



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

TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 May 2016
Trial Day 410

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 14-July-2016, 11:42
CMS/CFO: Sann Rada

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

The Accused: NUON Chea
KHIEU Samphan

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Victor KOPPE
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Trial Chamber Greffiers/Legal Officers:
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SENG Leang

For Court Management Section:
UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Mr. DE WILDE D'ESTMAEL	French
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Mr. LYSAK	English
The President (NIL Nonn)	Khmer

1

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

2 (Court opens at 0908H)

3 MR. PRESIDENT:

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

5 Today, the Chamber hears testimony of witness 2-TCW-816, in
6 relation to S-21 Security Centre.

7 Mr. Em Hoy, please report the attendance of the parties and other
8 individuals to today's proceedings.

9 THE GREFFIER:

10 Mr. President, for today's proceedings, all parties to this case
11 are present except Anta Guisse, the International Counsel for
12 Khieu Samphan, who is absent for personal reasons.

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

16 The witness who is to testify today, that is, 2-TCW-816, confirms
17 that, to his best knowledge, he has no relationship, by blood or
18 by law, to any of the two accused, that is, Nuon Chea and Khieu
19 Samphan, or to any of the civil parties admitted in this case.

20 The witness took an oath before the Iron Club Statue this
21 morning, and he has Mr. Moeurn Sovann as duty counsel. Both are
22 present to be called by the Chamber.

23 Thank you.

24 [09.10.58]

25 MR. PRESIDENT:

1 Thank you. The Chamber now decides on the request by Nuon Chea.
2 The Chamber has received a waiver from Nuon Chea, dated 23rd May
3 2016, which confirms that, due to his health, that is, headache,
4 back pain, he cannot sit or concentrate for long. And in order to
5 effectively participate in future hearings, he requests to waive
6 his rights to be present at the 23rd May 2016 hearing.
7 He advises that his counsel advised him about the consequence of
8 this waiver, that in no way it can be construed as a waiver of
9 his rights to be tried fairly or to challenge evidence presented
10 to or admitted by this Court at any time during this trial.
11 Having seen the medical report of Nuon Chea by the duty doctor
12 for the accused at ECCC, dated 23rd May 2016, which notes that,
13 Nuon Chea has back pain and feels dizzy when he sits for long and
14 recommends that the Chamber shall grant him his request so that
15 he can follow the proceedings remotely from the holding cell
16 downstairs, based on the above information and pursuant to Rule
17 81.5 of the ECCC Internal Rules, the Chamber grants Nuon Chea his
18 request to follow today's proceedings remotely from the holding
19 cell downstairs via an audio-visual means.
20 [09.12.34]
21 The Chamber instructs the AV Unit personnel to link the
22 proceedings to the room downstairs so that Nuon Chea can follow.
23 That applies to the whole day.
24 The Chamber now issues an oral decision to admit documents in
25 relation to 2-TCW-816.

3

1 The Trial Chamber is seized of E319/36, which is the
2 International Co-Prosecutor's request to admit 95 additional
3 written records of interview. This request includes two written
4 records of interview of 2-TCW-816, who is scheduled to testify
5 today. They are E319/23.3.55 and E319/23.3.56.

6 The Trial Chamber decides to admit the two documents, that is,
7 E319/23.3.55 and E319/23.3.56 into evidence and assigns them
8 document number E3/9815 and E3/9816, respectively. Written
9 reasons for this ruling and on the remaining requests of E319/36
10 will follow in due course.

11 [09.14.24]

12 And before we proceed to hear testimony of 2-TCW-816, the Chamber
13 will hear oral responses and submissions on two matters. First,
14 that is, Nuon Chea's defence submission to admit two documents
15 pursuant to Rule 87.4, and a request for reconsideration of the
16 decision of the Trial Chamber to adjourn the proceedings.

17 Secondly, the Chamber will hear oral responses to the request by
18 International Co-Prosecutor to admit into evidence the written
19 records of interviews and documents in Annex 47, pursuant to Rule
20 87.3 and 87.4.

21 And now we will discuss the first request, that is, the request
22 from Nuon Chea's defence for the Trial Chamber to reconsider its
23 decision on the adjournment of the proceedings as well as to
24 admit two documents into evidence, pursuant to Rule 87.4, so that
25 they can be used to question 2-TCW-816.

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1 The Defence Counsel submitted the two requests via email to the
2 senior legal officer of the Trial Chamber on 20 May 2016.
3 Therefore, the Chamber would like to hear responses from the
4 concerned parties on these two requests.

5 [09.16.07]

6 And first, the <floor> is given to the Defence Counsel for Nuon
7 Chea to make a brief submission on the two requests. Though they
8 are separate, you can do it at the same time so that the parties
9 can make their responses to the two requests. And upon hearing
10 those responses, the Chamber will use them as the basis for our
11 decision.

12 Defence Counsel for Nuon Chea, you may proceed.

13 MR. KOPPE:

14 Thank you. And good morning, Mr. President, Your Honours,
15 counsel.

16 Very briefly in relation to the first request, that is, to have
17 two documents added as evidence, the first is a military court
18 statement of the upcoming witness, and the other is a compilation
19 of S-21 documents that the upcoming witness has been confronted
20 with during one of his interviews before the Co-Investigating
21 Judges.

22 [09.17.24]

23 I think both documents are relevant, and if any responses from
24 the Prosecution are coming in relation to this request, I'm happy
25 to reply to these comments.

5

1 The second request is, as you said, Mr. President, a request to
2 reconsider our earlier adjournment request. I will not repeat
3 everything that is in our motion, but I will -- I would like to
4 make a few comments in relation to the most important reason as
5 to why we are asking for adjournment.

6 You might recall that, in the previous discussion, we spoke at
7 length about the new -- newly made OCIJ list of people who were
8 allegedly detained at S-21. In relation -- in the context of this
9 discussion, we also discussed the admitting into evidence of a
10 total of 871 documents that form the actual basis of this new
11 OCIJ list, which was prepared in Cases 003 and 004.

12 [09.18.54]

13 After the Chamber admitted the underlying documents, the 871
14 documents, we received an email from one of the legal officers
15 attributing E3 numbers to the documents that hadn't been admitted
16 into evidence yet. It turned out that, of those 871 documents
17 used by the OCIJ to prepare this list, 724 were not assigned an
18 exhibit number.

19 The total amount of pages of these new E3 documents is about
20 6,763. If you deduct the confessions that were used, we still end
21 up with 4,731 pages, new -- newly admitted evidence.

22 Prosecution, in response to earlier submissions in relation to
23 the first request for adjournment, said that most prisoner lists
24 or biographies were already on the case file or were already
25 accessible in Zylab. However, although with certain exceptions,

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1 theoretically that is true, in practice, however, it turns out to
2 be very difficult, if not almost impossible, to actually access
3 those prisoner lists or S-21 documents.

4 [09.20.41]

5 In paragraph 20 of our motion, we are -- we have detailed the
6 huge problems that we encountered with accessing these documents.
7 The upcoming witness and, of course, also the witness after him,
8 Duch, I can now call him by name, of course, have presumably many
9 things to say about all those newly admitted documents, all those
10 newly admitted S-21 documents, and we find that we do not -- we
11 simply do not have enough time to be able to prepare for these
12 two witnesses in relation to these newly admitted prisoner lists,
13 biographies, etc.

14 What we propose is something that we proposed also alternatively
15 in our earlier request, is in order to not waste time,
16 Prosecution today will start with examining 2-TCW-816, will also
17 start next Thursday -- or this coming Thursday, I apologize, with
18 questioning Duch, and that once the examination in chief has been
19 completed, we get additional time to prepare, additional time to
20 process all those newly-admitted E3 S-21 documents and then,
21 subsequently, continue with our examination -- our
22 cross-examination.

23 [09.22.40]

24 We believe that this is a reasonable request in the light of the
25 newly (sic) evidence presented by the OCIJ and which is now part

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1 of our case file.

2 So Mr. President, I believe -- there are other reasons in our
3 request, by the way, but I don't feel the urge or the need now to
4 expand on that. They all go to the extremely heavy caseload, work
5 pressure that we are facing now.

6 But summarizing, I believe that we are making a reasonable
7 request in relation to these newly admitted documents. Thank you.

8 [09.23.26]

9 MR. PRESIDENT:

10 Thank you, Counsel.

11 I'd like now to give the floor to the Co-Prosecutors to respond
12 to the two requests by the Defence Counsel for Nuon Chea, who
13 have just summarized the two requests. You may proceed.

14 MR. DE WILDE D'ESTMAEL:

15 Good morning the parties and the Judges.

16 I'll respond to the first motion regarding the admission of two
17 documents, regarding the <examination> of 2-TCW-816. Regarding
18 the <statement he made> before the military tribunal<, we> don't
19 have any objection <to the admission of this document, which is
20 very short.>

21 As regards the second document that has to do with <a
22 compilation> of <documents from> S-21 attached to the statements
23 made to the Co-Investigating Judges, as a matter of fact, we do
24 not see the relevance in admitting all those documents <once
25 again,> insofar as all <those> documents have already been

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1 admitted individually. These are lists of prisoners entering
2 S-21, including the name of the witness who will appear today.
3 All those documents already have E3 exhibit numbers. I do not
4 think there's any single document in that list that doesn't have
5 an E3 reference number.
6 <I will not go into detail, but in any case> we do not have any
7 real objection to the admission of those documents, but it would
8 be unfortunate <to create duplicates and to> clog the case file
9 with documents that are already on the record. <Later> I will use
10 a number of those documents that already have E3 exhibit numbers.
11 It would be easier and more practical.
12 I'll give the floor to my colleague as regards the second
13 application.
14 [09.25.44]
15 MR. LYSAK:
16 Good morning, Your Honours, counsel.
17 Let me start by saying that the Co-Prosecutors strongly oppose
18 the idea that we should proceed and examine, do our examination
19 of the next two witnesses and that the defence should then have
20 an additional three weeks -- three weeks off to prepare its
21 examination of those same witnesses.
22 Whatever you decided to do with respect to this issue, the
23 parties should be treated the same. They should be treated
24 equally.
25 [09.26.30]

1 It is fundamentally contrary to the spirit of equality of arms
2 that we hear regularly in this courtroom for the Defence to have
3 that much additional time to prepare for these witnesses than the
4 Prosecution.

5 Now, with a witness like Duch, we recognize there's an enormous
6 amount of material. I'm -- I have 5,000 pages of previous
7 testimony from him, many exhibits. You can spend a long time
8 preparing, thinking of new issues when you are getting ready for
9 a witness like this, but we do have a schedule, so that needs to
10 be balanced.

11 Whatever you decide, one side should not be given an advantage
12 like the Defence are asking for here.

13 Just a couple of points to make sure we are clear here. This new
14 OCIJ list, which is the core basis for the request, is as new to
15 us as it is to the Defence. It came from the other cases, but it
16 wasn't on the case file, so the very first time we saw that new
17 list was the same time that the Defence saw it. So we have not
18 had any more time than them with it.

19 [09.28.08]

20 And the issue of resources, last time we argued this, I told the
21 Court that we had checked a while ago and there were at least as
22 many defence lawyers and consultants on the Defence side, the
23 various teams at this Court, as the Co-Prosecutors. I have to
24 apologize. That is not actually correct.

25 My apology, though, is to my colleagues because it turns out my

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1 information was a year old. As of now, there are 47 lawyers and
2 consultants on the various defence teams, 21 lawyers and
3 consultants in the Co-Prosecutor's Office. So I was wrong when I
4 said we had equal resources. In fact, there are twice as many
5 lawyers and consultants on the defence teams now. And I recognize
6 I'm talking about all the defence teams, but we have to deal with
7 all cases.

8 [09.29.16]

9 So my point here is, it has come time, I think, for the Defence
10 to stop playing the card of they don't have enough resources
11 compared to the Prosecutors. We manage our resources in a
12 different way. All of us work on the other cases, so we rotate in
13 this courtroom. That's the way we chose to do it. But we do not
14 have any advantage. In fact, it seems we have a disadvantage in
15 terms of resources, in terms of the time that we can allocate to
16 whatever requirements.

17 One final point on the issue of the Prosecution examining two
18 witnesses first and then the Defence following. The other reason
19 that is fundamentally unfair, we react as a trial -- as the trial
20 proceeds to what the Defence question witnesses about when it is
21 their turn, so any time we are in a segment like we are now, if
22 the next witness who's upcoming is a very important witness, the
23 Defence will have some new theories, new issues to try to raise
24 with this witness. We always try to take those into account, and
25 have a right to take those into account when we examine the next

11

1 witness.

2 My point here is we are put at a disadvantage if we don't have --
3 hear the defence's examination of the next witness, 2-TCW-816,
4 before we have to start questioning Duch.

5 [09.31.09]

6 We have the right to hear what the Defence is going to try to
7 establish with 2-TCW-816, before the next witness is called.

8 My second point, the length of the adjournment sought. I
9 submitted this -- on this issue to you before. We simply think
10 that the request that's being asked here is far too long an
11 adjournment.

12 You gave the Defence an additional week. That was reasonable. I
13 think it is unreasonable to ask for a three-week adjournment
14 here. Let me just make a few quick points.

15 The core issues relating to S-21, the core issues relating to the
16 remaining witnesses have been part of this case for the last
17 eight or nine years that both sides have been working. Eight or
18 nine years we've been working on this case. And I will
19 acknowledge that there are new issues that arise from the new
20 OCIJ list, and I will talk about that next, but if the Defence
21 seriously wanted to try to show that there were only 5,000
22 prisoners at S-21, a proposition we think is simply absurd, if
23 they seriously wanted to do that, they should have started a long
24 time ago, whether in Zylab or at DC-Cam, going through the
25 underlying records.

12

1 [09.32.50]

2 Second, in terms of the length of time, let's not forget that the
3 Defence has already questioned Duch once, the Nuon Chea defence.
4 They prepared for and questioned Duch for two and a half days in
5 Case 002/01 from the 3rd to the 5th of April 2012.

6 When you put it in that perspective, I think the request to
7 adjourn for three weeks is simply unreasonable.

8 The specific issues, other issues that are raised in their
9 briefs, that there are new filings that they have to deal with,
10 that is always the case. We are always, at this Court, having to
11 deal with new briefs, to multi-task, to respond to issues that
12 come up, and the Defence certainly are as capable of doing that
13 as we are.

14 [09.33.50]

15 So let me get to a proposal that we have because we do recognize
16 that this new OCIJ list is quite significant. It -- everyone, I
17 think, has understood, including Duch himself has recognized,
18 that the 12,000 number, the original number, was low. He,
19 himself, has always acknowledged there were more prisoners than
20 that.

21 Now we have a new list from someone who has gone back and
22 reviewed all the records, and that number is now 15,000. That is
23 significant. I'm not going to stand here and tell you that that
24 is not significant. It is.

25 This new list, particularly the excel spreadsheet, is a very

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1 valuable resource. I don't find it a burden. I actually find it
2 quite helpful because in preparing, you can now very quickly
3 filter and find groups of prisoners, to find -- look for
4 individual prisoner names, to focus on specific periods of time.
5 So, I think this list is very valuable, but I also do recognize
6 that it does present some new issues, and it is important that it
7 be properly used in this Court.

8 [09.35.20]

9 Our proposal, Your Honours, because, in fairness, the work of
10 trying to verify this prisoner list, this new one, is not
11 something so much that will be done through witnesses on the
12 stand. It is more a matter of people, if they wish, checking the
13 underlying records -- the underlying records to verify whether
14 there are names that shouldn't be on there, whether there are
15 names that have been missed.

16 I'm sure both sides will be doing that, and that will be a
17 process that will continue. But that is a process that I think --
18 the process of verifying this new list will mostly be a matter of
19 checking documents. At the same time, there may be some
20 additional questions for witnesses that arise.

21 So with that in mind, here is a proposal that Mr. Koumjian came
22 up with. I think it is a very good one, of how we can continue
23 with the trial, but at the same time give both sides, Prosecution
24 and Defence, some additional time to continue looking at this new
25 list.

14

1 [09.36.40]

2 What we have in mind is that we would continue as scheduled with
3 2-TCW-816 the next two days, start Duch on Thursday, but that we
4 will break up -- we suggest breaking up Duch in -- from --
5 instead of nine consecutive days to five days starting Thursday,
6 then four days which would be delayed until perhaps the end of
7 the internal purges segment, perhaps the -- which I would suggest
8 would be perhaps the last week of June before the summer recess.
9 The idea here would be that the Prosecution would do two days,
10 the defence two days, and I think the Trial Chamber has one day
11 that it's reserved for questioning. I'm not sure who's going
12 first, but that we would do five days. The other four days of
13 Duch would be heard at the end of the purges segment.

14 [09.37.50]

15 That would give people who are working on these new OCIJ lists
16 additional time to assimilate that material so that when we get
17 to the end of the purges segment, we can recall Duch and people
18 will have sufficient time, two days each, to examine him and, to
19 the extent new issues arise from these -- from the OCIJ list,
20 they can incorporate them at that time.

21 That is a way we believe we can proceed, give the Defence some
22 time, give the Prosecution time, too, with this new material, but
23 continue the important work in this courtroom.

24 Anticipating the Defence response that we need this courtroom --
25 we need to be out of this courtroom in order to prepare, I simply

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1 think that is not a reasonable request. These are big defence
2 teams. They have to multi-task. And like I said, this -- the work
3 of reviewing this OCIJ list is mostly a work for a few people
4 going through the underlying records. I do not think it is
5 reasonable to suggest the entire Nuon Chea defence team has to
6 have three weeks off to go through this new list.
7 So, what we are proposing, if you look at it schedule-wise, would
8 be the next witness, two days, Duch starting Thursday, one day
9 this week or two days this week, complete him next week. The
10 following week after that starting with the purges segment,
11 continuing with the purges and then, at the end of June,
12 recalling Duch for four days.

13 [09.39.44]

14 That is our proposal to, Your Honours, to deal with the
15 situation. The other advantage of this is there -- we've -- the
16 Court has raised that there may be problems with Duch testifying
17 nine days in a row, so the other advantage is that it would split
18 up his testimony, perhaps would be easier for him, given his
19 situation, age and that, than testifying nine days in a row.
20 So that is the Co-Prosecutor's response. I'm happy to answer any
21 questions if you have them.

22 MR. PRESIDENT:

23 Thank you.

24 And I'd like now to hand the floor to the Lead Co-Lawyers for
25 civil parties to respond to the two requests by the Defence

16

1 Counsel for Nuon Chea, who provided a summary this morning. You
2 may proceed.

3 [09.41.01]

4 MS. GUIRAUD:

5 Thank you, Mr. President.

6 Regarding the first application of the Nuon Chea defence
7 regarding the admission of documents on the basis of Rule 87.4,
8 we have no specific objections in that regard and we will rely on
9 the Chamber's <discretion>.

10 Now, regarding the second application of the Nuon Chea defence, I
11 would like to make the following short observations.

12 On 12 May last, the Chamber issued a decision providing for an
13 adjournment of one week to allow the Defence, but also to the
14 other parties, the time to check or to formulate observations
15 <and documents>. Three kinds of documents had to be reviewed
16 during this adjournment, <ie.> the new prisoner list that was
17 established by the OCIJ, <all of> the documents that were used as
18 a base for this list, and the new photo album that was provided
19 by DC-Cam and then, through this decision, the Chamber was
20 allowing the Nuon Chea defence to prepare new observations to
21 clarify certain requests that were made prior by the Defence.

22 [09.42.36]

23 Now, the question that we're asking ourselves today is whether,
24 in this lapse of time of one week, if the Defence as well as the
25 civil parties, to a certain extent, were able to complete these

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1 different tasks and, in particular, to verify and to <study> the
2 new list of the OCIJ, <all of> the documents that were used to
3 create this list and the new photo album by DC-Cam.
4 And the comment I'd like to make regarding these documents is
5 that there is a real problem regarding the documents that were
6 used to establish this prisoner list by the OCIJ, and I can say
7 today that some of the documents that were admitted by the
8 Chamber and that form the foundation of this list are not
9 accessible while we're speaking now. They're not accessible on
10 Zylab and the Defence is not able to check these documents, but
11 it's the same for the civil parties.

12 [09.43.47]

13 So as long as there will not be a factual link between the <set
14 of> documents that were admitted by the Chamber and Zylab, the
15 parties will not be able to check the documents that formed the
16 base of the OCIJ's prisoner list.

17 So this technical problem is a real problem. It possibly might
18 have implications in terms of time. And regarding this specific
19 point, we would like to rely on the Chamber's wisdom so that the
20 Chamber may find the technical means, the human means that would
21 allow us to solve this problem in the most expeditious way
22 possible so that we can all check the documents that were
23 admitted and that are used as the base for this new list, which
24 is important for the Defence, which is important for the
25 Prosecution, but which is also important for the civil party

1 lawyers.

2 We have a certain number of civil parties, an important number of
3 civil parties whose relatives died at S-21. This new list from
4 the OCIJ constitutes also, for us, an extremely important tool.
5 And of course, we would like to be in a position to check the
6 documents that form the basis of this list.

7 [09.45.10]

8 Now, regarding the proposal, the concrete proposal that was made
9 by the Co-Prosecutors, well, I must confess that, of course, it
10 was impossible for me to talk about this with Ang Pich my
11 colleague, and the other lawyers, so therefore, at this <point>,
12 I must rely on the Chamber's wisdom on the way to organize the
13 testimony of the witnesses to testify so that the parties may
14 check all of the elements of the list and for the trial to take
15 place in the most expeditious way possible.

16 Thank you.

17 MR. PRESIDENT:

18 Now the floor is given to the defence team for Mr. Nuon Chea.

19 Now you have the floor first, Counsel for Khieu Samphan.

20 [09.46.09]

21 MR. KONG SAM ONN:

22 Thank you, Mr. President, Your Honours, everyone in and around
23 the courtroom.

24 In relation to the request of the defence team for Mr. Nuon Chea,
25 we, the defence team for Mr. Khieu Samphan, have no objection to

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1 the admission of the documents.

2 However, in relation to the request for additional time, we
3 responded to that matter already to -- we addressed this matter
4 already before the Chamber and we now support the request of Mr.
5 Nuon Chea's defence team in relation to additional time. In fact,
6 we do not have sufficient time to work effectively on our defence
7 team.

8 The Co-Lead Lawyers for civil party made mention already about
9 some documents which were disclosed recently -- which have been
10 disclosed recently in relation to the revised list of S-21
11 prisons <by the Co-Prosecutor>, and we need also to examine the
12 other documents in relation to Choeung Ek.

13 We, in addition to that, need to examine <the request of the
14 Co-Prosecutor,> document E319/47, and there are numerous
15 documents that we need to study before we start to question the
16 two last witnesses on S-21, Duch and another witness <>.

17 [09.48.04]

18 Again, we do not have sufficient time to examine and study all
19 those documents <in relation to> Duch and another witness. And I
20 believe that the additional time is very necessary, and it can
21 provide sufficient time for the defence team for Mr. Khieu
22 Samphan to defend our client diligently.

23 And <regarding the Co-Prosecutor's submission> in relation to
24 <breaking Duch's case into segments>, the witness who will come
25 to testify, in fact, as far as we are concerned, the Case 002 has

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1 a break into different segments and now we are examined S-21
2 facts. Because of the different segments of the trial, we need
3 time to study on different facts and documents. I do not really
4 understand the submission of the International Co-Prosecutor,
5 particularly the submission on the additional time <after the
6 Co-Prosecutor is done with their questioning, before letting the
7 defence team put questions to witnesses in relation to S-21>.

8 [09.49.47]

9 <> I have heard the Co-Prosecutor said that giving additional
10 time to the defence team will jeopardize the equality of arms of
11 the parties.

12 I believe that the Co-Prosecutors have facilities -- have all
13 facility and proper time to prepare their case, so I believe
14 there is nothing jeopardized the equality of arms of the parties.

15 I don't believe that these have any -- this will have any
16 implication on the equality of arms, particularly <regarding the>
17 request for additional time.

18 I believe that the Chamber has had its practice so far,
19 particularly in relation to 2-TCW-1000. The Chamber, at the time,
20 provided the opportunity for the Co-Prosecutors to put question
21 first and then there was an adjournment before the defence team
22 started to question that 2-TCW-1000.

23 That <practice> was appropriate <> for <complicated cases, for
24 instance, in case of expert witnesses> and this should be also
25 applied in the case of witness -- the upcoming witness <in

1 relation to S-21>, that is, Duch.

2 [09.51.54]

3 So I believe time -- additional time should be given to the
4 defence teams so that they can have opportunity to study and
5 examine the documents and for the reason that they could defend
6 the interests of the clients effectively. And I believe the three
7 weeks -- the additional time of three weeks is very appropriate
8 so that we have opportunity to study and examine all relevant
9 documents.

10 Thank you, Mr. President.

11 JUDGE FENZ:

12 Can I just ask a question to the Prosecution?

13 You made the suggestion five days now and then the purges and
14 then four days later. Now, to me, that sounds a bit like we also
15 need more time to study all the documents.

16 Is this correct? And if so, in case the Chamber decides not to go
17 with this suggestion, would you still be ready to proceed with
18 the original schedule, or at least with the schedule that has
19 Duch in one chunk?

20 [09.53.16]

21 MR. LYSAK:

22 We will always do our best and proceed when you decide to bring
23 witnesses in here. What I am saying is we -- both sides can
24 benefit from this new list, and if we are going to have some sort
25 of delay, it should be equal for both sides because I would -- I

1 will be ready to question Duch when you want me to question Duch
2 and I will do the best I can.

3 Would I benefit if I have some additional time, a split? Of
4 course. And there shouldn't -- my point is that there shouldn't
5 be an advantage for one side for us to question a witness and
6 then for them to have three weeks off to prepare. It should be
7 equal.

8 But we all have to work and do the best we can with the time we
9 have, so whatever you decide, we will -- we will be ready.

10 MR. PRESIDENT:

11 And now the floor is given to the defence team for Mr. Nuon Chea
12 to register his reply.

13 [09.54.39]

14 MR. KOPPE:

15 Yes. Thank you, Mr. President.

16 Let me reply first to what the Prosecution has said in relation
17 to those S-21 documents that were shown at one point to the
18 upcoming witness.

19 It is certainly not our intention to have documents admitted
20 again. We were under the impression that those documents, because
21 they were Case 001 documents, were not yet on -- were not yet
22 admitted as E3 evidence. We might have erred in that, so the
23 second part of that request we will withdraw insofar components
24 of this compilation have already been admitted. We apologize for
25 any confusion in relation to that particular set of documents,

1 that compilation.

2 [09.55.38]

3 Responding to the Prosecution in relation to our request for
4 reconsideration, let me -- let me respond by saying that I have
5 to smile a bit when I heard the Prosecution talking now about the
6 importance of this OCIJ list and it's underlying sources.

7 I might recall the Prosecution on the hearing the 31st of March
8 when we first raised the issue said, oh, it's just -- and I
9 quote, "The OCIJ just simply created some sub-lists and there is
10 no dramatic new S-21 evidence."

11 Then, at the hearing of the 2nd of May, the Prosecution said,
12 "Oh, don't worry. These documents have been around for a long
13 time. Defence should have been able to examine those documents
14 already quite a while."

15 So now, I write down that also the Prosecution finally finds this
16 new OCIJ list quite significant, and the civil party lawyers now
17 say, and I agree with that, that these underlying documents and
18 this list is, quote unquote, "extremely important".

19 [09.57.08]

20 It took a while, but it seems that we are now at least on the
21 same page as it relates to the importance of this new list and
22 the importance of the underlying documents and the need and
23 urgency for all parties to be able to go through these underlying
24 documents and to be able to verify them and to do cross-checking,
25 etc.

1 Having said that, I also had to smile a bit when I heard the
2 argument of equality of arms. Aside from the point that equality
3 of arms is a right for the Defence to protect the accused, and
4 not for the Prosecution to invoke, it also simply doesn't apply
5 in this particular case because the problem -- one of the main
6 problems is that the Prosecution already had all its time to
7 examine the documents, to examine the witnesses in Case 001.
8 It is true that we were able to question Duch in the first part
9 of this trial, but that wasn't about S-21, because S-21 wasn't
10 part of the scope of Case 002/01.

11 [09.58.32]

12 So the equality of arms and the strong resistance of the
13 Prosecution to start with questioning the witnesses, then have a
14 pause, and then it is up to the Defence I really do not
15 understand in the light of the huge advantage the Prosecution
16 already had in relation to S-21 and Duch. They started in 2006
17 with their own examination, their own investigation.

18 In addition, I must note, that what we have suggested is
19 something which is common practice at the ICTY. There is no
20 problem there, it seems, that in relation to particularly
21 important witnesses the prosecution starts first, then there is a
22 break, and then the defence has its opportunity. That, in itself,
23 is a mechanism which is widely used at the ICTY, and I do not
24 understand the resistance in relation to this mode of proceeding.
25 Saying that -- or doing a count of all defence lawyers, all

25

1 defence team consultants, that really doesn't make any sense at
2 all, Mr. President. I have no opportunity, even I'm forbidden to
3 do so, to discuss any matters with Case 003 or Case 004 defence
4 teams. I will never do such a thing. So just counting how many
5 prosecutors that are on one side and how many lawyers and defence
6 consultants that are on the other side doesn't absolutely make
7 any sense whatsoever.

8 [10.00.20]

9 The truth of the matter is that I am the one here standing,
10 asking questions and hopefully, at one point, can be replaced
11 once or twice by senior legal consultant. But at the end of the
12 day, it's me who is standing here, it's me who's asking
13 questions. The Prosecution is alternating all the time.
14 As a matter of fact, in this particular segment, I've counted
15 already five or six prosecutors asking questions to various
16 witnesses.

17 But summarizing, we maintain our request. We really do need some
18 additional time or extra time, Mr. President, so that I do not
19 have to be in Court that I can actually properly examine those new
20 underlying documents as well. So we do maintain our request.

21 [10.01.24]

22 MR. PRESIDENT:

23 Counsel Koppe, please be on your feet. I have two questions.
24 In relation to your request for three weeks' adjournment, is that
25 the three weeks' additional adjournment to the two weeks'

1 adjournment that we already had? That is the first one. Or
2 whether your request for three week adjournment was the original
3 request and that the two weeks of that had already been adjourned
4 so that you only need one additional week.

5 Secondly, if the Chamber makes such a decision and that only the
6 prosecutor <or the Lead Co-Lawyer for civil parties> will put
7 question to the two witnesses who are the main witnesses in Case
8 <002/01>, would it be flexible for the Chamber to hear other
9 witnesses in relation to other facts, or you prefer to have this
10 one exclusive week off?

11 MR. KOPPE:

12 Thank you, Mr. President.

13 Answering your first question, no, it is a full three weeks after
14 the examination by Prosecution of the next witness and Duch, so
15 it's not those two weeks that -- or one week that was granted
16 should not be included in those three weeks. It's three new
17 additional weeks.

18 And secondly, yes, the pause in between. Yes, we do need a pause
19 in between. So, no witnesses relating to the purges. So we really
20 do need a time without any trial going on.

21 [10.03.50]

22 MR. LYSAK:

23 Just a few points in response to the various comments here.

24 On the technical issue, the documents -- the new underlying lists
25 are not available under their E3 numbers, but I believe that they

1 are available if you search the ERNs on the shared material
2 drive. I think their motion recognizes that they were able to
3 download them. So, I think that the technical issue the civil
4 parties are referring to, it's just a matter of searching by the
5 ERN on the shared materials drive rather than searching by the E3
6 number.

7 A second -- we are not aware of any precedent at the ICTY. Mr.
8 Koumjian has spent extensive time there. There is no such
9 procedure that counsel is suggesting. It's not cited in their
10 motion.

11 [10.04.56]

12 What they are asking for here is to have an advantage over what
13 the Prosecution have. And just so I'm clear, Judge Fenz, if there
14 is going to be any sort of delay here, we have the right to spend
15 some additional time going over that list, too. My point is
16 simply we will always be ready to do the best we can whatever you
17 decide.

18 As to the need for a complete adjournment and not hear any
19 internal purges witnesses, again, I think the defence team, as
20 the prosecutors do, have to multi-task. Internal purges is an
21 issue we've been dealing with in every segment of this trial --
22 every segment of this trial, the issue of purges, of arrests of
23 local cadres.

24 The defence team, Mr. Koppe, when examining witnesses, work site
25 witnesses, other segments, spends usually at least half of his

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1 time questioning witnesses on issues of purges, alleged treason
2 and traitors and arrests, so I don't understand how the defence
3 team can say that they need to have the time completely off.

4 [10.06.12]

5 The examination of Duch, to say that, yes we examined Duch but it
6 wasn't about S-21, he needs to read the record. Mr. Pestman
7 examined him extensively about S-21, about confessions, about the
8 process, about his client's involvement. It's simply false to say
9 that they did not examine Duch already about S-21.

10 In terms of Case 001, I didn't work on that. Our principal
11 lawyer, you'll recall, was Alex Bates. He left at the end of that
12 proceeding. So to suggest that myself, or most of the other
13 lawyers have some advantage over the Defence is simply -- is
14 simply false.

15 Last, I forgot to mention this, with respect to the next witness,
16 2-TCW-816, we recognize that that is a witness who also has some
17 knowledge of the lists, so we also propose or suggest at least,
18 that the Trial Chamber be open to an additional day later at the
19 end of the purge segment if either the Prosecution or the
20 Defence, after going through the new lists, feels that they have
21 additional questions for 2-TCW-816. We think it would be
22 reasonable to bring that witness back for one additional day if
23 either side wants it.

24 Thank you.

25 [10.08.01]

1 MS. GUIRAUD:

2 Thank you, Mr. President.

3 I would like to make some brief remarks in response, first of
4 all, to the technical problem.

5 I have requested my team to verify this matter, and I
6 persistently state that all documents are not available as we sit
7 today in the shared material drive and a significant number of
8 documents are still not available on Zylab, which impedes
9 research considerably. So it has an impact on the technical work
10 we are doing now.

11 As for the Nuon Chea team's request to have a situation in which
12 the first part of the hearings would be for the prosecutors and
13 then part of that time for the civil parties and second part
14 would be for the defence, let me remind everyone that we are in a
15 civil law situation and we are dealing with witnesses for <the
16 Chamber>, <and not witnesses for the Prosecution or the Defence.
17 There's> no examination in chief <and> cross-examination <here>.

18 [10.09.25]

19 We have witnesses <for the Chamber who are heard by the parties>,
20 and all the parties ask questions continually. I <am aware> that
21 there is a <constant> tendency in this Chamber to <always want to
22 drive> these proceedings <toward> the common law approach, <but I
23 think that is a mistake>. <There is no examination in chief.

24 There is no cross-examination. These are> the Chamber's
25 witnesses, <and it is in the interest of seeking the truth that>

30

1 the witnesses be heard continually, <and> questioned by the
2 Co-Prosecutors, the civil parties, the Chamber and the Defence.
3 Once more, we are in a system that is radically different from
4 the system that <is used> at the ICTY.

5 I thank you.

6 MR. PRESIDENT:

7 And the defence teams, do you wish to make any observation to the
8 last remarks by the Deputy Co-Prosecutor and -- the International
9 Lead Co-Lawyer for civil parties?

10 [10.10.34]

11 It seems not. The Chamber now will discuss the second issue, that
12 is, the request by the International Deputy (sic) Co-Prosecutor
13 to admit into evidence the written records of interviews and
14 documents in Annex 47, pursuant to Rule <77.3> and <77.4>, which
15 was submitted on 5th May 2016, that is, document E319/47.

16 And on the 11 May 2016, the Defence Counsel for Khieu Samphan
17 made a request to delay the response until the 13 of June 2016,
18 that is, document E319/47/1. And on the 16 of May 2016, the
19 Chamber notified parties via email of its decision to grant in
20 part the request by <Nuon Chea's (sic)> defence to make an oral
21 response to the request by the Co-Prosecutors to be made on
22 Monday, 23rd May 2016.

23 The request by the Deputy -- by the International Co-Prosecutor
24 is to admit written records of interviews as well as documents in
25 the Annex <47>, and seven of those WRIs are related to S-21

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1 Security Centre. And due to the urgent matter of this issue, the
2 Chamber wishes to hear responses from parties orally to this
3 matter so that the Chamber can use them as the basis for our
4 decision.

5 [10.12.19]

6 Each party is granted 20 minutes. And the floor is first given to
7 the Lead Co-Lawyers for civil parties to make observation or to
8 respond to request by the Deputy -- by the <International>
9 Co-Prosecutor.

10 You may proceed.

11 MS. GUIRAUD:

12 Thank you, Mr. President. I'll be very brief because we'll rely
13 on the Chamber's decision or the Chamber's discretion as regards
14 that application.

15 MR. PRESIDENT:

16 And I'd like now to hand the floor to the Defence Counsel for
17 Nuon Chea to respond to the submission by the International
18 Co-Prosecutor.

19 You may proceed, Counsel.

20 [10.13.13]

21 MR. KOPPE

22 Thank you, Mr. President. We have no observations.

23 MR. PRESIDENT:

24 Lastly, I'd like to hand the floor to the Defence Counsel for
25 Khieu Samphan.

1 MR. KONG SAM ONN:

2 Thank you, Mr. President. Once again, good morning, Your Honours,
3 and everyone.

4 I have some observations to make in relation to E319/47 by the
5 Co-Prosecutors.

6 And I'd like to make our responses to the submission by the
7 International Co-Prosecutor on 5th May 2016, to admit 47
8 documents into evidence. Those documents were from Cases 003 and
9 004.

10 Among the 47, 19 of them had been disclosed to us. As for the
11 rest, that is, 28 documents, we could access them on the 10th of
12 May 2016.

13 [10.14.32]

14 A day after, that is, 11 May 2016, we made a submission to the
15 Trial Chamber to extend the time to respond to that submission,
16 that is, document E319/47/1. We request for additional time to
17 respond, that is, from that time until today, that is, until the
18 last day of the judicial recess, so that we're able to prepare
19 ourselves to question the two last witnesses in relation to S-21,
20 as well as to give us time to review the new S-21 list of
21 prisoners, as well as newly-admitted documents since those
22 documents are the basis to form the new prisoner's list.

23 We stated earlier that, a majority of the documents requested by
24 the International Co-Prosecutors are the written records of
25 witnesses to replace their live testimonies in the proceedings in

1 Case 002/02. Some of them had already testified or are going to
2 be testified by the Chamber.

3 [10.16.18]

4 We also confirmed that the five documents, that the
5 Co-Prosecutors identified are related to S-21, are the written
6 records of some witnesses who had been summonsed or had
7 testified. And for that reason, we have no objection against the
8 said five documents.

9 On 16 May 2016, at 3.23 in the afternoon, the Chamber made a
10 decision and notified the parties via an email that, since there
11 are only seven documents related to S-21, we were required to
12 respond to the request for the admission of these seven documents
13 before we hear the testimony of the witness today.

14 The Trial Chamber also added that, at the same time, we had to
15 respond to the entire request by the Co-Prosecutor. We are not
16 really sure of that <decision>. We do not see the urgent need to
17 respond to the request to admit the WRIs in hearing -- in place
18 of hearing the live testimonies, and that is in relation to some
19 topics which were already discussed, or some other topics that
20 are going to be discussed. And we are still even unclear until
21 today that the Chamber has not yet decided on the last request by
22 the Co-Prosecutors, that is, document E319/36, which is similar
23 in nature and which was submitted six months ago and that we
24 actually responded to that request five months ago.

25 [10.18.22]

1 Since we cannot do many of these tasks at the same time, we
2 prioritized ourselves in preparing to question witnesses in
3 relation to S-21. And today, we would like to respond to the
4 submission by the Co-Prosecutor, that is, document E319/47. And
5 we have not yet read all those newly documents requested by the
6 International Co-Prosecutor to be admitted as evidence in the
7 case file.

8 Up to today, we do not have the facility to review the <19>
9 documents, which have previously been disclosed. This means that
10 we are driven to meet the urgent need of the other parties and
11 which are not serving the interests of our client.

12 For that reason, we object to the principle of the need for us to
13 respond fully to the submission by the Co-Prosecutors except in
14 relation to only the seven WRIs of witnesses who were testified
15 or who are going to testified, that is, the sequential number of
16 document 28, 37, 38, <39>, 40, 41 and 43 of Annex E319/47.2.

17 [10.20.04]

18 As for the other 40 remaining documents, they do not satisfy the
19 criterion stipulated in Rule 87.4 and 87.3 of the ECCC Internal
20 Rules. And I'd like to provide a general ground for our
21 objection. After that, I would mention specific objections to
22 some of those documents.

23 Now, in relation to the belated request, in paragraph 7 of the
24 submission, the International Co-Prosecutor stated that he sought
25 permission from the Co-Investigating Judges to disclose those 47

1 documents through that successive seven requests from 16 March
2 <2015> to 25 April 2016, and in footnote 12, six of the requests
3 were made in 2015 and the seventh request was submitted on 25th
4 April 2016.

5 [10.21.43]

6 In the same paragraph 7, the Co-Prosecutors also stated that the
7 Co-Investigating Judges approved those requests on the 17
8 December <2015>, 25th January 2016, 29 January 2016 and 25th
9 April 2016.

10 And in footnote 13, which refers to the decision of 25th April
11 2016, the OCIJ responded to the request by the Co-Prosecutor on
12 the same day, and that request is <related> to <> only one
13 document.

14 [10.22.37]

15 In their request, the Co-Prosecutor did not provide any
16 explanation as to the reasons why they <had> to wait until May
17 2016, to make a request to admit into evidence the 46 documents,
18 when they are fully aware of those documents and that they
19 actually request for their disclosure in 2015 and that they
20 receive the permissions by latest January 2016. And except one
21 document, which was requested received a response <> on 25 April
22 2016. This clearly shows the negligence on the prosecutor's side.
23 This also clearly shows through the facts that the Co-Prosecutors
24 only made the request now to admit into documents the WRIs of
25 witnesses whom they propose to testify and that some of them

1 actually provided their testimony during the last few weeks in
2 relation to S-21 while the Co-Prosecutor themselves knew that the
3 Trial Chamber actually decided to hear those witnesses since 7
4 March 2016.

5 The second point in relation to this part is that those documents
6 are not conducive to ascertaining the truth. Most of the requests
7 by the Co-Prosecutors are to admit into evidence the WRIs of
8 witnesses in lieu of their live testimonies, and <> the Trial
9 Chamber only provided minimum value of credibility of those WRIs.
10 I refer to the Judgment, E313, paragraph <44> and footnote 94.

11 [10.25.14]

12 The Co-Prosecutors only raised the matter of relevancies of those
13 WRIs but failed to explain the need to have those documents or
14 the -- whether they are conducive to ascertaining the truth. Why
15 it is now to have the documents of very minimal value during
16 these important stages of the proceedings while there are
17 thousands of documents which are more important and more value
18 already exist in the case files related to the same subject
19 matter? And if they are of important value in ascertaining the
20 truth in this matter and for the interest of justice, why the
21 Co-Prosecutors do not propose to hear testimonies of those
22 witnesses?

23 [10.26.17]

24 In conclusion as for the general observation, the requests by the
25 Co-Prosecutors failed to satisfy the criteria stipulated in Rule

1 87.4.

2 Now, on specific issues in relation to those requests, I'd like
3 to make some mention of certain documents. The first batch for
4 them is documents related to S-21 and the documents that we do
5 not object to are the documents labelled as S-21 documents, and
6 there are five of them, and they are the previous statements of
7 witnesses who have testified or who will come to testify.

8 In our request for extension, as we stated there, we do not
9 oppose these five documents.

10 And in relation to the two documents identified by the Trial
11 Chamber and that the Trial Chamber actually identified two
12 additional documents that are related to S-21, and we assume that
13 these two documents are document number 31 and 32 of annex
14 E319/47.2, and these documents are labelled by the Co-Prosecutors
15 as related to the role of the accused.

16 [10.28.09]

17 Based on a summary provided by the Co-Prosecutors, these two
18 documents are likely about certain facts that the OCIJ did not
19 investigate in Case 002.

20 For that reason, we object to the admission of these two
21 documents as they are not relevant, and this is pursuant to Rule
22 87.3(a).

23 Now, for documents related to Khmer Krom. In footnote 2 of
24 E319/47, the International Co-Prosecutor states that he requests
25 to the admission of documents related to Khmer Krom as the

1 Co-Prosecutors noted a decision by the Trial Chamber, that the
2 Trial Chamber stated that they were not seized of this matter,
3 but the Trial Chamber is of the view that in certain cases these
4 documents are relevant.

5 [10.29.30]

6 In its previous submission, that is document E319/40 in paragraph
7 6, the International Co-Prosecutor confirms that they did not
8 provide exculpatory evidence in relation to <rape outside> forced
9 marriage since the Trial Chamber is not seized of this fact.

10 However, in the case of the Khmer Krom, the Trial Chamber was of
11 the view that although they were not seized to examine these
12 facts, in certain cases those documents were relevant. Here I
13 refer to paragraph 11 of document E348/4.

14 Likewise, in relation to documents related to rape outside forced
15 marriage, documents related to Khmer Krom shall not be disclosed
16 or included in the case files since they are not part of the
17 indictment against the Accused.

18 Number 3, documents related to individuals to be summoned.

19 Certain documents requested by the Co-Prosecutors related to
20 certain individuals who are to be summoned but there is no
21 decision on this matter yet, in cases where the Trial Chamber
22 allows the Co-Prosecutors to disclose those documents, there is
23 no reason to admit those documents into evidence as long as no
24 decision has been made in relation to those witnesses.

25 [10.31.49]

1 Number 4 is related to the previously disclosed documents, and
2 before that -- before I conclude, I'd to make observations in
3 relation to the 19 documents which have been previously
4 disclosed.

5 There are 7 of those 19 documents which are related with other
6 testimonies of witnesses who have testified or who are going to
7 come to testify. The other 12 documents had been disclosed by the
8 Co-Prosecutors based on their obligations to disclose exculpatory
9 evidence, and I'd like to draw the Chamber's attention on this,
10 that since disclosure of these documents, none of the defence
11 team requests for admission into evidence those documents and
12 only the Co-Prosecutor who made such a request.

13 And we object to these 12 documents for the same reasons that we
14 have mentioned earlier, that these 12 documents do not satisfy
15 the criteria stipulated in Rule 87.4 and 87.3.

16 To conclude my response, I request the Trial Chamber to dismiss
17 the request by the International Co-Prosecutors, except the seven
18 WRIs in relation to witnesses who have been summoned or who have
19 already testified, that is document in -- that is document number
20 28, 37, 38, 39, 40, 41 and 43 of annex E319/47.2.

21 Thank you, Your Honours.

22 MR. PRESIDENT:

23 Lastly, I'd like to hand the floor to the Co-Prosecutors to reply
24 to the response. You may proceed.

25 [10.34.31]

1 MR. LYSAK:

2 Thank you, Mr. President.

3 Let me first address the timing of the filing of the motion. I
4 think it is wrong to call it belated. We -- let me explain that
5 we are dealing with a new procedure since the Trial Chamber's
6 ruling, last October or November, I think, that asked us to do
7 the disclosures in a different way. So we have changed entirely
8 the procedure that we have to go through with these Case 003 and
9 Case 004 WRIs.

10 [10.35.20]

11 It is now a two-step process for us. The first step is to
12 determine whether material, any of the new interviews, contain
13 any exculpatory material; anything that would be considered
14 exculpatory.

15 In the past, we went through something that is actually a lot
16 easier to do, which is "does this interview have relevant
17 information to a subject in Case 002. If so, disclose." That was
18 the task that could be done by a lot of people in our office;
19 it's a much easier task. The assessment of whether or not a
20 particular interview is exculpatory or not is one that requires a
21 fairly detailed understanding of this ongoing -- of this trial.
22 So we go through this first process in order to get the
23 disclosures out as quickly as we can because that's the most
24 important thing in our view, is that this material gets
25 disclosed.

41

1 We then have to go through a second step, which is to evaluate
2 interviews and determine whether we wish to move them into
3 evidence pursuant to 87.4. That applies both to material that was
4 disclosed and interviews that were not disclosed as exculpatory
5 or relating to trial witnesses.

6 [10.36.53]

7 I tell you this because this process was intended to result in
8 fewer documents being admitted and disclosed, and that is the
9 case. That has happened, but it does take us a little more time
10 now to go through that process, and we are quite careful now. We
11 are being very selective in terms of what we put into evidence as
12 87.4. I can tell you that the forty-some documents came out of a
13 review of many, many hundred -- many hundred interviews.

14 So we are trying to be selective in terms of what we put before
15 the Court. We're trying to be careful in reviewing for
16 exculpatory material. That takes us a little more time, but I
17 don't think we have in any way been -- there's been a lack of
18 diligence. We have proceeded as quickly as we can.

19 [10.37.57]

20 I think it's also a little bit hypocritical for the Defence to be
21 complaining about our 87.4 motion, which without any question,
22 concern new material, new evidence that has arisen in another
23 case. They don't seem to have -- the Khieu Samphan team doesn't
24 seem to have any problem when their counterparts file 87.4
25 motions on the eve of a witness, sometimes asking for 15 new

1 documents -- I'm thinking back to one of the experts -- to be
2 admitted, which is material which has been around for a long
3 time, and I don't hear any complaints coming from that side of
4 the aisle. So I think there is a little hypocrisy here in terms
5 of the approach -- their approach to 87.4 motions.

6 In our view, material should be admitted if it helps this Chamber
7 ascertain the truth. Whether it's -- excuse me -- whether it's
8 the last-minute 87.4 filings by the Defence before witnesses are
9 heard, whether it's our motions concerning the new interviews
10 that are coming from the other investigations, the ultimate issue
11 is, does it help this Chamber ascertain the truth.

12 [10.39.19]

13 And the Khieu Samphan team has argued, if we're not going to hear
14 these people as Trial witnesses, how does it help? That is a
15 false argument. In mass atrocity cases, we cannot call every
16 single witness to be heard. Corroborative evidence is important
17 in cases like this, in complex cases where we cannot hear every
18 witness. So to say that because we're not proposing these people
19 as trial witnesses means it's not relevant, is simply false.

20 [10.40.02]

21 There is an argument, specific argument, about interviews 31 and
22 32 on our annex that these don't relate to the subject matter of
23 this case. In fact, these are interviews that relate to purges in
24 Kratie. There is a trial witness that, Your Honours, have
25 selected, 2-TCW-1005, that you've selected, and that's the very

1 subject that this witness is going to testify about, purges in
2 Kratie. So I don't think it is correct to say that is not an
3 issue that is pertinent to this case. It is very pertinent.
4 Khmer Krom, the argument about the Khmer Krom, I think counsel is
5 confusing two different issues. What, Your Honours, ruled was
6 whether Khmer Krom were part -- treatment of Khmer Krom was part
7 of the charges against the accused in connection with the
8 genocide against the Vietnamese charge, and clearly you've ruled
9 they are not.

10 [10.41.09]

11 It is a different issue whether interviews contain evidence that
12 is relevant to the policy, the policy against the Vietnamese,
13 because the Khmer Krom and the Vietnamese are very
14 interconnected, and when you read these interviews you will see
15 that this evidence is very pertinent to showing the policy
16 targeting the Vietnamese and anyone associated with them. So it
17 is relevant. This remains relevant to showing the policy even
18 though Khmer Krom are not part of the technical charges in the
19 case.

20 The other point I wanted to address concerns the process with
21 respect where we have these new WRIs for trial witnesses. I think
22 the unfortunate thing that happened with the filing of this
23 motion, and it was inadvertent, was that the motion was filed
24 while one of these witnesses was testifying.

25 Let me first remind you, though, that the witness interviews had

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1 been previously disclosed. They had been available to all the
2 parties, they were promptly made available. It's then up to the
3 parties to choose whether they wish to use them with the witness.

4 [10.42.33]

5 Now, one of the members of our -- some of the members of our team
6 had an incorrect understanding that when trial witnesses come
7 into this courtroom, their interviews are automatically admitted
8 into evidence. And, generally, that has been the case. Generally,
9 with most of the witnesses where we've had new WRIs, either one
10 side or the other has gotten on their feet or sent an email
11 before and said, we would like to use this new WRI that was
12 disclosed.

13 [10.43.11]

14 So, there wasn't any effort here to put in evidence that hadn't
15 been made available to everyone. It was an assumption by the
16 people who prepared this motion that anyone who is a trial
17 witness, their written record of interview will come into
18 evidence, and that's why it was included in those charts.

19 But I think it would be helpful, since no one here seems to
20 object to written records of interview of trial witnesses also
21 being admitted. We would be happy to not include those in our
22 87.4 motions if there is an agreement among the parties that when
23 these witnesses testify, their written records of interview will
24 come into evidence.

25 I know you look --

1 [10.44.08]

2 JUDGE FENZ:

3 We need a decision at some point, so it's -- I agree in probably
4 all -- most all cases they will be admitted eventually, but --

5 MR. LYSAK:

6 Yes.

7 JUDGE FENZ:

8 Technically, you still need an admission anyway.

9 MR. LYSAK:

10 Yes.

11 JUDGE FENZ:

12 Yes.

13 [10.44.23]

14 MR. LYSAK:

15 No, I understand that. What I'm suggesting, Your Honour, is that
16 instead of including these in -- where we're dealing with WRIs of
17 an upcoming trial witness who have been disclosed, instead of
18 those being put into a written motion with others, that the
19 parties simply notify, make an email, or make an oral request at
20 the start of the proceedings to admit the newly available WRIs.
21 If the Chamber would prefer to proceed in that matter, I think
22 that's easier for all the parties and no one ever seems to have
23 any objection to the admission of these statements. What varies
24 is sometimes parties just do not end up using them in their -- in
25 examination, which has happened with Him Huy. The prosecutor

1 doing that examination decided not to use those new interviews
2 and neither did any of the defence teams even though they had
3 them. But they were on our list because there is an assumption by
4 the people who are preparing the annexes that all WRIs relating
5 to trial witnesses would ultimately be admitted. So, I wanted for
6 Your Honours to understand that that was the thinking that was
7 going on in terms of what happened with Him Huy interviews.

8 [10.45.57]

9 MR. KONG SAM ONN:

10 Thank you, Mr. President, I would like to reply briefly.

11 Number 1, in relation to the rebellion at Kratie, I believe this
12 fact is not within the topic trial of Case 002/02. So the related
13 documents in relation to that fact should not be admitted into
14 evidence.

15 Number 2, the Co-Prosecutors stated that Khmer Krom had relation
16 with the Vietnamese. This point is not clear to us. We do not
17 know what -- what kind of relation Khmer Krom had with
18 Vietnamese. They're different facts, which we have to consider
19 and study. As far as we're concerned, Khmer Krom are considered
20 Cambodian as of now. So it is clear to us about the category of
21 Khmer Krom as Cambodian at the present time.

22 Point number 3, the Co-Prosecutor submitted that some documents,
23 which are not objected, should be automatically admitted into
24 evidence. That is not <entirely> correct.

25 Whenever a -- whenever the Co-Prosecutors request to call any

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1 individual before the Chamber, the Co-Prosecutors are required to
2 submit the relevant documents in relation to that witness <if
3 available>. This can facilitate our work.

4 [10.47.59]

5 If the Co-Prosecutors do not include the written records of the
6 witness, <> those written records of the witness cannot be
7 admitted into evidence.

8 MR. PRESIDENT:

9 And now we have to pause a few minutes so that we can change the
10 DVD because the DVD ran out of -- at the moment. So, technician,
11 you are directed to change the DVD and we will continue for
12 another few minutes.

13 (Short pause)

14 [10.48.54]

15 MR. PRESIDENT:

16 I am grateful -- the Chamber is grateful to submissions,
17 responses and replies of the parties in relation to the two
18 requests by the defence team for Mr. Nuon Chea and the one
19 request by the International <> Co-Prosecutor to admit some
20 documents into evidence under Internal Rule 87.3 and 87.4.

21 [10.49.29]

22 The Chamber will take all these submissions, observations and
23 responses and replies of the parties into consideration <and
24 rule> before we can proceed to hear the current witness this week
25 -- witnesses this week and the following week.

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1 And it's now the appropriate time for the short break. I believe
2 usually we have a short break at <11.30, but> today is a special
3 case because <we did not have a break earlier because of the
4 urgent matter, as well, because the Chamber needs time to make a
5 decision regarding this issue soon>, so that we are able to hear
6 the <witness who is summoned> to come and testify <today>.

7 Now, the Chamber decides to take the break from now until 1.30 in
8 the afternoon. By that time, the Chamber may resume its hearing.

9 [10.50.43]

10 Security personnel are instructed to bring Mr. Khieu Samphan to
11 the waiting room and have him returned in the afternoon before
12 1.30.

13 The Court is now in recess.

14 (Court recesses from 1050H to 1337H)

15 MR. PRESIDENT:

16 Please be seated.

17 The Chamber would like to inform the public that it will resume
18 the hearing for a few minutes to issue an oral ruling on the
19 request of the defence team for Mr. Nuon Chea for additional
20 time, so that the defence teams have sufficient time to examine
21 and study the new documents so that they can use as the basis in
22 the testimony of the upcoming witnesses in relation to Case
23 002/02, particularly S-21 and other facts.

24 [13.38.14]

25 Following requests by all parties to re-arrange the Trial's

1 schedule to allow additional time for preparation, the Chamber
2 adjourns the hearings until 2 June 2016, at which time the
3 Chamber will hear the testimony of 2-TCW-816 for three days.
4 The Trial Chamber plans to use two sessions to ask questions to
5 this witness. Duch will then be questioned by all parties. A
6 detailed, revised schedule will be emailed to the parties by the
7 senior legal officer.

8 The Chamber consequently rejects the alternative proposals. All
9 other pending issues including <the proposal related to> new
10 documents <to be admitted into evidence> will be addressed in due
11 course.

12 I instruct the court officers who work with the WESU to inform
13 2-TCW-816, and also the duty counsel about the ruling on the
14 adjournment of the hearings. And please also inform them the new
15 schedule so that the witness can be brought before the Chamber on
16 2 June 2016, at 9 a.m.

17 [13.40.18]

18 Security personnel are instructed to bring Mr. Nuon Chea and
19 Khieu Samphan back to the ECCC's detention facility and have them
20 returned into the courtroom on 2 June 2016, before 9 a.m.

21 The Court is now adjourned.

22 (Court adjourns at 1340H)

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