



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

26 August 2009, 0902H

Trial Day 65

Before the Judges:

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

Lawyers for the Civil Parties:

MOCH Sovannary
TY Srinna
KONG Pisey
Alain WERNER
Fabienne TRUSSES-NAPROUS
Jessica FINELLE

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
DUCH Phary
Natacha WEXELS-RISER
Matteo CRIPPA

For Court Management Section:

UCH Arun

For the Office of the Co-Prosecutors:

SENG Bunkheang
Vincent DE WILDE D'ESTMAEL
CHANLINO Pak

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
Francois ROUX
Marie-Paul CANIZARES
Lucile NATTIEZ

List of Speakers:

Language used unless specified otherwise in the transcript

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

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

2 (Judges enter courtroom)

3 [09.02.37]

4 MR. PRESIDENT:

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

6 We are going to proceed with the civil party applications and the
7 challenges by the defence counsel. Before we proceed, the
8 Chamber would like to inform the parties to the proceedings and
9 the public that today the Chamber is going to sit only in the
10 morning. The session will be adjourned by 12 p.m. because this
11 afternoon the Chamber needs to meet internally to resolve the
12 unfinished matters.

13 Yesterday we had the adjournment to meet to discuss these
14 matters. Since the urgent matters are not yet resolved then we
15 will take this afternoon's session to finally resolve them.
16 Before opening the floor for the discussion, the Chamber would
17 like to instruct the parties as the following. This morning we
18 are going to bring about the matters challenged by the defence
19 counsel and the civil parties have the right to respond to any
20 observations or grounds for the challenges that will be raised by
21 the defence counsel.

22 And at the same time, if there is any new grounds or matter
23 raised by the civil parties lawyers, then the defence counsel is
24 entitled the right to also respond. But the defence counsel can
25 respond only once to the matter and the Chamber will not

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1 entertain the counter responses like what happened yesterday. So
2 please be informed.

3 The Chamber has already heard and noted the observations of the
4 Co-Prosecutors, who expressively stated that they would not have
5 any observations in relation to the matters raised by the civil
6 party lawyers or the defence counsel. However, if the
7 Co-Prosecutors would wish to make any comment or observation in
8 relation to this matter then they could inform the Court.
9 Now we would like to proceed with the defence counsel to present
10 the grounds for their challenges in relation to the civil party
11 applications. And these grounds should be presented on a
12 case-by-case order.

13 Could the defence counsel hold on because we note that civil
14 party lawyer, group 3, is on her feet.

15 You may proceed.

16 [09.08.05]

17 MS. TRUSSES-NAPROUS:

18 Thank you, Mr. President.

19 Indeed I said to you yesterday that before we review the civil
20 party applications that might raise difficulties, I wanted to
21 bring up general points. Apparently I'm not sure that I'm
22 receiving -- yes? Am I being heard? Yes indeed, yes.

23 So I would like to make a few observations, introductory
24 observations that will allow me to cover a series of issues
25 regarding the difficulties that have been encountered, in order

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1 to provide all of the elements regarding the civil party
2 applications. So I am please asking you for the leave to make
3 these introductory observations which are rather general in
4 character.

5 (Deliberation between Judges)

6 MR. PRESIDENT:

7 The civil party lawyer group 3, you may proceed but please be
8 brief. We already discussed this at length yesterday, so I hope
9 you will be brief this morning.

10 MS. TRUSSES-NAPROUS:

11 Mr. President, I indeed wish to make a few introductory
12 observations regarding the applications of our civil parties
13 because there are elements there that indeed seem necessary to
14 develop in a general manner. Two problems indeed are raised --
15 the link with S-21 and, on the other hand, the second question is
16 the kinship link or let's say the proximity issue.

17 So regarding point number one, I would like first to state in an
18 introductory manner that I believe that the fact that the
19 archives at S-21 are not complete cannot be challenged.

20 [09.12.06]

21 Some of them have disappeared; the proof being that in certain
22 applications we only have a photograph. In other applications we
23 have a name appearing on a list. In another application there
24 might be a biography. However, sometimes, we cannot bring
25 together all of the elements. So this seems to me to be already

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1 an element that allows us to say that these archives are not
2 complete.
3 And the second element that allows me to say this are the
4 observations made by certain witnesses; for example, David
5 Chandler, who indicated -- because he studied very much in depth
6 these S-21 archives and David Chandler is telling us that these
7 archives indeed are not complete and he said in particular when
8 he was heard regarding ERN 00361627 that some of the civil
9 parties indicated the way that they had received access to this
10 document, such as on August 18th when Antonya Tioulong spoke
11 about her cousin who was able to access these archives in 1979,
12 whereas they were covered outside of Tuol Sleng in dust.
13 So it is perfectly understandable that these archives indeed are
14 not complete. So consequently I believe that it is possible for
15 us to say now -- and this is what we are supporting as civil
16 party lawyers -- that it is not because we cannot find any traces
17 of proximity links regarding our civil parties in the S-21
18 archives that these people have never been detained nor smashed
19 at S-21.
20 Mr. President and Your Honours, this is why I believe that your
21 Chamber will have to review the civil party applications and
22 statements in order to assess their coherency and their logic,
23 given the historical context, the specific historical context
24 regarding these individual applications, and regarding as well
25 the relevant evidence that we're able to gather, in particular

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1 during the investigation phase and during these hearings.

2 [09.15.07]

3 Furthermore, regarding S-21 again, we have often heard -- or
4 several times -- the accused saying that he did not accept as
5 proprietary value a simple photograph -- a simple photograph at
6 S-21 -- and I'd like to state that it's not up to the accused to
7 say if such evidence can be accepted or not. It is up to the
8 Chamber to say if indeed this evidence is admissible or not.
9 However, in order to avoid any kind of difficulties, the civil
10 parties in our group -- and this was the same for the civil
11 parties in the other groups -- we have asked the S-21 museum to
12 certify the provenance of these photographs, and this is what we
13 will be able, therefore, to review on a case-per-case basis, but
14 we had indeed the provenance of these photographs certified by
15 the museum.

16 On the other hand, it seems to us that in certain applications we
17 have a photograph; in others we have a name on a list; in others
18 there is a biography, and I believe that indeed it is not
19 necessary to require the accumulation of all of these elements
20 from the S-21 archives in order to provide evidence regarding the
21 fact that that person was detained and smashed at S-21. This is
22 even more so the case that -- sorry, Mr. President.

23 MR. PRESIDENT:

24 Could you please slow down a little bit for good record and
25 interpretation? It would be good if you can speak slower so that

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1 interpreter can really fully follow what you are saying.

2 [09.17.47]

3 The Court officer, could you please check whether the civil party
4 lawyer received the message from me?

5 MS. TRUSSES-NAPROUS :

6 (Technical malfunction) deal with the notion and the definition
7 of what kinship means -- of what proximity means. And indeed,
8 Article 32C states that psychological harm is liable to include
9 the loss of relatives who were victims of these crimes --
10 includes the loss of relatives who were victims of these crimes.
11 And a relative can be a direct family member, but can also be a
12 third-party person who might have brought you up; a friend even.
13 And I will mention a quote from Philippe Letourneau, a jurist,
14 who in 1970 was -- when he studied a ruling from the French Court
15 of Cassation which, in fact, had freed the list of people --
16 opened the list of people who could act. So Philippe Letourneau
17 indicated that the principle of reparation regarding relative is
18 inflationist, so therefore I believe, or we believe, that
19 regarding our group -- and I believe that these elements are
20 shared with the other groups -- that it is the coherence and the
21 logic behind the civil parties' statements that will in these
22 circumstances allow the Chamber to make a decision in favour of
23 certain civil parties that will have to be -- whose suffering
24 will have to be acknowledged as well as their expectations.

25 [09.27.11]

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1 And in any case, we, of course, will let the Chamber decide -- in
2 all of its wisdom -- in the interest of the victims and for the
3 ascertainment of the truth.

4 This is, Mr. President, Your Honours, the observations that I
5 wanted to provide as an introduction.

6 MR. PRESIDENT:

7 The international Co-Prosecutor, you may proceed.

8 MR. DE WILDE D'ESTMAEL:

9 Thank you, Mr. President.

10 Given that the Co-Prosecutors will not participate in the debate
11 regarding each individual civil party, we also wish to
12 provide certain general observations in the same line of thought
13 as what was stated by Ms. Trusses-Naprous who, therefore,
14 represents these civil parties of her group and I imagine that
15 the other civil party lawyers agree.

16 Indeed, evidence is free and it seems to us that this evidence
17 that also can be applied in Rule 23 should be appreciated in a
18 reasonable manner by the Chamber given the elements that are
19 presented, and given the coherency of these elements, and given
20 the logic behind each of the statements in the civil party
21 applications as well as given other statements from the civil
22 parties that might have also been included in the case file.

23 [09.29.30]

24 Our point of view is also that we must take into account in this
25 appreciation of the evidence -- take into account a certain

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1 number of elements, some of which were already mentioned by the
2 civil party lawyer. And the first element is -- well, the facts
3 go back to 30 years which explains that for many civil parties it
4 was impossible for them to preserve documents that would have
5 been, of course, useful today.

6 Civil parties often -- for those that have been heard, often
7 explained that during the Khmer Rouge period, practically all of
8 the photographs of their relatives or people that were close to
9 them were destroyed and unfortunately, they cannot, of course, be
10 presented today.

11 I would like to insist on the fact that the archives are
12 incomplete; that numerous documents could not be found, others
13 have been destroyed and others, still, have deteriorated over
14 time because they were stored under poor conditions. These are
15 the documents, however, which made it possible for the Office of
16 the Co-Prosecutors to prepare a combined list of S-21 prisoners
17 which is, therefore, based on the biographies, the prisoner
18 lists, the list of executed prisoners and the photographs that
19 were collected. This list is necessarily incomplete -- and the
20 accused, in fact, accepted this on several occasions,
21 particularly during the investigation phase -- and the numerous
22 names that are found in this list do not reflect the actual
23 reality of the number of persons who perished in S-21. The
24 figure that we have records for is far below reality and thus, I
25 am surprised when defence counsel, on several occasions, have

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1 stated that because of the fact that the name of a person is not
2 found on that combined list there is no evidence of any kind
3 concerning the fact that that person was brought into or executed
4 at S-21.

5 [09.32.21]

6 It seems to me that this is an attitude which leads to drawing
7 hasty conclusions from the absence of a name on the list when we
8 know it is incomplete, past ones or present ones. And all of
9 these elements plead in favour of the admissibility of other
10 elements of evidence that can establish identity or authenticate
11 documents relative to identity or to kinship with the victims of
12 S-21.

13 Thus I believe that one could take into account acts confirming
14 birth certificates or documents having been prepared by mayors or
15 even the testimony of witnesses who can establish the reality of
16 an identity.

17 Finally, our suggestion, Mr. President, because to my knowledge
18 the Chamber has not yet set time limits for counsel for the civil
19 parties to collect and compile all of these documents -- our
20 suggestion is that if it is the case in today's debate on each
21 individual case counsel for the civil parties tell you that a
22 certain number of documents are in the process of being compiled
23 but cannot produce at today's hearing, our suggestion to the
24 Chamber would be that a time limit, a final time limit, be set
25 for the collection and compilation of these documents in order,

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1 with regard to this last batch of documents that needs to be
2 produced and filed, a last swift debate may take place prior to
3 the end of proceedings.

4 [09.35.52]

5 These are the observations that we intended to make on a
6 preliminary basis and I believe that we will have no observations
7 to make during the discussion concerning individual cases. Thank
8 you.

9 MR. PRESIDENT:

10 The defence counsel, you may proceed.

11 MR. KAR SAVUTH:

12 Thank you, Mr. President.

13 MR. PRESIDENT:

14 The floor is now given to the civil party counsel.

15 MR. KONG PISEY:

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

18 I am a counsel representing civil party group 2 and 4. First of
19 all I am in agreement with the civil party counsel, group 3, and
20 I also would like to provide my submission to the Chamber
21 regarding the kinship of the civil parties to the victims of S-21
22 Office and the difficulty in proving such kinship.

23 [09.37.36]

24 For instance, one of my clients in the document E2/35 -- the
25 client has a nephew who died at S-21 and there is also a

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1 photograph. And this client was objected by the defence counsel.

2 The reason is that the parents of the victim also passed away.

3 MR. PRESIDENT:

4 Mr. Counsel, you are reminded that you should right now make an

5 overall observation and for each particular civil party you will

6 have your turn to respond to the objections that will be raised

7 by the defence counsel on an individual basis.

8 Right now the floor is given to you to make general observations.

9 MR. KONG PISEY:

10 Thank you, Mr. President. Then I will wait to respond to the

11 defence counsel.

12 MR. PRESIDENT:

13 The Chamber would like now to give the floor to the defence

14 counsel to make their observation or objection on individual

15 cases for the civil party applications.

16 MR. KAR SAVUTH:

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

18 morning, ladies and gentlemen.

19 I am a defence counsel for the accused and I would like to make

20 my general observations before I raise the issue on an individual

21 basis.

22 [09.39.42]

23 It is my observation that the accused has acknowledged all the

24 crimes committed at S-21 where 12,380 people died at that

25 location. And I am the defence counsel and I am here ready,

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1 waiting for all the civil parties' applications. I do not have
2 any objection to that.

3 However, to be eligible as a civil party there are certain
4 criteria that need to be met in order for it to be legitimate.

5 First, the first criterion would be whether the person fits the
6 criterion as a civil party; that is, whether the person is a
7 husband, a wife, a son or a daughter, a mother or a father of the
8 victim. For such a case, the civil party would agree to it. But
9 if someone says he is a nephew or that the relatives, six or
10 seven relatives died, and probably even not died at S 21, then my
11 client and I cannot accept it.

12 Secondly, to be a civil party all evidence has to be clearly
13 shown that the victim is actually victimized at S-21. And I do
14 not require every single piece of documentary evidence. However,
15 at least amongst those documents there is some of S-21's
16 documents, for example a photo with a serial number placed in
17 front, and if the photo cannot be found then at least there is a
18 confession; the confession made at that location. Then we will
19 accept it. It's as simple as that.

20 And if the confession cannot be found or the photograph is not
21 available then we can turn to the list of the prisoners. So
22 there is a list of the prisoners and if their name is there then
23 we would accept one of these three criteria.

24 [09.42.24]

25 And if nothing fits into the three criteria that I just raised

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1 then we, the defence team, cannot accept it. And that's why we
2 objected several civil party applications because of these
3 grounds.

4 And this is my general observation and I would like my
5 international defence counsel to raise the issues related to
6 individual applications.

7 MR. PRESIDENT:

8 International defence counsel, you may now proceed.

9 MR. ROUX:

10 Thank you, Mr. President. Before Counsel Canizares comes in to
11 set things in order, I would like to make a few preliminary
12 observations myself. I wish to thank counsel for the civil
13 parties to have opened this preliminary debate, which I believe
14 is extremely important for this part of the proceedings and I am
15 very sensitive also to the statement made by the Co-Prosecutors.
16 I am pleased that the Co-Prosecutors have decided to intervene at
17 this point in the arguments because we have reached a very
18 important point in our pleadings. We have always said that from
19 the moment that the accused acknowledges responsibility, we have
20 always said that we would be open to civil party applications
21 made by persons who were smashed at S-21. However, as Counsel
22 Kar Savuth has just recalled there are rules of law and in Latin
23 one says "dura lex sed lex"; the law is harsh, but it is the law.
24 We are not here in a forum other than one dedicated to justice
25 and we must respect the law.

14

1 The NGOs have been working on these files for a very long time
2 and it is, therefore, up to the NGOs and, forgive me, to counsel
3 for the civil parties to produce the minimum elements that will
4 make it possible for the Chamber, at the end of the day, to
5 decide whether such-and-such a person does indeed fit in with the
6 criteria required for a civil party application.

7 And I would like to respectfully draw the attention of everyone,
8 at this point, to the fact that we are the first international
9 tribunal to have accepted civil parties. We have fought over a
10 period of 15 years in order to arrive at the situation which we
11 are experiencing today because, until now, victims were not civil
12 parties before international courts and tribunals.

13 [09.46.20]

14 We have obtained this result, but please, please, let us not
15 spoil this result. Let us not cancel all the efforts that we've
16 made in order to achieve this. Some of the civil parties, last
17 week, went beyond their role as civil parties during the hearings
18 and had to be warned by the President and by defence counsel. We
19 are in the process of making considerable progress altogether in
20 the field of international criminal justice and therefore, we are
21 bound to achieve excellence.

22 And I turn to you, dear colleagues from the civil parties; it is
23 up to you to supply the juridical elements that will make it
24 possible to consider that certain persons are or are not civil
25 parties. You know that in this country there have been thousands

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1 -- tens of thousands of dead and, inter alia, in 196 prisons in
2 the country and some families may, in good faith, imagine that
3 their father, their son, their mentor died in S-21. And one
4 might find out that it wasn't in S-21, but in another prison.
5 What would we have done then? We would have done everything
6 except practising law.
7 We are here in a forum dedicated to handing down justice. There
8 are rules which have been recalled by counsel Kar Savuth and in
9 my preliminary observation; I intended to insist on the absolute
10 necessity to respect these rules. It is in the interest of the
11 law and it is in the interest of the civil parties, themselves,
12 because if, in the future, we wish in further and other
13 international tribunals -- further the progress that has been
14 successfully achieved in this tribunal with regard to civil party
15 applications.

16 [09.49.11]

17 Well, Mr. President, the defence has already given a case-by-case
18 list yesterday concerning these applications. In the meantime,
19 we have received new elements of evidence which, in fact, is
20 congruent with the observations of Judge Cartwright, which is
21 that at every moment of the debate, there are new elements coming
22 and thus the defence must be allowed to respond at any and at all
23 times.

24 Therefore, instead of going through everything that has already
25 been said yesterday, perhaps we could ask counsel Canizares, who

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1 keeps the list updated -- perhaps we could ask her to tell us
2 which are the case files for which we received information
3 yesterday and where we believe that adequate information has been
4 supplied. The Chamber, of course, will have the final decision
5 on this, but on the basis of information that we received
6 yesterday, we can already tell you that some of these cases have
7 been endowed with sufficient elements of evidence.

8 Perhaps I can now give the floor to Counsel Canizares. Thank
9 you, Mr. President.

10 MR. PRESIDENT:

11 The defence counsel, you can proceed.

12 MS. CANIZARES:

13 Thank you, Mr. President. Indeed, as my colleague François Roux
14 has just indicated to the Chamber, new documents were produced by
15 the civil parties from group number 1, who yesterday gave us new
16 documents concerning five applicants. But also this morning,
17 from group number 3 -- as group number 3 gave us a certain number
18 of documents concerning four of the civil party applicants.

19 [09.51.30]

20 So Mr. President, if you will allow me, perhaps I could make a
21 brief preliminary comment as well. As far as I'm concerned,
22 insofar as the Chamber will surely understand quite clearly that
23 at the time when your hearing was about to start this morning, we
24 received new elements of evidence and it is somewhat difficult
25 for us to take the time to assess their value. The hearing has

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1 already begun. Though these documents are, indeed, in our
2 possession, I must admit to you that I haven't had the time to
3 examine all of them and, more specifically, to discuss with my
4 client issues of relevance with regard to these documents.
5 In fact, this brings to my mind an observation that was made
6 yesterday afternoon by one of the counsel from group 1 who
7 reminded the defence that it was up to the defence, from the
8 initial hearing, to submit its observations regarding the civil
9 party applications. Well, my observation in this regard will
10 perhaps seem to you to be somewhat candid, to use a term that was
11 used by my colleague, Werner, yesterday following one of my
12 observations, but the Chamber, I'm sure, will understand quite
13 easily that it was rather difficult at the time; a time when many
14 documents had not yet been produced -- very difficult to be able
15 to say in a clear and definitive manner what the position of the
16 defence was with regard to the civil party applications.
17 In any event, given the elements of proof that we have received
18 yesterday at the end of the hearings and elements of evidence
19 which, in fact, have been produced exclusively in Khmer language,
20 which were translated neither into English nor into French, we
21 have been able to consider that with regard to two of the
22 plaintiffs of group 1, these elements enable us today to state
23 that we no longer have an objection regarding the civil party
24 application of these two persons. That is D25/20 as well as
25 civil party E2/57.

18

1 However, we stand on our objections regarding the other civil
2 parties, with the reservation of course that defence will have
3 opportunity to examine the documents that were produced and
4 handed to us this morning.

5 MR. PRESIDENT:

6 The defence counsel, do you only have your objections for the
7 individual applications regarding the two civil parties that you
8 just raised?

9 Court officer, can you check the audio system? Sometimes it can
10 be heard clearly; sometimes it is so weak.

11 [09.57.55]

12 I would like to confirm again, the defence counsel, do you still
13 show your objection regarding the individual applications of
14 D25/20 and E2/57?

15 MS. CANIZARES:

16 Given the documents that were produced last evening, Mr.
17 President, the defence no longer has objections concerning these
18 two civil parties. I repeat, D25/20 and E2/57.

19 MR. PRESIDENT:

20 Alain Werner, you may proceed.

21 MR. WERNER:

22 Good morning, Mr. President, distinguished members of the Court.
23 Just a few words to say that D25/20 and E2/57, we wish to thank
24 the defence for the diligence with which overnight they
25 scrutinized the documents and gave us a position this morning.

19

1 We appreciate their gesture and indicate to the Chamber that we
2 will, of course, submit an application so that these documents be
3 translated and filed. The reason why they were not translated is
4 that as soon as we received them we handed them over to the
5 defence.

6 But once again, we wish to thank the defence for its efforts and
7 we wish to tell you that we will do all required formalities to
8 ensure that these documents be translated. Thank you.

9 MR. PRESIDENT:

10 The defence counsel, you may now proceed.

11 [10.00.08]

12 The civil party lawyer, we have noted that you are on your feet.
13 Could you please make sure that you can just say -- or make the
14 observation which is new from the point you already mentioned
15 earlier. Otherwise we'll never end this session and I hope this
16 is the last chance you can make your observation.

17 MS. TRUSSES-NAPROUS:

18 Thank you, Mr. President.

19 Simply I wanted to say to the Chamber indeed that we filed with
20 the defence new documents this morning and of course these
21 documents are being prepared, and we are preparing the motion so
22 that it be filed in conformity with the Rules of this Court. But
23 here again we wanted -- because, of course, these applications
24 might be confronted today -- well, we wanted the defence to
25 receive this information in order to respect the principles of

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1 adversarial hearing.

2 MR. PRESIDENT:

3 The defence counsels can now proceed with the grounds for the
4 challenges of the civil party applications on a case-by-case
5 basis, and the civil parties will need to prepare to be ready to
6 respond to the challenges presented by the defence counsel. So
7 they will be only given a chance to respond to these applications
8 on challenges.

9 I noted that the civil party would be given the last opportunity,
10 as I mentioned, so what would you want to address again? Could
11 you please be prepared to just rise and express the whole issues
12 you want to address the Court, because today's session is about
13 the floor for the challenges of the civil party applications by
14 the defence counsel and that the civil party lawyers are to only
15 provide the supporting documents to support their civil party
16 applications.

17 [10.03.17]

18 You have already requested for observation and now for more than
19 one hour such observation has been made but we don't know why you
20 will keep wanting to address the Court relating to the same old
21 matter. This is the last opportunity for you, of course.

22 MS. TRUSSES-NAPROUS:

23 Mr. President, it was simply a technical problem that I was
24 bringing up. As far as we are concerned as civil party lawyers,
25 we had considered -- but I don't know if the Court will accept

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1 this and if the defence will object to this but we considered
2 taking the floor for all of the applications group by group --
3 group Number 3, group Number 2, group Number 1. I do not know if
4 you had considered this way of proceeding but that was the
5 solution that we are proposing to you. If of course this is not
6 possible, well, then again of course I will let the Chamber
7 decide.

8 MR. PRESIDENT:

9 Yesterday there has been the display in relation to the orders of
10 the challenges and the Chamber would like to base on this order
11 that if civil party lawyers find that any particular civil party
12 applications are challenged by the defence counsel then they are
13 ready to respond to those challenges.

14 So the defence counsel, you may now proceed.

15 [10.06.34]

16 MS. CANIZARES:

17 Yes, Mr. President. I suggest that we get back to the order that
18 I had presented yesterday, to get back to the list, if of course
19 the Chamber agrees with this way of proceeding.

20 So the first civil party that was brought up yesterday was E2/22
21 and the defence indicated regarding this civil party that the
22 plaintiff, Mr. Sitha Chhoem was complaining for the general
23 arrest of Division 310, to which he belonged as a former Khmer
24 Rouge soldier. And the defence underlined the fact that the
25 plaintiff was only mentioning friends and that on top of this

22

1 there was no document in the case that substantiated the link
2 between the plaintiff and the victims that would have been
3 detained at S-21.

4 And I do not need to recall the preliminary observations that
5 were provided by my colleagues Kar Savuth and François Roux, but
6 it is now up to the civil parties to provide a minimum amount of
7 evidence so that the Chamber may decide if such-and-such a person
8 is able to bring together the evidence that allows this person to
9 join as a civil party.

10 We believe in this particular case regarding either kinship link
11 or the fact that the victim might have been detained at S-21,
12 well, we consider in this particular case that there is no
13 element that can allow us to consider that these civil parties
14 are enabled to act.

15 MR. PRESIDENT:

16 Civil party lawyer group 2. Chhoem Sitha is a civil party in
17 that group, so you may now proceed.

18 [10.09.21]

19 MR. KONG PISEY:

20 Mr. President, thank you. With the President's leave I would
21 like to preserve our rights to present further evidence and
22 documents to support this civil party application if the Court
23 needs.

24 MR. PRESIDENT:

25 The debate is almost coming to an end and when you ask the

23

1 Chamber when exactly the Chamber would prefer the evidence to
2 support that application, I think we are ambivalent as to what
3 kind of comment are you making here because the hearings will
4 come to an end soon also. And when are you intending to file
5 these documents to the Chamber? Because so far as we remember,
6 the civil party lawyers had to be ready and prepared to present
7 the documents to the Chamber at any moment they are seised of
8 their documents.

9 I don't understand why you asked the Court this, because the
10 schedule and the ending of the hearing, as expected, have already
11 been informed. As recently as yesterday we already made it known
12 to the civil parties and to the parties to the proceeding about
13 the expectation that the hearings would end.

14 And these proceedings have been well set forth in the
15 proceedings, in the Internal Rules and also in the Criminal
16 Procedural Code of Cambodia, and in the other codes in relation
17 to the filing of documents and supporting documents.

18 The defence counsel, you may now proceed with another civil party
19 application and challenge.

20 [10.11.38]

21 MS. CANIZARES:

22 Regarding the following case, E2/37, here again we are confronted
23 with the same case as the previous case because the plaintiff
24 here is referring to six of his friends that would have been
25 arrested and killed at S-21. And we here again have no evidence

24

1 of any kind of kinship link with the victims and, as well, we
2 have no document in the file proving that these victims had
3 anything to do with S-21.

4 MR. PRESIDENT:

5 Civil party group 3, you may now proceed.

6 MS. TRUSSES-NAPROUS:

7 Yes, Mr. President. In this case it is indeed a person who is
8 coming to join as a civil party because this person saw his
9 friends being arrested and brought to Tuol Sleng. And in this
10 specific case it is indeed friends. The civil party brought up
11 in his statement that he was very much afraid, he was frightened
12 and that he felt extreme suffering when he learnt about the fate
13 of his friends.

14 So I would like to refer to my preliminary observations regarding
15 the notion of close acquaintances. Since this person suffered in
16 relation to the loss of his friends and to see his friends being
17 brought away, well, in these conditions since we're speaking
18 about a person who's very old, that we cannot contact very
19 easily. This person is living in a rather relatively isolated
20 area beyond Ratanakiri province so therefore, it's very difficult
21 to reach this person and his age as well does not allow him to
22 participate in extremely developed discussions so therefore, I'm
23 going to let the Chamber appreciate this very specific case -- to
24 judge on this very specific case.

25 MR. PRESIDENT:

25

1 The defence counsel, you may now proceed.

2 MS. CANIZARES:

3 Regarding E2/66, the plaintiff states that her older sister, Penh
4 Sothera, would have been detained at Tuol Sleng and it happens to
5 be that Ms. Penh Sothera -- therefore the victim -- seems,
6 according to Mr. Kaing Guek Eav seems to be the daughter of Vorn
7 Vet, but however, the plaintiff indicated that her parents' name
8 was well, Penh Morn for her father and Chin Tharn for the mother.
9 [10.15.35]

10 That is to say that it seems that there might be a similar name,
11 that the plaintiff sister's name and the name of a person that
12 might have been detained at S-21, but the registration papers of
13 the plaintiff does not correspond to the registration of the
14 victim that she is bringing forth.

15 MR. PRESIDENT:

16 Civil party lawyer group 2, you may proceed.

17 MR. KONG PISEY:

18 Mr. President, thank you.

19 Penh Sokhen, the civil party, saw the photo of her sister at
20 S-21. She based her argument on the photo, but not on the name
21 that is similar.

22 MR. PRESIDENT:

23 The defence counsel, you may now proceed.

24 MS. CANIZARES:

25 Regarding civil party D25/15, the defence stated that the

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1 plaintiff was not providing the evidence of a kinship link with
2 the victim and did not include in the file, elements that allowed
3 us to relate the victim to S-21 and the civil party counsels
4 provided us with extra documents and these extra documents do not
5 seem, however, to the defence to be more relevant than the
6 documents that are already included in the case.

7 [10.17.57]

8 The only element that we may find in this case are related to
9 biographical data that were compiled regarding a certain victim
10 by the name of Pen Um, but this biographical data was only
11 compiled by DC-Cam and do not come from S-21.

12 MR. PRESIDENT:

13 The civil party lawyer group 1, you may proceed.

14 MS. TY SRINNA:

15 Mr. President, I would like to respond to the challenge by the
16 defence counsel regarding this client of mine, D25/15, Suon
17 Sieng.

18 I interviewed him and he made it clear that Pen Um was his
19 cousin, not the biological sibling and we obtained the biography,
20 his biography, at S-21. So on the top page of this document, it
21 reads "S-21, Phnom Penh" so this document is available from S-21
22 compound and Pen Um is found in the smashing list dated on the 15
23 of October 1977.

24 And we, the counsel for the civil party, searched through the
25 internet of the DC-Cam website and we found out this list and we

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1 have not yet included these documents in the case file, but we
2 will make it available to defence counsel after the adjournment
3 and that we have obtained the document via the internet from the
4 DC-Cam website and database.

5 So these documents can be used as the proof to support the claim
6 that my client was detained at S-21 -- his document was seen at
7 S-21.

8 [10.20.41]

9 Suon Sieng also emphasized that he was the cousin of Pen Um and
10 Suon Sieng made his identification card available to us. The
11 documents, he maintained previously, were not available because
12 now he is more than 70 years old and he did live through the
13 regime and he really experienced the Khmer Rouge regime and those
14 documents in relation to the identification of his and his cousin
15 were all destroyed and burned down in order to escape from being
16 spied on by the Angkar or the DK people.

17 He burned down the documents in order to make sure that he could
18 survive without concealing these identification of his then he
19 would be arrested and executed like his cousin already. So with
20 these reasons, actually we found it rather difficult to establish
21 the kinship between him and his cousin; however, the counsel will
22 do it best to find further documents to support the civil party
23 application.

24 Thank you.

25 MR. PRESIDENT:

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1 The defence counsel, you may now proceed.

2 MS. CANIZARES:

3 Regarding Civil Party E2/35, the plaintiff states that by
4 visiting Tuol Sleng, she would have recognized the photograph of
5 her nephew bearing number 567. No document in the file can
6 substantiate that the person who was photographed is, indeed, the
7 nephew of the plaintiff and I can even say as well that there is
8 no name appearing on this photograph so we cannot even know by
9 looking at this photograph that it does regard the person that
10 the plaintiff is referring to.

11 [10.23.50]

12 MR. PRESIDENT:

13 The civil party lawyer group 2, you may now respond.

14 MR. KONG PISEY:

15 Mr. President, thank you. Regarding civil party application
16 E2/35, this civil party claimed that he saw his nephew at Tuol
17 Sleng and he knew him very well because the nephew lived with him
18 for several years. And during the Khmer Rouge regime the nephew
19 was the soldier and later on was arrested. He said that he did
20 not know where the nephew was being taken to but the nephew left
21 the message with him that he would be arrested.

22 Because we have not seen the name -- I mean the similar name of
23 this person because the mother of this victim had to help another
24 cousin -- so we can see that the names are not consistent because
25 the auntie of the victim was the cousin of the person who filed

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1 the application.

2 [10.26.12]

3 And we tried to find the document in relation to the victim but
4 it is not possible to obtain that information except the photo,
5 and there has not been any writing on the photo. So at S-21 we
6 only saw the photo and that we cannot really write any additional
7 message on the photo because it would not be genuine.

8 MR. PRESIDENT:

9 The defence counsel, you may now proceed.

10 MS. CANIZARES:

11 Regarding E2/38, the plaintiff indicates that his uncle was
12 arrested and detained at Tuol Sleng. The same observations as
13 previously, insofar that we have no element that can substantiate
14 the kinship between the plaintiff and the victim and that there
15 is no document as well that can prove that the victim was
16 detained at S-21. In particular, more specifically, the defence
17 did not see on the prisoners list of S-21 this victim's name.

18 MR. PRESIDENT:

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

20 MS. TRUSSES-NAPROUS:

21 Mr. President, the civil party is Ms. Hiet Teycheou and I'd like
22 to specify that her father's name, which is mentioned indeed in
23 the documents that were included in the case -- because her
24 father is called Sos Tahiet and that the victim is the uncle of
25 my client -- uncle of my client called Sos El; that is to say,

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1 the brother of the father of Ms. Hiet Teycheou.

2 [10.28.55]

3 Now, regarding the proof of kinship link, we already have this
4 element that I just mentioned. But we did what was necessary as
5 for each case and we contacted the associative network that is
6 trying to bring together extra information; in particular,
7 evidence regarding kinship links. So we must -- regarding this
8 case, we should be receiving this week, in fact, the specific
9 element of evidence that we will indeed be able to prove this
10 link.

11 Now, regarding the link with S-21, while this is a person who was
12 arrested on the 17th of April 1975, whereas this person was
13 living with his spouse in Phnom Penh and he was an intellectual
14 and he was considered to having belonged to Lon Nol's regime, and
15 we all know that on that day many intellectuals, cadres, civil
16 officials, were arrested and were detained at S-21. And there is
17 indeed no document, of course, that was found regarding this
18 person and the link between this person and S-21.

19 But, however, Ms. Hiet Teycheou's statement leads us to believe
20 that this statement is perfectly credible and that indeed it is
21 quite possible or quite probable that this person was detained
22 and smashed at S-21. So therefore I believe that this statement
23 is perfectly coherent and that you should consider it as such.

24 Mr. President, please, I'd like to apologize for this but indeed
25 in this case I already had, indeed, two documents that can

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1 substantiate the kinship link. It is Index ERN 00274587 and ERN
2 00274589 which -- and these are indeed two affidavits from people
3 who know my client perfectly well and who were able to provide
4 any -- all the useful elements to substantiate her kinship link
5 with her uncle.

6 [10.32.00]

7 So given the preliminary information that I provided earlier on,
8 I am please asking you to accept and to not challenge this civil
9 party application.

10 MR. PRESIDENT:

11 Now it is time for a break. The Chamber will take 20 minutes
12 break until 10 to 11, when it will resume.

13 The hearing is adjourned.

14 THE GREFFIER:

15 All rise.

16 (Judges exit courtroom)

17 (Court recesses from 1032H to 1055)

18 (Judges enter courtroom)

19 MR. PRESIDENT:

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

21 The Chamber would like now to give the floor to the defence
22 counsel to continue with the observations on the objections.

23 MS. CANIZARES:

24 Thank you, Mr. President.

25 [10.55.52]

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1 The defence has made good use of the break in order to study the
2 different documents that were submitted to us this morning by one
3 of the civil party groups. Therefore, I hope that you will
4 authorize me, Mr. President, to work back up from the
5 chronological order that I was following this morning and to
6 discuss E2/30. I hadn't discussed it. I had left it by the
7 side, if you want, because I wanted to take the time to examine
8 the documents that we received.

9 Well, as it happens, in spite of these documents, the defence
10 remains on its position and lets its objection stand. Indeed,
11 the plaintiff alleges that her two brothers and sister-in-law
12 were detained and killed in S-21. If it is the case that the
13 plaintiff and the victims have a somewhat similar name,
14 nevertheless we are of the opinion that the kinship is not
15 secured in the documentation submitted and, though the plaintiff
16 submitted a series of photographs that have been filed, these
17 photographs appear to us to be of an insufficient nature to
18 demonstrate that those persons were indeed detained in S-21.

19 MR. PRESIDENT:

20 The civil party counsel, group 3, you can respond.

21 MS. TRUSSES-NAPROUS:

22 Mr. President, in this file this is Mrs. Ngoem Kim Hoeurn, who
23 lost her two brothers in Tuol Sleng, as well as the wife of Chan,
24 Duong Rum.

25 I believe that the connection with S-21 is unchallengeable.

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1 Indeed we have the photographs that were filed in the hearing in
2 the first stage, the photographs originating from S-21. These
3 photographs, since they were questioned, led us to get in touch
4 with the management of S-21 and obtain certification of the
5 authenticity and provenance of these photographs.

6 [10.58.56]

7 Indeed we received an affidavit from the deputy head of the
8 documentary repository of Tuol Sleng Museum, attesting that the
9 photographs of prisoners detained at S-21 under numbers 00984 --
10 and Mr. President, if you allow me, I will also be looking
11 through these photographs because the affidavit also mentions
12 issues relating to another case and I wouldn't want the two to
13 become confused.

14 So as far as this specific case is concerned the number is 02045
15 and number 02147. Photographs which we have here and which were
16 handed over to the defence -- the photographs as well as
17 documents will be forwarded to the defence by way of a motion
18 submitted to your Chamber.

19 We would like to add further that in this specific case there is
20 also an S-21 biography concerning Chan and there is an S-21
21 biography which you will find under reference ERN -- well, I
22 noted ERN 013 -- excuse me, let me give you the Khmer reference
23 00273314 -- 00273314. I believe that in effect there is no
24 problem whatever in establishing the connection with S-21. We
25 have photographs and we have a biography.

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1 With regard to kinship, in this case we have two affidavits which
2 have already been filed and the ERN reference, Khmer 00273301 and
3 00273307; two affidavits from persons Chea Im and Khem Tol
4 attesting to the kinship between our client and the brothers. As
5 for the harm suffered by the client, of course it is
6 unquestionable.

7 [11.02.41]

8 The only kinship connection between the parties being so close
9 automatically implies that there is suffering inflicted on that
10 person due to the loss of her brothers and her sister-in-law.

11 Regarding the sister-in-law of our client, there is also a
12 photograph. It seems that this is a photograph that comes from
13 Prey Sar, from S-24.

14 These are the observations we wanted to make with regard to this
15 particular case, Mr. President.

16 Thank you.

17 MS. CANIZARES:

18 With regard to civil party reference E2/41, the civil party
19 presumes that her grandfather, Mr. Pheach Kim, was killed in Tuol
20 Sleng because the civil party states that they saw the photograph
21 of the latter in Tuol Sleng. The defence can only note the fact
22 that the civil party did not file this picture, it's not joined
23 in the file, and that the civil party also supplies no evidence
24 that Mr. Pheach Kim, the victim, was indeed her grandfather. No
25 document emanating from Tuol Sleng has been supplied.

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1 Lastly, we must observe that the name of Mr. Pheach Kim cannot be
2 found in the list of prisoners of S-21.

3 MR. PRESIDENT:

4 The civil party lawyer, group 1, you take the floor.

5 MS. TY SRINNA:

6 Mr. President, I would like to respond regarding civil party

7 E2/41 Sin Sinet.

8 The documents regarding the prisoners at S-21 is here with us.

9 We have obtained this document of the person and the photo to
10 identify his identification with the placard number 7 hanging
11 underneath his photo.

12 [11.05.35]

13 The civil party pointed to the photo found at S-21 when she paid
14 a visit to the vicinity. She saw the photo and found the
15 identification or identity documents in relation to that victim.

16 And these documents have been collected from DC-Cam website and
17 we will submit these documents at a later date with further
18 clarification from the S-21 archive.

19 Regarding this grandfather of Sin Sinet, we have already got the
20 documents and Sin Sinet herself has obtained the national
21 identification card and the birth certificate and the Book of
22 Residence.

23 Before 1975, before the Khmer Rouge regime, she was sent to live
24 with her grandparents in Kampong Saom . She was only seven years
25 old back then. She was very close to the grandparents and she

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1 treated them as her own parents. And her grandparents treated
2 her like their own daughter, not granddaughter. And the civil
3 party also indicated in the application that she had lived with
4 the grandparents in Kampong Saom in Veal Renh. And having
5 compared and verified the document, point 5 here which is
6 detailing the information of the person who actually worked as
7 the smith in Kampong Saom.

8 So this information is very consistent with the account of the
9 civil party who said she lived with her grandparents in Kampong
10 Saom. And I hope this information is able to substantiate the
11 application.

12 She also found another photo and biography in relation to the
13 grandfather and for that reason she has searched for the family
14 members and we can find her article in the Search for the Truth
15 magazine of the 1999 issue.

16 [11.08.47]

17 So with this information we can conclude that she has been
18 searching for the lost family members and it has been rather
19 difficult for her to really establish the documents to prove that
20 she has relation with the grandparents because she has not
21 obtained other related documents.

22 However, I believe that since she has already published the
23 search information for the whereabouts of the relatives and that
24 the recent document obtained, they can help support her
25 application.

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1 MR. PRESIDENT:

2 The defence counsel, you may now proceed further.

3 MS. CANIZARES:

4 Civil party E2/62 states that her two brothers are alleged to
5 have been arrested and killed in Tuol Sleng. And she files a
6 picture of herself taken in Tuol Sleng and that of another person
7 whom she has identified as being her brother.
8 However, no other element in the case file gives us any further
9 evidence with regard to kinship. Furthermore, the defence would
10 like to note that since 1976, more specifically March 1976, Ta
11 Mok who was in charge of the South-Eastern Zone from which the
12 plaintiff originates was no longer sending anyone to S-21.

13 MR. PRESIDENT:

14 The civil party lawyer, group 1, you take the floor.

15 [11.10.54]

16 MS. TY SRINNA:

17 Mr. President, thank you. Regarding civil party E2/62, Hoem Mom,
18 I would like now to establish the linkages between this applicant
19 and S-21.

20 We have obtained the photo, the photo number 217. In relation to
21 this photo, we also obtained the source of the document on the
22 internet from the database of the DC-Cam. And the document
23 states that this person's photo has been obtained from Tuol Sleng
24 and that the person in this photo was the person who detained at
25 Tuol Sleng.

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1 And this is another piece of clear information about the relative
2 of the civil party who proves that the photo is the person who is
3 her brother and detained at S-21.
4 Regarding the kinship, this person also indicated that there were
5 two siblings who lost during the regime as the defence counsel
6 stated but they could only find one person, Saing Kim Leng who
7 already died. They found this information about Kim Leng.
8 However, the identification card states the civil party as Him
9 Mom but in the birth certificate the name is spelled differently
10 although it shares the same sounds. I mean the name could still
11 be pronounced as Hoem Mom.
12 So after the Khmer Rouge regime some registrars who survived the
13 regime were not able to really register the correct names of the
14 applicants and since my client is not well -- or rather literate
15 -- then it was difficult to really produce or to tell the
16 registrar the correct name. That's why I think this point should
17 also be well considered by Your Honours.
18 And Saing Kim Leang and Saing Kim Leng died but only Kim Leang
19 was found in S-21 and only his photo remains, and the name of the
20 civil party Hoem Mom is correct in the identification card, and
21 the name she uses for her civil party application. However, in
22 the birth certificate the name or the surname has been changed
23 for several family members. For example, Kim Leang's surname
24 would be changed to Sang because he took after the father's
25 surname.

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1 So I think these kind of discrepancies in the uses of name has
2 been contributed to the change of regime and that people may have
3 changed their names, or maybe the registrars have mistakenly
4 written their names on the official papers. And sometimes
5 individuals may have changed their name arbitrarily without even
6 informing the local authority about this intention, and it is
7 very common in Cambodian society that this kind of thing happens.

8 [11.16.09]

9 And I believe that we can actually produce further documents to
10 support this relation between our applicant, the civil party
11 applicant, to the person in the photo. And I believe that if she
12 has not known this person she would not be able to even link the
13 photo to the life story and that to the moment she had once lived
14 with them, and that she was moved to even see the photo.

15 So I believe that it is genuine enough that this civil party has
16 clear kinship with the person in the photo and I would like to
17 beg the Court to accept the applicant as the civil party in the
18 proceedings, although some civil parties may find it difficult to
19 bring the supporting documents to support their civil party
20 applications because during the regime several documents have
21 been damaged, or even the S-21 documents have been used to wrap
22 some kind of Cambodian cake and it is not always sure that all
23 the documents obtained at S-21 still maintained at S-21 because
24 several documents have been missing.

25 During the Democratic Kampuchea regime, the regime which spied on

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1 everyone, which exercised their surveillance on every individual
2 because they were suspicious and that people were fearful and
3 they would not dare keep any documents because they were afraid
4 that those documents could be used to implicate them in the
5 arrests. So a lot of documents were destroyed, so people were
6 left without any trace of good documents to support their
7 identity.

8 [11.18.41]

9 MR. PRESIDENT:

10 The defence counsel, you may now proceed.

11 MS. CANIZARES:

12 Civil Party E2/63 states that her brother-in-law, Mr. Phleang
13 Hauy, is alleged to have been detained and executed in S-21. In
14 spite of the documentation which we received this morning, the
15 defence nevertheless feels that these elements are not sufficient
16 to establish a proof of kinship between plaintiff and victim, and
17 furthermore these elements do not establish proof that the victim
18 was detained in S-21, and defence therefore can only observe that
19 the name of Phleang Hauy is not to be found in the list of S-21
20 prisoners.

21 MR. PRESIDENT:

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

23 MS. TRUSSES-NAPROUS:

24 Yes, Mr. President. Indeed this morning we handed over to the
25 defence a new document which is in the form of an affidavit from

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1 the mayor of the municipality of our client, attesting kinship
2 with her brother-in-law. Of course we feel that this is
3 probative evidence with regard to establishing kinship.
4 As for the connection with S-21, indeed it is persons we did not
5 find in the lists in spite of all our efforts and research, and
6 the information -- the only information that we have regarding
7 this person -- is based on the indications given by our client
8 herself, who stated in her statement that in 1978 someone had
9 sent to her a picture of her father and brother, both hands
10 shackled, both feet shackled with chains and their stomachs slit
11 open. They both died like animals, and this is the statement
12 that we have.

13 [11.21.40]

14 I leave it up to the Court to rule on this specific case.

15 MR. PRESIDENT:

16 The defence counsel, you may now proceed.

17 MS. CANIZARES:

18 The Civil Party E2/64 alleges that her uncle, Mr. Cheab Baro, and
19 her aunt, Ms. Khut Phan, as well as five of her cousins, were
20 detained and killed at Tuol Sleng. However, there is no evidence
21 in the file that proves the kinship between the plaintiff and the
22 victims and in the same way the defence believes that the
23 documents that are included are not sufficient to provide the
24 proof that the victims were killed at Tuol Sleng.
25 The civil party mentions a photograph and this photograph was

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1 never produced until yet, and there is also mention of a
2 biography of Mr. Cheab Baro, but in fact it is a document that
3 was hand-copied by the civil party and that therefore is not a
4 document coming from S-21, and here once again the defence was
5 only able to notice that Mr. Cheab Baro's name is not on the
6 prisoners list of S-21.

7 MR. PRESIDENT:

8 The civil party lawyer group 2, you may now proceed.

9 MR. KONG PISEY:

10 Mr. President, thank you. I would like to shed light on the
11 civil party applicant E2/64, Nheb Kimsrea.
12 These victims include only Khut Phan, and Khut Phan's husband was
13 Cheab Baro. Cheab Baro was the biological brother of Cheab Nheb
14 and Cheab Nheb was related to Nheb Kimsrea and Nheb Kimsrea is
15 the civil party applicant. Nheb Kimsrea was the nephew of Nheb
16 Baro.

17 At that time Khut Phan, who was wife of Cheab Baro, had five
18 siblings and they were detained and smashed. But there has not
19 been any document to prove that Cheab Baro was detained at S-21
20 but there is a list of prisoners at S-21 which contains the name
21 Khut Phan, who was the wife of Cheab Baro.

22 So there is another list of prisoners who were smashed at S-21
23 and Madam Khut Phan, the wife of Cheab Baro, was also found in
24 that list.

25 [11.25.53]

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1 So Cheab Baro actually got married to Khut Phan and the wife who
2 was actually seen in the list of executions at S-21, and I had
3 already told the court the relationship between these people, so
4 I would like the Chamber to consider Nheb Kimsrea as the civil
5 party.

6 MR. PRESIDENT:

7 The defence counsel, you may now continue.

8 MS. CANIZARES:

9 Civil Party E2/65 alleges that an uncle died in 1977 at S-21. We
10 do not even have the name of the uncle in question so therefore
11 the defence believes that the proof of kinship and the proof that
12 the uncle was detained at S-21 is not established.

13 MR. PRESIDENT:

14 Civil party group 3, you may continue.

15 MS. TRUSSES-NAPROUS:

16 Mr. President, it seems that we are in a very specific case here
17 and it seems that this perfectly reveals what might happen in
18 certain families. Indeed, since we have no documents, we
19 therefore met very recently our client and we met her indeed to
20 establish the facts. And it happens to be that this person
21 received orders from her family challenging her civil party
22 application and she does not want to disappoint her family.
23 So under these circumstances we told her and we let her know what
24 were her possibilities, either to waive her civil party
25 application or to stand by it. And this was indicated to her and

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1 she asked to think about it.

2 [11.28.50]

3 So therefore, within this week, she will present to us her final
4 decision and in that case I will let you know, Mr. President, my
5 client's decision.

6 MR. PRESIDENT:

7 The defence counsel, you may continue.

8 MS. CANIZARES:

9 E2/70 states that her uncle, Mr. Sok Bun, was killed at S-21.

10 However, we do not have -- we have no element regarding the civil
11 party that can substantiate the kinship or that can prove that
12 the victim was indeed detained at S-21 -- that was Mr. Sok Bun.

13 MS. MOCH SAVANARRY:

14 Good morning, Mr. President, Your Honours, ladies and gentlemen.
15 Related to the civil party application E2/70, in which she lodged
16 the application because the uncle was arrested and killed at Tuol
17 Sleng Prison, we have tried to research to find the documents
18 related to his detention at S-21, as well as relevant documents
19 that could provide us further information.

20 We have tried to look at the list of the prisoners by the Office
21 of the Co-Prosecutors and we found a name, Sok Bun, at number
22 9,556 but when we examined the detailed information for that
23 prisoner and compared it to information of the victim in the
24 complaint made by our civil party, the information is not the
25 same.

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1 [11.30.59]

2 I do not know how the information was contradictory but I would

3 like to reserve the right for the Chamber to make decisions.

4 If we analyze the information provided by my clients to the

5 Chamber in the application, we see that in early '78 Roeun, the

6 103 Sector chairman, called the village chief and subdistrict

7 chiefs and people to a meeting under the guards of armed guards

8 and no one was allowed to move out even for relieving themselves.

9 After the meeting Prum Ham, Kong, Chieb, Chuon, Ry and the uncle

10 of the civil party, Sok Bun, who were the village chief and

11 subdistrict chiefs during the Khmer Rouge regime -- after we

12 reached that segment and analyzed the information received by the

13 Chamber we could conclude that the Rohas district, Rovieng

14 district of Preah Vihear, was in a sector in the North Zone which

15 was subject to internal screening during that time.

16 The accused also acknowledged that during the internal screening

17 those who were the targets for the arrest to S-21 were those who

18 worked in the district and subdistrict levels. So we believed

19 that the information provided to us is connected to the events

20 that happened at that time and it is also related to the

21 information received by the Chamber.

22 In addition, in relation to the kinship between my civil party

23 and the uncle of Sok Bun, after receiving information of the

24 objections by the defence counsel I contacted my client and

25 requested for clarification of kinship, and we are still waiting

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1 for the response.

2 [11.33.07]

3 And we hope that we will be able to receive necessary information
4 and documents within this week and once we receive the documents
5 we would submit it to the Chamber for decisions.

6 And this is my observation. Thank you, Mr. President.

7 MR. PRESIDENT:

8 The defence counsel, you may now continue.

9 MS. CANIZARES:

10 Regarding Civil Party E2/71, which alleges that her
11 brother-in-law died at S-21 in 1976, just as in the previous case
12 there is no element in the file that allows us to substantiate
13 the kinship between the plaintiff and the victim and allowing us
14 to consider, as well, that the victim was, indeed, detained at
15 S-21. And in addition, the name of this victim does not appear
16 on the prisoners list at S-21.

17 MS. TRUSSES-NAPROUS:

18 Yes, Mr. President. Here again, we asked from the mayor of the
19 commune she lives in for an affidavit regarding the kinship and
20 we are still waiting for it and we were, indeed, asked to receive
21 this document before the end of this week. So I hope that before
22 the end of this week, I will be able to put this document before
23 the Chamber.

24 Now, regarding the link with S-21-- as the defence indicated --
25 indeed, we were not able to find the name of this victim on the

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1 S-21 lists. However, there is a certain amount of coherency in
2 the account because Ngoy Sreng was arrested for an offence that
3 he would have committed in the context of his work because it was
4 held against him that he left without asking for permission from
5 his superiors.

6 [11.35.56]

7 And we know that he was brought to Sala Chen and then afterwards,
8 he was transferred to Tuol Sleng. It, therefore, seems that in
9 this specific case -- it seems that the statement from our client
10 allows us to consider that, indeed, this person was detained and
11 smashed at S-21. And here again, we will let the Court rule on
12 this.

13 MR. PRESIDENT:

14 The defence counsel, you may now continue.

15 MS. CANIZARES:

16 E2/76 joined as a civil party following the demise of her brother
17 -- her older brother, Ung Koam, which she alleges occurred at
18 Tuol Sleng in '78 or beginning of '79. Now, beyond the fact that
19 the victim and the plaintiff carry the same name, we have no
20 other element that allows us to substantiate the kinship between
21 these two people.

22 Now, regarding the second issue -- the fact that the victim was
23 allegedly detained at S-21 -- the only evidence that we have in
24 our file is a biography of Mr. Ung Koam, but that is hard to
25 authenticate as coming from S-21. And here again, it is even

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1 more so the case that Mr. Ung Koam's name is not on the prisoners
2 list at S-21.

3 MS. MOCH SOVANNARY:

4 Thank you for the clarifications by the defence counsel.

5 [11.38.14]

6 In response to that, regarding the event whether Mr. Ung Koam was
7 the blood brother of Ung Voeun and that he was detained at the
8 S-21 or not, we had a brief biography of Mr. Ung Koam. It was an
9 S-21 document. It is in the document E2/76.4.

10 If we look at the event from the beginning as described by the
11 civil party in the complaint, in 1974 in Chhuk Kruos
12 sub-district, Kampong Svay district, Kampong Thom, the civil
13 party provided information that the brother was arrested by Lon
14 Nol soldiers and forced to be a soldier and he was sent to the
15 battlefield. It is consistent with the events at the time and
16 there was a fight between the Lon Nol and the Khmer Rouge
17 soldiers.

18 It was also observed that in early '76, the civil party provided
19 an information that the brother went to meet him. We did not
20 know the situation of the meeting at the time, whether he
21 secretly went to meet the civil party or not. And then he went
22 to the battlefield and reappeared. And Ung Koam went to meet his
23 mother and told his mother that he used to be a Lon Nol soldier
24 and that he would be sent to Phnom Penh and he would be detained
25 in Phnom Penh. And from that day, he disappeared.

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1 His family, after the liberation, found that document so we would
2 like to submit the documents to the Chamber for consideration.
3 Secondly, in relation to the kinship between the civil party and
4 the victim, Ung Koam, from the evidentiary documents provided by
5 the civil party in relation to the ID card, the victim
6 information form and the biography he provided and the biography
7 of Ung Koam from S-21 in addition to the interview made by the
8 DC-Cam with his mother, we can conclude that the information
9 related to the address is the same.
10 [11.41.04]
11 It was the same address provided in the information of Ung Koam
12 as the one provided in the interview provided by his mother as
13 well as the information of the address mentioned in the ID card.
14 So we can see the kinship between the civil party and the victim,
15 Ung Koam.
16 In addition, in the biography of Ung Koam, we can see that he
17 said his mother was Hul Soeun and in the interview between his
18 mother and DC-Cam, the name was the same. And his mother also
19 said that presently, she lived with her daughter. And this is a
20 factor for our consideration of the existence of kinship between
21 the civil party and the victim, Ung Koam.
22 Also, in order to clarify the kinship, we, the counsel, requested
23 to the civil party to make additional documents to prove the
24 kinship.
25 Thank you, Mr. President.

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1 MR. PRESIDENT:

2 The defence counsel, you may now continue.

3 MS. CANIZARES:

4 Following case is E2/77 and for which we practically have no
5 element at all whether regarding the kinship or whether regarding
6 the victim's presence at S-21. And here again, I will take the
7 liberty of specifying that the victim's name is also not on the
8 prisoners list at S-21.

9 [11.42.50]

10 MR. WERNER:

11 Mr. President, unless I'm mistaken, E2/77 was not listed by the
12 defence lawyers unless I am mistaken. So this can explain why we
13 might be a little bit surprised. So if we could please receive a
14 bit of clarification regarding this.

15 MR. PRESIDENT:

16 The defence counsel, may you respond to that?

17 MS. CANIZARES:

18 Unless I'm mistaken, Mr. President, I believe that the civil
19 party E2/77 was supposed to be initially heard by the Chamber and
20 that person renounced. This is why, since we did not hear her,
21 so therefore the defence was not able to put forth its
22 observations regarding this civil party; well, this is why I took
23 the liberty of including it among the civil parties that have not
24 yet been heard.

25 MR. PRESIDENT:

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1 In the case of E2/77, this civil party was one of the civil
2 parties selected to make statements before the Chamber, but the
3 civil party waived the right to appear before the Chamber;
4 therefore, the civil party was not challenged by the defence
5 counsel.
6 Yesterday, it was clearly stated the inclusion of the E2/77 by
7 the defence counsel on to the list of the civil parties they
8 objected as this E2/77 waived the right to appear before the
9 Chamber. Therefore, the civil party counsel, can you provide any
10 information regarding this or what is your position?

11 [11.45.39]

12 MR. WERNER:

13 Mr. President, as far as I understand, that this civil party
14 belongs to group number 2 and if this is the case, I am not able
15 to provide information.

16 MR. PRESIDENT:

17 The civil party counsel group 2, can you proceed?

18 MR. KONG PISEY:

19 Mr. President, I apologize as I did not receive this information
20 early enough so I cannot respond at this stage.

21 MR. PRESIDENT:

22 Mr. Counsel, when do you think you can respond?

23 MR. KONG PISEY:

24 I will respond once I receive sufficient information, Mr.
25 President.

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1 MR. PRESIDENT:

2 The Chamber is putting this matter before it today and then
3 tomorrow morning, that will be the last time. Actually, the
4 matter regarding this civil party was clearly stated due to the
5 changes made by that civil party involving the right to appear
6 before the Chamber in making a statement and the defence counsel
7 considered that if the civil party were to appear before the
8 Chamber then they could question or challenge the civil party
9 before the Chamber. Therefore, the only time that you can
10 provide your position is only today and tomorrow morning only so
11 please be ready to proceed. And the Chamber has the view that it
12 is appropriate for you to do so tomorrow morning.

13 [11.48.15]

14 MR. KONG PISEY:

15 Thank you, Mr. President.

16 MR. PRESIDENT:

17 The defence counsel, you may now proceed with your next
18 challenge.

19 MS. CANIZARES:

20 E2/81 is intervening on behalf of her father, Mr. Am Thort and
21 her grandfather, Mr. Am Sabin and despite the documents that were
22 provided to us this morning, the defence views these documents --
23 that is to say, a photograph, and we do not know whose photograph
24 it is -- well, considers that these documents are not sufficient
25 to substantiate the kinship between the plaintiff and the victim

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1 and in the same way, there is no element in the file
2 substantiating the fact that the victim was detained at S-21.
3 But in order to clarify, however, the defence would like to
4 stress that on August 12th 2009, documents were addressed to it,
5 but however, these documents which only exist in Khmer do not
6 involve the victims that were brought up but seem to regard a
7 great uncle, Mr. Pot Moy, so that is to say, neither the father
8 nor the grandfather. And whether it is the father or the
9 grandfather or the great uncle, there is none of these three
10 names are on the prisoners lists at S-21.
11 MR. PRESIDENT:
12 Counsel, you may proceed.
13 [11.50.19]
14 MS. MOCH SOVANNARY:
15 Thank you, Mr. President.
16 Before I respond to the challenge raised by the defence counsel,
17 I would like to state about the kinship between the three victims
18 and my client and I would like to provide an explanation and a
19 reason that my client decides to waive his rights to be heard by
20 the Chamber.
21 At that time, in his file, even though we tried to research for
22 supporting documents, we failed to locate any. That's why we
23 made decision to waive the rights to be heard by the Chamber.
24 However, recently, by the research of my client of the document
25 at the genocidal museum at Tuol Sleng, he located a document that

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1 is a biography of the detainee and we submitted the document to
2 the Chamber. It's E2/81.3, ERN 00362274. It is a biography of
3 the detainee at Tuol Sleng and my client verified that the
4 kinship is stated in E2/81.2. That's the victim, Pot Moy, in the
5 biography of the detainee was the grandfather.
6 What is lacking at the moment is the document verifying that the
7 client is a kinship of Pot Moy and I requested my client to make
8 such a document and that we would receive the document next week
9 upon which we would submit it to the Chamber for consideration.
10 Later on, once we found that document, we the counsel did further
11 research and we looked at the database of the Office of the
12 Co-Prosecutor. We found a photograph which was similar to the
13 photo of the father of the client, Am Thort. With the
14 President's leave, I would like to show the similarity between
15 the photo found in the document of the Co-Prosecutor and the
16 photograph provided by my client to prove that it is the
17 photographs of the same person.

18 [11.53.21]

19 MR. PRESIDENT:

20 Yes, the Chamber grants this opportunity. Court officer, can you
21 project the photographs on the slide?

22 MS. MOCH SOVANNARY:

23 I would like to inform the Chamber that this photograph was
24 printed from a small photo from the document. If it is difficult
25 to view, I would like to seek assistance from the A/V Unit to

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1 project the file, the electronic file, from the document instead.
2 This is the photo of the father of the civil party, Am Thort, and
3 my client will provide the certification of kinship and probably
4 it will be in our hands next week. This is the photo of the
5 father of my client that we found in the database file of the
6 office of the Co-Prosecutors.

7 MR. PRESIDENT:

8 The Court officer, you can now remove the photos.

9 MS. MOCH SOVANNARY:

10 Thank you, Mr. President. These photographs have been provided
11 to the defence counsel for their examination and we will submit
12 all these documents to the Chamber either today or tomorrow as we
13 are in the process of preparing these documents to be ready for
14 the submission.

15 [11.55.38]

16 On another point, if we look at the information provided by the
17 civil party in her application, we could see the consistencies of
18 the information in relation to the series of historical events
19 that the Chamber has received through the hearings in the
20 proceedings so far. In that document the civil party said that
21 they lived in the Romeas Haek district in Svay Rieng. That
22 location -- that is the Romeas Haek district under the leadership
23 of Sao Phim and that location was also a target of internal
24 screening at that time.

25 That person was arrested by the CPK and why the CPK did not

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1 arrest his subordinates? We could see that the grandfather of
2 the client, the civil party, Am Sabin, was forced to join the
3 Khmer Rouge military under the leadership of Sao Phim, and the
4 father, Am Thort, as shown in the photographs, was the chief of
5 the security at that time.
6 Later on, in 1977 there was the people from the southwest who
7 entered that group and people were arrested by the southwest
8 group. One day the grandfather of the civil party, as well as
9 the father, were called to a meeting at the Romeas Haek
10 subdistrict office, where they were arrested. At that time the
11 position and the role of this grandfather and the father of the
12 civil party, they held the roles within the Romeas Haek
13 subdistrict and district. Also, from the information provided by
14 my client, after the arrest of the grandfather and the father,
15 the southwest group started to evacuate the base people and there
16 were two or three stages of evacuation.

17 We can see that the information provided by the civil party is
18 consistent and credible and we would like to submit all the
19 informations and documents to the Chamber for decision for my
20 client's civil party application. Thank you.

21 [11.58.32]

22 MR. PRESIDENT:

23 The defence counsel, you may now proceed with your next
24 challenge.

25 MS. CANIZARES:

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1 Concerning Civil Party E2/82, there is very little in the case
2 file, nothing to substantiate a kinship between a plaintiff and
3 victim, nothing to demonstrate that the victim was in S-21; and
4 further, the name of the victim again cannot be found on the list
5 of S-21 prisoners.

6 MS. MOCH SOVANNARY:

7 Thank you, Mr. President. As my international colleague raised
8 from the beginning in her preliminary observation, which was also
9 supported by the Co-Prosecutors, the list of the prisoners
10 prepared by the Office of the Co-Prosecutors is not an ultimate,
11 definite list. That means it does not cover all the names of the
12 prisoners at S-21.

13 Secondly, based on the Rule 87, evidence can be provided in the
14 criminal case by all means. So the Chamber can consider all the
15 relevant informations provided by the civil party in their
16 complaints.

17 This civil party named Man Sothea, he lost his mother, Sem
18 Sokhlim, during the Khmer Rouge reign, during the evacuation of
19 people from Phnom Penh. If we look at the role of his mother,
20 she was the former staff of the Filipino embassy and they wanted
21 the family to live in the Philippines but it was obstructed by
22 the bombardment and by the ultimate fall on the 17th April '75
23 that they could not go to the airport on time.

24 [12.01.02]

25 In the complaint the information states that while on the journey

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1 the mother protested the Khmer Rouge soldiers that, "Why making
2 such a revolution when people were evacuated from Phnom Penh? In
3 my role I should be placed into a vehicle and not to walk on the
4 street." And she added that she wanted to work in Phnom Penh in
5 order to transform that vicious regime, and then she was sent to
6 Phnom Penh.

7 We can now consider where would she be taken to Phnom Penh in her
8 status, as she openly protested against the Khmer Rouge. So from
9 the information provided by the civil party to the Chamber, we
10 learned in details in relation to the principle of smashing by
11 the CPK and the accused also said that S-21 is a criminal
12 mechanism of the CPK policy. Besides smashing enemies they would
13 also try to find the traitorous link through tortures during the
14 interrogation to extract the confession.

15 So based on such information, the mother was sent to Phnom Penh.
16 Maybe she was not killed immediately. Probably she was being
17 tortured and interrogated to find further links and this
18 information is incredible and I would like to submit all these
19 informations to the Chamber for examination and decision, and we
20 will try to look for further information and we reserve the right
21 to submit further informations if we find any.

22 And also in response to the defence counsel on the issue of
23 kinship, I requested my client to prove the kinship and I will
24 wait for response, and once we receive the response it will be
25 submitted accordingly to the parties and to the Chamber. Thank

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1 you.

2 MR. PRESIDENT:

3 Now it is time for adjournment for lunch and the schedule for
4 today's hearing has been changed as it was required and as the
5 Chamber announced this morning.

6 [12.03.45]

7 For this afternoon the Chamber cannot hold the hearing as the
8 Judges have to hold internal meetings to resolve and discuss
9 certain urgent matters. Therefore today's proceeding is
10 adjourned today and it will resume tomorrow morning starting from
11 9 a.m.

12 Security guard, take the accused back to the detention facility
13 and bring him back to the Chamber tomorrow morning before 9 a.m.
14 The hearing is now adjourned.

15 THE GREFFIER:

16 All rise.

17 (Judges exit courtroom)

18 (Court adjourns at 1204H)

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