had indicated, according to the BBC -- and
14 this is prior to yesterday and we know that he was -- Mr. Gaddafi
15 was indicted -- that all options are available -- all options.
16 And from where one could determine -- for Gaddafi that is -- and
17 that can only mean that that would include also amnesty, the
18 ability for Gaddafi to leave Libya, not be prosecuted in order to
19 stop the ongoing bloodshed. That's the purpose of an amnesty.
20 It's been around ever since mankind. It may be distasteful at
21 times but that's the purpose it serves.
22 I'll wait until my colleague finishes.
23 Okay, now, if I go onto the -- Mr. Ang Udom already indicated the
24 validity of it, of the amnesty itself. Clearly the King is
25 allowed by the Constitution to provide an amnesty and the scope

1 of the amnesty as well. But nonetheless we were asked also to
2 talk a little bit about whether this is in conformity with the
3 Constitution.

4 [10.09.22]

5 And this issue is very relevant for the purposes here because
6 there seems to be -- there are arguments that the amnesty itself
7 violates certain international norms and therefore it is
8 impossible for the King to have granted an amnesty of this scope.
9 Also that Cambodia had signed onto certain international
10 instruments which effectively would prevent Cambodia or prevent
11 the King from granting such amnesties.

12 Our position has been, and it has been rather consistent, that
13 this particular amnesty, which is very narrow in scope, narrow in
14 a sense that it only deals with one particular individual and
15 therefore the argument that was made by the civil parties that
16 the truth will not come out, that the victims will be cheated,
17 and in this particular instance we're dealing with one
18 individual. It does not prevent this Court from trying any of
19 the other leaders.

20 Now, this is rather important because when you compare this
21 amnesty with the one that was given in Sierra Leone when the
22 United Nations signed onto it as a moral guarantor -- and I'll
23 talk about the postscript that they put on after the signing of
24 it, but when you look at that particular amnesty of ours, that
25 was a blanket amnesty for everyone. No one was going to be

1 prosecuted.

2 [10.11.22]

3 In this particular instance, we're only speaking about Mr. Ieng
4 Sary and the reason I mention about the impact that this amnesty
5 had on the country itself, you have to weigh that. It was a quid
6 pro quo. You put your arms down, you come in, you allow the
7 troops to integrate with the national troops -- which indeed is
8 what they did -- and in exchange there is a benefit. The benefit
9 is you will get pardoned and you will get an amnesty and we'll
10 talk about a little bit more of the specifics.

11 Now, eventually we all know what happened in Sierra Leone. That
12 amnesty didn't hold up. It didn't hold up because one of the
13 parties that had signed onto it reneged; they backed off.

14 Amnesty was provided on condition that the fighting would stop.
15 The fighting continued after the signing of the amnesty and so
16 the government was perfectly within its rights to say, "You have
17 violated one of the conditions" and based on that they went then
18 to the United Nations and asked for the establishment of a court.

19 In this instance, Mr. Ieng Sary has abided by all of the
20 conditions of the amnesty and the amnesty, itself, as I've
21 indicated, brought fruit -- the very fruit that it was intended
22 to bring -- peace to Cambodia because after that the rest either
23 put down their arms or just gave up.

24 So we maintain that number 1) national jurisdictions have the
25 capacity to grant amnesties. States can grant amnesties even

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1 when we're talking about crimes such as the ones that we find in
2 this particular indictment. I'm unaware of -- and perhaps I'm
3 wrong, but I am unaware of any jurisprudence which mandates that
4 there's actual prosecution for crimes of the sorts that we have
5 in our particular indictment. There is jurisprudence, of course,
6 that clearly states that a state should not engage in the
7 commission of these crimes, but it allows the national courts and
8 the national jurisdictions to deal with those crimes once they're
9 committed and I dare say that the reason behind that is to allow
10 instances where an amnesty may prevent further bloodshed. So
11 yes, the states are not permitted to commit crimes which are
12 considered jus cogens. That's clear that there is no customary
13 international law in place that would mandate a national court to
14 prosecute such crimes and there lies the distinction.

15 [10.15.19]

16 And I mention this specifically because of the instance in
17 Sierra Leone because Sierra Leone had also signed onto the very
18 same instruments that Cambodia has signed on. But nonetheless, a
19 representative of the United Nations on behalf of the United
20 Nations signed that agreement and there is nothing thereafter or
21 during that agreement where you have the United Nations claiming
22 that the Sierra Leone Government did not have the authority to
23 enter into such an agreement -- an amnesty agreement. That it
24 did not agree with it. That it objected to it. That it would
25 not sign onto it. There's nothing. They signed it and after

1 there was a postscript.

2 And I mention this and I highlight this because it demonstrates
3 that even for the crimes for which Mr. Ieng Sary is charged --
4 even for these sorts of crimes -- national jurisdictions are
5 permitted to grant amnesties and there is no international
6 prohibition or customary national law prohibiting this.

7 The next point, Your Honours, very briefly, will be on the scope
8 of the actual pardon and this deals with the language itself
9 because this was one of the issues. We have three different
10 variations. There are some differences. We use what we believe
11 is the official translation. Now, why do I say official?

12 Because it's the government's official translation and that's
13 what's posted on the -- I believe the ECCC website, but that's
14 where we received that translation. And then there was -- you
15 have another translation by the Pre-Trial Chamber and I believe
16 there is a third translation now.

17 [10.17.55]

18 There is some ambiguity and there is some vagueness as to what
19 exactly the drafters meant and I'll cover the text of it, but for
20 right now let me just focus on this ambiguity. Well, clearly,
21 the only -- any doubt obviously has to go -- we submit -- to the
22 benefit of Mr. Ieng Sary, but more importantly because we have
23 this ambiguity, we submit that the best way and perhaps the most
24 proper way to resolve this is to have the parties that were
25 involved in negotiating and actually granting the amnesty give

1 evidence so that there's a clear understanding of what was the
2 intent behind the text.

3 Now, I understand the prime minister has since then made public
4 remarks that if you read it very carefully you'll see I meant
5 something else or I left the door open. With all due respect to
6 the prime minister, his public remarks are political in nature
7 because that's what politicians do. They make political
8 statements for the benefit of the constituency which would be the
9 Cambodian people. Those remarks do have no value in this Court
10 not with respect to this particular agreement.

11 And let me give you but one example and I do this and I will try
12 to be as delicate as I possibly can because it is a rather
13 sensitive matter, but the prime minister in the past made remarks
14 concerning the international judges that sit on the Pre-Trial
15 Chamber, remarks that they were receiving their instructions from
16 foreign governments. Based on that we, the Ieng Sary defence,
17 then filed a motion for clarification -- not for
18 disqualification, but for clarification -- because the judges
19 themselves cannot publicly denounce or renounce those remarks and
20 I can only presume because judges -- at least in my jurisdiction
21 -- normally do not respond to such public remarks. Others may do
22 it for them, but it's almost impermissible for a judge to respond
23 to that. The judges clearly made their case. That was the end
24 of the matter. So clearly what was being stated publicly -- what
25 was being stated publicly -- was incorrect.

1 [10.21.08]
2 Now, when you look at the purpose behind the prime minister's
3 remarks, it had to do with a particular ruling which it would
4 appear was to the prime minister's dislike. I mention that only
5 because when you look at the remarks in this particular instance,
6 obviously, it is for political consumption because, at this
7 point, his constituency -- the Cambodian people, the voters --
8 are the ones that are going to go to the poll. Again, we have
9 the ECCC. It's in existence so now it is easy to make a remark
10 and perhaps he may be correct, but if that is the case, I think
11 that the best evidence in this case -- the very best evidence --
12 is from the witnesses themselves. And I think that ambiguity can
13 be cleared up in that fashion.
14 Now, let's talk a little bit about the substance itself because
15 there's been some confusion as to what exactly does this amnesty
16 mean because, well, on the one hand we have the pardon. We
17 talked about that yesterday and briefly today, but the amnesty,
18 itself, makes reference to a 1994 law -- a 1994 law. Now, if you
19 read the law by itself clearly Article 5 sets it out there -- or
20 Article 6, I should say, is very clear that the leadership does
21 not benefit from the amnesty that is provided under the 1994 law.
22 In other words, that law was put into place in order to get
23 everyone but the leadership to put down their arms, rejoin
24 society. If done so within a six-month grace period, all is
25 forgiven. That was the purpose of the law.

1 So you look at the preamble, it tells you what it covers. You
2 look at Article 5 and then you look at Article 6 and from Article
3 6, it's very clear that Mr. Ieng Sary could not avail himself to
4 the amnesty that was granted under the 1994 law. That's clear
5 and we've never said otherwise. However -- and this is what is
6 the most important part of the amnesty that was received by Mr.
7 Ieng Sary, it is the however part. However, when you have the
8 amnesty that -- effectively when you read it carefully, it is our
9 respectful submission he's liberated from the constraints covered
10 under Article 6. And then you look to Article 5 and, therefore,
11 the amnesty makes an exception that enables him to benefit -- to
12 accrue all the benefits that are listed in Article 5. That's our
13 understanding when we look at it. It's when you look at the
14 preamble, Your Honours -- and I'm not going to read it because
15 you have it all, but when you look at that and then when you look
16 at Article 6 and you look at the amnesty that grants an amnesty
17 of that, we submit that the amnesty allows an exception for Mr.
18 Ieng Sary to benefit for that in two ways: 1) because he's a
19 leader -- under the leadership and 2) because of the time
20 constraints. There was a six-month window of opportunity and,
21 obviously, this is 1996. The law was meant for a period within
22 '94-'95.

23 [10.25.30]

24 There is one particular case, Your Honour, where it has been
25 mentioned and references have been made and I believe even the

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1 prosecution has latched onto it as some sort of an indication
2 that -- of what this amnesty meant and how the law should be
3 interpreted and that was the case of the Chhouk Rin case. I
4 think it's also known as the backpacker's case. But in any
5 event, this individual committed some crimes after the amnesty
6 period or it might have even been during and then tried to avail
7 himself of the amnesty.

8 When you look at -- under 1994, when you look at the law, the law
9 covers crimes that would have committed during that period. What
10 the law does not say -- and I think this is where the trial judge
11 got it wrong -- way wrong -- the law doesn't say you have six
12 months -- a six-month grace period -- to commit all the crimes
13 that you can and then come in within that six month and you will
14 receive amnesty. No, you had six months to come in for crimes
15 that were committed during the period -- the same temporal period
16 -- that we're dealing with today.

17 And that's why this case is not instructive at all. It has
18 nothing to do with the amnesty that we're dealing with today.
19 This individual committed some crimes after the 1994 law came
20 into existence and, therefore, he could not under any
21 circumstances benefit and to suggest that somehow this case is
22 instructive I think is misleading.

23 [10.27.34]

24 I believe our submissions, Your Honours, have been rather
25 comprehensive. I've kept my remarks rather short. If there are

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1 any questions, I'm happy to answer them, but I believe our
2 position has been consistent throughout and that is that the
3 amnesty that was provided is a valid one, that those crimes --
4 even if this were an internationalised court, those crimes do not
5 mandate this particular court. It certainly doesn't mandate a
6 national court. Amnesties -- states can grant amnesties even for
7 crimes of jus cogens because the international instruments that
8 they sign onto prohibit them from committing them, but there's no
9 obligation to then prosecute. Of course we want prosecutions. I
10 don't want to be misquoted on that. Of course prosecutions are
11 necessary, but also there are allowances -- exceptions -- for
12 amnesties to be provided for all the reasons that amnesties are
13 usually given.

14 Thank you, Your Honours.

15 MR. PRESIDENT:

16 Thank you, Counsel.

17 It is now appropriate for us to take a 20-minute recess. So we
18 come back at ten fifty. All rise.

19 (Court recesses from 1029H to 1058H)

20 MR. PRESIDENT:

21 You may be seated. The Chamber is now back in session. There
22 was a request yesterday by the lead co-lawyers regarding the
23 request for the list of new witnesses whose names were decided
24 upon by the Pre-Trial Chamber in its recent decision. The
25 Chamber therefore requests the lead co-lawyers to make their oral

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1 request that shall be done at the end of today's hearing, that
2 is, at 4 pm this afternoon.

3 Again, before the end of the hearing today, the lead co-lawyers
4 shall make their presentation or request on the list. I would
5 like to give the floor now to Judge Lavergne.

6 JUDGE LAVERGNE:

7 Thank you, Mr. President. What the Chamber would require of the
8 civil party co-lawyers is that they should clarify the requests
9 they wish to make following decision that shall be rendered by
10 the Pre-Trial Chamber, admitting new civil parties in the
11 consolidated group of civil parties. We would like to have those
12 clarifications this afternoon at about 4 pm.

13 [11.01.03]

14 MS. SIMONNEAU-FORT:

15 In order to be sure that I have properly understood the Judges, I
16 would like to know whether, at that time, that is 4 pm, you would
17 like us to clarify our request, or to provide you with lists?

18 JUDGE LAVERGNE:

19 What we expect of you is to clarify the request you will make
20 following decisions of the Pre-Trial Chamber admitting say 1,700
21 civil parties.

22 MS. SIMONNEAU-FORT:

23 We will make those requests orally, of course.

24 MR. PRESIDENT:

25 I would like now to give the floor to the prosecution. Mr. Ang

1 Udom, you may proceed.

2 [11.02.05]

3 MR. ANG UDOM:

4 Good morning, Mr. President. I would like to seek your
5 permission from my client, Mr. Ieng Sary, to rest in the room
6 downstairs, as he has a problem with his back, and his spine, and
7 I would like to seek your permission, so that he can participate
8 from the room downstairs.

9 MR. PRESIDENT:

10 The Chamber has heard the request by the defence counsel, and it
11 appears that the accused seems to suffer from the condition
12 mentioned by his counsel. Therefore the Chamber allows Mr. Ieng
13 Sary to leave the courtroom, and he can participate the
14 proceedings by audiovisual communication in the waiting room
15 downstairs.

16 Security guards, you are instructed to bring Mr. Ieng Sary to the
17 waiting room downstairs, and the ICT section please link the
18 proceedings to the equipment downstairs.

19 [11.03.55]

20 Once again, I would like give the floor now to the Co-Prosecutors
21 to respond to the presentation on the issue before the break by
22 the defence counsel.

23 MR. CHAN DARARASMEY:

24 Good morning, Mr. President. My name is Chan Dararasmey, deputy
25 Co-Prosecutor. Good morning, Your Honours, good morning

1 everyone. In relation to the preliminary objections raised by
2 the Ieng Sary defence, on behalf of the prosecution I would like
3 to submit to the Chamber to reject these preliminary objections
4 that Ieng Sary shall not be prosecuted for the crimes of genocide
5 and other crimes, because of the royal amnesty and pardon by the
6 royal decree in 1996.

7 I have two arguments to raise before the Chamber. First, the
8 royal decree has clear limited scope, and does not intend to bar
9 any prosecution of major crimes committed by Ieng Sary as alleged
10 during the Democratic Kampuchea regime between '75 yo '79.

11 Second, for the sake of argument, even if the scope of the royal
12 decree intends to include the amnesty for the genocide, this
13 Chamber has an obligation under both national and international
14 laws, so not honoured or support the prevention of prosecutions
15 against Ieng Sary for other major crimes he's allegedly committed
16 during the period of Democratic Kampuchea, as stated in the
17 Closing Order.

18 [11.06.15]

19 My submissions today, Your Honour, will highlight the key
20 arguments of the Co-Prosecutors, in our various written
21 submission on this particular issue, and that we urge Your
22 Honours to make your decision in relation to all these
23 statements. I would like to raise the arguments in relation to
24 the preliminary objections, and my colleague, Mr. William Smith,
25 will provide the second argument.

1 I would like now to address our arguments regarding the scope of
2 the royal pardon and amnesty for Ieng Sary. In the typical
3 reading of the royal decree for pardon or amnesty, it clearly
4 indicates the two situations where pardon or amnesty given to the
5 accused relies mainly on the English language. However, we
6 submit that there is no such situation of the two include the
7 intention to prevent the prosecution for those crimes committed
8 by Ieng Sary.

9 [11.07.45]

10 The English translation used by the Royal Government's working
11 group in charge of the work of the ECCC, which has been satisfied
12 by the defence counsels, reads, in Article 1: The pardon is
13 given to Ieng Sary, former deputy Prime Minister in charge of
14 Foreign Affairs in the government of Democratic Kampuchea, for
15 the sentence of death and confiscation of all his property
16 imposed by order of the People's Revolutionary Tribunal of Phnom
17 Penh dated 19 August 1979. And secondly, an amnesty for
18 prosecution under the law to outlaw the Democratic Kampuchea
19 group promulgated by Reach Krom number 1 NS94 dated 14 July 1994.
20 The translation by the Pre-Trial Chamber, that is from the ITU,
21 on the use of the word amnesty in the two subparagraphs and a
22 translation by the Trial Chamber, which also derived from the
23 ITU, using the word pardon in the first subparagraph, and there
24 is a grammatical arrangement, and for that reason there the word
25 pardon is also used in the second subparagraph. However, it is

1 clearly understood that the royal decree in the Khmer language
2 has a binding effect of enforcement.
3 Various translations exist, as mentioned by the Pre-Trial
4 Chamber, and also as agreed by the defence counsel, that's the
5 word used in the royal decree. According to the Khmer meaning,
6 which has the equivalent in English as to lift the guilt, in
7 Khmer it reads leuk leng tos, and this term or phrase encompasses
8 both the pardon and the amnesty in the Khmer context.
9 There is also evidence that there are existing Cambodian legal
10 documents before the issuance of the royal decree in 1996. For
11 instance, I would like to show another legal document. In the
12 decree number 28, dated 20 June 1988, issued by the State Council
13 of the People's Republic of Cambodia, in Article 2 it reads: any
14 convict who fulfills the condition in Article 1 shall receive
15 amnesty in cases where those convicts have served two-third of
16 the overall imprisonment, or at least 15 years for the life
17 sentence.
18 [11.11.10]
19 Your Honours, it is clear from this example that the word in
20 Khmer leuk leng tos, or, in English, lifting the guilt, as used
21 in the decree of 1996 which used for the reduction of sentence,
22 and nothing more than that. Therefore, the arguments raised by
23 the defence counsel in document E51/10 in paragraph 6, that
24 within this context, the word guilt may encompass more than
25 simply a sentence. This means they do not consider the use of

1 this word in the Khmer language in the legal profession.

2 As the Cambodian lawyers and judges clearly know that this is
3 just one of the examples of legal documents established within
4 the 80s and the 90s that use the word lifting the guilt within
5 the context of reductions of sentence after conviction.

6 Therefore, the arguments raised by the defence counsel in
7 document E51/10, in paragraph 6, that's the word amnesty, in
8 reference to the sentence to death, which was abolished in the
9 decree shall be the word that shall be used.

10 [11.12.55]

11 Because this word has a better understanding than the word
12 pardon, which does not carry any meaning at all in both the
13 English and the Khmer context. On the contrary, in the English,
14 the word pardon and amnesty require no contextual meaning,
15 because these two terms are clearly defined.

16 Your Honours, I would like to give you an example. In Black's
17 Law Dictionary, the word pardon is defined as the act or an
18 instance of officially nullifying punishment, or other legal
19 consequences of a crime. And also, in the same dictionary, the
20 word amnesty is defined as a pardon extended by the government to
21 a group or class of persons, usually for a political offence, the
22 act of a sovereign power officially forgiving certain classes of
23 persons who are subject to trial but have not yet been convicted.

24 [11.14.30]

25 Therefore, in English, the word pardon is related to the

1 reduction of sentence, or the nullifications of the sentence of a
2 convict, and the word amnesty is related to the protection of an
3 individual who shall not be prosecuted in the future. Similarly,
4 in the English language, as well as in the Khmer language, the
5 idea that the pardon shall be understood broadly then the word
6 amnesty is incorrect.

7 In fact, it is the opposite. Because the word amnesty is to
8 provide a future protection from prosecution, and pardon is only
9 for the reduction of sentence for the existing conviction. Your
10 Honours, therefore, contradicting to the position of the defence
11 counsel that the interpretation of the decree in the Khmer
12 language would lead to inconsistencies due to the two distinct
13 characters, or the contextual character of the words lifting the
14 guilt, meaning pardon or amnesty, as I stated in the English
15 language about.

16 This is a failure to analyse or to consider the customs and the
17 legal application in the Khmer language in relation to the use of
18 this word. For that reason, the prosecutoin agrees in principle
19 with the defence counsel that the intention of the legislation
20 and the negotiators that shall be considered in the
21 interpretation of the royal decree is the actual intention
22 deriving from that royal decree, and other existing documents
23 which are already in the possession of the Trial Chamber.

24 [11.17.10]

25 And, for that reason, there is no need to summons any witness to

1 provide clarification before this Court, as all the documents are
2 already in the case file. Looking at the first section of the
3 royal decree, it is clear that royal decree limits the scope on
4 the nullification on the enforcement of the decision to convict
5 Ieng Sary to death, and the confiscation of his property imposed
6 by the order after he was trialled by the People's Revolutionary
7 Tribunal in Phnom Penh in 1979.

8 This means that in this portion of the royal decree, it does not
9 state the amnesty from the prosecution of those crimes. However,
10 it's the reduction of sentence after being convicted. This
11 actually means a pardon. However, for a pardon to be valid, in
12 order to avoid future prosecution for the same crimes, and as the
13 word pardon is defined, it requires the accused to be tried, to
14 be convicted, and in general, shall serve portions of such
15 sentence.

16 [11.18.55]

17 This pardon does not bar future prosecution for other crimes
18 committed during the period of Democratic Kampuchea. Your
19 Honours, I would like now to briefly discuss on the second part
20 of the royal decree, where it mentions the amnesty for
21 prosecution under the law to outlaw the Democratic Kampuchea
22 group to Ieng Sary.

23 As the defence counsel argue appropriately in their written
24 submission, the word in Khmer leuk leng tos, in this context,
25 means amnesty for future prosecution only under the law to outlaw

40

1 the Democratic Kampuchea group. The defence counsel argued that
2 the future prosecution, as he already received amnesty for
3 prosecution under that law, include other crimes that he's been
4 alleged or charged to commit during the Democratic Kampuchea
5 period. Such interpretation is inappropriate.

6 [11.20.35]

7 Therefore, in any circumstance, such analysis does not lend any
8 weight to prevent future prosecution of Ieng Sary for other
9 crimes he committed during that period. Amnesty is precise and
10 clear, and only related to the prosecution of other crimes
11 mentioned in the law to outlaw the Democratic Kampuchea. That is
12 in article 4, it talks about the offences of cession, destruction
13 against the Royal Government, destruction against
14 organs of public authority, or incitement. And also the other
15 offence is in article 9, that is the violation of the right of
16 the people by using this law to outlaw the Democratic Kampuchea
17 group.

18 These are the two new offences defined by this law, and it does
19 not carry any retroactive application at all. The law to outlaw
20 the Democratic Kampuchea does not have the meaning as argued by
21 the defence counsel that it establish various criminal offences
22 for those crimes committed during the Democratic Kampuchea, and
23 the law does not have the intention as raised by the defence
24 counsel in their written submission, because the only basis for
25 the prosecution of the Khmer Rouge members for the various crimes

1 committed during the period of Democratic Kampuchea, they shall
2 be prosecuted by the Khmer Rouge Tribunal.

3 [11.22.35]

4 In order to reach an interesting conclusoin, it is important that
5 the defence counsel relies on Article 3 of this law, which states
6 that members of the political organisation, or the military
7 forces of the Democratic Kampuchea group, or any persons who
8 commit crimes of murder, rape, robbery of people's property, the
9 destruction of public and private property, etcetera, shall be
10 sentenced according to existing criminal law.

11 The interpretation by the defence counsel that Article 3 forms
12 the only legal basis for prosecutoin of the Khmer Rouge membesr
13 for the crimes they committed during the period of Democratic
14 Kampuchea is fundamentally flaws, for the folowing reasons.

15 One, Article 3 is a statement which clearly states that the
16 Cambodian criminal law at that time is not within the scope of
17 the law to outlaw the Khmer Rouge, and cannot be applied for the
18 various acts of the membesr of the Khmer Rouge or any person.

19 This is a statement, it's not an establishment of a law, and this
20 law does not subject to any existing criminal law or set aside
21 the criminal law in 1956.

22 [11.24.05]

23 It is merely a statement to strengthen the application of the
24 facts that sentence shall be carried out. Besides that, in the
25 absence of Article 3 of the law to outlaw the Democratic

1 Kampuchea group, it does not mean that the existing Cambodian law
2 cannot be applied. For that reason, it is not the only authority
3 to prosecute members of the Khmer Rouge for various crimes they
4 committed during the period of Democratic Kampuchea as argued by
5 the defence counsel.

6 The arguments by the defence counsel that the provision that it
7 shall be sentence according to existing criminal law, it means
8 that the charges are not consistent with the domestic law. This
9 is clear that this is an intention to delay or to disrupt the
10 entire application of this provision, because prosecution shall
11 be done according to the domestic law.

12 [11.25.15]

13 Number two, Article 3 refers to the crimes committed after the
14 coming into existence of the law that is after July 1994 and not
15 before that. Here the intention is for the crimes committed
16 during the Democratic Kampuchea it would have worded differently,
17 that were committed. In addition, besides the amnesty as stated
18 Article 5 of the law to outlaw the Democratic Kampuchea group,
19 this law does not have any retroactive effect.

20 Your Honours, the third point that I would like to present is the
21 following. The offences stated in Article 3, even if they are
22 serious, the wording used in the criminal law does not have the
23 same weight to the gravity of the crimes committed by Ieng Sary,
24 and the arguments by the defence counsel that the serious crimes,
25 including the domestic laws, for example, murder, rape, robbery

1 of people's property, the destruction of public and private
2 property, etcetera, is not correct. As mentioned in the list, it
3 is not consistent with the interpretation of any statutory rules,
4 both national and international.

5 [11.26.50]

6 The only retroactive provision in the law to outlaw Democratic
7 Kampuchea is Article 5, which does not create the amnesty for the
8 various crimes committed during the Democratic Kampuchea, but
9 those amnesties are only for those people who are not senior
10 leaders of Democratic Kampuchea. And only for members of the
11 Democratic Kampuchea group who reintegrate within the government
12 of Cambodia, that is six months after July 1994.

13 The other important point is that the senior Democratic
14 Kampuchea, including Ieng Sary, need to be prosecuted, therefore,
15 Your Honours, we submit that you reject in its entirety the
16 argument that the law to outlaw the Khmer Rouge provides amnesty
17 for the prosecutions of crimes in the future solely based on the
18 arguments raised by the defence counsel that the provision in
19 this law, and to the purpose and the intention of this law.

20 [11.28.15]

21 To conclude, the actual wording used in the royal decree on
22 amnesty and pardon, there is no intention in relation to the
23 amnesty for the future prosecution of genocide or other crimes
24 committed by Ieng Sary. In 1996 the legislatures explained this
25 point, and also in 1996 the Prime Minister also explained to the

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1 public that the wording in the decree is clearly sort out
2 beforehand, as he read. If you study the wording in the royal
3 decree, you can see the possibility for future prosecution for
4 crimes committed by Ieng Sary.
5 We really pay attention to the word used, that is the word
6 pardon, which does not bar the prosecution of Ieng Sary before
7 any tribunal that shall be established in the future. In the
8 same year, that is in 1996, Mr. Thomas Hammerberg, the UN
9 representative for human rights in Cambodia, as the Prime
10 Minister explained to him, that the intention of the amnesty is
11 to give initiatives for the mass defection, the decree for Ieng
12 Sary is to prevent any future prosecution of him for the sentence
13 by the court in 1979, and the possibility that he shall not be
14 prosecuted for violations of the law to outlaw the Democratic
15 Kampuchea group.
16 [11.30.15]
17 Therefore the arguments raised by the defence counsel cannot be
18 relied upon, and on behalf of the prosecutoin, I urge Your
19 Honours to reject in its entirety all the arguments raised by the
20 defence team in order for to protect the interest and to provide
21 justice to the victims and to those who died during the
22 Democratic Kampuchea, because Ieng Sary is the person within the
23 senior leaders of that regime when he was in power.
24 This is my submission, Your Honour, and I would like now to give
25 the floor to my colleague, Mr. William Smith, to provide the

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1 second argument on the Chamber's obligation to prosecute for
2 various crimes Ieng Sary committed between the period of 75 to
3 79. Thank you, Your Honour.

4 [11.31.15]

5 MR. SMITH:

6 Good morning, Your Honours, counsel. As you've just heard, we
7 submit that the royal decree did not, nor was it intended to, to
8 extend to provide an amnesty for the prosecution of genocide or
9 similar related crimes before this Court. On the basis of my
10 colleague's submissions, and on the basis of the submissions
11 we've put to the Chamber in the past, we ask that the preliminary
12 objection be dismissed on that basis alone.

13 Before I answer Your Honours' questions in relation to whether or
14 not witnesses should be called on this issue, and also your
15 fundamental question as whether or not you have the power to
16 invalidate an amnesty for genocide if you believe that is in fact
17 what was the intention, I would like to make three quick remarks
18 to what was raised by my learned friends, the Ieng Sary defence
19 team, and they're remarks that perhaps need to be made initially,
20 because they certainly jarred in my mind, and I think they should
21 jar in Your Honours'.

22 [11.32.35]

23 Firstly, they state that there was no benefit to Mr. Ieng Sary to
24 agree to defect to the government unless he got an amnesty
25 against, or for a genocide prosecution that may occur in the

1 future. My first answer to that, Your Honours, is from the
2 evidence you can see from the pardon, the benefit was his life.
3 He got his life back, despite the fact that in 1993, by the
4 Constitution, the death penalty was abolished, it was quite
5 prudent, and quite cautious of the King and the Cambodian
6 Government, to ensure that that death sentence never be carried
7 out in the future.

8 Secondly, the next no that jarred my mind, was when the defence
9 stated, international defence counsel stated, I know of no
10 international jurisprudence or convention that says a state must
11 prosecute or punish offences of jus cogens crimes or crimes of
12 similar types to genocide. The defence have stated they are only
13 aware of conventions that request and comply states to not commit
14 acts of genocide.

15 [11.34.10]

16 I turn Your Honours to the convention on the prevention and
17 punishment of the crime of genocide, where at Article 1 it
18 states: the contracting parties confirm that genocide, whether
19 committed in time of peace or time of war, is a crime under
20 international law which they undertake to prevent and to punish.
21 The third point that I would like to briefly remark to was the
22 national defence counsel for Ieng Sary stated: this Court can
23 only apply national Cambodian law. As Your Honours know, if you
24 look at one of the first articles in the statute of this Court,
25 Article 2 new, it states that the Chambers shall be established

1 to bring to trial senior leaders in relation of violation of
2 Cambodian laws, related to crimes, international humanitarian
3 law, and custom and international conventions recognised by
4 Cambodia. And Your Honours are well aware of the procedural law
5 that must be followed, which is Cambodian law, unless it
6 conflicts with international standards and international
7 practice.

8 [11.35.30]

9 So the position put forward, Your Honour, that this Court can
10 only apply national Cambodian law, couldn't be more wrong.
11 Going back to the submissions, Your Honour, if for the sake of
12 argument we submit that even if you found the scope of the decree
13 was intended to provide an amnesty for genocide and similar
14 crimes, this cannot be binding on this Court. It is our position
15 to you that, as Judges presiding in this unique internationalised
16 Court, you have an independent and fundamental obligation, under
17 international law, to not allow an amnesty to protect Ieng Sary
18 from facing this trial for genocide and other crimes.
19 We respectfully submit this obligation still exists, whether or
20 not the decree is in conformity with the Constitution,
21 particularly Articles 27 and 90 new. We ask that our prior
22 submissions in relation to these matters be taken into account.
23 I'll first address general obligation of an internationalised
24 court, such as the ECCC, under international law, not to uphold
25 amnesties for genocide and jus cogens crimes. I will then

1 address the particular issue of the constitutionality of the
2 decree.

3 [11.36.55]

4 The defence argue first that the ECCC is not an internationalised
5 court, and I know we've spent a reasonable amount of time on this
6 matter, but I think a few further things need to be said. And
7 they also say, even if it is, this Court has no legal authority
8 or power to invalidate an amnesty or pardon for genocide or jus
9 cogens crimes. As discussed yesterday, the issue of the
10 internationalised nature of this Court has been decided many
11 times, at least six, from our review, by this Chamber and the
12 Pre-Trial Chamber.

13 The ECCC jurisprudence is consistent, that this Court is an
14 internationalised court, it operates as an independent entity
15 within the court structure of Cambodia. This Chamber and the
16 Pre-Trial Chamber has directly applied international law
17 throughout the entire proceedings. In discussing the issue of
18 legality in the Duch judgment, at page 30, Your Honours stated:
19 as regards relevant sources of international law applicable at
20 the time, the Chamber may rely on both customary and conventional
21 international law, including the general principles of law
22 recognised by the community of nations.

23 [11.38.25]

24 In applying the concept of joint criminal enterprise, in the same
25 judgment, at paragraph 510, you held: ultimately, joint criminal

1 enterprise, as applied by this Chamber, follows from customary
2 international law, not national law. This Court has consistently
3 accepted its internationalised nature, and the necessity and
4 ability to apply international law directly to its mandate.
5 I refer you to paragraph 579 of your judgment where you hold:
6 the ECCC, like other internationalised tribunals, is entrusted
7 with reducing crimes of considerable enormity and scope into
8 individualised sentences. Additionally, the process of
9 sentencing is intended to convey the message that globally
10 accepted laws and rules have to be obeyed by all, irrespective of
11 their status and rank.

12 [11.39.30]

13 On this basis, it's well settled, Your Honours, that the ECCC is
14 an internationalised court, albeit set in the domestic structure
15 in Cambodia. And Cambodia's international obligations do not
16 affect the Court's amnesty and pardon. To put that again, we ask
17 htat you reject the defence submissions that this is a domestic
18 court, and therefore Cambodia's international obligations do not
19 affect the Court's considerations on amnesty and pardon.

20 Similarly, we ask that you reject the defence alternative
21 submission that as an internatoinalised court, the ECCC cannot
22 apply international law directly. The Chamber and Pre-Trial
23 Chamber have shown this over the last four years.

24 Finally, the defence argue, in an alternative submission, that
25 even if this Court could apply international law directly, it

1 could still not hold the decree to be invalid. This is on the
2 basis, that they state there is no norm or standard to allows an
3 internationalised court to invalidate a validly granted amnesty
4 or pardon. We ask that this argument be rejected, as
5 international jurisprudence states the opposite. In 1998, at the
6 ICTY, in the case of Anto Furundzija, on the 10th of December of
7 that year, the Trial Chamber held that amnesties for jus cogens
8 crimes, such as torture, as a crime against humanity, would be
9 inconsistent with international law.
10 They held that any domestic amnesty law would not prevent
11 prosecution for torture before the ICTY, or any other foreign
12 jurisdiction, for the same state under a different regime. In
13 arriving at this conclusion, they discuss, at paragraph 155, the
14 senselessness of the situation if international law allowed
15 states to have international obligations to prevent and punish
16 crimes by establishing national legislation on the one hand, yet
17 on the other a state is allowed to condone torture or absolve its
18 perpetrators through an amnesty law.
19 [11.42.00]
20 In such a situatoin they held that the natoinal measures
21 violating the general principle and any relevant treaty
22 provisions would produce the legal effect discussed above, in
23 addition would not be accorded international legal recognition.
24 They said holding such amnesties would be unlawful, and I state,
25 what is even more important is that perpetrators of torture

1 acting under, acting upon, or benefiting from other national
2 measures may nevertheless be held criminally responsible for
3 torture within a foreign state or in their own state under a
4 subsequent regime.

5 Six years later, in 2004, on 13 March of that year, six years
6 later, the Special Court of Sierra Leone Appeals Chamber upheld
7 the same principle, in the cases of Kallon, Kamara and Kondewa,
8 by refusing to allow claims of amnesty to prevent prosecution for
9 jus cogens claims. The Appeals Chamber held that there was a
10 crystallising international norm that a government cannot grant
11 amnesty for serious violations of crimes under international law,
12 and this is amply supported.

13 [11.43.25]

14 In relation to an internationalised court, the Appeals Chamber
15 specifically found that a domestic pardon should not apply in
16 respect of a prosecution of jus cogens crimes. They held even if
17 the opinion is held that Sierra Leone may not have breached
18 customary law in granting an amnesty, this court is entitled, in
19 the exercise of its discretionary power, to attribute little or
20 no weight to the grant of such amnesty which is contrary to the
21 direction in which customary international law is developing, and
22 which is contrary to the obligations in certain treaties and
23 conventions, the purpose of which is to protect humanity. And
24 that's at paragraph 84.

25 Of the last ten years, Your Honours, this customary law continues

1 to develop. Particularly as evidenced by the statements of the
2 United Nations Secretary-Generals, who represent over at least
3 190 member states. In 1999, in Sierra Leone, the
4 Secretary-General, as the moral guarantor to the Lome Peace
5 Accord, which contained general amnesty provisions, attached an
6 important proviso. The United Nations interprets that the
7 amnesty and pardon in Article 9 of this agreement shall not apply
8 to international crimes of genocide, crimes against humanity, war
9 crimes, and other serious violations of international
10 humanitarian law. Then in 2000, the Secretary-General again
11 stated, in his report on the establishment of the Special Court
12 of Sierra Leone, while recognising the amnesty as an accepted
13 legal concept, and a gesture of peace and reconciliation at the
14 end of the civil war, or an internal armed conflict, the United
15 Nations has consistently maintained the position that amnesty
16 cannot be granted in respect of international crimes such as
17 genocide, crimes against humanity, and other serious crimes. UN
18 document number S2000/915, paragraph 22.

19 [11.45.45]

20 And again, in 2004, the Secretary-General stated, in his Report
21 on the Rule of Law and Transition justice in Conflict and
22 Post-Conflict Societies, that the UN shall ensure that peace
23 agreements and Security Council resolutions and mandates reject
24 any endorsement of amnesty for genocide, war crimes, or crimes
25 against humanity, including those relating to ethnic, gender, and

1 sexually-based international crimes, and ensure that no such
2 amnesty previously granted is a bar to prosecution before any
3 United Nations created or assisted court. That's UN document
4 number S2004/616.
5 Your Honours, as with the other international and
6 internationalised courts, you bear the duty to uphold the United
7 Nations commitment to combat impunity for genocide and other jus
8 cogens crimes. Significantly, Cambodia is a signatory to the
9 Genocide Convention which requires individuals committing
10 genocide to be prosecuted and punished by the state, and this is
11 a parallel obligation to ensure that amnesties for these crimes
12 are declared inapplicable.
13 [11.47.05]
14 Contrary to the defence assertion, Your Honours, there is no
15 customary international law prohibiting you as judges in an
16 internationalised court from declaring as invalid a domestic
17 amnesty for genocide, in fact, the opposite is true. If the
18 decree granted an amnesty for genocide, it's our submission that
19 you have the obligation, or at least the discretion, to give it
20 no weight. We ask that you reject the defence arguments on these
21 points, as in their written pleadings, it's largely supported by
22 a few academic articles that state the position as of the late
23 1990s. Similarly the avoid, largely, the fact that state
24 practice, as evidenced by the Secretary-General statements over
25 the last ten years, has solidified significantly since the

1 Furundzija decision in 1998.

2 Similarly, the defence minimise the responsibility of a state not
3 to provide amnesties, particularly when they are parties to the
4 Genocide Convention, which creates an obligation to prevent and
5 punish these crimes.

6 [11.48.20]

7 Turning now to your power under Article 40 to determine the RPA,
8 the royal pardon and amnesty, we submit that the defence argument
9 that you have the power to determine the scope but not the
10 validity makes no sense. It's axiomatic that to determine the
11 scope, you must be able to determine the validity. This Court
12 cannot be in the position where it finds itself that the decree
13 has no scope to cover amnesty, but cannot determine validity.
14 This would completely frustrate the purpose of Article 40 new.
15 Regarding the constitutionality of the decree, it's our
16 submission as an internationalised court, you have the power to
17 determine this issue.

18 As previously submitted, the royal decree did not, nor was it
19 intended, to provide an amnesty for the prosecution of genocide.
20 From the plain reading of the words in the decree, there is no
21 evidence of an intention to grant an amnesty that was in
22 contravention to Article 31 of the Constitution. Article 31
23 states: The Kingdom of Cambodia shall recognise and respect
24 human rights as stipulate in the United Nations Charter, the
25 Universal Declaration of Human Rights, the covenants and

1 conventions related to human rights, women's and children's
2 rights.

3 The defence argue that Article 27 of the Constitution, which
4 grants the King the power to grant partial or complete amnesty is
5 unlimited is clearly wrong. As part of normal statutory
6 construction rules, the provisions of a legal instrument should
7 be read in the context of each other. In particular, it's clear
8 that the amnesty would be unconstitutional if it was not to
9 respect covenants and conventions as referred to in Article 31.
10 This of course would include states' obligations to prevent,
11 prosecute and punish acts of genocide.

12 [11.50.30]

13 Based on our previous arguments regarding the scope of the
14 prosecution, we agree with the finding of the Pre-Trial Chamber
15 in their decision on Ieng Sary's appeal, at paragraph 201, there
16 is no indication that the King and the others involved intended
17 not to respect the international obligations of Cambodia when
18 adopting the decree.

19 The defence argument that the Constitution places no limits on
20 the crimes which may be amnestied and pardoned is at odds with
21 the correct interpretation by the Pre-Trial Chamber, and
22 surprisingly, with the defence oral submissions yesterday and
23 today. They argued that Article 31 of the Constitution required
24 Cambodia to respect covenants and treaties, so therefore the
25 principle of ne bis in idem under the ICCPR would apply. Yet at

1 the same time, in their written submissions, they argue that the
2 King's amnesty power is unlimited, necessarily meaning that it
3 was not bound by Article 31. This position on the issue should
4 be rejected.

5 [11.51.45]

6 To conclude, Your Honours, we submit that the decree did not, nor
7 was it intended to provide an amnesty for genocide and other
8 crimes in the future. Again, for argument's sake, if Your
9 Honours found it did, this Chamber has the discretion to reject
10 such an amnesty on the basis that it did not comply with
11 international treaty obligations, and customary international law
12 on the issue. It should also be rejected because of this Court's
13 obligation as an internationalised court to uphold principles and
14 treaties and conventions, the purpose of which is to protect
15 humanity.

16 In answer to your point as to whether or not witnesses should be
17 called as to the intensity of the scope of the royal pardon and
18 amnesty, we submit that the intention is clear, and they are not
19 required, and secondly we also submit that Your Honours should
20 rule on the issue of whether or not, even if the royal pardon and
21 amnesty was intended to cover crimes of genocide, and the other
22 crimes in this indictment, you should consider whether or not you
23 have your obligation, and you should exercise your discretion,
24 whether or not you would allow that to occur in the first place.
25 Only after you've asked that question, it's submitted, Your

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1 Honours, that any issue of calling witnesses would be necessary.

2 [11.53.20]

3 So for all the reasons we've provided in our written submissions,
4 and those provided by my colleague and I today, we request that
5 this preliminary objection be dismissed.

6 MR. PRESIDENT:

7 Thank you Mr. deputy Co-Prosecutor for your response. It is now
8 time for us to break for lunch, but before we break we would like
9 to ask Mr. Ieng Sary defence whether your client wishes to
10 participate in the afternoon session.

11 MR. ANG UDOM:

12 Mr. President, I would like to consult with my client before I
13 can answer your question, because I cannot decide by myself. I
14 believe that my client can come to the Court only once in a
15 while, but again, I would like to seek your permission that I
16 consult with my client before I can answer to your question.
17 Perhaps I can answer your question in the afternoon session
18 whether he can come to the Court.

19 MR. PRESIDENT:

20 We are concerned that there could be possible disturbance just
21 like what we had yesterday. But now the Chamber announce the
22 recess for lunch break, and the Court will come back at 1.30 to
23 continue our proceedings. Detention facility guards are directed
24 to escort the accused persons to the cells downstairs and bring
25 them, together with Mr. Ieng Sary, for the afternoon session, by

1 1.30.

2 (Judges exit courtroom)

3 (Court recesses from 1156H to 1337H)

4 (Judges enter courtroom)

5 MR. PRESIDENT:

6 Please be seated. The Court is now back in session.

7 This morning, we already had hearings concerning pardon and
8 amnesty. The Chamber has also noted the observations by the
9 Co-Prosecutors.

10 Next we proceed to the lawyers for the civil parties to make
11 their own oral submission in response to the observations made by
12 Ieng Sary's defence team.

13 Counsel Ang Udom, you may proceed.

14 MR. ANG UDOM:

15 Mr. President, as you indicated this morning, the defence counsel
16 for Ieng Sary would request that Mr. Ieng Sary is excused and
17 observe the proceeding from the holding cell because he cannot
18 remain seated more than 20 minutes.

19 MR. PRESIDENT:

20 Mr. Ieng Sary is now permitted to be excused from this courtroom
21 and that he will observe the proceedings from the holding cell
22 through the A/V installed equipment downstairs.

23 The security personnel are now instructed to bring the accused to
24 the holding cell.

25 The A/V Section is now instructed to make sure that the A/V

1 system is installed so that Mr. Ieng Sary can fully observe the
2 proceedings.

3 Mr. Pich Ang, you may now proceed.

4 MR. PICH ANG:

5 Mr. President, Your Honours, the response by the lead co-lawyers
6 to be made in a moment will be done first by Mr. Olivier Bahougne
7 and then ...

8 [13.41.40]

9 Mr. Hong Kimsuon, followed by finally, Ms. Silke Studzinsky.

10 MR. PRESIDENT:

11 The Chamber will allow the civil party lawyers to proceed with
12 their oral submissions, and you will have three minutes for this
13 -- rather, 30 minutes for the whole oral submission by these
14 three people.

15 MR. BAHOUGNE:

16 Mr. President, Honourable Judges, good afternoon.

17 I would first of all like to say that we support the arguments of
18 the Co-Prosecutors in their entirety, however, we would like to
19 complement them with some facts and considerations as follows.

20 [13.42.39]

21 As a matter of fact, before analyzing the constitutionality or
22 the scope of the petition of the 1996 royal pardon and amnesty,
23 we think it's important for us to analyze the circumstances under
24 which the royal pardon and amnesty were obtained. I say
25 "obtained" not granted. Was the royal pardon not obtained under

1 the threat of weapons, hostage-taking and amputation of Cambodian
2 territory and the suffering endured by the Cambodian people?

3 The socio-economic context of the years prior to the signing of
4 the royal decree have shown that the Khmer Rouge leaders
5 permanently refused to join the peace process, a peace process as
6 part of which they had to assume responsibility for their past
7 actions.

8 In 1990, prior to the meeting of UN Security Council Permanent
9 Members, war was raging in provinces in Cambodia; Battambang,
10 Pursat, Kampong Chhnang, Kampong Thom. The fighting plunged the
11 country in mourning and 150,000 people were rendered hostages --
12 or refugees, and tens of thousands of refugees were caused. Some
13 people compare the fighting to what happened between 1975 and
14 1979 with the same cohort of horrors.

15 The government in power had to devote 40 percent of its budget to
16 trying to restore peace when members of the UN Security Council
17 met on the 26th of November in Paris. The Khmer Rouge pursued
18 their actions and people who've had to flee the war-torn zones
19 were to the tune of 486,000, all while working to find an
20 agreement for reconciliation and pacification except for the
21 Khmer Rouge which was opposed to this and pursued the armed
22 struggle.

23 [13.45.14]

24 The UNAMIC, United Nations Advanced Mission, could not do its
25 works. As such, a helicopter of UNAMIC was fired at and the

1 second-in-command of the Mission was wounded. The Khmer Rouge
2 were viewed by the Cambodian people and the international
3 community as the only obstacle to true peace.
4 At the end of the year, the armies continued fighting, causing
5 thousands of victims and refugees. At the time, it was
6 impossible to create a neutral political environment because of
7 the refusal of Khmer Rouge leaders to join the peace process,
8 because of the threat represented by the continuation of the
9 struggle in zones under Pol Pot, Ieng Sary and Khieu Samphan, and
10 the extreme political sufferings which took the form of physical
11 elimination and harassment of people.
12 The first authority of the United Nations in Cambodia recognized
13 that there was no neutral political environment that was
14 conducive to free elections, and they said that on the 19th of
15 December 1992 and the 11th of January 1993, declaring less than
16 five months before the elections that the indispensable political
17 neutrality was not present. As a matter of fact, the Khmer Rouge
18 leaders called for a boycott of the 1993 elections. At the same
19 time, 372,000 refugees were in makeshift camps. They were
20 victims of the fighting.
21 On the 1st of August 1993, UN soldiers based in Cambodian
22 territory were attacked by Khmer Rouge troops. UN peacekeeping
23 troops were detained.
24 In late 1993, there were elections held and 90 percent of the
25 people participated in the elections. The Khmer Rouge could only

1 kill and cause havoc.

2 [13.47.41]

3 On the 1st of August 1994 the war continued and military
4 activities absorbed at least 28 percent of the national budget,
5 and this caused a generalized climate of insecurity, and armed
6 robbery. The government had to solve the problems of a country
7 that was devastated in its human resources as well as its
8 equipment.

9 The 1993 agreement, which was a testament to the will to pacify
10 the country, was being promoted, but for the Khmer Rouge that
11 sought to propagate violence. And it tried to haggle the pardon
12 using their electoral following and the stranglehold they had
13 over the country. Khieu Samphan refused the demand for a
14 ceasefire as a pre-condition for negotiations. That's why the
15 7th of July 1994 a law was adopted by the 103 members of
16 parliament outlawing the Khmer Rouge group.

17 Against this backdrop, extreme violence was such that Ieng Sary
18 took advantage of the vulnerability of his country and its people
19 and the instability in the country to rest; it's his pattern.

20 On the 2nd of November 1993 in Phnom Pen, the first Prime
21 Minister, Hun Sen, took the floor to condemn Ieng Sary, and back
22 politicians, who were holding up the integration of troops in the
23 royal armed forces and who were acting as if they wanted to
24 create a tripartite army.

25 Under the threat of amputating territory under their control and

1 pursuing the armed struggle as well as the violences they were
2 perpetrating, the leaders of the Khmer Rouge, and particularly
3 Ieng Sary, haggled for pardon.

4 [13.49.59]

5 More than 376,000 people were deported and events were similar to
6 those committed during the Democratic Kampuchea regime.

7 Ieng Sary's pardon decree was obtained. First Prime Minister,
8 Hun Sen, argued that he was to save the nation, that this
9 declaration is proof of threats and constraints imposed by Ieng
10 Sary. The decree was set aside by the King and countersigned by
11 the two Prime Ministers. Furthermore, the King insisted on
12 ensuring that two-thirds of the National Assembly signed the
13 decree before it was published.

14 No vote or debate took place in the National Assembly. On the
15 contrary, members of the Assembly were consulted in a private
16 capacity. They were asked to sign it to show their agreement.
17 As such, the National Assembly did not sit. It is obvious that
18 had there been serenity, the absence of threats, the absence of
19 hostage-taking, this pardon would never have been granted.

20 The Chamber will, therefore, apprise itself of this fact which
21 should be taken into consideration, and they should consider this
22 pardon null and void. If they reach a contrary finding, it would
23 be proof that terrorists can use violence and sequestration to
24 obtain -- absolve -- to be acquitted of their crimes.

25 I thank you.

1 MR. PRESIDENT:

2 Mr. Hong Kimsuon.

3 MR. HONG KIMSUON:

4 Mr. President and Your Honours, I am Hong Kimsuon.

5 My international colleague, Ms. Studzinsky, and I will respond to
6 the observation of the objection of Ieng Sary's defence with
7 regard to the royal pardon and amnesty. We will focus our
8 response on the impact that a pardon and amnesty had on victims
9 of mass crimes and examine whether these are violations of the
10 international obligations of the Royal Government of Cambodia
11 towards victims.

12 [13.52.28]

13 We submit that if the pardon and amnesty are held as valid, these
14 conflict with the internationally recognized rights of victims of
15 serious international crimes. Consequently, we submit that the
16 royal pardon and amnesty must be held to be invalid before the
17 ECCC.

18 If Mr. Ieng Sary escapes from being held accountable for this
19 alleged commission of international serious crimes, this would
20 hinder the general rights of victims and that impunity would
21 continue to reign. Impunity is the enemy of reconciliation and
22 justice.

23 International standards regarding victims and, in particular,
24 victims of mass crimes since after World War II, the right of
25 victims to an effective remedy has been enshrined in all major

1 international and regional human rights instruments. The idea of
2 a remedy has developed and extended to encompass specific duties
3 to carry out a full and effective investigation and uncover the
4 truth of past events.

5 International human rights law has imbricated with international
6 criminal law proceedings and has become an inherent and integral
7 part of international criminal justice mechanisms. Human rights
8 in themselves are largely declaratory and ineffective without a
9 corresponding enforcement mechanism, such as criminal
10 proceedings, to deal with historic mass crimes.

11 Remedies are the means by which a right is enforced, or the
12 violation of a right is prevented, redressed or compensated. The
13 term "remedy" entails two components. One, the procedural
14 component relating the process in which claims of human rights
15 violations are heard and decided. Two, this substantive
16 component comprising the outcome of the proceedings and the
17 remedies.

18 [13.55.06]

19 In the context of the royal pardon and amnesty, we focus on the
20 first part of the meaning of remedies. It is clear that a right
21 to an effective remedy for victims is a well-established
22 principle under international human rights law. The UN
23 Declaration on Human Rights, 1948, guarantees in Article 8 the
24 right to an effective remedy by the competent national tribunals
25 from acts violating the fundamental rights granted to him by the

1 constitution or by law.

2 The International Covenant on Political and Civil Rights contains
3 a similar provision that each state party ensure an effective
4 remedy to any person whose rights and freedoms are recognized in
5 the covenant violated. It appears that this remedy is to be
6 determined by a competent judicial, administrative or legislative
7 authority.

8 The Convention Against Torture adds the right to complain and to
9 have his case promptly and impartially examined, and the right to
10 compensation and rehabilitation as a form of reparation as one
11 important component of an effective remedy.

12 The general right to the effective remedy is also addressed in
13 the International Convention on the Rights of the Child, the
14 International Convention on the Elimination of all Forms of
15 Racial Discrimination, The Hague Convention respecting the laws
16 and customs of war on land, the additional protocols to the
17 Geneva Conventions and the Rome Statute of the International
18 Criminal Court. The equivalent provision under the African
19 Charter on Human Rights provides the right to have his case
20 heard.

21 This has been interpreted in case law that the state must provide
22 effective remedies to its citizens. Recognition of the right to
23 effective remedy has also been included in decisions of regional
24 bodies such as the European Convention and the Inter-American
25 Conventions.

1 [13.57.30]
2 Guidance about what constitutes an effective remedy can be
3 obtained from the Human Rights Committee, which underlined three
4 important components: the duty to investigate; the duty to
5 prosecute and punish; and the incompatibility between amnesty
6 laws and the rights to the remedy.
7 The interconnectivity between human rights law and international
8 criminal law is lucid when such a human rights body explicitly
9 links state obligations, such as criminal proceedings, as an
10 effective remedy and responses to serious human rights
11 violations.
12 In addition, case law of regional human rights courts has
13 strengthened this approach in *Rodrigues v. Uruguay*. The
14 Committee considered that the state party to take effective
15 measures to carry out an official investigation in the
16 plaintiff's allegations in order to identify the responsible
17 persons and to enable the victim to seek civil redress.
18 The Human Rights Committee stated in both *Distar* (phonetic) v.
19 Colombia, with regard to an effective remedy, the state parties
20 and the duty to investigate and to prosecute criminally, try, and
21 punish those held responsible for violations of human rights such
22 as abduction, disappearance, torture and death.
23 Furthermore, the Human Rights Committee clearly states in its
24 Comment Number 20 that amnesty, in a general sense, is generally
25 incompatible with the duty of states to investigate such acts, to

1 guarantee freedom from such acts within their jurisdiction, and
2 to ensure that they do not occur in the future.

3 [13.59.16]

4 To conclude and summarize, the right to an effective remedy
5 encompasses the duty of the state to properly investigate,
6 prosecute, and punish for the violation of rights that are
7 guaranteed in human rights instruments unless the laws are
8 incompatible with these rights.

9 The fundamental right to an effective remedy was crystallized in
10 the United Nations Declaration on the Basic Principles of Justice
11 for Victims of Crime and Abuse of Power, 1985. The UN
12 Declaration articulates the scope of an effective remedy against
13 victim access to justice, information, and a voice in judicial
14 proceedings.

15 Similarly, Principle 19 of the UN Updated Principles of Combating
16 Impunity, 2005, indicates that states shall undertake prompt,
17 independent and impartial investigations of violations of human
18 rights and international law and humanitarian law and take
19 appropriate measures in respect of the perpetrators, particularly
20 in the areas of criminal justice by ensuring that those
21 responsible for serious crimes under international law are
22 prosecuted, tried and duly punished.

23 In 2005, the UN Basic Principles on Victims were adopted by the
24 UN General Assembly and expanded and detailed in 1985 Declaration
25 focussing specifically on victims of gross violations of

1 international human rights law and serious violations of
2 international humanitarian law.

3 Although these principles do not have allegedly binding character
4 of ratified international treaties, many have become part of
5 customary international law.

6 I would like now to proceed to my colleague, Silke Studzinsky, to
7 continue.

8 MS. STUDZINSKY:

9 Good afternoon, Mr. President, Your Honours, dear colleagues. I
10 will continue with our submission.

11 [14.01.29]

12 The remedies for victims under the UN basic principles can be
13 grouped into four main categories.

14 First, access to justice. States have to provide for victims of
15 gross violations, fair, effective and prompt access to justice,
16 with reference to general access to judicial bodies to achieve
17 appropriate remedies.

18 This does not necessarily mean at the outset a criminal
19 proceeding, however, since the identification and liability of
20 the perpetrators is required as a condition to reparations as a
21 remedy, the right of access to justice indirectly includes
22 criminal investigation of the violations that constitute
23 international crimes as a prerequisite to holding the persons
24 liable and to enable a reparation claim to be made against the
25 responsables.

1 Since the state's obligation with regards to reparation is
2 subordinated to the individual application to provide reparation,
3 this end can only be achieved if the individual perpetrator is
4 identified and brought to trial.

5 [14.02.41]

6 Importantly, access to justice must be fair, prompt and
7 effective, which obliges the state to react immediately after a
8 gross violation occurs. To be effective, substantial remedies
9 must be seen and received.

10 Second, investigation, prosecution and punishment. Investigate
11 violations effectively, promptly, thoroughly and impartially and,
12 where appropriate, take action against those allegedly
13 responsible in accordance with domestic and international law can
14 be found in Article 2.3(b). In cases of serious violations,
15 states have a duty to investigate and if there is sufficient
16 evidence, the duty to submit to prosecution the person allegedly
17 responsible for the violations and, if found guilty, the duty to
18 punish her or him.

19 The mechanisms of the Human Rights Committee demonstrate that the
20 criminal component, including state obligations relating to this,
21 is an essential part of the remedies for victims. This
22 obligation cannot be buried by statute of limitation. The
23 provision in Article 4.6 stipulates that a statute of limitation
24 does not apply to gross violations of international human rights
25 law and serious violations of international humanitarian law

1 which constitute crimes under international law.

2 This is a strong basis for our submission, that criminal
3 prosecution is an important component of state obligations with
4 regard to victims' rights.

5 Third, Access to Information on the Courses and Access to Truth.
6 Access to relevant information concerning the violations and
7 reparation mechanisms, including the courses leading to their
8 victimization, is a fundamental right for victims. Moreover,
9 being informed about the courses and conditions pertaining to the
10 gross violations and to learn the truth in regard to these
11 violations is recognized as part of the right to an effective
12 remedy.

13 [14.05.07]

14 Access to the truth means access for its specific individual
15 victims, their families, and their communities, including
16 understanding the courses and obtaining adequate answers to the
17 important question -- why crimes happened and why they happened
18 to them and their families. Proper investigations by a state in
19 criminal proceedings are likely to discover what has happened and
20 satisfy the information needs of individual victims and
21 communities.

22 The effect of validating any amnesty given to defendants of mass
23 crimes constitutes an obstacle to the ability to access
24 information about facts and circumstances surrounding an
25 international crime and, consequently, negates the guarantee of

1 victims' rights to an effective remedy.

2 Number 4, access to reparation. All major human rights
3 instruments, including the UN basic principles, set up the right
4 to reparation to be made against the person or persons who are
5 held liable for the crimes.

6 Following that, if the responsible are unable to satisfy the
7 reparational requests, the responsibility falls on the state. We
8 will highlight how both pardon and amnesty conflict with victims'
9 and civil parties' rights to be compensated for loss, damages,
10 and personal and direct harm.

11 [14.06.42]

12 To conclude, international standards for victims of gross
13 violations that constitute international crimes, and their right
14 to effective remedies, includes state obligations to investigate,
15 prosecute and try those responsible, as well as providing the
16 means to access to justice, information, and reparation.

17 We will now examine the royal pardon and the amnesty and their
18 validity in the light of aforementioned state obligations towards
19 victims at the international level.

20 The pardon that Mr. Ieng Sary was granted for the 1979 conviction
21 and the amnesty for prosecution of crimes under the outlawing
22 law, if held valid, would lead to full impunity of one surviving
23 senior leader of Democratic Kampuchea.

24 According to the set of principles for the protection and
25 promotion of human rights through action to combat impunity,

1 impunity is defined as:

2 "The impossibility, the de jure or de facto, legal or factual,
3 of bringing the perpetrators of violations to account, whether in
4 criminal, civil, administrative or disciplinary proceedings since
5 they are not subject to any enquiry that might lead to their
6 being accused, arrested, tried and, if found guilty, sentenced to
7 appropriate penalties and to making reparation to their victims."

8 If the pardon and amnesty were held to be valid, there would be
9 no other national or international mechanism to hold Mr. Ieng
10 Sary accountable or any legal remedy for the victims. Such
11 impunity would conflict with the rights of victims in
12 international human rights law and falls way short of meeting the
13 requirements of international standards in this area. Moreover,
14 that would be in violation of state obligations with regard to
15 victims, as stipulated in international instruments and case law.
16 [14.09.17]

17 The Royal Government of Cambodia has ratified all relevant
18 international conventions and adopted the UN basic principles,
19 and has the obligation to comply with them as stated in Article
20 31 of the Cambodian Constitution. Consequently, the same applies
21 to the ECCC as it is a court within the national judicial system.
22 A total impunity granted to one of the senior leaders, Mr. Ieng
23 Sary, would amount to a serious violation of state obligations by
24 the Royal Government of Cambodia towards victims of mass crimes.
25 For victims and civil parties, validating the pardon and amnesty

1 would mean an effective exclusion of the right to access justice,
2 information and truth, and the right to have crimes properly
3 investigated, prosecuted and tried with regard to the case
4 against Mr. Ieng Sary.

5 Such a state of impunity would violate the international
6 obligations of the Royal Government of Cambodia and, thus, the
7 obligations of the ECCC.

8 Mr. Ieng Sary has submitted that victims are not precluded from
9 an effective remedy because the pardon and amnesty protects only
10 him and not the other accused. Contrary to this internationally
11 recognized victims rights cannot be said to be remedied merely
12 because other senior leaders are prosecuted. In the absence of a
13 truth and reconciliation commission or other mechanisms,
14 discontinuing the criminal proceedings against Mr. Ieng Sary
15 would exclude significant portions of the history relating to his
16 personal responsibility as a member of the standing and central
17 committee of the regime, effectively denying victims the right of
18 access to information and the full truth.

19 [14.11.27]

20 Since it is alleged that the senior leaders planned and performed
21 various crimes pursuant to a joint criminal enterprise, the
22 alleged criminal contribution of Mr. Ieng Sary to the overall
23 enterprise is a crucial and significant piece of the puzzle which
24 cannot be removed from the case on the basis of the pardon and
25 amnesty.

1 If the case of Mr. Ieng Sary is dismissed, the victims will
2 suffer direct and personal harm as a result of his alleged
3 actions; would be deprived of having their harm properly and
4 fully addressed.

5 Finally, any reparation to be borne by the accused would simply
6 fail if Mr. Ieng Sary escapes accountability, as victims and
7 civil parties would have only three accused against whom they
8 could direct their reparation claims, if convicted.

9 Since Mr. Ieng Sary is considered to be the wealthiest among all
10 accused persons, who possess assets in Cambodia or/and abroad,
11 dismissing his case would significantly reduce the implausibility
12 of any reparation awards.

13 [14.12.02]

14 To conclude, holding the royal pardon and amnesty valid would, in
15 addition to all the other arguments made in this submission, not
16 only violate the Court's international obligations towards
17 victims and, in particular, civil parties, it would also be an
18 affront to the pain, suffering and damages done to these
19 individuals, their families and their entire communities, given
20 that Mr. Ieng Sary allegedly partook in destroying the very
21 fabric of Cambodian society.

22 Therefore, civil party lawyers respectfully request that the
23 defence objections concerning the royal pardon and amnesty be
24 dismissed, and let the Chamber declare that the royal pardon and
25 amnesty is not valid before the ECCC.

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1 Thank you for your attention.

2 MR. PRESIDENT:

3 Thank you, civil party lawyers.

4 To continue, the Chamber gives the floor to the defence lawyers
5 to reply to the response, if they wish to do.

6 MR. KARNAVAS:

7 Good afternoon, Mr. President. Good afternoon, Your Honours; and
8 good afternoon to everyone in and around the courtroom. I will
9 briefly respond; I'll just hit the highlights if you will.

10 [14.14.22]

11 I'll start off with the national Co-Prosecutor's remarks, in
12 particular. It began by, as I recall, indicating that there was
13 no need to call witnesses, and the international Co-Prosecutor
14 also made the same remark. And, of course, they were relying on
15 the Pre-Trial Chamber's interpretation of what, of course, were
16 the intentions of the King and, of course, the Prime Ministers
17 and anyone else who might have been involved in the negotiations.
18 With all due respect to the Pre-Trial Chamber, we were not a
19 party to the negotiations and what they may divine to have been
20 the intention of the King is not sufficient, in our respectful
21 submission, because the best witnesses that are capable of
22 explaining what the intention was are the parties who engaged in
23 that negotiating process.

24 We especially think now that it is necessary to have testimony on
25 not only the language but the intent behind the amnesty because,

1 again -- and we have the prosecution now informing us or
2 declaring what it was that the Prime Minister had indicated in
3 his political statements as to what he intended the amnesty to
4 entail. And then, of course, we hear more hearsay as to what the
5 Prime Minister may have told somebody else who has a UN title
6 and, therefore, there's no need.

7 So for all those reasons, Your Honours, we believe that our
8 submission is the correct one and that should be granted because
9 there is ambiguity, not only as to the text, but also as to the
10 intent behind it. And that seems to be one of the fundamental
11 arguments in this case.

12 [14.16.38]

13 Next, let me address briefly how the 1994 law has been
14 interpreted by the prosecution and how, in our respectful
15 submission, at least there seems to be some -- their
16 interpretation would lead to an absurd result -- and I don't mean
17 this in a pejorative sense, it's not attack on the prosecution,
18 but merely that what they're claiming seems to be an absurdity --
19 and that is that the amnesty that Mr. Ieng Sary received, based
20 on their interpretation, would kick-in after Mr. Ieng Sary went
21 through a trial. In other words, Mr. Ieng Sary in 1996 agreed to
22 be re-tried again, then if found guilty, he would then benefit
23 from a pardon.

24 That is an absurdity. Or, to even make it more absurd, that
25 after this particular trial, irrespective of what you may find

1 with respect to our jurisdictional issues, that if in the event
2 Mr. Ieng Sary is convicted, he could still benefit from the
3 amnesty itself. That's what I took away from that argument.
4 Clearly, Mr. Ieng Sary intended to be amnestied and not to be
5 prosecuted for any crimes that he may have been involved in or
6 associated with during the relevant periods. Full stop. Not
7 that he would -- that he had negotiated that he could be retried.
8 And if that were the case, if that were the case, why did not the
9 Cambodian government prosecute him in '96 when he came over; or
10 '97; or '98? Where was the UN to say "arrest him and prosecute
11 him"? Nowhere. So that's why that interpretation fails.
12 And as far as what the 1994 law covers, what it's supposed to
13 cover, I urge the Trial Chamber to first read the law in its
14 entirety, starting with the preamble. But also, speaking of
15 public remarks, Mr. Sam Rainsy, who had been finance minister in
16 1994 and had participated in the National Assembly at the time --
17 in fact, I believe he was with FUNCINPEC when he was the finance
18 minister -- he made it very clear as to what the intention was
19 behind the passage of the 1994 amnesty law.

20 [14.19.46]

21 He was quite clear that it specifically covered crimes that had
22 taken place during the period of the Khmer Rouge rule from 1975
23 to 1979. Now, we've cited this material, Your Honour, so I don't
24 want to belabour the point, it's in our submissions. But,
25 clearly, that was the whole purpose of that amnesty law, and I've

1 already explained how we believe the law should be interpreted in
2 conjunction with the amnesty, so I won't go over that again. I
3 don't think the petition is persuasive, especially since I
4 believe I was rather clear this morning as how we feel and stand
5 on that particular issue.

6 Now, the International Co-Prosecutor was rather frank this
7 morning and we wish to thank him for saying what -- the quid pro
8 quo that Mr. Ieng Sary got was life. He got to keep his life in
9 other words, but he was not going to be executed or put in prison
10 for the rest of his life and, of course, that's the argument that
11 we were making yesterday and today, which is why that file, for
12 all its faults, produced a legitimate -- a legitimate verdict,
13 one that would have been acted upon and one that required --
14 required a pardon from the King.

15 So that's why these two arguments, the ne bis in idem and the RPA
16 are effectively -- they go hand-in-glove; they're tied together.
17 But it validates the point that we have been trying to make.

18 As far as what is or is not customary international law and what
19 is applicable -- and I understand Your Honours have taken an oath
20 to exercise your discretion, and we appreciate that and, of
21 course I don't think there's a single person here in courtroom
22 that would say otherwise. We do think and we do submit that the
23 law is not quite as crystal clear as the prosecution would have
24 you believe, albeit, they use this word, "crystallization"; it
25 has crystallized. And how do they do so? They do so by pointing

1 out to one or two cases.

2 [14.22.31]

3 One or two cases do not crystallize into a customary
4 international -- into customary international law. You need
5 state practice and opinio juris. We've discussed this
6 extensively in our briefs so I won't belabour the point. But
7 suffice it to say simply because you have a judgment or a
8 decision from one particular Court, that, in and of itself, while
9 it may be instructive it certainly is not enough to constitute
10 customary international law, or at least the principles for which
11 it is being argued.

12 The same thing goes with remarks made by the UN
13 Secretary-General. Yes, he is entitled to make remarks which --
14 what he believes may be indicative opinio juris and we support
15 the fact that as the law is progressing, the law is becoming
16 clearer. And of course, international criminal law is evolving.
17 But we have to keep in mind a couple of things throughout these
18 proceedings while we're dealing with these legal issues, but also
19 throughout the trial.

20 First and foremost, Mr. Ieng Sary, as well as the others, are
21 being tried for -- under the Criminal Codes that would have
22 existed at the time. What was the customary international law at
23 the time? What was the law applicable in Cambodia at the time?
24 And so when you look at the amnesty that was provided in 1996;
25 what was the law at that time, not what is the law today or

1 thereafter. What was it at that time?

2 And, again, by way of example, if indeed the law was as settled
3 -- as settled -- as the prosecution would have you believe, then
4 why on earth would the UN participate in the negotiations at
5 Abidjan with -- or Sierra Leone in order to bring the fighting to
6 an end. And what they signed off and what they remarked was
7 postscript, it was after the signing that they entered -- oh, and
8 by the way, not before, not during, at no time did the United
9 Nations prior to the signing indicate that this is impermissible.

10 [14.25.31]

11 And we stand by what we've indicated earlier. Yes, countries
12 should not -- states should not be engaged in violating any of
13 these norms. And yes, they do have an obligation to prosecute.
14 But there is also that discretionary power still left to states
15 to grant amnesties.

16 And the granting of the amnesty -- now directing my remarks to
17 one of the civil parties. We began hearing some of the
18 historical background as to how the amnesty was given and, in a
19 sense, what I took away was Mr. Ieng Sary blackmailed the
20 Cambodian government into offering him an amnesty.

21 Well, I have news for the gentlemen, and that is, that's the
22 whole purpose of an amnesty, to stop a situation that's ongoing.
23 It's regrettable. In granting the amnesty, when authority has
24 the power to grant it, it doesn't necessarily mean that the
25 authority granting it is in the right. What it means is it has

1 the power to grant it. And in this instance, as I said
2 yesterday, the proof is in the pudding and in the tasting in that
3 by granting the amnesty the purpose of it was to stop the
4 bloodshed, stop the conflict; and it did stop.

5 And today if there is peace in Cambodia, if there is a unified
6 political system in the sense that people go and vote their
7 choice and there's no armed conflict is because Mr. Ieng Sary
8 began that process in 1996.

9 Now, we heard, but wait a minute. If you grant -- if you give
10 him this amnesty and if you find that this amnesty applies,
11 effectively what you will be doing is promoting impunity. And
12 here's what I have to say to that. In principle I agree that
13 everyone deserves justice. No doubt about it. But I also am a
14 fundamental believer in the power of the law. And the law has
15 to be applied whether we like it or not. It is not a
16 technicality. It is not something that we can just ignore when
17 it's inconvenient or when difficult decisions need to be made.

18 [14.28.09]

19 Granting an amnesty for the government, and for the King to have
20 signed it, was a difficult and perhaps even painful decision but
21 nonetheless it was one that was necessary and one that the powers
22 that be who had the authority to do so recognized was important
23 at the time.

24 All we are asking you, Your Honours, is to look at the law
25 carefully, look at the amnesty; since it is ambiguity, let's

1 clarify that ambiguity. But at the end your decision should not
2 be based on whether one party is not going to receive their day
3 in Court. It's going to be on whether the law is applied. And
4 we have to apply it consistently throughout these proceedings and
5 in every court, no matter where we are.

6 And I know, Your Honours, that you will do your level best in
7 exercising your wise discretion on this matter and at the end, we
8 will abide by the decision and go forward, no matter what the
9 situation is.

10 Thank you very much.

11 MR. PRESIDENT:

12 Thank you, counsel. It is now time for us to take a short
13 recess. We'll take a 20-minute recess and we will come back at
14 2:50.

15 THE GREFFIER:

16 All rise.

17 (Judges exit courtroom)

18 (Court recesses from 1429H to 1452H)

19 (Judges enter courtroom)

20 MR. PRESIDENT:

21 Please be seated. The Court is now back in session.

22 I notice that Mr. Phat Pouv Sang is on his feet.

23 MR. PHAT POUV SANG:

24 Your Honour, I would like to seek the leave for my clients to go
25 back to the detention facility because she is not now well.

1 Thank you.

2 MR. PRESIDENT:

3 Because your request is well-reasoned, and because they have
4 problem of the accused, and as I noticed that the accused Ieng
5 Sary has been sitting in this courtroom for quite a long time,
6 the Chamber grants the leave that the accused can be escorted
7 back to the detention facility. The guards are directed to bring
8 the accused back to the detention facility.

9 [14.53.56]

10 (Accused person exits courtroom)

11 MR. PRESIDENT:

12 Next, we move on to oral arguments on the statute of limitations
13 in relations to grave breaches of the Geneva Conventions.

14 The Chamber will today hear oral arguments on the preliminary
15 objection concerning statutory limitations in relation to grave
16 breaches of the Geneva Conventions. This preliminary objection
17 has been raised by the Ieng Sary team. The Ieng Sary defence
18 team has been allocated one hour for the presentation of these
19 preliminary objections. The co-prosecutors then have 45 minutes
20 in response and the civil party lead co-lawyers 30 minutes. The
21 Ieng Sary defence then have 15 minutes in reply.

22 As indicated in the Initial Hearing agenda, the parties are
23 requested to address the following specific questions in relation
24 to this preliminary objection.

25 First, statutory limitations in relation to grave breaches of the

1 Geneva Conventions envisaged and permissible within customary
2 international law, in particular, between 1975 and 1979. The
3 Ieng Sary defence is invited to expand orally on the issues
4 raised in paragraph 6 of its supplementary filing E83, if it so
5 chooses.

6 Before giving the floor to the Ieng Sary defence, the Chamber
7 would like to inform the parties to Case 002 that as predicted
8 from what we have done for the last two days, it appears that we
9 may not be able to finish our agenda in time as we had planned.
10 So we may -- the hearing shall be continued until Friday and so
11 all parties please be informed.

12 [14.57.04]

13 Now the Chamber provides the floor to the Ieng Sary defence for
14 them to make their presentation with regards to their preliminary
15 objections.

16 MR. ANG UDOM:

17 Thank you, Mr. President; thank you, Your Honours, once again.
18 Now, I would like to address our preliminary objections regarding
19 the grave breaches of the Geneva Conventions. As the President
20 has just indicated, the Trial Chamber has asked the defence to
21 address the following specific questions. One, was statutory
22 limitations in relation to grave breaches of the Geneva
23 Conventions envisaged and permissible within customary
24 international law, in particular between 1975 and 1979.
25 And, two, the Ieng Sary defence is also invited to expand orally

1 on the issues raised in paragraph 6 of our supplementary filing,
2 E83, at the Initial Hearing, if we choose so.

3 Paragraph 6 of filing E83 states, in pertinent part, in quotes:

4 "Article 6 of the Establishment Law criminalizes grave breaches
5 as defined in the Geneva Conventions."

6 However, this article does not provide for the right application
7 of all provisions of the Geneva Conventions.

8 [15.00.11]

9 The Defence will address the second question first followed by
10 the first question. I would like to touch upon the partial
11 application of the Geneva Conventions at the ECCC.

12 Article 4 of the Establishment Law states, in pertinent part, in
13 quotes:

14 "The act of genocide, which have no statute of limitations..."

15 Article 5 of the Establishment Law states, in pertinent part, in
16 quotes:

17 "Crimes against humanity, which have no statute of
18 limitations..."

19 However, Article 6 of the Establishment Law which relates to
20 grave breaches of the Geneva Conventions does not include the key
21 words, "which have no statute of limitations".

22 The ECCC is a Cambodian Court. In a Cambodian Court, law needs
23 to be domestically incorporated before being applied. If the
24 Establishment Law is considered to be incorporating legislation,
25 grave breaches of the Geneva Conventions become criminal law and

1 Cambodian law.

2 Cambodian law is subject to the statute of limitations unless
3 expressly stated otherwise. Article 6 of the Establishment Law
4 does not expressly state otherwise. The statute of limitations
5 applies to Article 6 of the Establishment Law.

6 [15.03.03]

7 Your Honours, as a Cambodian Court, or even if the ECCC is
8 considered to be an internationalized court, the criminal acts
9 encompassing grave breaches of the Geneva Conventions are
10 applicable through Article 6 of the Establishment Law either as
11 incorporated domestic law or as legislation allowing the direct
12 application of international law for these limited criminal acts.
13 In either case, Article 6 does not apply the entire Geneva
14 Conventions at the ECCC, but rather only provides jurisdiction
15 over those who committed or ordered the commission of grave
16 breaches of the Geneva Conventions.

17 In sum, the ECCC has jurisdiction to punish perpetrators of the
18 acts which make up the crime of the grave breaches of the Geneva
19 Conventions. It does not allow for the incorporation or
20 application of the entire text of the Geneva Conventions. The
21 default position for criminal offences being punished in Cambodia
22 is that a ten-year statute of limitations applies.
23 statute of limitations in relation to grave breaches of the
24 Geneva Conventions were envisaged and permissible within
25 customary international law, in particular, between 1975 and

1 1979. I will now touch upon this issue.

2 Statutory limitations in relation to grave breaches of the Geneva
3 Conventions were envisaged and permissible within customary
4 international law, in particular, between 1975 and 1979. Grave
5 breaches of the Geneva Conventions arise from the Geneva
6 Conventions. The customary international law of grave breaches
7 of the Geneva Conventions in 1975, 1979 will be codified in the
8 Geneva Conventions of 1949.

9 [15.07.13]

10 Nothing in the Geneva Conventions which states that statute of
11 limitations are prohibited; on the contrary, these conventions
12 state that state parties shall apply statute of limitations. And
13 the applications of these Conventions need to rely on the state
14 law.

15 There was very little evolution in the customary international
16 law of grave breaches of the Geneva Conventions from 1949, which
17 is the year of the completion of the Geneva Conventions, to 1979;
18 that is, from 1949 to 1979. The Convention on the
19 non-applicability of the statute of limitations to war crimes and
20 crimes against humanity, 1968.

21 There is -- in 1975 there were only 17 states which ratified the
22 Convention, scarcely enough to create customary international
23 law. Cambodia has neither signed nor ratified this Convention.
24 In 1975, Cambodia's obligation regarding grave breaches of the
25 Geneva Conventions was to implement domestic legislation to

1 prosecute certain international offences. Domestic legislation
2 criminalizing the grave breaches of the Geneva Conventions can be
3 implemented with a statute of limitations.

4 There is no customary international law prohibiting a statute of
5 limitations to apply to grave breaches of the Geneva Conventions.

6 I conclude my acumen here and my colleague will continue to
7 provide further details to the Chamber.

8 [15.10.40]

9 Thank you, Mr. President; thank you, Your Honours, for your
10 courtesy and attention.

11 MR. PRESIDENT:

12 Thank you, Counsel Ang Udom. Counsel Karnavas, you may now
13 proceed.

14 MR. KARNAVAS:

15 Thank you, Mr. President. I will be very brief, just to touch on
16 a couple of points in picking up where Mr. Ang Udom left off.

17 And, again, I will address the issues in the same order in which
18 he addressed them, in other words, getting to your second

19 question first and then answering your first question as far as
20 whether the grave breaches of the Geneva Conventions envisaged
21 statute of limitations.

22 Now, as my colleague indicated, it is our submission that even if
23 it applies -- when you look at what was signed on in Cambodia,
24 Article 6 of the Establishment Law does not apply the entire
25 Geneva Conventions but merely one part of it. And when you look

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1 at the grave breaches, the crimes that fall within grave
2 breaches, we submit you have to look at the 1956 Penal Code,
3 which has a ten-year statute of limitations.
4 If you look at, for instance, Article 109 of the 1956 Penal Code,
5 it states:
6 "A person who committed a felony more than ten years ago, that he
7 will not be punished."
8 And then if you look at, for instance, Article 36 of the
9 Establishment Law states, in pertinent part:
10 [15.12.59]
11 "Those who have committed any crimes as provided in Articles 3
12 New, 4, 5, 6" -- which are the grave breaches -- "7, and 8 shall
13 be sentenced to a prison term from five years and onwards."
14 So clearly the crimes that we're talking about are felony crimes
15 where the penalty would be under the provisions as related at the
16 time, which would be the 1956 Penal Code.
17 And of course for -- you could also look at Article 30 of the
18 UNTAC Code which also sets out the Statue of Limitations of ten
19 years for crimes committed in Cambodia that fall within the
20 category of crimes that are within the grave breaches of the
21 Geneva Convention.
22 I think my colleague was rather complete on that; we don't need
23 to belabour the point. So let me go to the next issue which was
24 whether this was envisaged and permissible within customary
25 international law, in particular, between '75 and '79.

1 Now, in order to answer this question obviously we needed to do
2 some research and look at what was being discussed during that
3 period and prior to that period. And we submit that, based on
4 our research, there's nothing -- the Geneva Conventions seem to
5 be silent on this particular issue.

6 There is one UN report which we were able to look at for
7 guidance, and this is the report of the United Nations Economic
8 and Social Council and it's titled, "Questions of the
9 Non-Applicability of Statutory Limitations to War Crimes and
10 Crimes Against Humanity" and it's dated 15 September 1996.

11 [15.15.22]

12 So clearly from that we can glean that there was a discussion as
13 to whether statutory limitations should be applicable to crimes,
14 at least war crimes and crimes against humanity. So there is
15 this discussion going on, this is back in 1996. Naturally it
16 precedes the period of '75 to '79 but when you look at the report
17 -- and obviously the report advocates -- the report is
18 advocating, essentially, the position that we should abolish --
19 we should abolish statutory limitations. So that's the essence
20 of it, the discussion of it. How can we get there? And of
21 course one of the things that you need is you need countries to
22 sign on to this principle.

23 So Cambodia is mentioned in this particular book, study, on page
24 56. And according to the report, this is what it states:

25 "There are no special texts dealing with punishment of war crimes

1 and crimes against humanity. Any such crimes would be punished
2 under the provisions of the Penal Code covering gang murder,
3 looting, and arson, et cetera. They would be subject to the
4 normal statutory limitations, i.e.: ten years in respect of
5 criminal proceedings and 20 years in respect of the execution of
6 the penalty."

7 And I was just handed a note being reminded that I mis-spoke.
8 This is in 1966, not in 1996. My apologies, I'm a little
9 fatigued at this moment.

10 So here we have in 1996 at least we know where Cambodia stands.
11 By the Convention on the Non-Applicability of the statute of
12 limitations of War Crimes and Crimes Against Humanity, 1968, as
13 Mr. Ang Udom indicated, only 17 states ratified it out of the
14 total of 134 states.

15 [15.18.02]

16 And I'll list them very quickly. These states are Albania,
17 Belarus, Bulgaria, Cameroon, Cuba, Guinea, Hungary, India, Kenya,
18 Mongolia, Nigeria, Philippines, Poland, Romania, Russia, Rwanda,
19 Tunisia, and Ukraine. Russia, of course, being the only member
20 -- only permanent member of the Security Council.

21 As of today -- as of today it is our understanding -- and I couch
22 it in these terms because if I misspeak or if I misunderstand or
23 misconceive what the law is, you know, it's not because I
24 intentionally am trying to mislead the Trial Chambers, but it's
25 our understanding based on our research that as of today, 54

1 states have ratified it. Cambodia has not signed or ratified
2 this treaty. Of the five permanent members of the Security
3 Council, Russia still remains the only one.
4 And indicative of the limited support against -- against -- the
5 applicability of the statute of limitations for grave breaches of
6 the Geneva Convention, can be seen in the European Convention in
7 the Non-Applicability of Statutory Limitations to Crimes against
8 Humanity and War Crimes, 1974, which only seven states had
9 ratified it. So this is a 1974 result of only seven states.
10 This is the European Convention on non-applicability.
11 Now, we have extensively litigated this issue and provided in the
12 Table of Authorities, the authority which we have relied on
13 whenever we make a particular assertion in any of our
14 submissions.
15 [15.20.19]
16 And so briefly I just want to go over some of what is in our
17 pleadings without mentioning the actual sources where this could
18 be found because you have our pleadings. But, for instance, the
19 majority of states only enacted laws prohibiting Statutes of
20 Limitations after 1979. That's the majority of those states.
21 statute of limitations for war crimes still apply in Greece,
22 Malta, Norway, Portugal, Sweden, Turkey, Senegal, and China.
23 In 2005, the International Committee of the Red Cross, as you may
24 well know, did a study on customary international law -- perhaps
25 this is the seminal text, at least as of that time, 2005 -- on

1 what constitutes customary international law where they found
2 that as a rule of customary international law, statutory
3 limitations may not apply to war crimes. This was in 2005. They
4 may not apply to war crimes.
5 Now, the International Committee of the Red Cross may have
6 reached this conclusion in 2005 but given the scope of your
7 question, Your Honours, which was in '75 to '79, the answer would
8 be that it was envisaged at that particular time how the law --
9 customary international law may have evolved since then, which is
10 admirable, is not necessarily, I submit, indeed it is not
11 applicable for this particular tribunal because of the temporal
12 jurisdiction and because of when the crimes are alleged to have
13 been committed.

14 [15.22.05]

15 One other point; France, for instance -- and I mention France
16 because the legal system of Cambodia is not only inspired but I
17 would say based on the French system -- still defends its 20-year
18 statute of limitations for war crimes provided or as long as the
19 act in question does not also amount to crimes against humanity.
20 So the discussion is an ongoing one.

21 Bearing the debate in the third Committee of the United Nations
22 General Assembly on the question of punishment of war criminals,
23 in 1967 Honduras stated that "war criminals should have the
24 benefit of statutory limitations for humanitarian reasons". Many
25 countries constitutions establish the principle and made it part

1 of their law. It was reasonable that when the period of
2 statutory limitations expired a war criminal should gain a
3 certain degree of relief. Now this is Honduras 1967.
4 And again, lest there be any misunderstandings, because of the
5 nature of the question I am trying to provide the Trial Chamber
6 with what we believe the law is or was at that particular time on
7 or about before and thereafter.

8 In 1992 the Hungarian Constitutional Court struck down laws
9 looking to introduce statutory limitations for certain categories
10 of crimes after the statute of limitations had been told.

11 Likewise, the Swiss Federal Court also refused to apply certain
12 laws invalidating prescriptions to genocide and grave breaches to
13 crimes that had already been time barred.

14 We submit that at the time between '75 and '79 Mr. Ieng Sary
15 would only -- is likely to have only been aware that statute of
16 limitations do indeed apply to the crimes that are included
17 within the category of grave breaches. I mention this because
18 one of the criteria, of course, is whether it was accessible and
19 foreseeable.

20 [15.25.10]

21 Now, we're not advocating here that it's okay to commit crimes or
22 that the statute of limitations are good or bad. We do
23 recognize, however, that there are policy reasons for having
24 statutory limitations. I don't believe it's the time or place to
25 really make an argument as to what policy reasons -- what those

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1 policy reasons are, although, I could certainly give several
2 examples; one, for instance, is to ensure that a trial takes
3 place when the evidence is fresh and the witnesses are readily
4 available. That's perhaps the strongest.
5 No doubt that as time goes by there is this -- today there is --
6 I don't want to say that something has crystallized, but we're
7 getting to a crystallization to the point where under
8 international criminal law statute of limitations will
9 effectively be non-existent in the very near future. We're not
10 there yet. We certainly were not there in 1975 to 1979. And, of
11 course, that's the law that has to be applied by this tribunal.
12 And if there is any doubt, certainly we submit that Mr. Ieng Sary
13 is protected under Article 38 of the Constitution, in the sense
14 that he -- the doubt must go to his benefit. Although, we submit
15 that there is no doubt that from the period of 1975 to '79 there
16 was an existence of the statutory of limitations. These crimes
17 that fit within the Geneva Convention as grave breaches,
18 effectively are felonies, the statute of limitations was ten
19 years. And that is our position and we maintain it.
20 Thank you very much.

21 [15.27.35]

22 MR. PRESIDENT:

23 Thank you, counsel, for the observation.

24 Next we would proceed to the prosecution.

25 MR. VENG HUOT:

1 Mr. President, Your Honours, I am Veng Huot, and together with my
2 colleague Tarik Abdulhak.

3 I will respond to defence submissions on the applicability of
4 statutory limitations to grave breaches of the Geneva
5 Conventions. I will address the first issue indicated in the
6 agenda for today's hearing while Mr. Abdulhak will deal with the
7 second issue and more generally with the points made by the
8 defence today.

9 Turning to the first issue, in summary, the Co-Prosecutors submit
10 that any statutory limitation on the prosecution of individuals
11 suspected of committing grave breaches of the Geneva Conventions
12 was not permissible under customary international law in
13 existence as at April 1975. This is because in 1975 Geneva
14 Conventions reflected customary international law and that grave
15 breach provisions had obtained the status of jus cogens.

16 As Your Honours are aware, to be recognized as part of
17 international law a customary norm must satisfy two elements.

18 The first is consistent state practice and the second is opinio
19 juris.

20 [15.30.45]

21 Your Honours, as for the first condition, that a number of crimes
22 which are recognized as principles of customary international law
23 have additionally obtained the status of jus cogens, they include
24 grave breaches of the Geneva Conventions and jus cogens norms
25 have the highest status as state obligations in international

1 law. They are binding on all states. Any treaty which conflicts
2 with such norms is void as provided in Article 53 of the 1969
3 Vienna Convention on the Law of Treaties.

4 In his 1993 report on the establishment of an international
5 tribunal for the former Yugoslavia, the Secretary General of the
6 United Nations stated that the Geneva Conventions constitute the
7 core of the customary law applicable in international armed
8 conflicts. This view was confirmed by the judges of the
9 international tribunals. The International Court of Justice
10 itself accepted the status of Geneva Conventions as customary law
11 in its advisory opinion on the legality of the threat or use of
12 nuclear weapons in 1996.

13 In assessing the status of grave breaches in particular, the
14 Trial Chamber should consider the rapid development of
15 international criminal law in the first half of the 20th century,
16 including the emergence and recognition of the crime of genocide.
17 Even though the Genocide Convention was only adopted in 1948, as
18 early as 1950 the International Court of Justice held that
19 genocide was an international crime, and that the principles
20 enshrined in the Convention were universal. They were binding on
21 all states even in the absence of any conventional obligation.
22 The key consideration which led the court to this conclusion was
23 the fact that the condemnation of genocide as a crime reflected
24 the most basic universal human rights. We submit that in a
25 similar manner, the prohibition of grave breaches of the Geneva

1 Convention obtained jus cogens status by 1975.
2 [15.34.40]
3 The Geneva Conventions unconditionally oblige state to prosecute
4 persons suspected of committing grave breaches. For example,
5 Article 149 of the third Geneva Convention, and Article 146 of the
6 fourth Geneva Convention require the contracting parties to enact
7 any legislation necessary to provide effective penal sanctions
8 for persons committing any of the grave breaches.
9 Each state is under the obligation to search for suspects and to
10 bring them before its courts. These obligations are absolute.
11 Nothing in the Conventions suggest that state parties may
12 unilaterally place limits on these obligations, such as by
13 enacting statutes of limitations.
14 Your Honours, as you may already be familiar, any individual who
15 has been charged with war crimes shall not be entitled or shall
16 not be credited from the benefit of the statute of limitation.
17 State practice after the adoption of the Geneva Convention and
18 before 1975 confirms the inapplicability of statutes of
19 limitations to grave breaches. This includes the adoption of the
20 1968 UN Convention and the 1974 European Convention on the
21 non-applicability of statutory limitations.
22 Article 1 of the 1968 Convention provides that no statutory
23 limitation shall apply to grave breaches, irrespective of the
24 date of their commission. According to the preamble to the
25 Convention this is an affirmation of a principle of international

1 law.

2 [15.38.22]

3 We submit that although only 19 states had become parties to the
4 UN Convention as at 1975 this does not diminish the universal
5 applicability of the customary rule. The reluctance of some
6 states to ratify the 1968 UN Convention arose from a concern with
7 the retroactive applicability of the Convention itself, not with
8 the correctness of the principles contained in the Convention.

9 A number of states, such as Peru, argue that the Convention
10 should apply only to crimes committed after the entry into force
11 of the Convention. Your Honours, this Convention came into force
12 in 1970, five years before the exact date as indicated in the
13 indictment. The fact that Cambodia has not ratified the 1968 UN
14 Convention also does not affect the non-applicability of statutes
15 of limitation because the principle arises out of customary
16 rules.

17 As indicated in one of the decisions, the ECCC is a special
18 court, and having considered the crimes committed after the World
19 War II and the magnitude of the crimes, as the International
20 Court of Justice indicated in its advisory opinion on the threat
21 of nuclear weapons, fundamental principles of humanitarian law
22 are to be observed by all states whether or not they have
23 ratified the conventions that contain them. These principles
24 constitute intransgressible (sic) rules of international
25 customary law.

1 The principle of non-applicability of statutory limitations was
2 reflected in the statements of several states during debates
3 preceding the adoption of the 1968 Convention. In the third
4 Committee of the UN General Assembly the representative of
5 Czechoslovakia stated the non-applicability of statutory
6 limitations to war crimes and crimes against humanity followed
7 directly from international law. The application to such crimes
8 of the rules of domestic law concerning statutory limitation
9 would constitute a flagrant violation of the principles of
10 international law. Numerous other states made similar
11 statements, including Bulgaria, Chile, France, India, Israel,
12 United States of America, Soviet Union and the United Kingdom.
13 [15.43.07]

14 In the pre-1975 period numerous states enacted domestic laws
15 which removed statutes of limitation for war crimes; examples,
16 including Switzerland in 1927, Niger in 1962, Soviet Union in
17 1965 and Luxembourg in 1974.

18 In 1993 the Constitutional Court of Hungary upheld a law which
19 revoked statutes of limitations with respect to crimes against
20 humanity committed during the suppression of a 1956 uprising.

21 In 2003 Argentina incorporated the 1968 UN Convention in its
22 domestic legislation and annulled two laws that provided
23 amnesties in relation to military dictatorship that ruled from
24 1976 to 1983.

25 Cambodia has also incorporated the notion of international

1 customary law in our penal code as in Article 9. When it comes
2 to crimes against humanity, war crimes, the statute of
3 limitations shall never lapse.
4 Judgments by national courts dealing with crimes committed prior
5 to 1975 also confirm the principle of non-applicability of
6 statute of limitations to international crimes. I will mention
7 just two examples. Number one, in the Hass and Priebke cases,
8 the Military Court of Rome and Supreme Court of Cassation of
9 Italy allowed the persecution of former Nazis for crimes
10 committed in the 1940s. The courts upheld the inapplicability of
11 statutes of limitations to war crimes despite the fact that Italy
12 is not a party to the 1968 UN Convention.

13 [15.46.36]

14 In the second case with regard to Videla case, the Appeal Court
15 of Santiago in Chile held that grave breaches committed in 1974
16 cannot be subject to a ten-year statute of limitations. It
17 stated that any attempt to tamper with criminal liability for
18 acts which infringe the rights of persons in war time is beyond
19 the state's competence.

20 It is also noted that several international instruments that had
21 been adopted after 1979, those instruments reflect the principle
22 with regard to the non-statutory limitation concerning crimes.
23 Your Honours, you may also be referred to Article 29 of the
24 Statute of the International Criminal Court; number two, Article
25 6 of the basic principles and guidelines on the right to a remedy

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1 and reparation for victims of violations of international human
2 rights and humanitarian law; and number three, Article 7 of the
3 draft code of crimes against the peace and security of mankind.
4 Your Honours, in conclusion we submit that statutory limitations
5 on grave breaches of the Geneva Conventions were not permitted by
6 customary international law in 1975. Any statutory limitation on
7 the prosecution of these crimes has always been inconsistent with
8 core principles of international law and humanity. To uphold time
9 limitations would frustrate the effective protection of the most
10 basic universally recognized rights in customary international
11 law as at 1975.

12 With regard to the Geneva Convention, the Trial Chamber (sic) has
13 already ruled that there is no statute of limitation with regard
14 to it -- the decision by the Pre-Trial Chamber.

15 [15.49.47]

16 I will now invite my colleague to address the remaining issues.

17 I am very grateful, Your Honours.

18 MR. ABDULHAK:

19 Good afternoon, Your Honours.

20 As my colleague has explained, I'll address primarily the second
21 question which the Chamber has posed in its Initial Hearing
22 agenda, and perhaps respond to some of the comments made by the
23 defence in their oral submissions.

24 And I think by way of perhaps explaining the difference in the
25 positions between us and the defence, I might just touch briefly

1 upon the issue of what we say is the proper jurisdictional
2 framework within which Article 6 operates. We say that Article
3 6, just like Articles 4 and 5 of the ECCC Law, does not
4 criminalise conduct. It's a law, the ECCC Law, and this article
5 included, is a law which creates a judicial forum and gives it
6 jurisdiction in respect of international crimes which were in
7 existence and which were punishable as at 1975.
8 Of course this is reflected in Article 9 of the ECCC Agreement
9 which states that the subject matter of the Extraordinary
10 Chambers shall include grave breaches of the 1949 Geneva
11 Conventions.
12 [15.51.19]
13 It is clear, therefore, that this is a statute giving
14 jurisdiction in respect of international crimes, as opposed to a
15 domestic law criminalising conduct.
16 Now, of course this is also consistent with the findings of the
17 Pre-Trial Chamber, which held in its decision on Ieng Sary's
18 appeal against the Closing Order that of course Cambodia was
19 always under an obligation to prosecute grave breaches, that
20 obligation existed in 1975; that the ECCC law creates, as I said,
21 a judicial forum to prosecute these crimes, and that such vesting
22 of jurisdiction is proper given that these crimes were punishable
23 as at 1975.
24 Of course Your Honours reached similar conclusions in case one
25 where you held at paragraphs 400 to 408 of your judgment that the

1 Trial Chamber has jurisdiction with respect to grave breaches of
2 the Geneva Conventions; that Geneva Conventions were customary
3 law as at 1975; that grave breaches, in particular, constituted
4 crimes, and perhaps most importantly that there was a universal
5 mandatory criminal jurisdiction as at 1975, a, what we say, is an
6 international obligation upon all states to suppress or rather to
7 investigate and prosecute and punish those accused of grave
8 breaches.

9 Your Honours, the core feature of the defence argument in
10 relation to Article 6 is that by omitting the words "which have
11 no statute of limitations", the legislature has effectively
12 allowed a statute of limitations to operate in relation to
13 Article 6, whereas that's not the case in relation to Articles 4
14 and 5. And the corollary of that argument is that Article 6 does
15 not incorporate Geneva Conventions, but that it rather
16 criminalises certain conduct.

17 [15.53.20]

18 We say that that is plainly wrong if you look at the wording of
19 both the ECCC Law and the ECCC Agreement. It's clear, Your
20 Honours, that Article 6 simply gives jurisdiction. The wording
21 could not be more clear. And it states, "The Extraordinary
22 Chambers shall have the power to bring to trial all suspects who
23 committed or ordered the commission of grave breaches of the
24 Geneva Conventions." Then it goes on to say "...such as the
25 following acts..."

1 And, Your Honours, when you look at the list of the enumerated
2 acts in Article 6 you find that it's not an exhaustive list. It
3 doesn't, in fact, include all the grave breaches that you find in
4 the Geneva Conventions. It doesn't include, for example, the
5 crime of using biological experiments.
6 Article 6 also invites you to look at the Geneva Conventions to
7 define terms such as protected persons or protected property.
8 Therefore one has to go to the conventions, one has to apply the
9 conventions as a whole, and that's what Article 6 requires.
10 Now, I'd like to quickly touch upon what I would describe as an
11 impossibility in the argument put forward by the Ieng Sary
12 defence team. They effectively say that because grave breaches
13 are punishable by a term of imprisonment of more than five years,
14 they are felonies under domestic law, and that therefore, as
15 such, they attract the application of a domestic statute of
16 limitations.
17 Now, Your Honours, the argument goes something like this: a
18 penalty for grave breaches is defined in 2001, the first time the
19 ECCC Law is enacted, and yet that penalty qualifies grave
20 breaches as at 1979 for a statute of limitations which is to last
21 ten years. Clearly, Your Honours, that is an argument that
22 cannot withstand scrutiny.
23 [15.53.21]
24 And it's interesting in this regard to note that when Cambodia
25 acceded to the Geneva Conventions in 1958 -- that is only two

1 years after the enactment of the penal code -- it chose not to
2 enter any reservation with respect to its obligations to
3 prosecute those accused of grave breaches.

4 Now, perhaps there is some room, in fact, for agreement between
5 us and the defence. Counsel has referred to statutes of
6 limitations on war crimes and what we say is that the issue here
7 is not one as to whether or not statutes of limitations can apply
8 to war crimes, that's not a question Your Honours have asked.

9 The question is specifically in relation to grave breaches, which
10 of course is a very specific subcategory. It's the only
11 category, as my colleague explained, to which an absolute duty to
12 prosecute applies under the Geneva Conventions. And so we say it
13 is a very different type of offence to any war crime or any other
14 type of war crime.

15 Now, there is another inconsistency in the position that the Ieng
16 Sary defence team has taken today. You'll be intimately familiar
17 with the extensive arguments they've made in relation to the
18 existence of independent legal regimes as at 1975, i.e. an
19 international legal order with specific international principles,
20 including criminal offences, and then a national legal order
21 which is reflected in this case by the 1956 Criminal Code. And
22 the defence have argued that for that international law to be
23 incorporated there needs to be a law which achieves that purpose
24 and that in the absence of such a law, as at 1975, this Court
25 will breach the principle of legality to allow a prosecution of

1 international crimes.

2 [15.58.23]

3 And this is reflected in a number of pleadings by the Ieng Sary
4 team and I'll just quote one specific passage. At paragraph 119
5 of the Closing Order appeal the Ieng Sary defence submits, "The
6 Geneva Conventions could not have been incorporated through the
7 1956 Penal Code or the 1954 Code of Military Justice, as Cambodia
8 only ratified the Geneva Conventions after these codes entered
9 into force." That same argument is contained at paragraph 19 of
10 Ieng Sary's motion against the applicability of grave breaches,
11 and the number of that document is D379.

12 And then at paragraph 28 of that same pleading Ieng Sary says,
13 "The Agreement and Establishment Law do not create new law. They
14 merely provide the ECCC with jurisdiction to apply already
15 existing laws. Grave breaches are not found in the 1956 Penal
16 Code."

17 Your Honours, you're being invited on the one hand to find that
18 there is no interaction between the 1956 Penal Code and the
19 international principles, and yet at the same time you're being
20 asked to find that a statute of limitations in the 1956 Code in
21 fact applies.

22 Of course, as my colleague has highlighted, this issue has been
23 dealt with by the Pre-Trial Chamber in its decision on the
24 Closing Order, and at paragraph 73 the Pre-Trial Chamber found
25 that the Geneva Conventions, which are the applicable law before

1 the Court, pursuant to Article 6, provide that war crimes are not
2 subject to any statute of limitations.

3 It's interesting, I think, Your Honours, to look at the regime of
4 enforcement of grave breaches in the Geneva Conventions as a way
5 of highlighting some of the submissions that my colleague has
6 made, and further to the argument that grave breaches attract a
7 positive duty to prosecute, a duty which states cannot invoke
8 domestic law to avoid.

9 [15.59.38]

10 The International Committee of the Red Cross, to which my
11 colleague has referred, in its commentary on the enforcement of
12 Article 146 of the fourth Convention says that the obligation to
13 search for persons accused of committing grave breaches is an
14 active duty. It is a duty to ensure that the person concerned is
15 arrested and prosecuted with all speed. Nowhere in the Geneva
16 Conventions or in the commentaries is there any reference to the
17 adoption of domestic statutes of limitation as a legitimate
18 limitation on this obligation.

19 And I'll just illustrate with two very brief examples why we say
20 that allowing domestic statutes of limitations could not possibly
21 be permitted by the Conventions. If you are to accept these
22 submissions, then a state party could simply sit on its hands for
23 a period of time, whether it be ten years or 20 years, not
24 investigate or prosecute, and then subsequently come back and say
25 "Well, we can no longer prosecute because the statute of

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1 limitations under our domestic law has come into force and
2 prevents a prosecution."
3 Equally, a suspect could evade justice for a period of time, of
4 ten or 20 years, and equally be beyond the reach of authorities
5 and beyond the reach of international justice simply because a
6 domestic statute is invoked to prevent prosecution.
7 We say that is inconsistent with the regime of the Geneva
8 Conventions with the positive duty to enforce the grave breaches
9 regime to search, apprehend and prosecute suspects at all times.
10 The specific article of the Geneva Conventions in which these
11 obligations are contained, and I'll use just one example of
12 Geneva Convention, the fourth Geneva Convention is Article 146,
13 and as Your Honours will be aware, there are three prongs to that
14 obligation. One is to undertake domestic legislation to provide
15 effective penal sanctions; two is to search for persons alleged
16 to have committed the crimes; and a third is to either prosecute
17 or hand over to another contracting party the suspects.
18 [16.01.58]
19 And this third responsibility to extradite or to prosecute has
20 been subject of extensive commentary by international experts.
21 And so, for example, in his report on this duty the Special
22 Rapporteur of the United Nations states -- and this is at
23 paragraph 14 -- "There are numerous grounds of refusal which are
24 not appropriate when crimes under international law are
25 concerned." And it goes on to say "There are also numerous

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1 obstacles to the effectiveness of prosecution systems that are
2 not appropriate to such crimes, including statutes of
3 limitations." And this is in UN Document Number A/CN.4/571.
4 Equally, Your Honours, the International Committee of the Red
5 Cross submits that the obligation to investigate war crimes and
6 to prosecute suspects is part of customary international law and
7 that perhaps answers in part your first question today.
8 I would also note, as counsel for the civil parties mentioned
9 earlier today, that to allow limitations on prosecution before
10 this Court would be inconsistent with Cambodia's obligations under
11 the International Covenant on Civil and Political Rights, and
12 specifically Article 2, which requires states to ensure that any
13 persons whose rights or freedoms have been violated to have
14 access to an effective remedy.
15 Now, Your Honours, we say that it's not correct to say that the
16 Geneva Conventions haven't addressed the issue of statutes of
17 limitations, and we say that for two reasons. One is that the
18 grave breaches regime is clear: it does not allow for any
19 exceptions under domestic law. And, of course, Your Honours, if
20 you take into account the principle of *pacta sunt servanda*, which
21 is reflected in the UN Convention on the Law of Treaties, states
22 cannot invoke domestic law as an excuse not to comply with their
23 international obligations. That is one way in which we say the
24 Geneva Conventions actually do deal with this issue, they provide
25 a positive duty to which there is no exception.

1 [16.04.12]

2 But secondly, Geneva Conventions also deal with issues of fair
3 trial, and in particular, the third Geneva Convention looks at
4 circumstances in which a person who is a protected person may be
5 brought to trial by a detaining power. And there are a number of
6 articles in the third Geneva Convention which provide essential
7 fair trial guarantees for such a person. And if you look at
8 Articles 87, 99, 103, 105 and 106 of the third Geneva Convention,
9 which provide those guarantees, there is absolutely no reference
10 to statute of limitations.

11 Your Honours, the international tribunals have not dealt with
12 this issue extensively. It has no reason in litigation before
13 the tribunals. But it is interesting to note, for example, that
14 the ICTY in its judgment in the Mrdja case -- that's M-R-D-J-A --
15 on the 31st of March 2004, found that crimes against humanity and
16 war crimes belong to the most serious category of crimes, and as
17 such are not subject to statutes of limitation. And this is at
18 paragraphs 103 to 104.

19 What's also interesting is that in 1993 the Minister for Foreign
20 Affairs of Yugoslavia in a letter to the UN Secretary-General
21 expressed a view that statutes of limitations do not apply to war
22 crimes -- and we submit this is relevant -- ICTY was looking at
23 conduct taking place in the early 1990s and we say that there
24 were no significant developments in international law between the
25 mid-1970s and the early 1990s.

1 [16.05.02]

2 Your Honours, the defence have made reference to the case of
3 Klaus Barbie which was prosecuted in France, and of course, as
4 Your Honours will be aware, in that case the courts found that a
5 domestic statute prevented prosecution for war crimes, but that
6 it did not prevent prosecution in relation to crimes against
7 humanity.

8 We say that you should not follow this decision for a number of
9 reasons. Firstly, this decision is based on a specific French
10 statute, a 1964 legislation for which there is no equivalent
11 before you. It was a legislation which specifically exempted
12 crimes against humanity.

13 Secondly, in a case which preceded Barbie, a case called Touvier,
14 the Appellate Courts had in fact sought and obtained from the
15 Ministry of Foreign Affairs an interpretation of this 1964 law,
16 and they felt themselves bound by that interpretation; again, a
17 position which does not apply to this Court.

18 But most importantly, Your Honours, we say that it makes no sense
19 to draw distinctions between crimes against humanity and grave
20 breaches. And realizing my time is short I will just complete
21 this point very briefly. If you look at the passage quoted by
22 Ieng Sary in his preliminary objection, E43 at paragraph 8, I
23 think it illustrates why it is inappropriate to apply the
24 statutes of limitations. It speaks for itself. The view of the
25 court in Barbie was that following determination of hostilities

1 it is necessary that the passage of time should be allowed to
2 blur the acts of brutality which may have been committed in the
3 course of armed conflict, even if those acts constituted
4 violations of the laws and customs of war or were not justified
5 by military necessity.

6 [16.08.00]

7 Your Honours, this is an attempt to draw a distinction between
8 two international crimes, crimes against humanity and grave
9 breaches of war crimes. We say that there is no such distinction
10 in international law. The international law does not recognize a
11 hierarchy of crimes. Crimes against humanity don't take
12 precedence over grave breaches. This Court should simply not
13 follow a domestic decision based on a specific domestic law.
14 And lastly, if I may illustrate why to draw such a distinction
15 would not be appropriate, take the example of S21, a crime site
16 which was the subject of proceedings in the first case before
17 this Chamber. To accept a distinction between war crimes or
18 grave breaches and crimes against humanity would be to accept
19 that an accused could be held liable in respect of only some of
20 the victims of that crime but not all.

21 Your Honours, that view has no support in international
22 jurisprudence. It is not a view that this Court should adopt.
23 We say that the grave breaches regime was a norm of customary
24 international law as at 1975, it imposed positive obligations of
25 all states, including Cambodia, and we say that by giving the

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1 Court jurisdiction over those crimes, Cambodian legislature has
2 not made them subject to statutes of limitation.

3 Thank you.

4 MR. PRESIDENT:

5 Thank you, Mr. Co-Prosecutor, for your observation.

6 Next we would like now to proceed to the co-lawyers for the civil
7 parties. May you please be reminded that you have ten minutes
8 for such submissions and please be precise.

9 [16.10.25]

10 MS. SIMONNEAU-FORT:

11 Mr. President, I require a clarification. Do we have ten minutes
12 to reply, to provide our clarification on our request, or to make
13 our submission?

14 MR. PRESIDENT:

15 We have noted that there is not enough time for any response to
16 the preliminary objection. However, the Chamber has noted
17 earlier that the lead co-lawyer would like to present to the
18 Chamber with regard to the request, the request that has already
19 been made, and because the Chamber would like also to be precise
20 on the presentation that's why it is now time for you to do that
21 and please make sure that the presentation is made within the ten
22 minute given.

23 MS. SIMONNEAU-FORT:

24 Mr. President, first and foremost, I wish to thank the Chamber
25 for allowing us this opportunity to bring some clarification to

1 our requests, particularly in light of the decision that was
2 issued by the Pre-Trial Chamber.

3 I wish to begin by saying that we are all convinced, particularly
4 the civil party lawyers, on the need to hear the statements of
5 victims on each point that shall be debated during this trial.
6 Since they have experienced these crimes their participation is
7 indispensable. We always believed that it would be necessary to
8 draw a list of civil parties so that they may be heard.

9 [16.12.49]

10 Why have we not yet filed these lists of civil parties? While in
11 the month of January in the Chamber's Directive E9 we were asked
12 to draw three lists, the lists of civil parties, witnesses and
13 experts who would bring forth essential elements during the
14 trial. We developed those lists and among the 2,124 civil
15 parties we chose about 146 to 147.

16 In May, April and June we received information from the Chamber.
17 We received directives as well as an agenda. We noticed that
18 only the list of witnesses and experts were referenced. We were
19 asked to produce a new list, reduced list, as well as revised
20 lists of experts and witnesses who were likely to speak on the
21 four first issues.

22 We were not surprised with such an exclusion; that is, we were
23 not surprised that there was an exclusion of the list of civil
24 parties because we awaited in good faith an additional directive
25 on the civil parties. This was for two reasons. They are the

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1 following; firstly, upon reading of Internal Rule 80, that deals
2 with Initial Hearing -- or rather, Rule 80 bis provides the
3 Chamber to reduce the list of witnesses and experts.

4 Now, obviously this is not provided for the civil parties and
5 this is not conceivable in a civil law system because several
6 parties are parties to the proceedings and they cannot be
7 shunned. Their hearing cannot be excluded.

8 The second reason is like the Chamber we were awaiting a decision
9 from the Pre-Trial Chamber. We were awaiting the final decision
10 on 1,851 appeals of civil party applicants who had been declared
11 inadmissible.

12 [16.15.41]

13 Now as of four days ago we now have 3,850 civil parties. Now
14 obviously given the number and names of civil parties we have the
15 obligation to review the entirety of our first list that we drew
16 up in January based on admitted civil parties who had been
17 recognized as civil parties and the new list will include civil
18 parties who will necessarily have to be heard over the course of
19 the trial.

20 To conclude, what is clear for us is that only the civil parties
21 alone are entitled to produce a list of a reduced number of civil
22 parties who may speak on the first four subjects. We are fully
23 aware that it is not possible to hold the proceedings over years
24 and years. We are perfectly aware that we must be very rigorous
25 and chose the civil parties who will bring forth the most

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1 essential and relevant information.

2 Today we seek two clarifications -- well, rather, we have one
3 clarification to seek and one request. Our first request for
4 clarification pertains to document E93/2/1 with respect to the
5 policies of Democratic Kampuchea. Does the Chamber seek a broad
6 understanding or a more restricted understanding of the policies?
7 Are you more concerned with the implementation of the policies or
8 with the conception of the policies? We are therefore awaiting
9 an answer to our request for clarification that had been put a
10 few days ago.

11 Our second request is one to obtain a deadline. Now, given the
12 number of civil parties who admitted today we wish to ask for a
13 reasonable timeframe that I would quantify as within two months,
14 to establish a new initial list that would replace that which was
15 filed following your directive of January. We need to establish
16 firstly a general list of all civil parties who would be in a
17 position to adduce evidence on all of the subjects and then a
18 reduced list, a revised list that will be restricted to civil
19 parties who once again will only bring forth essential
20 information that will deal only with the first four segments of
21 the trial.

22 [16.19.06]

23 That concludes my remarks. I hope this clarification of our
24 request is very clear.

25 I wish to specify that tomorrow we will be filing a submission

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1 that includes the information that I have just indicated to you.

2 Thank you.

3 JUDGE LAVERGNE:

4 Now, of your request that you have presented this afternoon there
5 is one which concerns a deadline which you asked to be set, a
6 two-month deadline in order to file new lists -- or rather a new
7 initial list -- to make sure that we don't confuse matters. What
8 I'd like to know at this stage is will you file a list of civil
9 parties or witnesses?

10 You must remember that in the directive, the directive referenced
11 under E9, the list of civil parties was divided into two
12 categories. You have a list of civil parties who may bring forth
13 evidence on adjudicated facts or facts that we will adjudicate
14 upon and a second list of civil parties who may come and testify
15 to the suffering or the impact of the alleged crimes.
16 Therefore, what type of list do you intend to file and who is
17 concerned by that list?

18 [16.22.15]

19 MS. SIMONNEAU-FORT:

20 In the month of February, I believe, following your directive E9
21 in which you had asked for a list of civil parties, witnesses and
22 experts, in response we filed three lists, a list of civil
23 parties and a list of witnesses and a list of experts. We never
24 divided our list of civil parties; that is with two categories on
25 list of civil parties to speak on their suffering and those to

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1 speak to the facts.

2 We felt at the time that it was impossible for civil parties to

3 testify to the facts and to their suffering, and at the time we

4 had asked the Trial Chamber if such civil parties would one day

5 speak on the facts and on another day speak on their suffering,

6 and I believe, if I recall correctly, we received an answer

7 following the trial management meeting indicating to us that each

8 civil party may be heard on both the facts and suffering.

9 We did not file two lists of civil parties at the time. We filed

10 three lists which was entirely pursuant to the directive of the

11 Trial Chamber.

12 Our request today effectively concerns a general list of civil

13 parties that would replace that list which we filed following

14 your E9 directive. This exhaustive list -- the first exhaustive

15 list is no longer relevant because we have to include the close

16 to 2,000 new civil parties, and based on that general list, and

17 just as everyone has been invited to do today, we will establish

18 a list of civil parties who will only speak to the first four

19 subjects.

20 And one of the consequences of that is that out of precaution we

21 have included in the list some civil parties who were not

22 admitted, therefore, we are going to have to review our list of

23 witnesses. Our two-month timeline is simply to readjust, if I

24 will, our list of civil parties, and the exhaustive list as well

25 as the list of parties who will speak on the four segments, and

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1 as well as a list of witnesses who may in fact include those who
2 have been newly admitted as civil parties as of Friday.

3 [16.26.00]

4 MR. PRESIDENT:

5 The Court session for today has come to an end. The Chamber will
6 take the adjournment and tomorrow's session will resume by nine
7 o'clock. Parties are invited to attend the hearing as scheduled.
8 The security personnel are now instructed to bring the accused
9 person Khieu Samphan to the detention facility of the ECCC and
10 bring him back to the courtroom by 9:00 a.m.

11 (Court adjourns at 1627H)

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