



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 - KAING GUEK EAV "DUCH"

CONFIDENTIAL

Case File N° 001/18-07-2007-ECCC/TC

23 November 2009, 0901H

Trial Day 73

Before the Judges:

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

Lawyers for the Civil Parties:

TY Srinna
KONG Pisey
MOCH Sovannary
HONG Kimsuon
Karim KHAN
Silke STUDZINSKY
Philippe CANNONE
Martine JACQUIN
Pierre-Olivier SUR

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
DUCH Phary
LIM Suy Hong
Natacha WEXELS-RISER
Matteo CRIPPA

For Court Management Section:

UCH Arun

For the Office of the Co-Prosecutors:

CHEA Leang
William SMITH

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
Francois ROUX
Helene UÑAC
CHAN Ravuth

List of Speakers:

Language used unless specified otherwise in the transcript

| Speaker | Language |
|-------------------------------------|----------|
| MR. CANNONE | French |
| MR. HONG KIMSUON | Khmer |
| MS. JACQUIN | French |
| MR. KHAN | English |
| MR. KONG PISEY | Khmer |
| MS. MOCH SOVANNARY | Khmer |
| MS. STUDZINSKY | English |
| MR. SUR | French |
| THE PRESIDENT (NIL NONN, Presiding) | Khmer |
| MS. TY SRINNA | Khmer |

1

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

2 (Judges enter courtroom)

3 [09.01.33]

4 MR. PRESIDENT:

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

6 Before we begin our proceedings, we would like to invite Ms. Se
7 Kolvuthy to report on the attendance of the parties to the
8 proceedings today.

9 THE GREFFIER:

10 Mr. President, I have already verified the presence of the
11 parties to the proceedings. They are all present.

12 MR. PRESIDENT:

13 The Trial Chamber would like to inform the public and the parties
14 to the proceedings that the hearing will be scheduled from the
15 23rd to the 26th, or 27th of November to hear the closing
16 statements of the parties and according to the Scheduling Order
17 for the closing statements issued on the 30th of September 2009.
18 In order to make sure that the proceedings of the closing
19 statements are smooth and precise, and since this is the final
20 stage of the proceedings, the Trial Chamber would like to remind
21 the parties to the proceeding and the public that this is the
22 final stage of the proceedings.

23 So the Trial Chamber would wish to please remind the parties that
24 -- please bear in mind the multilingual and multicultural setting
25 and speak at a measured pace. And, number two, please read out

2

1 numbers slowly and repeat if possible. Three, please spell out
2 long and/or difficult names.
3 Four, please remember to turn on your microphone before you start
4 speaking. Make sure that you speak directly into the microphone.
5 If you start speaking and remember that your microphone is not
6 on, please repeat what you said before when you turned it on.
7 The interpreters may find it difficult to interpret if the
8 sentence is not fully complete.
9 [09.06.52]
10 Five, if the exchange is taking place between speakers of the
11 same language, for example Judge and counsel who both speak the
12 same language, before replying to the interlocutor in the same
13 language. That's because should wait for his or her interlocutor
14 to finish speaking before taking the floor, which will allow the
15 interpreters to keep pace.
16 The Trial Chamber hopes that the parties to the proceedings will
17 be mindful of these guidelines and we hope that the proceedings
18 will be as smooth as expected.
19 The security officers are now instructed to bring the accused to
20 the dock.
21 MR. PRESIDENT:
22 Next, we would like to give the floor to the civil party lawyers
23 group 1 to present their case. They have one hour and 15 minutes
24 to make such statements.
25 [09.08.53]

3

1 The floor is yours.

2 MS. TY SRINNA:

3 Mr. President, Your Honours, my name is Ty Srinna, the national
4 co-lawyer for the civil party group 1. I would like to introduce
5 myself and my colleague, Mr. Karim Khan, who is here to present
6 the final oral statement before the Chamber. He will be taking
7 the floor first and I will be making the statement after him.

8 So, may it please the Court that now Mr. Karim Khan take the
9 floor.

10 MR. KHAN:

11 Mr. President, Your Honours, counsel for the defence, learned
12 Co-Prosecutors, my colleagues for the other civil parties, good
13 morning.

14 Your Honours, it was about nine months ago when the initial
15 hearing in this matter was conducted and at the end of this
16 trial, Your Honours will give birth and render the first
17 jurisprudence emanating from this Court which will address the
18 legal responsibility for the first time in this Court arising out
19 of the events some 30 years or more ago.

20 Your Honour, it is humbling and also a privilege to stand here
21 representing civil party group 1 to make our final submissions.

22 Your Honours and all members, all parties in the Court, are in
23 possession of the final submissions that were filed previously on
24 behalf of civil party group 1. It is, of course, not our
25 intention to simply read out those arguments and those

4

1 submissions.

2 [09.11.36]

3 We trust that in due course, Your Honours will give the most
4 anxious scrutiny, the most careful consideration, to those
5 submissions that were put in on behalf of the civil parties that
6 we represent.

7 Your Honours, there are an awful lot of firsts in this case.

8 This, of course, is the first completed trial, not only of this
9 Court, but the first completed trial where civil parties have had
10 an active role and, of course, the road has not always been easy
11 and lessons are there to be learned. We are humble enough, we
12 hope, to acknowledge that reality.

13 But it is my humble submission that whatever flaws and defects
14 that have bedevilled the representation that the various civil
15 parties that appeared before you have endeavoured to put forward
16 on behalf of the clients they represent, it has been done in good
17 faith. It has been a sincere attempt to make the system work,
18 the system, of course, that was devised by the drafters of both
19 the Cambodian government and the United Nations.

20 But, Your Honours, I would ask that in reviewing the testimony
21 that you've heard, Your Honours be constantly alive to
22 distinguishing between rhetoric and reality. It is, of course,
23 and has sometimes been the case -- that allegations have been
24 made that the civil parties that appear before you and the
25 victims that they represent would like vengeance, that they would

5

1 want blood. On occasion, it's been emphasized by the defence in
2 different context that, of course, we are in a court of law not
3 in a market square where one is pillorying, where one is stoning
4 an accused.

5 [09.14.18]

6 Your Honours will determine the extent to which civil party
7 participation has been a success or a failure but, Your Honours,
8 I do recall, with the greatest of respect, my own comments back
9 in February when I sought to make it very clear for the record
10 that the civil parties we represent, civil party group 1 -- and I
11 believe the transcript discloses we speak with one voice on this
12 matter -- that all the civil parties that have appeared have not,
13 in fairness, despite the tragedies and the suffering that they
14 have endured for all these many years, they have not succumbed to
15 the baser instincts of seeking revenge but have sought, quite
16 properly, to avail themselves of the procedures put in place so
17 that they can have a voice, so they can have closure, and to
18 assist Your Honours in seeking to get to the truth.

19 Your Honours will also be alive, no doubt, on occasion to
20 suggestions being made that we are no more than prosecutors. Of
21 course, Rule 23 of the Internal Rules binds the scope of civil
22 party participation. But, Your Honours, whilst we are, it is
23 correct, enjoined to support the prosecution, we have not simply
24 aped the prosecution uncritically.

25 And, once again, by way of one example that pertains to the civil

6

1 parties I represent, I do recall right at the beginning of these
2 proceedings in February the attempt put forward by the
3 prosecution to introduce the doctrine of Joint Criminal
4 Enterprise.
5 And on that occasion, I made my reservations known, and I do note
6 that Mr. Roux and his defence team for the accused do, in their
7 submissions, take issue with the doctrine of Joint Criminal
8 Enterprise. Civil party group 1 has not filed any document
9 supporting the insertion of that doctrine into these proceedings.
10 So, Your Honours, if in the course of these proceedings, in the
11 course of reviewing the evidence you come across any suggestion
12 that civil parties are simply outflanking and outnumbering a
13 poor, lone accused. I would ask you to step back and have pause
14 for thought and seek to decide actually what have the civil
15 parties sought to do. Your Honours, it is, of course, a
16 challenge, a challenge that you as professional and experienced
17 Judges are familiar with to get to the truth.
18 In this jurisdiction, of course, it is not simply about proving
19 the guilt or establishing the innocence of an accused person
20 that's before you. In my respectful submission, and I stand to
21 be corrected, one of the advantages, one of the inspirations,
22 behind civil party participation, apart from the ultimate
23 possibility of reparations as defined in Rule 23, is to allow the
24 victims to come before you in whatever form -- documentary
25 statement or viva voce witness that appears before this Court.

7

1 [09.18.39]

2 To give Your Honours an insight as to the impact the alleged
3 crimes had upon their lives and the lives of their loved ones and
4 to bring to bear a unique perspective, a perspective which the
5 victims themselves are best able to provide that will assist Your
6 Honours in getting to the truth.

7 Your Honours, today our submissions will broadly follow the
8 structure of our final brief. In a moment, my learned friend and
9 colleague, Ms. Srinna Ty, will address Your Honours in more
10 detail on the role of civil party participation, the legal
11 standard and, also in light of one of Your Honours' recent
12 decisions on the factual basis for civil party participation.
13 Your Honours, I will then seek to make some submissions on what
14 we in civil party group 1 say is the guilt of the accused and
15 also them to address Your Honours on the question of reparations
16 and some ancillary matters that may arise in the course of those
17 submissions.

18 Your Honours, in reviewing these submissions and in reviewing the
19 extent or the scope of civil party participation, I would also
20 ask that at the end of these proceedings, in your deliberations,
21 you do once again consider any suggestions by the defence that
22 there has been something that perhaps on occasion been described
23 as inequality of arms. There, on one side of the courtroom, is a
24 defence team facing not one prosecutor but five prosecutors.

25 Civil parties are not prosecutors, but on the issue of equality

8

1 of arms, I think it's only fair to bear in mind when assessing
2 the evidence, the success of civil party participation or
3 otherwise, to bear in mind that unlike my learned friends sitting
4 opposite for the defence and unlike the prosecution sitting to my
5 left, there has not been any financial assistance from the Court
6 for civil party participation. This cannot, in my respectful
7 submission, be lightly glossed-over because it is a principal of
8 international human rights law, in my respectful submission, that
9 all rights are to be rendered practical and effective, not
10 theoretical and illusionary.

11 [09.21.51]

12 Your Honours, I do accept fully that Your Honours have attempted,
13 with great patience, to allow civil parties to participate, but
14 we do not have the resources that have been given to the defence
15 and are at the disposal of the prosecution. Your Honours, apart
16 from it being -- as far as civil party group 1 is concerned; when
17 I was approached at the end of last year to represent the 37
18 civil parties that make up our group there were, of course, very
19 real reservations that I had, not only in the system and what
20 could be expected, but dealing with the resources. But one is
21 faced with an issue whether or not one steps and seeks to assist
22 with whatever deficiencies may come along with that attempt to
23 assist or whether or not one steps back in such a way that will
24 result in the largest civil group party being without
25 representation.

9

1 Now, Your Honours, I have not been here for much of these
2 proceedings. I must apologize for that and the reason I'm going
3 into some detail about this, Your Honours, is because I do not
4 wish for a moment that my absence to have in any way the
5 slightest impact on the civil parties that are represented. It
6 has not been a discourtesy to the Bench at all. What is
7 important that is throughout these proceedings, civil party group
8 1 has been constantly represented both by Cambodian -- with able
9 assistance of the Cambodian lawyer sitting next to me, as well as
10 international representation, and in that line, Your Honours, I
11 must give my great and sincere thanks to my co-counsel, Alain
12 Werner, who was throughout here in these proceedings and Brianne
13 McGonigle.

14 [09.24.33]

15 Your Honours, I do hope that when assessing the evidence that has
16 been brought or the questions that are being put or the
17 submissions that have been filed by civil party group 1, Your
18 Honours will come to the conclusion that within the system that's
19 been devised, they have assisted and shed some light, however
20 small, however faltering, on this case. Your Honours, of course,
21 are independent judges and Your Honours will not for a moment
22 uncritically accept the account or the theory or the version put
23 forward by the prosecution or by the defence, or for that matter,
24 by civil party Groups 1 to 4.

25 Your Honours must independently weigh, sift, re-evaluate and then

10

1 assess the evidence that you've heard and to navigate a way
2 through this evidence so that you come independently to the
3 truth.
4 Your Honours, the final remark before I pass the next stage of
5 the submissions to my learned friend is that a feature of this
6 case, and a lot has been made of it, has been the accused's
7 acceptance of various limbs that have to be proved by Your
8 Honours. Now, Your Honours will, of course, give proper credit
9 to whatever has been done and agreed by the accused, that's only
10 right, but Your Honours must objectively, we say, review the
11 evidence to determine whether or not what has been accepted by
12 the accused amounts to full disclosure and the full truth.
13 Your Honours, for reasons that I will give when I rise again
14 after my learned friend, Ms. Srinna Ty, it is our strong
15 submission that the evidence discloses only one conclusion; that
16 for all that has been said by the accused, for all the eloquent
17 submissions of the defence, in large and important material
18 particulars, even today, the accused has sought to evade or
19 minimize his role and the reality -- the awful reality that was
20 S-21 and the regime that operated there and the fate and the
21 suffering that befell so many civil parties that we all
22 represent.
23 Your Honours, at the moment, with your leave, Mr. President, Your
24 Honours, I will pass the floor to my learned friend, Ms. Srinna
25 Ty. I'm grateful.

11

1 MS. TY SRINNA:

2 To follow up, I would like to present the closing statement for
3 the civil party group 1.

4 Your Honours, on behalf of the civil parties group 1 and the
5 representative of the legal interest of the civil parties,
6 comprised of 37 people, whose relatives and their loved ones have
7 suffered a great deal from the very barbarous acts during the
8 Khmer Rouge regime, especially at S-21 which was under the
9 chairmanship of the accused, Kaing Guek Eav alias Duch.

10 [9.29.08]

11 I am going to make a brief closing statement concerning the role
12 of the civil parties and the legal standards for civil party
13 applications.

14 During this course of my submission, I will be presenting to the
15 Court, the grievance and concerns of the civil party group 1.

16 To begin with, I would like to touch upon the role of the civil
17 parties. According to the Internal Rule, Rule 23 of the ECCC,
18 and the Criminal Code of Procedures of Cambodia of 2007, the
19 provisions covering the role of the civil parties in the law
20 already, and the documents, have already been put before the
21 Chamber for consideration, and in other international tribunals,
22 the role of the civil parties have already been well considered
23 especially the participation of the civil parties in the criminal
24 proceedings.

25 The main role of the civil party participation in the proceedings

12

1 is to take part in the criminal proceedings brought against the
2 accused by the prosecutors. So as the direct victims of the
3 crimes, the civil parties have the very important role to -- and
4 of the truth of the crimes committed more than 30 years ago at
5 S-21 and in the whole Khmer Rouge regime. Either the crimes have
6 been inflicted on them directly or onto their loved ones.
7 So the civil parties have mentally and physically suffered from
8 the crimes. The suffering they have to bear with them for the
9 rest of their life, so the role of the civil parties are very
10 important to these proceedings and, to do so, we have been here
11 on behalf of them and to lodge the complaints before the
12 Tribunal.
13 [09.32.42]
14 I believe that without the presence of the civil parties in the
15 ECCC's proceedings, the Trial Chamber would find it rather
16 difficult to measure the magnitude of the sufferings of all the
17 victims at S-21, as well as the consequences or the damages
18 caused to them. The presence of the civil parties additionally
19 helps reveal the truth of their suffering and their situation at
20 S-21 under the supervision of the accused and to tell the Court
21 how their suffering was.
22 So the civil party participation in the proceeding is to seek
23 justice for themselves, the civil parties, and for their
24 relatives or loved ones; those who have suffered from the very
25 cruel acts and unjustified acts.

13

1 Many victims have not been familiar or have never been told of
2 their offences when they were arrested and detained at S-21.
3 They, therefore, have been trying to know, to find out the truth,
4 to see the perpetrators being on trial, especially those who have
5 committed the crimes against them and their relatives. On top of
6 this, the ECCC helps the civil party to release their grievance;
7 the suffering they have lived with for more than 30 years.
8 Obviously, regarding the civil party, Neth Phally, who has
9 already given his testimony before the Trial Chamber during the
10 proceedings, he clearly identified his situation and his effort
11 to seek justice for his brother who perished at S-21. And he
12 also wished in the courtroom to wish for his brother's soul to
13 rest in peace because he believes that during the course of these
14 proceedings, justice prevails.

15 [09.36.11]

16 The role of the civil parties in the proceedings of the ECCC is
17 very important to assist the Trial Chamber to -- and of the truth
18 and also to make sure that justice is done for all the victims
19 and for Cambodia as a whole, and it is a great effort in the
20 national reconciliation also.

21 So for that reason, there are 90 civil parties who have filed
22 their civil party applications to join as civil parties in Case
23 File 001. Among them there are civil parties who we represent.
24 There are 37 civil parties in my group. One of them has
25 withdrawn their civil party complaint due to the problem in the

14

1 proceedings.

2 I would like to also point out and raise the concern of each of
3 the civil parties in my group so that the Trial Chamber has the
4 ground for recognizing them as the civil parties. Civil party,
5 Ly Hor, E2/61, was a direct victim of S-21, proven by substantial
6 documentary evidence which the accused and Witness Mam Nai
7 verified on the 28th of July 2008; document under E137.
8 Moreover, his own testimony confirms his detention at S-21. Ly
9 Hor suffered direct personal and irreparable injury due to his
10 detention at S-21. However, when he was brought before the
11 Chamber to give his testimony, he was challenged by the accused
12 and that his name, Ly Hor, was changed from Eav Hor (phonetic).
13 And from that point, the accused refused to acknowledge that Ly
14 Hor could have been a genuine civil party.

15 [09.39.48]

16 As Your Honours may be quite familiar already, in our Cambodian
17 society regarding the Cambodian people, the survivors of the
18 Khmer Rouge regime, it is very hard for them to understand legal
19 matters concerning the changes of names. They, therefore,
20 arbitrarily or blindly (sic) changed their names.
21 Regarding the direct victim, Kerry Hamill, who was the brother of
22 civil party Robert Hamill, the victim bearing number E2/87 -- my
23 apologies, I am rather confused here. I would like to restate
24 that Kerry Hamill was one of the foreigners detained and executed
25 at S-21, and S-21 confessions corroborate this testimony. Kerry

15

1 Hamill's murder had massive and incomprehensible effects upon
2 Robert Hamill and his entire family. His family life
3 disintegrated following Kerry's murder. His elder brother
4 committed suicide upon having heard that Kerry was executed at
5 S-21. His parents lost their ability to parent for a long time
6 due to overwhelming grief, and he took solace in alcohol,
7 resulting in his education suffering.

8 Another direct victim, Hav Sophea, D25/4, who is the child of
9 victim Chin Sea, alias Hav Han, who was detained at S-21
10 detention facility; and another person named Chin Sea. Chin
11 Sea's name appeared in the list of the prisoners and the name has
12 been verified clearly by the accused because the accused
13 acknowledged that Chin Sea was one of the victims at S-21.

14 [09.43.07]

15 Civil party Hav Sophea's injuries from the loss of her father are
16 tangible. Financially, physically and emotionally her family is
17 in a very desperate position. For a long time, she was
18 struggling to hold on to life, and due to the loss of her father
19 she could not attend school and destroying her ambition to become
20 a teacher. And because of that, her mother was not able to
21 attend the proceedings. The accused already recognized that Chin
22 Sea was executed at S-21; however, he said that he did not even
23 know whether Hav Sophea was the daughter of Chin Sea genuinely or
24 not, and he asked that further papers are submitted to prove the
25 connection.

16

1 Regarding this matter, I would like to respectfully submit that
2 the accused has made it clear already that he maintained that he
3 was responsible for all the crimes committed at S-21 and he said
4 that he was in charge of the facility, however, in the contrary,
5 he rejected the recognition of the victim, the civil party
6 belonging to my group. So we would like Your Honours to also
7 take deep consideration into the matter also.
8 Victim Neth Bunthy, who was the brother of civil party Neth
9 Phally, E2/50, was also the direct victim. Neth Bunthy's S-21
10 prisoner biography is on the case file, corroborated by the
11 accused's recognition that Neth Bunthy was a victim of S-21.
12 Civil party, Neth Phally, and his family became deeply depressed
13 upon learning of his brother's execution at S-21. On one
14 occasion, his grief so overwhelmed him that he was unable to
15 avoid a falling tree branch and lost his left arm as a result.
16 Direct victim, Joshua Rothschild -- civil party; Joshua
17 Rothschild and Jeffrey James, E2/88 and E2/86, for the victim
18 because they were the nephews of James W. Clark. James Clark's
19 name on S-21 prisoner list and his S-21 confession confirmed that
20 he was held and executed at S-21. The civil parties, Joshua
21 Rothschild and Jeffrey James, suffer ongoing insomnia,
22 nightmares, and anxiety since learning of their uncle's death.
23 Another direct victim, Man Sim, was the son of civil party Man
24 Saut, D25/18. Man Sim alias Riem entered S-21 on the 4th of
25 December 1976 and was executed on the 17th of March 1977. Civil

17

1 party, Man Saut, is still in pain today because of his son's
2 brutal murder at S-21, evidenced by debilitating anguish and
3 persistent stomach pain.
4 [09.49.05]
5 Direct victim, Sman Sles, was the brother of civil party Sman
6 Nob, E2/44, and Sman Sar, E2/45, and direct victim Sa Math, was
7 civil party Sman Nob's nephew and civil party Sman Sar's son.
8 Sman Sles, alias Leng Sokha, was detained and executed at S-21 as
9 evident by an entry on the S-21 revised prisoners list and his
10 S-21 prisoner biography. Sa Math, alias Roeun, was also detained
11 and executed at S-21, evidenced by his entry on the revised
12 prisoner list and his prisoner biography.
13 Direct victim, Ta Losmath, alias Man Math and Man Ma, was the son
14 of civil party Man Mas, E2/51, alias Man Malymas. Ta Losmath's
15 S-21 prisoner biography, S-21 confession and entry on the revised
16 prisoner list confirm that he was held and executed at S-21.
17 Direct victim Thlorc Luon, alias Yorn, was the father of civil
18 party Yim Leng D25/23. Thlorc Luon's S-21 prisoner biography and
19 the entry on the revised prisoner list confirm that he was held
20 and executed at S-21.
21 Direct victim, Suos Sovann was the sister of civil party Suos
22 Sarin, D25/24. Suos Sovann's S-21 prisoner biography, S-21
23 photograph and entry on the revised prisoner list confirm that
24 she was held and executed at S-21; and her application has
25 already been recognized by the ECCC.

18

1 Direct victim, Ke Kengsy alias Dan, was the brother of civil
2 party Ke Khon, D25/25 and Ke Samut, E2/46. Ka Kengsy's S-21
3 prisoner biography and entry on the revised prisoner list confirm
4 that he was held and executed at S-21.

5 [09.52.56]

6 Direct victim, Che Heng, was the brother of civil party Che Heap
7 D25/10. Che Heng's S-21 prisoner biography, with photograph,
8 confirms that he was held and executed at S-21.

9 Direct victim, Michael Deeds, was the brother of civil party
10 Timothy Deeds, D25/22. Michael Deeds' S-21 confession
11 demonstrates he was detained and executed at S-21.

12 Direct victim, Roun Math alias Roun Savy, was the brother of
13 civil party, Roun Sreynob, E2/42. Roun Math alias Savy is listed
14 on a revised prisoners list and his S-21 confession and biography
15 confirm he was detained and executed at S-21.

16 Direct victim Ismael Amat alias Sokh was the brother of civil
17 party El Li Mah, E2/43. Ismael Amat's S-21 prisoner biography
18 and entry on the revised prisoner list confirm that he was held
19 and executed at S-21. Direct victim, Ismael Amat, was the
20 breadwinner, the person the whole family depends on. Because he
21 was an Islamic graduate who received a scholarship to study in
22 France and later on he was recalled to be executed at S-21.

23 Direct victim, Men Kan, was the son of civil party Men Lay,
24 E2/47. Men Kan is listed on a revised list of prisoners as
25 entering S-21 on the 18th of July 1975 and being executed later

19

1 in 1975.

2 Direct victim, Nhem Thol alias Ra, was the sister of civil party,
3 Nhem Sophan, E2/48. Nhem Thol alias Ra is entered on the revised
4 prisoner list confirming she was detained and executed at S-21.

5 Direct victim, Srei Yeng, was the husband of civil party Kom Men
6 alias Kum Men, E2/52. Srei Yeng's S-21 prisoner biography with
7 photograph of Srei Yeng and the entry on the revised prisoner
8 list confirm he was detained and executed at S-21.

9 [09.57.09]

10 Direct victim, Khoeung Mouy Sor alias Khoeung Bouy Sor was the
11 brother of civil party Try Ngech Leang, E2/52. Mouy Sor is
12 listed on the list of victims executed at S-21 in 1976 and the
13 revised prisoner list indicates that he entered S-21 on the 22nd
14 of February 1977 and was executed on the 20th of July 1977.

15 Direct victim, Sok Heng, was the father of civil party Heng Ngech
16 Hong, E2/42, and S-21 prisoner biography of Sok Heng with a
17 photograph and entry on the revised prisoners list confirm he was
18 detained and executed at S-21.

19 Direct victim, Beng Pum, was the brother of civil party Beng
20 Chanthorn, E2/55. Beng Pum's S-21 prisoner biography and entry
21 on the revised prisoner list confirm he was detained and executed
22 at S-21.

23 [09.58.54]

24 Direct victim, Yun Loeun, was the nephew of civil party Yon
25 Chhoeun, E2/56. Yun Loeun's S-21 prisoner biography confirms he

20

1 was detained and executed at S-21.

2 Direct victim Auy Ren, alias Auy Ven, alias Mao, was the sister
3 of civil party Ly Khiek, E2/57. Auy Ren's name is entered on the
4 daily monitoring list of prisoners of S-21 for 3rd June 1977,
5 evidencing her detention and execution at S-21.

6 Direct victim, Puol Khoeun, alias Chaing, was the father of civil
7 party Puol Punloek, alias Nget, E2/58. Puol Khoeun's S-21
8 confession and entry on the revised prisoner list confirmed he
9 was detained and executed at S-21.

10 Direct victim, Chann Sinoun, was the brother of civil party Chann
11 Kruoch, E2/59. Chann Sinoun's S-21 biography entries on the name
12 list of prisoners and interrogators in Group 8 of Comrade Soeun
13 and entry on the revised prisoner list confirmed he was detained
14 and executed at S-21.

15 Direct victim, Norng Kim Vet, was the elder sister of civil party
16 Norng Kim Leang, E2/60. Norng Kim Vet's S-21 prisoner's
17 biography confirms she was detained and executed at S-21.

18 Direct victim, Saing Kim Leng, was the brother of civil party
19 Hoem Mom, E2/62. Saing Kim Leng's S-21 prisoner photograph
20 confirms he was detained and executed at S-21.

21 Direct victim, Pen Um alias Rith, was the cousin of civil party
22 Suon Sieng, D25/15. Pen Um's S-21 prisoner biography and entry
23 on the list of prisoners smashed on the 15th of October 1977
24 confirms he was detained and executed at S-21.

25 [10.02.08]

21

1 Direct victim, Nop Ngan alias Sar, alias Chareun, was the elder
2 brother of civil party Ngeth Sok, D25/20. Nop Ngan's S-21
3 prisoner biography confirms he was detained and executed at S-21.
4 Direct victim, Pheach Kim was the grandfather of civil party Sin
5 Sinet. I would like to make correction. Pheach Kim was the
6 grandfather of civil party Chin Sinet, E2/41. Pheach Kim's S-21
7 photograph -- I apologize that we have a small technical problem.
8 I need to consult with my esteemed co-counsel.
9 Due to time constraints, I would like now to read only the name
10 of the civil parties. Direct victim, Mayith, the elder brother
11 of civil party Lim Yon, E2/69. Direct victim, Heng Pun alias
12 Chun, alias Chun, was the husband of civil party Khiev Neap,
13 E2/75. Direct victim Prak Pat was the husband of Nget Uy, E2/73
14 (sic).
15 In conclusion, I would like to address the Chamber that the
16 number of civil parties in my group produced enough evidence to
17 be admitted as civil parties. Unfortunately, a few numbers,
18 seven civil parties in my group who failed to produce enough
19 evidence and proof in relation to the kinships to be admitted
20 before the Chamber, especially to indicate the kinships of the
21 victim including E2/42, E2/62, D25/15, E2/67 and E2/73 and E2/74
22 and E2/75.
23 In relation to civil parties in our group that produced not
24 sufficient as shown by other parties, the main ground that we
25 could not find sufficient documents to support that because the

22

1 situation and the condition has happened during the 30-year
2 period, meaning that the documents -- most of the documents have
3 been destroyed during the DK regime and also after the DK regime.

4 [10.06.30]

5 To begin, I would like to give the floor to my esteemed
6 co-counsel because the time allocated for my group seems to very
7 limited, so I give the floor to my co-esteemed lawyer.

8 MR. KHAN:

9 Mr. President, I'm most grateful for the submissions put forward
10 by my learned friend.

11 May I check, Mr. President, perhaps with the assistance of the
12 Court Officer, how long do we have left for civil party group 1?
13 Is it 10 or 15 minutes? Fifteen minutes. I'm grateful.

14 Mr. President, I will try to finish our submissions in the 15
15 minutes that are remaining to us. There is, indeed, a
16 considerable amount of ground to cover. Your Honour, perhaps the
17 most prudent course is to take matters out of order. I do know
18 that some of the other civil parties are going to be spending
19 quite some time on the issue of reparations.

20 [10.08.22]

21 The position of civil party group 1 has been adequately and fully
22 detailed in the joint filing of the 14th of September. So, Your
23 Honours, on the issue of reparations, I rest with your leave on
24 the written filing that is before you.

25 As far as the other matters are concerned, as is clear from the

23

1 brief that we put in, our submissions are divided into four main
2 areas in which we take issue with the accused's continuous
3 protestation that he had no autonomy in S-21.
4 In effect, it seems, Your Honours, that the accused is saying
5 whilst bad things happened in S-21, he was simply a tool and he
6 couldn't really have done much about it. He could not have done
7 much to alleviate the suffering. He couldn't have done other
8 than simply be the Chairman of this camp, which I have not the
9 slightest hesitation in describing as a camp dedicated to death.
10 Your Honour, the second aspect of the closing brief is the
11 submission that the accused used the autonomy that he had not to
12 alleviate suffering in any deliberate manner. There are sporadic
13 examples that he gives, whereby, the odd person he saved but,
14 Your Honour, there's no systematic, deliberate, sustained
15 evidence of seeking to alleviate suffering. This is no Schindler
16 that is before you. This is no individual that sought to
17 minimize suffering rather, we say, that he was continuously
18 dedicated to his job.
19 Your Honour, this -- the act, the role, the part played by the
20 accused was not, we say, simply confined to S-21 and the
21 miserable creatures that were tortured and killed there in the
22 basest and the meanest fashion. We say this campaign of terror
23 and torture that the accused headed in S-21 -- that he ran in
24 S-21 -- had a clear causal effect on increasing the paranoia
25 elsewhere in the upper echelons of the Party that resulted in a

24

1 vicious cycle in which more and more people were arrested; more
2 people were tortured into nonsensical and completely -- very
3 often completely false confessions and so the circle continued.
4 [10.11.50]
5 Your Honours, we say that the accused -- as was apparent also
6 from the psychologist's report before Your Honours -- did what he
7 did not only because he was ideologically of the same mind as
8 those senior members in the Khmer Rouge at the time, not only
9 because he wished to belong to the powerful group then in power,
10 but also because it made life comfortable for him.
11 Your Honours, dealing with the issue of autonomy, contrary to the
12 accused's submissions that he had little or no autonomy, the
13 evidence we say gives the lie to that submission. Your Honours,
14 this evidence is before you. On the 22nd of June of this year,
15 the accused stated he almost forgot, but he fled with a dentist
16 who was incarcerated and that she later died. He also stated --
17 and this is at page 29 to 30 -- that three other people were
18 spared.
19 Your Honours, one must juxtapose these examples that pepper the
20 evidence before the Trial Chamber with other examples where the
21 accused, having the option under the cloud -- under the shroud of
22 chaos to allow people to leave, showed no mercy and eradicated
23 them, and he states that the reason he did that, the reason he
24 smashed them at that time was because he thought the Vietnamese
25 were returning.

25

1 Your Honour, he stated on the 8th of June 2009, at page 14,
2 another example of a group that he decided he had sufficient
3 autonomy to seek to save and they were painters and artists.
4 Your Honour, on the 28th of April 2009, he gives another example
5 of his autonomy contrary to his protestations of lack of
6 autonomy. He stated in that moment of clarity, we say, that on
7 his own initiative, he proposed moving the detention centre of
8 Ponhea Yat High School -- moving it to the Ponhea Yat High School
9 and that proposal of his was rubber stamped, it was approved by
10 the upper echelon.

11 [10.15.05]

12 And, Your Honour, he simultaneously decided a new killing field
13 would be opened up and that would be by Choeung Ek. Your Honours,
14 he stated that he didn't request prior approval; he didn't
15 require consultation for these not insignificant decisions. He
16 did it of his own volition, under his own clearly understood
17 powers, and after he took the act he had sufficient confidence to
18 report it to his superiors who, once again, rubber stamped it.
19 Once again, they allowed it without any consequence to him
20 whatsoever.

21 Your Honours, he stated that when it came to individual cells --
22 again, he didn't even report that. Forget about seeking prior
23 approval, he didn't even report the implementation of individual
24 cells higher up to his superiors.

25 Your Honours, one must wonder -- and we say Your Honours must

26

1 wonder when considering the evidence, what happened to this
2 autonomy; where did it dissolve, where did it evaporate, when it
3 came to the interrogations, the torture and the killing of so
4 many people?

5 [10.16.40]

6 Your Honours, there's been no evidence led, for example, by the
7 defence and, of course, the defence quite rightly can sit there
8 on their hands and do nothing, it's their right, but they are
9 putting forward a case which we say seeks to minimize the role of
10 the accused.

11 But they haven't put forward any attempt, for example, of the
12 accused to -- in the course of interrogations that he clearly
13 guided by his annotations and by his directions information which
14 he sought from his subordinates by his clear directions.

15 No attempt by him, for example, to seek to get answers from those
16 that were incarcerated, implicating, for example, people that
17 were already dead so that, of course, no new people could be
18 rounded up and incarcerated.

19 Many options, we say, would be open to an accused that was not
20 actively desirous, actively committed and, actually, actively
21 intent and actively loving the job he was charged to do. And,
22 Your Honours, in due course, must critically analyze the evidence
23 and decide whether or not the protestations of remorse put
24 forward today are false, are true or are a mixture -- are a
25 mixture of moments of truth and still residual, deep-seated

27

1 attempts at denial, shifting blame, shifting responsibility, for
2 the most terrible incidents that took place on that camp in S-21.
3 [10.18.23]
4 And, Your Honours, when assessing the evidence, I would ask Your
5 Honours to be alive to the type or the manner in which evidence
6 has been elicited. As I was going through the transcripts,
7 various examples became clear where by dint of leading questions
8 -- by dint of leading questions put forward by the defence, the
9 accused provided evidence that perhaps should be given very
10 marginal, if any, probative value. It should be given very
11 little probative weight without independent and spontaneous
12 evidence coming from the mouth of the accused.
13 Your Honours, just one example is the questioning of the 16th of
14 September at page 51, and my learned friend for the defence -- on
15 that occasion it was Mr. Roux -- put this question, and I will
16 take the time to read it in full. He said:
17 "Duch, do you authorize me to tell the victims that, if they
18 wish, they can come and see you in your prison cell; that you
19 will open the door to your cell to them and the door of your
20 soul? Do you authorize me to tell the victims that, Duch? Do
21 you wish me to tell them that the road does not end today and
22 that the road that connects you and them remains open if they
23 wish it to be so?"
24 But Your Honours will read in due course the answer. But, Your
25 Honours, in my submission, one must be alive to leading

28

1 questions, guiding any witness including an accused that's before
2 you. And that kind of answer to that kind of question must be
3 given either little probative value or, at the very least, it
4 must be approached with the utmost caution.

5 Your Honour, there was substantial autonomy for Duch as to the
6 methods of torture that he adopted. Your Honours, you have heard
7 expert testimony from witnesses that no documents were found, in
8 fact, in the archives. No evidence has been collected that
9 dictated to the accused any particular forms of torture that he
10 had to adopt.

11 [10.21.09]

12 He had autonomy to design a system, and we say that the evidence
13 discloses that he designed a cruel and callous system, taking
14 forward what he learned in M-13 and perfecting it, in large
15 manner, to those people that were unfortunate enough to come to
16 S-21.

17 And, Your Honour, the evidence of S-13, whilst it doesn't form
18 part of the charges, is not irrelevant because, again, we say it
19 provides an insight, a glimpse into the real intentions of the
20 accused that's before you.

21 Your Honours will remember perhaps the testimony of the accused,
22 the evidence of the accused, that in M-13 when people were placed
23 in pits and some drowned to death, he came up with this, we say,
24 fanciful, bizarre and nonsensical idea that they were placed in
25 these pits for their own protection from the air strikes of the

29

1 United States Air Force. And Your Honours perhaps will recall
2 the evidence before you that, in fact, at that time the aerial
3 bombardment that was then conducted by the United States had
4 largely finished.
5 Your Honours, we say this is a very clear example of the accused
6 failing to accept the reality of what he did, minimizing his role
7 so that he could somehow put himself forward as a pitiful
8 creature himself, somebody deserving only mitigation for whatever
9 -- and not grasping the sharpest nettles, not grasping the
10 harshest truths of his conduct.
11 [10.22.52]
12 That is not to deny the fact that in other areas, on softer areas
13 of torture, the accused, of course, has accepted his
14 responsibility. You Honours, often things are not black and
15 white, there are areas that need to be forensically analyzed and
16 Your Honours need to do that with great scrutiny and care to get
17 to the truth.
18 But, Your Honours, we say that when looking at the evidence, a
19 pattern clearly emerges. An example is his evidence on the 22nd
20 of June that he denied giving orders for people's fingernails to
21 be pulled out and when he learned of it, he said "Stop it; it's
22 terrible"; words to that effect at page 86 to 87. Your Honours,
23 there's no evidence he punished the perpetrator but, more
24 importantly, when you read that in conjunction with his denial
25 that he ordered and encouraged -- that he ordered people to eat

30

1 excreta and compare that with the evidence that is being put
2 before you, we say that a pattern emerges in which this accused
3 is once again shifting responsibility and minimizing his role in
4 the most brazen fashion because, in that regard -- whilst
5 accepting that he didn't punish the guards that forced detainees
6 to eat their own excreta.

7 Prak Khan on the 21st of July states that in fact he was taught
8 by what I say was his master, Duch, he was taught to insert
9 needles under the nails by Duch. It was considered a light
10 technique. It was painful enough to serve their ends and yet
11 work could still be obtained from those individuals. Your
12 Honours, the same witness stated later on that this was to
13 humiliate individuals and also they were told -- the guards were
14 told by this accused that sits before you that they were to
15 require detainees to eat their own excreta.

16 [10.25.23]

17 The question that was put was:

18 "Was it possible to have him eat his own excrement? Is that what
19 you're telling us?"

20 And the answer from this witness is this:

21 "... that on this particular point he told the interrogators to
22 apply it, clear and unequivocal, and he even instructed us to
23 draw a picture of a dog and pay homage to it."

24 Now here, Your Honours, we have the dog and once again the
25 accused says well, actually, however awful it seems, however

31

1 culturally insensitive it seems, in fact this was again a device
2 to spare these individuals a worse fate. Your Honours we say
3 that's patent nonsense -- complete and utter fabrication.
4 Your Honour, there is often a ritual incantation by the accused
5 in the course of these proceedings to express guilt and, Your
6 Honours, we accept in some part it may be true. In some small
7 areas the words have been spoken and Your Honours have the
8 difficult task to see to the extent to which it is real and
9 sincere.

10 We say, as a matter of law, that when one compares the process
11 here -- for example, to the truth and reconciliation commission
12 models -- and in one of our -- in our appendix to our closing
13 brief, we refer to the South African Truth and Reconciliation
14 model. There, amnesties were available where individuals gave
15 unconditional, absolutely honest and unrestricted truth. We say
16 that has not happened here and Your Honours must be alive to that
17 when assessing the gravity of the harm to the civil parties we
18 represent and in determining the truth. Your Honours, nothing
19 could perhaps be clearer than what we say is the really rather
20 naked example of the accused denying what is obvious to anybody
21 that is objectively considering the evidence.

22 Your Honours, on the 22nd of June 2009 at page 39, a document was
23 put to the accused in which he told a Comrade Pon to use hot
24 methods and really extract information from the suffering
25 detainee at whatever cost, even if it resulted in his death.

32

1 Now, Your Honours, that's in black and white, it was part of the
2 archives that were recovered. It was put to the accused. Rather
3 than accept it and say, well, it's a terrible mistake, it was a
4 matter at the time, Your Honours, what he says -- what he says is
5 this is a strategy to bluff the detainee. Your Honours, we say
6 when you put all these together, a pattern emerges. This is not
7 a strategy to bluff a detainee; this is a strategy of the accused
8 to try to bluff this Court.

9 [10.28.34]

10 THE PRESIDENT:

11 Civil party group 1 has already used up the time allocated to
12 them.

13 How much time would you wish to take to finish your final closing
14 statement because times have already been wisely allocated; that
15 we expect group 2's submission will be completed by twelve.

16 MR. KHAN:

17 Mr. President, I am alive to that, and I do apologize. Our
18 timekeeping has gone awry. Your Honours, it's a lot to cover,
19 but perhaps if you could indulge me with five to 10 minutes.
20 I'll try to do it in five, but five to 10 minutes and I will try
21 to cover very quickly the areas that I've got -- Your Honour,
22 within five minutes in any event, I'll try to conclude. I'm in
23 Your Honour's hands, of course.

24 THE PRESIDENT:

25 You are allowed another three minutes to finish your statement

33

1 and, of course, you have not covered the substantial part of the
2 statement, that's why three minutes you may wrap it up.

3 MR. KHAN:

4 Mr. President, I'm most grateful.

5 Your Honours, the evidence before you -- and it's referred to in
6 my brief -- discloses a clear and sustained attempt by the
7 accused to avoid the most awful parts of what happened in S-21
8 and to say he was ignorant of it. Your Honours, he blatantly and
9 unashamedly was trying to ingratiate himself with the higher-up
10 echelons in power at that time.

11 Your Honour, there is a clear example of rice being available at
12 one moment, and we have numerous examples of people being carried
13 like pigs on sticks, so emaciated were they, people eating gruel
14 and were suffering and weak. And yet when he has the boon of
15 having ample rice, what does he do? Does he feed it to these
16 starving and emaciated people in his care? Your Honours, no, he
17 does not. What he does, he gives it to his superiors and he
18 says, very clearly, he wanted to promote the reputation of S-21.

19 Your Honours, the fact of the paranoia and the effect it has is
20 detailed quite significantly by the evidence that's before Your
21 Honours; and, Your Honours, I would refer to Etcheson's expert
22 report that testimony and the evidence of Chandler as well. But
23 clearly we say that there is a correlation between the activity
24 of Duch and the suffering and activity in S-21.

25 Your Honours have got E68.3, E68.4 and E68.2, at least the

34

1 various graphs that the prosecution put forward showing the
2 number of people detained and killed in the camps, and we say
3 there's that there's a clear correlation between the periods when
4 the accused is very active and the number of people that are
5 detained and arrested.

6 Your Honours, I would refer very briefly to the transcript of the
7 19th of May, 2009, in which an example is given of people being
8 arrested because of information received by Duch in the course of
9 torture and confessions.

10 Your Honours, in summation, we would ask you to consider the
11 evidence most carefully, to get to the truth, to give -- and
12 there are difficulties here on reparations, but one thing that is
13 in the power of Your Honours that does not require a penny in a
14 trust fund, does not require anything from any government, is the
15 truth. And the evidence before Your Honours -- and it's touched
16 upon in our brief -- is the truth itself has enormous value to
17 these civil parties we represent.

18 Your Honours, the evidence of many individuals is worth
19 remembering, and I'd wanted to touch upon the three viva voce
20 witnesses. But just looking, perhaps, at the first of those,
21 looking at Robert Hamill, Your Honours, that is a complete
22 pathology of a family being disintegrated by the acts of Duch and
23 how a whole family is also smashed, we say. A brother that
24 throws himself off a cliff; a mother that becomes withdrawn; a
25 father that starts sobbing when he's doing the washing up

35

1 quietly; his girlfriend that never remarries; a brother that
2 doesn't, and is constantly scarred; in Court and even today.
3 Your Honour, these sufferings did not finish in S-21. They did
4 not have it tragically end with the mercy of death that those
5 individuals in the end found, but they continued upon their loved
6 ones to the present day.
7 Your Honours have heard also the evidence of other witnesses as
8 to -- and our second witness, Hav Sophea, how she died 21 days --
9 she was born 21 days after her father was detained.
10 Your Honours, for all these reasons, it is our submission that
11 whilst justice has been delayed in this matter, not because of
12 the fault of the accused I accept, but it's been delayed for
13 many, many reasons. Your Honours do have it in your power to
14 ensure that justice is not denied.
15 Your Honours, with those submissions, I would ask that Your
16 Honours give the most anxious scrutiny to the submissions put
17 forward in our final brief and find the accused guilty for the
18 reasons put forward by the prosecution and supported by the civil
19 parties I represent and my learned friends represent.
20 Your Honours, I'm most grateful for the additional time.
21 (Judges exit courtroom)
22 (Court recesses from 1034H to 1052H)
23 (Judges enter courtroom)
24 MR. PRESIDENT:
25 Please be seated. The Court is now back in session.

36

1 We would like to now give the floor to civil party lawyers, group
2 2, to present their case. The civil party lawyers, group 2, have
3 one hour and 15 minutes. The floor is yours.

4 MR. KONG PISEY:

5 Good morning, Mr. President, Your Honours. I'm very grateful to
6 Your Honours for giving me this opportunity to address the Court.
7 To begin with, I would like to first give the floor to my
8 co-counsel, Ms. Silke Studzinsky, and I will follow. Thank you.

9 [10.54.12]

10 MS. STUDZINSKY:

11 Thank you. Good morning, Mr. President, Your Honours. Good
12 morning everyone in attendance and everyone observing this
13 important day.

14 I want to make two remarks in advance. First, we will submit one
15 single speech, one closing statement together; and second, we
16 will read it out also to facilitate the work of the interpreters.

17 As a German citizen who lives every day with the knowledge of my
18 country's recent criminal and bloody past, and as an

19 international lawyer before the ECCC, I would like to begin by

20 quoting from the closing statement of the British lead

21 prosecutor, Hartley Shawcross, in the Nuremberg trial:

22 "The law triumphs over the evil. The proceedings were not guided
23 for the sake of revenge but by the strong resolution that such
24 heinous crimes never ever occur again."

25 The Nuremberg trials were a cornerstone in the history of

37

1 civilization and the foundation of international and
2 internationalized tribunals dealing with mass atrocities beyond
3 comprehension and beyond appropriate terms for such horrific and
4 violent events. This well-intentioned hope expressed by the lead
5 prosecutor still under the shock of the Second World War has been
6 frustrated as history has proved that wars and combats, including
7 the Democratic Kampuchea regime 30 years after World War II, have
8 left hundreds of millions of deaths behind.
9 [10.56.08]
10 This shows that international tribunals which are putting on
11 trial the most responsible, those who have orchestrated mass
12 killings and other horrible crimes, do not provide a guarantee
13 for non-repetition. Nevertheless, the increasing prosecution of
14 war criminals in the last decade, including the establishment of
15 the ECCC as well as of the permanent International Criminal Court
16 as a last resort, contributes to the worldwide struggle against
17 impunity. The creation of the ECCC, although more than 30 years
18 after the crimes were committed and with a first trial before it,
19 will close one of the numerous impunity gaps in history.
20 By this trial the ECCC will make a significant contribution to
21 the healing process of the Cambodian people, those here and
22 abroad, who are still marked and suffering by the indescribably
23 horrendous crimes committed by the DK regime. Coming to an end
24 after 73 days of the trial, we will first portray the views of
25 our clients, currently 17 people, about the proceedings and their

38

1 participation. Secondly, we will shed light on the stories of
2 those civil parties who did not give their testimony in Court.
3 Thirdly, we will thoroughly analyze the statement of the civil
4 party Mrs. Nam Mon, and fourth assess adduced evidence with
5 regard to sexual crimes. Finally, we will examine the defence
6 strategy and focus on reparations.

7 Now I would like to address our clients' expectations and relay
8 their observations during the proceedings and look at the
9 proceedings' positive and negative impact upon them.

10 [10.57.57]

11 As this is the first Court of its kind that has allowed victims
12 to be a party and to play a role equal to the prosecution and
13 defence when dealing with grave crimes against humanity and war
14 crimes, the first trial against Mr. Kaing Guek Eav will set an
15 example and give future generations guidance on participation
16 rights of victims.

17 Now is the time to take stock of achievements and failures and to
18 assess the contribution this Court has had in bringing justice to
19 victims and fostering the reconciliation process in Cambodia.

20 According to surviving documents, the detention centre S-21 was
21 the last location for 12,273 women and men whose names could be
22 found. Children are not included as they were not registered by
23 name and due to the fact of disappeared and destroyed documents;
24 the actual number is clearly higher.

25 However, only 94 victims applied to become civil parties, which

39

1 amounts to less than 0.8 percent of the prisoners at S-21. Why
2 is this number so small compared to the number of imprisoned
3 persons? Wouldn't you expect at least one civil party related to
4 each former prisoner?

5 One reason is that the victims and potential civil parties are
6 still fearful of repercussions by former members of the Khmer
7 Rouge who are still believed to possibly come back into power and
8 who are known to be part of the reigning government. Therefore,
9 some of those who applied as civil parties requested protective
10 measures in order not to be identified.

11 Two of our clients later withdrew their demand for protection
12 because they felt safer step by step while they met other civil
13 parties and exchanged their apprehension. They have learned that
14 being in the public light is a means of protection. They feel
15 that they are no longer alone with their story and have
16 experienced huge solidarity within the group.

17 [11.00.09]

18 Appearing as a civil party in Court and to expose oneself in
19 public requires enormous courage and I would like to thank and
20 applaud all civil parties for their bravery and for coming
21 forward and overcoming their fear and concerns of reprisals. For
22 many of the civil parties Angkar still has power and operates as
23 evil spirits that can still harm them, and by coming forward they
24 are attempting to destroy this power that has tormented the
25 Cambodian psyche.

40

1 Three of our clients are direct survivors of S-21 and the others
2 are relatives of those who were incarcerated and killed. The
3 situation and interest of the latter is rather different from
4 that of the survivors. The survivors live with a detailed
5 knowledge of what their daily existence at S-21 was like. They
6 lived through the horrible torture and ill treatment every single
7 day and night.

8 Dedicated to them is the following lines by Jean Améry, survivor
9 of the Nazi concentration camp Auschwitz. I quote:

10 "Anyone who has been tortured remains tortured. Anyone who has
11 suffered torture will never again be at ease in the world. The
12 abomination of annihilation is never extinguished. Faith in
13 humanity, already cracked by the first slap in the face, then
14 demolished by torture, is never acquired again."

15 [11.01.55]

16 Now physically handicapped and also mentally ill, one of our
17 clients, Mr. Bou Meng, described it as follows. I quote:

18 "I will never become a healthy person again like I was before
19 being incarcerated in the torture prison S-21. The visible and
20 invisible scars remain forever and my body and mind is destroyed
21 perennially."

22 The survivors have to deal on a daily basis with their memories
23 and they expect the Court to recognize them as victims, to hear
24 their stories and to be able to give evidence of the
25 incomprehensible inhumane treatment which deprived them of their

41

1 dignity as human beings.

2 They ask the question, "Why was I selected to be imprisoned and

3 tortured without being given any reason and without having

4 committed any wrongdoing? I was not guilty of anything."

5 The circumstances of the relatives are unique. They want to know

6 what has actually happened to our loved ones. Which torture

7 methods were they subjected to? Were they interrogated and by

8 whom? How were they treated during their stay at S-21? Did they

9 leave any hidden message for us? Did they call out for help?

10 How and where were they killed? Why were they selected to be

11 dehumanized?

12 While asking this, they stress that torture and killing are never

13 ever justified, regardless of the guilt of an imprisoned person.

14 The case cannot answer all these questions and therefore their

15 pain cannot be healed completely.

16 [11.03.50]

17 Both of them, the direct and indirect victims, are seeking

18 justice. But what does this justice mean for them? For both of

19 them justice means, among other things, finding the truth and

20 getting answers to their excruciating and relentless questions

21 which haunt them at night and deprive them of necessary sleep.

22 And the sleep they manage to achieve is inadequate and causes

23 permanent restlessness in their souls and preys on their minds.

24 They are permanently deprived form a peaceful life until this

25 very day. The civil parties demand the disclosure of the entire

42

1 historical truth of their beloved ones who are ghost-like visions
2 as long as no detailed information about their fate is available.
3 Learning this information is the only way to re-establish the
4 dignity of their beloved and to relieve them from past horrors by
5 being able to live their own lives free of past unanswered
6 visions.

7 Not all of our clients could testify in Court. The content of
8 their applications has been put before the Chamber but the
9 stories did not appear in public for the reason that time
10 prevented every civil party to be heard. Therefore, we would
11 like to tell you about our clients.

12 I start with Mr. Tath Lorn, born 1970. He was three years old
13 when his father joined the Khmer Rouge Army. For years he had no
14 information about him. He simply disappeared. In 2006, he
15 learned that his father was killed in S-21 and he received some
16 additional information on his whereabouts. Then he visited Tuol
17 Sleng and saw a photograph of his father which was shocking for
18 him.

19 [11.05.39]

20 He became a civil party in order to receive more information
21 about his father and what happened to him in S-21. He found out
22 that he was arrested on 19th of June 1976. The date of his
23 execution is unknown. The fact that he grew up without his
24 father makes life difficult anywhere, but especially in Cambodia.
25 Although he often participated in the hearings and learned more

43

1 about the functioning of S-21, his questions about the fate of
2 his father remain without response and plague him day and night.
3 I come to Mr. Chhoem Sitha. He fought as a soldier against Lon
4 Nol and was later in Division 310. After the arrest of the chief
5 of the division, Sbauv Hin alias Euan, in May 1977, soldiers of
6 the division disappeared every day and night. He could not sleep
7 any more and feared every day and night that he would be arrested
8 and killed. His friend and company leader in the army, Mr. Som
9 Oeum and his nephew Mr. Kov Phalla, with whom he had fought
10 together, were arrested and delivered to S-21 to be killed.
11 Without knowing why he survived, as so many of Division 3109 did
12 not, he feels the duty for his comrades who were killed, to seek
13 justice for them.
14 I come to Mrs. Ul Say. She married in 1972 Mr. Eng Mak and had
15 three children with him -- one son and two daughters.
16 Her husband was the Department Chief of Sector 43 and was taken
17 to be re-educated.
18 Mrs. Ul Say never saw her husband again. According to the
19 prisoner biography, he was arrested on 13th of October 1976 and
20 then in Building B, cell 5 of S-21 and had the prisoner number
21 24.
22 Mrs. Ul Say learned only recently -- through the magazine
23 "Searching for the Truth" -- about the imprisonment of her
24 husband in S-21. For thirty years, she lived with the hope that
25 somehow he might return and now she knows, at least, that he was

44

1 in S-21. But the date of his execution and his treatment in S-21
2 are further unknown.

3 Mrs. Ul Say lived, since her husband's disappearance, as a widow
4 and carried the burden on her shoulders to raise their three
5 children alone. Since the disappearance of her husband, she
6 became chronically ill and has never recovered. Her life is one
7 that has been destroyed and characterized entirely by pain and
8 struggle like so many others of her Cambodian people.

9 [11.08.25]

10 I come to Mrs. Iem Soy. She lost her four years younger brother
11 in S-21. He had joined the Khmer Rouge 1973 and served then as a
12 soldier in Division 310. He was arrested on 11th of January 1977
13 and was alive at least until 4th of February 1977 when his name
14 appeared on the list of prisoners to be interrogated. He had
15 prisoner number 7 and was in room number 4, cell 2.

16 Mrs. Iem Soy learned only recently that her younger brother was
17 imprisoned.

18 THE INTERPRETER:

19 The President interrupts.

20 THE PRESIDENT:

21 Ms. Studzinsky, could you please slow down a little bit. The
22 interpreter has just asked us to instruct you to slow down so
23 that he can fully interpret your message because it appears to be
24 rather fast at your deliveries. Could you please make sure that
25 you maintain a slower pace and could you also please repeat the

45

1 final few sentences that appear to be missing from the
2 interpreting?
3 MS. STUDZINSKY:
4 Okay, thank you, Mr. President. I restart with Mrs. Iem Soy.
5 [11.09.48]
6 She lost her 4 years younger brother in S-21. He had joined the
7 Khmer Rouge 1973 and served then as a soldier in Division 310.
8 He was arrested on 11th of January 1977 and was alive at least
9 until 4th of February 1977 when his name appeared on the list of
10 prisoners to be interrogated. He had prisoner number 7 and was
11 in room number 4, cell 2.
12 Mrs. Iem Soy learned only recently that her younger brother was
13 imprisoned, interrogated and killed in S-21. She was shocked,
14 but she could not gain more information about his fate. She
15 misses her brother a lot as they had spent a lot of time together
16 in their youth. As his elder sister, she helped raise him to
17 become a polite and gentle young man.
18 Since his disappearance, her family has always felt incomplete
19 like a body missing an arm or a leg. She is still searching for
20 response to the question why her beloved brother was executed
21 although she knows that imprisonment and executions were
22 arbitrary and had no relationship to reality.
23 I come now to Mr. Sin Lim Sea. He seeks justice for his elder
24 sister Sin Chhum Lim, her husband, Sa Rin and their child, Sa Li.
25 His elder sister joined the Revolution in 1970. His

46

1 brother-in-law was Deputy Chairman of Commerce. He disappeared
2 in June 1977 and entered the prison on 22nd of August 1977. His
3 sister, Mrs. Sin Chhum Lim, entered S-21 five months later
4 together with her young child.
5 The civil party lived, as a teenager, with his sister and her
6 husband together. They were like his parents and gave him the
7 necessary advice, education and love that he needed. When they
8 successively disappeared, he was left alone and had to rely on
9 his own. He misses his sister, brother-in-law and his young
10 niece a lot. He wonders how he could have escaped from death and
11 why his loved ones were imprisoned and tortured in S-21. He
12 wants to honour his relatives with whom he was so close, but
13 still has unanswered questions and seeks more information about
14 their fate.
15 [11.12.39]
16 I come now to Mrs. Hong Savath. She was 11 years old when her
17 father's brother, her Uncle Loek Sreng, was taken away from the
18 village. He was a teacher and well-known and recognized in the
19 village. She often spent time in her uncle's house and with him
20 and his family. When her uncle disappeared and later his entire
21 family, she missed this wise and gentle man.
22 In 2008, when she discovered him on a photograph in Tuol Sleng
23 Museum, she cried and became very depressed and is still
24 wondering which kind of torture he was subjected to. She cannot
25 imagine what mistake he could have made. The question of "why"

47

1 haunts her over and over and she cannot accept that defining and
2 selecting them as enemies involved any rational thought behind
3 such a decision in subjecting him or her to interrogation and
4 torture was completely arbitrary.

5 Come now to Mrs. Penh Sokhen. She lost her three year elder
6 sister, Penh Sopheap, in S-21. At the age of 22, her sister had
7 just married when she was arrested and brought to S-21.

8 The civil party, Mrs. Penh Sokhen, received in 1980 the
9 information that a photograph of her sister was found in S-21.
10 On this photograph, her sister was hung upside down with tied
11 legs and stabbed in the neck. Mrs. Penh Sokhen, haunted by this
12 picture, has fallen into a deep sadness since then. She feels
13 unbelievable sorrow when she tries to imagine the suffering her
14 sister must have gone through and the pain and horror she was
15 subjected to.

16 [11.14.43]

17 Mrs. Penh Sokhen has no further information or details and she
18 does not know when her sister was killed. Although she
19 participated several times in the proceedings and followed the
20 hearings closely, she could not receive any additional
21 information about the day of her sister's death.
22 Furthermore, she feels very sad that she could not hold a funeral
23 ceremony until today because of lack of financial means. Not
24 having a funeral ceremony deprives her from a peaceful
25 relationship with the spirits of the ancestors and Buddha.

48

1 Come now to Mrs. Nheb Kimsrea. She was born in 1978 and lost her
2 uncle, Mr. Cheab Baro and his wife, her aunt, Ms. Khut Phorn
3 including their five children in S-21.

4 Her uncle was Secretary of a Battalion of Division 450 and he was
5 accused of having planned an attack against the Party. He was
6 detained on 19th of February 1977. Although she never knew her
7 uncle and his family, the civil party learned early from her
8 parents about the fate of a part of the family. Her parents had
9 a strong relationship with Mr. Cheab Baro and his family and the
10 suffering of her parents accompanied her all her life.

11 Having lost a significant part of her family and the horrible
12 circumstances in S-21, she grew up rather alone and missed her
13 uncle, her aunt and her cousins. She wants to memorialize her
14 family by representing them in the proceedings.

15 I come now to Mrs. Lieng Kan. She lost her nephew, Mr. Nhem
16 Chheuy, who was imprisoned and killed in S-21.

17 [11.16.43]

18 Until 1975, she lived together with her family including her
19 nephew in Anko Chey (ph) village and grew up with him. He was
20 like an elder brother for her. She had a strong relationship
21 with her nephew who she loved very much.

22 Later, when they were already separated and her nephew was
23 conscripted into the Khmer Rouge army, she even tried to meet him
24 secretly. She recalls very well the last time that she met him,
25 when he informed her about the secret next steps planned by the

49

1 Khmer Rouge. Then he disappeared. Mrs. Lieng Kan was so shocked
2 when she saw his photograph in the Tuol Sleng Museum in 2008,
3 where he was wearing prisoner number 567. She was very
4 emotionally moved by this sudden discovery and worries about his
5 fate in S-21.
6 She could not receive any further information about him in the
7 current proceedings and all research she has done so far was not
8 successful. Due to the lack of further information she still
9 lives with huge uncertainty. Her last image of her nephew should
10 not have to be that of him in an S-21 uniform with number 567.
11 These are, in brief, the stories of those of our clients who did
12 not have the opportunity to tell their stories in Court, but
13 should be heard in public to memorialize and honour their loved
14 ones who were tortured, dehumanized and finally killed in S-21.
15 The crimes committed by the accused made their families
16 incomplete. Not a day goes by without the memories of the horror
17 suffered by their loved ones.
18 [11.18.42]
19 We do not want to refer again to the stories of the survivors Mr.
20 Bou Meng and Mr. Chum Mey, but elaborate further on the statement
21 of Mrs. Nam Mon. All survivors contributed significantly to the
22 evidence and shed light on the daily course in S-21.
23 The other indirect victims who lost their families in S-21, like
24 Mrs. Chhin Navy, Mr. Chum Sirath, Mrs. Phung Guth Sunthary, her
25 mother Ms. Im Sunthy and Mr. Seang Vandy contributed to recognize

50

1 the consequences that the crimes committed by the accused had and
2 have on them, while living examples of the Cambodian society.
3 All their testimonies were very emotional and moving. They
4 demonstrated that their suffering is ongoing more than 30 years
5 after the crimes were committed.
6 They are seeking justice, which means seeking the truth about
7 their beloved and seeking the truth about how the DK regime
8 worked and functioned; in particular, the detention and security
9 system and the motivation for committing the crimes.
10 The civil parties performed their participation rights in the
11 proceedings to achieve this important aim. Those civil parties
12 who testified were very satisfied that the Trial Chamber allowed
13 them to speak in Court about their experiences. This was
14 cathartic for them, but some of them were so nervous that they
15 were unable to remember a few of the details that they intended
16 to account. But some of them also, felt not very welcome by the
17 Trial Chamber and I will explain why they had this impression.
18 [11.20.37]
19 They felt that the Trial Chamber was not very receptive to their
20 sufferings. All civil parties who testified in August were
21 systematically not thanked at all for their appearances, although
22 it was usual practice towards all other witnesses, experts and
23 those civil parties who testified in July. "Thank you" are two
24 small, little words, but they mean a lot. They were treated as
25 standby witnesses, mere fill-ins, and had to tell their stories

51

1 suddenly, as it was the case for Mrs. Phung Sunthary and her
2 mother, Ms. Im Sunthy, who were called to the Court with short
3 notice without being prepared and without sufficient attention by
4 the Court that they are all highly traumatized and needed time to
5 prepare appropriately for the long-awaited day of their
6 testimony.

7 The result was that both could not sleep at all the night before
8 they were summoned, having to work on the preparation of their
9 statement, and did not feel well at all physically, but did not
10 dare to not appear because of having fear that they will then not
11 be heard at any other time. None of the experts would have been
12 treated similarly.

13 Civil parties who were heard in August further noticed that
14 nearly no question was asked by the Chamber, although one-third
15 of the available time was reserved for questions for the parties
16 and the Chamber. This left for them the impression that the
17 Trial Chamber was rather uninterested in their stories.

18 The civil parties further had fear to cry after they heard the
19 orders of the President to the first civil parties that they
20 should control their emotions and if not, the Chamber would have
21 no time to hear them later. Perceived as a threat, civil parties
22 tried their very, very best to suppress any so-called
23 interruption of the testimony by their tears.

24 [11.22.46]

25 The Trial Chamber's order to the civil parties to suppress their

52

1 tears and to control their emotions did not contribute to a
2 healing process and gave them the impression that their
3 traumas are not appropriately addressed by the Chamber.
4 These painful traumatic expressions are the result of the crimes
5 committed by the defendant and are therefore relevant for the
6 Chamber to find the appropriate sentence.
7 Furthermore, looking for proof of torture, Mr. Bou Meng was
8 ordered by the President to show his scars on his back in public
9 and broadcasted session without regard to his dignity and
10 privacy. Of course, he would not dare to refuse due to the
11 respect towards the Judges of this Court. Fortunately, stripping
12 his clothes off in Court was finally averted by his lawyer.
13 As already mentioned, civil parties are seeking the truth.
14 Through their right to question witnesses and the accused, they
15 tried to disclose details of daily living conditions in the
16 prison but whilst doing this, their lawyers were sometimes
17 interrupted by the President, which unfortunately gave the
18 impression that the Trial Chamber seemed not to be interested
19 very much in thoroughly examining the available evidence.
20 Furthermore, a part of the civil parties have the impression that
21 the Court did not execute its caretaking duty towards them. They
22 did not feel protected when the national defence counsel shouted
23 at them and, with his unchangeable attitude, explained that this
24 behaviour is normal. They missed the attention and care of the
25 President when the accused insulted in a sexual manner their

53

1 international lawyer, which was not translated into English or
2 French, thus feeling attacked themselves by the accused.

3 [11.24.44]

4 As a result, some of the civil parties did not feel well
5 protected while they were testifying and not supported by the
6 Bench in their search for truth. They are still wondering why
7 they were not treated with equal respect like all witnesses,
8 experts and the accused. Is the personification of sufferings
9 shown every day too hard to bear?

10 At the end of the hearing, civil party lawyers were then excluded
11 from questioning character witnesses including the psychological
12 and psychiatric experts and are not allowed to comment on
13 sentencing, although the outcome of the trial with an appropriate
14 sentence is of utmost importance for the process of justice.

15 Civil parties felt that they were deprived from their
16 participation rights when the Internal Rules, itself, and the law
17 do not limit their rights to question any witnesses and experts,
18 nor to make submissions on sentencing. Even after having
19 received the reasoning of these decisions, they still cannot find
20 any grounds based on the law or the Internal Rules which could
21 justify their exclusion.

22 In contrast to those civil parties that missed a respectful
23 treatment, others did not claim and expect, at all, that the
24 President of the Chamber should have thanked them and protected
25 them. Their self-esteem is so low that they do not have the

54

1 self-confidence to believe that they deserve, like everyone else,
2 to be respected in their treatment by Judges of this Court.

3 Despite these shortcomings, we want to stress that the civil
4 parties appreciate the opportunity to tell their story in front
5 of this Court and they want to thank for this.

6 [11.26.44]

7 I come now to the statement of Mrs. Nam Mon. Her statement
8 deserves more attention and needs a close assessment of
9 credibility. For the first time, she revealed before the Trial
10 Chamber her story.

11 She overcame all obstacles and with all her strength and courage
12 to break the silence after 30 years that she was working as a
13 medic in S-21 at the age of 15 and that two of her brothers were
14 guards of the prison. Furthermore, she accounted that she saw
15 the accused personally beat to death her Uncle Euan, Chief of
16 Division 310, and Uncle Ket behind the fence of S-21 which she
17 observed from Building D.

18 Later on she was arrested, interrogated, tortured and raped
19 before being sent to S-24. Her father, mother and younger
20 brother were killed at S-21 but she had heard that her brother,
21 Roeung, was ordered to beat their own father to death.

22 Is this story credible? Did she tell the truth? In order to
23 analyze the testimony, we will use the tools for credibility
24 assessment of testimony. The first tool is to look at the
25 genesis of the account. Regarding the genesis of her testimony

55

1 and the explanation she gave for the primary withholding of
2 relevant test, Ms. Nam Mon asserted that she did not tell her
3 whole story out of fear that she herself and members of her
4 family were working in S-21. Only after participating in the
5 proceedings and receiving a lot of support and encouragement by
6 other civil parties, she was able to talk freely and reveal the
7 past.

8 [11.29.07]

9 This explanation is plausible. Second is the manner of the
10 account. Her account was appropriately accompanied by very
11 strong and overwhelming emotions. Further, she disclosed details
12 which she could only know as an eyewitness. Additionally, the
13 murder of her Uncle Euan, who was the chief of Division 310, and
14 her Uncle Ket of the same division, by the accused himself is
15 plausible given that close and personal relationship.

16 Thirdly, psychological experts on credibility assessment of
17 witness testimony stress that any false statement needs a motive
18 behind. Obviously, there is no potential motive for her to
19 invent this story. She gains nothing by incriminating the
20 accused just at this late stage of the proceedings. She has
21 already submitted substantive material to become a successful
22 civil party. It does not benefit her status. Furthermore, her
23 account was not coined by hatred or revenge. In contrary, she
24 spoke positively about the accused, whom she described as being
25 handsome at the time. Why should she then incriminate the

56

1 defendant against better knowledge?

2 Fourth, she incriminated herself while she told the Court she was
3 part of the total institution of S-21 and contributed to the ill
4 treatment of prisoners with insufficient medical treatment,
5 although she was still very young.

6 Why should she take this risk of self-incrimination without any
7 need if the story is not true? Even if it is unlikely that she
8 would be prosecuted, exposing herself would still put her
9 reputation in the village at risk and could lead to banishment in
10 her village as a punishment for her complacency with the Khmer
11 Rouge.

12 [11.31.29]

13 Fifth, regarding the content of the story itself, it seems to be
14 plausible that she focused mainly on her family members. It is a
15 typical performance of somebody who faced a horrible situation at
16 a rather young age to block out such atrocities and other
17 occurrences related thereto. Therefore, this defence argument
18 does not put doubts on her statement.

19 The fact that she could not recognize the photograph with the
20 accused taken during the DK period does not make her statement
21 questionable. First, its quality is bad and secondly a certain
22 ability to recognize somebody on a photograph 30 years later is
23 required, which she obviously does not have.

24 Therefore, the only reasonable conclusion is that the content of
25 the story, the manner how she told it, the details that she could

57

1 recall and the fact that no motive for a false statement is
2 obvious, leads to the inescapable conclusion that her statement
3 is plausible, credible and convincing.

4 In addition, the nonverbal reaction of the accused is unusual in
5 contrast to his reactions with all other witnesses and civil
6 parties. When Mrs. Nam Mon described the personal involvement of
7 the accused and the killing of his friends and comrades, Euan and
8 Ket, he looked at the ceiling and acted uninterested. In all
9 other cases, he paid close attention to all that is being said by
10 anyone on the stand.

11 [11.33.28]

12 In addition, when she asked him if he denied her account of what
13 happened, he never responded. Instead he began with general
14 comments about his responsibility for all crimes, never
15 addressing the specific account of beating her uncles to death.

16 Again, in all other instances when witnesses or civil parties
17 accused him of any personal direct involvement in torture, he
18 would outright deny it. In this case he entirely avoided the
19 question and did not deny his involvement. Instead of addressing
20 Ms. Nam Mon's testimony and her question to him, the accused
21 simply contested her testimony by submitting there were no female
22 medics at S-21. Ms. Nam Mon addressed this point by explaining
23 that she entered the original site prior to it becoming S-21,
24 dressed like a male after the advice of her father. She
25 continued dressing like a male when the site became S-21 and

58

1 operated by the accused.

2 Regarding the photographs of killed family members of Ms. Nam
3 Mon, he argued that the statement of Ms. Nam Mon and the
4 photographs were not corroborated by other documents although
5 gathered in July 2008 in Tuol Sleng. Then the accused simply and
6 continuously referred to other civil parties in order to distract
7 from Mrs. Nam Mon while the Trial Chamber reminded him several
8 times that he should give his comment on this civil party and not
9 on others.

10 To conclude, the reaction and content of the accused's comments
11 show that he did not dare to contest, in the presence of the
12 civil party, her account about his personal involvement in
13 beatings and killings -- but why? The answer is because they are
14 true. These facts, in particular the murders, are enclosed in
15 the closing order. The killing of her uncles, who are among the
16 12,273 killed persons, is one of the charges against the accused,
17 who is deemed to be criminally responsible for these killings.

18 [11.36.00]

19 So far the form of liability is, according to the indictment,
20 having ordered these killings, now he must be considered as the
21 direct perpetrator of these two killings. It is within the
22 mandate of the Trial Chamber to assess the form of liability
23 according to the facts submitted before it. Replacing the
24 liability of command responsibility through direct commission
25 does not prejudice the accused as it is of the same weight and it

59

1 is the jurisdiction of the Trial Chamber to finally qualify the
2 form of liability.

3 During the trial Mrs. Nam Mon also revealed to her international
4 lawyer, after her declaration in Court and after she saw the
5 witness and guard Chhun Phal testifying that he had raped her.
6 Immediately after have received additional detailed information,
7 we requested the Chamber to submit additional facts regarding
8 Mrs. Nam Mon. The Chamber granted the request but postponed it.
9 Nevertheless, surprisingly, the Trial Chamber rejected this
10 additional information about the rape to be belated and that it
11 will be impossible to gather related evidence within a reasonable
12 time. The decision dates 28th of October 2009.

13 This decision is erroneous for two reasons. First, we have
14 announced immediately after having received the information the
15 request to the Trial Chamber to be allowed to submit further
16 information. Secondly, the decision completely ignores the
17 difficulties of a victim of rape to come forward with her story.
18 Furthermore, the ruling does not take into account the impact,
19 the disclosure of being raped, has on the reputation of a woman
20 in Cambodia. She would be considered in her community as fair
21 game for everybody.

22 [11.38.19]

23 Therefore, she never ever talked about these facts for more than
24 30 years. Only when she saw the perpetrator here in the court
25 room again she started to take all her courage in both hands and

60

1 felt that she could no longer remain silent and informed her
2 international lawyer. Simply to dismiss a request for being
3 belated under the described circumstances does not do justice to
4 a victim of rape.

5 Moreover, the defendant admitted many cruel things that he at
6 first denied. The credibility of this defendant is extremely
7 questionable given that he has misled the Court on various
8 occasions and continues to withhold information despite his
9 assurances of being truthful.

10 A chilling example of this is when he first denied the blood
11 drawing and anatomic surgeries and experiments done on prisoners
12 and only later admitted remembering suddenly. It is highly
13 doubtful that one could forget such atrocities.

14 I would like to give now the floor to my Cambodian colleague who
15 will continue and for this we change to make it easier, our
16 seats.

17 MR. KONG PISEY:

18 Mr. President, Your Honours, I may now proceed with the remaining
19 of the statement.

20 I am going to make the statement in relation to three points
21 which is sexual crimes and female investigators, the accused
22 defence strategy and the reparations.

23 [11.40.43]

24 Having received the final submission of the Co-Prosecutors,
25 surprisingly rape as a crime against humanity does not appear at

61

1 all, although rape is part of the indictment and has been
2 admitted by the accused at least in one case.

3 Omitting sexual violence committed in S-21 constitutes a bad
4 example for Cambodia, a country in which recently police and
5 court officials classified the rape of a woman who was not a
6 virgin, not as rape.

7 Although all kinds of sexual assaults are the most heinous crimes
8 mostly committed against women, these crimes remain regrettably
9 often unpunished and enjoy broad impunity. The prosecution and
10 thus the Co-Investigating Judges already failed to investigate
11 properly sexual violence and ignored the existing evidence.

12 Therefore, we would like to summarize our thoughts on the matter.

13 The first case, if that, of a namely unknown interrogator who
14 raped the accused's former school teacher by inserting a stick
15 into her vagina during the interrogation. According to the
16 accused, he remained unpunished, with the approval of Son Sen.

17 The accused explained as follows.

18 "If I understand the law properly, if the act was a sexual abuse,
19 I would rather request my superior. At the time I did not fully
20 know the law. I did not study any penal code of Cambodia and
21 therefore I did not know about this matter. Probably even my
22 superior did not know it."

23 And being asked if knew that committing rape was a wrongdoing, he
24 reserved his right to remain silent.

25 [11.43.34]

62

1 Of course it is not necessary to study the penal code to become
2 aware that rape and sexual abuse are serious crimes. The
3 accused's attempt to avoid liability by hiding behind the penal
4 code is a slap into the face of the victims. The accused did not
5 need to study the penal code to know that inserting a stick into
6 the vagina is a serious crime. Again, this is an example of how
7 he attempts to cleverly evade responsibility when it suits him.
8 It is clear that as the commander of S-21 when prisoners enter
9 and were already destined to be killed, he did not take any
10 interest in how they were treated in the interim. As a result,
11 many women felt prey to sexual assault under his command.
12 Likewise, not receiving any protection against other forms of
13 torture and ill-treatment inflicted day and night on them.
14 Although the accused was convinced that this case was the only
15 rape case at S-21, he could not give any reason for this
16 assumption. The evidence refuted his supposition -- rather
17 supposition which he wanted to be taken as truth.
18 The second case reported by witness Prak Khan and Leach Mean --
19 the case was of the interrogator named Touch. He raped a female
20 prisoner during lunch time and the whole staff of S-21 gathered
21 in order to not let him flee. He was arrested. Although this
22 incident attracted the interest of the entire staff, the accused
23 pretends to have no knowledge of this case and even the
24 interrogator Touch was unknown to him. His credibility again is
25 destroyed.

63

1 If the entire staff of S-21 was informed, the accused had to have
2 knowledge. Nothing took place in S-21 without the accused being
3 informed.

4 [11.46.30]

5 The third rape case was reported by the witness Chhun Phal who
6 has been told by his superior that this rape was done by a guard
7 adjacent to him and saw the rape victim. The accused claimed to
8 have prevented the occurrence of sexual assault by designating a
9 team of female interrogators. However, there is no collaborating
10 evidence to support this.

11 Furthermore, even with female interrogators it is doubtful that
12 these few women could protect the hundreds of women at S-21 who
13 were mainly monitored by male guards on a daily basis.

14 Additionally, the accused himself states that these female
15 interrogators were purged. So who was protecting the women when
16 these women were killed?

17 Given the situation of male guards at S-21, the accused had
18 sufficient reason to know that the male interrogators and guards
19 who were deprived of a sexual life would be more likely to
20 exploit the defenceless situation of the women prisoners. These
21 women, who were already destined to death and were degraded to
22 less than human or animal status, were easy prey for these guards
23 to commit sexual assaults against them. Further, he failed to
24 take the necessary and reasonable measures to prevent such crimes
25 or to punish the perpetrators.

64

1 [11.48.44]

2 Therefore, the accused is criminally liable for at least three
3 rapes committed at S-21. The closing order encloses insofar the
4 fact and is clear enough by indicting him with at least one case
5 of rape.

6 The fourth case of rape, committed by the guard Chhun Phal
7 against the civil party Ms. Nam Mon, was regrettably excluded by
8 the Trial Chamber and therefore this case remains unpunished.
9 Furthermore, the witness Mr. Vann Nath and the civil party Mr.
10 Bou Meng accounted that it was usual practice that the male
11 prisoners in the big cells had to strip off their clothes while
12 the guards sprayed water on them. The guards used these
13 occasions regularly to mock about their genitals and to insult
14 them sexually. Legally this is sexual harassment, which must be
15 subsumed as another inhumane act against the prisoners.

16 Now I'm going to talk about the accused's defence strategy. The
17 strategy of the accused's defence is based mainly on the
18 following four pillars.

19 One, the accused as a victim of the DK regime could not escape
20 and simply obeyed orders without any discretion. He was doing
21 his job as a Chairman of M-13 and then S-21 reluctantly.

22 Two, to strongly contest any personal involvement in torture,
23 killings and arrests.

24 Three, pretending to co-operate fully and having truthfully
25 confessed.

65

1 Four, requesting forgiveness, apologizing and expressing remorse.

2 [11.51.15]

3 We do not want to repeat the arguments of our colleagues and join
4 them fully-related to the first point of his defence of being a
5 victim, a captive of the DK regime whose orders he had to obey
6 and that he could not escape from. The civil parties argue that
7 pretending to be a victim insults them and all other victims in
8 Cambodia as a whole.

9 Likewise, he is not a scapegoat, suggesting again that he is now
10 a victim of numbers of victims who barely conceal "hatred",
11 quoted from an article in the French newspaper "Le Monde",
12 quoting Mr. Roux. The accused and his defence seem to completely
13 confuse the facts of who is victim and who is perpetrator in this
14 media campaign to try the case outside of the courtroom. The
15 evidence adduced in trial contradicts his defence.

16 We conclude that he was a willing, enthusiastic and meticulous
17 participant with broad discretion, including sparing lives and
18 bettering the prison conditions for Rout Kut and Chao Seng, who
19 he called "semi-prisoners", and providing them with decent food
20 and accommodation. He was not only proud of his job and
21 convinced of the Party line to identify "the enemy" and to
22 eradicate him or her without sense of guilt, but moreover he
23 enjoyed the power as a power-hungry man who performed his work
24 much more than 100 percent without any empathy for his victims.
25 His aim was to keep his power, being in a highly-recognized

66

1 position with exclusive daily contacts to the highest-level
2 commanders.

3 He liked to flatter his superiors and to please them and, for
4 example, he ordered the painters to prettify the neck of Pol Pot.
5 He lived in villas in Phnom Penh and enjoyed a high living
6 standard under the given circumstances, which he would have lost
7 immediately if he would have resigned. Consequently, later he
8 followed his hunger to belong to the powerful side of the world
9 and converted to become a Christian.

10 [11.54.36]

11 He did this in order to again be on the right side of the now
12 most-powerful religion, Christianity, as he classified it, as was
13 explained by the psychological and psychiatric experts. If he
14 remained a Buddhist his crimes would have deemed him to the 18th
15 level of hell where there is no return. Therefore, his
16 self-depiction as a simple recipient of orders who was obliged to
17 obey is refuted.

18 At this point we would like to quote Hannah Arendt, from her book
19 "Eichmann in Jerusalem: A Report on the Banality of Evil" where
20 she suggests that the Court should have told the accused,
21 Eichmann, who as well referred to having obeyed orders, the
22 following which I want to address to the accused.

23 "There still remains the fact that you have carried out and
24 therefore actively supported a policy of mass murder. For
25 politics it is not like the nursery. In politics, obedience and

67

1 support is the same."
2 Second pillar of the defence is contesting any personal
3 involvement in torture, killings and arrests. Why is it for the
4 accused of utmost importance to strongly object to any personal
5 direct involvement in such crimes, although he now admits having
6 ordered them? I'll try to give an answer.
7 Prior to the accused being in detention at the ECCC he was of the
8 opinion that only those are criminally responsible who have blood
9 on their hands and that orchestrating murder from behind a desk
10 bears no, or at least less, criminal guilt. In addition, he held
11 only the government of DK responsible. Only on advice of his
12 counsels, and I quote the defendant here.
13 "They explained to me that I had to confess and be responsible
14 for my crimes, and I would not put the blame ion the government
15 as I did in the past."
16 This was made on the 25th of June 2009. This shows clearly that
17 he lacked any consciousness of wrongdoing at the time he
18 committed the crimes. He was convinced of the policy of the
19 party line to smash the enemy.
20 We note that he followed his counsel's advice and now recognizes
21 his guilt and criminal responsibility for crimes committed in
22 S-21 at least in general.
23 [11.58.15]
24 However, the accused's defence strategy of denying any personal
25 involvement in torture, killing and arrest is unsuccessful. The

68

1 evidence adduced in the trial contradicts him. The statements of
2 Mr. Prak Khan, Mr. Saom Met, Mr. Vann Nath and Ms. Nam Mon gave
3 evidence that he ill-treated and at times tortured personally by
4 beating, electrocuting, and kicking.
5 Furthermore, annotations on confessions, the testimony of Khieu
6 Ches who was part of the catcher group who arrested people all
7 over the country -- in his direct and well-documented autonomous
8 exchange with Division Chief, Mr. Sou Meth about the
9 identification of so-called traitors and their delivery to S-21,
10 including those arrests which were organized at his home
11 demonstrate his personal involvement in arrests.
12 At times the accused also continued the practice of M-13 to
13 personally kill as Ms. Nam Mon described how he beat to death
14 with an iron bar her uncles Euan and Ket who were his close
15 comrades and revolutionaries.
16 The third pillar of his defence is to cooperate fully with the
17 Court by admitting and offering the civil parties frank
18 responses, neither sincere nor truthful. The cooperation with
19 the Court and his pretended truthful admissions is half-hearted.
20 One cannot consider this to be a true and thoughtful confession.
21 There were too many questions of all parties as well as of the
22 Judges that he either did not respond to at all or he
23 circumvented persistently and ingeniously.
24 His admission comprises only 68 per cent of the facts of the
25 closing order and cannot amount to a confession. It is only a

69

1 part confession, not more, not less.

2 [12.01.03]

3 Also, he failed to uphold his promise to the civil parties. At
4 the beginning of the hearing he assured them that he would use
5 all his efforts to contribute to the truth and to respond
6 sincerely to all their questions. He failed to do this on
7 several occasions.

8 He was unconvincing when he stated that he had no knowledge that
9 Professor Phung Ton who was highly regarded in Cambodia and whose
10 presence in the prison could not be overlooked by the accused.
11 To hide his responsibility, he even argued that the existing
12 documents on the entry date of Professor Phung Ton must be wrong,
13 stating that he was arrested in S-21 at the time when Nath was
14 Chairman. This would mean that Professor Phung Ton would have
15 been more than 20 months in S-21 and this, according to the
16 accused, without being tortured. It is very clear that the
17 accused is lying. Likewise, it was not convincing at all when he
18 stated he had no knowledge of the imprisonment of his close
19 friends Chum Sinareth and Chum Narith.

20 In our opinion, the presence of the related civil parties in the
21 Trial Chamber and the fact that their eyes are directed upon the
22 accused, prevents him from taking responsibility in the fact that
23 he was a party to the murder of someone he admired and indeed his
24 own close friends.

25 In addition, his belated offer to invite civil parties to visit

70

1 him in prison must be seen as a farce when looking back on the 23
2 days of the trial in which he has been constantly stuck for
3 answers.

4 [12.03.25]

5 Last but not least, the fourth major aspect of his defence was
6 his repeated request for forgiveness, his apologies, and his
7 expression of remorse towards the civil parties and their
8 families. This became more and more unctuous in the course of
9 the hearings and more and more these expressions contradicted and
10 opposed his above-depicted defence line.

11 For the civil parties, his repetitive apologizing during the
12 proceedings only solidifies his guilt. Furthermore, his attempts
13 at forging remorse by crying on cue, often around 4 p.m. at the
14 end of the hearing, can be described as "crocodile tears".

15 The civil parties felt the tears were orchestrated and devoid of
16 meaning and that by evading questions and orchestrating remorse,
17 the accused has forfeited any opportunity to convince the civil
18 parties that he is remorseful and therefore to allow them to
19 accept his apology or forgive the unforgiveable.

20 Reparations -- in our final submission we have submitted detailed
21 requests for reparations that we want to briefly summarize.

22 We took note of the simple comment in the defence final
23 submission that the accused is indigent and we add to this that
24 therefore he will not be able to pay for any kind of reparations.

25 We would like to remind the accused that he cannot sit back and

71

1 relax with an inward smile. The accused could do more than this.
2 We request that the accused bear the financial burden for his
3 crimes and that there are ways he can contribute. He could ask
4 for work that he could perform while in prison or write an
5 autobiography to be sold, all in order to collect some money for
6 the requested reparations.

7 [12.05.55]

8 At this point we want only to highlight our realistic request to
9 order the accused to write two open letters to the Royal
10 Government of Cambodia and to request, first, a state apology;
11 and, two, request for one-third of the entrance fees of Tuol
12 Sleng and Choeung Ek to be used for the realization of the other
13 requested reparations. At the end of our closing statement, we
14 respectfully submit the following requests to the Trial Chamber.

15 1.To declare all civil party application admissible.

16 2.To consider the facts pertaining to the accused's guilt as
17 submitted in the closing statement for the final judgment, in
18 particular related to the two killings and two -- in total three
19 cases of rape.

20 Three, to grant the reparation requests as filed with our final
21 submission.

22 Four, that the accused's strong wish to return into Cambodian
23 society will be rejected.

24 I'm very grateful, Your Honour. That's the end of my submission.

25 THE PRESIDENT:

72

1 The Chamber has already heard the oral closing statements of the
2 civil parties representing group 2 and group 1 and as scheduled,
3 it is already time to take the adjournment for lunch. So we will
4 take the lunch adjournment and resume the session by 1.30 p.m.
5 The security personnel are now instructed to take the accused to
6 the waiting room reserved for him or take him to the detention
7 facility and make sure that he is returned to the courtroom by
8 1:30 p.m.

9 (Judges exit courtroom)

10 (Court recesses from 1209H to 1331H)

11 (Judges enter courtroom)

12 MR. PRESIDENT:

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

14 Before we begin our proceedings for this afternoon's session and
15 before giving the floor to the civil party lawyers for group 3,
16 the Chamber would like to remind lawyers (microphone not
17 activated) that the Chamber would like to remind the parties, the
18 civil party and also the lawyers, we have noted the closing
19 statements of the civil party lawyers which have strayed beyond
20 the facts and legal matters which are supposed to be included in
21 the closing statement.

22 The Trial Chamber has already issued a decision and any decision
23 of the Trial Chamber is not an object for the closing statements
24 of the civil parties, and we would like to remind the lawyers,
25 the other two civil party lawyers, to be mindful of this.

73

1 [13.34.06]

2 The Chamber would not wish to interrupt amid the oral statement
3 of any civil party lawyer, so if such situation happens like it
4 happened this morning, then the Trial Chamber will interrupt such
5 statement because it is not relevant to such closing statement as
6 we expect.

7 We would like now to give the floor to civil party lawyers group
8 3 to present their case. The lawyers have the same amount of
9 time as the times allocated to civil party lawyers group 1 and
10 group 2. You have one hour and 15 minutes. You may now proceed.

11 MS. MOCH SOVANNARY:

12 Mr. President, Your Honours, I am Moch Sovannary, the national
13 co-counsel for civil party group 3.

14 Before we start our closing statement, I would like to seek the
15 permission from the President to allow my co-counsel, Mr.

16 Philippe Canonne, to proceed with the closing statement and I
17 will touch upon the reparations part.

18 MR. PRESIDENT:

19 Your request is granted and, Mr. co-counsel, you may now proceed.

20 MR. CANONNE:

21 Yes, Mr. President, Your Honours. My name is, therefore,

22 Philippe Canonne, and Moch Sovannary has said that I am

23 representing in the name of Avocats sans frontières in France and

24 I will represent civil party group 3.

25 [13.36.19]

74

1 I am grateful to this Court for allowing all three of us civil
2 party lawyers and we will share the time that is given to us on
3 an equal basis. And my statement will be based on the state of
4 mind, the mind set of the civil parties, their motivation and
5 their expectations.

6 Martine Jacquin will address you on the character of the victims
7 and she will tell you about their identities, their profiles, and
8 their stories. Moch Sovannary will tell you about the forms of
9 reparation we have considered and maybe the manner in which they
10 will be awarded.

11 And I would like to greet your Court most respectfully as well as
12 the public and on a fraternal basis I would also like to greet my
13 opponents and of course it's with great emotion that I will think
14 during my entire statement about these civil parties who are
15 victims.

16 And we have worked as lawyers tirelessly. It was a monumental
17 task to bring together the victims and, the most important, to
18 define their expectations. The status of civil party which is
19 granted to them in the context of an international criminal trial
20 is a major innovation and we are able to address the Court at
21 this point because we were assisted by NGOs, by international
22 organizations, by the Cambodian authorities, the government and
23 the Judges.

24 The investigation in this case was long and painstaking. This
25 Court gauged the scope of the events which are the subject of

75

1 this trial today. It is now in a position to make its
2 determination. So what then is our role at this point?
3 [13.39.20]
4 We will say nothing of the criminal aspects of the case. We made
5 an undertaking and we committed ourselves to this. This is the
6 role of the Co-Prosecutors. We will place ourselves in the field
7 of civil party reparations. We will discuss the responsibility
8 incurred and the harm suffered. We have, Mr. President, high
9 hopes. We aim to assist this Court to ensure the fairness of
10 this trial,
11 Lawyers are officers of the Court. They are not obstacles and
12 they are certainly not enemies. The stance and the utterance of
13 the victims today are the result of a long process of gestation.
14 We must not delude ourselves. The first reaction is often
15 instinctive. The civil parties would tell us then often, "Duch
16 must suffer the same treatment that we did." And we should give
17 voice to this first reaction and we must have the courage to hear
18 it, but we must transcend it. Then justice will be rendered and
19 not savagery.
20 To the crimes against humanity we wish to respond with words that
21 speak to our humanity. Mr. Accused, I have listened or read
22 closely practically all of your statements. My time is short. I
23 will read, without betraying the meaning but without adding one
24 single word, the most significant of your statements. You said
25 to us:

76

1 "I am meticulous. I either do things well or I don't do them.
2 The objective was to reach cruelty. We trained people to become
3 members of the Youth League to do everything they were ordered to
4 do, and we taught them to kill. I was responsible for their
5 education. I taught the interrogation methods. The Party
6 trusted me.
7 [13.42.58]
8 My own responsibilities were as follows: obtaining confessions,
9 preparing reports on the basis of these confessions, annotating
10 the confessions, educating on how to interrogate and strike
11 people, obtaining confessions. That was my duty."
12 And referring to those who according to you did not share your
13 ideology, you said:
14 "They are canker worms in our flesh which must be removed. And
15 my superiors trusted me, not the others. I committed all kinds
16 of serious crimes. Nobody committed more crimes than I did."
17 And I will stop here with my quotes, with one last sentence. You
18 said, Mr. Duch -- you addressed your apologies to your people.
19 On 9th April you wished, you said, "that justice be rendered for
20 the people of Cambodia, those who survived this terrible regime".
21 So now I ask myself, is your contrition sincere? You have wept
22 during a re-enactment. Weeping is a beginning of contrition.
23 Addressing apologies means the dawning of understanding and
24 assumption of responsibility. To go to the end of the trial,
25 that is true courage. And it should be recalled that during the

77

1 procedure you, however, applied to be released. To look, to
2 hear, to see, those whom one caused to be tortured is to cease to
3 consider people as objects. It means that the victims are
4 allowed to regain their dignity.
5 So look at them, Duch. Look at these men and women that you
6 sought to smash or whose parents, spouses or children you
7 smashed. You can smash insects, animals. You cannot smash human
8 beings because one day they will rise again. One way or the
9 other, either they or their successors will come demand a
10 reckoning.
11 [13.46.05]
12 You were steeped in Buddhist culture. You became Christian. In
13 both of these spiritualities, Mr. Duch, the human soul is
14 immortal, even if the body is not. Human beings are reborn on a
15 permanent basis and indefinitely because they are able to think.
16 They are able to feel; they are able to suffer; and they are even
17 able to forgive, and because their gaze beyond death is there to
18 judge you from the beginning of time.
19 Perhaps your victims will forgive you after this trial -- perhaps
20 -- but you cannot imagine how much these people are searching.
21 First and foremost, they are suffering, of course, but they're
22 trying. They are trying to understand why a man -- no worse than
23 any other -- can set up such barbarity. How can a person --
24 basically ordinary person -- can be at the same time respectable
25 and terrifying. Why this sudden incursion into their lives of a

78

1 totalitarian regime which thrust thousands or millions of them
2 onto the roads to exile -- onto the road to death.
3 Francois Bizot, a key witness who testified in April, taught us
4 that it would be a mistake to consider you only as a cold monster
5 that we could judge on the isolated basis by settling the problem
6 once and for all. We know that this is not that simple. Your
7 defenders will tell us how they intend to graduate your share of
8 the responsibility and they will do so in good conscience. That
9 is what their noble duty requires of them and we will listen to
10 them. But these people -- these civil parties -- these simple,
11 modest, poor, barely-educated or on the contrary, highly-educated
12 people who are leading their lives are fighting the same fight.
13 [13.49.21]
14 It is a universal fight to be here, to repeat tirelessly their
15 precepts of the law in order to avoid sinking -- in order to
16 avoid sinking to the level of animals, to continue to be human
17 beings and to continue to be men and women; that is to say, those
18 who do not destroy knowingly, deliberately their fellow human
19 beings in the name of an ideology. They were dehumanized;
20 treating them today with scorn would be a new form of
21 dehumanization. I, as everyone, I read the press and I read in a
22 certain press that the civil parties were disorganized during
23 this trial. It is true. Mr. Karim Khan reminded you this
24 morning that it is a novelty in international criminal courts.
25 We are inaugurating a new system here and therefore, it is not

79

1 easy to join together. It is, of course, much easier to
2 criticize. But is it really the right moment to criticize those
3 for whom this trial was intended? Is this really the message
4 that should be conveyed to those who desperate or exhausted,
5 those facing issues that sometimes are beyond them, those who
6 come here to seek justice?

7 I am inclined to read in these kinds of statements a simple
8 desire to improve the system. Any other approach would be
9 unconscionable. I have seen a surprising argument being advanced
10 recently which surprises. It would be necessary, as of now, for
11 these victims who were entitled to be heard, but in a specific,
12 clearly-bound point in the proceedings; it would be necessary for
13 them to revert to silence now. They would then become icons of a
14 kind; respectable, untouchable, but voiceless. Should we bury
15 them again? Should we hide them?

16 [13.52.32]

17 Whether the defence wishes this or not, this will never again be
18 possible. If one does not want to be a victim of history, one
19 must seek to understand it. The civil parties have done so.
20 They wish to go further. They feel no hatred, no desire for
21 vengeance. They only feel distress. But it is with them that
22 history will be reconstructed. Nothing will ever be the same
23 again, never. These people have become vigilant watchers. Each
24 time an attempt will be made to silence a man or a woman, a new
25 Duch will arise.

80

1 The victims have learned to identify suffering. They have
2 learned as civil parties that remedy can exist. We spoke in the
3 course of these proceedings -- much has been made about the modes
4 of reparation. A group will expand on this. I abide in
5 principle by everything that has been suggested and submitted to
6 this Court in this regard. I participated in the common effort
7 to this end, but I wish to share a personal feeling. You may
8 judge it as you wish. The most valuable reparation is probably
9 their very presence here. It is the acknowledgement of their
10 rights, their solidarity and the opening of new vistas.
11 This Court, to whose creation we have all contributed with
12 fervour and humanity -- sometimes clumsily -- most certainly
13 foreshadows the composition of future international criminal
14 courts and defines a new blueprint for hybrid courts. What I
15 mean by this, confirmed national jurisdiction as a priority, but
16 also an international composition, progressive establishment of a
17 victims unit of equal importance and value to the defence which
18 provides real material and psychological assistance to all of the
19 victims of atrocities.
20 I, therefore, harbour true hope and the presence of Moch
21 Sovannary is a symbol. She is Cambodian. She is 25 years old.
22 She has the courage to take part in this difficult trial. She
23 represents the drive of the youth that I have encountered over
24 the past three years while providing training to young jurists in
25 Cambodia -- young Cambodian jurists and lawyers; a training which

81

1 is supported and would receive warm welcome from the Bar
2 Association of the Kingdom of Cambodia and it's Chairman.
3 "This poor country," said Francois Bizot when he was speaking
4 about Cambodia. This magnificent country, I would say instead.
5 As I see how firmly the people are standing behind the values of
6 progress and of liberty. Let us never smash anyone again; never,
7 never again.
8 Reconciliation is the key message. It is the road we must take
9 in this task of reconstruction. But the word is not enough.
10 Reconciliation should pass through this trial. It must, as of
11 now, take along with it the fate of the civil parties. We are
12 facing a whole new immense task to find the fair and just process
13 of reconciliation.
14 At the beginning of your questioning, Mr. Duch, you recited a
15 poem in French and I will quote this stanza again:
16 "Weeping or praying, all this is in vain. Shoulder your long and
17 energetic task the way that destiny sees fit to ask, then suffer
18 and so die without complaint."
19 And you stood up with this poem, this text, Mr. Duch. You have
20 taken it from a well-known poem in France of Alfred de Vigny
21 entitled "The Death of the Wolf". Do you understand, do you
22 realize, that you have retained what is most dangerous in this
23 poem, what is most morbid, because it gives no chance to
24 humankind?
25 [13.59.18]

82

1 You have taken out what corresponds to your way of perceiving
2 life; that is to say that humankind, man is a man is a wolf for
3 man. Do you understand that now, when you're being tried for
4 crimes against humanity, you are quoting the romantic poets?
5 This is very very worrisome because there are two possibilities
6 here.
7 Either you think that you have to die without saying anything,
8 while fulfilling your task in life -- and I am therefore asking
9 myself where is your contrition in this case -- or since the
10 start you are trying deliberately to put us asleep on the basis
11 of this excerpt. And I still ask myself, "Where is your
12 contrition?" I am sorry to say.
13 In any case, do you realize that there is here a complete
14 historical discrepancy which is the most surprising. We are not
15 here in a trial dealing with elegance. We are not here in a
16 literary discussion. I am speaking to you about the 12,000
17 people who died at Tuol Sleng. Some say 16,000 even. So where
18 is the romanticism in this?
19 As far as we are concerned, and if we would like to continue
20 sticking to these philosophical references, we consider -- sir,
21 we consider that you have become a wolf -- a wolf for mankind, a
22 wolf for man, and we do not wish the death of the wolf.
23 [14.01.35]
24 I will quote another text and I will finish, Mr. President, with
25 this text. This other text -- I find it much more noble and it

83

1 is the preamble of the Constitution of your country, and before
2 writing the Constitution its authors state the following:

3 "We, the people of Cambodia, accustomed to having been an
4 outstanding civilization, a prosperous large, flourishing and
5 glorious nation with high prestige radiating like a diamond,
6 having declined grievously during the past two decades, having
7 gone through suffering and destruction and having been weakened
8 terribly, having awakened and resolutely rallied and determined
9 to unite for the consolidation of national unity, and the
10 preservation and defence of Cambodia's territory and precious
11 sovereignty and the fine..."

12 Well, it is on -- it is this fine diamond-tipped point that I
13 will bear in mind. It is this image that I will keep in mind,
14 not the sharp point of torture but rebirth.

15 Thank you. I thank you for your attention. I thank you, Mr.
16 President, in any case, and Your Honours for having granted us
17 the right to exist. I will now give the floor to Ms. Jacquin.
18 This will require a few seconds to set this up.

19 MS. JACQUIN:

20 Mr. President, Your Honours, I'd like to convey my greetings.

21 [14.04.06]

22 I am deeply moved as we stand here before you to address the
23 Court on behalf of the civil parties who were victims of the acts
24 committed by Mr. Duch, who is being tried by this Court. It is
25 no easy task for us today to rekindle the memories, the life and

84

1 the suffering experienced by the civil parties in S-21.
2 Simone Veil, a minister of the French Republic who was interned
3 in Nazi concentration camps at the age of 17, said upon her
4 return:
5 "We were returning from a world where an attempt had been made to
6 banish us from humanity. We wanted to tell of this but we came
7 up against the incredulity and indifference of others. It was
8 only years later that we found the courage to speak about because
9 the world was listening to us."
10 Incredulity, indifference and the courage to speak out have been
11 fundamental aspects of the civil party participation in this
12 trial. It took Cambodia, as it did many countries who had
13 suffered similarly, decades for the survivors to speak out
14 because sometimes the torturers were their neighbours. They
15 needed to have the courage because at any point in time they
16 would be meeting those whom they were accusing in these
17 horrendous acts; those who were looking at them with their
18 conscience, good or bad.
19 As civil parties our first task is to speak out. When you take a
20 certain distance you find on one hand the sons and daughters of
21 the martyrs and on the other side you find a number of people
22 that the population -- in the population who want to forget or
23 have others forget what they were, and I think in this case what
24 we need to do is speak out. Duch, you are in the second
25 category: those who wish to forget who they were.

85

1 François Bizot wrote:

2 "...to obey terror but in such darkness and in such silence that
3 I wondered whether he had ever taken the measure of the terrible
4 power with which he was vested."

5 He was talking about you, sir. He was the first to say that
6 there was a certain humanity in you that should not be ignored,
7 but he was aware that at one point you were vested with the power
8 to kill and he wondered whether you were aware of it.

9 Mechanically, to the extremes, you applied the impersonal and
10 absolute instructions that were given to you. In your view, the
11 Buddhists will stultify the country and Angkar would glorify it
12 for prosperity. In order to do so, their entire country had to
13 be rid of the vermin to free them from the traitors -- to free
14 the country from traitors and the vermin.

15 It is on behalf of these traitors, these cowards, this vermin --
16 it is on behalf of these ghosts who before dying came before you
17 that I speak today. This was the voice that was taken from them
18 forever. This was the voice that left their children, sons and
19 daughters, prey to incredibility -- or incredulity and
20 indifference. And even today, incredulity and indifference can
21 return quite quickly and I think it is one of the purposes of
22 this Trial to put an end once and for all to the negation of the
23 reality of what daily life was in Cambodia.

24 [14.08.38]

25 To be joined as a civil party is something unimportant in view of

86

1 the violence that the victims suffered. And if we consider the
2 murders and the torture, we consider that they are not part of
3 the sacrifice because sacrifices are sacred. This cannot be said
4 of the sufferings suffered by the victims on the Khmer Rouge
5 regime.

6 The idea was to eliminate everyone who would one day try to
7 establish the death of a loved one. So today is there a search
8 for vengeance? No. What the civil parties want only is to speak
9 out whilst they still can. And it is in such difficult
10 situations that when you have bloodthirsty crises, that is when
11 we meet exceptional, peaceful individuals who are farseeing, who
12 try to stay out of this destructive mechanism.

13 Unfortunately, Mr. Duch, you are not one of those.

14 How can we situate this Cambodian tragedy in the context of the
15 tragedies of the 20th century? Horror does not need to be
16 widespread to be established, but to quantify it is a way to
17 begin to understand and accept it even though in Cambodia no
18 category of the population was spared. The power you held, Mr.
19 Duch, led Cambodians to despair. And this Court is honourable in
20 that it resides in the fact that it is giving voice to memory.

21 So should we find excuses for all this? Should we say that it is
22 the 540,000 people who died as a result of the U.S. Army bombing?
23 Should we say that it is because of the French protectorate that
24 was in this country since 1963 which prevented Cambodia from
25 being involved in the war of Indochina? No. There is no

87

1 historical excuse.

2 [14.11.02]

3 We cannot find excuses even in the violence of the western powers
4 or in the distorted philosophy that came from the West as well.

5 In Democratic Kampuchea, Mr. Duch, as you well know, there were
6 no prisons, no courts, no universities, no high schools, no
7 money, no post office, no books, no leisure activities. There
8 were rules. There were 12 hours of manual labour, two hours to
9 rest, and so on and so forth.

10 Angkar decided everything. There was a future which was
11 expressed in these terms: To lose you is no loss. To keep you
12 is no gain.

13 Can it be thought that everything has been said at this Trial? I
14 think not. And we cannot say this because there is no precedent
15 in the history of humanity for what happened in Cambodia. So the
16 goal today or one of the goals of this Court, at least insofar as
17 the civil parties are concerned, is that even 30 years later
18 voice has been given to the voiceless. People who could not
19 speak can now speak. We are enabling these sons and daughters of
20 those who were tortured, disembowelled -- these children of the
21 horror are now allowed to be heard and it is for them an
22 essential aspect.

23 Mr. Duch, you look at us today and you tell us, "I am another
24 man". You say that you have found a voice in a religion that
25 accepts forgiveness. Is forgiveness really applicable here? I

88

1 couldn't say. Can the civil parties as such, forgive what they
2 suffered?

3 In any event, after 30 years of silence, the civil parties can
4 talk and they can listen and that is important. Perhaps not by
5 you. Perhaps they'll be listened to by the Court. Perhaps
6 they'll be listened to by the West or maybe the Cambodians, those
7 of good conscience, and all of those with bad conscience as well.
8 It is difficult to know. We may not know this for sure, but we
9 know that they have spoken and they have been heard. Today, I am
10 a member of a group representing 28 victims who are the symbolic
11 representatives themselves of the 12 or 16,000 people who
12 perished at S-21.

13 [14.13.43]

14 And, Mr. President, I would like to take the time briefly to
15 mention each of these victims before this Court because for each
16 of these victims we saw courage and a difficult undertaking.
17 These victims will no longer be anonymous. We are going to talk
18 about the men, the women and the children who are no longer
19 faceless. They have names; they have families; they have a life
20 and they a right to life. And we think that these victims should
21 be present in the determination of this Court because, in the
22 final analysis, the madness of men, singly or severally, would be
23 unimportant if it had not led millions of men and women to lose
24 their rights to life.

25 That is why, Mr. President, I would like us to project a number

89

1 of photographs of the victims.

2 MR. PRESIDENT:

3 The AV Unit, could you please check to make sure that the voice
4 is heard? Now, you may proceed.

5 [14.16.32]

6 Now, the Chamber allows such pictures to be projected, but make
7 sure that you will be allowed to show the pictures in your
8 allocated time only.

9 MS. JAQUIN:

10 Thank you, Mr. President.

11 Mr. President, first of all we have Mr. Khuon Sarine. He joined
12 as a civil party for the detention of his uncle, Mr. Khuon Sarouk
13 who worked in the Cambodian Embassy in Japan, who returned to
14 Cambodia at the request of the government. He was interned,
15 detained and executed in S-21. Mrs. Meas Keth, Mrs. Tioulong
16 Neva and Tioulong Antonya applied to be joined as civil parties
17 on account of their daughter and sister, Tioulong Raingsey. She
18 was well known in Cambodia because she was a speaker on the
19 French radio. She was arrested, accused of being a CIA agent and
20 executed in S-21. Mrs. Meas, who is an elderly woman, never let
21 go and abandoned her daughter.
22 Antonya never, never forgot their sister and her children,
23 Nevinka and Visaka, never mourned their mother. Mr. Kimari was
24 the husband of Rangsey Tioulong. He, too, died at S-21. Nevinka
25 and Visaka remained orphans; they had lost both their parents.

90

1 Mrs. Chan Yoeurng joined as a civil party on behalf of her uncle,
2 Mr. Sok Bun. He was the mayor of his town. He was arrested and
3 imprisoned in S-21 and he was executed. Mr. Lay Chan came to
4 give to us his testimony of the suffering he endured whilst he
5 was detained in S-21. Mrs. Nhoem Kim Hoeurn lost three members
6 of her family in S-21, had two brothers. Nhoem Chan and Nhoem
7 Kuy were still children and she also lost her sister-in-law, Mrs.
8 Dong Rom
9 [14.18.57]
10 Mr. Fit joined as a civil party for the death of his friends Mr.
11 Poy, Yorng and Chhom, who were all detained and executed in S-21.
12 Mr. Chhat Kim Chhuun applied to be joined as a civil party for
13 the execution of his father, Mr. Am Thatt and his grandfather,
14 Mr. Am Sabin and during this case he also found the documents
15 pertaining to his great uncle, Mr. Pot Moy who was also executed
16 in S-21.
17 Mrs. Sek Seik was to marry Mr. Mok Chhoeun. The marriage never
18 took place because her fiancé was sent to S-21 where he was
19 executed. Mrs. So Saung joined as civil party for the execution
20 of her brother-in-law, Mr. Meas Sun alias Teng Sun, who was
21 bringing her up. Mrs. Ung Voeun joined as a civil party because
22 her brother, Mr. Ung Koam was executed. Mrs. Chin Meth came to
23 give testimony before you regarding the detention conditions in
24 Prey Sar. She still has the physical scars. Mrs. Soem Pov is
25 joined as a civil party for the execution of her brother, Ngay

91

1 Sreng. Mrs. Heit Tei Chov is joined as a civil party for her
2 uncle, Mr. Soss El who was accused of sharing intelligence with
3 the enemy and executed in S-21.
4 Mrs. Kan San was joined as a civil party for her brother, who was
5 a soldier who was at the front in Koh Kong. Mr. Man Sothea
6 joined as a civil party for the execution of his mother, Mrs. Sem
7 Lach Sin (phonetic). She was the former secretary of the
8 Cambodian Embassy in the Philippines. She expressed her
9 disapproval of the Khmer regime publicly. She was immediately
10 arrested and executed in S-21.
11 [14.21.14]
12 Mr. Phouk Khan joined as a civil party for the death of his wife
13 and cousin and also for the scars he bore after his own
14 detention. Mrs. Suon Sokhomaly joined as a civil party on behalf
15 of her husband, Mr. Suon Kaset, who was mentioned on several
16 occasions during the trial.
17 Mr. Ouk Vasouthin joined as a civil party, on behalf of Mr. Ouk
18 Chin, who was a member of parliament under Lon Nol. The next
19 civil party did not follow his father when he was arrested and he
20 never saw him again. Mrs. Lefevre and Mrs. Ouk Neary joined as
21 civil parties for the execution of their husband and father, Mr.
22 Ouk Ket, who was in France and returned to Cambodia at the
23 request of the government and for the love of his country, and he
24 was immediately arrested and executed in S-21. Mrs. Martine
25 Lefevre and Mrs. Ouk Neary never forgot their husband and father

1 and still suffer from his loss.

2 Mrs. Meas Saroeun joined as a civil party on behalf of her

3 father, Mr. Ouk Tob, who was also a soldier and who was in Robas

4 Eyk district, who was arrested, imprisoned in S-21 and executed.

5 Lastly we have Mrs. Pan Pech, who discovered that her

6 brother-in-law, Mr. Lon Ung (phonetic) had also been detained and

7 executed in S-21.

8 Mr. President, these are the 28 civil parties we represent and I

9 would like to mention their courage because two years ago it was

10 difficult to be joined as a civil party in Cambodia. Primo Levi,

11 a European writer who experienced the war and the Nazi

12 extermination camps, who tried to understand and share his

13 experience, said in his seminal work, which is entitled "If This

14 Is A Man", that it was difficult to understand the experience of

15 the detained people.

16 [14.23.32]

17 You see, imagine a man who is deprived of who he is -- his house,

18 his habits, his clothing -- everything he possesses. He would be

19 a hollow man. He is reduced to suffering and need. He is devoid

20 of any judgment. He is oblivious of all dignity because a man

21 who has lost everything may lose himself. Such a man's life or

22 death can be decided light-heartedly without any human

23 consideration except for the fact that he may be found useful.

24 The feeling of our existence depends largely on what other people

25 think of us.

93

1 So we can characterize as non-human the experience of those who
2 have experienced the time when human beings were objects in the
3 eyes of other human beings. Monsters exist, but they are too few
4 to be really dangerous. Those who are most dangerous are the
5 ordinary people, the functionaries -- those who are ready to
6 believe and obey without question -- and Mr. Duch, perhaps you
7 are one of those. Perhaps you are the ordinary man, this former
8 teacher, this Marxist who was loyal, who was good at obeying
9 orders, who was assiduous, who could forget the humanity of men,
10 women and children under his charge in S-21.

11 In an attempt to understand these acts, the psychiatrists, Boris
12 Cyrulnik wrote in 2009 in September:

13 "These men and women kill for love. In their happiness they
14 become people who are venerated. They experience ecstasy. It is
15 at odds with their routine and social humiliation. To kill while
16 smiling, without feeling any guilt, you have to not put yourself
17 in the place of others. You have not to imagine his suffering.
18 Understand the empathy. You have to continue empathy and
19 understand only group values, which is why all well brought up
20 pleasant people still can become assassins. It is not mental
21 illness or family unrest that we can find the explanations for
22 mass murders. It is in the pleasure that they derive from
23 submitting to popular madness and it is that which will be most
24 frightening.

25 [14.26.19]

94

1 Lastly I shall quote François Bizot again, who is an important
2 witness before this Court and who said:
3 "I am purged of my ghosts. I have emptied my memory. I close
4 the gate behind me. Death was so close that we smelled its
5 foetid breath. Nobody felt omnipresence in our camp. Like us,
6 like them, like Duch, I had become familiar with the horror."
7 So Mr. Duch, what did you want it to be said? Did Angkar
8 congratulate you for these confessions that were so necessary?
9 Today you have heard the civil parties, those whom you did not
10 give voice to before -- 30 years later -- have you now
11 understood? I doubt it. I do not know. The only approach of
12 civil parties is to give testimony so that the whole of humanity
13 can take up the flame of their struggle so that they can
14 understand that they can be the voice and be those who have had
15 the courage to participate in this trial. A survivor of the
16 genocide described how he was in the jungle, he was alone and
17 hungry. He wanted the world to know how a regime had coldly
18 planned the deaths of millions of women and children, plunging to
19 the country into pre-history. The trace that the Khmer Rouge
20 leaves is that of blood and victims and we seek justice.
21 For the civil parties, giving testimony is their overriding goal.
22 They want to talk about the spectre that haunts them and which I
23 believe haunts you too. You should not take the absence of
24 judgment of the civil parties as forgiveness. Primo Levi said:
25 "No, I will not forgive any of the guilty parties, either now or

95

1 ever. I will only forgive somebody who is now proven to be aware
2 of the faults of the past and who is now resolved to excise them
3 from his conscience and from the consciousness of others."

4 [14.28.43]

5 What do you say, Mr. Duch? You have acknowledged during this
6 trial a great many things but very often you have challenged
7 details and you have often challenged details unjustly, and you
8 have said in that case that you challenge them because you
9 yourself could not accept what had happened; that the civil
10 parties had to accept. To give the floor to the civil parties
11 before this Court has enabled them to raise the dead again and to
12 give them a voice.

13 So I shall conclude my statement with a few words by

14 Levi-Strauss, who said:

15 "The respect of humanity by humanity cannot be based in its
16 particular dignity that humanity arrogates because humanity will
17 then be able to decide that they deserve the dignity, or some
18 aspects of humanity will decide that they deserve the dignity
19 more than others. We should start by respecting all forms of
20 life apart from one's own life. If we do not do so we will not
21 respect the other forms of life in humanity itself."

22 This is the heritage of this great thinker that we as lawyers and
23 judges should never lose sight of, because nothing can ever
24 justify one human being dominating another. Thank you.

25 [14.30.07]

96

1 MS. MOCH SOVANNARY:

2 Mr. President, Your Honours of the Trial Chamber, as a new
3 generation and on behalf of civil party group 3, first of all I
4 would like to express my profound thanks to the Royal Government
5 of Cambodia in conjunction with the United Nations for
6 establishing this Tribunal, because of this very important
7 influence that the civil parties' voices are now heard and that
8 their rights are acknowledged and they can take part to claim
9 their reparations.

10 I will be talking only about the reparations they deserve.
11 According to the previous hearings, everyone has acknowledged
12 without any denial that civil parties have suffered physically
13 and mentally. The victims themselves have also acknowledged
14 these sufferings and everyone recognizes that this suffering has
15 been inflicted onto them by the crimes at S-21 under the
16 supervision of the accused person. I would like to also tell the
17 Court that this kind of suffering still remains, although 30
18 years or so have passed and that the regime has collapsed, but
19 time passes by; the suffering remains.

20 The civil party group 3 would like to express our support in
21 relation to the legal grounds concerning the reparations and the
22 motion dated on the 14th of September 2009 document E159 and we
23 also support another document, document E159/3/1, the submission
24 in relation to the reparation. And we also support other claims
25 or requests for reparations raised by other civil party lawyers

1 in their closing statements.

2 We would like to note that this nation, these people are in need
3 of rehabilitation. They need effective medical care and
4 treatment for the victims. National reconciliation or the
5 restoration of the damages for those victims cannot be done
6 without this Court and we believe that the Court will bring this
7 to the civil parties, and we would like to note that what the
8 civil parties' lawyer and the victims of our group would like is
9 the justice. Justice needs to be done and it has to be seen to
10 be done. And by way of giving them, awarding them the
11 reparations, it is a justifiable means to prove that justice is
12 done and seen to be done. Reparations do not come in the form of
13 empathy or sympathy or compassion but is the form that they
14 deserve, the rights they're entitled to get, to be given.

15 [14.34.04]

16 I would like to also pinpoint the effectiveness of how the
17 reparations are implemented and I would like to draw the Trial
18 Chamber's attention to some forms of reparations requested by the
19 parties. First, the civil party lawyers group 3 support all
20 forms of reparations as already entailed in other submissions by
21 previous civil party lawyers, and we would like the Chamber to
22 also consider additional forms of reparations as follows.

23 The civil party lawyers group 3 believe that an establishment of
24 voluntary fund or so-called trust fund is very important and to
25 make sure that such fund is genuine, we would like the Trial

98

1 Chamber to first maintain or preserve the crime sites. Number
2 two, to protect and maintain those sites because they were the
3 places where victims were executed and that civil party lawyers
4 group 3 would like to maintain our strong position that those
5 sites shall be maintained and preserved to commemorate the
6 memories of those victims.

7 It is very important because the preservation of the sites is the
8 -- it's like the memory to tell to the younger generation to
9 remember the crimes committed and victims can go there to stand
10 right in front of the memorials to cry out loud and to express
11 their grievings. And after all, these places will be the place
12 to encourage them because at least we believe that the victims
13 were not murderers, and we believe that only them can really stop
14 the miserable historical wheel to repeat its path.

15 [14.36.45]

16 And we would like the Trial Chamber to also first declare that
17 all buildings and the locations of S-21 or in Phnom Penh or at
18 Prey Sar are well maintained and, number two, all crime sites are
19 to be preserved and the instruments of torture have to be
20 maintained where they belong. On top of that, all documents at
21 S-21 -- regardless of the documents that have already been well
22 displayed in the public -- have to be well preserved.
23 Four, preserve all the documents and portraits -- for example,
24 those by Vann Nath, the survivor of S-21 -- and have those
25 portraits exhibited and displayed at S-21. And we would like,

99

1 also, the Trial Chamber to consider erecting the plaque or the
2 board to commemorate the victims and to commemorate the forced
3 labour.

4 And on top of that, we would like the Trial Chamber to declare
5 the preservation of the graves and pits at Choeung Ek. And we
6 would like, also, a request for the building of the place where
7 the displays of detail of how order was executed by the accused.
8 And we would like the Trial Chamber to order the writing of the
9 names of the victims at S-21 -- the names from the list of the
10 joined prisoners list of S-21 from document E68.

11 [14.38.46]

12 And we would like, also, a board where the names of the victims
13 -- unidentified victims -- are displayed on that board and that a
14 pathway is left for victims to walk past the place to commemorate
15 the souls of the victims because it is the places where the last
16 minutes of the lives of their loved one ended.

17 Next, the civil party group 3 would like to request that the
18 Trial Chamber order a trust fund for the benefit of the victims.
19 The reason for this is that we would like to remind and draw your
20 attention that after the case file is concluded, it finished but
21 the victims remain. They still have to struggle on to life for
22 many years to come and we have already learned that they have
23 suffered a great deal and they are now facing their mental health
24 and they have poverty.

25 Moreover, during the 3 years, 20 days -- 8 months, 20 days,

100

1 rather, and after more than 30 years of the collapse of the
2 regime, there has not been any tangible treatment or medical
3 attention to the victims. And most importantly, the direct
4 perpetrators have still enjoyed or had still enjoyed impunity and
5 that the trial process is really a venue for encouraging the
6 victims to believe that justice is done. And that they need
7 medical treatment. They need their medical treatment so that
8 they can really be cured from the mental harm. And this fund in
9 particular shall be established in a way that it is transparent,
10 flexible and independent in its mission.

11 Next, I would like to also present to the Chamber in relation to
12 the other matters that may arise in relation to the
13 implementation of the reparations. The question remains. Who is
14 going to implement such reparations and when should such
15 reparations be implemented? And when exactly should the trust
16 fund be established?

17 [14.41.48]

18 And there is another question, also, in relation to how the
19 reparations are implemented because the accused is considered to
20 be indigent. And when the final judgement comes final and if
21 there is no -- in effect -- implementation of the reparation, who
22 is ready to solve this problem? So to that effect, the civil
23 party lawyers, group 3, would like to request that in the final
24 judgment the Trial Chamber pinpoint who exactly is responsible
25 for awarding the reparations.

101

1 According to Internal Rules, Rule 113(3) reads that, "The
2 Co-Prosecutors may seek the assistance of the law-enforcement
3 authorities to ensure the execution of sentence." Here we have
4 the Victims Unit. And the Victims Unit has the authority and
5 can work for the interests of the victims. So this unit deserves
6 the position to help the victims.
7 So we would like the Trial Chamber to state in its final judgment
8 the time period to execute the reparations and we request that
9 the sooner the better that the reparations are executed
10 especially it would be better if after 30 days when the judgment
11 comes final, then the reparation comes into force.
12 And we would like, also, that the committees for establishing the
13 trust fund is established and we would like the composition from
14 the Victims Unit to be part of the committee and if the Trial
15 Chamber finds that it is appropriate that the Victims Unit shall
16 be allowed to be still functional to help maintain the
17 reparations process and that we would like the committee to be of
18 the people who have good knowledge and that the statutes of such
19 committee is also thought.
20 [14.44.34]
21 Mr. Kong Pisey of civil party group 2 already addressed his
22 matter and that we believe that the Trial Chamber can exercise
23 its discretion on how they can find ways to award the reparations
24 more effectively to the victims and that the Court can also
25 declare the sources of the funds to be used for such reparations.

102

1 We also request that the assets of the accused is disclosed and
2 that we would like the Trial Chamber to declare that such assets
3 be automatically be included in the trust fund. And we would
4 like the Trial Chamber to set or order a provision so that it can
5 be implemented more effectively regarding the reparations.

6 In relation to the same interests of civil party group 3, we
7 welcome any kind of resolution the Trial Chamber sees important
8 and beneficial to the implementation of the civil party
9 reparations.

10 So here, we would like to present such statements to the Trial
11 Chamber and on behalf of the civil party, I am very grateful to
12 the Trial Chamber for your very consideration concerning these
13 reparations and we believe that the reparations will be awarded
14 more effectively.

15 And finally, we are very grateful to the Chamber for giving us
16 the opportunity to address the Court on behalf of the civil party
17 lawyer group 3. I am very grateful, Your Honours.

18 [14.46.32]

19 MR. PRESIDENT:

20 Civil party lawyers, group 3 have already concluded their oral
21 statement and they have really followed the allocated time set by
22 the Trial Chamber.

23 Since it is now an appropriate time to take an adjournment, we
24 will take the adjournment for 20 minutes and we resume at five
25 past three.

103

1 (Judges exit courtroom)

2 (Court recesses from 1447H to 1508H)

3 (Judges enter courtroom)

4 MR. PRESIDENT:

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

6 We would like now to give the floor to the civil party lawyers,
7 group 4 to make their closing statement. The counsel has the
8 same allocated time as the other three groups, 1 hour and 15
9 minutes. You may now proceed.

10 MR. HONG KIMSUON:

11 Thank you, Mr. President, Your Honours and the distinguished
12 guests.

13 [15.09.11]

14 My name is Hong Kimsuon and along with my co-counsel, Mr.
15 Pierre-Olivier Sur, we are presenting the oral closing statements
16 in relation to the reparations and the civil party applications.
17 And we are not going to pinpoint the charges or neither am I
18 going to present the factual analysis of any matter in the case
19 file because the victims are entitled to only address the Court
20 concerning the reparations and the suffering they have endured
21 during the Khmer Rouge regime especially those who have suffered
22 in S-21 and S-24 or Prey Sar.

23 For the last 30 years, for the Asian people who are Buddhists are
24 quite familiar with the Buddhist principle that we should learn
25 how to forgive and forget or in another sense, we say that those

104

1 who commit bad things will receive bad karma and those who do
2 good will receive good things.
3 And these days, we already live in a country in which we know
4 that the country with the rule of law that in such a country
5 there are three main bodies; the executive, the legislative, and
6 the judicial body and now we have the Tribunal, the Court which
7 is established to bring charges against those people whom have
8 committed crimes or who have committed crimes during the Khmer
9 Rouge regime.
10 I would like to make it clear that it is now the most important
11 day of the victims in this country and in the world who are
12 waiting for the Court to bring justice to them. So, I would like
13 to appeal to the Tribunal to do its best to make sure that
14 justice is done and seen to be done to those people and on behalf
15 of the victims.
16 In Case File 001, there are about 90 people, but the reason we
17 have few numbers of them in Case File 001 is because that they
18 have not been quite familiar with the effectiveness of the
19 internationalized court. So on behalf of both groups, we don't
20 have a lot of civil parties, but we believe that we make a good
21 portion of the civil party groups.
22 [15.13.03]
23 And according to Rule 23 of the Internal Rules of the ECCC, civil
24 parties are entitled to the right to participate in the
25 proceedings and the civil parties' lawyers are -- the four groups

105

1 have already submitted a joint submission in relation to the
2 claims for reparations in Case 001.
3 Today, the civil party lawyers, group 4 would like to add an oral
4 closing statement concerning the civil reparations and to that
5 effect, we are now representing 10 victims -- direct or indirect
6 victims: Mr. Ou Savrith with ERN number -- with E2/26; 2.
7 Madame Nhek Ou Davy; 3. Ms. Ou Kamela E2/27; 4. Mrs. Chum Neou
8 D25/16; 5. Mr. Touch Monin D25/14; 6. Mrs. Kaun Sunthara
9 D25/17; 7. Mrs. Ros Chuor Siy E2/38; 8. Mrs. Ros Men D25/9
10 (sic); 10. Mrs. Kong Teis D25/19 -- my apologies, the numbers
11 are mixed up -- 10. Mr. Chraing Sam-Ean D25/12.
12 These 10 people are the direct and indirect victims. For
13 example, Mr. Ou Savrith, with E2/26, Mrs. Nhek Ou Davy and Ms. Ou
14 Kamela whose relatives were the victims who perished at S-21
15 known as Tuol Sleng Museum now and they are here in the
16 courtroom. They have travelled all the way from France and Mr.
17 Ou Savrith and his relatives are here in the courtroom and their
18 loved one was Ou Vindy who was executed by the people under the
19 supervision of the accused, Kaing Guek Eav alias Duch. Although
20 the accused may not acknowledge that Ou Vindy was executed but
21 his name appears in the list of the prisoners list at S-21. So
22 it is to the knowledge of the accused that whoever's name appears
23 in the list was detained and executed at S-21.
24 So Ou Savreth who is the brother of Ou Vindy was executed on the
25 20th of May 1976. And Mr. Ou Savreth is the civil party ERN

106

1 number 00364092 through 00364093. And his identification card or
2 birth identification is under ERN 00364089 through 00364091.
3 Mr. Ou Vindy got married to Mrs. Kamela in Phnom Penh on the
4 first of August, 1969 as stated already in the document with the
5 ERN 00274209 through 00274213. And her national identification
6 card is also included, the card of Nhek Ou Davy under ERN
7 00274208.
8 [15.19.13]
9 And finally, Ms. Ou Kamela 38, is the daughter of Mrs. Nhek Ou
10 Davy and Ou Vindy as indicated on the family civil status record
11 under ERN 00274213. Ms. Ou Kamela's national identity card is
12 also in the case file with ERN 00273257 through 00273258.
13 These identifications are the proof, the legal proof before the
14 ECCC in that they have already been recognized.
15 I would like just to indicate that these 10 victims have not been
16 refused by the trial Chamber or challenged by the defence
17 counsel. I would just like to remind the parties to the
18 proceeding and the Court about the process of the following
19 people in relation to Mr. Ou Vindy when before he was executed or
20 tortured and executed at S-21, he was an officer in the Sihanouk
21 regime and he still maintained his position in the Lon Nol's
22 regime and he was appointed to work at the cabinet of ministers.
23 And he was a very good father and he got married to Madame Nhek
24 Ou Davy and they have three children.
25 In 1976 he was arrested by these infamous Angkar and smashed in

107

1 May 1976. His name appears in the list of the prisoners of S-21.
2 It can be found also under ERN 00171639 under number 7059. And
3 for more information of his confession it can be found under ERN
4 number 00274217 through 00274264. And his photo can also be
5 found.

6 Regarding the tortures that had been inflicted onto him by the
7 henchmen of the accused -- and we believe that he implicated
8 himself in the confession that he was the CIA agent, and he
9 himself did not even understand who or what CIA was and the
10 accused himself made it already clear that CIA was just the term
11 used to force the prisoners to say so in order that they were
12 implicated in the confession before they were arrested and
13 executed.

14 [15.23.29]

15 So Ou Savreth was 11 years old at that time and he continued his
16 education in France. His wife and children were in Cambodia
17 during the Khmer Rouge regime and when he learned of the
18 information that his brother Ou Vindy, or the husband of Madame
19 Nhek Davy or the father of Ms. Ou Kamela, was arrested and
20 executed by the Khmer Rouge regime at S-21, the facility under
21 the supervision of the accused Kaing Guek Eav alias Duch.

22 And this family has lived with these haunting memories until
23 these days. They are now recalling how their husband, their
24 brother, their father suffered before he was executed. According
25 to the video link in the proceedings, Mr. Ou Savreth already

108

1 expressed his suffering and the unspeakable suffering, having
2 lost his brother. His wife and his children made it clear
3 already that what they would wish to see in the proceedings is
4 the searching for the truth and justice for the brother, for Mr.
5 Ou Vindy, and the justice for Madame Nhek Ou Davy and Ms. Ou
6 Kamela.

7 The confession which contains 56 pages and maintained at S-21
8 detention facility is there and they want to find out how the
9 person was detained for more than 90 days at Tuol Sleng. How
10 painful was it?

11 Therefore, without any prosecution or without any searching for
12 the witnesses to bring in the evidence, then no one ever knows
13 how those people died and whether their souls can rest in peace
14 or not.

15 [15.26.27]

16 To conclude, I would like to also address the Court concerning
17 the suffering of the civil parties groups I am representing.

18 Mrs. Chum Neou is the direct victim and indirect victim of S-21
19 which covers also S-24. Mrs. Chum Neou is the direct victim who
20 was cheated by the Khmer Rouge long before 1975. She was tricked
21 by the propaganda of the Khmer Rouge and she ended up being a
22 victim at S-24. Her husband, Mr. Nou Samouen, who was a very
23 loyal person to the Khmer Rouge regime, was also a victim of S-21
24 and perished there.

25 Her suffering remains. She has struggled for the rest of her

109

1 life for the cause of the revolution but, after all, she lost her
2 loved one and when she returned to the home village she only went
3 there to learn that her relatives were all executed by the Khmer
4 Rouge and she was also criticized and blamed for causing all the
5 suffering, and she was accused of supporting the Khmer Rouge by
6 her relatives.

7 The painful recollection of Mrs. Chum Neou at S-24, or Prey Sar,
8 is forming a part of her testimony and that she was arrested
9 along with her husband and detained at S-21 by the end of 1976.
10 They were accused of being enemies. Her husband was the very
11 loyal servant to the Khmer Rouge regime.

12 [15.29.50]

13 In 1977, after the arrest of her husband in late 1976, so early
14 1977, she was five months pregnant and she was departing from her
15 husband to experience -- or to be exposed to the great suffering
16 at S-24, and she came here before the Chamber to give testimony
17 in August 2009 and she saw the accused, although she did not make
18 it clear that she was close to him, but she saw him during the
19 time when she had suffered from the accusation that she belonged
20 to the group of the enemies, or the elements -- the bad elements.
21 She was working in the rice field and she saw the accused, who
22 was walking on the paddy field dike, but the accused already
23 challenged such recollection. And at a later date when she was
24 still detained she got morning sickness and every pregnant woman
25 in the world, I believe -- if someone who was five months

110

1 pregnant, would need nutrition to support, to feed -- for the
2 good health of her herself and the infant. It is really
3 important that she wouldn't get enough food but instead she was
4 not given sufficient food. And at night she was detained in a
5 locked room while during the daytime she would be taken to work
6 in the rice field.

7 She gave birth to a baby without a medic or midwife but she was
8 assisted during the labour by a co-detainee and it was quite
9 suffering because when her baby was born there was not even a
10 piece of cloth to wrap or to use for covering the infant. Is it
11 still the way that the accused keeps saying that he doesn't
12 understand the Criminal Code or law, so we believe that this is
13 all the sufferings Mrs. Chum Neou has suffered, and she worked
14 her best to make sure she can live to see her newborn.

15 [15.33.21]

16 But later on the subordinates of the accused Kaing Guek Eav,
17 alias Duch, forced her to work, leaving her infant alone, and she
18 had some health problem that she could not really breastfeed the
19 newborn, and this problem made it impossible for her to
20 breastfeed the newborn. And it is quite painful to see such
21 situation and no-one knows this very well, other than the victim
22 herself.

23 In 1978 her newborn died. It was then that the Angkar and Duch's
24 subordinates allowed Chum Neou to see her son, but she could not
25 really see him alive because he died before she approached him.

111

1 She was lucky though. She returned to the detention facility and
2 could survive the regime.

3 And she also indicated before the Chamber on the 24th that she
4 was forced by the military under the supervision of the accused
5 to go into the jungle for several years to come and one day, as
6 she indicated in her testimony, tried to escape but the Kaing
7 Guek Eav subordinates arrested her and that the accused pointed a
8 pistol right into her forehead but the accused already challenged
9 such account.

10 And I don't want to repeat that Madam Chum Neou has lost
11 everything after the regime and I will share the floor with my
12 co-counsel, Mr. Pierre-Olivier Sur in a moment but I would like
13 to talk about Mr. Touch Monin who is another civil party whose
14 brother, Mr. Chea Khan, alias Chin -- and the accused has already
15 acknowledged the person in the courtroom because he was the close
16 friend of the accused but was killed during the regime under --
17 at S-21.

18 [15.36.25]

19 Chea Khan also died at S-21. Yin Thony (phonetic), the nephews
20 -- and these people died at the facility. Madam Ros Chuor Siy
21 also died. I think my co-counsel should take the floor from me
22 to describe more on the matter of this victim because she lives
23 --

24 she is in France. Another three victims Ros Men, Ros Thim, were
25 the victims -- Chraing Sam-Ean who was the brother of Chraing

112

1 Sam-Ean and Madame Ros Men and her sister Ros Thim -- the husband
2 Ros Che was found to have died at S-21.
3 I would like to finally say that these 10 people have joined as
4 the civil parties and we would like Your Honours to consider
5 their suffering and how they died at S-21 and despite of that the
6 accused keeps challenging such account and in our joint
7 submission of the full civil party lawyers of the four groups.
8 We already included the reparations and forms of reparation but
9 we would like to add that these days the victims do not think
10 that they will get any direct reparations from the accused
11 because the Court has already acknowledged that the accused is
12 indigent.
13 [15.39.12]
14 So we would like to see in the judgment the order to -- people
15 concerned to erect a board and to list the names of the victims
16 at S-21 and also S-24. We would like the memorials for the
17 victims so that victims can be well remembered. And we also wish
18 that the entrance fee at S-21 and Choeung Ek be included in the
19 fund to reveal any reparation related courses.
20 Next, I would like to share the floor with Mr. Pierre-Olivier
21 Sur. I am very grateful to Your Honours.
22 MR. SUR:
23 Mr. President, Your Honours. I am aware of the honour, the
24 immense honour that I have in ending this day on behalf of the
25 victims of S-21. As each of my learned colleagues has addressed

113

1 the court and they have each talked about the matters of fact and
2 of law and the history or this first in the history of courts, I
3 shall limit my address to some snapshots, powerful depictions of
4 what is felt now by the families of all the claimants, of those
5 who died in S-21.

6 The first impression, Mr. President, Your Honours, is a paradox.
7 We note that if Duch came to this Court without a great deal of
8 difficulty, the victims for their part had enormous difficulties
9 in securing recognition as civil parties because in the final
10 analysis they are not even up to 100 of them. This paradox is
11 based on two words, that reduces the situation to the level of
12 theory.

13 [15.43.03]

14 Duch is in complicity, as one might put it, with your Court. The
15 victims have been, for a long time, at odds with the procedures
16 so to speak. The road has been very long for the victims and
17 it's been a hard road to travel. It has been 30 years and after
18 30 years whilst in the villages where they live, in the rice
19 paddies where they work, they have each found a way to live with
20 the others. And who are these others?

21 In one family, the other is one who is a former Khmer Rouge. And
22 besides, are there not amongst our clients people who are former
23 victims but also former Khmer Rouge soldiers?

24 And then, Mr. President, Your Honours, there is a huge cultural
25 problem that further complicates the issue. My colleagues have

114

1 said all day, and I repeat, that they are steeped in Buddhism.
2 This magnificent religion with its notion of karma, its belief in
3 reincarnation, and the concept of letting go.

4 In the meantime, their country which is still led by a former
5 Khmer Rouge soldier has all the trouble in the world and one
6 might well understand. To foster this cohabitation and looking
7 towards the future whilst keeping memories alive. It has been
8 barely a few months since the history books started teaching
9 about S-21.

10 In this culture clash, which consists in coming to a Court and
11 speaking to Mr. President and Your Honours, we have a culture
12 where the prosecution is inquisitorial and the procedure is
13 written, whereas the oral proceedings would be the norm.

14 And these are our proceedings which consists in agreeing to speak
15 out, which consists in agreeing to shed tears in public, so that
16 this catharsis as one of my colleagues described it
17 -- because this catharsis is at odds with Buddhist culture.

18 Opposite us we have Duch, about whom the remarkable psychological
19 experience of the expert, Ms. Sironi-Guilbaud, revealed that he
20 had two principal character traits. The first is that he will
21 always choose the law of the survival of the fittest. The
22 survival of the fittest was first and foremost a tenet of French
23 culture when he studied and with his love of good work, as the
24 expert said, he was in such great service to our culture that
25 today he's able to recite from memory, without notes, the end

115

1 lines of Alfred de Vigny's "Death of the Wolf".
2 And when Khmer Rouge became powers to be reckoned with in his
3 country, he chose to serve them. There also he did so with his
4 love for a job well done, and we ask how far. And then you have
5 a third phase in his life. After the fall of the Khmer Rouge
6 regime, he converted to Christianity. So he, in a manner of
7 speaking, re-Westernized himself and Ms. Françoise
8 Sironi-Guilbaud, the psychiatrist, says that although is
9 conversion was sincere it was primarily to satisfy his desire,
10 his renewed desire to follow the law of the survival of the
11 fittest.
12 [15.50.20]
13 And so he comes before this Court in total complicity, and so he
14 monopolized the hearings and the Trial, sometimes assigning good
15 and bad points at will, and so he is diametrically opposed in his
16 approach to the approach of the families we represent.
17 Might it not be difficult for him because the second major
18 character trait, still according to Ms. Sironi-Guilbaud, is that
19 he has a psychological shortage in terms of empathy? This man
20 experiences difficulty in approaching sentiment and empathy,
21 proximity, understanding of suffering that is experienced by
22 other people, and so he may triumph at his trial. Mr. President,
23 Your Honours, I wanted to bring to your attention this difficulty
24 that is felt because amongst the victims there is a great sense
25 of discomfort.

116

1 The second impression that I wish to share with you is the way in
2 which our clients respond to Duch's requests for forgiveness. I
3 have said before that obviously culture clash contributes to this
4 dichotomy, but if we work hard and think about it, it becomes
5 possible in our view to respond to Duch in two ways. The first
6 thing, or the first way, is that the victims acknowledge the
7 position that he has taken.

8 I am representing a woman who was sequestered for nearly seven
9 years by a terrorist group called FARC, and I'm referring to
10 Ingrid Betancourt. She and her colleague in misfortune -- or
11 partner in misfortune, said that their torturers, of course,
12 never mentioned the issue of forgiveness because they are still
13 at war, and each of these women said that they did not regain
14 their freedom when they were finally sitting in a helicopter that
15 was taking them away from hell. They regained their liberty or
16 their freedom later on when they went -- or embarked on the
17 journey of forgiveness.

18 [15.55.17]

19 This is something that is personal to the victims. Mr.
20 President, Your Honours, this is a matter solely for the victims
21 because in regard to the accused -- which brings me to my second
22 point, unforgiveness -- the situation is entirely different. In
23 this regard, forgiveness can only be accompanied by sincere
24 confession, and sincere and exhaustive confession, and yet it is
25 not our impression that the confessions were sincere and

117

1 exhaustive.

2 I remember Mr. Karim Khan recalling the episode of torturing

3 people by pricking under their nails. I also recall the episode

4 of cement on the face, or indeed the incident -- the situation of

5 prisoners who ate their own excrement, as we were told.

6 I hear my colleagues telling me that each time the problem of his

7 teacher was brought up, Duch was evasive. And still I hear our

8 civil party clients that my learned Hong Kimsuon mentioned at the

9 end of his statement. And I refer here to Ms. Chum Neou at M-13;

10 Duch's revolver on her temple.

11 Mr. President, I know that this is not within the jurisdiction of

12 the Court but all the same, faced with such a memory, such an

13 indelible memory, that of having a revolver pressed to one's

14 temple, Duch refused to acknowledge the facts. And then

15 regarding forgiveness that he's speaking to us about, there is no

16 pure form of forgiveness when it is deprived. Pure forgiveness

17 only exists when it's deprived of negotiations.

18 However, how may we imagine that at the end of the defence's

19 argumentation we ask you, regarding the essence of this argument

20 about forgiveness, that they are requesting negotiation on the

21 sentence?

22 [15.58.56]

23 Furthermore, Mr. President, Your Honours, there is a third

24 emotion that transpires from these hearings when we speak

25 together. It is Duch's argument, telling us that he was just a

118

1 pawn, just a pawn in the Khmer Rouge machinery. Then if somebody
2 else had been at the head of S-21, he would have done the job a
3 bit as Eichmann has pleaded when he was in Jerusalem.
4 This argument is not admissible. First of all, we very well know
5 that he left M-13 to come to S-21 as a theoretician of torture.
6 It is at M-13 that he perfected his sinister methods and it is
7 because he felt love for a well-done job at M-13 and because at
8 M-13 he was doing it better than the others that he was chosen to
9 become, as he states himself, the Chairman of S-21.
10 Someone who puts everything into theory, somebody who improves
11 things, somebody who commands, is not a simple pawn.
12 Furthermore, we very well know that he had saved Bizot. We also
13 know that at S-21 he spared the dentist, he spared the
14 photographer, he spared the painter. And we have read in the
15 interviews of the photographer that when the photographer was
16 doing his job at S-21, the photographer would sometimes go to the
17 house where Duch was living to take thousands of photographs of
18 Duch -- thousands of photographs of Duch in his personal private
19 life.
20 This man -- he spared this man, the photographer, obviously. And
21 Dr. Chandler came to testify to say that indeed Duch could not
22 only save people within S-21 but also prevent arrests. However,
23 if he was able to spare, he was also able to smash, and smash
24 even his schoolteachers, and we will always remember his
25 schoolteacher. We will always remember his law teacher.

119

1 [16.03.18]

2 We will always remember finally his former superior, Son Sen, to
3 such a point that he might not have been just a pawn but, on the
4 contrary, maybe he ended up terrorizing -- even terrorizing his
5 superiors.

6 Mr. President, Your Honours, Duch finally is seeking through his
7 counsel to be rehumanized. Indeed, it is important that the
8 Chamber treat him as he was treated during these proceedings;
9 that is to say, with respect to the defence and with respect to
10 the person he is, but if he has to be rehumanized, what does this
11 mean? What does it mean to be rehumanized?

12 It means that if we have to bring him back to our community of
13 human beings, this means that we have to consider that he is part
14 of our social group, that he is a member of the social contract
15 that unites us all and that generates our society.

16 So he must be judged in his role; that is to say, the role of a
17 criminal, a criminal against humanity. If Duch tried to move us
18 during the first time he came to the dock by telling us that at a
19 given moment he could no longer backtrack, that he ended up
20 thinking about his child and about his wife and about himself and
21 that he was a coward, well, I would simply like to recall that
22 this man also in the same period gave birth to another child and
23 therefore he was not only following a psychological strategy of
24 locking himself up in himself and of resisting, but also that he
25 was doing precisely the opposite -- that he was developing

120

1 himself.

2 [16.06.59]

3 I would like to state once again that here and to close, what I
4 have to say -- to say a few words about the people I have met and
5 that I will never forget.

6 I would like to tell you that Ms. Ros Men yesterday was in a
7 total blackout situation; she could no longer even make us
8 relive, bring her brother back to life who was a Buddhist monk,
9 who died at S-21. Bring back to life, in her memories even. We
10 have reached that level. The hearts, the souls are locked.
11 And I would like to say a few words about Ms. Kong Teis and her
12 daughter who yesterday, again, were shedding tears and these
13 tears moved me because I know that this is an act that already
14 proved that they were facing the emotions that they have to
15 accept to feel in a trial and the daughter told me, "Think.
16 Imagine that during the Khmer Rouge period, we were not even
17 entitled to cry."

18 [16.09.20]

19 And this made me think about Principle Number 6 of the Rules of
20 Discipline of S-21 where it is written that as you're being
21 beaten and as you're receiving electric shocks, it is forbidden
22 to scream. And I wish to share with you the emotion of Ms. Chum
23 Neou the one who had the revolver put to her temple, who came to
24 tell us that Duch is lying.

25 Mrs. Kaun Sunthara and my colleagues showed to you photographs

121

1 and I would like simply to -- and out of respect for her -- to
2 remind what is said in a written record regarding her brother so
3 that we may bring him back to life for a few instants among us.
4 He was one metre 65 high. He was a bit light -- his skin was
5 lighter than the mungo bean. He was handsome like a Chinese
6 mixed blood and I would like Mr. President, Your Honours, to read
7 again what you heard on August 20th last when Mr. Ou, here
8 present, was here testifying from Versailles in France through
9 the video conferencing system.
10 And he read a letter from his niece who is there for the daughter
11 of his brother who disappeared at S-21 and this niece, this young
12 lady, was completely successful and she's beautiful. She
13 graduated from extremely difficult studies; she is a certified
14 accountant and let me tell you the rest. But here are the five
15 letters of -- her letter,
16 "... and her absence has deeply affected my life as a woman, not
17 having my father by my side during the great events of my life
18 has profoundly hurt me. I would have wished that he'd be here
19 with me to protect me when I needed so. I would have given
20 everything to see pride on his face as a father when I passed my
21 baccalaureate, or when I passed my exams and when I got my first
22 job. I would have loved to thank him for having become the woman
23 that I became."
24 [16.12.44]
25 Your Honours, this lady who succeeded in everything, who's been

122

1 married for the past 10 years, did not have a child yet but she
2 has just become pregnant and she is expecting which probably sets
3 for her and thanks to this trial for which I believe the
4 unfolding -- the way that she can now look towards the future and
5 no longer keep on reliving the past of her father whom she never
6 knew, who died at S-21 after having gone through atrocious false
7 confessions under torture and after having said that he was
8 instigating a revolution against the Khmer Rouge even though he
9 was a high ranking official -- a graduate from L'ENA, the
10 National School of Administration in Paris -- and having
11 denounced his best friends who thus were in turn arrested,
12 tortured and killed.

13 Mr. President, Your Honours, I will now speak rapidly about Touch
14 Monin, Ros Chuor Siy to remind you that Mr. Ros Nhim was the
15 cousin of Chea Khan was a former friend of Duch and who returned
16 to Cambodia while he was in China in order to serve the state.
17 And while Duch called him back, he was sent to S-21 and in this
18 same way for Ros Chuor Siy, Ros Saroeun, who was the former
19 director of the airport -- who became the Director of Air
20 Cambodia in France, who returned to serve his country and
21 returned after the capture of Phnom Penh in 1975 and was
22 immediately sent to S-21.

23 I have now finished and would like to tell you that people of my
24 generation; born 20 years after the end of the Second World War
25 had heard their parents and their grandparents repeat that the

123

1 death camps were over, that they would no longer happen again.

2 The death camps and the mass graves have survived.

3 [16.16.25]

4 The only way -- and my generation believes in it -- the only way
5 to overcome this is to entrust to this extraordinary

6 international justice which we are all serving here -- the very

7 noble mission of saying, and of judging that there are crimes

8 against humanity that will not remain unpunished.

9 MR. PRESIDENT:

10 The oral closing statement by the civil party lawyers for group 4

11 has come to an end and has been heard according to the time

12 allocated.

13 It is now 20 past four and it is time to take the adjournment.

14 So the Chamber will take the adjournment for today and we will

15 resume the session tomorrow by 9 a.m. The Chamber would like to

16 inform the parties to the proceedings and the public that during

17 tomorrow's session the whole session will be reserved for the

18 Co-Prosecutors to make their oral closing statement, and we hope

19 the parties to the proceedings and the public are well informed

20 and come to the courtroom as scheduled.

21 The security personnel are now instructed to take the accused to

22 the detention facility and bring him into the courtroom by that

23 time.

24 (Judges exit courtroom)

25 (Court adjourns at 1620H)