



**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**

**ORIGINAL/ORIGINAL**

ថ្ងៃ ខែ ឆ្នាំ (Date): 27-Apr-2017, 13:48

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**TRANSCRIPT OF TRIAL PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/TC

11 January 2017

Trial Day 499

Before the Judges: NIL Nonn, Presiding  
Claudia FENZ  
Jean-Marc LAVERGNE  
YA Sokhan  
YOU Ottara  
Martin KAROPKIN (Reserve)  
THOU Mony (Reserve)

The Accused: NUON Chea  
KHIEU Samphan

Lawyers for the Accused:  
Victor KOPPE  
LIV Sovanna  
SON Arun  
Anta GUISSSE  
KONG Sam Onn

Trial Chamber Greffiers/Legal Officers:  
Harshan ATHURELIYA  
SE Kolvuthy

Lawyers for the Civil Parties:  
Marie GUIRAUD  
HONG Kimsuon  
PICH Ang  
SIN Soworn

For the Office of the Co-Prosecutors:  
Nicholas KOUMJIAN  
SONG Chorvoin

For Court Management Section:  
UCH Arun

**List of Speakers:**  
  
Language used unless specified otherwise in the transcript

Speaker	Language
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KOPPE	English
Mr. KOUMJIAN	English
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0904H)

3 MR. PRESIDENT:

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

5 Today, the Chamber will hear oral responses from parties on two

6 issues. First, there is the remaining charges in Case 002, and

7 second, that is the available resources for the two Defence

8 teams.

9 Ms. Se Kolvuthy, please report the attendance of the parties and  
10 other individuals to today's proceedings.

11 THE GREFFIER:

12 Mr. President, for today's proceedings, all parties to this case  
13 are present.

14 Mr. Nuon Chea is present in the holding cell downstairs. He has  
15 waived his right to be present in the courtroom. The waiver has  
16 been delivered to the greffier.

17 Thank you.

18 [09.05.57]

19 MR. PRESIDENT:

20 Thank you. The Chamber now decides on the request by Nuon Chea.

21 The Chamber has received a waiver from Nuon Chea, dated 11

22 January 2017, which states that, due to his health; that is,

23 headache, back pain, he cannot sit or concentrate for long. And

24 in order to effectively participate in future hearings, he

25 requests to waive his right to be present at the 11 January 2017

1 hearing.

2 Having seen the medical report of Nuon Chea by the duty doctor  
3 for the Accused at the ECCC, dated 11 January 2017, which notes  
4 that, today, Nuon Chea has a lower back pain and feels dizzy when  
5 he sits for long and recommends that the Chamber shall grant him  
6 his request so that he can follow the proceedings remotely from  
7 the holding cell downstairs. Based on the above information and  
8 pursuant to Rule 81.5 of the ECCC Internal Rules, the Chamber  
9 grants Nuon Chea his request to follow today's proceedings  
10 remotely from the holding cell downstairs via an audio-visual  
11 means.

12 The Chamber instructs the AV Unit personnel to link the  
13 proceedings to the room downstairs so that Nuon Chea can follow.  
14 That applies for the whole day.

15 First, the Chamber will hear oral submissions from parties on the  
16 remaining charges in Case 002.

17 On the 9th September 2016, the Lead Co-Lawyers for civil parties  
18 made a submission on the remaining -- for clarification on the  
19 remaining charges in Case 002, that is, document E439. The  
20 Defence Counsels for Khieu Samphan, for Nuon Chea and the  
21 Co-Prosecutors responded to the submission, that is, documents  
22 E439/1, E439/2, E439/3, respectively.

23 [09.08.17]

24 Lead Co-Lawyers for civil parties replied to the responses of  
25 Nuon Chea on the 23rd September 2016, that is, document E439/4.

3

1 On the 16th December 2016, the Chamber notified parties via an  
2 email that the Chamber would set a date to hear oral submissions  
3 from parties concerning the remaining charges in Case 002,  
4 immediately after the conclusions of the evidentiary hearing in  
5 Case 002/02. However, on the morning of 10 January 2016 (sic),  
6 the Chamber further notified the party -- the parties that the  
7 Chamber could not hear the testimony of 2-TCW-946 via video link  
8 on the afternoons of 10 and 11 of January 2016 (sic). For that  
9 reason, the Chamber asked the parties to prepare their oral  
10 submissions on the remaining charges in Case 002, on Wednesday  
11 morning, 11 January 2016 (sic).

12 [09.09.38]

13 For that reason, the Chamber would like to hear oral responses  
14 from parties on this issue.

15 And first, the Chamber hands the floor to the Lead Co-Lawyers for  
16 civil parties to make their oral summary on their submission. And  
17 the combined time for the Lead Co-Lawyers and the Co-Prosecutors  
18 is one Court session.

19 Lead Co-Lawyers, you have the floor.

20 MS. GUIRAUD:

21 Thank you, Mr. President, and good morning to all of you.

22 This is a subject that is particularly important for the civil  
23 parties, so I'm going to try to be as clear as possible by trying  
24 to speak slowly so that the interpreters may follow our  
25 argumentation that, at times, may be a bit technical <>.

4

1 [09.10.31]

2 It is important to recall for the Chamber, but even more so for  
3 the public, that the civil parties, since the 2010 change, are  
4 participating in <the> trial through a group and that they are no  
5 longer participating on an individual basis in <the trial. And  
6 that, therefore, all of the> reflection <we have undertaken> is  
7 <particularly> important because <it does, in a de facto manner,  
8 commit> the group<, which> is made up of <approximately> 3,800 <>  
9 civil parties.

10 <The> Chamber remembers, I'm sure, that the civil parties, since  
11 the beginning of these <discussions>, have always <maintained the  
12 principled position> that <all of the> facts that are contained  
13 in the Closing Order of Case 002, had to be <adjudicated> for the  
14 very simple reason that some of the civil parties have suffered  
15 <on account of> facts that have not yet been <adjudicated> or  
16 <considered> by the Chamber in Cases 002/01 and <>002/02.

17 [09.11.51]

18 <> I would like <> to explain to the Chamber the way that we  
19 <have> proceeded in order to carry out our <discussions and>  
20 consultations with the civil parties, by reminding <> the Chamber  
21 and the parties <of> the factors that we took into account to  
22 <hold our discussions and> consultations by <also> providing  
23 <some> figures <> to the Chamber. Because I believe it's  
24 important that the Chamber understands exactly which sub-groups  
25 are <affected> by this discussion within the <consolidated group

5

1 of civil parties. I would then> like to say a few words on the  
2 consultation process that we set up and then provide our  
3 conclusion to the Chamber.  
4 <The> objective of our discussions was, for Ang Pich and myself,  
5 to <identify> the <common> interest of the consolidated group.  
6 And in order to do so, we <were strongly committed to fully>  
7 listening to the civil parties and listening, <more  
8 specifically>, to the civil parties that were <direct victims of>  
9 facts that, for the moment, have not yet been <adjudicated> or  
10 considered by the Chamber.  
11 <Several> factors guided our thought process, and the first of  
12 these factors is that the civil parties are <advanced in> age<.  
13 The> Chamber knows <that more> than 200 civil parties have died  
14 since the beginning of Case 002. <As> an example, we <learned>  
15 this weekend that a civil party that the Chamber knows very well  
16 died. This is No Sates, <> the Cham civil party who came to  
17 testify on the Trea village <massacre>. No Sates died <> this  
18 <weekend>. And we receive <such> news <almost> on a daily basis.  
19 [09.13.57]  
20 <It's also> important <> for the Chamber to <be aware> that  
21 <close to> 400 civil parties are considered <to be> too <old> or  
22 too ill to partake in <activities>, that is to say, <> to go to  
23 <> information <forums> or to <attend> reparation <activities>.  
24 The> first <criteria is> age, which, of course, is fundamental  
25 <> in <our> thought process <>.

6

1 <The> second <criterion> is the length of the trial. We should  
2 not forget that the civil parties started their legal <journey  
3 almost> 10 years ago, for most of them, and <that it has been a  
4 long> time<, and that,> of course, we have to take this factor  
5 into consideration.

6 [09.14.51]

7 <> The third factor that guided our thinking is the reality of  
8 this trial, that is to say<, the fact> that we're speaking today  
9 about a trial that concerns the same defendants, Khieu Samphan  
10 and Nuon Chea. Khieu Samphan and Nuon Chea have <now> been  
11 <definitively> convicted for having partaken in a criminal  
12 project, which was <the cause of> the harm that all of the civil  
13 parties <in the consolidated group> suffered <>. And, <> in this  
14 regard, the Supreme Court's decision, <which recalled> that the  
15 revolutionary project of Democratic Kampuchea was a criminal  
16 project, allows <-- or,> at least we think it> allows, the civil  
17 parties <> to find some kind of answer to the harm that they  
18 suffered.

19 <Another> element that we took into consideration is the fact  
20 that the civil parties who are <> direct victims of the  
21 <remaining> facts <> have already all participated through the  
22 consolidated group in the hearings of Cases 002/01 and 002/02,  
23 but also sometimes in the reparation projects linked to Case  
24 002/01.

25 <Finally>, the last <criterion> that we took into consideration



7

1 is the possibility of imagining <non-judicial> measures that  
2 <might meet> the expectations of the civil parties who are  
3 directly concerned by the facts that would be part of a possible  
4 Case 002/03. So, what we tried to imagine is<,> if the Chamber  
5 <were to> put an end to <the trial of> Case 002, which measures  
6 could we <come up with> to address the expectations of the civil  
7 parties in a <non-judicial> context? And the Chamber knows that  
8 the Internal Rules provide leads because there is the possibility  
9 to <implement non-judicial> measures for the victims.

10 [09.17.21]

11 After having given you an overview of the factors that guided our  
12 thinking, I would like to give to the Chamber a few figures  
13 because it seems important to me to guide your deliberations.  
14 The consolidated group is made up of 3,800 civil parties, 3,860  
15 on paper, but now we have more than 200 civil parties who have  
16 died. <Within> this group of civil parties, 446 were admitted as  
17 direct <> or indirect victims of <> the remaining charges in Case  
18 002.

19 And I'd like to specify to the Chamber and to the parties that we  
20 based ourselves on the admissibility criteria of the OCIJ, which  
21 is the only objective criterion that allows the Chamber and the  
22 parties to understand the figures that we arrived at. And I'd  
23 like to remind to the Chamber that these admissibility criteria  
24 were not decided by us. It is the OCIJ, back then, that decided  
25 on these criteria. And it's important to <mention> as well, that

8

1 these criteria are not exhaustive and <that>, therefore,  
2 sometimes the OCIJ admitted a civil party on the basis of one  
3 single criterion whereas, de facto, the civil party had been a  
4 victim of several facts within the scope of Case 002.

5 [09.19.12]

6 Let me give you an example. A civil party may have been admitted  
7 on the basis of the treatment of the Cham, because the civil  
8 party is a Cham, and then you <ultimately realize> that the civil  
9 party was also a victim of forced marriage.

10 So, 446 civil parties were admitted as direct <> or indirect  
11 victims of the <remaining> charges <>. A great portion of these  
12 civil parties were admitted under the heading of <> the treatment  
13 of Buddhists <and forced transfer number 3>.

14 So when we withdraw these two admissibility criteria, we have <>  
15 60 civil parties who were admitted only as victims of the  
16 remaining charges in Case 002 <-- once again, that is excluding>  
17 the treatment of Buddhists and forced transfer number 3. Maybe,  
18 it might be useful to remind you that the remaining charges  
19 regard, <for the most part>, security centres: Kaoh Khyang  
20 security centre <>; Prey Damrei Srot security centre; the  
21 execution sites of District 12; the security centre of Sang; the  
22 security centre of Wat Kirirom; the security centre of the North  
23 Zone; <> the work site of Prey Sar; the worksite of Srae Ambel;  
24 and the security centre of Kok Kduoch.

25 [09.21.02]

1 So, if we consider <>these sites, except for the treatment of  
2 Buddhists and forced transfer number 3, we <have> 60 civil  
3 parties who are concerned. Out of these 60, <only> 34 <> were  
4 admitted on this <> sole basis, that is to say, for having <>  
5 been victims <only> of these particular facts. The remainder of  
6 these civil parties were <also> admitted in connection with other  
7 facts.

8 So, it is necessary to note that, aside from forced transfer  
9 number 3 and for the treatment of Buddhists, the direct victims  
10 that are concerned by the remaining facts are a minority within  
11 the consolidated group.

12 [09.22.08]

13 <With> these figures in mind, we decided to carry out  
14 consultations to try to understand the general interests of the  
15 consolidated group, and we acted in two <phases>. First, we  
16 consulted all of the lawyers in August of last year. And then we  
17 organized direct consultations with the civil parties in the  
18 presence of the lawyers by, first of all, consulting the direct  
19 victims of the remaining facts <> in order to understand what  
20 they <would like>. And then we carried out other consultations  
21 with the civil parties of the consolidated group in order to  
22 <find out> if they wanted the trial to continue or not.

23 <The> conclusion that we drew from this consultation process is  
24 that the <demand> for justice remains a priority for the civil  
25 parties<,> that <a large number of> civil parties <would like>

10

1 the trial to continue, and <that,> at the same time, an even  
2 greater number of civil parties <would like> measures <to> be  
3 developed <> to support them and, therefore, we're speaking here  
4 about <> measures <that are not strictly judicial>, but measures  
5 aiming at supporting the civil parties in their day-to-day lives  
6 and in their need to talk about what they experienced <during>  
7 the <Khmer Rouge> period.

8 [09.24.05]

9 I hope that the Chamber and the parties followed me. I had the  
10 impression that I was clear in French, <but> I <was aware of some  
11 scepticism> among the non-French speakers. So I hope that the  
12 Chamber followed my figures because we're trying, of course, to  
13 be as transparent as possible in order to explain to you the  
14 decision that we reached, because it is up to Ang Pich and <>  
15 myself to synthesize all of this work and to keep in mind that  
16 the Internal Rules <instruct> us to <ensure an expeditious  
17 trial>. This is part of our mission.

18 <Therefore>, our conclusion is that a <significant> number of  
19 civil parties <would like> the trial <to> continue, but <that,>  
20 among these civil parties, an <equally significant> number <>  
21 consider that <non-judicial> measures could address their need  
22 for justice and <their request> for support.

23 [09.25.30]

24 Regardless of the Chamber's decision, it will be up to us  
25 afterwards to explain this decision to the civil parties and to

11

1 develop measures that will make it possible to <satisfy> their  
2 expectations <outside of> the trial.

3 I hope that I was clear and, of course, I can answer the  
4 Chamber's <additional> questions if my explanations were not  
5 sufficiently exhaustive. <Now,> I will give the floor to Ang  
6 Pich, <who,> I believe has additional information to provide.

7 MR. PRESIDENT:

8 Yes, Counsel Pich Ang, you have the floor, says the President.

9 MR. PICH ANG:

10 Good morning, Your Honours, and good morning, parties and the  
11 general public as well as the civil parties who are present here  
12 today and who are following the proceedings remotely.

13 My partner, Marie Guiraud, has informed the Chamber on the many  
14 points that we have, already, and I only would like to make  
15 supplementary remarks as follows.

16 [09.26.58]

17 The civil parties that we had conversation and consulted with,  
18 would like to have the remaining charges be heard by the Chamber,  
19 and that was by the majority of the civil parties. And only a  
20 small number of civil parties do not wish to hear the remaining  
21 charges be heard, since they believe that the suffering that they  
22 had endured during the period of '75 to '79 is sufficient and  
23 they do not want to see the remaining of these suffering return;  
24 and that they wish not to bear the suffering again. And that is  
25 the main concern, that they do not want to recall the suffering

12

1 that they endured and not want to hear the remaining charges be  
2 heard.

3 And among all the civil parties, as Marie Guiraud informed the  
4 Chamber, there are elderly civil parties and there are those  
5 civil parties who are sick, and there are also civil parties who  
6 passed away. And their wish as a civil party is to have the  
7 strongest support, that is, the support for them health-wise,  
8 physically and emotionally, before they die.

9 [09.29.13]

10 So for the Trial Chamber as well as for the relevant parties who  
11 may lend support to the civil parties, please pay attention to  
12 their -- their need, in their capacity as the surviving civil  
13 parties and the victims. And I request that their support -- the  
14 support for the civil parties should be as much as possible or  
15 other measures shall be taken to lend support to them.

16 And that is all I want to raise, Mr. President.

17 And allow me to sum up that, generally, the civil parties would  
18 like to have the remaining charges be heard. However, their main  
19 priority and need is the support for their health.

20 Thank you.

21 JUDGE FENZ:

22 Just one comment to avoid confusion for the public. Non-judicial  
23 measures are called non-judicial measures because the Court is  
24 not involved in them, so the Trial Chamber cannot, under the  
25 Rules, order non-judicial measures.

13

1 [09.30.43]

2 MR. PICH ANG:

3 Madam Judge, yes, we clearly understand about the  
4 differentiation. However, I would like to have the voice of the  
5 civil parties heard in this courtroom.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you.

9 The floor is now given to the Co-Prosecutors to make their oral  
10 submission on this matter.

11 MR. KOUMJIAN:

12 Thank you, Mr. President. Good morning, Your Honours, counsel.

13 Your Honours, the position of Chea Leang and myself, remains the  
14 same as we submitted in writing in document E49/3 (sic), but  
15 also, this has been our position since the -- before the start of  
16 Case 002/02.

17 [09.31.40]

18 At that time, many people doubted there would even be a Case  
19 002/02. We did have an Order from the Supreme Court about what  
20 the scope of that case would be. And what we have now  
21 accomplished because we've basically completed or at the point of  
22 completion of that case, perhaps one more witness, is a larger  
23 case, a broader case than I believe anyone had imagined  
24 previously. It's much broader than the Order of the Supreme Court  
25 on the severance of 002/01 as to what 002/02 should include.

14

1 It's even broader than the Prosecution's submission before the  
2 start of 002/02, about what the scope of this trial should be.  
3 It's important for everyone to understand that Case 002/02, the  
4 combination of Cases 002/01 and 002/02, has now covered all of  
5 the legal charges in the case. Not every location will have been  
6 covered. Not every one of the security centres, for example, that  
7 were charged in the closing order, are covered, but each of the  
8 charges of murder, extermination, genocide, forced marriage,  
9 rape, etc., all of these charges will have been covered.  
10 [09.33.19]  
11 In my experience in war crimes cases in various countries,  
12 including here in Cambodia, is that victims have a great desire  
13 to see justice, and there's no question about that. And I  
14 understand the Lead Co-Lawyers expressing that very strong desire  
15 of the victims to see what happened to them recognized, formally  
16 in a Court. However, in every place I've been, there also has  
17 been criticisms that, why does the process take so long, why does  
18 it cost so much money.  
19 When you're dealing with massive crimes, and there hasn't been a  
20 trial more massive -- dealing with more massive crimes since  
21 World War II, than this trial, it's impossible to cover every  
22 crime against every victim. There are 3,860 civil parties  
23 participating in this trial, but the facts show that there were  
24 millions of victims of the crimes of the DK regime.  
25 [09.34.35]



15

1 Even in the Closing Order, the Closing Order charges make certain  
2 charges. For example, it includes several additional security  
3 centres. But that itself, of course, was just a selection of the  
4 over 200 security centres where, in fact, Cambodian people were  
5 victimized during the DK regime.

6 In order to do an efficient trial, there has to be -- it's just a  
7 simple matter of practical common sense -- a selection of crimes  
8 that will be proven at the trial that are representative of the  
9 policies and that encapsulate the criminal behaviour that's  
10 involved in the case.

11 That, I believe, has been very well covered between Cases 002/01  
12 and 002/02. As I said before, all legal charges are covered. And  
13 I believe all the victims of the regime, all of the civil  
14 parties, including the 60 mentioned by the Lead Co-Lawyers, and  
15 the millions of others that are out there, can take a great deal  
16 of satisfaction in seeing that these crimes and these policies of  
17 the regime were covered in these two trials.

18 I would remind everyone of the criteria, in fact, to participate  
19 as a civil party. I don't recall off the top of my head the  
20 document number, but I'm sure we all know that the -- during the  
21 earlier proceedings, before the case got to the Trial Chamber,  
22 there was an appeal to the Pre-Trial Chamber by civil party  
23 applicants. And the Pre-Trial Chamber made clear, that anyone who  
24 was a victim of the regime, who was a victim of the crimes in a  
25 broad sense charged, could participate as a civil party in Case

16

1 002/02, even if the particular location where they were  
2 victimized was not in the Closing Order or subject of the initial  
3 submissions, or subject of the investigation, because this was a  
4 case about national policies. So, all of the victims of those  
5 national policies could participate as civil parties.

6 [09.37.18]

7 We think it makes no sense to have a third trial in this case  
8 given that all of the legal charges have been covered. The  
9 proceedings have been going on for many years. There still is the  
10 very strong possibility that there will be an appeal. We're still  
11 going to have to -- some time for a judgment in Case 002/02 and  
12 then an appeal in Case 002/02. All of that will, of course by  
13 necessity, delay the ultimate enforcement of the sentence that we  
14 now have from Case 002/01; the actual transfer of the Accused to  
15 a facility, Cambodian detention facility. And we think it simply  
16 does not make sense to continually try this case until everyone  
17 is deceased.

18 We think the trial has been broad. It has covered all of the  
19 policies, criminal policies, of the regime. The charges between  
20 the two trials are representative of those criminal policies, and  
21 I think all of the victims, both civil parties and those not  
22 participating, can feel a great sense of justice if the crimes  
23 against them are recognized. If the policies of the regime, the  
24 criminal policies of the regime, are recognized by the Court.  
25 Thank you.

17

1 MR. PRESIDENT:

2 Thank you.

3 And the Chamber now gives the floor to the defence team for Mr.

4 Nuon Chea.

5 You may now have the floor.

6 [09.39.06]

7 MR. KOPPE:

8 Yes, Mr. President. Thank you.

9 We are in a bit peculiar position, I would say, to have to  
10 respond to the civil party application. Although from a certain  
11 perspective understandable, we, of course, nevertheless, fully  
12 agree with most of the submissions from the Prosecution.

13 We had a very extensive debate before the start of trial 002/02.  
14 All parties at the time were able to give their input as to how  
15 we should proceed in that second trial, which charges should be  
16 dealt with. We had our say at the time. And it is, indeed, true,  
17 as the Prosecution remembered, that in 2013, actually, nobody  
18 thought that there would even be a second trial.

19 [09.40.19]

20 It is, indeed, correct as well that the charges that Nuon Chea  
21 has faced in 002/02, have been much broader than the minimum that  
22 was advised by the Supreme Court Chamber.

23 I think it would be very fair to say, although unspoken, that is  
24 extremely unlikely that there will be a third trial. There is  
25 really no legal necessity whatsoever to have a third trial.

18

1 In the highly unlikely scenario that there would be a third  
2 trial, I would just like to make two very brief points.  
3 First one would be that -- to remind the Chamber of the concern  
4 expressed by the Supreme Court Chamber in its decision of late  
5 February 2013, before the second trial would start. The concerns  
6 expressed about -- as laid down in paragraph 51 of that decision,  
7 actual or appearance of bias of Judges from the previous trial  
8 educating the second trial -- adjudicating the second trial.  
9 So the Supreme Court Chamber at the time had concerns about which  
10 Judges should adjudicate a second trial. There were concerns that  
11 if these Judges would be the same Judges as in the first trial  
12 this would be -- this would raise concerns as to the bias of  
13 Judges.  
14 It will come as no surprise, Mr. President, that we will be  
15 arguing in our closing brief and closing submissions that all  
16 Judges of this Chamber have shown extreme bias in adjudicating  
17 the second trial. So if there is to be a third trial, God forbid,  
18 there should be definitely other Judges appointed, both national  
19 and international. But as I said, it's a very academic situation  
20 that we're dealing with.  
21 [09.43.01]  
22 The second point that we would like to make is the following. I'm  
23 not quite sure if I understood the summing up of the Lead  
24 Co-Lawyers correctly, but again, I didn't hear them talking about  
25 charges in relation to the security centre at Krouch Chhmar.

19

1 We -- the response to the submissions of the civil party Lead  
2 Co-Lawyers was specifically about this very issue. I would like  
3 to remind the Chamber, again, of our filing on the 19th of  
4 September 2016, in which we argued that it seemed that the Lead  
5 Co-Lawyers for the civil parties had deliberately excluded Krouch  
6 Chhmar security centre from their listing as to crime sites which  
7 should be tried in Case 002/03.

8 [09.44.04]

9 Krouch Chhmar security centre, for the benefit of the public, was  
10 a security centre that was run in the East Zone, and crimes  
11 committed there would, of course, be crimes for which, present  
12 highly-ranking government officials would be responsible  
13 criminally, would be liable criminally.

14 So if, again, in the highly academic scenario that there would be  
15 a third trial, we would argue strongly that the Krouch Chhmar  
16 security centre and the crimes committed, allegedly, in '75 in  
17 the East Zone would be added to the list of potential crimes.

18 I believe these are the two things, Mr. President, that I would  
19 like to say.

20 MR. PRESIDENT:

21 Thank you.

22 And now it is the last floor. The Chamber hands the floor to the  
23 defence team for Khieu Samphan to make an observation on this  
24 matter.

25 You may now proceed.

20

1 [09.45.25]

2 MS. GUISSÉ:

3 Thank you, Mr. President. Good morning. Good morning, everyone.

4 We, the Khieu Samphan <> team, find that the situation is very  
5 clear. You have no choice but to put an end to the proceedings  
6 for the remaining charges. And since no one went into the details  
7 of the grounds on which you <are going to have to> make that  
8 decision, I would like to revisit that issue <and go into the law  
9 a bit>.

10 The Co-Prosecutors, in their response to the civil party  
11 <request>, referred to Rule 89 quater of the Internal Rules,  
12 which enables you, and I quote, "to reduce the scope of the trial  
13 by <excluding certain> facts <set out> in the <Indictment>." End  
14 of quote.

15 The Khieu Samphan defence team would like to underscore the fact  
16 that, if <we> believe you should put an end to <proceedings for>  
17 the remaining charges, it wouldn't be <pursuant to> this article  
18 of <the> Internal <Rules>. So, <for the record>, I do recall that  
19 we had strenuously objected at the time of <its> presentation  
20 during the plenary session, and I would like to explain<,  
21 especially> to the Chamber<, or perhaps not, since they were>  
22 aware of our submissions at the time<, but more importantly for  
23 the public>.

24 [09.47.15]

25 <We feel> that this rule<, which gives the Chamber this

21

1 opportunity,> is unlawful <in that> it violates the principle of  
2 <fair proceedings> in Cambodian law<,> since<,> as in French> law,  
3 it is the Co-Investigating Judges who decide to <seize> the  
4 Chamber and <> that decision <cannot be violated> in the manner  
5 in which it was <done in> Article 89 quater<. But, mainly,> we  
6 objected to that <article> because in Rule 89 quater, paragraph  
7 3, it was envisaged, and I quote:  
8 "Evidence relating to the facts excluded may be relied upon to  
9 the extent it is relevant to the remaining facts." End of quote.  
10 And the reason why we objected <> was not because, <foolishly,>  
11 as Defence Counsel, we would have a position that is contrary to  
12 the interests of the Accused, which is to object to the  
13 <exclusion> of the charges<,> but simply> because if you say that  
14 the charges are <excluded, at that point,> it <means that> the  
15 facts referred to in those charges cannot be <referred to in any  
16 capacity>. <Therefore,> because <this Rule> 89 quater, as far as  
17 we are concerned, is such an egregious violation of the principle  
18 of a fair trial<,> it is not on these grounds> that <> we are  
19 requesting <you> to <exclude> the remaining charges <today>.  
20 [09.49.06]  
21 There is another reason, which is clearer<,> a general principle  
22 in international customary law, which I <will come back to. But  
23 first I must recall, since> this issue of remaining charges was  
24 already dealt with<,> I must recall what> the Supreme Court  
25 Chamber said <about this> in 2014. <And here,> I refer the

22

1 Chamber and the parties to the decision of the Supreme Court  
2 Chamber, E301/9/1/1/3, which was a decision <on> the appeal  
3 <that> we <had> lodged against your new severance decision.  
4 And what <> the Supreme Court Chamber <had> recalled in that  
5 decision, and this time <it's> paragraph 69 <that I'm referring  
6 to,> the Chamber had ruled as follows, and I quote:  
7 [09.50.16]  
8 "The Trial Chamber took no decision in this respect," that is,  
9 with regard to the remaining charges. "The Supreme Court Chamber  
10 considers that reducing or withdrawing charges requires an  
11 explicit decision of the Trial Chamber, this requirement being  
12 dictated by concerns <with> legal certainty as to the scope of  
13 the charges referred to in Case 002."  
14 And on this point, the Chamber reached the following finding, in  
15 paragraphs 89 <and 90. In paragraph 89,> it had decided <at that  
16 time> to stay the proceedings because it couldn't <leave the  
17 situation as it was, leaving> the charges that it hadn't ruled  
18 upon <> hanging, <but> in July 2014 in paragraph 90, it stated  
19 the following:  
20 "This stay is provisional but, although it clarifies the formal  
21 status of the remaining charges <in Case 002>, it does not  
22 alleviate concerns about the right to be tried within a  
23 reasonable time. To this end, the Supreme Court Chamber urges the  
24 Trial Chamber to fulfil its duty to bring closure to the entirety  
25 of the cases before it." End of quote.



1 [09.52.00]

2 In July 2014, therefore, the Supreme Court Chamber requested that

3 the <Trial> Chamber <> issue a decision, <> and it <strongly>

4 urged the Chamber to explain the way forward regarding <the>

5 remaining charges. In the paragraphs I've just quoted, we have

6 two important elements: legal certainty and reasonable time. <It

7 goes without saying that if,> in 2014, it was considered that

8 there was <> legal <uncertainty> and it was also considered that

9 the situation was urgent <and> the principle that the accused be

10 tried in reasonable time <could> not be violated<, it goes

11 without saying that, today, in 2017, the prejudice that had been

12 pointed out> at the time about <this issue of> legal

13 <uncertainty> and <reasonable> time<, it goes without saying,

14 therefore, that, in 2017, this prejudice is an> even more

15 important <matter for the Accused and for> Mr. Khieu Samphan <>.

16 And that is why, <because> in 2017, close to seven years after

17 the issuance of <the> Closing Order, close to six years <--> 2011

18 <it> was <> your first severance decision <--> close to six years

19 after that initial severance decision <where we had that> legal

20 uncertainty as <to what would happen with> the remaining charges.

21 [09.53.44]

22 <Well> today, you <must admit> that it is impossible to ensure a

23 trial <within a> reasonable time <for the> remaining charges

24 <and, due to this impossibility, you have the duty to terminate

25 the proceedings concerning> those <remaining> charges.

1 A while ago, I referred to a principle in international customary  
2 law<. I am referring here>, as regards jurisprudence<,  
3 specifically>, to the Lubanga Appeal Judgment. I refer <> also to  
4 our submissions requesting a stay of proceedings <of 1> August  
5 2013, document E275/2/1/1, particularly in paragraphs 3 <to> 7.  
6 And we request you, quite simply, to find that<, faced with the  
7 fact that it is> impossible to conduct a fair trial in a  
8 reasonable time<,> you <must admit> that <there is no> other  
9 choice to <terminate> the <proceedings in the> remainder of the  
10 trials in Case 002/02, which was the subject of this trial.  
11 And I would like to add that the reason why it is all the more  
12 impossible to envisage a trial in a reasonable time as regards  
13 the remaining charges and <that,> in the same decision of the  
14 Supreme Court Chamber that I quoted a while ago, document  
15 E301/9/1/1/3, in paragraph 76 <-- there are> effects of your  
16 severance decision <that were> mentioned. And this is what was  
17 stated <> in paragraph 76:  
18 [09.55.42]  
19 "Now, if the new severance of <> Case 002 is confirmed, the Trial  
20 Chamber's decision to sever <the case> prior to <hearing>  
21 evidence in Case 002/02 will <create a distinction between> Case  
22 <002/02> and any other cases <based> on the remaining charges  
23 referred to in the <Indictment and> the evidence produced in  
24 <these> various <cases> would <cease to fall under> the same  
25 common basis." End of quote.

25

1 That is what the Supreme Court Chamber stated in July 2014. So,  
2 not only do we have a problem of <> reasonable time since the  
3 Closing Order, let me remind you, dates back to 2010, but we have  
4 another problem, which is that, as regards <any trial or> trials  
5 that could occur following the severance decision you took in  
6 Case 002/02, <> we <no longer> have a common basis <and that  
7 would> mean that you <would> have to start from scratch. That is  
8 what the Supreme Court Chamber <held>.

9 [09.57.05]

10 Under such circumstances, <> being tried in a timely manner is  
11 <absolutely> not possible and<, in those circumstances, you have  
12 no other choice but to terminate the proceedings.> I refer<,  
13 once> again to the <jurisprudence that we had> referred to in our  
14 submissions in 2013.

15 For purposes of completion -- and this ties in with the second  
16 element -- we've talked about <> law today, we've talked about  
17 <major> principles, but I believe that, bearing in mind the  
18 elements that were focused on and which underscore the positions  
19 of the various parties, we find that we are all <very clearly  
20 aware> of the <> issue of <funding for another possible trial  
21 that> arises <and that --let's not be naive and let's be a bit  
22 honest with ourselves -- we know that this issue of financing  
23 will be> fundamental even though<, normally,> it shouldn't be <a>  
24 basis <for> discussions <in a court, where we are meant to be  
25 talking about justice>.

26

1 <So>, I wanted to make these remarks<, but, in> any case, <> the  
2 conclusion of the Khieu Samphan <> team is that you don't have  
3 any other choice but to <terminate> the proceedings.

4 [09.58.38]

5 MR. PRESIDENT:

6 The Chamber is grateful to all parties for making submissions on  
7 this matter. The Chamber will take all the comments and  
8 observations into consideration and issue a decision in due  
9 course.

10 There's another matter that the Chamber would like to address.

11 Now is appropriate times for rest. The Chamber will resume at  
12 ten-twenty after the recess.

13 (Court recesses from 0959H to 1021H)

14 MR. PRESIDENT:

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

16 The Chamber will now proceed with the <second> issue, that is, in  
17 relation to the available resources for the two defence teams.

18 The two defence teams notified the Chamber yesterday by email  
19 that they wish to make an oral submission regarding the  
20 availability of the resources that may have a short-term and  
21 long-term impact on their -- on the performance of their duties  
22 after they received a request from Administration Office of the  
23 ECCC.

24 [10.23.08]

25 First, I'd like to hand the floor to the defence team for Nuon

1 Chea to make an oral submission on this issue concerning their  
2 team. You have the floor.

3 MR. KOPPE:

4 Yes, Mr. President. Thank you for this opportunity to speak about  
5 this issue.

6 Indeed this week, we received quite alarming news that the Office  
7 of the Administration is considering substantially cutting the  
8 budget of both defence teams.

9 Apparently, I'm not quite sure about this, but there has been  
10 pressure from donors that also the defence should accept cuts in  
11 their budgets. Apparently because of funding issues, all sections  
12 of the ECCC are dealing with this and it seems that the donors  
13 believe that we have sort of to face the same consequences.  
14 Our understanding is the following, that as per the end of March,  
15 hence 24 days before the deadline of our Closing Brief, two --  
16 effectively two team members have to leave or their contracts  
17 will not be renewed.

18 [10.24.56]

19 These are the, as I understand, the team members who have been  
20 added in respect of the many, many disclosures that we had from  
21 Cases 003 and 004.

22 This is, of course, a substantial departure from earlier; things  
23 that were said to us by the Defence Support Section.

24 As the Chamber is well aware, the disclosures from Cases 003 and  
25 004 keep continuing. As a matter of fact, yesterday new

1 disclosures were put on the Case File and yesterday the  
2 Co-Prosecutors proposed to disclose another batch of disclosures  
3 to us.

4 [10.25.56]

5 If indeed two very valuable team members have to go because of  
6 these cuts, 24 days before the Closing Briefs are due, that is  
7 highly problematic in terms of preparation for our Closing Brief.  
8 Alternatively, mention has been made, that if these plans will  
9 not materialize, then the budget that was attributed in relation  
10 to the Case 003 and 004 disclosures will be substantially cut  
11 immediately after 24 April, the day of the Closing Brief.

12 Again, that is also highly problematic if that would be an  
13 alternative scenario because between 24 April and the Closing  
14 Submissions, of course, we have to react substantially and  
15 materially to the Closing Brief of the Co-Prosecutors. It is only  
16 then that we will be aware of which evidence from Cases 003 and  
17 004 the Co-Prosecutors find particularly relevant and important.

18 So if this intention of the Office of the Administration  
19 materializes, we are in deep trouble in terms of preparing our  
20 defence, both for the Closing Brief and for the Closing  
21 Submissions.

22 If that is, indeed, the case, then we will be forced to request  
23 to extend deadlines and ask -- and that will, of course, delay  
24 the trial substantially, something I believe, I am certain of,  
25 nobody in this courtroom wants.

1 [10.28.00]

2 So our request, Mr. President, would be that the Chamber gets in  
3 contact with the Office of the Administration as soon as possible  
4 in support of our position, maybe in the same way as the Chamber  
5 has expressed support in relation to the issue of the translation  
6 of Court transcripts, an issue that we discussed during the last  
7 Trial Management Meeting.

8 Although it's not a decision yet, it is apparently an intention  
9 to decide as such. We felt it nevertheless important to raise  
10 this issue as soon as possible so that the Chamber's hopefully  
11 still in a position to change the course of the Office of  
12 Administration.

13 JUDGE FENZ:

14 Sorry, can I just ask so we have it on record. You have informed  
15 the Office of Administration of all these facts; they are aware  
16 of it?

17 [10.29.10]

18 MR. KOPPE:

19 Yes.

20 MR. PRESIDENT:

21 Counsel for Khieu Samphan, you have the floor.

22 MS. GUISSSE:

23 Thank you, Mr. President. A few additional observations.

24 Perhaps to begin, what we need to clarify, at least on behalf of  
25 the Khieu Samphan team, is that we're currently discussing with

30

1 the Administration and perhaps what we're asking of the Chamber  
2 is pedagogical aid, let me put it that way.  
3 The problem that often occurs in this type of <trial>, is that  
4 <people always have> the impression that the only work that's  
5 being done<, whether it's> by defence teams or other <parties,>  
6 is when we're actually in the Trial Chamber. But perhaps we need  
7 to remind <those who are not lawyers and also perhaps> certain  
8 lawyers who haven't been in the courtroom for a while <> that  
9 it's just the tip of the iceberg. In order to get to the  
10 <courtroom, in order to produce a> closing brief and <to get to  
11 the> closing arguments, there is an enormous amount of work that  
12 people don't see, but that is<, nevertheless,> fundamental,  
13 essential and important.  
14 [10.30.27]  
15 So, very clearly, this pedagogical support that we are asking the  
16 Chamber to extend to the Office of Administration is to <remind  
17 them> specifically <with regard to this issue, concerning <both>  
18 the Closing Briefs and the Closing Arguments<, that> if you've  
19 agreed to <allow> more time and more <pages for closing arguments  
20 and for the closing briefs than> in Case File 002/01<, it is  
21 because> you are aware <and you have received information from>  
22 the parties <indicating that> the mass of documents and legal  
23 elements and legal discussions to be dealt with <are definitely>  
24 much <greater> than in the Case 002/01. <That's the first point.  
25 And the second point, since we're being told -- this is what we



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1 have heard and, once again, we> hope that the information that  
2 we're going to be reiterating will be heard <-- but since we're  
3 being told that there is an intention to cut> two members of our  
4 teams by the end of March, <> particularly people who were  
5 <assigned,> among other things because it's never quite that  
6 simple <to work on the issue of> evidence coming from Case Files  
7 003 and 004, I would like to recall, and perhaps this is  
8 important, that we are awaiting a <significant> number of <hours'  
9 worth of> audio files that will need to be used by the people in  
10 charge of this issue <within our teams. And, in addition, the  
11 work will not stop at the time the closing brief is submitted,  
12 because, as my colleague mentioned, there will then be a need to  
13 work on our oral responses to the> 800 pages of the Closing  
14 Briefs of the Co-Prosecutors<. In short, we know all of the work  
15 that needs to be done> and the masses of <> evidence <that need  
16 to be gone through> and <the points of law that> we will have to  
17 <discuss> during <that> period.  
18 You, <of course>, understand this<. Apparently>, the <>  
19 Administration <is not necessarily aware of it. So, what we're  
20 asking the Chamber to do at this stage -- and> once again, we  
21 hope that discussions <> with the Office of Administration <about  
22 what will happen next, will be fruitful --> is to <> explain <>  
23 that it's not at the time <when> we <> have this mass of work <>  
24 to <accomplish in order to be able to appropriately finish and to  
25 properly defend our clients, it's not at this time> that <vital

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1 resources should be cut off from our teams. We have always worked  
2 with lean teams. It has been challenging. But here, really, at  
3 this stage that is so critical to the proceedings, to consider  
4 reducing our teams seems to us especially impossible to  
5 understand>.

6 [10.33.00]

7 <And we are> therefore <> asking the Chamber<, once again,> to  
8 extend <what I am calling> this pedagogical effort, <> towards  
9 the Office of Administration <>.

10 JUDGE FENZ:

11 To be a bit more precise, if I understood the Nuon Chea team  
12 correctly were they asking let's say as a minimum, you can  
13 obviously always ask for more, is the extension of the contract  
14 for two team members for two months which is the end of May  
15 because closing speeches are at the beginning of May?

16 [10.33.42]

17 MR. KOPPE:

18 End of June because the--

19 JUDGE FENZ:

20 Oh.

21 MR. KOPPE:

22 --Closing Submissions are in June.

23 JUDGE FENZ:

24 Yes. That's why I said end of May. Closing speeches are on the 5  
25 June.

1 MR. KOPPE:

2 Yes, so what we would ask is contracts to be extended to 30 June  
3 or 21 June, the day after the very last Closing Submissions.

4 JUDGE FENZ:

5 Okay.

6 [10.35.05]

7 MR. KOPPE:

8 So, yes.

9 JUDGE FENZ:

10 And it amounts for your team to what?

11 MS. GUISSSE:

12 <It's> the same thing<:> that we <keep the current  
13 configuration>.

14 <JUDGE FENZ:

15 Two people, three months.

16 MS. GUISSSE:>

17 I don't know how to tell you. Just the current configuration of  
18 the team should be retained until the last day of the <> Closing  
19 Arguments. We should maintain the same team until the <last day  
20 of the Closing Arguments>.

21 [10.34.41]

22 MR. PRESIDENT:

23 And I'd like now to hand the floor to the Co-Prosecutors to make  
24 observations or to respond to this issue because this matter is  
25 clearly related to the Co-Prosecutors, since you are the teams

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1 that disclose information from Cases 003 and 004 and that will  
2 have an impact on the resources from now until end of June.

3 MR. KOUMJIAN:

4 Thank you, Mr. President. We did not plan to make any  
5 submissions, but I'm happy to provide any information that would  
6 help the Chamber.

7 I gather from your last remark that you're asking us for some  
8 prognosis of disclosures. What I can say is that I think  
9 disclosures have slowed down because we caught up with most of  
10 the backlog. I haven't been briefed this week about exactly where  
11 we are, but as you know, may know, that yesterday another  
12 investigation was preliminarily closed, so OCIJ continues to  
13 investigate.

14 I'm not sure exactly how many more statements they will produce.  
15 We are obligated to review all of those and will continue to do  
16 so, however, it appears that three of the four cases are at <>  
17 least preliminarily closed by OCIJ. And we will continue to  
18 review all new material produced to see if it fits the  
19 requirements for disclosure.

20 [10.36.41]

21 MR. PRESIDENT:

22 And, lastly, I hand the floor to the Lead Co-Lawyers for civil  
23 parties.

24 MS. GUIRAUD:

25 No particular observations on the requests of the Defence, Mr.

35

1 President, which seem to us to be legitimate. We, ourselves, do  
2 not have this problem. On the international side, we are all  
3 consultants. We all have contracts which are renewed monthly, but  
4 we have not been informed that certain of those contracts would  
5 <be terminated> in the month of March, simply because we haven't  
6 had any recruitment connected to the disclosure of evidence from  
7 Cases 003 and 004. We have a different configuration, so.

8 [10.37.34]

9 MR. PRESIDENT:

10 The Chamber would like to thank parties for addressing their  
11 concerns and responses to the issues and the Chamber will take  
12 all that matter into consideration and to consult with the Office  
13 of Administration in order to deal with this issue.

14 And the Chamber will proceed to the final step of the proceedings  
15 in Case 002. And the Chamber will now address the final  
16 procedural steps to be taken in Case 002/02.

17 The Chamber has sat for 274 hearing dates in Case 002/02 and  
18 heard the testimony of 114 witnesses, 63 civil parties and eight  
19 experts. A few decisions or the reasons to follow for certain  
20 decisions already made remains to be issued. This will be  
21 finalized as soon as possible by the Chamber.

22 In addition, there remains pending before the Supreme Court  
23 Chamber, an immediate appeal filed by the civil party Lead  
24 Co-Lawyers seeking to clarify that the Chamber, the Trial  
25 Chamber, is seized of factual indications of rape outside the

1 context of forced marriages.

2 [10.39.02]

3 The Lead Co-Lawyers, however, have indicated that they will not  
4 seek to hear additional witnesses if their appeal is granted.

5 At this time, the Chamber does not envisage hearing any further  
6 witnesses, therefore today is the final day of evidentiary  
7 hearings in Case 002/02. The Chamber, however, notes that it may  
8 re-open the proceedings to hear the testimony of 2-TCW-946, no  
9 later than 31 January 2017, if it can arrange the video-link  
10 testimony of the witness through the cooperation of the German  
11 authorities. The Chamber will notify the parties on the  
12 development in this matter.

13 For the next step in these proceedings, the Chamber has set  
14 deadlines for Closing Briefs, which are to be submitted on 24  
15 April 2017, in a single ECCC language. No written responses will  
16 be accepted.

17 [10.40.31]

18 The Co-Prosecutors Closing Brief shall be no more than 800 pages,  
19 whereas the defence teams shall have 550 pages each. The Lead  
20 Co-Lawyers shall have 550 pages for submissions on all issues  
21 including reparations. The final claim for reparations is due on  
22 22 May 2017.

23 Closing Statements will be held starting 5 June 2017. The Lead  
24 Co-Lawyers have been allocated one day, the Co-Prosecutors, three  
25 days; and each defence team, two days. One day has been allocated

1 for rebuttal and four hours for the final statements of the  
2 accused should they choose to exercise that right.  
3 Should any party not require the full time allocated to them for  
4 Closing Statements, they are requested to inform the Chamber and  
5 other parties as soon as possible to facilitate scheduling.  
6 The Chamber thanks the parties for their assistance and  
7 cooperation throughout the proceedings in this case.  
8 The Chamber would also like to thank all the Court staff,  
9 including interpreters, transcribers, court officers,  
10 audio-visual technicians, medical personnel and members of the  
11 detention unit for their outstanding respective roles in  
12 facilitating these proceedings.  
13 The Chamber will adjourn now and it will resume on 5 June 2017  
14 commencing from nine o'clock in the morning.  
15 Security personnel, you are instructed to take the two accused,  
16 Nuon Chea and Khieu Samphan, back to the detention facility.  
17 The Court is now adjourned.  
18 (Court adjourned at 1043H)