



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"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

27 August 2009, 0910H

Trial Day 66

Before the Judges:

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

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Alain WERNER
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SENG Bunkheang
Vincent DE WILDE D'ESTMAEL
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The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
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Helene UÑAC

*Extraordinary Chambers in the Courts of Cambodia
Trial Chamber - Trial Day 66*

*Case No. 001/18-07-2007-ECCC/TC
KAING GUEK EAV
27/8/2009*

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JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MR. HONG KIMSUON	Khmer
MR. KAR SAVUTH	Khmer
JUDGE LAVERGNE	French
MR. ROUX	French
MS. SE KOLVUTHY	Khmer
MR. SENG BUNKHEANG	Khmer
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. TRUSSES-NAPROUS	French
MR. TY SRINNA	Khmer
MR. WERNER	French

1

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

2 (Judges enter courtroom)

3 [09.10.06]

4 MR. PRESIDENT:

5 Please be seated. The Trial Chamber is now in session.

6 Per our sitting schedule, this morning the Trial Chamber will
7 continue to hear the challenges by the defence counsel and the
8 responses by the civil party counsel regarding certain remaining
9 civil party applications.

10 Before we proceed the Chamber would like to make an announcement
11 to the parties to the proceedings for our proceedings in the
12 future after we finish hearing the challenges and responses on
13 the remaining civil party applications. This morning the Chamber
14 will finish to hear the challenges to the civil party
15 applications and the responses thereto.

16 Therefore the Chamber will be asking brief submissions from the
17 parties on whether the civil parties have a right to question the
18 accused and witnesses on the issue of the accused's character.

19 The Co-Prosecutors will have 10 minutes to make their
20 submissions, the civil parties a total of 40 minutes and the
21 defence 40 minutes.

22 After an adjournment for deliberations, the Chamber will inform
23 the parties of its decision on whether the civil parties will be
24 granted an opportunity to question the accused and witnesses on
25 character. Following that decision the Chamber will start

2

1 questioning the accused.

2 On a separate issue, the Chamber has noticed, especially
3 yesterday -- the Chamber noticed the request by the civil
4 parties. Therefore the Chamber would like to issue a verbal
5 direction for submissions of additional evidence for the civil
6 parties.

7 The Trial Chamber refers to the oral submission by the civil
8 party counsel during the morning session on 26th August 2009
9 regarding their intention to submit to the Chamber evidential
10 material related to the civil party applications and the victims
11 in the case file 001 who have been challenged by the defence
12 counsel.

13 In order for the Chamber to have sufficient grounds for its
14 examination and decision referring to the above challenged civil
15 party applications, and in order to ensure an expeditious and
16 fair trial, the Chamber issues the following direction.

17 [09.14.41]

18 1.Civil parties whose applications have been challenged shall
19 submit additional evidential materials to the Chamber to show the
20 relevancy between the civil parties and the victims in the case
21 file 001.

22 2.If possible, civil parties shall submit those evidential
23 materials to the Trial Chamber, by the latest, Thursday the 3rd
24 September 2009 at 4.30 p.m.

25 Let me now proceed with our proceeding and the schedule this

3

1 morning. That is the challenges of the defence counsel for the
2 remaining civil parties.

3 The Co-Prosecutor, you may proceed.

4 MR. DE WILDE D'ESTMAEL:

5 Thank you. Last Monday Deputy Co-Prosecutor William Smith came
6 before the Chamber to enquire about the period during which
7 Co-Prosecutors might ask questions to the accused with regard to
8 personality or character. We haven't yet received a response
9 from the Chamber and we wish to insist with the Chamber so that
10 we may be informed of the time that will be allotted to us,
11 particularly so that we may adequately prepare the questions that
12 we intend to ask.

13 [09.17.51]

14 I wish to insist on the fact that this is the last chance that
15 will be given to ask questions from the accused with regard to
16 character and responsibility. It is therefore essential for the
17 prosecution, probably also for the other parties as well, to
18 ensure that the truth will out and in the spirit of good
19 administration of justice.

20 Now, we are not unaware of the fact that on Monday two expert
21 witnesses will be testifying for one day and a half, and that the
22 dates at which these witnesses will be heard are difficult to
23 change. However, we wish to suggest that if it is the case that
24 the questions that are asked, probably this afternoon, from the
25 accused, have not been exhausted by the different parties

4

1 involved, then that these questions may continue after the
2 hearing of the experts on Monday and Tuesday.

3 And thus I ask that enough time be dedicated to the questions
4 that will be asked from the accused, both for the Co-Prosecutors
5 and for the other parties. Thank you.

6 MR. PRESIDENT:

7 Thank you, Mr. Co-Prosecutor, for your reminder. The Chamber
8 would like to remind the international Co-Prosecutor that the
9 Chamber does not forget what was raised by the Co-Prosecutor
10 William Smith for his request on the time allocation in
11 questioning the accused on his character. Actually he requested
12 a time allocation of one hour to 1.30 minutes and yesterday the
13 Chamber took that matter into consideration and the reason the
14 Chamber has not yet responded to the request, because the Chamber
15 will have to hear brief submissions by the parties this morning
16 as whether the civil parties shall have a right to ask the
17 accused on his character.

18 [09.20.46]

19 And the Chamber has to hear the brief submissions by the civil
20 parties first before this Chamber can make a decision on the time
21 allocation for each party to the proceeding because the time
22 allocation will vary, based on the decision after the Chamber
23 hears the brief submissions of the civil parties. And of course
24 what was requested by the international Co-Prosecutor seems
25 reasonable; that is, the time allocation between one hour to one

5

1 hour and 30 minutes in proportion to the time allocation
proportionate for each party.

Secondly, the Chamber would like to inform the parties to the
proceeding that the scheduling to hear the two experts which was
planned for one and a half days, that is for Monday and the
morning session on Tuesday, has not been changed as the time
allocation was to respond to the time and date needed by the
experts, the two experts

On the questioning of the accused's character which was planned
to proceed after we hear the challenges and the responses and
after we hear the brief submissions by the civil parties as
whether they have a right to ask questions regarding the
accused's character, we will start the questioning in the
afternoon session today and if it does not finish we will
postpone it and after we will hear the testimonies of the two
experts on Monday and Tuesday morning's session then we will
continue on Tuesday afternoon's session.

So this is the information for all parties to the proceedings,
especially for the Co-Prosecutors. I hope I have made myself
clear.

Mr. Co-Prosecutor, is it clear enough for you now?

[09.23.33]

MR. DE WILDE D'ESTMAEL:

Yes, perfectly clear, Mr. President, so we will await your final
decision concerning allocated time until after the discussions of

6

1 this morning. Thank you.

2 MR. PRESIDENT:

3 Let me now proceed with our schedule.

4 The defence counsel, you may now proceed with your challenges to
5 the remaining civil party applications. There are six civil
6 party applications remaining. That is E2/77, who is a civil
7 party in group 2; you may now proceed.

8 MR. ROUX:

9 Thank you, Mr. President. Good morning, Mr. President, Your
10 Honours.

11 I will be touching upon E2/83. This is the one we wish to deal
12 with before those that belong to group 1. In fact E2/83 has to
13 do with Mrs. Hong Savath, group 2, which has not yet been
14 discussed. So please allow me, Mr. President, with regard to a
15 group 2 case which goes to Counsel Studzinsky, that we wish that
16 she will get well quickly and we are very sorry that we have to
17 challenge civil parties in her absence. Concerning civil party
18 E2/83, there is nothing at all in the case file. That is the
19 reason why the defence challenged this application.

20 There are no documents relative to kinship and, with regard to
21 the presence of the uncle of Mrs. Hong Savath in S-21, the
22 plaintiff mentions a photograph. But the only photograph that
23 was filed is obviously a photograph that was not taken in Tuol
24 Sleng. Thus we have practically nothing to work on and that is
25 the reason why we raise this objection.

7

1 Thank you, Mr. President.

2 MR. PRESIDENT:

3 Civil party counsel, group 2, you can respond to this challenge.

4 [09.27.33]

5 The Chamber would like to inform the civil party lawyer group 2

6 that you have not yet responded to the challenges by the defence

7 counsel for civil party E2/77 as you were not ready to respond.

8 Therefore, this morning you can respond to both challenges; that

9 is, E2/77 and E2/83 as just raised by the defence counsel. And

10 E2/77 was challenged and the reasons were given yesterday by the

11 defence counsel.

12 You can proceed.

13 MR. HONG KIMSUON:

14 Thank you, Mr. President. My name is Hong Kimsuon. I am a civil

15 party lawyer for group 2 and my co-international colleague is

16 Studzinsky. I'm also representing civil party group 4 with Mr.

17 Pierre-Oliver Sur.

18 I am now speaking on behalf of my colleague as my colleague has

19 some health concerns.

20 First, in response to the civil party application E2/77, with the

21 name Keang Vannary, I was absent yesterday as I spent time to do

22 further research on this client. Keang Vannary, E2/77, who is my

23 client -- but I did not meet her yesterday. I met an

24 intermediary organization, the Khmer Kampuchea Krom Organization,

25 and I met her relative, who told me that this client was frail

8

1 due to old age, and I actually wanted to speak to her in person
2 whether she wishes to waive her rights.

3 [09.30.03]

4 Her daughter informed that her mother waived her right to be a
5 civil party to this 001 case file. So this is information for
6 the Chamber and for the civil parties and the parties to the
7 proceeding.

8 Regarding another civil party, E2/83, and the defence challenge
9 that there is no sufficient documents to prove the kinship and
10 that the photo was not taken at S-21, the photo that is
11 available. I would like to also tell the Court that yesterday I
12 tried to contact the civil party applicant through the victims
13 unit and the photo she obtained and filed here was obtained from
14 S-21. However, due to time constraints I am not yet able to
15 retrieve the photo with the number attached from the chief of the
16 Tuol Sleng museum.

17 So with the President's leave I will submit this document in due
18 course when we obtain the information, and I will reserve to put
19 further documents to support the application.

20 MR. PRESIDENT:

21 The defence counsel, you may now proceed with another civil
22 party, especially the five remaining civil parties in group 1.
23 So there is only one remaining group, group 1. So the defence
24 counsel may proceed with the rest of the five applicants and the
25 civil party lawyer, group 1, can simultaneously respond to the

9

1 challenges.

2 MR. ROUX:

3 Thank you, Mr. President. I am now indeed referring to the five
4 following civil parties: E2/49, E2/69, E2/73, E2/74, E2/75.

5 [09.33.41]

6 Mr. President, my esteemed colleague Alain Werner said to us that
7 he wished to provide explanations regarding these five civil
8 parties simultaneously as long as -- but there is no document in
9 these five cases. Under these conditions, Mr. President, I would
10 like first therefore to listen to Alain Werner's explanations,
11 and he told me that they would be of a general nature. And then
12 I would like to address these observations afterwards. Thank
13 you.

14 MR. PRESIDENT:

15 Mr. Alain Werner, you now may proceed.

16 MR. WERNER:

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

18 Let me please, before I start, thank the defence, because we
19 agreed with the defence yesterday, and we asked the defence if it
20 would be possible for it not to follow a chronological order, and
21 therefore to group our five cases at the end so that we may in
22 one go express our observations on these five cases before the
23 Chamber. And the defence agreed to this and we are thankful.

24 Please let me speak to you about one specific case and then I
25 will refer to the four others later. E2/49, so this is Mr. Eng

10

1 Sitha. This civil party told us yesterday that it was no longer
2 interested in taking part in these proceedings and therefore,
3 according to Article 23 paragraph 10 that stipulates that a civil
4 party can at any moment waive its request for reparations or step
5 out, we would like to inform the Chamber that this civil party,
6 E2/49, is indeed waiving its claim and is no longer a civil
7 party. So this is for E2/49.

8 Now let me please let me refer to the four others: E2/69, E2/73,
9 E2/74, E2/75. As Counsel Roux said to us in a perfectly
10 appropriate way, the situation is the following. We did not have
11 in January and in February -- when we started with the civil
12 parties and when we came to the initial hearing we did not have
13 any evidence, any biographies, or any confessions. Their names
14 do not appear on the prisoners lists. That is so.

15 And a decision on principle was taken by my group back then,
16 which was to maintain the civil party applications, and we were
17 ready in February to explain why, the reason why our stance was
18 such and why we would like to retain the civil applications
19 despite the fact that there are no biographies, that they're not
20 on the prisoners lists and that there are no confessions.

21 [09.37.40]

22 So the question was not put to us in February and I would like to
23 explain to you briefly regarding these four civil parties. Well,
24 I would like to tell you what is our stance, on what legal base
25 our stance is based, given that we will not obtain extra

11

1 evidence. It does not exist, so therefore the situation will not
2 change. This is why I would like to bring up these four cases
3 now.

4 So our position is the following. Our stance is that if your
5 Chamber believes, given the civil party applications -- if the
6 Chamber accepts the information, if the Chamber considers that
7 this information is coherent and are sufficiently detailed, our
8 stance is that in itself this should form the necessary proof
9 according to Article 23 paragraph 5, according to Article 3.5
10 subparagraph (d) of the Practice Directions on the participation
11 of the victims because nothing in these articles nor in the
12 Internal Rules nor in the Practice Directions imposes in an
13 automatic way that a civil party has to provide a material
14 evidence, written evidence to support its civil party
15 application.

16 There is nothing, nothing, nothing in both of these articles that
17 states this. And if you look at Article 23 paragraph 5 -- and I
18 will take the liberty of reading this:

19 "Any civil party application must contain sufficient information
20 and must provide its compliance with the current rules and must
21 provide useful information on the victim's situation and include
22 if necessary any evidence that can determine the existence of the
23 harm if it is necessary."

24 [09.40.43]

25 So nothing automatically imposes upon us that we have to provide

12

1 any written evidence.

2 So Mr. President, Your Honours, international jurisprudence and

3 in regards to civil party participation -- well, international

4 jurisprudence is limited of course because this system is only

5 beginning here in international courts. However, we feel that

6 there is a very strong tendency that is being defined and in

7 particular by the jurisprudence of the preliminary Chamber. And

8 this tendency goes in the direction of accepting indirect

9 evidence to support the civil party applications.

10 If the victim can provide the evidence that it was indeed

11 impaired by objective obstacles to provide the direct evidence or

12 the elements that would support its application -- and the

13 preliminary chamber of the ICC continue and tells us that it will

14 decide on a case-per-case basis based on the merits of the

15 intrinsic intrinsic coherence of the victim's statements.

16 And I refer to the decision of Lubunga, the decision of the 10th

17 of August 2007. So it is indeed just a preliminary chamber. but

18 what we're saying here is that there is indeed a tendency that is

19 being formed which accepts that in certain cases there is no

20 material evidence for objective reasons and that indirect

21 evidence must also be admissible.

22 So I would like to tell you one thing here. Mr. President, Your

23 Honours, we are here in international criminal procedures where

24 -- and my colleague is very much aware of this -- the ICTR over

25 the past 11 years since the Akayesu jurisprudence that was

13

1 rendered on the 2nd of September 1998 -- we are in a field where
2 legal criteria states that an accused can be accused in an
3 international criminal court on the basis of only one single
4 statement; on the basis of only one single statement which is not
5 necessarily corroborated.

6 [09.43.41]

7 This is what the Akayesu jurisprudence states and this is what
8 was confirmed later. And of course this statement must be
9 credible and must be relevant, obviously. But the argument is
10 that you can convict somebody in international criminal courts on
11 the basis of a statement without any extra evidence, without
12 anything else.

13 And if this is true, well, then it cannot be possible to require
14 automatically that a civil party -- beyond what the civil party
15 is stating -- to require that the civil party must necessarily
16 provide evidence through a biography or a confession. This is
17 not possible. We cannot require this. This cannot be an
18 automatic rule.

19 So if you accept indeed our submission, if you accept the
20 criteria that we're proposing to you -- that is to say the
21 coherence of the information that our four civil parties have
22 provided to you, and this is a very important point for us --
23 this will create no prejudice to the accused for two reasons.
24 The first reason is that our four civil parties are providing no
25 incriminating element, contrary to other civil parties who

14

1 testified earlier. These civil parties are providing no
2 incriminating elements against the accused. And number two, the
3 accused -- and this is very important -- will not be obliged to
4 pay reparations, individual monetary reparations.
5 [09.45.34]
6 There will be therefore no negative consequences for the accused
7 since the four civil parties -- whether they're accepted or not
8 -- this will change nothing for the accused because he will not
9 be obliged at the end of this trial to pay any money to the civil
10 parties. And this necessarily must have an influence on the
11 criteria that you're going to set.
12 So Maitre Roux, with his great talent, said to you yesterday in a
13 direct way, I could say, that in your decision you must consider
14 in case file number 2 or et cetera, because you will probably be
15 the first ones thinking about this issue that we're bringing up
16 today -- well, he brought forth this argument and I would like to
17 say something about it.
18 If you go beyond what is required, what is literally required by
19 the Internal Rules or by the Practice Direction, if you say to
20 yourself, "We require as an automatic criteria evidence to
21 support the civil party applications," well then, based on what I
22 understand -- and you know that we're not joining case file
23 number 2, but still -- but based on what I understand, the quasi
24 totality of the civil party applications in case number 2 will
25 then have to be declared as inadmissible because there is

15

1 practically no proof, particularly in the detention centres
2 within Cambodia. There is no confession, there's no physical
3 evidence, there's no prisoners list, and that is the consequence.
4 That is the consequence of such a decision as you're bringing up
5 now.

6 [09.47.17]

7 And there is something else. We strongly reject -- with all of
8 our respect, of course, that we have for our esteemed colleague,
9 Maitre Roux -- but we strongly reject the scarecrow argument; the
10 argument that consists of saying, "Okay, okay, if you decide that
11 indeed there is no need to provide any evidence, well then there
12 will be flows and flows of civil party applications that are
13 going to submerge and drown your jurisdiction."

14 Mr. President, Your Honours, the accused is benefiting from the
15 presumption of innocence and of course we must explain to you the
16 reasons why we believe that our civil parties are joined. But
17 our civil parties must benefit from a presumption of good faith,
18 and if this trial has demonstrated one thing it's that there has
19 not been any imposter; there has not been any profiteer among our
20 civil parties. Our clients have all acted in complete good faith
21 and we're asking that our clients can benefit from this
22 presumption of good faith.

23 So -- and I'm almost finished, I'm almost finished -- so you
24 remember I mentioned the jurisprudence of the ICC with this idea
25 of indirect evidence being sufficient. That is to say that if

16

1 indeed a civil party can prove that it was objectively hindered
2 in providing its evidence, well, the evidence that our four civil
3 parties can provide to you to demonstrate their good faith -- and
4 to prove that they are indeed also hindered by objective
5 obstacles to provide direct proof such as a biography, a
6 confession or prisoners list -- well, this proof is the
7 destruction and the disappearance of parts of the S-21 archives.
8 Counsel Trusses-Naprous said that to you and she mentioned what
9 David Chandler mentioned, of course, and the international
10 Co-Prosecutor also mentioned this and I think that this is even
11 more illustrative than just referring to an expert -- I would
12 like to read to you just a few lines of what is present in the
13 case file.

14 [09.49.54]

15 This comes from Nic Dunlop's book and unfortunately this book was
16 not translated, neither in French or in Khmer, but it is in the
17 case file and the index ERN in English, 0078697 to -- there are
18 only the two first pages here, unfortunately. I can also give
19 you the ERN in French or Khmer but that doesn't correspond to
20 anything because there is no real translation.

21 I'd just like to read one single page regarding the destruction
22 of these archives so that you may understand really what the
23 situation is, and I'm going to read it in English because the
24 text is only in English. So Nic Dunlop is speaking about
25 somebody called Hor and he says the following:

17

1 MR. WERNER: (speaking in French):

2 "Rho found a room near Tuol Tumpoung market with his wife and
3 daughter and he began to look for work. At the market one
4 morning he saw women selling fried bananas wrapped in paper with
5 handwriting on it. There had been no paper during the Khmer
6 Rouge. Now in the semi-derelict city it was everywhere. Sheets
7 of it blew through the streets. Children had begun to collect
8 it.

9 "He picked up one parcel of bananas. He recognized the
10 handwriting. It was the confession of a friend from Paris. When
11 he asked where it had come from, from a little boy, the little
12 boy led him down the back street to Tuol Sleng.

13 [09.51.57]

14 "He saw the razor wire along the wall and Vietnamese soldiers at
15 the entrance and said, 'I didn't dare to go inside.'"

16 Mr. President, Your Honours, it's not to try to be funny here,
17 but a part of the confessions or of the biographies was used to
18 indeed wrap up fried bananas in the Phnom Penh markets in the
19 1980s. That is the situation; that is the reality.

20 So I have finished regarding the five civil parties. Yes,
21 indeed, we cannot provide -- for 10 percent of our civil parties
22 we cannot come indeed -- despite our best efforts we cannot come
23 and provide you the proof, the evidence, but we believe that what
24 our clients are saying is coherent and we believe that what
25 they're saying must provide sufficient evidence, given the

18

1 circumstances -- and here once again it's not to be comical but
2 maybe the biography or the confession of one of our four clients
3 was used indeed, as well, maybe to wrap up fried bananas or any
4 other kind of foods in the Tuol Tumpoung market in the 1980s.
5 That is the real situation and that is our submission.
6 Thank you for having given me the time -- to listen to me.

7 MR. PRESIDENT:

8 The defence counsel, you may now proceed in response to the
9 counsel of the civil party.

10 MR. ROUX:

11 Thank you, Mr. President. Everyone probably has understood that
12 we're now entering a real debate which has been presented to the
13 Chamber since the start, in fact. From this side of the bar
14 we're trying to respectfully draw the Chamber's attention to what
15 might be and what must be the role of the civil parties. And I
16 heard, once again, a lot of confusion in what was just presented
17 to us regarding the role of the civil parties.

18 [09.55.02]

19 And I would like us to be clear and I'd like us to reassure
20 everyone here and to reassure the people who will not be able to
21 join as civil parties, they are represented here by the
22 Co-Prosecutors' Office and from which we may believe that they
23 will manage, in the best conditions possible, their applications
24 -- their representation, the representations of the interests of
25 society at large.

19

1 So whether the civil parties who will not be able, for legal
2 reasons -- because we are here in a court of law -- so the civil
3 parties who will not be able, for legal reasons, to be
4 individually represented here in this Court, well, they should
5 rest assured they will be at least morally represented by the
6 Co-Prosecutors office.

7 Once again, what is a civil party in a civil law trial? It is a
8 person who can justify, who can prove its ability to act; that is
9 to say, it is someone who personally has endured or experienced
10 harm or someone who is very close from another person who
11 experienced harm. So that is to say a parent for a child or a
12 child for her parent, so someone who has the capacity to act and
13 someone who has the strong grounds to act, that is to say
14 somebody who can justify the harm endured.

15 And we are -- Mr. President, Your Honours, we are here in a court
16 of law. We are not at the market or in a forum. We are not at
17 the market square where we can throw stones to the accused.

18 And I heard even from far when I was in The Hague last week, I
19 heard words that were pronounced here in these proceedings, which
20 were like stones that were thrown to the accused's face. And I
21 suffered from that because I would like us to remain within the
22 context of a dignified trial and that everyone stay in his right
23 place.

24 [09.58.11]

25 What are we expecting from the civil parties? We are expecting

20

1 that they say two things to us once they will be entitled to do
2 so by law.

3 Two things, not three -- two things only. This is my personal
4 suffering -- one. And two, this is the memory of the person for
5 whom I'm suffering and I'm speaking to you about the person who
6 is suffering. And it stops there.

7 The problem is that since the very start these civil parties want
8 to go beyond their role. Do you remember as of the very first
9 hearing my esteemed colleague Maitre Khan who was saying to us,
10 "Civil parties do not exist in my tradition. I'm just
11 discovering this now and I like it. And I'm going to ask for
12 sentences against the accused and I'm going to bring in an expert
13 to claim for a sentence against the accused." This is total
14 confusion. I stood up. I stood up and I stood up against this.
15 And I said it again yesterday. What we are doing here is an
16 extremely, extremely important endeavour because we are opening
17 up a completely new ground and we are not allowed to be
18 approximate only about this.

19 So my esteemed colleague, fine, fine. You mentioned the ICC but
20 you only forget however that before the ICC the victims are not
21 civil parties. They are not civil parties.

22 [10.00.26]

23 And I considered as far as I'm concerned that here we are taking
24 a further step. We are making progress because here the victims
25 are not simply heard in the manner that they're heard at the ICC.

21

1 They are civil parties which includes all the rights attached to
2 a civil party status.

3 This is considerable progress but we are all aware, all aware
4 because we are all jurists, that when one has rights, one also
5 has duties.

6 And the first duty of a civil party is to respect the rules which
7 will enable the civil party to be effectively a civil party or
8 not. And the second duty is to respect the role of a civil party
9 in the course of proceedings; in other words, not to intervene on
10 the issue of the sentence which belongs to the prosecutor.

11 In total confusion you speak of the Akayesu jurisprudence and I'm
12 quite familiar with it because I've spent long hours in the
13 defence at that international criminal tribunal for Rwanda. But
14 you forget something here. When the tribunal -- presided over by
15 the regretted Laity Kama who was a great president -- when that
16 tribunal ruled on the subject, which I have reservations about
17 personally, it was after having heard the witness in a process of
18 examination and cross-examination because we are working under
19 full common-law procedures in Arusha.

20 This is not at all the case for the persons that we are
21 discussing here. The civil parties that you mention did not
22 come. They could not be heard. They could not be contradicted
23 or questioned.

24 [10.02.58]

25 So you're not at all in the Akayesu framework. And if you were

22

1 to go to the very depth of the Akayesu jurisprudence, then you
2 should recall the challenges to the taking of that decision and
3 recall that the tribunal was very careful to mention and recall
4 that this was exceptional, that such a practice could apply only
5 if there are no other solutions. And in international criminal
6 law you know as well as I do that the key principle is the
7 principle of corroboration.

8 Exceptionally in certain specific cases, as the tribunal said,
9 because the witness was examined and cross-examined,
10 exceptionally it is possible to accept testimony that is not
11 corroborated.

12 Now, yes, faced with a tragedy such as the one we are dealing
13 with here, I agree with you, Mr. Werner. The civil parties must
14 a priori be presumed to be speaking in good faith but one can
15 only be mistaken in good faith. One can be mistaken. We heard
16 at the bar persons who were mistaken, who thought in good faith
17 that they had been incarcerated in one location, whereas they had
18 been incarcerated in another, and you know this very well.

19 So you made an attempt at concluding by reading from the book of
20 Nic Dunlop but the other day the Office of the Co-Prosecutors
21 thought that it could rely on the exceptional film of Rithy Panh
22 as evidence. But these are works -- a book, a film, and
23 concerning the film of Rithy Panh it is eminently respectable in
24 that it is of superior quality. I know of no other film of that
25 quality.

23

1 [10.05.38]

2 Nevertheless, I think that the people who write these books or
3 the scenarios for these films never imagined that they would be
4 used in judicial proceedings, in legal proceedings. We are in
5 legal proceedings. And investigation took place. There are
6 rights and duties and I repeat, and as I said yesterday, "jura
7 lex sed lex", we are jurists. And an eminent law professor
8 stated something that we should never forget: sworn enemy of
9 arbitrary procedure form, structure, is the sister of liberty.
10 We are not here to rule in arbitrary fashion. We are here to
11 tell the law and I ask the Chamber to apply the rule of law with
12 regard to civil party applications, and once again to state loud
13 and clear also to the public here that they are fundamentally
14 represented here by the Office of the Prosecutor, who will
15 represent this entire society which was up-ended, whose social
16 links were violated, as we know, by the period of Democratic
17 Kampuchea. That is the role and the duty of the prosecutor. Do
18 not remove that from his office. Thank you.

19 [10.07.25]

20 MR. PRESIDENT:

21 Mr. Alain Werner, you can proceed. The Chamber would like to
22 remind the parties to the proceeding the main point of the
23 proceedings at the moment is whether the civil party applications
24 are acceptable and have all the criteria as set out, plus the
25 relevant information, and for the general reasons or other

24

1 reasons which are going to prolong the proceedings shall be
2 reserved and that can be used during the final submissions or
3 oral final submissions, which would be the appropriate time.
4 Alain Werner, you can proceed, but please adhere to the main
5 point of the proceedings at this stage and do not just wander
6 into the general observations or general points, because the
7 general points have been discussed already but now we are dealing
8 with specific applications on the lack of the conditions before
9 the civil parties can be accepted and as they are challenged by
10 the defence counsel.

11 MR. WERNER:

12 Thank you, Mr. President. I have fully understood what you have
13 said. I have two very, very short points. I'll be very quick.
14 Of course we understand the difference between what is taking
15 place here and what is taking place in The Hague at the
16 International Court of Justice, and perhaps this is due to the
17 fact that I did not express myself well. I was speaking of a
18 trend. My colleague has repeated on several occasions "jura lex
19 sed lex" and recalled the criteria that are applied in law, but
20 this is why I made this clarification discussing trends occurring
21 in international law.
22 The reason why we made this submission today is that there are
23 fundamental and intrinsic differences between the situation in
24 French, Swiss or Belgian law -- wherever you have municipal law
25 with civil parties -- where a crime was committed six months, a

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1 year or two years ago; countries where it is easy to find
2 material evidence, if required, and our field -- that of
3 international criminal law -- where events occurred in a time of
4 war where years have passed.
5 [10.10.29]
6 And what seems to us interesting in the trends that we see
7 outlined in the International Criminal Court is the fact that
8 even though the International Criminal Court is seised only of
9 situations which have occurred a relatively short time ago
10 because of its statute, even with those specificities what we see
11 outlined as trend, as general tendencies, is the ability of that
12 Court to accept indirect evidence. And this is very interesting
13 because we are here in a similar situation to that of the
14 International Criminal Court and, contrary to municipal courts,
15 we are in a situation where the conflict did not occur after 1998
16 but in 1975 to 1979.
17 That is the reason why I wanted to mention these trends which in
18 our opinion and in good faith support our opinion. And I want to
19 return to a point that is systematically raised by my colleague,
20 which is our position, which is another position -- the position
21 according to which our civil parties must have the ability to
22 plead on sentencing. That is a completely different issue. As
23 you know, this is a question that is submitted to the Chamber.
24 Our pleadings were submitted in writing. A ruling will come out.
25 This has nothing to do with what we're doing today. It's totally

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1 distinct and I tried to focus my intervention today on what is
2 needed in order to be able to say, "This person is indeed a civil
3 party and can enjoy these rights."

4 One more point. My dear colleague seems to enjoy Latin and it is
5 perfectly justified. *Jura lex sed lex* in fact applies both in
6 internal rule and elsewhere in general rule. There is nothing in
7 fact in the Internal Rules and in the Practice Directions telling
8 us that our civil parties must come before this Chamber with a
9 biography or a confession in hand.

10 [10.12.37]

11 So if we wish to apply *jura lex sed lex* on the basis of the
12 Internal Rules and on the basis of the Practice Directions, if
13 they tell you something that is sensible in their applications,
14 then you must admit or accept these applications. Thank you.

15 MS. TY SRINNA:

16 Mr. President, I would like to seek your leave to add to what my
17 colleague has just said in relation to the legality and the right
18 of the civil party, so that the defence counsel and the Chamber
19 as a whole can understand the legal right of the civil party to
20 make their application.

21 MR. PRESIDENT:

22 Yes, you are granted but please limit yourself to the conditions
23 and the criteria of the civil party application. And also you
24 should respond to the challenge raised by the defence counsel.

25 You are not allowed to make your comments or observations at this

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1 stage. The Chamber reserves the right to stop you and without
2 giving you any extra opportunity if, when you speak, you speak in
3 general terms. If the Chamber notices that from the beginning
4 then you will be interrupted and you will not be granted an
5 opportunity again. Yesterday's practice should be adhered to
6 today as well.

7 MS. TY SRINNA:

8 Thank you, Mr. President, for your guidance and I will try to
9 only raise the relevant evidence and facts. First of all, my
10 respects to Your Honours and ladies and gentlemen in the Chamber.

11 [10.15.15]

12 In response to Mr. François Roux, the defence counsel, I would
13 like to raise the issue of the legal right of the civil party.
14 The defence counsel raised it should be done through the
15 Co-Prosecutors as the civil parties are in support of the
16 prosecution. I would like to say that this is a mixed tribunal.
17 It means it's a hybrid of national and international court and
18 agreement was made between the United Nations and the Cambodian
19 government. In Article 12, the Cambodian laws are applicable in
20 this Chamber. And when I look at the Cambodian law stipulating
21 the right of the civil party participation in making the
22 application to this Chamber in the Code of Criminal Procedure of
23 the Kingdom of Cambodia. It stipulates clearly in Article 13
24 relating to the civil action:

25 "Civil action and damages shall be responded by and shall be

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1 actioned by the victims."

2 And who are the victims? Of course we have some direct victims
3 here; for example, Chum Mey and Bou Meng. Those are the direct
4 victims of S-21.

5 And some also provided testimony before this Chamber in the
6 previous hearings. So that is the right of the civil party,
7 participation in making their civil action and civil claims in
8 response to the damages caused to them.

9 [10.17.28]

10 François Roux also said the civil action shall be connected to
11 the direct kinship, for instance, between father and son. But in
12 Article 16 of the Code of Criminal Procedure, it states that:

13 "In the case of the death of the victim a civil action can be
14 started or continued by his successor."

15 And the successor here refers to the natural persons who are
16 related legally in relation to the kinship; for instance, the
17 direct bloodline relatives -- father, mother, children, brothers,
18 sisters, siblings, cousins. It means who are the blood-related
19 relatives to the victims.

20 So those civil parties who lodged their applications in my group,
21 they are related in some way to the facts and crimes alleged on
22 the accused. So they are entitled by law to make such
23 application.

24 MR. PRESIDENT:

25 The challenge, is it regarding the right of the civil party to

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1 participate or is it related to the lack of documents to prove
2 the kinship of the civil party applicants, or the lack of
3 documents to prove that they were or they are the direct victims
4 of S-21, and that's the whole point of the current proceeding.
5 So your response should be directed to these challenges. You
6 have to consider are they challenging the application as a civil
7 party participation or are they challenging the lack of documents
8 related to the applicants or the victims of S-21 Office?

9 [10.20.07]

10 So the Chamber would like you to remind to only focus on the
11 points raised by the defence counsel, and this is particularly
12 related to the E2/49 or E2/69 or E2/74, what is available and is
13 not, and E2/75 or E2/73.

14 And you are not allowed to make your general observation, as I
15 reminded you from the beginning. Do you understand? If you
16 understand, the Chamber will allow you to proceed. Otherwise you
17 will not be allowed to proceed. You can reserve all these
18 comments to be made at the final oral submission.

19 MS. TY SYRINNA:

20 Mr. President, yes, I understand your guidance. What I have said
21 is in response to the challenge by the defence counsel.

22 MR. PRESIDENT:

23 Are you talking on the points raised by the defence counsel? If
24 not, you have to be seated.

25 MS. TY SYRINNA:

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1 In relation to my client, I would like the President to consider
2 the current situation experienced by my client. And the points I
3 raised is also in response to what has been said by the defence
4 counsel in his challenge to the civil party applications in my
5 group. And I based my comment on the existing law of the Kingdom
6 of Cambodia.

7 Thank you, Mr. President.

8 [10.22.06]

9 MR. PRESIDENT:

10 Kar Savuth, you may proceed, and you are reminded only to express
11 your observations on the challenges of the legality or the
12 qualifications of the civil party application or any related
13 evidence to support that civil party application. And you are
14 not allowed to make your observations or submission in the middle
15 of this proceeding.

16 MR. KAR SAVUTH:

17 Thank you, Mr. President. Good morning, Your Honours. Good
18 morning, ladies and gentlemen.

19 As I have stated in my previous observation yesterday, the
20 defence counsel only wishes the civil party to verify in their
21 documents, in their application, their qualification as a civil
22 party; for instance, whether they are the husband or the wife or
23 the son or the daughter or the brother or sister and there are
24 supportive documents to prove that. That is the first criterion
25 that the defence counsel wants. You show that document, then we

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1 will accept it. So that is the first criterion.

2 And the second criterion is the evidence. The evidence that the
3 defence counsel wants is whether the civil party applicant
4 actually has a relative who suffered or victimized at S-21. If
5 this is clearly shown so then maybe we will accept all those
6 civil party applications.

7 For instance, this can be proved by a photo with the number from
8 S-21 Office and if you don't I know you only show us a photograph
9 from '73 or '72. How can a defence counsel accept that? We
10 cannot accept it. And if you cannot find a photograph then a
11 confession would be sufficient.

12 [10.24.38]

13 And if there is no confession then the list of prisoners -- and
14 there are two lists. One was prepared by the Office of the
15 Co-Prosecutor and then for the second list you can have a look at
16 the list of the S-21 at the genocidal museum. All the lists are
17 maintained there. And then you just photocopy the relevant page
18 with the name, then the defence counsel would happily accept it.
19 And if you cannot have all these documents, then you have a
20 biography. If you have a biography then we will accept it as
21 well, a biography from S-21. Or if the biography was used to
22 wrap the fried banana, then probably try to find anything else
23 like a photograph from S-21.

24 Thank you.

25 MR. PRESIDENT:

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1 Let me now stop the discussion and the adversarial hearing on
2 this civil party application.

3 The international Co-Prosecutor, do you have anything to add?

4 MR. DE WILDE D'ESTMAEL:

5 Thank you, Mr. President.

6 I wish very briefly to return to the general observations we made
7 yesterday concerning the flexibility which we feel should be
8 applied in consideration of elements of evidence that are
9 produced by civil parties in support of their applications.
10 However there is something which I find disturbing in the debate
11 which has just taken place. In fact, two points.

12 [10.26.34]

13 First of all, the fact that the defence returns to the role of
14 civil parties; it seems to me that within a few minutes we will
15 be having a debate concerning the role of civil parties and
16 apparently we are not allowed to respond to this at this point.

17 MR. PRESIDENT:

18 The Chamber now will not allow any adversarial hearing or
19 discussion on this matter, on the challenges and the responses.

20 I just said that.

21 The Chamber will now move to the new section; that is, a brief
22 submission shall be made regarding whether the civil parties are
23 entitled to put questions to the accused regarding the accused's
24 character.

25 The Co-Prosecutors now are given the opportunity to make their

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1 observations regarding this subject and you have 10 minutes to do
2 so.

3 Mr. Hong Kimsuon, do you have anything else to add?

4 MR. HONG KIMSUON:

5 Thank you, Mr. President. I would like just to take a brief
6 moment of your time. It's not related to the adversarial hearing
7 regarding the civil party application.

8 One civil party applicant E2/32 who made a statement on the 9th
9 of July 2009 and this civil party did not fully provide the
10 information to the Chamber, and on the 10th for the E2/32 I
11 wanted this civil party to show the statement regarding to a
12 guard at the Tuol Sleng prison and this civil party was so moved
13 by the countering with the former guard.

14 [10.29.29]

15 I only refer to this person with the code name because it is
16 still confidential.

17 MR. PRESIDENT:

18 Could you please tell the Court what exactly your purpose of
19 standing up and raising this matter, because we are ambivalent as
20 to whether -- what kind of submission you would prefer?

21 But please be brief and summarize your point so that your point
22 can be well communicated to the audience. And if you cannot do
23 that that then the small problem becomes bigger.

24 MR. HONG KIMSUON:

25 Thank you, Mr. President.

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1 I will rephrase my remark and since I have already been notified
2 that this is the last moment for raising any matter in relation
3 to the civil party matters.

4 I have a civil party who is my client and during this moment he
5 would like to submit a new application to be filed in the case
6 file especially in relation to the matter of S-21. The reason
7 behind this is that this document was not presented on the 9th of
8 July 2009 regarding the suffering he experienced during the time
9 he was detained because he was acquainted to another guard who
10 was also at S-21.

11 So my request is that the civil party is allowed to submit
12 additional facts in relation to the mistreatment he received by
13 the guard at S-21.

14 [10.31.52]

15 So he would like to preserve his dignity and that if the Chamber
16 allows it would be very grateful for him.

17 (Deliberation between Judges)

18 MR. PRESIDENT:

19 Mr. Hong Kimsuon, I think probably my capacity to understand you
20 is very low now because I seem to understand nothing from what
21 you have said and I believe that my international colleague would
22 share the same problem because we just don't understand what you
23 are talking about.

24 Please tell everything you want to say. I don't know what
25 exactly would it be, so what kind of fact are you introducing

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1 here? Is it a new fact? If it is new it cannot be introduced
2 now because the Chamber is now hearing the facts that have
3 already been alleged and laid out in the indictment. So further
4 facts are not related to this matter before the Chamber.
5 So according to our Criminal Procedural Code of Cambodia and the
6 Internal Rules which are very harmonized, I believe that we are
7 not dealing with the new facts now at this moment. So it would
8 be best if you can now please rephrase your statement in a more
9 concise way.

10 MR. HONG KIMSUON:

11 Thank you, Mr. President. I may now proceed to clarify the
12 position.

13 [10.34.16]

14 My client is a female civil party.

15 MR. PRESIDENT:

16 Of course, the civil party -- but please use the pseudonym. I
17 know that it is very confidential but please use the pseudonym of
18 that person.

19 MR. HONG KIMSUON:

20 Thank you, Mr. President.

21 I'm talking to the civil party E2/32, and I'm not saying the full
22 name of this witness who actually was the former staff of S-2.

23 And it is not really a new fact but the problem is that the civil
24 party failed to tell the Court that she was tortured and raped.

25 So this is the fact that we would like the Chamber to also admit

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1 this fact that the person failed to include in her testimony
2 before the Court on the 9th of July 2009, and that this person
3 would like to add that she was also raped apart from being
4 tortured.

5 MR. PRESIDENT:

6 You said that there is another witness who will be supporting
7 E2/32 in relation to her attempted fact so then if there is
8 another witness then we have to really deal with the witness on
9 top of the civil party that you mentioned, and whether this
10 application is admissible or not.

11 MR. HONG KIMSUON:

12 Thank you, Mr. President.

13 That's why I put this matter before the Chamber. I would like to
14 seek permission or consideration of the Chamber to accept the
15 E2/32's ground that she was raped.

16 MR. PRESIDENT:

17 Judge Lavergne, you take the floor.

18 JUDGE LAVERGNE:

19 I'm going to try to clarify things a little bit here.

20 [10.37.07]

21 I thought I understood that the origin of the issues that we're
22 dealing with today is to determine if your client's civil party
23 application is admissible, or is this something completely
24 different that we're talking about, because I understood at one
25 point that you are asking that we summons a witness again so that

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1 he can establish that the client was detained at S-21. Or are we
2 trying to bring up facts that have not yet been brought up at all
3 yet and do not stem neither from the hearings nor from the
4 Closing Order?

5 MR. HONG KIMSUON:

6 Thank you, Mr. President.

7 I would like to add further that this fact is related and this
8 request is made in relation to the request made by lawyer Silke
9 Studzinsky. The request has already been made, although I don't
10 remember the ER number of the request.

11 And I just would like to make it clear that it is the last moment
12 that we have to address the matter of the civil party matter.

13 Because my client said the guard at S-21 raped her but she was
14 feeling embarrassed or shy to actually tell the Court whether she
15 was raped at the moment when she was given the opportunity to
16 testify before the Court.

17 [10.39.26]

18 So I'm asking whether the Chamber would consider calling that
19 witness to give testimony before the Chamber or not.

20 (Deliberation between Judges)

21 MR. PRESIDENT:

22 It is now an appropriate time to take the adjournment, so we'll
23 take the adjournment for 20 minutes and we'll resume at 11 a.m.

24 (Judges exit courtroom)

25 (Court recesses from 1041H to 1107H)

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1 (Judges enter courtroom)

2 [11.07.42]

3 MR. PRESIDENT:

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

5 First, the Chamber would like to inquire with the counsel, Hong

6 Kimsuon, regarding his intention and submission as he made before

7 the break. Just to make really clear, if the Chamber is

8 requested to call the civil party E2/32 to have her testimony

9 heard again before this Chamber on the new fact which was not

10 questioned before -- that is the sexual rape by the former guard

11 of S-21 Office -- and whether the request was for the Chamber to

12 conduct an in-camera hearing or the request for the submission of

13 a statement to such effect in writing, so that the Chamber can

14 examine and make a decision accordingly.

15 [11.10.01]

16 You have to explicitly state your intention as Judges of the

17 Bench have different views on what you raised before the break.

18 MR. HONG KIMSUON:

19 Thank you, Mr. President. Before the break I submitted before

20 you and Judges of the Bench, and during the break I consulted

21 with my client, E2/32, to reiterate her position and she would

22 like to confirm that she would like to submit her written

23 statement before the Chamber of what she had not mentioned in her

24 previous testimony, and that the Chamber is not seised to conduct

25 another hearing regarding the new fact.

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1 So in summary, she would like me as her counsel to submit her
2 written statement before the Chamber. Thank you.

3 MR. PRESIDENT:

4 The Co-Prosecutors, do you wish to make any observation regarding
5 the request by Mr. Hong Kimsuon?

6 MR. DE WILDE D'ESTMAEL:

7 Mr. President, we have no particular observations to make. We
8 wish only to note that the Rules of Evidence that we work under,
9 Rule 87, must of course be fulfilled in order to be able to go
10 forward on this request. A priori we feel that this request is
11 justified and useful in order to arrive at the truth.

12 [11.12.30]

13 I hope that the civil party -- if it is authorized to make a
14 written statement, that the civil party will be able to explain
15 in what way the testimony or the evidence that she wishes to
16 bring forward was not available at the time of the hearing, and I
17 believe that these motivations must exist and that they need to
18 be explained in the submission. Thank you.

19 MR. PRESIDENT:

20 The defence counsel, do you have any observation to make
21 regarding the request by counsel Hong Kimsuon?

22 MR. ROUX:

23 Thank you, Mr. President. I would first like to recall that this
24 is the case of a civil party, E2/32, that was challenged by the
25 defence because this civil party stated that she had been a staff

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1 member at S-21, and the defence questioned the fact that she had
2 been a member of the staff of S-21 and I remind you that my
3 colleague asked that a witness be brought forward who himself
4 said that that person was not a member of S-21 staff.
5 Must we cover all this ground again? I hear the prosecutor
6 telling me that we should be able to authorize the request
7 because the evidence was not available at the time of the hearing
8 but this is not what is being sought. The request of my
9 colleague this morning is the following. "My civil party client
10 did not dare tell the Chamber when she testified -- did not dare
11 to tell some of the facts." So I respect the fact that she did
12 not dare to speak out but that person is a civil party. She is
13 supported by expert counsel. It was simple enough for her at the
14 time to contact counsel to tell them, "I can't bring myself to
15 say this to the Chamber," and the counsel would have then
16 requested that the hearing be continued in camera.

17 [11.15.32]

18 But we are at the end of the discussion of the facts now and we
19 would accept that a witness -- or rather a civil party, in fact
20 -- return to tell us, "Well, there is something that I hadn't
21 told you before"? Mr. President, distinguished members of the
22 Court, if you open that possibility you won't get one person
23 speaking, you'll get a whole queue of people coming back to say,
24 "Well, there's something we had omitted or forgotten to say; we
25 would like to say it now".

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1 So we are dealing with persons who have legal counsel. When the
2 problem occurred there was a possibility for them to consult with
3 counsel and counsel would have immediately seized the Chamber. I
4 believe that this is a tardy request, particularly since it
5 regards a person whose presence at S-21 was challenged and
6 continues to be questioned.

7 [11.16.42]

8 Thank you.

9 MR. PRESIDENT:

10 Mr. Hong Kimsuon, do you have anything else to add?

11 MR. HONG KIMSUON:

12 Mr. President, with your leave, if I am not mistaken I clearly
13 stated that the former guard of S-21 who was a witness to the
14 Chamber was seen by my client so it is up to the Chamber's
15 discretion to make such a decision.

16 MR. PRESIDENT:

17 The Chamber carefully listened to your request and the
18 observation of the Co-Prosecutors and the defence counsel and the
19 Chamber will take the request into consideration and discuss and
20 you will be notified at a later stage.

21 Before the Chamber gives the floor to the Co-Prosecutor, the
22 Chamber would like to make an oral decision. The Trial Chamber
23 hereby pronounces orally the operative part of its decision on
24 the following request.

25 Groups 1 and 2 civil parties co-lawyers' joint request for a

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1 ruling on the standing of civil party lawyers to make submissions
2 on sentencing. Document E72 filed on 9 June 2009; the operative
3 part of the decision taken in accordance with Article 14.1 a new
4 of the ECCC law is the following.

5 The Trial Chamber by majority, Judge Lavergne partly dissenting,
6 issues the following decision.

7 1.The joint request by the civil party co-lawyers of groups 1
8 and 2 is rejected.

9 [11.19.45]

10 2.The civil parties are directed not to make submissions
11 relevant to sentencing including (a) submissions on a sentence to
12 be imposed; (b) legal submissions relevant to sentencing; and (c)
13 submissions on or an evaluation of factors underlying a decision
14 on sentencing.

15 They are permitted to refer to such factors only when they also
16 refer to the guilt or innocence of the accused or a claim of the
17 civil party in question for reparations.

18 The written decision, including the reasons of the majority and
19 the minority, will be issued in due course.

20 Secondly, bearing in mind the decision just pronounced, the
21 Chamber directs hereby the parties to provide arguments in
22 response to the following question:

23 Are civil parties allowed to question the accused and the
24 witnesses called to testify at the part of the hearing that is
25 entitled, according to the scheduling order of the Trial Chamber

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1 of 14 August 2009, questioning the witnesses and experts on the
2 issues relating to the character of the accused?

3 Such arguments for the civil parties, the Co-Prosecutors and the
4 defence will be heard today after hearing the defence and the
5 civil party lawyers on the civil party claims.

6 Now, the Chamber would like to give the floor to the
7 Co-Prosecutors to make their submission in relation to the
8 question whether the civil parties have a right to ask questions
9 to the accused and the witnesses on the character.

10 [11.22.23]

11 The Co-Prosecutors have a 10-minute time allocation.

12 MR. SENG BUNKHEANG:

13 Thank you, Mr. President.

14 On the question whether the civil party lawyers are allowed to
15 question the accused or the witnesses or the experts regarding
16 the accused's character, the prosecution would like to make the
17 following observations.

18 Following Rule 23 of the Internal Rules which states that in
19 23.1(a) the participation in the criminal proceedings against
20 those responsible under the jurisdiction of the extraordinary
21 Chambers in support of the prosecution; and 23.6(a) stipulates
22 that when joined as a civil party the victim becomes a party to
23 the criminal proceedings, and especially Rule 94 of the Internal
24 Rules clearly stipulates that the civil parties are allowed to
25 make the final submission.

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1 Therefore, for us to have sufficient grounds and for the civil
2 party counsels to make their final submission as stipulated in
3 the Internal Rules, and as directed by the President just then
4 regarding the guilt of the accused, the civil party counsel shall
5 have the opportunity to ask such questions.

6 Also, in our proceedings so far the civil party counsel has been
7 granted the opportunity to participate in every stage of the
8 proceedings and there is no rule which prohibits the civil party
9 or their counsel to question in such in the proceedings.

10 Therefore the prosecution has the view that it is appropriate to
11 grant the opportunity to the civil party counsel to continue
12 their questioning as has been practised before this Chamber.

13 [11.25.25]

14 And my international colleague will provide further observation
15 on behalf of the prosecution.

16 MR. PRESIDENT:

17 The international Co-Prosecutor, you may proceed.

18 MR. DE WILDE D'ESTMAEL:

19 Thank you, Mr. President.

20 Given the fact that we have very little time I will limit my
21 comments to some general observations that go to consistency and
22 logic. However, it is possible that I may speak longer than one
23 or two minutes. I do not wish to plagiarize counsel François
24 Roux, but yesterday morning he launched into a tirade, the
25 substance of which I would like to summarize here.

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1 He stated that this was the first international tribunal or
2 hybrid tribunal to accept civil parties; that this was a genuine
3 step forward after 15 years of struggle. And unless I'm
4 mistaken, he also went on to say that one should not spoil or
5 cancel out all the efforts that had been made. This was in a
6 different context -- that's when it was said -- that's true, but
7 he did say that this represented considerable progress in the
8 field of criminal justice and that therefore we were all bound to
9 achieve excellence.

10 Well, today we feel that the defence would need to come up with
11 arguments that are compatible with that statement for reasons of
12 consistency and because this argument is supported by law. We
13 are of the opinion that the right of civil parties to take part
14 in the debate and the examination of witnesses before this
15 Chamber must be guaranteed and preserved or safeguarded.

16 [11.27.19]

17 The victims that applied as civil parties are, as is stated in
18 Rules 23.1 and 23.6, parties to the criminal proceedings. That
19 is the general principle. So it has to be one thing or the
20 other. Either we are party to the trial and all of the
21 consequences must be drawn from that, or we are not parties to
22 the trial.

23 In the Internal Rules no distinction is made that could justify
24 the fact that the civil parties were, as it may be, discounted or
25 second-rate parties, for instance with regard to the right of

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1 appeal. This is explicitly stated in the Internal Rules and one
2 cannot conclude from this that the civil parties are prevented
3 from asking questions from certain witnesses. Whether they be
4 character or personality witnesses changes nothing to the rule.
5 Rule 91, with regard to the hearing of witnesses in fact makes no
6 distinction between the parties and there is nothing there to
7 justify a limit being introduced at this stage.
8 Indeed, and returning to the tirade of counsel Roux, this is the
9 first time that victims can take an active part in the
10 proceedings, and the entirety of proceedings, before an
11 internationalized tribunal. And until now, in fact, they have
12 been able to do so at all stages of the proceedings. Some
13 applied before the Investigating Judges and they were authorized
14 to -- counsel authorized to participate actively in the
15 preliminary Chamber on issues of provisional detention.
16 [11.29.28]
17 Others applied to the Chamber after the Order of Indictment had
18 been handed down and each had been authorized to speak in the
19 proceedings and, since this Chamber respects the adversarial
20 principle, all the parties were allowed to express their
21 arguments in law and in fact. All parties were authorized to ask
22 questions from all experts, all witnesses who came successively
23 at the bar concerning M-13, S-21, Choeung Ek and S-24.
24 All of the parties were also invited by the Chamber to ask
25 questions from the civil parties, whether they be survivors of

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1 S-21 and its annexes or whether they be relatives of persons who
2 had been smashed and, more particularly, with regard to the
3 suffering they endured.
4 Thus, on behalf of the same rationale and the principle of
5 adversarial debate, we feel that all parties, with no
6 discrimination or differentiation, should be allowed to ask their
7 questions of the accused and witnesses with regard to the
8 character of the accused. This is both useful and necessary for
9 the truth to out and it does not infringe either the rights of
10 the defence or the discretionary power of this Chamber.
11 It is not justified that civil parties be suddenly silenced
12 because their voice and their perspective, which is distinct from
13 that of the prosecution -- contrary to what Maitre Roux said,
14 their voice is an essential voice when witnesses will come before
15 us to speak on forgiveness or reconciliation, for instance. If
16 we cannot hear the civil parties at that time I believe that we
17 will be making a mistake.
18 The witnesses we will be hearing now are not exclusively
19 witnesses for the defence. They are witnesses called to the bar
20 by decision of the Chamber and they are in no way different from
21 the others and, in reality, this testimony and testimony already
22 heard, as well as the statements of the civil parties, will all
23 in the end help you and assist you as Judges to make a
24 determination with regard both to the guilt of the accused and
25 the level of the sentence.

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1 [11.32.10]
2 And all those who will testify will not be speaking exclusively
3 on the character of the accused and they will all have an input
4 enabling you to determine what are the criminal facts, the mode
5 of participation in criminal activity and the existence or not of
6 mitigating circumstances or aggravating circumstances. These
7 witnesses giving the fact on the personality or character of the
8 accused are in no way different from others, and therefore the
9 civil parties should be allowed to fully play their role as
10 parties before this Chamber.
11 Now, if it is the case that your Chamber agrees to the principle
12 that the parties should take part in this part of the debate in
13 active fashion, this does not in any way prevent you from
14 regulating this participation if you so desire; for instance,
15 with regard to speaking time being allotted to the civil parties,
16 as you did today already because, well, we only speak 10 minutes
17 and the other parties have 40 minutes speaking time.
18 But this difficulty which you perhaps anticipate with regard to
19 the management of speaking time of the different parties in
20 future hearings should not cause you to put in question the
21 participation of civil parties in these proceedings; a principle
22 which is a principle that you have upheld from the outset in this
23 case number 1, and here we are not at all entering into a
24 discussion about case number 2.
25 Finally I would like to recall what Maitre Roux said, certainly

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1 in support of a different argument. We should not spoil the
2 progress and the step forward. We should not spoil or cancel all
3 the efforts that have been made over the last few years. Thank
4 you.

5 [11.34.24]

6 MR. PRESIDENT:

7 Next the Chamber would like the civil party lawyers representing
8 the four groups to make their observation in relation to whether
9 the civil parties have the rights to put questions to the
10 witnesses called to testify regarding the accused's character.
11 You have 40 minutes all together.

12 MR. HONG KIMSUON:

13 Mr. President, thank you. Your Honours, in the decision
14 concerning the submission or the rights of the civil parties to
15 put questions to the witnesses regarding the character of the
16 accused, on behalf of civil party group 2 and 4 I am here to
17 present our joint comments of the two groups.
18 First we would like to tell the Court that in our Internal Rules,
19 the Internal Rules of the ECCC, Rule 23 as quoted by the
20 Co-Prosecutor already, I would like to add briefly that the
21 creation of the Law on the Extraordinary Chambers in the Courts
22 of Cambodia by the United Nations and the Royal Government of
23 Cambodia, in their agreement they planned to put the most senior
24 people and the most responsible people of the Khmer Rouge regime
25 on trial. And the parties to the proceedings include the civil

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1 parties and the Criminal Procedural Code of Cambodia and the
2 Cambodian law are to be used if the Internal Rules of the ECCC
3 have not fully covered the main substance of the law that we need
4 to use, these national laws.

5 [11.37.41]

6 And regarding Rule 23, the civil party action by victims, which
7 states that paragraph 1(a) regarding the participation of the
8 civil party in the criminal proceedings, we are here to support
9 the prosecution of course. However, if we look at Rule 23.7
10 which states as it is that:

11 "Any victim participating in proceedings before the ECCC as a
12 civil party has the right to be represented by a national lawyer
13 or a foreign lawyer in collaboration with a national lawyer as
14 follows..."

15 And Rule 23.7(a) states that:

16 "Victims shall have the right freely to choose from amongst
17 national lawyers and foreign lawyers who are registered with the
18 Bar Association of Cambodia. In order to facilitate this choice
19 such persons shall be provided with a list of lawyers referred to
20 in Rule 12.2(a)"

21 So it is about the list of the national lawyers.

22 Here the rights of the parties are precisely set forth. So the
23 victims who would like to join as the civil parties are entitled
24 to legal representatives and counsels. So as a victim who can
25 explicitly express their physical and emotional damages as the

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1 consequences of the crimes alleged, they are entitled to the
2 rights to take part in the full proceedings.

3 So here the civil parties have the right to counsel and in
4 Cambodian law we use the term "lawyer". So lawyer, whether the
5 lawyer for the defence counsel or the lawyer for the civil
6 parties, are to serve the interests of their clients. So as a
7 lawyer and our clients, the civil parties here who previously are
8 victims, so victims are here to express their suffering and the
9 damages and that they are here to claim civil reparation and
10 compensation.

11 [11.40.57]

12 And regarding their statement or rights to make their submission
13 in relation to sentencing, they can do so to support the
14 Co-Prosecutor but the civil party is not just here to rise and
15 then say that we here are to support the Co-Prosecutor in
16 sentencing. I think that is not enough for the full rights of
17 the civil party are exercised.

18 If so, why should we have been participating in the proceedings
19 this far? We are here to show the Court the damages, the
20 consequences of the crimes committed by the accused towards our
21 clients. And we, the civil parties, have noted all the details
22 expressed or debated in the Court and we will put in our final
23 submission these notes.

24 So on behalf of civil party lawyers, group 2 and 4, we would like
25 the President to grant the rights or recognize the rights of the

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1 civil parties to put questions to the witnesses who are
2 testifying on the character of the accused in the very near
3 future.

4 I would like my co-counsel to share the floor. Thank you.

5 MR. PRESIDENT:

6 Civil party lawyer, group 3, you may now proceed.

7 MS. TRUSSES-NAPROUS:

8 Mr. President, Your Honours, I will say that I was very much
9 surprised by the issue that is presented to us today.

10 [11.43.20]

11 It is certainly because I belong to a civil law tradition, which
12 explains maybe that it may not have even come to my mind that
13 this issue would be raised. However, since it is raised I think
14 that it is necessary that I respond. And I will tell you that I
15 had planned to speak exactly in the same way as the Co-Prosecutor
16 did.

17 Indeed, just as the Co-Prosecutor, just as Maitre Roux at the
18 start, it is indeed for me indisputable that the civil parties'
19 presence in this trial, in a hybrid trial, in an international
20 trial, this presence for me absolutely needs to be acknowledged.
21 The civil parties are fully part of this trial. As of the moment
22 they have joined as such and this in view of the legal
23 dispositions.

24 And it is obvious here, and I'm not going to bring up the
25 articles that we already have been reminded by my colleagues --

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1 the Article 23, for example, of the Internal Rules that allows me
2 to -- that brings me to an observation since it was indicated to
3 you earlier by the defence that the civil parties were here to
4 present -- to express their suffering and to ask for reparations,
5 which is indeed the case, of course.

6 But it is also provided in Article 23 that the civil parties also
7 are involved in supporting the prosecution in prosecuting people
8 accused of crimes under the ECCC's jurisdiction. So it's exactly
9 the same thing in civil law trials in which civil parties come to
10 support the prosecution and they do participate in the totality
11 of the proceedings. And we did not yet mention however --and
12 again with reference to the Internal Rules, articles or the Rules
13 90 and 91 of the Internal Rules which deal with the questioning
14 of the accused and of the questioning of the other parties -- in
15 the context of the questioning of the accused, after questioning
16 by the Judges, the Co-Prosecutors and all the other parties and
17 their lawyers shall have the right to question the accused.

18 All questions shall be asked with the permission of the President
19 except for questions -- in Rule 91, the Co-Prosecutors and all
20 the other parties and their lawyers shall be allowed to ask
21 questions with the permission of the President.

22 There is therefore no difficulty involving these rules and on top
23 of this Cambodian law also authorizes the presence of the civil
24 parties at any stage of the proceedings. And therefore the civil
25 parties might present their observations during the hearings.

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1 [11.47.23]

2 And Article 326 of the New Criminal Code of Cambodia supports
3 what I just said as I was referring to the rules, because the
4 prosecutors, the lawyers and the civil parties must be allowed to
5 ask questions and all of the questions of course must be
6 authorized by the President.

7 So I am therefore also taking the liberty of referring to the
8 decision of the preliminary Chamber which came into play in
9 reference to case number 2. It was on the 20th of March 2008.
10 It is a decision related to the civil parties responding to
11 matters of provisional detention. And the preliminary Chamber
12 indicated that contrary to what was decided in the ICCC the
13 Internal Rule provides that once the civil party has been joined,
14 has applied, may participate in all of the stages of the
15 proceedings according to Rule 24 of the Internal Rules. It is
16 not necessary to prove a specific reason.

17 So I believe therefore that the civil parties must benefit from
18 the possibility of intervening at any level in the proceedings;
19 of course, naturally with the authorization of the President.
20 And this holds as well for the other parties because these
21 Articles involve and bring all of the parties and put them at the
22 same level and put them in the same context. And I think that
23 this is extremely important to understand.

24 So this being said I believe that it is also suite to remind that
25 the civil parties are represented by lawyers who are free and

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1 independent. And the accused, however, had the possibility of
2 questioning, through his counsel, the civil parties.
3 [11.49.52]
4 And his defence counsel used this right with a specific objective
5 in mind, the ascertainment of truth of course, and the interests
6 of their client as well. And at certain points they even
7 believed that they had no questions to put to the civil parties.
8 The civil party lawyers also would like to have the same
9 possibility, the same choice and they are fully part of these
10 proceedings. They must therefore have the possibility of being
11 able to question the accused regarding his personality and also
12 questioning the witnesses and the experts also in regard to his
13 personality. And this of course with the simple objective of
14 really understanding what might have happened, in the interest of
15 course of our clients but also in order to participate in the
16 ascertainment of the truth as well.
17 The civil party lawyers are here as well to partake in a work of
18 justice and to participate in a trial that must be a fair trial.
19 Therefore they are fully entitled to have their full place in
20 this trial and at every stage of these proceedings. And as the
21 Co-Prosecutor mentioned, this of course might modify the rules --
22 modifying the rules right now would be discriminatory and would
23 not at all be understood so I believe that it is -- maybe the
24 Chamber has a few questions regarding indeed the speech time that
25 be granted to the civil parties, of course.

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1 But this is a problem of organization only. But the principle in
2 itself, the principle of the freedom of expression of the civil
3 party lawyers, even in regard to the -- this principle cannot be
4 challenged.

5 [11.52.22]

6 The civil parties must be able to participate at all of the
7 stages of the proceedings.

8 MR. PRESIDENT:

9 Counsel Ty Srinna, you may now proceed.

10 MS. TY SRINNA:

11 Mr. President, Your Honours and distinguished members of the
12 Court, the Co-Prosecutors and the civil party of the other groups
13 have already made it clear in relation to this matter. However,
14 I would like to add on top of what has been raised.

15 As to the rights of the civil party to participate in the
16 questioning the witnesses regarding the character of the accused,
17 since Internal Rule 23 has been already expressly quoted, I would
18 like to quote from the Cambodian law, Article 325 of the Criminal
19 Procedural Code of Cambodia.

20 In that article it is about the questioning of the accused.

21 Paragraph 2 states that after the President of the Court put
22 questions, then the Co-Prosecutor and the parties are allowed to
23 put questions to the accused. Another relevant article is also
24 seen important, Article 326 which is the hearing of parties. It
25 states that:

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1 "The presiding judge shall listen to the statements of civil
2 parties, civil defendants, victims, witnesses and experts in the
3 order which he deems useful. The presiding judge can listen as
4 witnesses to judicial police officials and judicial police agents
5 who conducted the inquiry."

6 In the second paragraph as it referred:

7 "The prosecutor of the kingdom, the lawyers and all the parties
8 may be authorized to question the accused. All questions shall
9 be asked with the authorization of the presiding judge."

10 As referred to these two articles, the general substance has
11 already been well covered concerning the debates in the
12 proceedings and so far the proceedings have been fully -- full of
13 these articles with the order starting from the prosecutor and
14 then the civil parties and the defence counsel.

15 So regarding other facts which is new facts concerning the
16 character of the accused, as long as the facts are being put
17 before the Chamber, the parties to the proceedings will maintain
18 their rights to put questions to the person concerned. And in
19 relation to the character of the accused it is very related to
20 the alleged facts. Therefore, the parties to the proceeding are
21 entitled to the rights to put questions.

22 So we would like the Chamber to guarantee that the civil party
23 lawyers and civil parties will still have the rights to put
24 questions to the witnesses.

25 [11.57.19]

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1 And I would like to share the floor with Mr. Alain Werner.

2 MR. PRESIDENT:

3 Mr. Alain Werner, you now may proceed.

4 MR. WERNER:

5 Thank you. Thank you, Mr. President.

6 Let me please first share with you the fact that indeed our group
7 was also very much surprised last night when we understood that
8 you wanted to bring up this issue and hear what we have to say.
9 My colleagues and the international Co-Prosecutor brought up a
10 certain number of legal points, and I don't think we should get
11 back to them. Of course we support all of their arguments that
12 were presented on this side of the bar.

13 And let me please first tell you that regarding law, up until now
14 the criteria regarding questions are that these questions must
15 not be repetitive and that the question must be related to the
16 issue at hand. It is these criteria that we have been abiding to
17 for the past five months and I believe that you have adopted this
18 in a fair way as well. And we have tried as much as we could to
19 abide by this.

20 It is only these two criteria that were retained. So I would
21 like to do this, and I thought I could do this before you render
22 your decision.

23 [11.58.57]

24 There are indeed two different aspects here. There are the
25 pleadings and there are the questions, the questions that the

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1 parties put during hearings and regarding the pleadings, you did
2 render your decisions regarding the pleadings. We did not agree
3 with the defence. In fact, we didn't even agree among ourselves,
4 among the different civil party lawyers, and you decided. And
5 that's one thing. That's one thing. But the question of knowing
6 if the civil parties might be able to put questions to the
7 experts and to the witnesses is a completely different question.
8 And back then when we were pleading, both sides of the bar
9 regarding the issue of whether -- the issue of whether or not we
10 can plead, Maitre Roux at one point brought up the possibility of
11 calling in Mr. Robert Badinter who will explain to you what
12 happens in French law.
13 Let me please tell you that if Mr. Robert Badinter had come with
14 him and within the highest authorities in French law, all of them
15 would have told you that indeed, indeed, the civil party lawyers
16 are authorized to put questions to all of the experts and to all
17 of the witnesses in all criminal trials in France. And the
18 situation is not different in my country or in other countries
19 based on the civil law system. Nowhere, nowhere when there are
20 civil parties involved, nowhere is there a distinction between
21 different experts and different witnesses -- nowhere.
22 So let's please be clear. You would therefore be creating a
23 distinction that does not exist. And of course it would be an
24 enormous form of regression.

25 [12.00.53]

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1 Let me tell you something else as well. You are asking us the
2 question today regarding witnesses who are called in to testify
3 in regard to the accused's personality and only that. But let's
4 please be clear. Since the end of March, since therefore the
5 beginning of the substantive hearing practically all of the
6 witnesses and all of the experts spoke in one way or the other
7 directly or indirectly about the accused's personality and all of
8 the civil party lawyers, practically all of the civil party
9 lawyers for the past five months put questions to the experts and
10 to the witnesses regarding the personality of the accused.

11 In June myself, I directly put questions to the accused and the
12 accused was stating that he would not go into the cells because
13 he felt pity and he said the day before to Judge Lavergne that he
14 was himself a coward. And I confronted the accused and I asked
15 him if it was not because of cowardice or because of pity that he
16 would not go into the cells but because he was opportunistic
17 instead and that he did not feel any compassion.

18 I asked him that question personally and nobody objected to that.
19 Nobody objected -- neither the judges nor the defence. And the
20 question was considered as perfectly appropriate and the accused
21 did in fact answer me.

22 On the 20th of May, Dr. Etcheson -- I asked him three to four
23 questions, myself, directly to Dr. Etcheson regarding the
24 creativity of the accused. And Dr. Etcheson for practically a
25 full hour spoke about the accused's zeal and inventivity and this

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1 aspect of the accused which explains that he multiplied the
2 torture methods at S-21.
3 [12.02.52]
4 David Chandler on the 6th of August spoke in depth about the
5 personality of the accused, the fact that the accused's former
6 job as a schoolteacher corresponded so well with what he was
7 doing at S-21. And we put questions to Mr. Chandler regarding
8 this. And these are experts. We're not speaking about the
9 witnesses.
10 Francois Bizot -- on the 9th of April Francois Bizot spoke in
11 depth about the accused's character. And I put questions directly
12 to Francois Bizot in order to know if the character of the
13 accused, if the personality of the accused -- in order to know if
14 the accused's tastes for French culture, his intellectualism had
15 allowed Francois Bizot to convince the accused of his innocence
16 and therefore to save his own skin.
17 And I asked him if he did not believe that for other people, for
18 Khmer people because of the accused's character, if this -- he
19 would not have been able to convince the accused in the same way.
20 And Mam Nai on the 14th of July, I put directly questions
21 directly to Mam Nai regarding the character of the accused on his
22 tendency to directly denounce people, to send them to S-21. And
23 Mam Nai answered me directly.
24 If I had had more time I would have gone back to the transcripts
25 and I would have found all of the examples, all of the examples

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1 that proves that we all put questions directly regarding the
2 personality of the accused. I think more than 75 percent of the
3 witnesses were -- and the civil parties -- were directly
4 questioned by the civil parties.

5 [12.04.45]

6 So the situation is the following law "dura lex sed lex". The
7 law is perfectly clear here and my colleagues recall that. The
8 practice is unanimous in all civil law countries and the internal
9 dynamics over the last five months of this trial show that we
10 have all been in a position to ask questions from witnesses and
11 experts concerning the character of the accused. But if you stop
12 it now we'll be in an impossible situation.

13 We asked all the witnesses and all the experts regarding
14 character because they were not called to the bar to speak
15 specifically on character. And once you call them to the bar to
16 speak specifically on character then we would be prevented from
17 asking questions. That is impossible. It's an impossible
18 situation.

19 Thank you.

20 MR. PRESIDENT:

21 Now, it is appropriate time for our lunch break. So the Chamber
22 will adjourn for lunch and it will resume in the afternoon
23 starting from 1:30 p.m.

24 [12.06.19]

25 For this afternoon's schedule we will hear the observations by

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1 the defence counsel. After that the judges will retire for the
2 deliberation to make our decision. Then we will inform the
3 Chamber -- the parties of the decision and we can start
4 questioning the accused on the character.
5 Security guards, take the accused back to the detention facility
6 and bring him back before 1:30 p.m. The hearing is adjourned.

7 THE GREFFIER:

8 All rise.

9 (Judges exit courtroom)

10 (Court recesses from 1207H to 1335H)

11 (Judges enter courtroom)

12 MR. PRESIDENT:

13 Please be seated. The Chamber is now back in session.

14 For this afternoon's proceeding the Chamber would like to give
15 the floor to the defence counsel to make their observations, and
16 to make it brief, on the question whether the civil parties
17 should be entitled or granted the right to ask questions on the
18 character issues to the accused and the witnesses.

19 You take the floor.

20 [13.36.02]

21 MR. KAR SAVUTH:

22 Thank you, Mr. President.

23 Good afternoon, Your Honours, ladies and gentlemen.

24 Generally speaking, based on Internal Rules 91.2 and Article 326
25 of the Code of Criminal Procedure, all parties can raise a

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1 question specifically on the issue of the character or
2 personality of the accused and as it is decided by the Chamber,
3 the civil party lawyers have no right to make their submission on
4 sentencing or on the legal matters related to sentencing.
5 So what is the purpose of putting questions on the character of
6 the accused? What is the gain for the civil party? It is not to
7 maximize or minimize their civil claims. The question of the
8 character of the accused has only -- sole purpose is whether to
9 prove the guilt or the innocence of the accused, and the civil
10 parties have no obligation in the prosecution or in legal
11 submission regarding this matter. So they shall not be granted
12 the right to ask questions on the character to the accused or to
13 the witnesses. That is point one.

14 [13.38.09]

15 Point two, in the submission regarding the legal aspect the
16 Chamber weighs the equality of arms in order to ascertain the
17 truth, to find justice, and justice is not to be done for only
18 the civil party or the victims but it shall be done for the
19 accused as well. Therefore, justice can only be achieved when
20 there is an equality of arms.
21 And how can we achieve that? We can see that there are two
22 Co-Prosecutors representing the victims and they have the
23 obligation to put questions on the accused's character in order
24 to provide a burden of proof on the accused or to provide
25 inculpatory evidence on the accused; and on the contrary we, the

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1 defence counsel, will have to find the exculpatory evidence for
2 the accused. And if the four groups of the civil parties are
3 granted the right to put questions to the accused regarding his
4 character, then certainly it can be seen there is no equality of
5 arms, and of course this is at the discretion of the President
6 and the Judges of the Bench to find justice.

7 And this is my observation, Mr. President, and I would like my
8 international colleague to make further submissions.

9 MR. PRESIDENT:

10 The international defence counsel, you may proceed.

11 MR. ROUX:

12 Thank you, Mr. President. Well, all of us will have understood
13 that we have entered an extremely interesting area of debate and
14 the ruling of the Chamber on this matter will certainly be
15 scrutinized by jurists, both national and international, who have
16 been following all of these trials and ours in particular, and
17 who follow our trial on the issue of victim access to
18 international proceedings.

19 [13.41.25]

20 Now, you have this morning handed down a first decision which the
21 defence was waiting for in order to determine the orientation
22 selected by the Chambers. Things have become clearer now. As
23 far as the defence is concerned, we had always stated that a
24 civil party should not intervene on the issue of sentencing.

25 Now, at the beginning of my observations I would say that I was

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1 very much flattered by the fact that my colleague from the Office
2 of the Prosecutor quoted me at length. And I'm not in the habit
3 of contradicting myself or stepping back from a position I've put
4 forward, but in this quoting game, of course, I can also take
5 part and I will begin by quoting you as well.

6 You said before the Chamber all of the witnesses will help you to
7 come to a determination, both as to guilt and as to sentence.
8 Then I could simply stop pleading, since the Chamber has just
9 decided that the civil parties will not -- may not -- intervene
10 on sentencing; they have no ground to question witnesses who will
11 be coming into play on determination of the sentence, because
12 it's clear that when you are discussing character you are
13 obviously looking to sentencing.

14 And when one analyzes the personality of the accused it is
15 because one is seeking, on the basis of that personality -- one
16 is seeking to find the means to individualize the sentence.

17 We're dealing with criminal law here and what is the fundamental
18 principle of criminal law since Mr. Bechariat (phonetic). It is
19 the principle of the individual nature of the sentence.

20 [13.44.20]

21 In other words, confronted with identical facts, two accused may
22 be sentenced to different penalties because their personality
23 happens to be different. That is what personality or character
24 is about. This goes to an individualization or personalization
25 of the sentence.

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1 At this stage already one might ask what does this have to do
2 with the request for indemnification that is lodged by the civil
3 parties, because of the role of civil parties is one, to express
4 their suffering; and two, to seek redress. So what role can the
5 personality or the character of the accused play in regard to
6 these two aspects?

7 Continuing on what my distinguished opponents have said, Maitre
8 Werner explained at length that for the last five months the
9 civil parties on numerous occasions have had opportunity to put
10 questions going to the character of the accused. Duly noted.
11 Therefore you put all the questions that you intended to put
12 regarding the character of the accused. You know today
13 everything that you wanted to know. So why would you want now,
14 on witnesses that will deal exclusively with character, why would
15 you want to ask more questions? And you gave us a detailed
16 presentation of all the questions that you had occasion and
17 opportunity to put to the accused, to the experts and to various
18 witnesses.

19 We can consider that you have acquired sufficient knowledge in
20 this field and my colleague, Maitre Werner, very ably invoked
21 civil law. Well, that's interesting. I heard you from the
22 beginning of these proceedings that we should not lock ourselves
23 in the realm of civil law. But when it suits you, you invoke
24 civil law.

25 So you haven't since the outset -- you have not seized to attempt

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1 to go beyond the boundaries of the civil law.

2 [13.47.13]

3 You explained to us at length that you have the right to speak to
4 sentencing, that you might even have the right to call experts on
5 that issue. So at all times throughout the proceedings you tried
6 to outflank the role of the civil parties.

7 Well, please allow us on our side of the bar to revisit civil law
8 as well because, Mr. President, distinguished members of the
9 Court, the Co-Prosecutors and counsels for the civil parties are
10 perfectly right: in the context of civil law it is obvious that
11 the civil parties are entitled to question all of the witnesses
12 and all of the experts. I can confirm this. There is absolutely
13 no argument about this. In a national trial under civil law this
14 will happen.

15 The problem, however, which we are attempting to clarify here, is
16 how can one transpose rules of national law in international
17 proceedings for a trial that deals with mass crimes? And you
18 will understand what I mean.

19 When one is in a national civil law trial where there is an
20 accused who has committed one murder and when you have one,
21 perhaps two, civil parties applying, well, if the civil party
22 lets his or her suffering overflow, that might happen but it
23 won't go any further than that.

24 However, in proceedings such as this one dealing with mass
25 crimes, if you have one, two, three, five, 10 or 20 or more civil

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1 parties who come and let out their legitimate suffering then we
2 find ourselves in a situation that is unimaginable from the point
3 of view of a fair trial because the accused is no longer facing
4 one prosecutor but 20, 30, 50 prosecutors.

5 [13.50.15]

6 And when I said earlier that we were not at the marketplace but
7 in a forum of law here, that is what I wanted to say. And it is
8 even more complex in our case where you have an accused who is
9 pleading guilty and where we find ourselves in a situation that
10 is totally unexpected where someone is facing all these persons
11 accusing them who hardly puts up a defence and, as I said this
12 morning, is hearing words of such violence that it's as if he
13 were pelted with stones.

14 And I repeat for my civil party colleagues, you took yourselves
15 to be prosecutors. And this is the problem which we have to face
16 today. You thought you had become prosecutors. I was going to
17 say how could you? Don't you trust the Office of the
18 Prosecutors? Are you not satisfied with the work performed by
19 the prosecution? Why are you attempting to replace them, to
20 outflank them?

21 Let me quote a French saying which says if you sow the wind you
22 will harvest the storms. And distinguished members and
23 colleagues of the civil parties, you did sow the wind and today
24 you're harvesting the storm. You were surprised that the Chamber
25 would ask itself whether we should continue to let you behave as

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1 if you were prosecutors. That is the question that the Chamber
2 is asking you to answer.

3 And so, yes, indeed you have civil law on your side. That's
4 true. Looking at the letter of the law, the law is on your side.
5 But the law is a living organism and, more specifically, we all
6 know here that we are in a tribunal that creates law.

7 And so I would tell my colleagues and, looking to civil law and
8 to common law, I would like to recall the debate that is in
9 progress in my country today regarding the place of victims in a
10 criminal trial.

11 [13.53.30]

12 And since my colleague Werner very opportunely quoted an eminent
13 jurist, an eminent minister, an eminent president of the
14 Constitutional Council -- and I mean here Mr. Robert Badinter --
15 I would like to recall what Mr. Robert Badinter said in an
16 article published in the newspaper "Le Monde" which was entitled,
17 "One Should Not Confuse Justice and Therapy". We are at the very
18 heart of the subject matter here. And I read, quoting Mr.
19 Badinter:

20 "One must recall that criminal justice does not have the mission
21 of acting as a therapy for the suffering of victims. Its
22 function is of an enforcement deterrent and expressive nature
23 because it expresses the values of society, but it cannot be
24 considered to have as an objective to provide therapy. In the
25 name of the suffering of victims calling up on the solidarity of

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1 the entire society, we must not alter the difficult and delicate
2 balance of criminal justice which is based on the principle of a
3 fair trial which is enshrined in the European Human Rights
4 Convention."

5 But Mr. Badinter adds:

6 "We are seeing a trend drifting away and to claim that you are
7 on the side of the victims is politically always beneficial. Who
8 could be opposed to this? We live in a society based on emotions
9 which wants to express compassion. Nothing can mobilize emotion
10 more than crime and the suffering of victims, multiplied by the
11 media effect and the power, the graphic power of television.
12 This feeds the revenge, the urge to seek revenge which lies at
13 the very heart of human reaction when confronted with a
14 horrendous crime. But justice cannot be confused with revenge;
15 nor can it be confused with compassion for the victims. This is
16 why it is so difficult to practice."

17 I apologize for this somewhat philosophical digression but I
18 believe that in the face of stakes as great as those that we are
19 contemplating, it is good to remember our principles and our
20 difficulties. Therefore, I would like to suggest to the Chamber
21 that it be pragmatic. I do indeed believe that it would be a
22 serious issue if the Chamber were to hand down a principle
23 decision stating that the civil parties are not entitled to
24 question all of the witness who appear in a trial where there are
25 civil parties, but I also believe that the Chamber should take

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1 account of the particular context of the Duch case, and the
2 Chamber should hand down a specific decision; specific to the
3 Duch case.
4 [13.58.24]
5 And the Duch case is the case of an accused pleading guilty, and
6 if the Chamber is willing to look to common law I have on several
7 occasions in international criminal courts assisted persons
8 pleading guilty and I negotiated plea bargainings with the
9 prosecutors.
10 And when an accused pleads guilty before an international
11 criminal court -- please listen carefully -- an agreement is
12 struck with the prosecutors, enabling the accused to bring
13 forward character witnesses and the prosecutor does not challenge
14 them. The prosecutor refrains when someone pleads guilty in
15 common law -- refrains from questioning or challenging character
16 witnesses.
17 That is the solution. That is the solution. Let us be
18 pragmatic. Let us respond to the case we have at hand. Adapt
19 your decision to the circumstances of the Duch trial and, at the
20 same time -- and again in order to be pragmatic, I dare make a
21 suggestion to the Chamber. In order to avoid completely
22 depriving the civil parties from burning questions they may wish
23 to ask, and the Chamber could well decide that in this case the
24 civil parties will address the Office of the Prosecutors, thus
25 putting it back in its full role, and ask the Office of the

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1 Prosecutors to ask questions that the civil parties would have
2 liked to ask directly.
3 Well, I believe that we could perhaps go forward with such
4 solutions. Let me add still that with regard to the defence I
5 could also understand the fact that the Chamber decided to make a
6 difference between, on the one hand, accused and witnesses and,
7 on the other, experts. I would personally be willing to accept
8 that the civil parties be allowed -- either directly, either
9 through the prosecutor, be allowed to ask questions from the
10 experts.

11 [14.01.30]

12 But please, once again, on the condition that they are reminded
13 -- and, Mr. President, forgive me for insisting -- you've already
14 done this -- unfortunately you were not always followed in your
15 admonitions, but they must be reminded that the questions that
16 they put can deal exclusively with their suffering and
17 indemnification. Thank you.

18 (Deliberation between Judges)

19 MR. PRESIDENT:

20 After having heard the remarks made by the defence counsel and
21 having listened to the civil party lawyers' comments, the Chamber
22 would like to retire to deliberate and we will adjourn for 30
23 minutes now. We will resume after 30 minutes.

24 THE GREFFIER:

25 All rise.

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1 (Judges exit courtroom)
2 (Court recesses from 1403H to 1502H)
3 (Judges enter courtroom)
4 MR. PRESIDENT:
5 Please be seated. The Court is now back in session.
6 The Chamber is now going to pronounce the decision. After having
7 heard the parties on the question raised this morning, which was:
8 are civil parties allowed to question the accused and the
9 witnesses called to testify at the part of the hearing that is
10 entitled, according to the Scheduling Order. The Chamber decides
11 by majority, Judge Lavergne dissenting, as follows.
12 [15.03.15]
13 Civil parties are not allowed to ask questions to the accused
14 relevant to the character and to the following witnesses
15 appearing under the following pseudonyms or names: KW-34, and
16 Françoise Sironi-Guilbaud, D1, D2, D3, D4, D5, D6, Christopher
17 Lapel, D8 and D14.
18 The written decision, including the reasons of the majority and
19 the minority, will be issued in due course.
20 The time allocation for the Co-Prosecutors and the defence to
21 question the accused on his character will be one hour and 15
22 minutes each. The parties will be informed of the time
23 allocation for specific witnesses next week, which is Monday next
24 week.
25 The Chamber will now proceed to hear the questionings and

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1 responses in relation to the character of the accused.

2 The security personnel are now instructed to take the accused to
3 the dock.

4 We note that Mr. Francois Roux is on his feet. You may proceed.

5 MR. ROUX:

6 Thank you, Mr. President. At this stage the defence wishes to
7 ask the Chamber that it read out the paragraphs in the indictment
8 regarding what has been titled as "personality elements"; that is
9 to say paragraphs 162 to the end of this order. And I would like
10 to remind you that at the beginning of this trial when the
11 Greffier read out the indictment, the defence asked that the
12 paragraphs regarding personality also be read out and the Chamber
13 answered that this would be done when this issue of personality
14 is brought up. So therefore now, as we're going to be dealing
15 with this question of personality, it would be suitable to read
16 out the appropriate paragraphs.

17 MR. PRESIDENT:

18 The Chamber now accepts the request by the defence counsel. The
19 Greffier Se Kolvuthy is now instructed to read part of the
20 Closing Order by the Co-Investigating Judges from paragraph 162
21 to 170.

22 THE GREFFIER:

23 "Part 3. Character Information

24 [15.08.38]

25 A. Early life.

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1 Paragraph 162. Duch was born on 17 November 1942 in Pov Veuy
2 village, Peam Bang subdistrict, Stoung district, in Kampong Thom
3 province. His father deceased in 1990 and his mother is still
4 living. They were poor peasants of Chinese origin.
5 Duch appears in the register of births under the name Kaing Eav.
6 When he was two or three months old his name was changed to Yim
7 Cheav under the advice of a fortune teller. Since he did not
8 like this name, at the age of 15 he asked his father to change it
9 again. He took this opportunity to modify his date of birth to
10 appear younger in order to register for school. Henceforth his
11 new identity would be Kaing Guek Eav born on the 15th of February
12 1945.
13 During the Khmer Rouge period he assumed and was referred to by
14 his alias Duch. However, when he lived in China from late 1986
15 to 2 July 1989 he asked to be called Hang Pin.
16 Paragraph 163. Duch was the eldest of five children and the only
17 son. He got on well with his parents and sisters. He often
18 appears to have been ill when he was small, with what he called
19 illnesses caused by poverty and living in the countryside.
20 He began school late at nine years of age, a good pupil who
21 simultaneously feared and was fascinated by his teachers whom he
22 respected highly. He completed his schooling successfully at the
23 Kampong Thom Junior High School, followed by high school in Siem
24 Reap and at Lycee Sisowath in Phnom Penh, where he passed his
25 Baccalaureate in 1964.

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1 [15.11.36]

2 B. Personal, Professional and Political Evolution.

3 Paragraph 164. In 1965 Duch was appointed as a mathematics
4 teacher at the junior high school in Skun. His students would
5 later describe him as a sincere devoted man, always seeking to
6 help the impoverished. This professional activity did not last
7 long, however, as Duch was gradually becoming the revolutionary
8 that he was to remain for more than 20 years.

9 From age 15 he had been attracted by political activism, having
10 felt humiliated when he became conscious of his family's social
11 situation, especially when faced with the implacable demands of
12 an usurious uncle. In this respect he was undoubtedly influenced
13 by several of his teachers who denounced corruption and social
14 injustice and in particular by one of his instructors, Ke Kim
15 Huot, who would later be executed at S-21.

16 Paragraph 165. Duch's family and emotional life was
17 characterized by great stability except for amorous
18 disappointment during his youth which is described as being
19 important. Duch only mentioned one woman in his life, his wife,
20 Chhim Sophal, alias Rom, who was a garment maker. He explained
21 that with Son Sen's approval he had been able to choose his wife,
22 whom he had met in 1974. Duch married her in 1976 when he was
23 already Chairman of S-21.

24 He would have four children: a girl born on the 27th April 1977;
25 a boy born on the 14th of December 1978; another girl born on the

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1 30th of June 1981; and a son born on the 28th of October 1985.
2 [15.51.08]
3 Paragraph 166. After the 1979 capitulation Duch followed in the
4 wake of the Khmer Rouge for more than 10 years. He said he
5 wished to leave the movement but was incapable of doing so, being
6 a sort of prisoner of the regime in Samlout, where he arrived on
7 the 30th of December 1979. His main task there was teaching. In
8 October 1986 his superior, Son Sen, the head of Duch's unit,
9 Office K-18, sent him to China to teach Khmer to Chinese
10 students. He remained there for two years and worked under the
11 supervision of Son Sen's wife, Yun Yat.
12 In 1992, after Pol Pot named him to oversee economic issues in
13 Phkoam village, Thmar Puok district in the province of Banteay
14 Meanchey, Duch lost contact with his commanders. He explained
15 that the rupture was progressive as Khmer Rouge soldiers
16 dispersed little by little as the war continued. He became a
17 schoolteacher while trading in rice and breeding pigs.
18 On the 11th of November 1995 in Phkoam he was the victim of a
19 mysterious burglary, in the course of which his wife was killed
20 by a bayonet wound to the chest, whereas he was only slightly
21 injured. In this respect Duch alluded to a possible
22 assassination attempt financed by Pol Pot.
23 [15.17.55]
24 After the death of his wife Duch started to attend meetings of
25 the Evangelist Church of Battambang. He converted to

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1 Christianity in 1996 and has had his children baptized. He then
2 returned to live in Samlout, yet during renewed Khmer Rouge
3 combat activities against the government the subdistrict was
4 evacuated and its population crossed over to Thailand. In July
5 1997 Duch began to work for an NGO called American Refugee
6 Committee, known as ARC, where he remained until his
7 identification by journalists in May 1999. Shortly after that he
8 was arrested by the Cambodian military authorities.

9 C. Recognition of Responsibility.

10 Paragraph 167.

11 Duch has consistently recognized his responsibility for the
12 crimes committed at S 21 under his command. He explained that he
13 was led to speak out in 1999 because it was impossible not to
14 tell the truth about S-21 after he heard that Pol Pot denied the
15 existence of S-21 and claimed that it was an invention of the
16 Vietnamese.

17 Duch has regularly expressed remorse to the victims and their
18 families but also to the S-21 staff under his command. He stated
19 that none of his personnel were volunteers or proud of what they
20 had done, but rather terrorized and constantly in fear for their
21 lives

22 [15.20.55]

23 Paragraph 168.

24 Moreover, Duch has co-operated willingly in the judicial
25 investigation, neither attempting to implicating anyone who was

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1 under his orders nor placing the blame on the upper echelons of
2 the Party alone in order to exonerate himself. When confronted
3 with some of the inconsistencies in his testimony before the
4 Co-Investigating Judges, he indicated that they resulted from
5 fear and embarrassment he felt when reminded of an extremely
6 painful history of crime.

7 Paragraph 169.

8 He noted in his defence, 'I joined the Khmer Rouge in order to
9 liberate my people and not to commit crimes but that from 1971
10 onwards, when I was forced to supervise M-13, I became both an
11 actor in criminal acts and also a hostage of the regime.' Duch
12 says that he only became aware of the criminal nature of the
13 regime little by little, beginning when he saw people being
14 evacuated and stripped of their private property, followed by the
15 series of mass executions.

16 He added that when mass arrests were carried out, based on Kuy
17 Thuon's declarations, he understood that those who served their
18 own people could be arrested as opponents of the Party,
19 explaining that he began to be concerned about and afraid for his
20 life when Nuon Chea arrested Brother Nget You, alias Hong, and
21 Sau Chea, followed by his superiors like Vorn Vet.

22 Duch claimed all this led him to be paralyzed by fear for his
23 life, wondering when it would be his turn. He claimed that as
24 time passed he was less and less able to do his work, turning
25 over all interrogations to Hor and simply sitting in the

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1 sculpture room, specifying that in the end he was terrified to
2 the point that he slept day and night.

3 [15.24.12]

4 Paragraph 170.

5 Duch also claims that despite many attempts he never succeeded in
6 escaping from his post, either during the regime or after its
7 fall. He justified this by noting that he was subjected to
8 constant surveillance and that 'escape would mean death for me
9 and my family'."

10 QUESTIONING BY THE BENCH

11 BY MR. PRESIDENT:

12 Q. The accused, can you tell the Court about your biography from
13 the day you were born until you were arrested and sent --
14 gradually until you reached the detention facility of the ECCC?
15 You can tell the Court about your personality, your family, your
16 educational background and relation or social interactions, or
17 other matters you believe are important to tell the Court.
18 Please be reminded that so far some questions have already been
19 put to you and that you have already stated partially in the
20 proceedings for the last couple of months regarding your
21 character but they have been parts of the normal proceedings in
22 the Court. But today it comes to the specific session for the
23 character, the testimony on the character, so that the Chamber
24 can take it into account during the time when the verdict is
25 being rendered.

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1 So you may now proceed as what has been requested.

2 A.Mr. President, before I start to tell the Court about my
3 biography I would like to correct two words in this text. First
4 I went to China and I returned in 1988, in July 1988 not 1989.
5 It was in ERN 212208, paragraph 162. It was actually July 1988,
6 not 1989. And also I would like to correct another word which is
7 in the middle of paragraph 165. It was actually the date in 1976
8 but may I change it to the 20th of December 1975 instead?

9 [15.28.31]

10 Next, I would like to now begin with the telling of my biography
11 from the day I was born.

12 I was born in Pov Veuy.

13 Q.The accused may be seated since you are going to talk at
14 length so you are now allowed to be seated and then you can talk
15 while being seated.

16 A.I was born in Pov Veuy village. It was a village in the
17 jungle and it was on the river, Stoung River, five kilometres
18 from Chhmar River. There was a pagoda in the village and the
19 pagoda built on an island or an upper ground, on the hill I may
20 say. My grandfather and the head of the Pov Veuy Pagoda had been
21 very close to one another and the head monk of this pagoda
22 treated me as a student.

23 Five years later after my birth my parents had to leave the Pov
24 Veuy village, which was the native village of my mother. We go
25 to the Kampong Chen sub-district in Kampong Thom, which was about

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1 two kilometres from the Stoung market. The move was due to the
2 insecurity in the Pov Veuy village.
3 I was a child who was constantly educated by my grandfather.
4 Eventually during the time of my study I was still with him and I
5 tried to study very hard. In 1955-56 -- Cambodia gained
6 independence in 1953 and after independence the situation in
7 Cambodia became better because at that time the ransoms or the
8 kidnapping dropped dramatically.
9 [15.31.01]
10 In 1955-56 I was still in the primary school. I was influenced
11 by two sources, one from China, all those half-Chinese Cambodians
12 in Stoung, and there was a rumour that those Chinese people were
13 wealthy due to the indoctrinations by the Maoist Communism. The
14 Chinese Prime Minister Chou En Lai came to visit Cambodia later on
15 and that was the influence upon me.
16 The second source of influence was the local domestic influence.
17 My ancestors always appreciated me, that I was a good student,
18 and then when I grow up then I would not suppress their ignorance
19 or uneducated stance. And also in 1955-56 my teacher Ke Kim Huot
20 gave me some books to read and the tendencies in the book were in
21 two. One, it was the stance of the opinions of the peasants,
22 like the farmer, teacher, the workers or Sim, the driver and the
23 book on the democracy. And another type of books were by the
24 free Khmer, Son Ngoc Thanh for instance. So my teacher gave me
25 all types of books. Or "The Bread Thief at the Border" by Sang

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1 Sovath; "Did You Go Home", also authored by Sang Sovath. Sang
2 Sovath was a colonel during the time.
3 I studied just to gain my knowledge at the time and when I went
4 to study at Kampong Thom I kept continuing my research. I read
5 anything I could lay my hands on and I actually wanted to know
6 about the religions and I bought a book of religion by Minh Nakry
7 who was knowledgeable only in Buddhism and no other religions.
8 I kept studying and then I built like a study club. There were
9 five members in there: I myself, Ho Ngea, a Vietnamese child,
10 Kim Thoeun, a Khmer. We are three males. And Sou Sath and Khum
11 Samuth from Trapeang Veang when this is already in 1968. She
12 went to the forest. She was a Party member and she died at the
13 Aural Mountains. And the rest of the club members are still
14 alive.
15 [15.34.46]
16 In 1962 there was a rebellious activity at the Lycee Sisowath. I
17 did not join that movement yet at the time but the movement, the
18 strike and the demonstration were intense at the time and I still
19 had my gratitude to my teacher who protected me at the time. And
20 in 1962, in that same year, I met Son Sen. He called me. He
21 sent somebody to call me to meet me and then I promised that only
22 after I joined the movement then I would consider my stance on
23 the revolution and after I passed my final exam.
24 So my knowledge gathering was flowing in and my decision to join
25 the revolution was based on three parts. One, I actually

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1 persuaded one woman to study mathematics with me but she refused.
2 Second, I went to study arithmetic and during the time of the
3 study of arithmetic my bicycle was stolen while I was still in
4 the classroom. And third, the local authority conducted the
5 arrest of those who spread tracts and they were accused of
6 traitors and they were alleged of conducting a coup d'état to
7 overthrow Sihanouk. Chhay Kim Huor, who was my educator, was
8 arrested amongst various other people.

9 So by observing those situations I made my decision to enter the
10 revolutionary movement. I knew at the time through my teacher of
11 culture, Krun Mon, who told me that the joining of a
12 revolutionary movement was like a sphere. Once you come into a
13 sphere or a motor then you cannot remove yourself from it. And I
14 knew that once I entered there is no way for me to return. But
15 my belief at that time was intense. It was committed because
16 then the revolution had an option to salvage the country and to
17 rescue the people.

18 [15.37.49]

19 I noticed the changes in the entire world. First it started with
20 the Soviet Union, with Indonesia who had the majority Muslim
21 people, but overall it was taken over by Communism.

22 At that time Nasakam was the organization that led Indonesia.
23 Nasakam arrived from "Na" -- means national -- "sa" is an Islamic
24 word and "kam" that refers to Communism. And Ibin (sic) became
25 the president of Indonesia. So by observing all those situations

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1 and by seeing that even the Islamic community could not stand the
2 force of Communism and only the Communism was the wave to
3 override everything else. And that was the reason for my
4 decision to join the revolutionary movement.

5 And when I went to teach I did not pay much attention to the
6 teacher's wage. My focus was on the progress of the
7 revolutionary affairs to help the poor students.

8 At that time we were allowed to live in a society; that is
9 Communism within a society of imperialism. For example, we
10 gathered all our property. When I received 7,000 riels per month
11 for my wage I gave 6,000 to Angkar and only kept 1,000 for my
12 daily expense. I sacrificed everything. I ignored the need of
13 my parents at home and I was very proud that I sacrificed for the
14 revolution in order to help the Cambodian people and the country.
15 I was at Skun. My connection was also at Skun. There were four
16 of us. I was at Skun; Hor, me at Angh Ta Saom; In Lorn, alias
17 Nat, at Kampong Thom; and So Kim An at Kampong Thom.

18 [15.40.23]

19 In this network -- we called it the core people network, and I
20 was the chairman of that network because I was so influence in
21 theory. But I was not a type of person who did not know anything
22 about theory. The first book of theory that I studied and tried
23 to absorb the knowledge was "Principes élémentaires de
24 philosophie". That is "The primary philosophy of Communism" by
25 Georges Politzer, who published a lot of books on socialism. I

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1 tried to study that book very hard, and later on I read books by
2 Mao Tse Tung. So that was my way of trying to understand the
3 theory and my feeling was attached to it.
4 And I remember one phrase by Mao Tse Tung. He said the true love
5 for the people is to give an absolute authoritarianism to a
6 party. And in a new democratic society we have to be absolute on
7 the robbers, the thieves, on the people who commit larcenies.
8 And I reflected on the theory. I thought, "Well, it's one of a
9 good type." So for an authoritarian regime everything had to be
10 absolute. It meant there had to be a total elimination of those
11 bad people, like the robbers for instance.
12 At the end of his book Mao Tse Tung said, "Allow the blossom of
13 the 1,000 types of flowers and allow the 100 theories of politics
14 to complete each other". I was so satisfied with that phrase.
15 And when I looked at the discipline of the Buddhism I was also
16 satisfied. It means we do not have to revenge one another. But
17 I think it's impossible and in the Christian religion or
18 discipline at the time, although my knowledge was limited, if you
19 are slapped on the left then you give your right cheek for
20 another slap. And I don't think it's possible to serve the
21 people with such a theory.
22 So I still made myself involved in the movement and on the 29th
23 October '69 the Party assigned me to go to settle in the forest.
24 And there was someone who took me from Phnom Penh to the forest.
25 I met Kuy Thuon at Kampong Thom and at that time the messenger

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1 network was cut off in Kratie and then Kuy Thuon transferred me
2 to live at Chamkar Leu with Kae Pok.
3 [15.44.13]
4 A few days later I was arrested by the government and imprisoned.
5 And even if when I was imprisoned I struggled from inside the
6 prison, although it was not as effective as Dam Pheng. And after
7 I was released I still continued to make my movement.
8 And in August 1970 I left Phnom Penh to the Liberated Zone in
9 S'ang, Koh Thum. That was the time I observed a peculiar
10 situation in resolving the conflict by the Party. It was the
11 conflict between the Communist Party and the Workers Party of
12 Vietnam. The Vietnam Party assigned their force to come to
13 administer to the local authorities and establish their
14 organization in S'ang, Koh Thum and it was called Sector 62. And
15 the Anyang province was the authority to organize such
16 administration at that level.
17 One Khmer Krom, Chao Ken, who was a party member of the Workers
18 Party of Vietnam, came to join the Communist Party of Kampuchea.
19 And people were shot. Another person was also shot who was a tax
20 collector.
21 So I observed the conflict between Cambodian and Vietnamese. It
22 was not on a stance of comrade to comrade fighting together,
23 soldier to soldier against the imperialists, the U.S.
24 imperialists; no, but they were superior than the Communist
25 Party, and also during that time people from the East Zone

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1 organized Sector 25 with Chao Sovann as the secretary and Sokh
2 Ban Chamroeun. This Sokh Ban Chamroeun had the original name of
3 Mony and after a while, working together with him, he was
4 arrested. And our force from Phnom Penh, one of us was killed
5 and two or three of us were arrested and imprisoned, and Sao
6 Chhan fled to meet Vorn Vet, and Sisowath, alias Chamroeun,
7 intercepted and arrested him.

8 So I saw the intense conflict within the Party and a police force
9 was established by Moeng Samnang, alias Teng, and I thought that
10 if the leader was like that then the Police Office which was
11 established would be eliminated.

12 [15.47.13]

13 I lived under the protection of a cadre from Hanoi named Sien
14 San. The person was the general staff of the sector and until
15 May 1971 I fled that area to meet with Vorn Vet. I remember that
16 the police in the Khmer Rouge style would be in the same fashion
17 as the Khmer from the Issarak era. It means they would be killed
18 soon.

19 When I arrived I was asked to attend a training south of the Peam
20 village in Kampong Tralach district. After that training and on
21 the 20 of July 1970 Brother Hok called me to work at the Police
22 Office. I begged him not to go there because I believed it's
23 going to be eliminated because if the chief of the police betrays
24 then the subordinates would be eliminated as well. But Brother
25 Hok insisted that no, the decision was made from the Central

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1 Committee and you wouldn't have authority to make any arrest or
2 to make any request for the arrest. You were only assigned to
3 interrogate and then later on you might be assigned to smash
4 people. And I told Brother Hok that I would not be able to smash
5 anyone.

6 I begged him, and later on I was assigned to be the chairman of
7 the Police Office and the smashing was their responsibility, and
8 the police at M-13 was organized by them. At that time people
9 were sent in and I did not dare to kill anyone. So the number of
10 the detainees kept increasing, like Bizot stated, because I did
11 not dare to kill any of them and that was the time I requested to
12 create another M-13B in order to receive those people, those
13 incoming people.

14 In 1973 those people who I guarded in order to work with me, they
15 rebelled and they took some guns and fled, and I believed that
16 would be the best opportunity for me to remove myself, and then I
17 went to appeal to Vorn Vet that I made a mistake and then that
18 there was a rebellion and some of the comrades were injured, and
19 that would have a bad impact on the Party and that I was
20 responsible and that I should be sanctioned or disciplined.

21 [15.50.27]

22 But he did not look at my face; he was speechless. He didn't say
23 anything. Then I said goodbye to him and later on some people
24 were still sent in to be interrogated and I saw probably that
25 would be my fate. I was still thinking of the fate and I also

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1 thought of the poem that I learned. So if that's what my fate
2 was and that I could not avoid, then I would just have to carry
3 on with the assigned task. And that was the time I saw the
4 authoritarian view of the Party.
5 I recalled the theory of the teacher Krun Man that once you are
6 into the circle you cannot remove yourself while it's in motion.
7 And I believe once the independence was gained then I would be
8 asked to be transferred to be a teacher again. That was my
9 thinking. I fulfilled my duty while at the same time I was
10 shocked of what happened, and at that time co-operatives were
11 starting to be established and the direction for its
12 establishment was not to allow the Vietnamese soldiers to barter
13 rice from people at their own will, and that the rice should be
14 kept for the supplies to our soldiers. And if they want to
15 barter for rice then they have to go through the Communist Party
16 of Kampuchea.
17 But actually the plan was for Pol Pot to have an overall control
18 of the forces within the communities, within the co-operatives
19 through meetings, through monitoring, so that they have a full
20 grasp of the total quality of rice at every co-operative.
21 Also, in the studying materials and documents which had a
22 character of fascism and authoritarian, as shown in "The
23 Revolutionary Flag" magazine, it reads:
24 [15.53.10]
25 "Whatever lines for the source for the social stance then the

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1 view on the stance has to be for that class."
2 And what is the class and the Party line? The line was the
3 workers line. So if you are not in the workers line then you
4 cannot be a member of the workers line and then you cannot carry
5 out the duties of the workers line. And if you cannot be in such
6 a line then you would be removed. So that study would force
7 people to make themselves to be part of the workers line.
8 And this is simply to work because otherwise you would be killed.
9 And yes, indeed, people were killed. Intellectuals who
10 sacrificed to work in the countryside, who were in similar age to
11 mine, were arrested. Im Oray, for instance, who was an author,
12 he only studied up to the diploma certificate, he was arrested at
13 the Kampong Sala school for no clear reason.
14 So if you did not do what you were asked, you would be arrested.
15 Sangha Hoeun, the subordinate of Ta Mok, was also arrested and
16 sent to M-13 and that's what I witnessed personally. The Hanoi
17 cadres were arrested and also sent to M-13. There were a handful
18 of them. So if I did not follow them, I would be arrested as
19 well.
20 I strived to work hard and I was in constant fear in order to
21 survive to see my parents. So my purpose of liberating the
22 people was instead to be part of a mechanism to killing people.
23 And after the 17th April '75 I took the opportunity to meet Cheng
24 An while he was gathering workers and he said, "Yes, I wanted you
25 to work for me and I would inform you later when I come next

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1 time."

2 But on the 31st of March '75 I went to wait for him. He never
3 turned up. I said that will be the end of me and on the 20 of
4 June '75 I was called to study. After that study session I met
5 with a teacher. Then I returned to Amleang and on the 15th of
6 August 1975 he made a presentation on the establishment of S-21.
7 At that time Nat became the Chairman and I was the Deputy and I
8 was rather relieved because I believed that the majority of the
9 decisions will be made by the Chairman, but then in March Nat was
10 removed and I was assigned to replace him.

11 [15.57.33]

12 I could not protest so I became further involved in the circle in
13 motion of the mechanism. I knew I fell into the criminal
14 mechanism and that I could not remove myself from it. From '69 I
15 fled because I was led by the Party line by those who were
16 involved with the Party, but now the CPK was constantly
17 supervising me and what could I say? I could not remove myself
18 from this circle.

19 Therefore, wanting it or not, I had to fulfil my assigned duty.
20 My knowledge in theory was also one of the qualities that
21 satisfied them and that made the subordinates appreciate my role
22 and performance.

23 And in the final plan, as mentioned by David Chandler, I myself
24 believed I built people based on my conviction and commitment and
25 probably only 10 good people were built by me because the extent

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1 and the scale of the crimes committed by the CPK were so wide.

2 And my ability, my capacity, was so minimal, was negligible and

3 that I could not achieve anything else in order to amplify my

4 qualification.

5 Number two, I was a very strict student, meticulous, so it was a

6 kind of incentive and good qualification if this can be

7 interpreted in my honesty in the Party. However, it became

8 interpreted in the way that crime is committed then it would be a

9 part of the very horrendous crime committed by doing that.

10 Number three actually, I know that the confessions -- and my

11 superior, Mr. Son Sen, did not even believe that the confessions

12 were true but still we wanted to obtain confessions, so they are

13 a part of the crimes committed at S-21. And all the crimes

14 committed at S-21 were under my complete supervision and when

15 people talked about foreigners being burned alive, I was

16 expecting to hear and to challenge the person who actually told

17 the Court about a person being burned alive.

18 [16.01.00]

19 And after all, as I indicated clearly, no-one could violate my

20 policy order. I did not really talk strongly to my subordinates.

21 However, everyone had to respect my orders. My subordinates

22 could pay a visit to their families but I did not really have

23 that opportunity to pay a visit to my parents. During meal time

24 I would be joining them but Hor was in favour of me that he gave

25 me the dry food on top of what the other people could have.

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1 I may not tell the Court more than that and I would like to leave
2 the floor open for the Chamber to put more questions for further
3 clarification if the Chamber so wishes.

4 Thank you.

5 Q. When you decided to change the name -- you used the name Duch
6 to replace your original name because at the beginning you were
7 called Kaing Guek Eav. Can you tell the Court when exactly did
8 you change your name and what would have been the reason behind
9 the changing of name?

10 A. Mr. President, in 1964 I joined the revolution. At that time
11 my name was remained unchanged. But in 1967 there was a secret
12 session held. The location of the session was to the house near
13 the Maha Metrei Pagoda and at that moment that everyone's name
14 had to be changed to the revolutionary name. My name was changed
15 to Duch. Chhay Kim Huor changed to Hok; Nong Sarim changed to
16 Sang; So Kim An changed to another name; while In Lorn was
17 changed to Nat; so on and so forth.

18 [16.04.14]

19 And why I chose Duch, I think I made it clear before the Court
20 already, because I would prefer a Cambodian name. I didn't like
21 Chinese name because I remembered the last message from my
22 grandfather, because at that location there was a Buddha statue
23 that was really carved by the artist, Grandfather Duch, who was
24 very good at carving the Buddha statue. That's why I prefer the
25 name.

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1 And there was a situation when there was a person named Duch who
2 was asked by the teacher to read a book, and Duch was really a
3 good student who was very obedient and loved by the teacher, so
4 that's why I preferred the name because I thought it was really
5 the Khmer name and good name.

6 Q.We have already studied several documents and through the
7 debates we have observed that you used the name Duch for quite a
8 long time, but can you tell the Court whether you also have the
9 surname for Duch? Or was it required by the revolution that
10 people used only just one word other than having the first
11 surname or family name?

12 A.Mr. President, at M-13 it was the secret office. So was the
13 S-21. My name would not be revealed publicly in the Party so it
14 was used secretly, so I used Duch alone and I could not really
15 use my family name Kaing before Duch so normally it would be
16 obvious that people would know who the person was, so Duch would
17 be sufficient enough to keep the secret.

18 Q.The reason you changed your name from Kaing Guek Eav to the
19 one word Duch -- besides the secret purpose for the
20 confidentiality within the Party, was it supposed to be serving
21 other purposes?

22 A.There are two reasons. First, for the revolution; number two,
23 it is the Khmerization or to make sure that I really used the
24 real Khmer name for my name.

25 [16.07.43]

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1 Q. In your statement that you made just now, you showed your
2 social status and involvement and after you graduated with a
3 degree in teaching and you taught at the Skun lycee. You said
4 you did not pay great attention to the benefit from your
5 profession as a teacher because you indicated that you devoted a
6 great proportion of your salary to help the poor students and the
7 other poor teachers.

8 Can you tell the Court what kind of activities you had done to
9 manage your salary and to what extent was your salary used to
10 sponsor those poor people? Please give us some example of how
11 your salary was managed.

12 A. In helping the poor students actually I chose a few students
13 and I raised them. Then there was a brother of Nat also among
14 them and I had to cover their meals and I had to organize a
15 student co-operative, what I call, and we bought things from
16 Phnom Penh to be sold for the students. And we bought at a
17 higher price but sold at a lower price and I covered the losses
18 and we did not make any profits but we made profit only from
19 supporting the students.

20 And at the school there was a school which was going bankrupt or
21 maybe the situation was deteriorating and teachers were not
22 really well paid, so I could help them by sharing my salary to
23 substitute very minimal wages of those teachers. And later on
24 the situation was improved and it was supported and later on I
25 could manage to save some of the salary I earned or made from my

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1 teaching career.

2 And I helped two people at Skun but they died already, but I
3 don't want to reveal their names before the Chamber. And this is
4 how my salary was managed. And as I informed the Court already,
5 I did not really manage some money to support my parents but
6 instead support the poor.

7 [16.11.15]

8 Q.You had already described or explained to the Court
9 significantly; however, there are still something else that the
10 Court would like to know because after you were arrested by the
11 authority at a later date -- but could you please tell the Court
12 what had you been doing after 1979 until the day you were
13 arrested and detained at the Military Court before you were sent
14 to the detention facility of the ECCC?

15 So please just briefly tell the Court your roles and what had you
16 been doing from 1979 until the day you were arrested by the
17 Cambodian authority. But we would be interested to hear only
18 your involvement in the Khmer Rouge forces.

19 A.As I already indicated before, after the 7th of January 1979
20 unconsciously at about eleven I was about to have my meal. Then
21 I spotted the tank and I asked people not to eat their meal and I
22 asked them to await orders. I went home and grabbed a pistol and
23 came back. I did not even manage to wear my shoes. I could not
24 even get my pants so I could get only the pistol and shorts.

25 And at 2 p.m. we reached Sansam Kosal Pagoda. We didn't sleep

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1 for two days. We didn't have any food or water. And whatever
2 people did, I didn't care. I only made myself to sleep and
3 gained some strength. At that time Ta Mok was appointed as the
4 chief of the West Zone on top of the Southwest Zone. And he
5 demanded that the combatants or the soldiers were dispatched to
6 him. But Hor and other people did not want the soldiers to be
7 dispatched to Ta Mok and they intended to fight to the last
8 minute.

9 [16.15.00]

10 And a few moments later I ran to Amleang and Ta Mok ordered
11 Brother Phal to really give all the soldiers under my supervision
12 to him. And then I managed to really gather those soldiers and
13 dispatch them to be under control of Ta Mok.

14 Later on we kept running until we reached the Northwest Zone so
15 that we could really get some rice to feed on.

16 Brother Saroeun later on became the secretary of the Northwest
17 and it was the moment that my former soldiers and forces in my
18 unit started to die and separated, so a lot of people died,
19 including my in-laws and nieces and nephews. Finally it was I
20 alone and my wife and two children and we went to Samlout, very
21 lonely.

22 On the 30th I asked Brother Saroeun so that I could go and work
23 with Sou Met. I was allowed to do so but when I was about to
24 move already I was asked to come back. And we could not move
25 further anyway; after all I end up being with Sou Met and I was

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1 waiting for my brothers and relatives but after all I learned
2 that they all died. I had been with Sou Met for several months.
3 After about 12 months, or maybe less than a month, then Sou Met
4 assigned me to be the chief of the transportation and he wanted
5 me to be the commander of Division 75 but I did not want to
6 receive the offer. Sou Met was rather upset because I turned
7 down his offer but I didn't care. Later on Sou Met called me to
8 a meeting and I was warned by him and he asked me to teach his
9 children. I taught his children and my children.
10 [16.18.13]
11 About one year, Son Sen asked me to meet him on the 25th of June
12 1986. I went there with Sou Met, Brother Tith, so three of us
13 went there. We were put to wait by the receptionist and they
14 asked us to wait for uncle. I did not know who uncle it was.
15 Then Son Sen appeared and I saw him and then he asked my name and
16 then I told him that my name was Pin. It was the time when I
17 changed Duch to Pin.
18 On the 26th of June I met him. On September I was asked by him
19 to go to China to teach Khmer to students there. I only came
20 back in 1988 and I still worked as the person who wrote
21 curriculums under the supervision of Son Sen's wife. And later
22 on I was assigned to work, be in charge of economic section at
23 Phkoam. And then there was a fighting in Kok Thma and we lost
24 contact with the Party. And then I joined the educational
25 institution, becoming a teacher.

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1 Then there was an integration and Ieng Sary defected first.
2 Later on Son Sen also surrendered and my children went to their
3 aunty's and at that time Meas Mut, under the supervision of Ta
4 Mok, evacuated people to the refugee camps. And I then worked
5 for the American refugee organization called ARC.
6 Then there was a repatriation process; then we came back and I
7 was met by journalists, including Nic Dunlop, and later I was
8 arrested and detained at the Military Court. I was detained by
9 the Military Court on the 8th of May 1999 and I reported about
10 this already to the Investigating Judges of the Military Court,
11 the full account of my work until the day I was arrested by the
12 Court, the Military Court.
13 Q.Thank you.
14 MR. PRESIDENT:
15 Since it is now an appropriate time to take the adjournment, we
16 will take the adjournment now.
17 The Chamber will resume on the 31st of August, 2009 at 9 a.m.,
18 which is next week. On Monday the Chamber is going to hear the
19 testimony of two experts and, as scheduled, we are going to hear
20 these two experts for one full day and a half day.
21 Mr. François Roux, I note you are on your feet. You may proceed.
22 MR. ROUX:
23 Yes, Mr. President. Two points before we adjourn.
24 The first, we would like to inform the Chamber that the defence
25 waives the hearing of witness D14, so I would like the Chamber to

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1 know this as of now -- so D14 will not come. And another point
2 is could the parties be informed as soon as possible of the
3 schedule that the Chamber wishes to set up, in particular for the
4 pleadings?

5 Thank you.

6 [16.23.35]

7 MR. PRESIDENT:

8 The Chamber has already informed recently since there has been a
9 little bit change. The Chamber waits to see how we can calculate
10 the appropriate time to be allocated to the parties but these
11 calculations of time will be notified to the parties on Monday,
12 so parties will then be informed on how much time would be
13 granted to them to question the expert witnesses because the
14 Chamber will also make a decision to calculate these times as to
15 which expert witnesses would be put questions by the parties,
16 especially the civil parties.

17 So I think the time allocation will be different, so we will
18 inform the parties on Monday of this time allocation to put
19 questions to the witnesses.

20 Do I make myself clear? If you don't understand, you may ask Mr.
21 Kar Savuth who is quite familiar with my message.

22 The Court officer, could you please check whether translation is
23 not through or is it through?

24 MR. WERNER:

25 Mr. President, I believe that my esteemed colleague Mr. Roux is

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1 asking and wanted to ask that we understand that you're going to
2 come very quickly with an indication in terms of time allotted to
3 each party, and I think that what Mr. Roux was asking in regard
4 to that -- because many of us are going to leave Cambodia as of
5 September, and I know that you're working on this but it would
6 really help us a lot if you could tell us as soon as possible
7 when we are supposed to return in October. And I believe that
8 that is what Mr. Roux was asking and I am on my feet because I
9 fully support his request.

10 MR. PRESIDENT:

11 The Chamber has tried very hard during the last few days due to
12 this necessity. That's why sometimes we had to postpone the
13 hearing in order to discuss those urgent issues. And from my
14 recollection we agreed yesterday already and I, as the President
15 of the Chamber, have already signed that document and it has been
16 emailed to parties to the proceedings. You should check your
17 email.

18 [16.28.55]

19 MR. DE WILDE D'ESTMAEL:

20 Mr. President, another question just to clarify regarding Monday
21 and Tuesday's hearing. You spoke indeed about questioning two
22 expert witnesses. I would like to know if they are going to be
23 questioned together or successively. And how much time will be
24 given to the parties to put questions to them? Thank you.

25 MR. PRESIDENT:

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1 The Chamber has also considered this matter extensively but the
2 Chamber has not received any clear information yet regarding the
3 two expert testimonies. It also depends on their choice of how
4 they want to provide their testimony, either jointly or
5 individually. If they do it together then the reports will be
6 unified, otherwise it's going to be an individual report and it's
7 going to be repetitious.

8 So the Chamber would like to give the opportunity to get further
9 information from the two experts regarding their testimony and
10 their choice of whether they have any specific request in
11 providing their testimony. And then the Chamber will consider
12 that request and the time allocation will be provided to parties
13 to the proceedings tomorrow by email so that you have the ability
14 to have ample time to make your questions ready for the two
15 experts.

16 For other various issues and we have already reserved the time --
17 and for instance in the case that the defence counsel waived the
18 rights to hear the testimony of D14, then we could use that
19 allocated time for something else for our proceedings.

20 [16.32.05]

21 So then the schedule cannot be fixed. It will adapt itself to
22 the actual situation and the legal officers of the Chamber will
23 contact and make the arrangement for any precise informations
24 regarding the testimony of the two experts, whether they want to
25 provide their testimony jointly or individually. And we will

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1 inform you later on in due course.

2 They have provided certain information but the information
3 provided so far is not yet complete and the Chamber will try its
4 best to find solutions to this issue.

5 The security guard, take the accused back to the detention
6 facility and bring him back to the Chamber on Monday morning next
7 week before 9 a.m.

8 The hearing is now adjourned.

9 (Judges exit courtroom)

10 (Court adjourns at 1633H)

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