



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"

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Trial Day 64

Before the Judges:

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MS. CANIZARES	French
JUDGE CARTWRIGHT	English
MS. CHHIM SOTHEARA	Khmer
MR. DE WILDE D'ESTMAEL	French
MR. HONG KIMSUON	Khmer
MR. KAR SAVUTH	Khmer
JUDGE LAVERGNE	French
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THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. TRUSSES-NAPROUS	French
MR. TY SRINNA	Khmer
MR. WERNER	English

1

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

2 (Judges enter courtroom)

3 [09.07.20]

4 MR. PRESIDENT:

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

6 According to our schedule, this morning the Chamber will hear the

7 testimony of an expert witness, a psychological expert as

8 requested by the civil party counsel.

9 The Greffier, can you report the attendance of the parties to the
10 proceedings this morning?

11 THE GREFFIER:

12 Mr. President, the parties to the proceedings (no
13 interpretation).

14 MR. PRESIDENT:

15 Court officer, can you invite Dr. Chhim Sotheara into the
16 courtroom?

17 (Witness enters courtroom)

18 The Greffier, can you report the attendance of the parties to the

19 proceedings this morning? Your previous report was interrupted

20 due to the shortage of electricity.

21 THE GREFFIER:

22 Mr. President, all the parties to the proceedings this morning

23 are present and the expert to be testified, Dr. Chhim Sotheara,

24 is also present. This witness has no relationship or affiliation

25 with the parties to the proceedings. The identity has been

2

1 checked and verified and he has already taken an oath.

2 MR. PRESIDENT:

3 Good morning, Mr. Expert.

4 QUESTIONING BY THE BENCH

5 BY MR. PRESIDENT:

6 Q.Is your name Chhim Sotheara?

7 A.Yes, my name is Chhim Sotheara.

8 [09.13.11]

9 Q.How old are you?

10 A.I am 41 years old.

11 Q.Mr. Expert, please be reminded that you should only speak when
12 the red light on the microphone is on, so that your voice is
13 properly recorded on the transcript.

14 What is your current occupation?

15 A.I am a psychological doctor and a director of Cambodia TPO.

16 Q.Where is your current residence?

17 A.I live at number 97 E-1 Charles de Gaulle Street, Orussei, 7
18 Makara, Phnom Penh.

19 Q.Mr. Chhim Sotheara, as reported by the Greffier, you have no
20 relationship or affiliation with the parties to these
21 proceedings. And before this Chamber you have taken an oath
22 according to the Buddhist religion. Is this correct?

23 A.That is correct.

24 Q.Are you also a psychological professor at the university?

25 A.That is correct.

3

1 [09.15.24]

2 Q.Where did you finish your study? Is it in Cambodia and so
3 what year did you finish?

4 A.I finished my study in 1992.

5 Q.After you finished your study in Cambodia, you continued to
6 further your education, your post-graduate education, in New
7 South Wales University in Australia. Is this correct?

8 A.That is correct.

9 Q.How long have you been practising your psychological
10 profession?

11 A.For about 15 years so far.

12 Q.What are the reasons that motivate you to study this area of
13 expertise?

14 A.From the beginning, I was not interested in medical or
15 psychological areas, however, after the Khmer Rouge regime,
16 Cambodia had been destroyed in all aspects and there were only a
17 handful of doctors survived after the war. It is evident that
18 people were traumatized throughout the nation and they required
19 treatment and there was a great shortage of health care
20 professionals. That is one of the motivations for me to enter
21 the medical area.

22 I started in 1986 and finished my medical study in '92. However,
23 during that period of time I never studied the psychological
24 subject within the curriculum as there was no professor or
25 teacher survived the regime and who could teach at that medical

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1 school.

2 [09.18.10]

3 After I started working in '92, I became a surgeon and I
4 experienced several patients who had trauma. Some patients
5 committed suicide and the reason was probably because of their
6 superstitions as they believed and when they went mad or they
7 were psychiatric, they believed in tradition and superstition,
8 but I strongly believed it could be treated medically.

9 Therefore, in 1994 when the Oslo University of Norway established
10 a program to train the Cambodian doctors, the young generation
11 who wish to have that psychological expertise, and that's the
12 opportunity for me to sit for the exam in 1994. I studied and
13 finished it in 1998.

14 The program was a joint venture with Oslo University of Norway
15 and the medical department of Cambodia. At that time, there was
16 no Cambodian professor. All the professors were foreign from the
17 European countries and some from Asian countries. Cambodia did
18 not have any professor who could teach us at the time.

19 And this is important for me because after the traumatization
20 through wars, and especially the Khmer Rouge regime, Cambodians
21 were seriously traumatized and did not receive anything regarding
22 medical or psychological treatment.

23 Q.You have already said that you are a director of an
24 organization called TPO Cambodia.

25 The question is: when was that organization established and what

5

1 are the main activities in the support of the psychological
2 trauma, especially those people who were traumatized during the
3 Khmer Rouge regime?

4 [09.20.53]

5 A.TPO Cambodia was established in 1994. The founder was the TPO
6 International with the main office in Amsterdam in Holland. The
7 main purpose of the program was to respond to the needs, to the
8 psychological needs and assistance, the socio-psychological
9 impact on the Cambodian people who traumatized during the Khmer
10 Rouge regime, including the post-traumatic stress disorder, in
11 order to provide treatment to those people so that they would be
12 able to be ordinary people who could sustain and make a living as
13 ordinary people.

14 It became an independent organization in 2000 and it was led by
15 Cambodian people and I became the director in 2002. The main
16 activities of the organization are to intervene the psychological
17 assistance in the community as 80 or 90 percent of Cambodian
18 peoples living in the community and it is hard for them to come
19 to the hospital. So this program is to provide intervention in
20 such regard.

21 Also, it is to train the important resources at the community
22 level so that they are able to determine the cause of trauma and
23 to assist with those traumatized people within the community
24 itself.

25 We also disseminate information to the community regarding the

6

1 trauma, the impact of trauma, so that they understand and seek
2 appropriate solution and treatment. We also establish self-help
3 groups, especially for women who were the targets of domestic
4 violence and for males who were addicted to alcohol.

5 [09.23.07]

6 These two groups are interrelated and we provide assistance to
7 both groups. And these are the impacts inflicted upon the
8 Cambodian people from the Khmer Rouge regime and throughout the
9 various wars before that.

10 We also provide counselling services to the victims who were
11 traumatized psychologically or socially, and we also provide the
12 treatment, psychological treatment, in the means of analyzing
13 their trauma and provide the expertise for the treatment. TPO
14 also has various projects, namely, to provide the social,
15 psychological treatment to the witnesses and victims who are
16 going to provide testimonies to this Tribunal.

17 That is all, Mr. President.

18 Q.During the time of your research in this psychological
19 expertise -- as far as during the time of your tenure as the
20 director of the TPO organization -- had you interviewed victims
21 of the Khmer Rouge regime? Especially, have you interviewed the
22 victims of the S-21 Security Office?

23 A.Yes, I have.

24 Q.Based on your psychological expertise, and your study and
25 experience in this area, especially the psychology of the victims

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1 and the various aspects challenged by the victims as a result of
2 the Democratic Kampuchea regime, have you any thing or statements
3 to show to the Chamber regarding the psychology of those victims?
4 The Chamber would like to know the challenges or the
5 psychological impacts of the victims or the trauma or their
6 post-traumatic disorder that they have experienced so far based
7 on your area of this expertise. You may now proceed.

8 [09.26.08]

9 A.I thank you, Mr. President.

10 First of all, I would like to say with the President's leave, to
11 discuss the general outseting and overview before I enter the
12 specialized area regarding the traumatized victims. This is a
13 main factor for us to understand the overall impacts and the
14 depth of the suffering experienced by the victims.

15 The Khmer Rouge regime was a regime which destroys the entire
16 infrastructure of the country, the social fabric of Cambodia in
17 every aspect -- I could confidently say that -- at a social
18 level, family level and individual level.

19 In the social level, the Khmer Rouge regime destroyed every
20 aspect of the state institutions, namely, schooling, markets,
21 hospitals, universities and everything else was almost destroyed.

22 The intellectuals, the well-educated and those living in the
23 urban areas were smashed. As a result, the Cambodian people
24 could not live in harmony as they were forced to evacuate, forced
25 labour and executed and there was no sufficient service to

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1 provide to them including shelter, medical treatment or
2 sufficient food.

3 The people were divided into various groups, for instance, the
4 new people -- the bad people created an environment of fear or
5 mistrust. And also the cultural destruction, the religious
6 destruction and the ceremony destruction and the elimination of
7 belief, of creed, of the Cambodian people had tremendous
8 psychological impact.

9 [09.28.37]

10 People base their beliefs as a means to solve problems and to
11 seek meaningful explanation of what happened for all those
12 regimes, including the Khmer Rouge regime, so the loss of their
13 belief made them suffer psychologically, and when they had or
14 encountered problem, they could not find any solution to solve
15 those problems and the Khmer Rouge did not allow them to practice
16 their religion or to pay homage to their religion.

17 At the family level, the Khmer Rouge forced people not to live
18 together in the family. Children were segregated from their
19 parents and we know for sure that the children at young age need
20 warm, caring parents and they need this care. However, the care
21 has been deprived from the children and people were tortured,
22 food ration were also deprived of, and this really caused the
23 traumatic event and when the children grew up without any coping
24 with these effects then they will experience the problems. And
25 children were made to spy on their parents. Some children even

9

1 kill their own parents. This phenomenon has left a kind of
2 bitterness -- the trace of bitterness for those children for many
3 years to come.

4 The Khmer Rouge has destroyed the individual health or wellbeing
5 by way of forcing them to work very hard. They were not given
6 proper shelters. People lived in constant fear and this
7 situation made people experience the traumatic event and what we
8 called the post traumatic stress disorder.

9 After the research, Professor De Jong, the international director
10 of the TPO, conducted his research and, based on the research,
11 among the five people of Cambodian, two of them have developed
12 the trauma, and this is a high proportion of the Cambodian
13 population found in the research.

14 [09.32.17]

15 And 14 percent of the Cambodian population with the age of over
16 18 has experienced this post traumatic stress disorder. So we
17 can see that the high number of people who experienced such
18 traumatic events or the trauma is very high among the Cambodian
19 people.

20 And I have provided the therapy to many Cambodian people who
21 sought this assistance from other organization and many people
22 have still experienced the problem, especially the event
23 re-occurred during the daytime. And the victims told us that
24 whenever it rains, they feel like crying because it recalls the
25 time when torture -- when they were exposed to the sun and rain

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1 and, because of this, many people cannot really focus on their
2 day-to-day work and they even experience some nightmares.

3 A victim told us that he saw the dead wife and children in his
4 dream and the wife and the children cried out for help asking for
5 justice in the dream. And many victims shared with us that every
6 time in their dreams they saw the Khmer Rouge who were chasing
7 them, chasing to kill them. So the nightmares are often seen in
8 the dream and people also experience some kind of problem with
9 breathing.

10 Some victims who have suffered some kind of depression, they are
11 despaired. They don't want to live on and they find it difficult
12 to struggle to hold on to life, and they lose the effort to
13 parent the children. And children have to work double harder to
14 really support, to help the sick parents who were severely
15 traumatized. And because of this kind of traumatic event they
16 experienced, many end up being addicted to alcohol, for example,
17 like drink, and some victims develop some physical conditions,
18 for example, hypertension and chronic disease, because they have
19 experienced such trauma.

20 [09.36.05]

21 MR. PRESIDENT:

22 Judges of the Bench, would you wish to put questions to the
23 expert?

24 Judge Silvia Cartwright, you take the floor.

25 JUDGE CARTWRIGHT:

11

1 Thank you, President.

2 BY JUDGE CARTWRIGHT:

3 Q.Dr. Sotheara, I want to clarify your specialist background,
4 please. It's not completely clear to me and that may well be due
5 to the translation.

6 I understand you are a medical doctor and that you have undergone
7 postgraduate specialist training in psychology. Is that correct?

8 A.Of course I've undergone the medical doctor courses at the
9 medical university in Phnom Penh and I graduated with the medical
10 doctor degree. And later on I undergone another course in
11 psychology and I graduated with the degree in psychology in 1998.
12 In 1999 I pursued education, the postgraduate education, in New
13 South Wales for another one year and a half, and I am now
14 pursuing this postgraduate education in the Monash in Melbourne,
15 Australia in the same field, sponsored by the Australian
16 Fellowship Award.

17 Q.So your specialist qualifications are in psychology, not
18 psychiatry. Is that correct?

19 A.I think it is probably the translation problem but of course
20 my specialization is psychiatry.

21 [09.38.57]

22 Q.Thank you. And you have worked full-time with the victims of
23 the Khmer Rouge regime, and of course increasingly now their
24 children. Is that right?

25 A.I may not catch your question. Could you please repeat it?

12

1 Q.Yes. I do apologize. I just wanted to clarify that you have
2 worked full-time over recent years with the survivors of the
3 Khmer Rouge regime and latterly their children as well. Is that
4 correct?

5 A.I work mostly with the old-aged people and I have not
6 concentrated on the work with the children. Thank you.

7 Q.And can I infer from your testimony that one of the major
8 issues leading to the severe traumatization of the people who
9 lived through the Khmer Rouge regime is the lack of adequate
10 medical, psychological and psychiatric services for them during
11 that period and after it was finished? Am I correct in that
12 assumption?

13 A.I think it is part that the severe traumatization of the
14 victims were contributed to the lack of adequate medical services
15 available, because after the Khmer Rouge there has not been
16 adequate services for coping or helping those people to cope with
17 this problem.

18 And I said earlier that since the Khmer Rouge destroyed the
19 complete infrastructure at all levels, top down I mean, from the
20 collective level to the individual level, so this destruction has
21 damaged the core foundation of religion and this severely affects
22 the people's remedy and means to such therapy.

23 [09.42.40]

24 And some foreigners probably are in doubt why after 30 years or
25 so Cambodian people still suffered from this traumatization. And

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1 the answer is that Cambodian people have not had the appropriate
2 opportunity to be treated, due to the fact that the services are
3 inadequate and that many people are very busy to earn the living
4 to feed their family.
5 So these people have been busy with their daily life and this
6 does not mean they are not traumatized, but because they do not
7 really have the opportunity to get themselves healed, and one day
8 this kind of traumatization will reoccur. And during the time
9 with their being so busy with their daily life they might forget
10 the traumatization but this traumatization does exist with them
11 and one day they will realize that when they reoccur then they
12 will need complete medical assistance. During the Khmer Rouge
13 regime, people worked so hard and then, later on, because they
14 had to start from scratch, they focused too much on their daily
15 life by forgetting the traumatization. However, since the
16 establishment of the Khmer Rouge Tribunal, people now can recall
17 the past events and then they can really manage some time away
18 from their being so busy with their daily life to concentrate on
19 their mental problems.
20 The victims actually would prefer the truth and justice from the
21 Court. And the Court can give them this kind of justice and
22 truth to help them cope with their trauma, but so far they have
23 not achieved these goals yet.
24 [09.45.22]
25 Q.Thank you. I'm also interested in the impact of the Khmer

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1 Rouge regime on the generations that did not directly experience
2 it or who were very young at the time.

3 Do you have any comment to make on the impact of the conditioning
4 of the people to stop practicing their religion on the next
5 generation, and also the impact on the people who lived through
6 the regime without an education. What impact has that had on the
7 next generation?

8 A.The impact on the people who did not live through the Khmer
9 Rouge regime is also obvious because these impacts can be seen on
10 their family members. And if we compare this regime to the
11 Holocaust regime, we can see that the new generation have been
12 affected by the traumatization and the traumatic events
13 experienced by their parents. In Cambodia, there has not been
14 any study as yet to indicate the impacts on the younger
15 generation in relation to the traumatic events, though they had
16 not gone through previously.

17 But I can say that it is possible that the impact on the older
18 generation could be transmitted to the younger ones because
19 Cambodian family is in the form of extended one and people share
20 the same roof, so it is unavoidable that these impacts will be
21 affected on the rest of the family members because the eldest
22 sibling in the family would be breadwinner and those who need to
23 really take place the position of their parents' roles will be
24 severely or mostly affected.

25 And for the family in which the father or the parents are

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1 addicted to alcohol, then the rest of the family members will
2 experience some psychological problems as passed down from the
3 habits of the parents.

4 [09.48.55]

5 Q.In most societies where there has been a serious conflict
6 there is also a rise in violence, particularly family-related
7 violence, and you touched on that during the course of your
8 observations. Do you have any information from research or from
9 your own observations which enables you to comment on the level
10 of violence, including family-based violence, in the contemporary
11 Cambodian society?

12 A.TPO, when it is intervening in the community, we conduct the
13 social context assessment, and the reason for such assessment is
14 to learn the problems within the community and the reasons that
15 caused these problems. And we would like to also understand the
16 resources and the involvement in the community.

17 And we have found that family-based violence and drinking habits
18 have been found to be part of the problems in the community,
19 according to our research. And there has been another research
20 conducted by the domestic violence organization to find out the
21 domestic violence which is on the rise. And this problem is
22 dealt with constantly and on a regular basis by our NGO also.

23 Q.You mentioned in your opening comments that one of the
24 policies in the Khmer Rouge regime was to separate families, so
25 that often children no longer lived with their parents and were

16

1 asked to do things such as spy on their parents that are not a
2 normal part of family behaviour. Have you seen any consequences
3 of this separation of families after the regime ended and family
4 life in the usual way resumed?

5 [09.52.22]

6 A.I have observed that children have to live with their parents.
7 Children need good care from their parents, especially in
8 Cambodian family norm. And our tradition is that there is a
9 morale in showing the respect to the senior people.
10 But in the Khmer Rouge regime, children were separated from their
11 family members and parents and they were indoctrinated that they
12 were the children of Angkar and they were no longer the children
13 of their own parents. So children lost their identify. So there
14 was an identity crisis because the children themselves did not
15 know whether they belonged to the Angkar or belonged to their
16 parents.

17 And we, at that time, were forced to believe that the children
18 were the sole property of the Angkar, so children had to do
19 whatever Angkar asked them to do. And Angkar indoctrinated
20 children to execute any kind of orders including the order to
21 execute their parents. And children were educated by way of
22 cruel -- by aggressive methods, for example.

23 Now those children become the parents of their children. So we
24 can see that the way they treated their children is the same as
25 the way they were treated back then in the regime of the Khmer

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1 Rouge. So is the severe traumatizing effect on this younger
2 generation.

3 JUDGE CARTWRIGHT:

4 Thank you, Mr. President. I have no further questions of this
5 expert.

6 MR. PRESIDENT:

7 Judge Lavergne, you take the floor.

8 BY JUDGE LAVERGNE:

9 Q.Yes, good morning, Doctor. I have a few questions to put to
10 you.

11 [09.54.59]

12 You said to us that the Cambodian population -- or, in any case,
13 40 percent of the Cambodians aged more than 18 were experiencing
14 post-traumatic stress disorders and you said that due to these
15 disorders, certain people could re-experience in a recurring way
16 what they had lived through, the trauma that they had lived
17 through; that, for example, they could have nightmares.

18 And what I'd like to know is what is the impact of such hearings
19 as here today -- what is the impact of a trial such as ours on
20 the victims who are showing such trauma? Is it something that is
21 likely to worsen or to make the victims relive this trauma? Or
22 is it, on the contrary, something that is likely to help the
23 victims overcome their trauma?

24 A.Your Honour, I would like to emphasize that there are both two
25 cases. In the trial of the former leaders of the Khmer Rouge,

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1 it's an opportunity for the victims who had suffered and who had
2 been traumatized for many years to overcome their traumatization
3 through the justice they believe they will achieve from the Court
4 and through the truth they will have heard from the parties to
5 the proceeding in the hearings. So if these proceedings are of
6 justice, it will be very helpful to heal the wounds, the
7 suffering of those victims, although there will be several other
8 steps to help them overcome such traumatization.

9 And as I already indicated earlier on, the victims during the
10 Khmer Rouge regime, some might have thought that they might have
11 not had any traumatic problems because they had been working as
12 usual, but this is the situation of the unconsciousness because
13 they are unconscious of this traumatization.

14 [09.58.26]

15 And regarding some clients of mine we have consulted with, they
16 said that their sufferings or traumatization has gradually
17 healed, but having heard or having observed the proceedings of
18 the Tribunal's hearings, then the traumatization seemed to recur.
19 But I believe that these proceedings, however, will be a step to
20 heal this traumatization, and our NGO is doing our best to
21 educate them on the problems they have had in relation to the
22 traumatization, and we have advised them not to feel fear and
23 that we have our hotline telephone connection for them to call in
24 if they would need our immediate assistance or consultation.
25 They can even pay a visit to our office in person.

19

1 So after this hearing there will be some kind of impact also on
2 the emotion. Then we have been prepared to handle this.

3 Q.Is one of the specificities of the trauma that the Cambodians
4 are experiencing, isn't it linked to the fact that this trauma
5 can be related to an anonymous organization which was known as
6 Angkar; that is to say an entity that did not have any identity,
7 any kind of specific identity? The fact that we may discuss the
8 facts but also the identity or the personality of this accused,
9 doesn't this create an image? Well, does this kind of exchange
10 allow us to take care of these post-traumatic stress disorders?

11 A.I cannot clearly understand the question. Please can you
12 repeat yours?

13 [10.02.41]

14 Q.It appears to me that one of the specificities of the
15 suffering experienced by the Cambodian people is due to the fact
16 that their suffering was being imposed upon them by an abstract
17 entity, which was named "the organization" or Angkar.
18 And the question that came to me -- and I'd be interested in
19 knowing if you have an answer -- is to determine whether the fact
20 that we have a debate where we are discussing not only facts that
21 are alleged to have been committed by the accused but also his
22 personality. If acquiring such knowledge, which makes it
23 possible to put a face, to give a human dimension to these
24 events, if that is of a nature such that it will enhance the
25 possibility of treating post-traumatic disorders.

20

1 If, for instance, it is possible in this way to remove fear
2 because fear is partially due to ignorance, for instance.

3 A.Thank you, Judge, for the question. This is a complicated
4 issue to provide appropriate response, whether the psychological
5 trauma can be dealt with effectively.

6 However, I would like to say that we know during the Khmer Rouge
7 regime they used the word "Angkar" or "Upper Angkar" who issued
8 orders. Upper Angkar forced people to do this or that and we did
9 not know who Upper Angkar was or who the leaders were.

10 So it created an abstract system, and during the proceedings
11 before this Chamber we heard some former Khmer Rouge leaders who
12 blamed the Upper Angkar, who blamed the people who we could not
13 see, who were abstract. That is, they denied their
14 responsibility of the crimes committed, despite the fact that
15 they held senior positions during the regime and that creates
16 more pain for the victims, that they could not face their
17 deniability made by those people or the irresponsibility by those
18 people.

19 So the process of healing by this proceeding is entirely based on
20 the willingness of either the accused or other people in order to
21 reveal the truth to show and to reveal those people behind the
22 intangibility for the genocidal crimes committed during the Khmer
23 Rouge regime. If this cannot be done, the psychological wound
24 inflicted upon the people could not be healed as witnessed by
25 some of the civil parties who do not accept the apology because

21

1 they do not think it is appropriate because it is not true.

2 So the healing cannot be completed in that fashion although the
3 testimonies of course can relieve themselves to a certain extent.

4 [10.05.25]

5 Thank you.

6 Q.With regard to the treatment of these disorders, which are
7 considerable -- you've described them -- you tell us that your
8 organization gives the possibility of consultations. But your
9 centre, if my understanding is correct, is based exclusively at
10 Phnom Penh. Perhaps you would like to expand on this concept.

11 But could you tell us for instance what are the real needs in
12 order to ensure that on the scale of a country such as Cambodia
13 this type of disorder can be fully taken charge of?

14 A.The treatment of the post-traumatic disorders in Cambodia
15 needs to be done jointly in cooperation with various other
16 institutions. The seeking for justice by the Ministry of Justice
17 or other tribunals such as this one in addition to the various
18 educations concerning the genocidal regime needs to be done
19 temporally with the treatment of the trauma.

20 The provision by our TPO organization is one of the portions to
21 help those victimized people from the Khmer Rouge regime. So
22 there are of course -- needs to be involved by various
23 institutions, including the Chamber, and other strategies that
24 can be implemented to create a dialogue, apology or acceptance of
25 what happened.

22

1 And these are in combination with the psychological assistance,
2 the people can be healed psychologically.

3 [10.08.03]

4 Q.In concrete terms, can you tell us if you have any links with
5 the health system of Cambodia, with the hospitals and outpatient
6 clinics and if victims have the possibility of contacting not
7 only your association specifically, but for those who are in more
8 remote areas to care-giving structures, and what sort of care
9 then is available to them?

10 A.The psychological treatment service by the TPO is based in
11 Phnom Penh and in certain other provinces -- Battambang, Banteay
12 Meanchey, Pursat and Kampong Thom. Besides the psychological
13 service by TPO there is also a psychological counselling service
14 by the government within the Cambodian Soviet Hospital and also
15 at the Preah Kossamak Hospital in Phnom Penh.

16 In certain provinces there are psychological services organized
17 by the government in the referral hospitals, for example in
18 Pursat, Battambang, Banteay Meanchey, Kampong Thom, Kampong Cham,
19 Takeo and also in certain other provinces.

20 The service is provided by the general medical doctors, for
21 example, in Kampong Chhnang and Kampot.

22 Q.Thank you, Doctor, for these clarifications.

23 JUDGE LAVERGNE:

24 I have no further questions, Mr. President.

25 (Deliberation between Judges)

23

1 [10.10.25]

2 MR. PRESIDENT:

3 The Chamber would like now to give the floor to the
4 Co-Prosecutors to put questions to this expert witness if they so
5 wish. The time allocation for the Co-Prosecutors is 15 minutes.
6 If necessary a request can be made to the Chamber for additional
7 time.

8 MR. SENG BUNKHEANG:

9 Thank you, Mr. President. Good morning, Doctor.

10 QUESTIONING BY THE CO-PROSECUTORS

11 BY MR. SENG BUNKHEANG:

12 Q. Generally speaking, people who experience trauma during the
13 Khmer Rouge regime as they were forced to do hard labour and did
14 not receive any positive feedback or treatment in return, does
15 that have tremendous impact on the development family-wise or
16 social-wise?

17 Previously they were forced to work and receive nothing in return
18 besides the fear and the threat. So what are the impacts on the
19 development, social development and family development?

20 A. Thank you for the question, Mr. Co-Prosecutor.

21 Let me go back a little bit. Some victims were the children or
22 family members during that regime but at the moment after the
23 family members, the parents were killed by the Khmer Rouge, for
24 instance the parents were the breadwinners of the families or if
25 we refer to the opportunities they lost by the death of their

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1 father or mother, they still hang on to the feeling that if the
2 father or mother or relative members were still alive they would
3 not be in this hardship. And that type of feeling is still
4 growing inside them.

5 [10.13.08]

6 And it has impact on their daily thought. It has impact on their
7 daily living in addition to their study. And this would have an
8 overall impact. It would downgrade the living standard of their
9 family and as a result they resorted to alcohol, to drinking.
10 And that would lead to additional problems, for instance the
11 domestic violence and the development of the society based on the
12 statistics that Professor de Jong showed amongst two people who
13 had psychological impact amongst the five people selected.
14 This is a serious issue and a serious indication that people were
15 tremendously impacted and traumatized. And this also has an
16 impact on the social development or the development of the
17 economics in the country.

18 Additionally, the people who were the children during the Khmer
19 Rouge regime and now they are parents and they have to educate
20 their children, and they could only do that based on the way they
21 experience by their parents during the regime, and that would
22 transmit the way of education to the children.

23 Based on the population survey, the people who are 20 years or
24 under outweigh the number of people who are older than 20 years.

25 So in 20-years time, they would reach the age of 40 and they

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1 would be the core force, the catalyst of the economic
2 development. And if they still have the psychological impact, how
3 could that develop a country in a speedy way? And that would
4 have an overall impact upon the country.

5 MR. DE WILDE D'ESTMAEL:

6 Mr. President, I have approximately seven additional questions to
7 ask if you will allow me and, thus, I anticipate that we may go
8 beyond the time; it will depend on how concise and specific the
9 expert will be in his answers. Now, if have authorized me to go
10 to the end, please mention it to me.

11 [10.15.44]

12 BY MR. DE WILE D'ESTMAEL:

13 Q.Now, first question, Mr. Expert.

14 For those victims that have joined the civil party action and for
15 civil society as a whole, what is the importance of their
16 participation to the trial, in public, in front of the nation?

17 Can the other victims identify with this approach of the victims?

18 Can it play the role of a cathartic outcome for Cambodian society
19 without, of course, being a miracle remedy?

20 A.As I have said from the beginning, this trial is an
21 opportunity for the victims to receive information and the truth,
22 searching for the crimes committed upon their relatives or upon
23 them or other people. Therefore, it is an opportunity that they
24 know and that they would learn and that would have to relieve
25 their traumatic feeling.

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1 And for those who have the opportunity to participate as civil
2 party and to provide a statement or testimony, it is a forum for
3 them to express the feeling, the emotions, that have been hidden
4 for many years; to express them to the public to let them know
5 that in the Cambodian society -- to let them know that the
6 discussion or the chit-chatting during the Khmer Rouge regime did
7 not occur either at a family level or at a social level.
8 The study of the genocidal regime was not included in the state
9 curriculum, and people avoid talking about this issue. There
10 seems to be a conspiracy of avoidance or conspiracy of silence
11 that they seem together not wish to express their feelings, to
12 ignore the issues, but their avoidance does not happen and,
13 therefore, the participation, the making of statements or the
14 testimony in a certain way would help them.

15 [10.18.40]

16 Q.Thank you. My second question is the following.

17 How can you explain, according to the statements made by numerous
18 civil parties in this trial, that instead of diminishing over
19 time, the suffering related to their past or the past of the loss
20 of their kin under Democratic Kampuchea seems to increase over
21 time along with their anger? And we've observed that this is
22 particularly the case of persons who were outside of the country
23 during the period of Democratic Kampuchea and who lost relatives,
24 even though they had access to psychological care.

25 Do you believe that there is a transfer onto the civil parties of

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1 the fear and suffering which the civil party imagined was that of
2 the lost relatives?

3 A.Let me make it clear that the cultural issue, the religious
4 belief, the customs and
5 traditions which were eliminated by the Khmer Rouge are one of
6 the main cause. If the practice would help them to heal their
7 psychological trauma, I have already said that Cambodian people,
8 when they suffer such trauma, they tries to find a way to explain
9 -- to seek meaning of what happened and the meaning given to what
10 happened by them could be essential to help them or to heal the
11 wounds psychologically or, alternatively, the cycle of the trauma
12 could be transmitted to the next generation.

13 [10.21.09]

14 For the victims who reside overseas, it is difficult because they
15 live far away from the practice, the customs, the tradition and
16 the culture or the events occurred in Cambodia so they seems to
17 lost something, even if they live in the Western country in a
18 better living condition or in a society which are secure and
19 safe. But they lost their religious belief, traditions, foods,
20 the ways of acting, the communication, the language, and all
21 these combined together would prolong the wound and the suffering
22 they have within themselves.

23 For example, a client of mine whom I met in Sydney when I went on
24 my study tour, he was living in a better living condition, but he
25 still has the chronic suffering and that could not be treated by

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1 the doctor over there because of no clear symptom of what
2 happened. And, in fact, it was hard for him to pay homage to the
3 religion, but upon his return to Cambodia, he has ceremony to
4 pray to the lost souls of his parents and, psychologically, he
5 was relieved. And upon his return to his country, he was in a
6 better condition and this is evident of what happened for those
7 who reside abroad.

8 Q.Mr. Expert, among the factors that may increase the level of
9 trauma endured by
10 the civil parties and victims in general, we have been able to
11 observe, at the various statements of the civil parties before
12 this Court, that a certain number of them could be singled out --
13 and you can tell me if you agree with that or if there are other
14 factors that may come into contention.

15 [10.23.19]

16 First of all, the manner of death of the relatives; a violent
17 death after detention in S-21, after torture, lack of food, et
18 cetera. A second factor would be the lack of knowledge of the
19 motives and the circumstances of the death of the relative.

20 There may also be a factor due to the absence of a rationale to
21 explain these deaths. In a way, these are deaths for nothing in
22 view of a course that is not justifiable. Finally, the speakers
23 also mention the absence of a body and the inability to affect
24 closure amongst their suffering.

25 These are the main factors, I suppose, which increased the

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1 trauma, but do you believe that there are others as well?

2 A.The factors or the facts that they did not know the truth of
3 what happened are one of the factors which prolonged their
4 psychological suffering. The lack of service provision to the
5 victims is another matter which also prolonged their trauma and
6 suffering.

7 At present in Cambodia there are only 32 psychological experts.
8 When I started my study there were 10 of us, in '94, and if you
9 compare the limited number to the 14 million people who were
10 traumatized or who lived through the regime, this service is
11 minimal. In Cambodia the psychological service is only provided
12 to certain major provinces and not to the remote areas, and this
13 service is also minimal. It's only provided by TPO and only a
14 few organizations in a limited scope, based on their budgetary
15 limitation.

16 [10.26.00]

17 Another factor which is also prolonging the trauma experienced by
18 those people is that a majority of the victims are living in a
19 poor condition. Their living standard is poor and they are busy
20 dealing with their daily life, the difficulties in addition to
21 the suffering that they have been hidden inside them for so long.
22 And the poor living condition is a factor for them to postpone
23 seeking for the treatment or better service. Therefore, the
24 trauma is still ongoing.

25 In another case it is a common factor that a certain number of

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1 them, due to the poor standard of living, they are unable to hold
2 religious ceremonies to pay homage or to pray for the lost souls
3 in a satisfactory way, and that factor is of importance.

4 Q.Thank you. Earlier you briefly mentioned the lack of
5 forgiveness expressed by some of the parties. I would like to
6 return to this. How, in fact, can one explain the absence of
7 pity on the one hand -- of pity, except for one of the civil
8 parties; all the others we've heard felt no pity toward the
9 accused -- as well as the total absence of forgiveness for an
10 accused who nevertheless did co-operate and expressed his
11 regrets, at least to a certain extent? Therefore, is it
12 necessary for justice to be handed down, for the locks of
13 impunity to be removed prior to the possibility of accepting
14 excuses and perhaps later on forgiveness and reconciliation?
15 In other words, are we only at the very outset of a long process
16 of reconciliation?

17 A.It is my opinion that we need to understand what are the needs
18 of the victims. Before that let me verify certain issues.
19 First, we need to know what are the causes of these prolonged
20 traumatic stress disorders?

21 [10.28.57]

22 There are several factors. For instance, our brain, because the
23 trauma also would change the chemical substance of the brains,
24 the reflections and the functions of the brain. Secondly, the
25 word meaning -- the meaning that is given to the trauma the

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1 victims experience, what types of meaning they give to that
2 trauma.

3 And the third point is the need of the victims. What do they
4 want? Is it the safety or the living conditions? Or if maybe
5 the living conditions improved then they would be better with a
6 better feeling psychologically, and if they still believed that
7 they would be in a better condition if their family members did
8 not die during that time.

9 And the fourth point is the justice. And if justice can be seen
10 and served, then the civil party would acknowledge it and that
11 they would have the opportunity to give their forgiveness, and
12 that forgiveness is a main key to open the door or to pave the
13 past for psychological heal. And in the absence of the
14 forgiveness it is difficult for the healing of the wound, of the
15 psychological wound, and that would have an impact on the overall
16 national reconciliation.

17 Therefore, it is up to the willingness of both the accused and
18 the civil parties, and all of us as a whole, to reveal the truth;
19 the truth that can be accepted by the victims.

20 Q.I have two more questions.

21 Regarding the encounter that is taking place here in this Chamber
22 between the victims and the accused, could you please tell us if
23 an accused, no matter who he might be, through his repeated
24 statements do you believe that the accused is trying to put
25 himself on the side of the victims and to share their suffering?

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1 [10.31.47]

2 And in what psychological state can the victims or the civil
3 parties end up when there is this confusion that might make them
4 believe that the executioner is also a victim, or that the
5 victims could also have been executioners? What is the impact of
6 this on the civil parties of this kind of shuffling?

7 A.It is a very important question. TPO has made available the
8 services in 2003, '4 and '5 to assist both the victims and the
9 accused. The services are seen in the consultation for the
10 guards of the former S-21 compound and if you look back to the
11 historical event, the time when the Khmer Rouge made those guards
12 become the soldiers when they were 12 or 13 years old, they were
13 abducted from their parents and were put to the battlefields to
14 fight the enemies or to be put to stand on guard at the S-21
15 facility, and later on some of them were arrested and detained at
16 the place where they had worked.

17 So these people, at the beginning you could see that they become
18 victims but perpetrators at the same time. So the victims turn
19 perpetrators, the perpetrators turn victims, so it is a kind of
20 very complicating circle and it is quite difficult to understand
21 it also. Although the civil parties claim that they were
22 victims, but if you look back to the past event then we can
23 understand more that only if the past is well studied then we can
24 change our view in relation to the victims' and perpetrators'
25 relation.

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1 According to the research many believe that the present
2 perpetrators were the victims or are the victims. Or the victims
3 turned perpetrators. And I would like not to tell more about
4 this and I let the Court consider this.

5 Q.Thank you very much. I have a last question which is a
6 question from someone who is a foreigner and who is not a
7 Buddhist.

8 A civil party spoke to us about the contradiction between his
9 personal suffering and the notion of karma. And he also
10 underlined a certain contradiction between the justice of human
11 beings and the justice of Buddha.

12 [10.35.56]

13 And could you shed some light on this from a psychological
14 standpoint? Can karma play a role because of the dominant
15 religion in this country? Can karma play a role in the fact that
16 a certain number of victims do not dare to participate in such a
17 proceeding because it is part of human justice and prefer just to
18 rely on divine justice and therefore not to fight as hard as they
19 could if they were part of another culture?

20 A.I believe that the majority of Cambodian people who are
21 Buddhists, they are strong Buddhist followers. They believe in
22 karma. They believe in toleration and they believe that revenge
23 would not be a good option to cope with a problem.

24 And we should also balance the notion of karma and the notion of
25 justice of human beings. To find justice and to make sure that

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1 justice is well done, it is important that the evidence is
2 well-presented and well-accepted. I believe that Cambodian
3 people who are Buddhist are ready to forgive what happened
4 because according to the religion they have been educated to be
5 able to forgive, forget, to understand karma and to be able to
6 reunite and to live together in harmony after the problems.
7 And when another religion is compared to explain what happened, I
8 think it depends on the individual view or notion as opposed to
9 the theories of other religions to solve any particular problem.
10 So it is an individual choice to choose another religion in order
11 to interpret their suffering and to heal their grief.

12 [10.39.04]

13 Q.Thank you very much for all of this clarification.

14 MR. DE WILDE D'ESTMAEL:

15 Mr. President, I have no further questions.

16 MR. PRESIDENT:

17 We will take the adjournment for 17 minutes now.

18 The Court officer is instructed to assist the expert during the
19 adjournment and please call him back to the courtroom when we
20 resume.

21 THE GREFFIER:

22 All rise.

23 (Judges exit courtroom)

24 (Court recesses from 1039H to 1104H)

25 (Judges enter courtroom)

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1 MR. PRESIDENT:

2 The Chamber is now back in session.

3 The Chamber would like now to give the opportunity to the civil
4 party counsel, the four groups of the civil party counsel, to put
5 questions to this expert witness. The four groups of civil party
6 counsels have the combined total time allocation of 30 minutes.

7 You may now proceed.

8 [11.05.22]

9 MR. HONG KIMSUON:

10 Thank you, Mr. President. Good morning, Your Honours. Good
11 morning, ladies and gentlemen. I am Hong Kimsuon, a civil party
12 lawyer for group 1, 2, 3, and 4 in this special arrangement. I
13 represent all the four groups today to put questions to this
14 expert witness.

15 I would seek the President's permission if I need a little bit of
16 extra time.

17 QUESTIONING BY CIVIL PARTY COUNSEL

18 BY MR. HONG KIMSUON:

19 Q.Doctor, based on your description in regards to the trauma,
20 does the trauma experienced by the victims of the Democratic
21 Kampuchea regime -- and in this case it's related to the S-21
22 Security Office which is currently known as the Tuol Sleng
23 genocidal museum -- the types of trauma as experienced by those
24 victims, what are the most serious trauma experienced by those
25 victims?

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1 A.Thank you, Counsel, for your question. The trauma experienced
2 by the victims of S-21 Office, I cannot say for sure which type
3 of trauma is deteriorating or getting worse. I can say that they
4 are still experiencing the trauma. They still can recall the
5 events that happened. They still experience the nightmares, the
6 depression, and the difficulties, the challenges they face on a
7 daily basis. This difficulty is one of the factors for them not
8 to easily heal the trauma they experience.
9 Other factors -- including the trauma, they experience the
10 difficulty in their daily living condition, that they cannot act
11 freely and that they have difficulty in raising their family.
12 And these are common difficult experience by those people.

13 [11.08.34]

14 Q.Thank you. Regarding S-21, or the Tuol Sleng genocidal
15 museum, as it is known now, most of the victims are the relatives
16 of those executed at S-21. What are the main reasons for the
17 victims wanting to know the exact location of the death of their
18 relatives? What are the connections between the place of the
19 death and their psychological experience?

20 A.Thank you for the question, Counsel. I would like to say that
21 first let me talk about the family and the social environment in
22 Cambodia.
23 The social and family situation in Cambodia is that we live in
24 family separately, so the impact of the relationship is tense and
25 the closeness between each family member, who might be the dead

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1 victims or the victims who are survivors now -- and those people
2 who died could be the ones who assisted them, who had gratitude
3 over them. So the death of such dear people or relatives are
4 exactly the same type of suffering they would experience.
5 And the secondary traumatization experienced by them is the
6 post-traumatic stress disorder or the trauma. Even if they are
7 not the direct victims of the mistreatment or torture but due to
8 the closeness of relationship between them and the dead people
9 leads to the secondary traumatization, the hearing of the torture
10 or the mistreatment or other events related to their death would
11 cause the secondary traumatization in a similar fashion
12 experienced by those people who died.

13 [11.11.28]

14 This is my response, Counsel.

15 Q.Thank you. My next question is related to the responsibility
16 of the leadership of the Democratic Kampuchea regime or which is
17 commonly known as the Khmer Rouge clique.

18 In the proceedings before this Chamber there have been several
19 responses, especially from the accused, Kaing Guek Eav, referring
20 to Angkar or the upper echelon or the Standing Committee who
21 issued orders.

22 My question is: the establishment of a regime was done by human
23 beings or by those group of intellectuals who established such a
24 regime, and establishment of a regime with the plan to execute
25 people, in comparison to a regime established not to kill people.

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1 Does the idea of executing people differ from the idea of the
2 establishment of a regime for the progress of the society?

3 A.First of all, I do not have an expertise in analyzing a
4 situation in such fashion, but it is my opinion that what was
5 done by the Khmer Rouge regime is completely inappropriate.

6 Q.Thank you. The killing of people during the Khmer Rouge
7 regime left behind the suffering experienced by the survivors at
8 present, as we have all heard.

9 My question is: the responses of those people who were the
10 leaders or most responsible for the Khmer Rouge atrocity who do
11 not accept the responsibility and who say they do not know who
12 created such a possibility and that was not really helpful for
13 the victims at all.

14 A.As I have said earlier, the psychological healing of the Khmer
15 Rouge regime is dependent on the honesty that the accused or the
16 former leaders of the Democratic Kampuchea show or express or
17 acknowledge. We all know who are responsible for the killing of
18 the Cambodian people.

19 So the heartbeat of irresponsibility, or the absence of
20 responsibility, is an extra burden placed upon the victims; not
21 only the civil parties to this proceeding but on the Cambodian
22 people as a whole. They are not happy and they feel furious of
23 such deniability.

24 [11.15.25]

25 Q.Thank you. My next question is, Doctor, the Cambodian

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1 population, either the victimized survivors of the Khmer Rouge
2 regime or the younger generation of those people who are born
3 after the Khmer Rouge regime, they all have similar types of
4 trauma. Does the participation in this Chamber or the monitoring
5 of the proceedings would relieve them of their suffering?

6 A.The participation in the proceedings could result in two ways.
7 The hearing or the participation would cause the reoccurrence of
8 the experience of the events or experience that they faced a long
9 time ago and that they would experience again, the nightmares or
10 the unsettling feelings.

11 However, it also would help them if they have the ability or the
12 opportunity to express the feeling of the trauma they have
13 experienced to a certain degree, but I am not in a position to
14 say that it could assist them completely to heal the
15 psychological wounds of trauma.

16 Q.Thank you. The victims or the civil parties to this
17 proceeding know or are aware of the fact that they would like to
18 seek justice for themselves or for their dead relatives and to
19 seek for the truth. and in order to settle their feeling or to
20 heal their psychological trauma. Based on your experience what
21 can be done to assist them, to assist those traumatized victims
22 of the Khmer Rouge regime in order to fulfil these two points?

23 A.Knowing the truth, receiving the fair justice and the
24 acceptance of apology or forgiveness are the important factors
25 for the healing of their psychological wound. However, the

40

1 trauma that they experience needs to be healed or treated by a
2 proper service. The trauma they experience is severe and it
3 needs to be tackled properly and carefully.

4 [11.18.38]

5 Now, we all know the psychological service in Cambodia is minimal
6 and the psychological experts are in few numbers. So the service
7 given to them is also inadequate.

8 In addition, I believe the Khmer Rouge regime destroyed every
9 infrastructure and they lost completely almost everything,
10 including the dear ones, or the opportunity to do anything else.
11 They still believe that if there were no Khmer Rouge regime they
12 would be in a completely different position, in a better
13 position, in a higher education or better living conditions.
14 They have lost their identity. They have lost their trust and
15 beliefs.

16 These are also serious factors that we need to tackle carefully
17 in order to assist them. And we have to do this jointly in order
18 to heal their wounds by providing them the justice they deserve.

19 MR. HONG KIMSUON:

20 Thank you.

21 With the President's leave, I would like my international
22 colleagues to proceed with a question.

23 MR. PRESIDENT:

24 The international civil party counsel, you may proceed.

25 MR. WERNER:

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1 Thank you, Mr. President.

2 [11.20.09]

3 BY MR. WERNER:

4 Q.Good day, sir. Let me first of all express the gratitude that
5 we feel for your accepting to testify here. It's very important
6 for our clients and we are very grateful to you for this.

7 My first question will be the following. Doctor, is it the case
8 that you also worked giving consultations to direct survivors of
9 S-21?

10 A.That is correct.

11 Q.And, Doctor, are there specific symptoms which the direct
12 survivors of S-21 suffer from according to your observations?

13 A.I would like to separate the types of symptoms into two.

14 First, I would like to talk about the symptoms related to the
15 medical psychology; that's those victims who are the
16 psychological victims or they are traumatized victims in various
17 forms.

18 For example, the post-traumatic stress disorder and the
19 depression, the physical feeling, or the other diseases including
20 hypertension, chronic disease or diabetes as a result of those
21 events.

22 [11.22.14]

23 However, I would like to stress that they are the types of
24 diseases they experience but there are also other impacts
25 regarding the trauma. There has been an interpretation of the

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1 words "post traumatic stress disorder" into Khmer as "chum ngeu
2 bak sbat". It is different between the general trauma and the
3 PTSD so we have to know the difference between the medical trauma
4 or medical/psychological trauma and the post traumatic stress
5 disorders.

6 The survivors of the Khmer Rouge regime say they experience the
7 posttraumatic stress disorders of the Khmer Rouge regime. This
8 shows that they have fear, suffering, the avoidance, the anger
9 and the blanking out, and the avoidance of committing other
10 things, the mistrust for instance. And these are all the
11 symptoms that are experienced by the survivors limited or at
12 various levels. And the other thing is the social psychological
13 trauma also experienced by the victims in general and those
14 specific victims of the S-21.

15 So if you look the medical psychological trauma, that is
16 different from the social psychological trauma. It is more
17 serious than the medical psychological trauma.

18 Q.Thank you very much, Doctor.

19 Now, with relation to the second group, the kin of people
20 detained in S-21, you already discussed it but perhaps you could
21 be more specific.

22 As you know, S-21 had specific characteristics and one expert
23 came to tell us that the purpose of the terrible conditions of
24 detention in S-21 was to break the resistance of the detainee
25 prior to interrogation. Other experts and witnesses spoke at

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1 length about the extent and cruelty of the torture methods of
2 S-21 in contrast to other detention centres.

3 Now with regard to the kin of people detained in S-21, did you
4 observe specific symptoms for the family members of those who
5 were detained in that detention centre?

6 A.Thank you for the question. This question is similar to that
7 put to me by the previous counsel.

8 [11.25.25]

9 We have observed that there is a concept showing or indicating
10 the secondary traumatization. It means that the victims were not
11 directly involved with the event. They heard or they were the
12 relatives of those people and they also received the
13 psychological trauma or impact.

14 We all know that there has been research in the Western countries
15 that the next or the younger generation of the victims experience
16 the traumatic stress disorders. So it is clear that either the
17 direct victims or the children of the victims do experience the
18 trauma.

19 I would like to stress that the parents who experienced trauma,
20 namely the torture during the Khmer Rouge regime, the trauma
21 could be shown to their children and the children would observe
22 and witness the suffering inflicted upon their parents and they
23 would try to work harder in order to assist their parents, to
24 assist them psychologically as well.

25 Another point, the thinking and the behaviour of the parents or

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1 the victims does have an influence on the way of thinking of the
2 children or the relatives. And this seems to be transferring of
3 trauma from the victims to their relatives or to their children
4 as I have said earlier which is known as the secondary
5 traumatization. And the research has been conducted and proved
6 that it exists.

7 Q.Thank you, Doctor. Doctor, our clients constantly speak to us
8 and have expressed before the Court their feeling of guilt, the
9 feeling that is generated by the fact that as they say they were
10 unable to protect those close to them or they weren't able to do
11 more for them when they were tortured in S-21.

12 [11.28.16]

13 During your consultations, did you observe this feeling of guilt
14 expressed by the relatives or those close to persons who were
15 detained in S-21?

16 A.We have observed various indications regarding this aspect,
17 the sign of guilt they seem to have in theory. Victims of
18 torture are in a category that they could not do anything to
19 change the situation and that type of feeling could freeze them
20 in that they could not act voluntarily or do anything to alter
21 the outcome of the situation. And that feeling is shown in some
22 of the victims.

23 For instance, one victim who received torture together with his
24 wife and the wife passed away, that feeling would be with him for
25 a long time because he feels that he was in a situation that he

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1 could not do anything, that he was helpless. And he still has
2 that experience at present time. And sometimes in his dreams he
3 would see his wife coming to appeal for his help.

4 Q.The question was already asked to you but I was wondering if
5 you could give us more details in relation to our clients'
6 impossibility to mourn. Most of the people who died have not
7 been buried properly. Can you confirm that this fact contributes
8 in a concrete manner to the intensity of the pain that is still
9 present today for our victims, the fact that they were not able
10 to mourn their relatives properly?

11 A.I would like to emphasize that there are not many people who
12 could arrange the religious ceremonies to pay homage actually to
13 the dead souls. Only very few of them who exhumed the body of
14 the people who died and buried during those times.

15 [11.31.38]

16 So in general it is not really a common practice by many victims
17 because many victims who are my clients and who have been
18 consulted by our colleagues have not been able to do that and
19 they have no trace of whereabouts their loved one would have been
20 buried. So these factors have contributed to the delay their
21 suffering.

22 As I had indicated earlier that the Buddhist religious practices
23 and the ceremonial traditional ways of ceremonies to pay homage
24 to the dead souls, to wish them rest in peace is a good therapy
25 for the people who have been traumatized by the regime. But

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1 until now there are still very few of them who have really
2 resorted to these practices.

3 MR. WERNER:

4 Mr. President, I have two extra questions. May I please
5 continue?

6 Thank you.

7 BY MR. WERNER:

8 Q.Doctor, we the civil party lawyers had great trouble
9 convincing our clients, at least for some of them, to come speak
10 before this Court and even at the last minute some people even
11 felt too vulnerable to come express themselves here. So we had
12 to take names out of the list because our clients at the last
13 minute did not have the courage or did not feel capable of
14 testifying.

15 So can you confirm that today many people indeed still feel so
16 fragile that today even they cannot testify and that they cannot
17 confront their pain? Is that correct according to what you have
18 observed?

19 A.There are several factors that I can explain that are related
20 to this.

21 [11.34.12]

22 First, it is the psychological matter -- the thing that never
23 been treated before so I really appreciate those victims who are
24 brave enough to appear before the Court, but many of them are
25 still living with the suffering and they're too traumatized that

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1 they are discouraged to attending the proceedings.
2 Some of them said that when they observed the proceedings and
3 having seen the accused, there is a kind of moment of flashbacks
4 because they could recall what would have happened many years
5 ago. So the only way to stop them from refreshing the memory of
6 pain is to avoid coming here so that's why this is the main
7 problem that people are living with. And we all are quite aware
8 that during the Khmer Rouge regime -- it is a very barbaric
9 regime -- the regime that the root cause of the infrastructure,
10 religious belief and all kind of social interaction were smashed
11 to bits.

12 [11.35.42]

13 So these have affected severely on the livelihood, the emotions
14 of the people who now live to tell the story. They have felt
15 that they are not secured. There has no safety for them to be
16 able to talk in the public. They live with fear still. And the
17 Khmer Rouge taught people to mistrust one another, to put people
18 to spy on one another so these kind of factors created the
19 situation in which people did not rely on anyone. They perceived
20 everyone surrounding them as the people they fear and a lot of
21 victims we met told us that they have no trust in anyone. And
22 the lack of trust is the very great contributor to their
23 avoidance to talk in the public.

24 Q.Thank you.

25 My last question: some of our clients not only lost their mother

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1 or their brother or their sisters or their fathers at S-21, but
2 also their cousins or their grandfathers or even their
3 brother-in-law; people who would be considered in other cultures
4 as more distant family members, but however what we observed in
5 the proceedings that our clients pain is just as acute so how can
6 you explain that people who might have lost their brother-in-law
7 or their grandfather or more distant relatives might feel pain in
8 such an acute way?

9 A. It depends on the attachment, the linkages between the person
10 to that persons. In
11 Cambodian society and family, the Cambodian society has a
12 tradition of showing homage, gratitude, respect to the senior
13 members of the family so the younger children or members of the
14 family must have had established some kind of connection with the
15 dead people.

16 Those people who died could have been the role model, the mentors
17 for them. So this establishes a kind of bond -- the very close
18 bond for the people who live and who have to pay the gratitude to
19 dead people. So they have to find all means to return their
20 gratitude to them; so only by way of finding justice for them
21 would be the best remedy. That's why they have joined as the
22 civil parties in these proceedings.

23 [11.39.23]

24 MR. WERNER:

25 Thank you very much, doctor, for having answered my questions.

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1 MR. PRESIDENT:

2 The Chamber would like to give the floor to the defence counsel
3 to put questions to the expert. The counsel has 30 minutes to
4 proceed with the questions.

5 QUESTIONING BY DEFENCE COUNSEL

6 MR. KAR SAVUTH:

7 Thank you, Your Honours.

8 BY MR. KAR SAVUTH:

9 Q. Good morning, Doctor.

10 According to the trials, the Khmer Rouge trials, and you
11 indicated that these trials will heal the wounds, the emotional
12 or psychological wounds of the victims. I may have to ask you a
13 question: in the bases and the prisons -- more than 200 prisons
14 in Cambodia -- Cambodian people have been quite familiar who were
15 the perpetrators during the Khmer regime because people could
16 really point the finger to the perpetrators who actually tied up
17 their loved ones and executed them -- so the perpetrators in
18 those prisons are not being trialed. Those perpetrators in all
19 those prisons across the country have not been brought charges
20 against, so the question is how can the wounds, the psychological
21 wounds of those victims been healed if the perpetrators -- all
22 perpetrators have never been put on trial?

23 A. Thank you.

24 It is true, of course, the road to find justice for the victims
25 and as the trial under this hybrid Court has the jurisdiction to

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1 trial only the most senior and responsible people, the upper
2 apparatus of the Khmer regime, but it does not have the
3 jurisdiction to trial the perpetrators who are now living with
4 the victims in the communities among those victims.
5 And I think it is really difficult for the victims because
6 victims have to live together with their perpetrators: they go
7 to the same pagoda, they use the same local resources. They have
8 to share all the resources in the community so the social
9 interaction on a daily basis makes it very difficult for the
10 victims and this even prolongs the suffering of those victims.
11 But I would like to reiterate that we have to do our best to make
12 sure that the justice can be done on several stages. Justice at
13 this Court is seen as a symbolic justice because we are now
14 trying these most senior Khmer Rouge leaders, but to heal the
15 wounds, the psychological wounds of the victims in the community,
16 is to establish a mechanism for reconciliation; the
17 reconciliation that lead to the more psychological heal.
18 [11.44.01]
19 I don't exactly know what mechanism would be best but I believe
20 that we, the NGOs, the local authority and the government, should
21 really join hands in establishing a forum, a common forum or
22 reconciliating forums, to use the forums as the venue for healing
23 the pains of those victims. And I think it would be another
24 option that we create what we call a local court to really help
25 heal the wounds of the local people.

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1 Q.Thank you, Doctor. The next question is: I just would like
2 you to just clarify on it. This question is quite similar to
3 those questions asked by the international Co-Prosecutor already,
4 so for clarification I would like the doctor to shed also light
5 on this.

6 So far the civil parties, the victims, have known that the
7 accused received orders from the superiors. They're all quite
8 familiar that the accused had to order his subordinates through a
9 chain of command and that the civil parties are knowledgeable
10 that the accused has never executed any victim in person, and
11 civil parties and victims have known that the accused has never
12 tortured any person in person.

13 [11.45.59]

14 And the accused has on many several occasions prayed, expressed
15 his remorse and begged for forgiveness from the civil parties and
16 victims, but the surviving civil parties and victims still deny
17 such apology and opportunity to seek forgiveness. So I may ask
18 the doctor how we can actually heal the sufferings of the civil
19 parties and the victims, to make sure that they fully recover and
20 then they are in the position to forgive and forget.

21 A.This is a very good question but it is difficult to answer. I
22 would like to accept that the civil parties had been suffering
23 psychologically and they have been suffering for many years, and
24 they have expressed their anger and their emotions according to
25 what they have suffered, according to the theory that when one

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1 can express their feeling or emotion publicly it is a kind of
2 process to heal or to reconcile. I don't say that it is a
3 process to fully heal the wound, the suffering, but it is the
4 step to that destination.

5 These kind of emotions could have been expressed by the civil
6 parties and it is good that the accused expressed his remorse,
7 and it is really an open opportunity for healing the suffering.

8 I think now it depends on the honesty, the faithfulness of the
9 accused to be able to express or to tell the victims or the civil
10 parties that whatever he has expressed in his remorseful
11 statements is genuine and very sincere.

12 Some individuals, of course, cannot really accept such apologies,
13 even for the whole life, but some will be able to forgive and
14 forget.

15 [11.49.10]

16 Q.Thank you, Doctor.

17 MR. KAR SAVUTH:

18 With the President's leave, may I share the floor with the
19 international colleague?

20 MR. PRESIDENT:

21 The international defence counsel, you may now proceed.

22 MR. ROUX:

23 Thank you, Mr. President.

24 BY MR. ROUX:

25 Q.Thank you, Doctor. A lot has already been said and you are

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1 providing a fundamental contribution to these proceedings and I
2 would like to thank you for this. I might still have a few
3 questions, however. We have, of course, gone way beyond the
4 issue of S-21 because we have been bringing up with you, since
5 the start of this proceeding, the trauma that the entire
6 Cambodian population went through.

7 You have just spoken about what we could imagine as being, among
8 the Cambodian population -- as being what would happen after this
9 trial, that you qualified as symbolic, and my first question: do
10 you have any information on what I would call the small truth and
11 reconciliation commissions that seem to be taking place in
12 certain provinces, in certain parts of Cambodia? In the context
13 of your organization, have you been implicated in these
14 encounters between victims and executioners throughout the
15 country, and can you tell us something about this?

16 [11.51.48]

17 A.Thank you for the question. In relation to the interference
18 TPO has conducted so far, so far we have not been dealing with
19 the perpetrators in the community. The suffering, the trauma, is
20 tremendous for the whole community and we only focus on the
21 general interference to deal with the general population, and we
22 have budget constraints that we cannot really extend our effort
23 to that extent yet. But we believe that after the mission of
24 this hybrid Court comes to an end, we will do something to help
25 reconcile the community.

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1 The international tribunal is here to heal the wound of the
2 national level but actually we have to focus on the community
3 level.

4 Q.Thank you, first of all. A completely different question now.
5 We spoke a lot about forgiveness during these proceedings and I
6 would like, first of all, to put a question to you as a Khmer
7 person and as an expert. Could you please explain to us what
8 does forgiveness signify in Khmer culture? I believe that it is
9 a different notion from forgiveness as it is perceived in the
10 West.

11 A.Thank you for the question. In Cambodian context, in relation
12 to forgiveness, it relies on the Buddhist religion and this
13 forgiveness can be interpreted in both the religious way and the
14 human being way. However, if justice is done and that the truth
15 is revealed, forgiveness is possible.

16 In Buddhism, those who commit wrongdoings will receive some kind
17 of bad merits or reaction in the next life but, in our human
18 society, it is obvious that those who commit crimes, then they
19 have to be punished.

20 [11.56.00]

21 Victims who can see that although no punishment could be
22 inflicted on the perpetrators during this life, but they believe
23 that next life they would be suffering from what they did
24 wrongfully.

25 Q.Thank you.

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1 MR. ROUX:

2 Mr. President, I will need a bit more time. I do not know if you
3 wish to adjourn right now but I will need a bit more time.

4 MR. PRESIDENT:

5 You may proceed because you still have further time until seven
6 past twelve.

7 MR. ROUX:

8 Thank you, Mr. President. I'm not sure that I will be done by
9 seven past twelve, but we can move on, however.

10 BY MR. ROUX:

11 Q.I was a bit disturbed when some people in these proceedings
12 used forgiveness as something that is easy -- considered it as
13 something easy, and I would like you to remind us that
14 forgiveness is a slow process that goes certainly way beyond
15 these proceedings. And as far as I'm concerned, I do not
16 understand very well that we can right here tell a victim who is
17 coming to express his or her suffering or ask the victim, are you
18 ready to forgive? That's not the point here.

19 [11.58.31]

20 And you reminded us that it is as of the moment when justice will
21 be done that maybe -- maybe -- things might be solved between the
22 victim and the accused. But am I right in saying that it is too
23 early today to ask a victim straight off the bat, are you willing
24 to forgive?

25 A.Thank you, defence counsel. I would like to verify that I do

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1 not have expertise in dealing with the forgiveness or justice
2 issues, but this morning there has been discussions and questions
3 regarding the forgiveness and the psychological trauma, for
4 instance, and my responses might be unclear or insufficient.
5 Anyhow, I would like to say that this extraordinary Chamber, at
6 this stage of the proceedings: for forgiveness -- and I intend
7 to agree with you -- it's still too early. Nothing has been
8 shown clearly to both the civil parties and the general public
9 who have been following the proceedings so far. So this is going
10 to be a long process and it could even happen after the trial is
11 complete.

12 Forgiveness is a process and it is both individual and communal.
13 For individual forgiveness, it also differs from one individual
14 to another individual; depends on the understanding of that
15 individual person or based on his or her own experience and
16 acknowledgment of what happened and the acceptability level of
17 the responses made by the accused.

18 So this is a very complicated issue when we talk about the
19 acceptance of forgiveness. And some people will probably hold
20 back the anger and would not release it for the rest of their
21 lives. This is just from my personal opinion.

22 [12.01.34]

23 Q.Thank you. Would you agree with me and say that there is a
24 need to effect a clear distinction between the accused saying "I
25 beg your forgiveness", which represents the first part of the

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1 proposition, and the forgiveness that will be granted or that
2 will not be granted by the victim at some point-in-time. These
3 are two different things.

4 Can you agree with me to say that today the responsibility of the
5 accused is to beg forgiveness, but the victim is under no
6 obligation today to grant forgiveness? Can we agree to the fact
7 that these are two different things?

8 A.I think it is too early because everything has not yet been
9 shown clearly whether the seeking for forgiveness to the civil
10 party. The issue is still fresh and I tend to agree with you.
11 It's going to be a long, drawn-out process for the forgiveness or
12 the seeking for forgiveness. That could occur at a later stage.
13 I think the most important thing is to reveal the truth and the
14 events of what happened so that they would feel relieved, and
15 they could settle their feelings or the uncertainty of the events
16 that occurred 30 years ago.

17 Q.Thank you. Judge Cartwright did indeed remind us that we are
18 here to establish the veracity of the facts, but I have another
19 complementary question.

20 The victims -- and it's quite normal -- wish to understand and,
21 as you said, they ask why. Are you not of the opinion that it is
22 necessary at the same time to warn the victims that they will not
23 obtain all of the answers? Who will be in a position to explain
24 why, the why of the Pol Pot regime? Do we not need to remove
25 some of the illusions that the victims may have? Who will ever

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1 be in a position to understand Pol Pot?

2 That we are trying to establish the veracity of facts, yes, but
3 as to the why of the Khmer Rouge regime, will anyone ever be in a
4 position some day to explain the why of the Pol Pot regime? And
5 therefore should we not be preparing the victims to get used to
6 the idea that unfortunately they will have to accept that they
7 will not receive all the answers to their questions, however
8 legitimate they may be? And their questions are legitimate.

9 [12.06.21]

10 But should we not be preparing them to the idea that they won't
11 get all the answers and that, in spite of that, they will need to
12 seek closure?

13 A.Thank you, Defence Counsel. This is a complicated issue
14 related to a complicated response.

15 I think it is important to know the truth and to receive justice.
16 This is what the victims want and these are one of the conditions
17 that would lead to the healing of the psychological wound, but I
18 think it is very difficult to achieve it.

19 It is my opinion that everyone can project a version of truth
20 based on his or her understanding. It is also dependent on the
21 acceptance or acceptability of the truth by the other party,
22 namely the victims. In brief, it is difficult to show the truth,
23 and people who know the truth are only those who are the
24 perpetrators and the God.

25 So the expression of truth is dependent on individual person and

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1 the ability of acceptability by the victims. I do not have any
2 other response rather than this. Thank you.

3 Q.One last question, sir.

4 You gave us a description of a country traumatized by what has
5 occurred and we understand this. At the same time, when one
6 comes to Cambodia one sees a country where development is in full
7 swing; a country that is attempting to cope with this trauma, to
8 cope with this tragedy and to project itself in the future.

9 [12.09.12]

10 Could you tell us -- give us a few words about what is called
11 resilience and perhaps give us a bit of hope with regard to the
12 fact that some day Cambodia will be able to turn the page?

13 A.Thank you, Counsel. In the current process and from the fall
14 of the Khmer Rouge regime every one of us at the individual
15 level, social level or government level has attempted to raise
16 the standard of our livelihood, to rebuild the resources -- human
17 resources and financial resources -- so that we have the ability
18 to stand on our own. However, this does not mean we do not have
19 any suffering.

20 The suffering, the pain, is still there but due to the inadequacy
21 we were forced to work harder to overcome all the obstacles in
22 order to fulfil the needs of the livelihood, and that will put
23 off the suffering issues but at a certain stage when the
24 livelihood is improved, the situation is better, the suffering
25 would reoccur or would emerge, as I have stated this morning, to

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1 the victims.

2 There have been several victims who, after what happened and
3 after their living condition has improved, re-experienced those
4 sufferings and trauma. So in the future then the country as a
5 whole has to face the challenges of those re-experiencing trauma,
6 of providing solutions and treatment to those people who would
7 re-experience the trauma, and that is a complicated and serious
8 burden placed upon the society as a whole.

9 I do not know whether my response satisfies your question, Mr.
10 Counsel, because your question seemed to be long, so my response
11 may not be sufficient.

12 [12.12.03]

13 Q.Thank you, sir. Thank you for the work that you are carrying
14 out and I'm sure you've understood the fact that, as I believe,
15 within these walls we are trying to make this work possible for
16 the good of Cambodia. I thank you, sir.

17 MR. HONG KIMSUON:

18 Mr. President, I would like to seek your permission, as I did not
19 want to interrupt the national defence counsel, who said that all
20 the victims all know that Duch received orders from the
21 superiors. I would like to say that the victims do not know
22 about that but they heard through Duch of that statement.

23 MR. PRESIDENT:

24 The Chamber would like now to give the opportunity to the accused
25 to make his observation on the content of the testimony of this

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1 expert in relation to the reasons which led to the trauma, the
2 psychological trauma, or the various impacts of the psychological
3 trauma as a remnant of the Khmer Rouge regime placed upon the
4 people and the nation.

5 THE ACCUSED:

6 Mr. President, first of all I would like to say a few words
7 regarding the achievement of Dr. Chhim Sotheara.

8 I do not have any psychological knowledge but, through the
9 hearing of the testimony, I believe this is a good achievement as
10 it is based on pure scientific reason in interpretation without
11 any bias based on individual thinking. So this is just my few
12 words regarding the achievement of Dr. Chhim Sotheara.

13 At the same time, I would like to express my gratitude to him.

14 MR. PRESIDENT:

15 The Chamber --

16 [12.15.34]

17 MR. KAR SAVUTH:

18 I would like to respond to Mr. Hong Kimsuon. I said that
19 because, amongst all the victims, none of the victims or the
20 civil parties ever, ever acknowledged that Duch personally kills
21 or executes anyone, and that's when I said in my statement.

22 MR. PRESIDENT:

23 What has been raised by the parties are the observations based on
24 the individual understanding. However, please be reminded that
25 everything spoken in the Chamber is recorded properly in the

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1 transcript and it is upon the Chamber's discretion to analyze the
2 transcript in order to make decision and judgement.

3 So what is said by one party cannot be amended by another party.

4 Only that party who makes the statement can amend his or her own

5 statement. And, actually, the time allocation has been gone and

6 now it's fifteen minutes past twelve already and it could impact

7 the attendance of the public.

8 So the request for the amendment is correct if it's done

9 properly, but now the Chamber would like the accused to continue

10 with his observation.

11 THE ACCUSED:

12 I would like now to talk about my understanding. It is of my

13 opinion that the crime against humanity was born after the 17

14 April 1975 and it completely finished on the 6th of January 1979.

15 That was the day Ta Mok was arrested and put in prison, ready to

16 be tried. (sic)

17 [12.18.14]

18 Let me talk about the consequence of the regime of the crime

19 against humanity. The consequences are tremendous and extensive

20 and long-lasting. Even at the time the consequence is still

21 ongoing. So the testimony of Dr. Chhim Sotheara shows various

22 aspects of the consequences and I acknowledge the proper conduct

23 based on the scientific research.

24 I, personally, who was responsible for S-21, I am responsible for

25 the criminal mechanism and I determined that I am responsible for

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1 all crimes committed at S-21. I accept it legally and I accept
2 it psychologically.

3 And, secondly, I, Kaing Guek Eav alias Duch, is not responsible
4 over all the security offices throughout the country, but I am a
5 member of the Communist Party and I am still responsible
6 psychologically for all crimes committed on the people and on the
7 country as a nation throughout that regime.

8 I deserve whatever is deemed necessary by the Cambodian people
9 and I personally, when I challenged and faced the victims, the
10 widows, the orphans -- there have been several widows. They can
11 condemn here. I allowed that to happen. I bow myself before
12 them so that they can see that I acknowledge my crime.

13 Regrettably, some of the widows did not have the opportunity to
14 do so.

15 First of all, I thought Chao Seng probably did not come to lodge
16 the application and condemned me, but I learned that Madam Chao
17 Seng is still alive, they have not been in a divorce, but she has
18 not placed a complaint.

19 [12.20.56]

20 Secondly, Tan Polin, my former teacher -- that was the original
21 name that I learned of but after '79 the name was changed to
22 Dyphon Polin; she used her husband's name. But I have not seen
23 the complaint made by her in order to condemn me. I do not know
24 the reasons behind that.

25 But I believe the principle of Dr. Chhim Sotheara. They received

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1 or they suffered or experienced the psychological trauma, and I
2 would bow and respect all those widows from a distance, including
3 Madam Chao Seng and Madam Tan Polin.
4 Separately, regarding the orphans, there have been a considerable
5 number of them lodging the applications here but none have
6 appeared before the Chamber yet. I think there have been 10
7 applications made by the orphans. Regardless whether they lodge
8 the application or not, I am still responsible and I would bow
9 myself to acknowledge, to hear, what they would want to say, or
10 the consequence of the crimes or the psychological trauma they
11 experienced. And I think this will need time to solve properly.
12 So, in summary, the outstanding achievement of Dr. Chhim
13 Sotheara, I do not deny any aspect of it and I fully accept and
14 acknowledge it with respect, and also my respect goes to all the
15 general public in the public gallery.
16 MR. PRESIDENT:
17 The AV Unit needs to change the DVD for the recording, and when
18 it's done, please report to the Chamber.
19 Mr. Doctor, the Chamber would like to acknowledge your
20 participation in this proceeding as invited by the Chamber. Your
21 testimony regarding the psychological feeling and the trauma and
22 the impacts experienced by the victims and survivors of the
23 Democratic Kampuchea regime is valuable and tremendous for the
24 Chamber to consider and make judgment fairly without bias.
25 (Witness exits courtroom)

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1 The proceeding this morning has come to an end and actually it's
2 a little bit over time. The Chamber would like to apologize for
3 the inconvenience that we would like to have it finished for the
4 morning session.

5 [12.25.50]

6 The Chamber will resume its hearing in the afternoon, starting
7 from 1.30 p.m., and the parties to the proceedings and the
8 audience are reminded that the Chamber will hear the objections
9 of the civil parties by the defence counsel and the response made
10 by the civil party counsel.

11 The Chamber will start from 1.30 and adjourn at 3.30. The
12 Chamber planned to have an internal meeting yesterday afternoon
13 but it was cancelled. The Chamber needs to discuss and make
14 decisions on certain pending issues and will inform the parties
15 to the proceedings accordingly at a later stage.

16 Security guards, take the accused back to the detention facility
17 and bring him back before 1.30 in the afternoon.

18 The hearing is adjourned.

19 THE GREFFIER:

20 All rise.

21 (Judges exit courtroom)

22 (Court recesses from 1227H to 1340H)

23 (Judges enter courtroom)

24 MR. PRESIDENT:

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

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1 As the Chamber had informed late this morning, this afternoon the
2 Chamber will hear the objections of the defence counsel for the
3 application to the civil party and then the response by the civil
4 party counsel to that objection.

5 So in order for the proceedings to be smooth, the Chamber would
6 like now to give the floor to the defence counsel to express
7 their objections to those civil party applications.

8 [13.41.20]

9 It will be better for the defence counsel to express the
10 objection commonly for all those civil party applications and
11 individually for specific civil party applications.

12 You take the floor.

13 MS. CANIZARES:

14 Yes, Mr. President. Thank you very much.

15 As the defence had indicated last Monday, we have a certain
16 amount of objections regarding the grounds of certain civil party
17 applications and these were essentially linked to two elements,
18 the first one being that it transpires often that there is no
19 kinship that has been established between the civil party and the
20 victim. And the other element regarded the absence of evidence
21 proving that the victim might have been detained at S-21.

22 And last Monday we listed a certain number of civil parties and,
23 if you please give me the leave, Mr. President, I will go over
24 this list one by one with maybe for each one of them a bit of
25 explanation.

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1 There are first of all two civil party applications and it
2 transpires from these that these civil parties have absolutely no
3 kinship with the victims that they mention. So therefore the
4 defence is referring to E2/22 in which the plaintiff is
5 mentioning the general arrest of Division 710, to which he
6 belonged as a former Khmer Rouge soldier. And the civil party
7 filed a complaint regarding only friends and we believe that the
8 kinship here is not therefore established.

9 [13.43.52]

10 And it's also the same regarding E2/37 because the plaintiff is
11 complaining on the ground of six of his friends who had been
12 arrested and killed at S-21. Here again the defence can only
13 notice that there is a complete absence of kinship, therefore,
14 which makes this civil party application completely inadmissible.

15 And the question of kinship here is also an issue for another
16 civil party application, E2/66, and the plaintiff here is
17 indicating that her older sister, Penh Sophea, would have been
18 detained at Tuol Sleng.

19 And it happens to be that this kinship between the victim and the
20 civil party is not established as well because, when the defence
21 went over the documents in the case, file it happened to be that
22 the victim that she brought up -- that is to say Ms. Penh Sophea
23 was Vorn Vet's daughter, whereas the civil party claims that she
24 is the daughter of Morn Penh and of Tharn Chin. So therefore, of
25 course we can only notice that the kinship here is completely

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1 different.

2 [13.45.30]

3 And as well, another kinship issue, we can bring up a certain
4 number of civil parties that I'm going to list now and for whom,
5 on top of this, it appears that they are not in -- that there is
6 no evidence in the case file or there is not enough evidence in
7 the case file that allows us to consider that the victims have
8 indeed been detained at S-21. It is therefore the case for the
9 following civil parties.

10 D25/15, who brings up three of his brothers who according to him
11 have been detained at S-21 but we have nothing in the case file
12 that allows us to substantiate this and to establish a link
13 between the plaintiff and the civil party and no document, aside
14 from biographical data regarding a certain Pen Um which were
15 compiled by DC-Cam, which would allow us to say that the victims
16 were indeed detained at S-21.

17 So we believe the same thing regarding the following civil
18 parties: E2/30, who mentions two of his brothers. Here again
19 there is no legal document to support the kinship link and no
20 document can prove that the victims were indeed detained at S-21.
21 And it is the same for the case of E2/38 and in E2/41, in which
22 the plaintiff assumes that her grandfather was killed at Tuol
23 Sleng but without at all providing any documents that can support
24 that this person that she is bringing up was her grandfather and
25 without, as well, providing any kind of document relating that

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1 her grandfather might have been detained at S-21. It is here
2 again specified that her grandfather's name appears on none of
3 the prisoners lists at S-21 as well.

4 [13.48.08]

5 And we have the same observation regarding E2/49, who mentions
6 her older brother. Here again there is no kinship that has been
7 established and no proof that her older brother would have been
8 detained at S-21. Here again we would like to specify that in
9 this case, just as well as in a previous case, her older
10 brother's name is not in any of the S-21 prisoners lists.

11 And another civil party, E2/57, and the plaintiff brings up her
12 sister who apparently was killed at S-21. Here again no
13 documents can substantiate the kinship here and there is no
14 document in the case file as well. And here again I would like
15 to indicate that the only documents that are included in the case
16 file are only in English, neither therefore in French nor in
17 Khmer, and none of these documents allow us to prove that her
18 sister would have been killed at S-21.

19 And here, once again, we notice that here as well her older
20 sister's name is not on the prisoners lists of S-21.

21 And it is the same for the following civil parties: E2/63. Here
22 again no kinship link, no proof that the victim was detained at
23 S-21 and no -- and the victim's name not on the prisoners list as
24 well.

25 The same for E2/64, E2/65, and here again we have practically no

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1 document that would support that the uncle of the plaintiff was
2 detained at S-21 and no document as well in the case file
3 regarding E2/69, E2/70, E2/71, E2/73.

4 And here again we'd like to specify, and I would like to draw the
5 Chamber's attention to the fact that we have here in the case
6 file no French language document aside from the letter
7 designating the counsel.

8 [13.51.16]

9 And it's the same concerning E2/74, E2/75, E2/76 in which the
10 plaintiff mentions an older brother who was a Lon Nol soldier,
11 who would have been detained and killed at Tuol Sleng and beside
12 the fact that the plaintiff has the same name as the victim there
13 is no other element in the case file that allows us to justify or
14 to support the kinship link that might unite these two people.

15 And especially there is in the case file no document that can
16 support that the victim would have been detained at S-21. Here
17 again this victim's name is also not on the prisoners list.

18 And it is the same here again for E2/77, E2/81, E2/82 and,
19 finally, E2/83. Here again no kinship link with the victim, no
20 documents proving the link between the victim and S 21.

21 Regarding E2/83, well, this civil party said in 2008 that she saw
22 a photograph of her uncle at Tuol Sleng but this photograph was
23 never included before the Court.

24 And finally, I would like to get back to two or three other civil
25 parties. D25/20: and here again, given the elements in the case

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1 file, we see difficulty establishing kinship between the client
2 and the victim and also difficulties establishing the link
3 between the victim and S 21.
4 And here again, E2/35 -- maybe I forgot him when I listed them --
5 in which there is no proof of the kinship between the plaintiff
6 and the victim, who she says was her nephew. And there are no
7 documents to support that her nephew was at S-21 and there is
8 only in the annex of the application a photograph of the victim.
9 But we do not know if this person is indeed her nephew and
10 therefore we have, regarding this photograph -- well, we have no
11 name behind this photograph.
12 And finally, E2/62. The plaintiff mentions two of his brothers.
13 Here again no established kinship between the plaintiff and the
14 victim and, regarding the documents linking the victim at S-21,
15 we have not enough or sufficient elements that allow us to
16 support this link because the civil party put before the Court
17 only a photograph of itself that was taken apparently before the
18 photograph of her brother at Tuol Sleng.
19 So this is, Mr. President and Your Honours, the 26 civil parties
20 that the defence wishes to challenge regarding either the grounds
21 or the admissibility of these applications because there is a
22 lack of documents that would allow the defence to believe that
23 there is indeed a kinship link between the plaintiff and the
24 victim and that would demonstrate that the victim whose name is
25 brought up was indeed detained at S-21.

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1 [13.55.34]

2 These were the observations that the defence wanted to formulate.

3 MR. PRESIDENT:

4 Judge Lavergne, you take the floor.

5 JUDGE LAVERGNE:

6 Thank you, Mr. President.

7 I would like to have a bit of clarification coming from the
8 defence. You said that there were basically two categories of
9 objections, we can say. I'm not used to using this word
10 "objection" and I would like to know if you consider that the
11 absence of evidence supporting a kinship link is something that
12 is an obstacle to join as a civil party, and if the absence of
13 evidence that the alleged victim was detained or has any link
14 with S-21 also is what we could call the absence of grounds to
15 join a civil party. That's my first question.

16 And what I would like to know is if in the list that you just
17 mentioned, if you also included the objections that might have
18 been brought up regarding the civil parties who came to testify
19 here, or does this only involve the civil parties that are
20 remaining? And I don't mean anything pejorative about this use
21 of "remaining".

22 MS. CANIZARES:

23 Please allow me to answer your second question first.

24 [13.57.22]

25 Indeed, the list of civil parties that we have just given you

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1 only regards the civil parties whose hearing had not been
2 requested. The defence already said last Monday and also two
3 weeks ago also stated its stance regarding the civil parties who
4 had already been heard, and also the civil parties that were
5 going to be heard, and the list of civil parties that we have
6 just brought up only involves the civil parties who are not
7 scheduled to be heard.

8 And in order to answer your first question, of course, if the
9 civil parties do not provide the evidence of a kinship link
10 between them and the victims we will therefore consider that
11 their civil party application is inadmissible because it is
12 indeed required by the Internal Rules to provide this.

13 And regarding the victims that would not demonstrate, that cannot
14 demonstrate that there is -- or let's say the civil parties that
15 could demonstrate that there is a link between the victims and
16 S-21, well, the defence considers as well that their application
17 is also inadmissible since the victim would be mistaken in terms
18 of the person as well as in terms of their approach.

19 MR. PRESIDENT:

20 We note that Mr. Alain Werner is on his feet.

21 You may proceed.

22 MR. WERNER:

23 Thank you, Mr. President.

24 [13.59.56]

25 Mr. President, to clarify things and to enhance your

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1 understanding of how we intend to proceed on this side of the
2 bar, let me explain the situation. I believe here I speak on
3 behalf of my colleagues.

4 Prior to entering into an assessment on a case-by-case basis, we
5 are challenging the possibility for the defence at this stage to
6 challenge the admissibility of the civil party applications or
7 some of them. This is what I am going to explain to you now and
8 it is my understanding that I am not alone on this side of the
9 bar wishing to address this issue.

10 So if it is possible I would simply like to be given four or five
11 minutes to make a presentation and it may be the case that one or
12 two of my colleagues would also like to be heard on this
13 preliminary objection situation before we enter into the
14 assessment on a case-by-case basis.

15 MR. PRESIDENT:

16 You may proceed.

17 MR. WERNER:

18 Thank you, Mr. President.

19 Mr. President, the admissibility of civil party applications is
20 covered in two articles which are mirror articles of the Internal
21 Rules: Article 23 paragraph 4, and Article 83 paragraph 1. If
22 one reads Article 23 para 4 of the Internal Rules and Article 83
23 para 1 of the Internal Rules it appears quite clearly that the
24 assessment of admissibility of civil party applications must take
25 place at the initial hearing and not later.

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1 [14.02.24]

2 There is no other possible interpretation of Article 23 para 4
3 jointly with Article 38 (sic) para 1 which allows this.

4 It's very clear that any discussion concerning admissibility of
5 civil party applications must take place at the initial hearing.

6 As you all know, the initial hearing took place on 17 and 18
7 February of this year and in fact an assessment was undertaken in
8 this first hearing regarding E2/36, E2/51, E2/69.

9 It was discussed at length in the initial hearing and what was
10 discussed was admissibility relating to identity of these civil
11 party applications and in fact you handed down a decision on the
12 4th of March 2009 concerning these civil parties regarding their
13 status -- Application E2/36, E2/61 (sic), E2/69 -- and you
14 declared in your decision that the civil party application of
15 E2/36 was inadmissible.

16 So this was decided. It is also true that perhaps in the
17 Internal Rules there is a certain degree of ambiguity but it
18 changes nothing to our argument. It is true that Article 100
19 para 1 of the Internal Rules gives you discretion until the time
20 of sentencing that a civil party application is inadmissible, so
21 you have authority -- until judgment is handed down you have
22 authority to declare that one or another civil party is not
23 admissible. But this changes nothing to the fact that a
24 challenge to the admissibility of a civil party application by
25 any party, the defence or another party, cannot be undertaken

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1 except at the initial hearing and at no other time.
2 And there is a rationale, Mr. President, distinguished members of
3 the Court, because when a civil party application is declared
4 inadmissible, that of course opens the way to an appeal and an
5 appeal for the civil party which can appeal against the decision
6 of inadmissibility in front of the Chamber of the Supreme Court.
7 I believe that Judge Lavergne last Monday had indeed addressed
8 the defence -- I had the transcript, but Maître Canizares had in
9 fact confirmed this and Judge Lavergne had raised the issue
10 concerning kinship and he said, "Does this question go to
11 foundation or does it go to admissibility with regard to the
12 civil party application?"
13 [14.05.55]
14 And Counsel Canizares, as she repeated today, said it's a
15 question of admissibility and today she told us that all other
16 challenges go to admissibility as well, and we agree with Counsel
17 Canizares to say that indeed these are issues of admissibility
18 and we base ourselves, in order to do this, on Article 23 para 2
19 of the Internal Rules, which mentions the issue of admissibility
20 and says:
21 "In order for the action of a civil party to be admissible the
22 injury must be physical, material, psychological and a direct
23 consequence of the offence person to have actually come into
24 being."
25 Now, the kinship link which in fact the link between the civil

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1 party and Tuol Sleng, which is under subparagraph 2 para (b) are
2 issues of admissibility which by definition should have been
3 raised in February and cannot be raised today.

4 So what is left now? Well, what is left now is what we have
5 today, which was said by Judge Lavergne in February at the
6 initial hearing, which is the reality of the injury. In other
7 words, challenging the fact that the suffering of our civil
8 parties represents sufficient injury, and this is the only thing
9 that could be put in question today and certainly not
10 admissibility, and I will leave my colleagues to speak further on
11 it.

12 So what we ask is on a preliminary basis we ask that the Chamber,
13 prior to any debate and prior to having to justify so, because
14 many of these questions deal with kinship or connection to S-21
15 -- we ask that the Chamber rule on this question and say, yea or
16 nay, whether on the basis of the Internal Rule, a few weeks from
17 the closing of the hearings, whether the defence has the right
18 now to challenge the admissibility of the civil party
19 applications for 26 civil parties. Thank you.

20 [14.08.12]

21 MR. PRESIDENT:

22 The defence counsel -- the national side of group 1, would you
23 wish to make any observation in relation to the challenges of the
24 defence counsel concerning the 26 civil parties?

25 MS. TY SRINNA:

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1 I actually support the comment and observation made by my
2 colleague. Thank you.

3 MR. PRESIDENT:

4 Civil party lawyer, group 2, you now take the floor.

5 MR. KONG PISEY:

6 Thank you, Mr. President, Your Honours. I am here just to
7 express my strong support to my colleagues.

8 MR. PRESIDENT:

9 Civil party lawyer, group 3.

10 MS. TRUSSES-NAPROUS:

11 Yes, Mr. President. I entirely agree with the observations that
12 have been made by Counsel Werner and I totally concur with his
13 observations, and indeed I ask that we can have a debate on this
14 specific issue before we go into other issues that might flow
15 from civil party applications.

16 [14.09.55]

17 MR. PRESIDENT:

18 Civil party lawyer, group 4, you take the floor.

19 MR. HONG KIMSUON:

20 Thank you, Mr. President. I have very few comments. First I
21 would like to support the observation made by Mr. Alain Werner
22 and I would also like to inform the Court that regarding the lack
23 of documents to support the civil party application as stated by
24 the defence counsel, at the beginning the accused made it clear
25 that the documents at S-21 are lacking.

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1 Sometimes we do not really have the full documents because after
2 Duch took charge of S-21 from In Lorn, alias Nat, he very often
3 admitted that he sometimes, once having seen the photos taken at
4 S-21, then he started to realize that they must have been
5 genuinely taken from the vicinity. However, some other photos
6 and documents cannot be produced; for example, like in document
7 E2/64. I met the civil party in Kratie province, the party who
8 already stated clearly that a document has been already submitted
9 through the Victim Unit, and I think, with the President's leave,
10 if you would like me to trace down the information I can also
11 help the Court to contact the person to feed with further
12 information, including the photos.

13 MR. PRESIDENT:

14 The Co-Prosecutors, would you wish to make any observation in
15 relation to the observations made by the civil party lawyers and
16 the challenges by the defence counsel?

17 [14.14.17]

18 If you would wish to make any observation, you may now proceed.

19 MR. DE WILDE D'ESTMAEL:

20 Thank you, Mr. President. At this stage, we have no observations
21 to make except for the fact that this issue does, indeed, seem to
22 us to need to be settled before we enter into the actual debate
23 and discuss the points that were the subject of a challenge by
24 the defence.

25 MR. PRESIDENT:

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1 The defence counsel, would you wish to add further comments or
2 observation in relation to the remarks made by the civil party
3 lawyers?

4 [14.15.05]

5 MR. ROUX:

6 Yes, thank you, Mr. President. A few observations but, first of
7 all, I note that my associate, Hong Kimsuon, spoke to the
8 substance of the debate which from the outset cancels out the
9 request made by my colleague, Werner. You can't at the same time
10 say we are inadmissible and then go to the substance of the
11 debate. You have entered into the substance of the debate which
12 shows that your argument was based on a fallacy, however, it is
13 also tardy if not only based on a fallacy.

14 My dear colleague, I believe that it was last Monday last week
15 that the Chamber requested from the defence that it please be
16 prepared to make its objections. If you had any observations to
17 make, it was then that you should have made them rather than
18 today. The Chamber explicitly requested the defence one week ago
19 that it prepare for today's debate. You said nothing; you did
20 not protest; and you wait for the debate to begin to start a
21 protest and one of you goes to substance.

22 The second and last point. Please refer to the initial hearing
23 where I would like to recall that a certain number of case files
24 of civil parties had been provisionally admitted and the defence
25 had explicitly requested that its right to challenge the civil

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1 parties that had been admitted on a provisional basis be given
2 the opportunity to challenge them, reserved its right to
3 challenge them, and this is what happened.
4 Thus, distinguished members of the Court, if the civil parties
5 wish to stay with their objection, then we will need to ask for
6 an adjournment so that we may go back all the way to the initial
7 hearing to look at what was actually decided so that we may reply
8 in a more thorough fashion. In fact, this is what should have
9 been done last Monday.

10 [14.17.42]

11 It would have been acceptable that as of last Monday the civil
12 parties told us, "We want to warn you, we will oppose any
13 objections you may wish to make on Tuesday" and, in fact, the
14 civil parties did nothing of this. At the last minute, they
15 raised their hand and said, "We'll reject your objections, Mr.
16 President". Minimum that the defence requests that you grant us
17 an adjournment so that we may respond to this argument which I
18 continue to state is based on a fallacy.

19 MR. WERNER:

20 Mr. President, may I give a brief reply?

21 MR. PRESIDENT:

22 Please proceed.

23 MR. WERNER:

24 Mr. President, distinguished members of the Chamber, I would like
25 to raise three points.

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1 The first, I am, at the hearing with my colleague, responsible
2 for 38 civil parties and not one more. I am not responsible for
3 the comments made by counsel for the other groups and a position
4 which is a position of a colleague other than myself is a
5 different position.

6 My position is not linked to the position voiced by another
7 group. This seems to me to be clear. It has been the situation
8 from the outset of this trial and I must say that you will recall
9 that we have had divergent points-of-view on this side of the
10 bar. In the past, it was recognized.

11 [14.19.29]

12 Secondly, last Monday -- and my colleague will not remember
13 because he was not there -- but last Monday the civil parties
14 were not given the floor. The civil parties and the prosecutors
15 were not allowed to speak. All that was said was that the
16 defence should prepare.

17 The defence made a series of observations and what we were told
18 was that we were to prepare our observations for today. This is
19 what we have done, and today we share with the Court our
20 observations.

21 So the fallacy in all of this is something that would require
22 some explanation from my point-of-view. I must say, we can enter
23 into this debate if you wish, but I have the transcript of the
24 February hearing and Maître François Roux has a good memory.
25 Indeed, he reserved a certain number of things, but he is the

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1 only one bound, along with the defence, by these reserves that
2 were admitted in February.
3 These civil parties are not. We are bound by the Internal Rules
4 and what we tell you is that on the basis of the articles of the
5 Internal Rules that I mentioned, there is no legal foundation --
6 none whatsoever -- enabling the defence to come today and
7 challenge the admissibility of the civil party applications, and
8 it is ironic that Maître Roux does not base himself and does not
9 use the Internal Rules because he has to find an argument at the
10 hearing to explain to us what the defence has found to justify
11 its ability to challenge the civil party applications today.

12 MR. PRESIDENT:

13 Mr. François Roux, you may now proceed.

14 [14.21.40]

15 MR. ROUX:

16 Very briefly, President, the article we base ourselves on is
17 clearly Article 100 of the Internal Rules and it is on this basis
18 that, at the initial hearing, I had expressed reservations and if
19 my understanding is correct, as my colleague said, this Rule 100
20 authorized the Chamber to make a decision.

21 The Chamber asked the defence to present its observations so that
22 the Chamber may come to its own decision, and this is what we
23 did. We made our observations in order to enable the Chamber to
24 come to its own decision based on Rule 100.

25 So your challenge to our observations, as I said, is

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1 inadmissible, dear colleague. We are responding -- since you ask
2 where the grounds for our intervention is -- we are responding to
3 a request made to us by the Chamber, and I imagine that it is a
4 request that was governed by Rule 100. At least this is the way
5 we understood it and you, yourself, turned this completely around
6 and based yourself on Article 23, Bar 4 and paragraph 34, Bar 1,
7 but in fact this is your decision today -- for today.

8 As of today, we are responding to a request which was submitted
9 to the Chamber and we are in the framework of a request that was
10 submitted in the Chamber. We are nowhere else and the Chamber
11 has full power on the basis of the observations that it hears,
12 and pursuant to Article 100 -- to Rule 100 -- has full power to
13 come to a decision and rule on the status of civil party
14 applications.

15 MR. PRESIDENT:

16 Mr. Alain Werner, you may now proceed, but please make sure that
17 it is -- that's your last chance to respond.

18 MR. WERNER:

19 Thank you, Mr. President.

20 The Chamber did not request something from the defence except the
21 nature of its objections and on this side of the bar we were very
22 much interested in knowing what the nature of this objection was.
23 Their nature would be either admissibility or foundation or
24 something else and that is precisely the reason why Judge
25 Lavergne last Monday asked Counsel Canizares to specify the

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1 nature of these objections, because the nature of the objections
2 was not clear.

3 [14.24.55]

4 And Counsel Canizares very candidly, as she did today, said that
5 the nature of the objections went to admissibility. And on this
6 basis we rise and we say that on the basis of the rules which we
7 have quoted, according to the Internal Rules you are no longer
8 authorized to raise these objections. Had the defence raised
9 these objections on foundation, then our position would have been
10 different.

11 MR. PRESIDENT:

12 Judge Silvia Cartwright, you may now proceed.

13 JUDGE CARTWRIGHT:

14 Thank you, Mr. President.

15 A point of clarification, if I may, Mr. Werner, as you appear to
16 be speaking -- or at least your submissions are supported by the
17 other civil party groups. If during the course of the hearing it
18 becomes apparent that there is an issue over questions of kinship
19 or detention at S-21, do you suggest that the Chamber has no
20 jurisdiction to consider those issues?

21 MR. WERNER:

22 Thank you, Your Honour, for this question.

23 Of course, and as I recall, when I quoted Rule 100, at the time
24 of judgment you may, and until that time you can take any
25 decision that you may wish to take with regard to admissibility.

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1 This is quite clear in the Internal Rules. As I'm sure you have
2 noted, our group, when my civil parties came before you and
3 answered questions coming both from the Judges and from the
4 defence and the prosecutors, we indeed provided justifications.

5 [14.27.20]

6 And we introduced documents on behalf of these parties because we
7 considered that, since we were calling our own civil parties to
8 the bar to speak before you, it was our duty to give certain
9 explanations because, as you did in the instruction that you
10 published, you had asked these civil parties to justify a certain
11 number of things.

12 So we are not at all questioning here the fact that the Chamber,
13 again governed by Rule 100, has a perfect right to ask questions
14 on these issues. And again, we ourselves with no one prompting
15 us submitted documentation before anyone would ask us to explain
16 in detail links of kinship.

17 This is not at all what's in question here. What is in question
18 and at issue today is that the defence is returning -- in spite
19 of the fact that the Internal Rules very clearly, whatever
20 interpretation you might give it, does not allow this --
21 challenges for 26 civil parties, the kinship links.

22 This is what we are protesting against; not at all the fact that
23 the Chamber, as I said, until the time of judgment has a full
24 right to ask any question it may wish to ask with regard to
25 admissibility and the parties will have to give clarification.

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1 We have no difficulty with this whatsoever.

2 I hope this answers your question.

3 JUDGE CARTWRIGHT:

4 So it follows then that if the Chamber asked for clarification of
5 the list of civil parties that the defence has suggested as
6 lacking elements of kinship or proof of kinship or other elements
7 of admissibility, then you could not object to that. Is that
8 what your argument leads you to?

9 [14.29.33]

10 MR. WERNER:

11 But, Your Honour, my understanding of the situation is that the
12 Chamber requested that the defence specify which objections it
13 may have and, if it does have objections, what is the nature of
14 the objections it has with regard to civil party applications.
15 And if you wish for us to return to the February hearing -- and I
16 can quote what he said.

17 There was an exchange between Judge Lavergne and François Roux,
18 and Judge Lavergne explicitly requested from François Roux that
19 he confirm that on the issue of admissibility there were no more
20 challenges to be submitted by the defence. And this is on page
21 46 of the French version of the hearing of 17th February 2009.

22 And François Roux said that at this date there were no more
23 challenges to admissibility.

24 Our understanding of that is that challenges by the defence on
25 admissibility ended at that time precisely because, according to

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1 the Internal Rules, such challenges can be submitted only at that
2 time. And this is the reason why your Chamber in fact made a
3 series of rulings on that which once again opened the way for
4 appeal.

5 So for the defence to come today and challenge 20 or 25 civil
6 party applications, this will open the way for an appeal before
7 the Supreme Chamber a few weeks from the actual decision. This
8 means that if the defence says, "Well, our challenge is
9 admissibility," then what we reply is, "In our reading of the
10 Internal Rules, you are no longer in a position to do this. You
11 should have done it in February. You are no longer allowed to
12 put such a challenge before the Chamber."

13 [14.31.37]

14 I hope this is an answer to your question.

15 JUDGE CARTWRIGHT:

16 But it seems to me, Mr. Werner, that you allow the Chamber to
17 draw to the attention of the parties some problems or issues over
18 admissibility but the defence is not permitted to do that; that
19 is matters that come up during the hearing.

20 MR. WERNER:

21 Your Honour, my understanding of the defence's challenge of the
22 25 or 26 civil parties, it's not something that is taking place
23 during the hearings because these people did not come to the
24 hearings. It is just kind of investigation that the defence did
25 at one point and it's coming before you. And they are saying

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1 that such-and-such a civil party does not have any kind of
2 kinship link or we don't have this element or this official
3 proof, or things that result from something that happened during
4 the proceedings and this is the result of research that the
5 defence carried out, and they're coming today and they're telling
6 us that three weeks before the end of the debate that they
7 challenge this.

8 And here once again they're saying to us that this challenge,
9 this specific challenge based on the admissibility, took place in
10 February and my group indeed had to justify itself regarding this
11 kinship link with one of the civil parties and you came with the
12 decision and we decided not to appeal because you accepted our
13 decision.

14 [14.33.16]

15 Another group also had its application rejected and they decided
16 not to appeal. That's what happened in February. But in order
17 to answer your question, I do not see anything that happened
18 during the hearings here that today could have opened the way to
19 the defence so that they could come challenge 25, 26 civil
20 parties and say, "Oh I'm sorry, I'm sorry. For us this is not
21 admissible."

22 The issue of admissibility was in February and now it is too late
23 to question this admissibility which would then open the way for
24 appeals.

25 JUDGE CARTWRIGHT:

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1 One final practical question then. If the Chamber decides to
2 proceed and hear argument on these questions, are the civil party
3 lawyers ready to proceed?

4 MR. WERNER:

5 Your Honour, since I am not the civil party lawyer for groups 2,
6 3 and 4, let me just answer on behalf of my own group.

7 We have 10 civil parties which were challenged among the 20 or so
8 that were mentioned. We have in our group 10 of our civil
9 parties were challenged. For five of them we carried out some
10 research and we have documents, indeed, and we are ready at any
11 moment to get into the substance of this debate. I myself will
12 have some observations to formulate regarding the five others.
13 So indeed, we are ready today. But here once again, because my
14 legal arguments seem valid to me, we will ask you for a decision
15 before we will proceed. But in my group in any case we are
16 willing. We are ready to get into the substance of the debate.

17 [14.35.18]

18 JUDGE CARTWRIGHT:

19 Mr. President, it may be that counsel for the defence wishes to
20 comment on the matters that I have raised with the civil parties.

21 Civil party group 3?

22 MS. TRUSSES-NAPROUS:

23 Thank you, Your Honours. Thank you, Mr. President.

24 Indeed, regarding group number 3 we fully support of course the
25 request that was presented by Mr. Werner. We have exactly the

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1 same stance regarding the defence's stance today regarding the
2 admissibility of the civil party applications. And in addition,
3 we are also completely ready at any moment to answer the
4 Chamber's questions regarding each civil party application.
5 And regarding the grounds of these civil party applications, we
6 will then have, when the Chamber will request that we may express
7 ourselves regarding this, we of course will have general
8 observations, preliminary observations, as well as suggestions to
9 make. But as of now I believe that it is important to settle
10 this issue that is being brought up and to indicate if indeed the
11 defence can today challenge the admissibility of the civil party
12 applications, which seems absolutely impossible because indeed
13 this should have been done during the preliminary hearing.
14 And the defence, because there was then that possibility, the
15 possibility for the parties to challenge. In our group we just
16 received a case that was declared inadmissible by the Chamber.
17 There was no ID card in this case for our civil party and we did
18 not appeal on this and there was no problem about this regarding
19 this particular case.

20 [14.37.54]

21 So once again I completely support what was said by Alain Werner.

22 MR. PRESIDENT:

23 Mr. Hong Kimsuon, you may proceed.

24 MR. HONG KIMSUON:

25 Thank you, Mr. President. Good afternoon, Your Honours.

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1 I'm Hong Kimsuon representing civil parties group 2 and 4, and I
2 would like to make the following observations for both groups:
3 Although Alain Werner's representing civil party group 1, for
4 group 2 and 3 I agree with what he has said in addition to what
5 the counsel for group 3 said. No civil party in group 2 and 4
6 have been objected by the defence counsel -- for group 4 I mean.

7 MR. PRESIDENT:

8 The defence counsel, you may proceed.

9 MR. ROUX:

10 Thank you, Mr. President.

11 As my esteemed colleague Alain Werner noted, I was indeed not
12 present last Monday during the hearing since I had to go to
13 Lebanon, as you know. But I do have eyes to read and I do have
14 ears to hear what is being said, even if I am far away, and I
15 understood that the request that was presented by the Chamber is
16 a request that came from the Chamber.

17 [14.40.00]

18 So Mr. President and ladies and gentlemen, you are not today
19 seised of a request from the defence which is tending to declare
20 civil parties as being inadmissible. Today the defence is merely
21 satisfied by respectfully answering the request that was
22 presented by the Chamber, and I can very well imagine that this
23 request that was presented by the Chamber was presented within
24 the context of Rule 100 of the Internal Rules, and I imagine that
25 the Chamber in all of its wisdom is asking itself a certain

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1 number of questions regarding civil party applications.
2 And the Chamber in its wisdom wished to bring together the
3 defence's observations and of course the observations of the
4 civil parties too, and the defence presenting its observations
5 observes that indeed, whereas of course the debates have started
6 several weeks ago, well, I'd like to observe that regarding a
7 certain number of civil party applications, the civil parties
8 have still not provided the necessary elements so that the people
9 that they represent be declared admissible or well grounded. You
10 have not provided this evidence.
11 And the defence, once again addressing the Chamber's request,
12 merely contented itself of assessing all of this and very
13 respectfully submitted this issue to the Chamber.
14 And the Chamber of course will take the decisions that it has to
15 take, given the cases on which the defence worked upon addressing
16 the request, not on its own initiative. We do not file any
17 request on ourselves. We are simply addressing the Chamber's
18 request and we are telling you, and we'd like to draw your
19 attention and we'd like to draw the attention of the Chamber to
20 the fact that you should be careful because these cases are not
21 complete.
22 [14.42.26]
23 And given the situation of these incomplete cases, the defence
24 believes that the civil party applications are either not well
25 founded or inadmissible. But it is only the Chamber that is

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1 requesting and it is the Chamber that will decide until the very
2 end of the hearing. This is why I am saying that the observation
3 was of course interesting in terms of procedure but that it is
4 unfortunately completely inadmissible.

5 MR. PRESIDENT:

6 Now it is time for a break and the issue being discussed is not
7 yet clear. Therefore, the Chamber will take 30 minutes' break
8 until 10 past 3 when we will resume to continue our proceeding.
9 The hearing is adjourned.

10 THE GREFFIER:

11 All rise.

12 (Judges exit courtroom)

13 (Court recesses from 1446H to 1525H)

14 (Judges enter courtroom)

15 MR. PRESIDENT:

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

17 Next, in order to be sure and in order that the solution is
18 rendered, the Chamber would like to open the session for
19 discussion in relation to the matters already addressed before
20 the Court and we would like now to give the floor to Judge
21 Lavergne to respond to the matters because I think, because of
22 the language barrier, it would be very appropriate for Judge
23 Lavergne to proceed.

24 [15.27.12]

25 JUDGE LAVERGNE:

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1 Thank you, Mr. President.

2 First of all, maybe a clarification regarding the request that
3 was addressed by the Chamber to the defence. There might have
4 been a problem in the formulation or in the translation. In any
5 case, it is clear that the Chamber's intention was to ask the
6 defence to make comments; to make comments on the issues
7 regarding the civil party applications that might come up at this
8 moment in the proceedings.

9 So this indeed involved the admissibility as well as the grounds,
10 and we have taken note of what the civil parties called
11 themselves "preliminary questions" -- that is to say if the
12 defence had the right at this moment in the proceedings to
13 challenge the admissibility of the civil party applications. And
14 therefore we have taken note of this issue but, however, we
15 intend, in order that there be proper administration of the
16 proceedings and in order to guarantee expeditiousness, we wish
17 that the civil parties express their comments and express their
18 observations regarding the arguments that were brought up by the
19 defence regarding the civil party applications.

20 So we will therefore hear the civil party lawyers tomorrow and
21 then we will ask them to explain themselves regarding the
22 arguments regarding, at the same time, the evidence of kinship
23 link or of a link between the people who might have been detained
24 at S-21 and the people who joined as civil parties. And also we
25 will ask them to formulate their observations regarding the

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1 evidence of an existence of a link with the events that took
2 place at S-21.

3 [15.29.56]

4 However, we would like to specify that we will render a common
5 decision regarding this preliminary issue, as qualified as such
6 by the civil parties, as well as on the merits of the arguments
7 that were brought up by the defence upon the Chamber's request.

8 MR. PRESIDENT:

9 The defence counsel, you may proceed.

10 MR. ROUX:

11 Thank you, Mr. President. I wish only to make an observation.
12 We took advantage of the recess to bring up the transcript of the
13 preliminary hearing and I invite all parties and the Chamber,
14 with all due respect, to please refer to the Transcript of
15 Proceedings of this preliminary hearing where it was clearly
16 stated that what was granted to civil parties was a provisional
17 recognition.

18 I will recall, for your benefit, that we had problems of
19 translation at the time and problems of time limits and the
20 Chamber decided -- something which is not even to be found in the
21 Internal Rules -- of its own initiative, the Court says, "This is
22 a provisional recognition", and subsequent to that the Chamber
23 asked that the parties submit their observations, and I would
24 like to refer you to the observations of the defence which are as
25 follows in French:

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1 "COUNSEL ROUX:

2 Yes, Your Honour, generally speaking the defence does not wish to
3 challenge the civil party applications. However, the defence
4 would like to point out to the Chamber that for a certain number
5 of civil parties it has received documents only in English and
6 that accordingly it is not in a position to make a submission as
7 long as it does not have translations into French.

8 [15.32.33]

9 Furthermore, in the last few days we were receiving documents
10 that we have not been able to peruse. "

11 This is what we said at the initial hearing and, if the Chamber
12 will allow me to add, I would say that as late as yesterday --
13 yesterday -- we received documents. So what I said at the time
14 is still relevant now, and I continue to quote:

15 "It appears to me that for some cases questions might arise with
16 regard to the link that they may have with S-21. So all that the
17 defence can say at this point is that firstly, as long as we
18 don't have all the documents in French, we cannot make any
19 submissions and therefore we reserve the right, until the
20 substantive proceedings, to raise issues that may arise if it
21 appears that a civil party or a civil party applicant was not an
22 actual victim of S-21.

23 But, of course, for every person that a civil party has proven
24 was indeed a victim in S-21, there will be no challenge by the
25 defence."

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1 And Maître Lavergne at that time asked a question:

2 "If I may, just to clarify matters, are you making your
3 reservations on the well-foundedness of the applications or their
4 admissibility?"

5 And I replied:

6 "Maitre Roux, if persons consider that the civil party died in
7 S-21 and this is not the case, then it goes to admissibility."

8 And Judge Lavergne then stated:

9 "...because I think it should be perfectly clear to all parties
10 that at this stage we are not going to go to the merit of the
11 applications. We are simply trying to assess the apparent
12 existence of harm."

13 [15.35.02]

14 And Judge Lavergne added:

15 "And it is perfectly clear that during the substantive
16 proceedings, in other words now, on the merit we shall examine
17 each of the applications to be perfectly certain that the alleged
18 harm did in fact occur.

19 "So your reservations pertain instead to the fact that you
20 expressed some doubts perhaps with regard to the actuality of
21 harm, but we are not talking about admissibility. Do have any
22 reflections on that?"

23 And Maitre Roux replied, myself:

24 "With regard to prima facie admissibility, on a provisional basis
25 there is no problem, but I reiterate our reservations with regard

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1 to what may arise during the substantive hearing."

2 And Judge Lavergne:

3 "I agree."

4 So this is where we are now; the reservations that I had
5 expressed which the Chamber agreed with. Thank you.

6 [15.36.21]

7 MR. PRESIDENT:

8 The counsel, Alain Werner, you may proceed.

9 MR. WERNER:

10 Mr. President, Your Honours, counsel for the civil parties have
11 really -- and this is the gist of what I wish to say -- have
12 displayed no bad faith in making these observations and are not
13 intending to play on the rules. But for me the motivation for
14 our intervention is the following.

15 There was a preliminary hearing, after which there was a decision
16 as to admissibility. We told our civil parties, four, five or
17 six months ago after this preliminary hearing -- we told them,
18 you are civil party applicants and in Rule 23, paragraph 6 of the
19 Rule states that the fact that a civil party application is
20 admissible gives that civil party rights which these civil
21 parties have enjoyed for months.

22 They attend the hearings; they come to Phnom Penh; they are told
23 what is happening. Some came to testify. They did not have to
24 be sworn in because they are party to the proceedings. So we
25 considered at that point according to another reading, a good

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1 faith reading of the Internal Rules.

2 We are led to understand that questions of admissibility raised
3 by the parties could no longer be raised at this stage and,
4 therefore, our civil parties have been exercising rights thus
5 gained for months.

6 And now, a few weeks from the end of trial, we're being told, oh,
7 well you're not admissible; you're not a civil party. All the
8 rights that you have enjoyed for five months, we are taking away
9 from you.

10 [15.38.23]

11 Now, I understand Rule 100 and I understand that there is a
12 degree of ambiguity because it is a fact that until the time of
13 judgement, you have the right and authority to declare that a
14 party is not admissible. But when, at the last minute, the
15 defence comes and tells us that a civil party is not admissible,
16 then you could have stated this.

17 Nothing has changed. Nothing is new. Issues of kinship were
18 already known at the time. There were problems of
19 interpretation, we had some from the outset, but you could have
20 raised these issues in order to enable us not to make our civil
21 parties believe that they were civil parties for several months.

22 Now, on provisional recognition, and you quoted yourself and,
23 with all due respect, I quoted you and you did clearly emit
24 reservations. That is the privilege of the defence, not a
25 commitment for the civil parties.

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1 But if you take a civil party from group number 4, E2/26, Mr. Ou
2 who testified in a video-conference with Maitre Finelle from
3 Paris, Mr. Roux we have a decision here, a ruling just to clearly
4 show that there were several distinct stages in the proceedings.
5 Mr. Roux, I have here provisional recognition as a civil party
6 applicant, notified on 29 January 2009 to Mr. Ou and not Roux;
7 Mr. Ou.
8 On 29 January 2009, Mr. Ou was told, bullet number two:
9 "You are now provisionally recognized as a civil party applicant
10 until the preliminary hearing concerning the present case. At
11 that hearing, your application will be examined in line with
12 Article 83 of the rules, with Rule 83 of the Internal Rules."
13 [15.40.21]
14 And this is what we trusted was the case, what we believed in,
15 that there was provisional recognition, and at the initial
16 hearing if the different parties wished to make observations,
17 they could. Then rulings were handed down. This conferred
18 rights upon the civil parties which they have been enjoying for
19 months.
20 We're not simply doing this to waste the time of the Chamber, but
21 we're observing the fact that we've reached three-quarters of the
22 trial and the defence says, well, that's not admissible, these
23 people are not civil parties. We are challenging that position
24 on the basis of the Internal Rules. That's what we wanted to
25 say.

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1 MR. PRESIDENT:

2 The defence counsel, you may proceed.

3 MR. ROUX:

4 Well, a word in reply.

5 I believe that the reply lies in Rule 100 of the Internal Rules

6 the Chamber -- it's paragraph 1:

7 "The Chamber shall make a decision on any civil party claims of
8 judgement. It shall rule on the admissibility and the substance
9 of such claims against the accused and that is until the day of
10 judgement."

11 [15.42.04]

12 These observations have been made by us. You have made your
13 observations. We are waiting for the observations of the civil
14 parties, and I must reiterate the fact that yesterday evening we
15 received documents emanating from the civil parties. And this is
16 indeed a problem.

17 MR. PRESIDENT:

18 The Chamber has the view that if the counsels are responding to
19 each other in headlock, then it's going to take several more days
20 to resolve this issue.

21 It is important for the Chamber to adjourn at three-thirty in
22 order for the Judges to hold internal meeting and discussion in
23 order to provide instructions to the parties on the questioning
24 of the witnesses who will be here to testify regarding the
25 character of the accused; how it should be proceeded in order to

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1 be fair and to seek proper justice.

2 Therefore, the Chamber is going to adjourn now and it will resume

3 tomorrow morning starting from 9 a.m. as scheduled.

4 Security guard, take the accused back to the detention facility

5 and bring him back to the Chamber tomorrow morning before 9 a.m.

6 The hearing is now adjourned.

7 (Judges exit courtroom)

8 (Court adjourns at 1544H)

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