



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

ឯកសារដើម
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ថ្ងៃ ខែ ឆ្នាំ (Date): 25-Oct-2011, 14:47
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CMS/CF0:.....

TRANSCRIPT OF HEARING
ON SPECIFICATION OF CIVIL PARTY REPARATIONS AWARDS
AND ACCUSED IENG THIRITH'S FITNESS TO STAND TRIAL
PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

19 October 2011, 0900H

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

The Accused: NUON Chea
IENG Sary
IENG Thirith

For the Accused: SON Arun
Michiel PESTMAN
PHAT Pov Seang
Diana ELLIS
ANG Udom
Michael KARNAVAS

Trial Chamber Greffiers/Legal Officers:
DUCH Phary
Faiza Zouakri

For the Office of the Co-Prosecutors:
CHEA Leang
Tarik ABDULHAK
VENG Huot
Vincent DE WILDE D'ESTMAEL
CHAN Dararasmey

For Civil Parties: PICH Ang
Élisabeth SIMONNEAU-FORT
SAM Sokong
LOR Chunthy
Philippine SUTZ
Martine JACQUIN
Hervé DIAKIESE
CHET Vannly

For Court Management Section:
UCH Arun

INDEX

WITNESSES: Dr. LINA HUOT
Dr. SEENA FAZEL

Questioning by The President page 78

Questioning by Judge Cartwright page 80

Questioning by Judge Lavergne page 124

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MS. CHEA LEANG	Khmer
MR. DE WILDE D'ESTMAEL	English
MR. FAZEL	English
MS. JACQUIN	French
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MR. LINA HUOT	Khmer
MR. LOR CHUNTHY	Khmer
MR. PESTMAN	English
MR. PHAT POUV SEANG	Khmer
MR. PICH ANG	Khmer
MR. SAM SOKONG	Khmer
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer
THE PRESIDENT (Nil Nonn, Presiding)	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0900H)

3 (Judges enter courtroom)

4 [09.00.54]

5 MR. PRESIDENT:

6 Please be seated.

7 Today, the Trial Chamber in the Extraordinary Chambers in the
8 Courts of Cambodia opened a public hearing in regards to the
9 reparations for the Civil Parties and the fitness to stand trial
10 of Ieng Thirith.

11 As in the scheduling order dated 10th September 2011, the
12 composition of the bench is the following: myself, Nil Nonn, the
13 President, Judge Silvia Cartwright, Judge Ya Sokhan, Judge
14 Jean-Marc Lavergne, Judge You Ottara, and we have two reserve
15 judges, Judge Thou Mony and Judge Claudia Fenz.

16 In my capacity as the President of the Trial Chamber and on
17 behalf of my fellow Judges, I would like to welcome the
18 Co-Prosecutors, Co-Lawyers for the Accused and the Civil Party
19 Lead Co-Lawyers to this hearing.

20 [09.03.21]

21 The purpose of this hearing is to allow consideration of all
22 issues arising from the experts' report of the Trial Chamber's
23 psychiatric experts appointed by the Chamber on 23 August 2011.

24 This report was submitted jointly by the psychiatric experts and
25 distributed to the parties on Monday 11th October 2011. The

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1 report was supplementary to the conclusions reached by an early
2 expert geriatrician concerning the accused Ieng Thirith's
3 cognitive impairment. The psychiatric experts had been requested
4 by the Chamber to provide specialist psychiatric expertise to
5 enable the Chamber to determine Ieng Thirith's fitness to stand
6 trial.

7 This hearing will allow questioning of the psychiatric experts by
8 the Chamber and the parties in addition to adversarial argument
9 by Ieng Thirith's defence, the Co-Prosecutors, and the Civil
10 Party Lead Co-Lawyers in relation to the conclusions of the
11 psychiatric experts' report concerning the accused Ieng Thirith's
12 fitness to stand trial.

13 On 23 September 2011, the Trial Chamber also invited the Civil
14 Party Lead Co-Lawyers to supplement and to update the initial
15 specifications provided by them at the initial hearing concerning
16 the substance of the reparations awards, the intent to seek
17 within their final reparations claim.

18 The Chamber stresses that the purpose of the hearing is for the
19 Lead Co-Lawyers to provide the Chamber with more precise
20 specifications of the type of reparations awards they intend to
21 seek. Pursuant to Internal Rule 23 quinquies 3, they are required
22 only to supplement, update and, where necessary, amend the
23 initial specifications provided at the initial hearing in
24 accordance with the guidelines given to them in the Trial
25 Chamber's memorandum of 23 September 2011. This hearing will

3

1 commence by providing the Lead Co-Lawyers with this opportunity.

2 [09.06.41]

3 May I now declare the hearing open?

4 Greffier, can you report the attendance of the parties who are
5 summoned and allowed to attend this party by the Trial Chamber,
6 including the psychiatric experts who have been invited by the
7 Chamber as well?

8 THE GREFFIER:

9 Good morning, Mr. President.

10 The parties to the proceeding are as follows.

11 The prosecution is all present. Nuon Chea's Defence is present.

12 Ieng Sary's Defence is present. Ieng Thirith's Defence is

13 present. Khieu Samphan's Defence has notified the Chamber that

14 they will not participate in today's hearing. Nuon Chea is

15 present. Lead Co-Lawyers are present, and we have one

16 international Civil Party lawyer who was not yet recognized by

17 the Chamber -- is also present. The two experts summoned by the

18 Trial Chamber: one national, he is present and has already taken

19 an oath; for the international expert, he will arrive at 11 a.m.

20 The two experts have no affiliation or relationship with the

21 Accused or the Civil Parties.

22 Thank you.

23 MR. PRESIDENT:

24 Thank you, Greffier.

25 [09.08.54]

4

1 Before we start the hearing as scheduled, the Chamber would like
2 to proceed with the recognition of lawyer. Pursuant to Rule
3 22.2(a) of the Internal Rules, the Chamber would like to invite
4 each national lawyer and Mr. Pich Ang to proceed with the request
5 for the recognition of foreign lawyers not previously recognized
6 by the Chamber.

7 MR. PICH ANG:

8 Good morning, Mr. President, Your Honours. Good morning to the
9 prosecution and all the lawyers and everyone.

10 My name is Pich Ang. I am national Lead Co-Lawyer and I'd like to
11 request to the Trial Chamber to recognize one international
12 lawyer who is from the ASF. The name is Hervé Diakiese, who
13 already took an oath at the Court of Appeals of the Kingdom of
14 Cambodia to profess as a lawyer.

15 Thank you.

16 MR. PRESIDENT:

17 Thank you, Mr. Pich Ang.

18 Mr. Hervé Diakiese, you are now recognized by this Trial Chamber
19 as a lawyer for the purposes of the trial proceedings before this
20 Chamber, and, pursuant to this recognition, you enjoy the same
21 rights and privileges as a national lawyer. You may be seated.

22 [09.11.40]

23 Having completed all formalities concerning the recognition of
24 foreign lawyers, the hearing will now proceed.

25 Under the Internal Rules, as amended, the Civil Party Lead

1 Co-Lawyers may propose reparations initiatives designed or
2 identified in cooperation with the Victims Support Section and
3 supported by external funding. Pursuant to Internal Rule 23
4 quinquies 3(b), the success or otherwise of these initiatives
5 will depend on the ability of the Victims Support Section to
6 obtain sufficient funding in support of each initiative and to
7 oversee their successful implementation. A purpose of the initial
8 specification of reparations awards is to permit the Chamber
9 oversight as to their conformity or otherwise with the ECCC legal
10 framework and to enable early guidance to be provided where
11 necessary.

12 The Chamber considers this to be a vital component in ensuring
13 that measures pursued by the Lead Co-Lawyers over the course of
14 proceedings in Case 002 are within the scope of the Internal
15 Rules and may therefore result in meaningful outcomes for victims
16 and an optimal utilization of resources, both by the Victims
17 Support Section and external donors.

18 [09.13.37]

19 Under the Internal Rules, the Lead Co-Lawyers are obliged to
20 provide initial specifications of the substance and the mode of
21 implementation of each reparation claim sought. The purpose of
22 these initial specifications is to encourage sufficient
23 specificity and advanced planning and to ensure that meaningful
24 reparation can result through Civil Parties within the ECCC's
25 lifespan. It is therefore entirely to the benefit of the Civil

6

1 Parties that as much specificity as possible is provided to the
2 Chamber at an early stage regarding reparations measures sought
3 on their behalf.

4 In its memorandum of 23 September 2011, the Trial Chamber made a
5 number of observations regarding the Lead Co-Lawyers initial
6 reparations' specifications provided at the initial hearing. It
7 now invites them to take the floor in order to supplement them.
8 The Chamber would like now to give the floor to the Lead
9 Co-Lawyers for Civil Parties to make their presentation of the
10 reparation awards they intend to claim.

11 Thank you.

12 MS. SIMONNEAU-FORT:

13 Good morning, Mr. President, Your Honours. Good morning to
14 everyone in the courtroom.

15 The Civil Party Lead Co-Lawyers and the Civil Parties appreciate
16 this opportunity to provide the Chamber with the additional
17 details -- in fact, many details it requested after the initial
18 specifications at the initial hearing of June 29, 2011.

19 [09.16.21]

20 We are mindful, perhaps more than anyone else, of the importance
21 of reparations to a judicial process, and the Civil Parties would
22 not participate in the trial if it were not for the fact that
23 reparations are their ultimate goal. Reparations necessarily go
24 hand in hand with the sentence in any criminal trial which
25 entails Civil Party participation.

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1 We are pleased to note that the ECCC allowed Civil Party
2 participation, a first in international justice. Needless to say,
3 this adds an extra dimension to the trial along with the
4 obtaining of additional constraints, uncertainties and debates.
5 Now, even while Civil Party participation may prolong the trial,
6 in itself, the fact that this trial concerns the Democratic
7 Kampuchea regime makes it worthwhile.

8 It is difficult to conceive of a trial concerning crimes which
9 have touched each family, each and every village in Cambodia,
10 crimes that left visible traces 30 years on -- it would be
11 difficult to conceive such a trial without victim participation.
12 So who better than they can legitimately tell the story and
13 demand that the truth be brought to light and justice rendered?
14 Now, what constitutes the gravity of the crimes at issue, what
15 could, depending on the Chambers assessment, constitute crimes
16 against humanity, war crimes or genocide is that they were
17 committed against individuals who, directly or indirectly, are
18 demanding that justice be found. Without victims there can be no
19 crime. While this may sound obvious, there could be a temptation
20 not to allow Civil Party participation, whereas the Civil Parties
21 are the ones who symbolize and represent all victims.

22 [09.18.37]

23 The Chamber requested further particulars concerning reparations.
24 We welcome this request because it shows that the Chamber is
25 mindful of the interests of Civil Parties and of the reparations

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1 they will be awarded should guilt be established.

2 Now, within the time limits accorded to us, we will provide Your
3 Honours with all of the necessary details beginning with the
4 status report on the development of projects as well as an update
5 on the work that we are undertaking with members of civil
6 society, NGOs and other entities.

7 We will also talk about the legal framework within we work; that
8 is, the legal framework of the ECCC and also make reference to
9 other frameworks.

10 We will provide further particulars as requested by the Chamber.

11 We will also present personal thoughts that are substantiated in
12 various ways and we will provide responses to the Chamber's
13 observations made in Memorandum E125.

14 Once we have provided the details and initial specifications on
15 what we consider to be the legal framework concerning
16 reparations, without repeating what has already been said at the
17 initial hearing, we will go over the projects one by one while
18 supplying further particulars and explanations in each instance.

19 I wish to add that our observations today are the fruit of
20 collective work and consultations carried out amongst Civil Party
21 Lawyers and Civil Parties.

22 If I may, Mr. President, I will hand the floor over to my
23 esteemed colleague, Counsel Martine Jacquin, who is one of the
24 Civil Party Lawyers who remain at the sides of their clients and
25 who are defenders of Civil Parties and who all speak today with

1 one voice.

2 [09.21.15]

3 Thank you, Mr. President.

4 MR. JACQUIN:

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

6 I will develop three different topics. First of all, the
7 development process of the reparation claims of the Civil Parties
8 in cooperation with civil society and then the legal context and
9 the related restrictions and we will be facing a problem, which
10 are the consequences of the appeal and the consequences of the
11 severance on the Civil Party reparations.

12 First of all, please allow me to describe rapidly how, in view of
13 the rights and wishes of the Civil Parties, we have worked. As
14 the Co-Investigating Judges handed down their admissibility order
15 that admitted Civil Parties in Case 002, the Civil Party Lawyers
16 and VSS and our partner organizations launched a consultation
17 process in depth of the 2,129 Civil Parties living in Cambodia
18 and abroad. And having received the results of these
19 consultations, the co-lead lawyers for the Civil Parties as well
20 as lawyers acting in cooperation with the VSS and with the NGOs
21 carried out an exhaustive analysis and a synthesis of all of the
22 data to draw the areas in which the Civil Parties will express
23 their wishes and the obligation is, in fact, following the
24 Internal Rules to provide the first indications on the nature of
25 the reparations sought and we tried to articulate our common

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1 fields of interest to come up with coherent projects that are
2 feasible.

3 [09.23.20]

4 And an important element in this process must be underlined. The
5 wishes of the Civil Parties in Case 002 reflected quite often
6 reparations that had been requested in Case 001. These are
7 requests that had been dismissed by the Trial Chamber in its 26
8 July 2010 judgement and the Civil Party lawyer in Case 001
9 appealed to the Supreme Court and the Chamber still has to issue
10 its decision; therefore, we were obliged to oblige with little
11 information or without any legal landmarks and despite these
12 problems, we have defined in June 2001 four categories of
13 requests which regroup several sub-categories.

14 And on June 24th, that is to say, five days before the date when
15 the Co-Lawyers were obliged to provide their first indications,
16 1,750 people whose initial Civil Party application had been
17 rejected were admitted. And this new element was, of course, a
18 matter of satisfaction for us, but, of course, it had an obvious
19 impact on the first indications that we provided that only
20 represented about half of the wishes of the Civil Party
21 collective.

22 On June 29th, pursuant to Rule 80 bis, the Lead Co-Lawyers
23 provided orally their first indications regarding the nature of
24 the Civil Party reparations they are seeking and we wish then to
25 remind the role of Civil Parties in this trial because Civil

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1 Parties are those who are legitimating the reparations.

2 And we also mentioned a few legal points relative to reparations
3 and then we gave an overview of the reparation claims that we
4 consider as first indications on their substance. And we
5 developed these projects with NGOs so that they may take charge
6 of the implementation of certain projects in terms of feasibility
7 as well as in terms of sustainability.

8 [09.25.40]

9 And these specifications that we are providing today is to allow
10 the Chamber to see that the development of these reparation
11 projects, far from being an abstraction, is now projects that we
12 are working on very seriously with the Civil Party Lawyers.

13 And we're going to, now, bring up the legal context and the
14 related obligations in terms of the elements to set these
15 reparations. First, a few observations on Article 90 -- 80 bis
16 [corrects the interpreter].

17 Rule 80 bis, which provides for the initial hearing, provides
18 that "the Chamber can order the Civil Party Lead Co-Lawyers to
19 provide initial specification of the substance of the awards they
20 intend to seek within the final claim." We will not -- though we
21 will not take valuable time here reviewing the arguments, we put
22 before this Chamber during the first initial hearing concerning
23 the interpretation of the co-lead lawyers and the Civil Party
24 Lawyers of Rule 80 bis. Suffice it to say that we arrived at what
25 we consider a reasonable and legally sound assessment of our

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1 obligations under this rule on the basis of which it did not seem
2 to us necessary to come up with multiple interpretations.
3 Occasionally, legal debates might underline disagreements between
4 a party and a court regarding the meaning of a text. Please allow
5 us to express this disagreement. We consider, once again, that
6 Rule 80 bis does not impose upon the Civil Parties at this stage
7 in the proceedings to provide a detailed presentation of the
8 reparation claims that we're developing and even less so on the
9 way these reparations will be implemented.

10 [09.27.46]

11 At this stage and as it is said in Document E86 and E86.1, it is
12 simply required that we present with first indications and that
13 we present the substance of the reparations as we have defined
14 them. However, we consider, in today's hearing, that this is a
15 precious opportunity to provide the court an update on the
16 development of our reparation claims and we hope that this will
17 also be a starting point of a constant discussion with the
18 Chamber on these relevant questions for the development and the
19 final success of these reparations.

20 On the eighth paragraph of its 23 September 2011 memorandum, the
21 Chamber states that the aim of this initial specification is "to
22 encourage sufficient specification and advanced planning and,
23 therefore -- it is, therefore, entirely to the benefit of the
24 consolidated group of Civil Parties to provide to the Chamber as
25 much specificity as possible." Let me take this opportunity to

13

1 reassure the Chamber that the Lead Co-Lawyers and the Civil Party
2 Lawyers are committed to the development of well-planned and
3 legally-sound reparations. We understand our mandate in this
4 regard which is to seek collective and moral reparations on
5 behalf of Civil Parties as set out in Internal Rule 23.

6 We would also reiterate that the identification and design of
7 such reparations is under the purview of the Lead Co-Lawyers and
8 the Civil Party Lawyers and the organs they work with including
9 the Victims Support Section, NGOs and, finally, if necessary,
10 support from the Cambodian Government (inaudible).

11 We would like to respond to what the Court advanced in its 23
12 September 2011 memorandum according to which the initially
13 requested measures were not sufficiently precise for them to come
14 up with meaningful comments. With all respect due that the Lead
15 Co-Lawyers and the Civil Party Lawyers owe to the Chamber while
16 acknowledging that Rule 80 bis of the Internal Rules impose that
17 they must specify the nature of the reparations that they intend
18 to request in their final claim. Nothing in this rule seems to
19 provide for the Chamber to be involved in the planning nor to
20 announce an initial decision nor even to formulate meaningful
21 comments with obligations attached to it.

22 [09.30.37]

23 We would like to insist upon the fact that the Civil Party
24 Lawyers (Civil Parties, corrects the interpreter) constitute a
25 distinct and important part in the proceedings before the ECCC.

14

1 Although we understand that advanced planning is essential if we
2 want to make sure that these reparations are ready before the
3 judgement, we must also pay attention to legal issues that will
4 affect the development of the reparations as well as the desires
5 expressed by the Civil Parties.

6 At this stage in the proceedings, while -- as the trial has not
7 yet started and while a conviction has not been handed down, it
8 seems to us premature to discuss more in detail what involves the
9 planning of these reparation projects.

10 Following the Case 001 judgement, the reparations were appealed
11 and this appeal is still pending before the Supreme Court
12 Chamber. Even if modifications have been provided through the
13 Internal Rules that change in a significant way the rules that
14 were applied in Case 001, a certain number of points remain that
15 have not yet been clarified by these modifications and that may
16 be so thanks to the final appeal judgements. The legal rule
17 allows parties to challenge a decision which represents a
18 fundamental right that Civil Parties have used and today,
19 respectfully, we are expressing our disagreements.

20 [09.32.11]

21 The first difficulty resides in the fact that in the judgement
22 that was handed down in Case 001 in terms of reparations, the
23 Chamber did not present the legal reasons nor the grounds and in
24 the absence of such a presentation, the Civil Parties have to --
25 only -- can only rely on hypothesis. This gravely handicaps the

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1 Lead Co-Lawyers as well as the Civil Party Lawyers in their
2 mission of defending the Civil Party interests. It is also in
3 contradiction with the numerous provisions of the Internal Rules
4 as well as with international law guaranteeing reparations to
5 Civil Parties which -- and it is necessary to note that the
6 Chamber seems to have adopted a rather restrictive interpretation
7 of the notion of collective and moral reparations and cast aside
8 reparation measures that would -- that would benefit the
9 collective, but which they qualified as individual because the
10 Chamber does not allow us to have certainty. More specifically,
11 the questions relative to a trust fund requiring government
12 authorization are now being appealed.

13 [09.33.38]

14 Regarding this first point, the Civil Party Co-Lawyers are
15 arguing that the Chamber in Case 001 omitted to treat this trust
16 fund issue nor the request to create such a fund nor the simple
17 request forcing the Accused to write a letter to the Government
18 of Cambodia so that part of the entrance fees of S-21 be
19 transferred to a trust fund; none of these have been specifically
20 addressed. The Civil Party Lawyers are, therefore, waiting for
21 the Supreme Court Chamber to pronounce itself in regard to these
22 requests.

23 Regarding the second point, that is to say, measures that would
24 require prior authorization from the Cambodian Government, these
25 first requests have been rejected because the Court considered it

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1 beyond its jurisdiction. Here again, the Civil Party Lawyers
2 launched an appeal and they said that if the Court does not have
3 the jurisdiction to require the Court of - the Government of
4 Cambodia to provide reparation, it can ask the Accused to -- ask
5 for reparations against the Accused whose implementation may
6 require participation from the government. And the Kingdom of
7 Cambodia is also under the obligation following its international
8 engagement to provide reparations to the victims of the
9 atrocities of the Khmer Rouge regime.

10 The Supreme Court Chamber was also seized of the -- to consider
11 the degree of specificity that the Trial Chamber may reasonably
12 require; an issue which remains critically important to the Lead
13 Co-Lawyers and the Civil Party Lawyers who are designing and
14 developing the reparation requests that will be presented in Case
15 002.

16 [09.35.30]

17 The Civil Party Lawyers are arguing in their appeal that the
18 Trial Chamber did not -- had not informed the Civil Parties
19 beforehand on the admissibility criteria in view of obtaining
20 reparations. Furthermore, the level of specificity required by
21 the Chamber did not have any legal basis in the Internal Rules of
22 the ECCC and even if the Internal Rules were reduced, the degree
23 of specificity is -- remains an open question for which the
24 decision of the Supreme Court might provide useful -- a useful
25 answer. By applying an extremely high standard in Case 001, the

1 Chamber has damaged and violated the rights of the Civil Parties
2 to reparation.

3 Finally, it is suggested that the Chamber is inspiring itself
4 from other international and regional courts in this matter and
5 mentioned, in particular, the more flexible approach of the IACHR
6 and of the ICC. We are therefore waiting for the Supreme Court's
7 decision on these points and we hope that the indications that
8 will be provided will provide a major contribution to the
9 reparations that are now being developed.

10 And beyond the other arguments that are being presented today,
11 this is an extra reason to believe that it will be completely
12 unreasonable at this stage in the proceedings to wait for the
13 Civil Parties -- to expect from the Civil Parties that they
14 pronounce themselves in a definite way in terms of the reparation
15 claims and that each one of these reparations be ready to be
16 implemented. Therefore, we are waiting for the decision of the
17 Supreme Court to have as clear as possible a picture of the
18 framework in which we will have to operate.

19 And I will now bring up the consequences of the reparation
20 requests -- of the consequences of severance on the claims for
21 reparations that on 22 September 2011, the Trial Chamber issued
22 an order to sever the case pursuant to Rule 89 ter of the
23 Internal Rules by which it decided, and I quote here, "to sever
24 the prosecution in Case 002 and to divide them into a certain
25 number of discrete cases that incorporate particular, factual

1 allegations and legal issues".

2 [09.37.56]

3 It decided that the first trial that will be held in Case 002
4 would be based on forced transfers, phases 1 and 2, and on crimes
5 against humanity excepting persecution for religious reasons and,
6 in so doing, it also excluded cooperatives, work sites, security
7 centres, execution sites and the third population transfer. It
8 finally excluded from the charges of genocide and of grave
9 violations of the Geneva Codes of 1949. The Chamber, however,
10 indicates that it reserves itself the right to include, at any
11 moment, the examination of other charges in the context of the
12 first trial under the condition, however, that the defence's
13 rights, of course, are respected.

14 The Co-Prosecutors filed a submission to review the severance
15 order of 14 October and this submission or this motion, which
16 according to an email of 17 October 2011, will be dismissed. On
17 18 October, the Civil Parties also filed a review request
18 supporting partially the Co-Prosecutors in their approach;
19 however, the Chamber also issued on 18 October a decision to
20 dismiss this motion even before having received the motion. The
21 Civil Parties are concerned by the fact that according to the
22 Chamber and I will quote:

23 "Severance separating procedures in Case 002 has no incidence on
24 the nature and the participation of the Civil Parties at this
25 stage nor on the way that the co-lead lawyers may request

1 reparation in their name."

2 [09.39.51]

3 In its dismissal to defer this hearing, the Chamber acknowledged
4 that the severance may have consequences on reparations and we
5 will start by saying that these consequences are not a
6 possibility, but a certainty.

7 Pursuant to Rule 23 quinquies 2(b), a request for reparations
8 must include --

9 MR. PRESIDENT:

10 The Trial Chamber would like to remind Civil Party lawyer who is
11 speaking on behalf of the Lead Co-Lawyers and who is swerving
12 away from the topic being discussed pursuant to the scheduling
13 order issued that the Chamber would like the co-lead lawyers to
14 provide the specification of the reparation in this hearing. This
15 hearing is not for the discussions concerning the severance of
16 proceedings.

17 Secondly, the Lead Co-Lawyers are advised to come back to talk
18 about the topics as stipulated in the scheduling order that is to
19 provide the specifications or additional specifications of the
20 reparations sought pursuant to the Internal Rules as amended for
21 the purpose to safeguard the interests of all Civil Parties
22 concerning Case 002.

23 On behalf -- on my behalf as the President of the Trial Chamber,
24 I hope the Lead Co-Lawyers understand clearly the content of the
25 scheduling order as to what should be discussed in today's

20

1 hearing and, as we can see, the scheduling order has already
2 provided clear guidelines as to what is to be discussed today, so
3 once again, the Lead Co-Lawyers are advised to coordinate among
4 Civil Party Lawyers regarding the discussions to all the
5 presentations to be provided.

6 [09.43.07]

7 If you do not have anything to add, we can move on to the next
8 agenda item because we do not want to accommodate any off topic
9 discussion.

10 MS. SIMONNEAU-FORT:

11 Mr. President, thank you for your comments. We understand them
12 very well and we have abided by the directives that were issued
13 in your order.

14 We were asked to provide specifications on our initial -- at the
15 initial hearing with respect to the request for reparations, and
16 we cannot do so without referring to the Internal Rules, without
17 referring to the legal framework within we work and without
18 talking about the methods that are permitted.

19 [09.44.08]

20 Now, we were asked to talk about the development of each and
21 every project for which we will be providing technical as well as
22 contextual details. However, as an introduction, we must talk to
23 you about the legal framework as set out in the Internal Rules as
24 understood by the Chamber and as indicated in E-125, and also in
25 light of the pending appeal and the effects on our

21

1 specifications.

2 Now, allow me to impress upon the bench that we have -- we are
3 reaching a conclusion on our discussion about the legal framework
4 and we will soon be addressing each and every category of
5 reparations we intend to solicit.

6 [09.45.10]

7 I would also wish to say that what we are presenting before you
8 this morning is not an individual opinion of any one Civil Party,
9 but an echo of the consolidated group of Civil Parties. Now, if I
10 may, Mr. President, we would just -- if you would just allow a
11 few more minutes for us to conclude our discussion on the legal
12 and procedural framework as well as the consequences of the
13 severance order on our request for reparations.

14 (Judges deliberate)

15 MR. PRESIDENT:

16 Thank you, Madam Lead Co-Lawyer for Civil Parties. However, the
17 Trials Chamber do not allow the Lead Co-Lawyers or the
18 representing Civil Party Lawyers to talk about or to give comment
19 concerning the severance order. We do not need to talk any
20 further about how we should conduct this case in large magnitude.

21 [09.46.58]

22 Secondly, we have limited time and, as planned, this morning is
23 devoted to Civil Parties reparation, and we also reserve some
24 times to provide to other parties who wish to respond or to give
25 comments to your presentation. That is why we need to be very

22

1 clear in terms of time management, not only for this particular
2 hearing, but in the future, we will be this strict concerning the
3 time allowed and what to be discussed in the hearing.

4 Every party is advised to be abided(sic) by the order or the
5 scheduling order. So I hope this is clear. Parties are not
6 allowed to talk about something outside the topic.

7 MS. SIMONNEAU-FORT:

8 Very well, Mr. President. We will make no comments on the
9 severance order.

10 [09.48.15]

11 Now, we were told that we are allocated three hours and, as I
12 understand it, we have not exceeded this time limit, so we shall
13 continue.

14 MS. JACQUIN:

15 Mr. President, Your Honours, allow me to talk about the state of
16 affairs.

17 Now, the co-lead lawyers and the Civil Party Lawyers are still
18 consulting the Civil Parties who were newly admitted in June.
19 These consultations are still underway. Given the constraints and
20 restrictions that are entailed by some of the logistical
21 difficulties and the transportation issues that we face, despite
22 this, we are committed to undertaking exhaustive consultations
23 with all Civil Parties.

24 [09.49.10]

25 We believe that this consultation process is absolutely

23

1 indispensable, without which we cannot function, to which Civil
2 Parties are entitled and which provide Civil Parties with the
3 sense that they have access to justice.

4 The Lead Co-Lawyers and Civil Party Lawyers are reassured under
5 paragraph 11 with respect to -- all victims have the right to
6 effective reparations. The International Court for Transitional
7 Justice said so very well, that all Civil Parties have the right
8 to fair and effective reparations.

9 The Lead Co-Lawyers and Civil Party Lawyers will continue their
10 dialogue with the Civil Parties in this very respectful
11 consultation process and make sure that they receive reparation
12 for the suffering and harm that they were inflicted. By
13 proceeding in such a way, we will not compromise the presentation
14 of initial specifications. This will only reinforce our chances
15 of obtaining the reparations and providing stronger legal basis
16 to them.

17 [09.51.12]

18 Mr. President, Your Honours, I will now hand the floor over to my
19 colleague, Mr. Ang Pich. However, I want to thank you for having
20 listened to us and for speaking on behalf of the 4,000 Civil
21 Parties of the consolidated group, and not only the 1,200 Civil
22 Parties who gave us a very specific mandate. It was essential for
23 them to be heard by Your Honours and be recognized as Civil
24 Parties. They hold great hope in having justice be rendered.

25 MR.PRESIDENT:

24

1 Counsel Pich Ang.

2 MR. PICH ANG:

3 Good morning, Mr. President. Good morning, Your Honours. Good
4 morning, ladies and gentlemen who are present here.

5 [09.52.17]

6 To continue, I would like to hand over to Mr. Sam Sokong to
7 provide response to the observations of the Trials Chamber
8 concerning the reparation request. And I will follow by giving
9 the update and further details of the initial specification on
10 reparations. So I seek your permission to hand over to Mr. Sam
11 Sokong.

12 MR. PRESIDENT:

13 Counsel Sam Sokong, you may now proceed.

14 MR. SAM SOKONG:

15 First of all, good morning, Your Honours. Good morning, Mr.
16 President. My name is Sam Sokong, representing Civil Parties in
17 Case 002.

18 [09.53.40]

19 I would like to respond to the observation of the Trials Chamber
20 concerning the specification of -- on reparations that Civil
21 Party Lawyers sought in our last application.

22 In its document E-24, the Trials Chamber determined the legal
23 framework concerning the legal reparation. The Trials Chamber
24 provided initial observations with regards to the presentation of
25 the reparation at the initial hearing.

25

1 We would like to take this opportunity to respond to these
2 observations and to provide further clarifications with regards
3 to the -- with regards to our initial specification on
4 reparations as sought by Civil Parties' Lawyers as well as the
5 Lead Co-Lawyers. We will talk first about the collaboration
6 amongst our partners.

7 [09.55.05]

8 Both the Civil Party Lawyers and the Lead Co-Lawyers understand
9 that the burden to coordinate the projects is not on the co-lead
10 lawyers themselves alone, but this is also the role of the Civil
11 Party Lawyers to implement any other non-judicial measures and to
12 work closely with intermediaries pursuant to Internal Rule 23
13 quinquies 3(b). Accordingly, after several months of facilitation
14 among the Lead Co-Lawyers and Civil Parties' Lawyers, we have
15 held many meetings with the Victim Support Section project
16 management in order to determine the type of projects and the
17 nature of the projects.

18 Indeed, these projects or, rather, these measures will be
19 implemented through projects supported by donors as well as other
20 organizations.

21 [09.56.42]

22 The Victim Support Section has been working closely with other
23 concerned stakeholders to continue developing the projects and
24 how to implement those projects. However, at the same time, we
25 need to understand clearly the work that we need to give to the

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1 Lead Co-Lawyers that is how they are going to do, and we
2 understand that this is something new that we have had -- we
3 never had this work before in other international courts.
4 We have worked with -- we require technical staff as well as a
5 large amount of money in order to implement projects that are
6 both collective and moral, so we need to support -- Victim
7 Support Sections to have sufficient staff and resources to
8 implement those actions.

9 [09.58.00]

10 In the Trials Chamber memorandum on the 23rd of September, 2011,
11 the Trials Chamber indicated that the reparation is outside the
12 scope of the ECCC legal framework. On that point, the Chamber
13 referred to the Duch Judgment and to the Internal Rule 23
14 quinquies 1. However, it appears that neither of these
15 authorities offered the basis for rejecting the request for a
16 trust fund established especially to pay for legally acceptable
17 reparations.

18 I would like to indicate that what we are doing is not to do
19 independently, but it is -- it requires participation from other
20 concerned parties, concerned organizations, that it seeks finance
21 to support the reparations. But Elizabeth Simonneau-Fort will
22 specify the details.

23 [09.59.38]

24 Concerning the projects that seek approval from the Royal
25 Government, in response to the memorandum of the Trials Chamber,

1 the Trials Chamber indicated that some reparations requests may
2 fall outside the scope as allowed by the ECCC because it falls
3 under the competence of the Royal Government.

4 [10.00.19]

5 In that same paragraph in the memorandum, the Trials Chamber
6 indicated or referred to the request for the public holiday,
7 which the Trials Chamber states that the Trials Chamber does not
8 have any competence to avoid such a day. The Civil Lawyers would
9 like to indicate that -- would like to submit that we need to
10 seek approval from the Royal Government or, rather, the Civil
11 Party Lawyers would like to submit that we do not need to seek
12 approval from the Royal Government before the reparation request
13 can be granted.

14 [10.01.18]

15 In the drafting of Rule 23 quinquies 3(b), which states that the
16 Court may be recognize a specific project that gives effect to
17 the award and so have been designed to identify it in cooperation
18 with Victim Support Services for projects such as the institution
19 of a remembrance day, we do not seek the Courts to order such
20 institution against the government. Instead, we seek to liaise
21 with the government with the assistance of VSS prior to making
22 our final request, at which time we will simply be seeking the
23 Court to recognize the fruits of the process.

24 This is fully within the purview of the Lead Co-Lawyer to request
25 and the Trial Chamber to award, and the Internal Rules. The

1 required specificity of other measures in its 23rd September,
2 2011 memo to the Lead Co-Lawyers, the Trial Chamber observed that
3 a number of other measures sought let sufficient specificity to
4 enable the Chamber to give meaningful comment at this stage.
5 Through aspects of this observation beg a response, namely, the
6 definition of "sufficient specificity" and the need or
7 appropriateness of the Trial Chamber giving meaningful comment at
8 this stage, without a decision on the appeal from Case 001, the
9 Lead Co-Lawyers and the Civil Party Lawyers only have Case 001
10 Judgment and the Internal Rules to look to for the requisite
11 standard of specificity.

12 [10.03.48]

13 In the Case 001 Judgment, the Court's Trial Chamber stated that
14 "a prerequisite to the grant of an award is the clear
15 specification of the nature of the relief sought."

16 In its ruling on reparations, the Chamber rejected a number of
17 Civil Parties' reparation requests on grounds that they first
18 lacked specificity, yet the Chamber did not articulate what would
19 constitute a sufficiently clear specification.

20 [10.04.44]

21 It bears mentioning that there is no reference to a clear
22 specification requirement in either the applicable rules,
23 Revision 3 of the Chamber's direction on proceedings, relevant to
24 reparations and on the filing of final written submissions, in
25 fact, the Chamber did not cite any rule, precedent or other legal

1 basis to justify how it arrived at this requirement.

2 The words used in the amended Internal Rule that is the
3 specification does not provide the interpretation of the
4 definition of that word, the word "specific", and also, the Trial
5 Chamber did not provide its interpretation of the standard.

6 In its recent memorandum to Civil Party Lead Co-Lawyers dated 23
7 September, 2011, the Chamber again reiterated the obligation of
8 Civil Parties to provide sufficient specificity without defining
9 or clarifying the terms. Without clear direction from the Chamber
10 or the Rules, Civil Parties lack the necessary guidance to tailor
11 their reparations request to satisfy what the Chamber asks of
12 them. Most Civil Parties' requests provide the precise locations
13 at which they seek to have memorials erected. Must Civil Parties
14 assess potential costs of implementation and identify funding
15 sources? Must Civil Parties identify the exact contents to be
16 included in an educational initiative?

17 [10.06.51]

18 Though it is convenient to say yes to these questions, such a
19 response would neither be reasonable to Civil Parties, nor
20 supported by international law or standards. The Rules of
21 Procedure and Evidence of the International Criminal Court are
22 instructive as to how the international jurisprudence approaches
23 the specificity of reparations requests.

24 The ICC Rules state that, there is 91(b), reparations requests
25 must contain a description of the injury, loss or harm as well as

1 claims for rehabilitation and other forms of remedy. Nowhere in
2 the Rules are the terms "sufficiently specific" or "specificity"
3 employed.

4 [10.07.55]

5 Based on these Rules, it appears that as long as the Civil
6 Parties request awards appropriate to the harm, the Chamber will
7 consider them viable. These Rules have not yet been put into
8 practice, so there is no case law demonstrating how the ICC
9 interprets the Rules regarding reparations. Nevertheless, the
10 plain language of the ICC Rules does not require a high degree of
11 specificity.

12 Unlike the ICC, the Inter-American Court of Human Rights has a
13 body of case law that undermines the seemingly high threshold for
14 specificity set by this Court. The Inter-American Court of Human
15 Rights case law demonstrates that courts do not require victims
16 to request reparations with a requisite level of specificity. In
17 "Mapiripán Massacre" v. Colombia, the Court reasons that "given
18 the gravity of the facts in the instant case, the killings,
19 disappearances and forced displacement of the Mapiripán's people
20 and the situation of partial impunity, the intensity of the
21 suffering caused to the victims changes any conditions of the
22 assistance and other pecuniary or non-pecuniary consequences, the
23 Court deems it necessary to order payment of compensation for
24 non-pecuniary damages in fairness."

25 [10.10.20]

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1 In its decision, the Court stated that the state must build an
2 appropriate and dignified monument in remembrance of the facts in
3 the "Mapiripán Massacre" and it must be placed in an appropriate
4 public space in Mapiripán within a year.

5 That Court did not obligate victims to state the exact number of
6 memorials sought, their envisaged location or estimated cost
7 requirements. The ECCC imposed on Civil Parties who made similar
8 requests for memorials and pagodas in Case 001. The fact that the
9 Court has never defined what it means by "required specificity"
10 or "sufficiently specific" and that the terms --

11 MR. PRESIDENT:

12 I'd like to give the floor now to the Defence Counsel.

13 MR. SON ARUN:

14 Mr. President, my client is not well. He has a severe headache
15 and he could not sleep last night, and he tried to attend the
16 hearing. However, he would like to be excused now.

17 MR. PRESIDENT:

18 Your request is granted, and due to the health issue just raised,
19 he is excused.

20 [10.12.38]

21 Guards, you may now escort Nuon Chea back to his room, and he is
22 not required for this afternoon or tomorrow's hearing.

23 (Nuon Chea exits courtroom)

24 MR. PRESIDENT:

25 Civil Party Lawyer, you may now continue your presentation.

1 MR. SAM SOKONG:

2 Thank you, Mr. President.

3 [10.13.17]

4 The fact that the Court has never defined what it means by
5 "required specificity" or "sufficiently specific" and that the
6 terms have no precedent in international law, the Civil Parties
7 are left to guess at what they must provide to satisfy the Court.
8 They should not have to bear this added burden. If anything, with
9 the reparations to which they are legally entitled hanging in the
10 balance, they should be given clarity as to what is expected of
11 them and it must be in line with international law norms.

12 [10.14.19]

13 In order to conclude the types of the initial specifications, the
14 Trial Chamber's statement mentioned that in order to enable the
15 Chamber to provide meaningful comment at this point and also, for
16 the list of all the Civil Parties in Case 002, the Lead
17 Co-Lawyers and the Civil Party Lawyers agree that this is a start
18 point for all the reparations, and these rules are within the
19 legal framework of the ECCC and shall be applicable in Case 002.

20 [10.15.16]

21 The request for reparations or the not granting of it might have
22 an impact on the -- within the legal framework of the ECCC.
23 Moreover, the measures are far distant from the other reparations
24 allowed to be established within the framework of the Internal
25 Rules of the ECCC and other international norms.

33

1 When it comes to the right of making reparations claims by the
2 victims who are Civil Parties, due to the violations of the
3 international law or the international humanitarian law, the
4 reparations shall be proportionate to the seriousness of the
5 violations and the harm suffered. Despite the challenges faced by
6 the Chamber, it should have the ability to provide reparations or
7 to provide these awards besides the publications of the judgment
8 where many Cambodian people are able to receive.

9 [10.16.47]

10 As raised by the International Lead Co-Lawyer, I'd like to
11 conclude my presentation now and give the floor back to the
12 National Lead Co-Lawyer on the specific projects proposals for
13 the reparations.

14 Thank you, Mr. President.

15 MR. PICH ANG:

16 Mr. President, Your Honours, I would like to provide the bench
17 with the update and further details of the initial specifications
18 on reparations that the Lead Co-Lawyers and the Civil Parties
19 Lawyer intends to seek from your Chambers on behalf of our Civil
20 Parties clients.

21 [10.17.54]

22 On my part, I need about 20 minutes to provide the specifications
23 of the projects in three categories, and my colleague, Elizabeth
24 Simonneau-Fort, will supplement that with another category of the
25 projects.

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1 [10.18.17]

2 Now it is 20 past 10:00. I am not sure whether the President
3 would like me to continue with my 20-minute presentation or we
4 should have a break now.

5 MR. PRESIDENT:

6 You may proceed with your presentation.

7 MR. PICH ANG:

8 After we have a word and consulted with the Civil Parties and the
9 Civil Party Lawyers as well as the Victim Support Section and
10 other intermediary organizations, in our quest to seek
11 reparations for our Civil Parties, we have already provided the
12 Chamber with the four categories. And I will now try to provide
13 the Chamber with the specific projects for those categories.

14 [10.20.04]

15 The first category relates to the remembrance or memorialisation,
16 and the second project is with regard to rehabilitation. The
17 third one is the documentation/education, and we also have other
18 projects under the category 4. In the other categories, or
19 Category 4, there could be projects formulations which are still
20 under the pipeline, and what we have provided the Chamber now is
21 the preliminary description of certain projects.

22 [10.21.07]

23 Regarding Category 1, that is, remembrance and/or
24 memorialisation, encompasses a range of reparation measures aimed
25 at commemorating the lives and dates of victims, including the

1 Civil Parties and the younger generations, as well as providing
2 literal and metaphoric spaces for grieving and reflection. By
3 synthesizing the 28 individual requests submitted by various
4 legal teams, the Lawyers identified distinct sub-categories that
5 capture all remembrance-related requests: (1) facilitation of a
6 memorial day; (2) stupas and monuments; (3) ceremonies, and (4)
7 preservation of crime sites.

8 [10.22.13]

9 The first project is called advocacy project to create a national
10 and international memorial day. This project intends to achieve
11 the establishment of a memorial day in order to obtain some
12 symbolic, permanent recognition and collective remembrance of the
13 crimes committed during the Khmer Rouge regime.

14 This award would benefit all Civil Parties and would create one
15 day a year where the Civil Parties and the Cambodian population
16 can meet and organize religious and non-religious ceremonies for
17 the victims and their relatives according to their own beliefs
18 and cultural identity. This award is of benefit to the Civil
19 Parties, as it would help the Civil Parties to recover their
20 integrity and to get from the state and the international
21 community the recognition of an official date to pray and
22 organize religious and/or non-religious ceremonies dedicated to
23 their loved ones.

24 [10.23.41]

25 So far, no consensus has yet been reached on the appropriate day

1 to establish the memorial day. The different legal teams have
2 suggested dates ranging from an additional day added to Pchum Ben
3 to a national ecumenical day up to 17 April. Further discussions
4 on this topic will be held.

5 Furthermore, some groups have pleaded to have memorial days that
6 specifically would remember particular crimes, such as forced
7 marriage. Further consultations are needed in order to enhance
8 the symbolic virtue of this project. Finalizing the requests will
9 require identifying a particular day and manner of observance
10 with symbolic meaning for the victims. This facilitation project
11 will involve liaising with other government actors or members of
12 the international community to establish a national or
13 international day of commemoration.

14 [10.24.58]

15 The second project is called projects to be stupas and/or
16 monuments or ecumenical monuments. This project was requested by
17 nearly every legal team. The erection of monuments would pay
18 tribute to the memory of the victims in that they give an
19 opportunity for the victims and the younger generation to
20 remember the victims of the Khmer Rouge regime in a permanent and
21 collective way.

22 [10.25.46]

23 The aim of this award is to benefit to all Civil Parties as well
24 as to all victims and Cambodian persons. However, some specific
25 groups will have to be taken into account, as they have proposed

1 specific awards that would benefit principally the Civil Parties.
2 For example, the Maât team proposes the creation of a centre for
3 the promotion of Cambodian spirituality or for those victims who
4 are the victims of the forced marriage or particular stupas or
5 monuments or the locations, the geographical location where those
6 erections shall be established.

7 The Civil Parties' Lawyers will continue to discuss when it comes
8 to the requests for the monuments and the number of the victims.
9 There is no clear indication as yet how the projects shall be
10 implemented. We need to seek approval from the competent
11 authority for the geographical location where such erections may
12 take place.

13 [10.27.31]

14 The Victims Support Section is actively engaged in locating the
15 location for the building, and they are in contact with governors
16 of some provinces and so far agreements are expected.

17 The third project of this category is projects to organize
18 several ceremonies at the day of the issuing the judgment and on
19 other occasions. This project envisages the organization of a
20 ceremony after the judgment. It would gather all the Civil
21 Parties in order for them to express their grief collectively for
22 the lost ones and their feelings after the verdict.

23 [10.28.28]

24 In addition, it is also proposed to organize ceremonies at the
25 memorial day for some years. The exact numbers of ceremonies and

1 the place and time is yet to be determined.

2 This award is to benefit all Civil Parties, as they will be
3 acknowledged as victims publicly and will give an opportunity for
4 the victims and the young generations to remember the victims of
5 the Khmer Rouge regime in a collective way.

6 [10.29.14]

7 It has not been yet determined how this award will be exactly
8 designed and implemented. A proposal is that VSS will be in
9 charge of organizing the first ceremony after the verdict.

10 The fourth and the last project within this category is named
11 project to participate in the preservation of the crime site.

12 This project aims to participate in the organization of the
13 preservation of the crime site included in the closing order, and
14 it will benefit all Civil Parties as well as the victims.

15 [10.30.04]

16 The preservation of the crime site is of utmost importance in
17 order to have a palpable or demonstrative evidence of the place
18 where the atrocities were committed. The Civil Parties could, in
19 this way, commemorate the soul of the deceased relatives or
20 remember and tell to their relatives their sufferings during the
21 regime.

22 [10.30.32]

23 Additionally, the conservation of this concrete example of the
24 history of the democratic Kampuchea would be the best way to show
25 how the regime functioned to the peoples that are unaware of the

1 history of the crimes, and this place will be part of the
2 history.

3 As the government issued in late 2002 a circular to preserve such
4 places, that is, Killing Fields, we are identifying in
5 collaboration with the Victim Support Section if all the sites
6 are part of the case are preserved, and we are still doing this
7 work with the Victims Support Section, especially as the Victims
8 Support Section is already collaborating with the relevant public
9 authorities in order to execute the project. The Victim Support
10 Section has also visited the site.

11 [10.31.49]

12 Concerning Category 2, we address the issue of rehabilitation,
13 and this is our intent to seek for reparations for our clients.
14 The first project is named projects to establish psychological
15 and physical health services, and it aims to establish
16 psychological and physical health services to the Civil Parties
17 that suffered from trauma and/or illnesses due to the crimes
18 suffered during the Khmer Rouge regime.

19 This project includes also a wide range of proposals that
20 include, among others, the creation of a health centre for
21 elderly Civil Parties, the establishment of mental health centres
22 for victims or enrolling the Civil Parties in an existing
23 government program that provides identity cards and access to
24 health services for low-income Cambodians.

25 [10.33.15]

1 The beneficiaries of this project will be the Civil Parties who
2 suffered from trauma and health problems as a consequence of the
3 crimes committed to them during the regime. This would benefit
4 them as they would obtaining -- would be obtaining mental and
5 health care and would help them to overcome their suffering, both
6 physical and mental.

7 These projects can be established within the actual existing
8 structures, for example, the TPO and other health centres who are
9 already doing this project and they can perhaps collaborate with
10 other projects for the benefit of Civil Parties.

11 Nonetheless, an exact description of the projects cannot be given
12 at this moment and we reserve our rights to provide further
13 update at a later stage.

14 The second project of this category is project to support the
15 self-health group and is intended to assist Civil Parties to talk
16 about their suffering and to promote reconciliation. This project
17 includes establishing a network, specifically for victims of
18 gender-based violence, in particular, forced marriage.

19 So this project will allow the victims to talk their suffering
20 and to forget their pains that they experienced in the past and
21 to help them to move on to a new life.

22 These self-health groups are already a pilot project conducted by
23 TPO, therefore the project may seek cooperation with intermediary
24 organizations, as well as non-government organizations, and
25 especially the Victims Support Sections which allows the Civil

1 Parties, as well as other victims to participate or to be
2 involved.

3 [10.35.58]

4 Within the third category we talked about documentation/education
5 which this Lead Co-Lawyers intend to seek as reparations for our
6 clients.

7 The third category is intended to preserve and understand the
8 history of the Khmer Rouge and the experiences of individual
9 victims.

10 In this project we intend to incorporate the Khmer Rouge history
11 and/or their documents from the regions so that the next
12 generation understands what happened during that time and for
13 them to avoid or to refrain from committing the same crimes. This
14 award will benefit all Civil Parties and future generations.

15 Pursuant to the 23rd September 2011 memorandum of the Trials
16 Chamber, the Trial Chamber indicates that this project concerns
17 the public authorities. Indeed it is true and this has to -- this
18 project concerns the Ministry of Education and the Ministry of
19 Education is already incorporating this project into the school
20 curriculum.

21 But we wish to add to this ongoing work, that we would like to
22 include also other information concerning the Khmer Rouge
23 Tribunal within this school curriculum to give the knowledge
24 about the Court also to students, and we will seek collaboration
25 from the public authorities to coordinate this.

1 The second project within this category is an advocacy project,
2 encompassing a documentation centre, museum, archives or
3 libraries. This project envisages the establishment of spaces for
4 public access to historical documents and artefacts pertaining to
5 building libraries, archives and/or museums that serve the dual
6 purpose of observing artefacts from the Khmer Rouge era and
7 providing a space for Civil Parties and the public to educate
8 themselves about the regime and the ECCC trials.

9 [10.39.23]

10 The documentation centre would have the role to collect,
11 maintain, make analysis and distribute documents concerning the
12 Khmer Rouge regime for a museum, libraries or similar centre for
13 the purpose of taking care of the documents for the profit of the
14 Civil Parties and future generations.

15 This award will benefit all Civil Parties and the Cambodia
16 population, especially the younger generation. This project will
17 ensure that the documents available will be for the general
18 public benefit.

19 At the present time we have the DC-CAM Documentation Centre of
20 Cambodia who is under consideration -- who is considering doing
21 such project.

22 This project, if awarded, will be designed and implemented in
23 collaboration with the Civil Parties and communities in Cambodia.

24 I now move to the third project within this same category and it
25 is called the Victims Register or Kraing Meas, i.e. Golden Book.

1 This project envisages the creation of historical documents that
2 commemorate victims and can be accessed by current and future
3 generations. The Register opens the possibility to record as many
4 victims of the regime as possible and therefore would permit to
5 have a comprehensive register of the crimes committed and the
6 number of victims as this would be open to anyone who wanted to
7 tell their story. This project will benefit all Civil Parties and
8 all victims of the regime who wish to participate.

9 [10.41.47]

10 Regarding the implementation of this project, the Lead Co-Lawyers
11 request that a comprehensive book containing victim's narratives
12 and others be included.

13 Furthermore, it is envisaged that the Victim Register should be
14 maintained in both physical and online formats, via the existing
15 virtual tribunal which will be established at a later stage.

16 The last project of this category is the publication of the names
17 of the Civil Parties in the judgement. It is intended to request
18 the Chamber to include the full names of the Civil Parties and
19 where requested by the Civil Party Lead Co-Lawyers, their places
20 of residence, birth place, birth date and occupation.

21 This project also intends to request the Chamber to provide a
22 wide distribution to all -- in all the country. This measure
23 would benefit all the Civil Parties as this would be a formal
24 acknowledge of their participation in the proceedings, as this
25 was one of the reparation measures awarded in Case 001, we do not

44

1 think there would be any problem implementing it in this case.

2 I have just now presented to you, Your Honours, three categories
3 that the Lead Co-Lawyers intend to seek as reparations award for
4 our clients and given the fourth category concerning other
5 requests, my esteemed colleague, Elizabeth Simonneau-Fort will
6 continue.

7 MR. PRESIDENT:

8 Thank you, Mr. Lead Co-lawyer.

9 [10.44.22]

10 We note that it is now appropriate to take a short break. We will
11 break for 30 minutes; we will come back at 11:15.

12 (Court recesses from 1044H to 1109H)

13 MR. PRESIDENT:

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

15 The Court would like now to give the floor, again, to the
16 International Lead Co-Lawyer to continue her presentation.

17 Thank you.

18 MS. SIMMONEAU-FORT:

19 Thank you, Mr. President.

20 Like my colleague, Pich Ang indicated, I shall now talk about the
21 final categories for the reparations that we intend to seek.

22 Our consultations with the Civil Parties have produced evident
23 projects which have the approval of all parties and are within
24 the purview of the main international definitions of reparations,
25 remembrance and memory, education and documentation which my

1 colleague has just spoken to you about.

2 In addition to these I wish to talk about further projects whose
3 specification has not been sufficiently discussed amongst us, but
4 I do wish to present to you some of the general contours and
5 outlines, as well as the substance of these projects. We do so in
6 order to provide the specifications that the Chamber is seeking.

7 [11.11.20]

8 I will talk about four projects. The first includes the trust
9 fund whose title may and perhaps must be renamed. In paragraph
10 670 of the Duch Judgement the Chamber stated, and I quote:

11 "All requests which, whether directly or indirectly seek
12 individual monetary awards for Civil Parties or the establishment
13 of a trust fund for victims are beyond the scope of available
14 reparations before the ECCC."

15 It is based on this reasoning that the Chamber had dismissed the
16 initial individual requests for reparations.

17 The Chamber rightfully recalls that financial reparation, be it
18 individual or collective, is simply not possible. We are fully
19 aware of this limitation and we even believe that this is
20 justified given the sheer number of Civil Parties.

21 Moreover, the collective nature of reparations carries a very
22 significant and symbolic value in this trial, which once again
23 does not resonate for only the 3,900 Civil Parties who are
24 participating in this particular trial, but for the entire
25 population across Cambodia.

1 [11.13.33]

2 And it is precisely the scope of the collective harm and symbolic
3 significance of the reparations that justify the creation of a
4 trust fund. This project could be called "The project for the
5 establishment of a collective and moral reparations trust fund".
6 The Internal Rules already fully recognize the importance of
7 financial reparations, including symbolic and moral reparations.
8 In fact, may I point out that Rule 23 quinquies 3-b requires
9 providing the Chamber with guarantees of secured funding in our
10 final claim.

11 This justifies the need for establishing a trust fund. This fund
12 would enable donors who are willing to fund a reparations project
13 to entrust their contributions with an independent organization
14 that has the mandate of financing various projects. There are
15 many types of trust funds that already exist and which bear a
16 great resemblance to the one that we are proposing. These include
17 the ones set up by the International Criminal Court.

18 The Chamber could argue that this fund was established by means
19 of the Rome Statute, concurrently with the ICC and forms part of
20 its organs. However, this is not the case in this instance. There
21 is no logical reason why it could not be established here in a
22 different form, provided that the use of the funds collected is
23 guaranteed. Another example is the Federal Republic of Germany
24 Foundation which does a lot more than merely raise and distribute
25 funds.

1 There are also examples that can be cited in the jurisprudence of
2 the Inter-American Court of Human Rights. It would be possible to
3 mount an administrative organization, a board of directors or an
4 organization that carries an entirely different name that could
5 provide implementation of complex reparations and non-financial
6 complex reparations.

7 The Lead Co-Lawyers and the Civil Party Lawyers are proposing to
8 create an instrument of this nature with the view to implement
9 reparations in a practical and sustainable way. This instrument
10 is still in its development stage, it remains a project.

11 [11.16.53]

12 However, it is necessary for us to identify any juridical
13 obstacle that may bar the Chamber from granting such reparation,
14 especially since creating such a fund would provide no financial
15 compensation to the Civil Parties and would be in no way binding
16 for the government. In any case, this project would provide an
17 answer to the first question raised.

18 How can we guarantee the materialization and implementation of
19 the many reparation projects we have in mind given the material
20 constraints and issues and to make sure that it would benefit, in
21 one way or another, all victims, not just those who have been
22 admitted as Civil Parties?

23 The second project in this category hinges on the establishment
24 of a trust fund in terms of implementation. It involves forming
25 an organization that would oversee the implementation of

1 reparations, following the pronouncement of the judgement. It
2 would also have the mandate of keeping Civil Parties, victims,
3 and the international community informed of the establishment of
4 such a fund.

5 We are fully aware that forming and running such an organization
6 requires securing funds. This may be a difficult but not entirely
7 unfeasible undertaking.

8 One of the major concerns of the Civil Party Lawyers is of course
9 to ensure that, following the judgement, each reparation awarded
10 is actually put into effect.

11 We are aware that it will be virtually impossible to do this
12 through the judicial means once the Chamber is no longer seized
13 of the case file. However, an independent organization could be
14 tasked with overseeing, and as necessary, facilitating follow-up
15 on this matter.

16 [11.19.32]

17 Moreover, consistent with its task to provide information,
18 nationally and internationally, such an organization can enable
19 not only Civil Parties, but also victims and the international
20 community at large to be appraised of the status of each of the
21 reparations projects.

22 Reparations involve being awarded, firstly being put into effect
23 secondly, and being brought to the knowledge of a broader
24 audience, beyond those to whom they are intended.

25 The third project under this category could be named "The project

1 to facilitate the acquisition of Cambodian nationality" and I lay
2 emphasis on this title.

3 Now, at the initial hearing we perhaps too hastily and
4 inadvertently named the project "The project to grant Cambodian
5 nationality to ethnic Vietnamese". The Chamber made a number of
6 observations in its memorandum of E125 about the use of this
7 inappropriate name. The Chamber pointed out that it cannot force
8 the Cambodian government to grant nationality to anyone, this
9 being its prerogative. Needless to say, the Civil Party Lawyers
10 are very well aware of this.

11 To be very clear, the form of reparation sought by the ethnic
12 Vietnamese survivors, a minority group in Cambodia, was never
13 envisaged nor intended to override Cambodian governmental
14 discretion or authority in relation to the granting or not of
15 nationality or citizenship.

16 [11.21.51]

17 Firstly, allow me to clearly state that these claims are
18 legitimate, in that the harm that certain Civil Parties have
19 attested to is related to the crimes that were allegedly
20 perpetrated by the four Accused Persons in Case 2, namely
21 genocide, persecution and forced deportation of the Vietnamese
22 from Cambodia and as set out in the indictment.

23 In turn, the harm that they suffered as a result of their forced
24 deportation, tantamount to lost documents, lost citizenship, lost
25 opportunities, may be remedied in part by this project which we

1 refer to as project to facilitate acquisition of Cambodian
2 nationality, which fits squarely under the moral and collective
3 reparations framework of the ECCC.

4 Secondly, the reparation measure is envisaged to be a project
5 that aims at facilitating the applications for nationality from
6 ethnic Vietnamese victims who as a direct result of the crimes
7 committed by the Khmer Rouge, namely, forced deportation out of
8 Cambodia, lost all trace of documentation and means of verifying
9 or establishing their identities and their connections with
10 Cambodia upon their return to this country in the 1980's. These
11 victims were born and raised in Cambodia, as were their
12 ancestors. Some have Cambodian citizenship under previous
13 nationality laws.

14 [11:23:39]

15 As a result of forced deportation from Cambodia by the Khmer
16 Rouge such victims could no longer verify the number of years
17 they had previously resided in Cambodia or the facts of their
18 birth or their ancestors' birth in Cambodia. This entailed
19 further harm; that is they could no longer satisfy the criteria
20 to be granted nationality under Cambodian domestic law. And these
21 victims face a very real risk of statelessness. They essentially
22 live on the margins of society through absolutely no fault of
23 their own.

24 The facilitation of citizenship applications may entail, for
25 example, a project which raises awareness about Cambodian

51

1 nationality laws and legal criteria that applicants must satisfy
2 to be granted citizenship under domestic processes.
3 A relevant project may be to establish a legal service in the
4 client's area which would assist with collecting documentation
5 from applicants, help candidates complete the application forms
6 and submit these applications to the appropriate Cambodian
7 authority. It may also mean liaising with local government bodies
8 so that the authorities may be well-informed of the situation of
9 the ethnic Vietnamese and in full accordance with the nationality
10 law when exercising their discretion during the citizenship
11 determination process.
12 Any application for citizenship then that arises from this
13 reparation request or the reparation measure that is envisaged
14 will ultimately go through the process of an administrative
15 determination from the relevant body of the Cambodian government.
16 The project envisaged is one that merely facilitates the
17 application process and the government can determine the status
18 of these individuals through the ordinary processes that come
19 into effect for citizenship applications.
20 [11:26:39]
21 It is crucial that there is no further misunderstanding -- any
22 misunderstanding that could linger, be it from the view of the
23 Trial Chamber or from the general view of the public regarding
24 the reparations request for ethnic Vietnamese Civil Parties. This
25 is to prevent any further discrimination from society that would

1 have a negative impact on their community.

2 The legitimacy of the reparation claim of this particular project
3 is based on the fact that there is a clear link with the crimes
4 committed and harms suffered, and also the fact that this could
5 constitute a meaningful form of redress for ethnic Vietnamese
6 Civil Parties.

7 And lastly, I shall be very brief, on the fourth and last project
8 in this category, which could be entitled identifying the needs
9 and requests for professional training, this particular project
10 is intended specifically for the Civil Parties or victims of
11 forced marriages, as well as the children of victims of forced
12 marriages, even if they were born after the Khmer Rouge were
13 removed from power, a working group would be constituted in each
14 region in relation to each key area of training. It would
15 identify the needs and wishes to be undertaken. The government
16 could be part of this project if it accepts to support the idea
17 otherwise external financing will be necessary,

18 With respect to implementation of this project, the government
19 will be invited to observe the task force that will be informed
20 of its results. The proposed professional training should last at
21 least one year, and the financing should cover compensation for
22 trainers and make it possible to offer financial aid to the
23 program's participants. Once the professional training is
24 concluded the task force will assist participants in finding
25 employment or will help them in beginning and starting their own

1 business and their own businesses. Micro-credits could be used
2 for this purpose as well.

3 [11:29:36]

4 In conclusion, we wish to tell the Chamber that the rather
5 unusual character of these projects has not yet made it possible
6 for us to discuss them in detail. These projects have been put
7 forward for the consideration of all lawyers but may be subject
8 to further discussion after consultation, research and, to the
9 extent possible, consensus.

10 This does not take, in any way, anything from their object and
11 feasibility. This is the focus of the lawyers' reflection. Having
12 provided the Chamber with the details about our projects, we hope
13 that the Chamber now has a better sense of their importance,
14 necessity and symbolism. That being said, we remain fully aware
15 of the possible hurdles in implementing them and we are committed
16 to overcoming them.

17 At the conclusion I have a few words to say, just a few words. We
18 hope to have provided to the Chamber the clarifications and the
19 specifications and details it was expecting. We also hope that we
20 managed to express clearly further thoughts, and we also hope
21 that we expressed clearly the problems we are facing, the
22 questions we are asking ourselves, and, in particular, as a
23 result of the severance order or as a result of the uncertainty
24 hovering over certain notions and definitions relative to
25 reparations.

1 Our first indications were formulated in response to all of the
2 crimes committed and are addressed to all Civil Parties. Severing
3 the case significantly alters the scope of our requests and we
4 are in a confused situation today. We wish as a conclusion to
5 begin by asking a few open questions to which the Chamber might
6 possibly provide clarification.

7 How does the Chamber intend to articulate our first indication on
8 the nature of reparations with the consequences of the severance?
9 How does the Chamber foresee claiming reparations for each trial?
10 Has the Chamber already determined a necessary degree of
11 specification related to each project? These are questions, among
12 others, but all questions will condition our future work.

13 [11:32:553]

14 We would like to finish with the following: Reparations are not
15 merely cold-hearted and easily implementable technical measures,
16 reparations have to be satisfactory, meaning that each Civil
17 Party has to gather the impression that he or she is receiving a
18 form of compensation that will attenuate his or her pain. This is
19 even more so the case now as the case may be split into several
20 that will not include all Civil Parties.

21 Reparations need to force us to go beyond what is easy to do but
22 would be deprived of true significance for the Civil Parties.

23 Reparations would be of no significance if each Civil Party was
24 unable to understand their meaning and impact even indirectly.

25 The pre-trial Chamber at the International Criminal Court in the

1 Lubanga Dyilo case stated in its 10 February 2006 ruling -- and I
2 will quote it -- that, "to a certain extent the success of a
3 court is measured by the success of its reparations schemes." We
4 share this point of view.

5 We are aware that we are ambitious today and that we are
6 presenting a great number of projects whose difficulties in
7 implementing them to not escape us. It is our duty to be
8 ambitious. If we were not ambitious we would not be truly
9 defending our Civil Parties. But we know that certain projects
10 will need to be transformed and even some abandoned and others
11 will have to be transformed into non-judicial measures.

12 These choices will be made as we develop the projects and these
13 choices are entirely ours, as it is our duty and responsibility
14 to present possible feasible reparations if we are responsible
15 for presenting projects whose feasibility we can measure ahead of
16 time. The Chamber, however, will be tasked to decide beyond what
17 seems easily feasible, and forgive me for the term "ordinary",
18 the Chamber will have to pronounce measures who in compliance
19 with the Rules will maybe present the more extraordinary
20 character but that will constitute a true form of reparation.

21 [11:36:26]

22 The reparations in this case will be the fruit of our efforts and
23 of our common desire as Civil Party Lawyers and as the Chamber to
24 ensure that these reparations are not a simple gesture without
25 much significance, which would give rise to bitterness and

56

1 disappointment. It is our duty to ensure that the upcoming
2 judgment will be a powerful symbol. We wish to reassure the
3 Chamber that we place full trust in it in that regard.

4 Thank you.

5 MR. PRESIDENT:

6 Thank you, the Co-Lawyers.

7 Mr. Pich Ang, please go ahead. Please turn on your mic.

8 MR. PICH ANG:

9 Good morning again, Mr. President and Your Honours.

10 There are two more projects which we have not included in our
11 presentation today, and in this regard I would like to seek your
12 permission to allow our counsel Lor Chunthy to present to you
13 these two additional projects within Category Number 3 concerning
14 documentation and education.

15 MR. PRESIDENT:

16 The Chamber allows Mr. Chunthy to take the floor.

17 MR. LOR CHUNTHY:

18 Thank you, Mr. President.

19 May it please the Court, my name is Lor Chunthy, and I am one of
20 the Civil Party Lawyers and would like to present before the
21 Court today two additional projects that we intend to claim
22 reparations.

23 [11:39:00]

24 And I would like to indicate also that we are working with the
25 legal aid of Cambodia with the sponsorship from the French

1 embassy.

2 So, first of all, I would like to submit that the first project
3 is to establish a centre to disseminate information about
4 information that happened during the regime. During the regime,
5 information about the culture, about the custom of the people has
6 been abolished. So the purpose of this centre is to rehabilitate,
7 to make the Cambodian people believe again in what they used to
8 believe. So the purpose is for the next generations to oppose
9 what has been done by the Khmer Rouge.

10 So our group intends to establish this centre so that the victims
11 of the crimes can again believe in their own custom and
12 religions, but this centre is for any religions and we also
13 intend to gather documents to be maintained at the centre. So we
14 try to establish this kind of spirit to help the victims heal
15 their sufferings or their wounds.

16 Secondly, we also intend to establish this centre to preserve the
17 Cham culture, and this is intended for the Cham people.

18 Concerning this issue, I would like to indicate that because of
19 the Democratic Kampuchea regime there has been negative impacts
20 on Cham people; that is they have lost their culture, they have
21 lost their language. As a result, we would like to establish this
22 centre so that they could preserve their own culture. And this
23 centre, once established, will give benefits to all Civil Parties
24 as well as the general public. The appropriate location for such
25 a centre should be in towns in Kampong Cham Province where Cham

1 people are living.

2 So these are the two points that I would like to indicate to the
3 Chamber.

4 [11:43:16]

5 MR. PRESIDENT:

6 Thank you, Mr. Lawyer, Mr. Lor Chunthy.

7 Next the Chamber would like to ask to the parties whether they
8 wish to give any remarks or to respond to the presentation put
9 forward by the Lead Co-Lawyers.

10 The floor is now open.

11 MR. DE WILDE D'ESTMAEL:

12 Thank you, Mr. President.

13 Mr. President, Your Honours, I would like to tell you very
14 quickly that a criminal trial one of its main goals would be to
15 do justice and to establish the commission of crimes as well as
16 the conviction for the people who are responsible or not or also
17 to do justice to the victims in case of conviction.

18 Rarely in a country has a proportion of victims, whether they are
19 deceased, or whether they are survivors, or whether they are
20 members of direct -- of -- would have been as great as after the
21 period of Democratic Kampuchea. The Co-Prosecutors in their roles
22 as proving that mass crimes were committed, and when they
23 contribute to put an end to impunity represent the interest of
24 Cambodian society as well as of the Community of Nations, but the
25 victims, direct or not, of Democratic Kampuchea represent a great

1 majority of Cambodian society.

2 This is the reason why we would like to underline today the
3 capital importance, not only of the presence of victims during
4 these trials as witnesses or as Civil Parties, but also the
5 capital importance of the Civil Parties rights via their lawyers
6 and via the Lead Co-Lawyers and the importance of the possibility
7 of obtaining reparations even if they are collective and moral
8 and therefore with a symbolic scope.

9 [11:45:49]

10 All victims in Cambodia may be - might identify themselves with
11 the Civil Parties because of the nature of this project, of this
12 trial the Civil Parties represented their own interests but they
13 also represent more than themselves, they are the voice of all of
14 the victims who remained voiceless during the regime of
15 Democratic Kampuchea, and this trial would not reach its goal or
16 its full dimension if one or several Accused Persons were
17 sentenced but the Civil Parties were deprived of any reparation
18 beyond the mere publication of their name in the judgment and the
19 acknowledgement of the status of Civil Parties. This cannot
20 suffice.

21 The Co-Prosecutors are therefore encouraging all parties to the
22 proceedings; that is to say, the Civil Parties, the Lead
23 Co-Lawyers and the individual Civil Party Lawyers, VSS, the
24 government, the funders, the local authorities as well as local
25 partners and also your Chamber to do everything that is possible

60

1 so that all -- so that any significant reparation proportional to
2 the harm suffered be proposed within a reasonable timespan and
3 that these projects be sufficiently detailed, measured and
4 planned and possibly supported by outside financing; that this
5 project be accepted by your Chamber in a flexible and creative
6 and ambitious manner, and that this project be fully put --
7 implemented before the ECCC closes while, of course, taking into
8 consideration the consequences of these reparations once they
9 would have been implemented.

10 Thank you.

11 MR. PRESIDENT:

12 Madam Co-Prosecutor?

13 [11:48:17]

14 MS. CHEA LEANG:

15 Thank you, Mr. President. Good morning everyone here.

16 As a prosecutor myself, and for the purpose of the public
17 interest, and in regards to the presentations by the Lead
18 Co-Lawyers and Civil Party Lawyers, I would like to make general
19 observations concerning legal matters.

20 I have three points to say today; that is one concerns Article 36
21 new, which allows the participation of victims in the
22 proceedings, and this is also in line with our national law,
23 Article 2.2. So if you look at this legal point the civil
24 reparations are very important for victims.

25 In the case that the Trial Chamber finds the Accused guilty as

61

1 stipulated in Articles 3, 4, 5 of the ECCC law, those crimes
2 concerns crimes against humanity, genocide and war crimes. So in
3 the case that the Chamber finds that the Accused is guilty but if
4 the significant reparations cannot be awarded to the victims, the
5 results will be meaningless.

6 Secondly, as stipulated in the Rules, the Accused is bound to
7 afford the reparations. And also stipulated in the Internal Rules
8 the reparation request shall be feasible within the framework of
9 the ECCC. In this regard the Trial Chamber should also -- should
10 consider what reparations scheme can be implemented.

11 As we referred to the previous judgment rendered by the Trial
12 Chamber, we find that there is no clear indication as to what
13 procedures the Civil Parties as well as Civil Party Lawyers
14 should follow when it comes to the implementation of the
15 reparations. So I am submitting that the Trial Chamber provide
16 clear procedures for them to follow as to how the reparation can
17 be implemented.

18 Thank you.

19 [11:51:29]

20 MR. PRESIDENT:

21 Thank you, the prosecution.

22 I would like to know whether the defence counsel would like to
23 make any observations concerning the presentations put forward by
24 the Lead Co-Lawyers.

25 You may now proceed, counsel.

1 MR. PESTMAN:

2 Good morning, Your Honours.

3 We have no observations. Thank you.

4 MR. PRESIDENT:

5 Counsel, please.

6 MR. SON ARUN:

7 My name is Son Arun. Once again, good morning, Mr. President.

8 I just would like to indicate that this morning the Lead

9 Co-Lawyers presented to us the reparations scheme, but when it

10 comes to the reparations scheme I would like to submit that we

11 can be clear about the reparations unless we know for sure about

12 the crimes alleged to have been committed, but here we are doing

13 with speculation when it comes to the number of people died

14 during the regime. I do not oppose indeed to the reparations to

15 be awarded to victims, but what I am requiring is that we need

16 specific and accurate number of the victims.

17 [11:53:44]

18 This morning Civil Party Lawyers talked about ethnic minority who

19 died during the regime and these include Vietnamese and Cham

20 people. As for the Cham people, I can say that when they are --

21 as they are living here in Cambodia they are considered as Khmer

22 people. And as for Vietnamese, they have two group of Vietnamese;

23 one is legal Vietnamese immigrants and another one is illegal

24 Vietnamese immigrants.

25 So in this regard I would like to submit that the Chamber

63

1 consider whether reparations can be awarded to those illegally
2 migrated into the country.

3 So to me everything here is unclear. So I am seeking for
4 clarification.

5 MR. PRESIDENT:

6 Lawyer Phat Pouv Seang, you may now proceed.

7 MR. PHAT POUV SEANG:

8 Good morning, Your Honours.

9 I am interested in a point that was raised by my learned friends,
10 Civil Party Lawyers, with regards to Internal Rule 23 quinquies,
11 reparations have to be moral and collective, but what the lawyers
12 are requesting they are requesting reparations for Vietnamese and
13 Cham people. I don't think this is an appropriate request.

14 Now, the victims are alleged to be Cambodian people. They are not
15 requesting reparations for Khmer people but they are requesting
16 for Vietnamese and Cham people. I am submitting that Khmer,
17 Vietnamese and Cham people are all human beings so we do not
18 specify -- we do not need to specify that reparations are only
19 for Vietnamese or Cham people. So this is meaningless. This is
20 useless.

21 [11:56:27]

22 If we refer to the statistics or the number of Vietnamese during
23 that regime that were approximately 500,000 Vietnamese people. So
24 given the statistics, there were more Cambodian people who died
25 during the regime. So what I'm requesting is that maybe we don't

64

1 have to specify that the reparations are for Vietnamese people. I
2 did not hear this morning that the lawyers are requesting
3 reparations for Cambodian people.

4 So again I am requesting that we don't have to specify that
5 certain reparations are for a specific group of people. Let the
6 reparations for all people. This will be appropriate. If we are
7 requesting for Vietnamese and Cham people I'm afraid that the
8 general Cambodian public will wonder why no reparations are being
9 sought for Cambodian people.

10 Thank you.

11 MR. PRESIDENT:

12 I note that Mr. Karnavas would like to take the floor.

13 MR. KARNAVAS:

14 Good morning, Mr. President; good morning, Your Honours; good
15 morning to everyone in and around the courtroom.

16 We certainly support a multi-faced approach to justice that
17 allows accountability without retribution and rehabilitation
18 through awareness. We also support many of the proposals that
19 were put forward, though, it would appear -- and this is up to
20 Your Honours to decide -- that what -- that much of what is being
21 asked is something that the government should be doing as opposed
22 to the legislating -- legislating these matters from the bench.

23 [11:58:48]

24 We support Cambodia to institute, for instance, structural
25 reforms, erect museums and monuments to memorialize the events.

65

1 We support the creation of a national human rights watch agency
2 to look into human rights violations. We support the
3 establishment of a viable legal aid institute so that all accused
4 can receive legal aid. We support educational programs that will
5 tell the entire story, not just from one particular date in April
6 1975 to 1979.

7 But it would appear that much of what is being asked, which is
8 highly commendable and highly aspirational, is perhaps something
9 that the government should be doing as opposed to Your Honours.
10 And it would also appear that while the Court may make
11 suggestions but I'm not convinced, personally that is, that the
12 Court is capable of actually ordering much of what is being
13 requested. That is not to say -- that is not to say that we do
14 not support many of the requests that have been made as projects.
15 And I leave it to Your Honours to decide at the end what is
16 within your capabilities, both under the law and what is
17 feasible, to decide what to do.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you, Counsel Karnavas.

21 Please go ahead, Mr. Ang Udom:

22 MR. AUG UDOM:

23 Good morning, venerable monks in the public gallery; good
24 morning, everyone in this courtroom; good morning, Your Honours.

25 I will not repeat what has been said, but I have a point to say

66

1 for Your Honours' consideration. Civil Party Lawyers are
2 requesting a particular reparation, that is to -- that is the
3 acquisition of the nationality for Vietnamese victims. I do not
4 oppose this but I seek Your Honours' considerations that every
5 decision has to be made under the law.

6 [12:01:52]

7 When it comes to foreigners who were living in Cambodia, living
8 in the country who did not have the Cambodian nationality but
9 then who died, would it be possible to grant nationalities to
10 those victims? Would the children of those who died be granted
11 automatically the Khmer nationality?

12 If I'm not mistaken, according to the nationality law, a
13 foreigner can obtain the Khmer nationality on the basis of four
14 criteria; one, the foreigner is born on the territory of
15 Cambodia, two, the foreigner is married to a Cambodian national,
16 three, the nationality -- the Khmer nationality can be granted to
17 investors as required by the government, and number four concerns
18 donations, donations to be given to the government; that is a
19 certain amount of donations to the government can result in the
20 award of the Khmer nationality.

21 So I am wondering what law will be based to grant nationality to
22 the victims.

23 MR. PRESIDENT:

24 Thank you, Defence Counsel.

25 And before we adjourn the Chamber would like to give the floor to

67

1 the Lead Co-Lawyers for them to make any reply, if they wish so,
2 but they should be reminded that they should be brief because we
3 are running out of time for this hearing.

4 MR. PICH ANG:

5 Thank you, Mr. President. Once again, good morning, Your Honours,
6 and good morning, venerable monks.

7 First of all, thank you for the support from the Defence Counsel
8 when it comes to the reparations sought for Civil Parties.

9 [12:05:11]

10 To reply to the Defence Counsel's remarks; I find that there may
11 be a misunderstanding between us here when it comes to the
12 reparations. We would like to indicate that these reparations are
13 for Civil Parties in general but certain Civil Parties may
14 benefit more, and we are also having non-judicial measures to
15 give benefits to Civil Parties.

16 When it comes to Vietnamese clients, I will hand over to my
17 colleague to reply to this point.

18 But I would like to clarify that we are not seeking for the
19 Chamber to give Khmer nationalities to any Vietnamese victims.

20 We also acknowledge that we are requesting many reparations but
21 we are working very hard to make them feasible so that the
22 Chamber grants these reparations.

23 So now I would like to hand over to my colleague to address the
24 issue of reparations concerning Vietnamese victims so that there
25 shall not be any misunderstanding about our reparations request.

68

1 MR. PRESIDENT:

2 Counsel Sokong, you may now proceed.

3 MR. SAM SOKONG:

4 First of all, once again, good morning, Mr. President.

5 Concerning these reparations, because I am a lawyer representing
6 Civil Parties who are Vietnamese victims during the Khmer Rouge
7 regime, and together with my international colleague, Ms. Lima
8 Nguyen, I would like to respond to the remarks made by the
9 Defence Counsel that our project concerning the acquisition of
10 the Khmer nationalities to the Vietnamese victims is made
11 pursuant to Document E125.

12 [12:08:42]

13 In order to avoid any misunderstanding or confusion concerning
14 our request regarding the Khmer nationality to be awarded to
15 Vietnamese victims, I would like to state as follows: we have
16 received Civil Party applications from Vietnamese victims, that
17 is, to participate in these proceedings. Some of these Civil
18 Party applications were accepted by the OCIJ while some others
19 were rejected. Still some of them were later recognized and
20 granted the status by the PTC. In the applications they indicated
21 that they suffered from the crimes committed during the regime.
22 What we are requesting from the Chamber is the decision that
23 allows us to facilitate the application for the Khmer nationality
24 to be applied by our Vietnamese victims who lost their identity,
25 who lost their relevant document to prove their identity during

1 the regime between 1975 and 1979.

2 But the most important thing is that we are not requesting from
3 the Trial Chamber to award or to grant the Khmer nationalities to
4 our Vietnamese clients, but what we are requesting from the
5 Chamber is the decision that allows us to facilitate the
6 application for Khmer nationality for our clients.

7 MR. PRESIDENT:

8 Thank you.

9 Next I would like to hand over to -- I would like to give the
10 floor to Madam Lead Co-Lawyers to make the final observation.

11 MS. SIMONNEAU-FORT:

12 Thank you very much, Mr. President.

13 Just a few words; we represent a consolidated group of Civil
14 Parties, therefore, at the conclusion of this hearing I would
15 hope that you bear in mind not just one or two projects but all
16 of the projects that we have presented to you this morning.

17 [12:12:28]

18 I would respectfully remind you that Rule 23 quinquies allows us
19 to talk to you about projects that do concern one specific group
20 of Civil Parties, and we have clearly identified exactly which
21 group this concerns as we have done. This particular rule also
22 states that the Chamber can then grant the reparations. It is up
23 to you. I simply want to say that things that have been said and
24 that have been repeated be absolutely clear. This is not a matter
25 of granting nationality. As we have said, this is a matter of

70

1 facilitating access to beginning the process of obtaining
2 Cambodian nationality.

3 I think it would also be appropriate to thank the Co-Prosecutors
4 for expressing their view and for the support of the Civil
5 Parties' participation in these proceedings but, once again, I
6 wish to remind you that our presentation today concerns a
7 consolidated group of Civil Parties, concerns a multitude of
8 reparations projects and not any one specifically that should be
9 given more weight than the other.

10 Thank you.

11 [12.14.11]

12 MR. PRESIDENT:

13 We will now adjourn for lunch break and I hope we will have
14 sufficient time to discuss this relevancy issue during the
15 substantive hearings concerning the specification of reparations
16 to be raised by the Lead Co-Lawyers.

17 And as for now, we come to the conclusion of this hearing.

18 And the Chamber would like to inform the parties and the public
19 that the second hearing for today, scheduled for today, will
20 begin at 1.30 p.m. concerning Madam Ieng Thirith's fitness to
21 stand trial.

22 Now, the Chamber adjourns the hearing now and parties who are
23 allowed to participate in the hearing need to come back at 1.30
24 p.m. to continue our hearings.

25 (Court recesses from 1215H to 1329H)

1 MR. PRESIDENT:

2 Please be seated. The Court is now back in session.

3 The following session will be dedicated for the fitness to stand
4 trial regarding the accused person Ieng Thirith.

5 [1.30.21]

6 On the 21 February 2011, the Defence for accused Ieng Thirith
7 filed a motion before the Chamber challenging her fitness to
8 stand trial.

9 In response, the Trial Chamber, on the 4 April 2011, appointed
10 Professor John Campbell, a geriatrician, as an expert and
11 requested him to conduct a medical assessment of the Accused.
12 Professor Campbell was requested to prepare a written report in
13 respect of the Accused and to indicate whether further expert
14 medical or psychiatric examination and report may be required to
15 enable the Trial Chamber to reach a determination of her fitness
16 to stand trial.

17 In this report of 23 June 2011, Professor Campbell concluded that
18 the Accused suffers cognitive impairment compromising her ability
19 to participate fully in her trial and to exercise her fair trial
20 rights.

21 In consequence of this report, the Trial Chamber, on the 23
22 August 2011, appointed four psychiatric experts: Assistant
23 Professor Dr. Lina Huot; Assistant Professor Dr. Chhunly Koet;
24 Dr. Seena Fazel; and Dr. Calvin Fones Soon Leng, to supplement
25 the conclusions reached by Professor Campbell regarding Ieng

1 Thirith's cognitive impairment.

2 [13.32.59]

3 Assessment of the accused Ieng Thirith, by the psychiatric
4 experts took place in August 2011 and these experts submitted
5 their report to the Chamber and the relevant parties on Monday,
6 11 September 2011.

7 The purpose of the present hearing is to consider all issues
8 raised by the psychiatric experts' report in relation to the
9 accused Ieng Thirith.

10 A few remarks regarding the structure of this hearing.

11 The Trial Chamber will commence by questioning the psychiatric
12 experts and will then permit these experts to be questioned by
13 the parties.

14 The Chamber will also hear oral argument concerning the
15 appropriate legal standard to be applied in determining the
16 accused Ieng Thirith's fitness to stand trial if sought by the
17 parties.

18 On 11 October 2011, the English version of the psychiatric
19 experts' report was communicated to the parties on a strictly
20 confidential basis, pending ultimate determination by the Chamber
21 of its classification. The Khmer and French versions of this
22 report were similarly notified to a -- a few days later and prior
23 to this hearing.

24 In its Scheduling Order, the Chamber invited the parties to
25 address the following specific questions concerning the accused's

1 fitness to stand trial during this hearing.

2 [13.35.03]

3 (1) May an accused be considered mentally unfit to stand trial if
4 any of the criteria for this determination identified in the
5 ICTY's Strugar case is found to be lacking, or must all criteria
6 instead be viewed together when making this assessment?

7 (2) Does the accused Ieng Thirith's impaired memory, as
8 identified by both Professor Campbell and the psychiatric
9 experts, render her unable to exercise her fair trial rights to
10 the standard required by the Strugar case -- or Strugar test,
11 rather?

12 (3) Does the degree of impairment identified by Professor
13 Campbell and the psychiatric experts in relation to the accused
14 Ieng Thirith's capacity to enter a plea, instruct counsel,
15 testify and understand the nature of the charges, course of the
16 proceedings, details of the evidence, and consequences of the
17 proceedings indicate that she is unfit to stand trial taking
18 account of the fact that the Accused is represented and, thus,
19 able to some extent to exercise these rights through counsel?

20 (4) As found by the experts, the accused Ieng Thirith's condition
21 is degenerative and may entail ongoing delays to the proceedings
22 due, for example, to the need for additional or ongoing medical
23 testing or day-to-day fluctuations in her condition?

24 Given the impact of these factors on the rights of the other
25 Accused to an expeditious trial and the likely overall

1 lengthening of proceedings in Case 002, do the parties consider
2 it to be in the interest of justice that the accused Ieng
3 Thirith, be severed from these proceedings pursuant to Internal
4 Rule 89 ter as an alternative to determine -- to the termination
5 of the proceedings against her in the event of a finding of
6 unfitness to stand trial.

7 [13.38.08]

8 (5) What consequences for the accused Ieng Thirith, would stem
9 from a severance order pursuant to this Rule?

10 The Chamber will commence the questioning of the experts on these
11 and other areas. The floor will then be given to the
12 Co-Prosecutors. The Lead Co-Lawyers may then speak. In the
13 interest of efficiency, they should limit their interventions
14 only to areas where they differ from the Co-Prosecutors. Finally,
15 the Defence team for Ieng Thirith will be given the floor.

16 At the conclusion of this hearing, the other defence teams will
17 be given the opportunity to address the impact of the accused's
18 degenerative condition from the perspective of the rights of the
19 other Accused to an expeditious trial.

20 The other defence teams were invited to address whether they
21 therefore consider to be in the interests of justice that the
22 accused Ieng Thirith, be severed from these proceedings pursuant
23 to Internal Rule 89 ter.

24 In accordance with Internal Rule 79.6, this hearing will be
25 presumptively public and conducted to the maximum extent possible

75

1 in open session. The Chamber has, however, already indicated a
2 need to balance the rights of the accused to privacy concerning
3 medical information against the public's right to know the basis
4 on which an application on fitness to stand trial will be
5 determined.

6 The hearing on accused Ieng Thirith's fitness to stand trial
7 will, in consequence, commence in open session. Where any party
8 considers there to be a need to proceed only in closed session,
9 an oral motion may be made to the Chamber. These applications
10 will be heard in open session and granted by the Chamber where it
11 considers the interests of justice to so require.

12 [13.41.02]

13 The Greffier is now instructed to report on the attendance of the
14 parties to the proceedings.

15 THE GREFFIER:

16 Mr. President, the experts are present and awaiting call by the
17 Chamber.

18 MR. PRESIDENT:

19 Thank you. Court Officer is now instructed to bring the experts
20 to the courtroom.

21 (Witnesses enter courtroom)

22 MR. PRESIDENT:

23 Good afternoon, the experts.

24 First of all, we would like to put questions to the national
25 expert concerning his background. The national expert, is your

76

1 name Huot Lina?

2 MR. LINA HUOT:

3 That is correct, Your Honour.

4 MR. PRESIDENT:

5 How old are you?

6 MR. LINA HUOT:

7 I am 48 years old.

8 MR. PRESIDENT:

9 What is your occupation?

10 MR. LINA HUOT:

11 I am a psychiatrist working at the Khmer Soviet Friendship

12 Hospital as the Deputy Head of the Department.

13 MR. PRESIDENT:

14 Where do you live?

15 MR. LINA HUOT:

16 I am at 491A0 Kampuchea Krom, just a stone's throw away to the

17 Lylay restaurant.

18 MR. PRESIDENT:

19 According to the report by the greffier, you already have taken

20 an oath before you were brought to this courtroom; is that

21 correct?

22 [13.43.30]

23 MR. LINA HUOT:

24 That is correct, Your Honour.

25 MR. PRESIDENT:

77

1 Thank you, Mr. Huot Lina.

2 Next we would like to proceed to put questions to the
3 international expert.

4 Is Seena Fazel your full name?

5 MR. FAZEL:

6 Yes, it is.

7 MR. PRESIDENT:

8 How old are you?

9 MR. FAZEL:

10 I am 42.

11 MR. PRESIDENT:

12 Where do you live?

13 MR. FAZEL:

14 I live in Oxford, United Kingdom.

15 MR. PRESIDENT:

16 What is your occupation?

17 MR. FAZEL:

18 I am a clinical senior lecturer in forensic psychiatry.

19 [13.44.43]

20 MR. PRESIDENT:

21 According to the Internal Rule, Rule 31.2, you are asked to take
22 an oath according to your religious belief before you can give
23 testimony to the Court. You will now be assisted with the oath
24 taking by our court officers.

25 THE GREFFIER:

78

1 I solemnly declare that I will assist the Trial Chamber honestly,
2 confidentially and to the best of my ability.

3 MR. FAZEL:

4 I solemnly declare that I will assist the Trial Chamber honestly,
5 confidentially and to the best of my ability.

6 MR. PRESIDENT:

7 Thank you, expert.

8 [13.45.53]

9 Next we would like to proceed again to Dr. Fazel, Professor
10 Fazel.

11 QUESTIONING BY THE PRESIDENT:

12 Q. Can you tell the Court briefly your background, educational
13 background in particular, and your background with your
14 occupation?

15 A. Yes. I studied medicine at the University of Edinburgh, and
16 then I trained in psychiatry in Oxford, where I also was a
17 clinical research Fellow studying the psychiatric illness of
18 older people in prison, and then I subsequently did higher
19 training in the sub-specialty of forensic psychiatry, which I
20 completed in 2002.

21 [13.46.47]

22 And since that time, I have been working both academically and
23 also clinically in the specialty of forensic psychiatry.

24 MR. PRESIDENT:

25 Thank you, Mr. Fazel.

1 Next, we proceed to Dr. Lina.

2 [13.47.22]

3 BY MR. PRESIDENT:

4 Q. You already indicated that you are the head of psychiatric
5 department of Khmer Soviet Friendship Hospital; is that correct?

6 A. That is correct, Your Honour.

7 Q. According to the -- your biography, you also are associate
8 professor; is that correct?

9 [13.47.53]

10 A. That is correct.

11 Q. Can you tell the Court your qualification and skills with
12 regard to psychiatry?

13 A. I graduated at the Health Science Faculty in 1990. Then I
14 worked at the emergency department, and in 1994 I was offered --
15 I graduated at Oslo University, Norway, to become the forensic
16 psychiatrist, the first promotion of psychiatrists. There were
17 only 10 of us back then.

18 [13.48.55]

19 I was then selected by the Ministry of Health to continue my
20 education in Australia, and I had to compete in the rigorous
21 tests, the program funded by USAID, and I graduated with a
22 Master's degree in psychiatry in Monash University in Australia
23 in 19 -- rather, in 2001. And I graduated from Oslo in 1998.
24 I later on worked at the Khmer Soviet Friendship Hospital as the
25 head of the psychiatric department at the same hospital.

1 MR. PRESIDENT:

2 Thank you, Mr. Huot Lina.

3 [13.50.07]

4 Before we proceed to the next session, we would like to inform
5 both of the experts that the questioning session will be on after
6 this session, and both of you can either choose to respond to the
7 question individually or one of you representing the two
8 responding to the questions.

9 If the questions are of general nature in that they are not
10 really directly aimed at any particular expert, you can remain
11 silent or you can either choose to respond. Any of you can either
12 respond to that particular question. In responding to directions
13 or giving presentation, you can decide to, among yourselves, who
14 would be willing to act on behalf of the group. And you should be
15 advised that while giving response to any particular questions,
16 try to speak at a slower pace and make your response clear so
17 that they can be well rendered.

18 [13.52.04]

19 I would like to hand over to Judge Silvia Cartwright to proceed
20 with the questions.

21 QUESTIONING BY JUDGE CARTWRIGHT:

22 Thank you, President.

23 Q. Well, first, Drs. Lina and Fazel, the Trial Chamber thanks
24 you for agreeing to undertake this assignment and to assist the
25 Trial Chamber and for coming here to be examined today.

81

1 [13.52.34]

2 You were one of a group of four psychiatrists -- you were two of
3 a group of four psychiatrists, in fact, who examined and reported
4 on Madam Ieng Thirith's psychiatric and physical abilities. Is it
5 correct that the other two were Dr. Koeut Chhunly and Dr. Calvin
6 Fones?

7 A. (No recorded response)

8 Q. That's correct. Thank you.

9 [13.53.04]

10 And Dr. Koeut also graduated from a Norwegian university as a
11 psychiatrist, and he is also working in the Psychiatric
12 Department of the Khmer Soviet Friendship Hospital in Phnom Penh,
13 and he's also Assistant Professor of Psychiatry at the University
14 of Health Sciences at Phnom Penh here in Cambodia; is that
15 correct?

16 A. (No recorded response)

17 Q. Thank you. You will note that after a little bit of a time
18 lag, that light will come on which enables you to answer. I'm
19 sorry it's not immediately available.

20 [13.53.47]

21 And Dr. Calvin Fones is a consultant psychiatrist with the
22 Gleneagles Medical Centre and Associate Professor of the Yong Loo
23 Lin School of Medicine at the National University of Singapore in
24 Singapore; is that correct?

25 MR. FAZEL:

82

1 A. Yes, it is.

2 Q. Well, first, I am going to ask you to confirm what your
3 assignment was. I will summarize it for you. Then I will move to
4 some more general issues before discussing in detail with you the
5 diagnosis and your responses to the specific questions and issues
6 raised by the Co-Prosecutors and by the Defence for Ieng Thirith.
7 [13.54.43]

8 And in doing so, I will be working through your report, which has
9 the date of the 9th of October, 2011. And also by doing so, I
10 will be formally putting that report before the Chamber.

11 So first, your assignment, I would ask you to confirm, was as
12 follows. You were asked to work collaboratively as a group of
13 four psychiatrists in examining and assessing the accused Ieng
14 Thirith, and you were asked to prepare a consolidated report; is
15 that correct?

16 MR. FAZEL:

17 A. Yes, it is.

18 Q. Well, congratulations on that. I'm not sure that four
19 lawyers could achieve it, but that's very good. Thank you.
20 [13.55.34]

21 Now, in the report -- in the assignment, the expertise
22 assignment, you were asked the -- to report on the following
23 matters. You were asked to supplement the conclusions reached by
24 Professor Campbell in his report of the 23rd of June of this year
25 concerning Ieng Thirith's cognitive impairment.

83

1 [13.56.02]

2 You were asked to provide specialist psychiatric expertise to
3 enable the Trial Chamber to determine Ieng Thirith's fitness to
4 stand trial, to assess her mental and cognitive ability and you
5 were asked to comment on whether any aspect of her physical
6 status when considered in conjunction with her medical or
7 cognitive status might alter that assessment. And you were also
8 asked to give your prognosis for the improvement or deterioration
9 of her mental or cognitive status.

10 Is that right?

11 MR. FAZEL:

12 A. Yes, it is.

13 Q. Thank you.

14 [13.56.44]

15 You were also asked while considering her psychiatric statement
16 -- status, rather, to bear in mind five points which we'll return
17 to consider in more detail later in this examination; is that
18 correct?

19 MR. FAZEL:

20 A. Yes, it is.

21 Q. And of course, you were asked to respond to a number of
22 specific questions and issues raised by the Prosecutors and Ieng
23 Thirith's Defence team.

24 MR. FAZEL:

25 A. Yes.

84

1 Q. You were also authorized to examine all relevant earlier
2 medical reports and material, including the report completed by
3 Professor Campbell, to consult other medical or psychiatric
4 experts who have previously reported to the court or treated Ieng
5 Thirith during her detention, to advise the Trial Chamber of any
6 additional reports or tests undertaken by you personally and any
7 earlier tests or reports relied on by you in completing your
8 report.

9 [13.57.53]

10 And you were also asked to advise the Trial Chamber if there is
11 any further expert medical examination other than a psychiatric
12 assessment that might be required to enable the Trial Chamber to
13 reach its determination.

14 Does that generally summarize your assignment?

15 MR. FAZEL:

16 A. Yes.

17 Q. Thank you.

18 [13.58.18]

19 Now, before coming to the testing that you undertook personally
20 and to your conclusions, I would like to get an overview of the
21 preparatory work that you undertook and what other material you
22 reviewed, including oral reports by those treating or caring for
23 Ieng Thirith.

24 So first of all, and without telling us the results of these
25 consultations at this stage, could you list the occasions that

1 you examined Ieng Thirith yourselves?

2 MR. FAZEL:

3 A. We examined Ieng Thirith on three occasions, on the 12th
4 and 13th of September, specifically once on the 12th of September
5 in the afternoon and twice on the 13th of September.

6 Q. Thank you.

7 [13.59.12]

8 And could you specify those people whom you consulted, for
9 example, when you reviewed Ieng Thirith's three most recent CT
10 scans, and others whom you consulted among the physicians,
11 including the physicians who are part of the team providing
12 medical care to Ieng Thirith?

13 MR. LINA HUOT:

14 A. Our team of expert, we met with Dr. Chheang Ra, who is a
15 medical doctor at Calmette Hospital. He has treated Madam Ieng
16 Thirith so far, and we also met with Dr. Hey Leang, a specialist
17 radiologist, and he explains the CT scan, the three CT scans that
18 have been done so far.

19 [14.00.28]

20 And in addition, we also asked or conducted interview Mr. Mao
21 Sopheron, who is the Chief of the detention facility of the ECCC.

22 Q. Now, we have already examined many of the reports
23 concerning Ieng Thirith at the earlier hearing while we were
24 examining Professor Campbell, but it would be of assistance if
25 you summarized the content of certain reports which seem to be of

1 particular significance in your expertise report.

2 [14.01.14]

3 You might like to expand on your interpretation of these reports
4 at a later stage, but let's just list them at this point.

5 The first is the reports following Ieng Thirith's admission to
6 Bumrungrad Hospital in January 2006. Did you specially review
7 that report?

8 MR. FAZEL:

9 A. We reviewed a summary of her care that occurred some months
10 after that admission, but included a diagnosis and an overview of
11 her care throughout the early part of 2006.

12 Q. Thank you.

13 [14.01.58]

14 And you have also had the opportunity to review regular reports,
15 including those of the 13th of November, 2007, and the 28th of
16 February, 2008 which contained a summary of her physical health
17 in particular; is that correct?

18 MR. FAZEL:

19 A. Yes, that is.

20 Q. And of course, you have reviewed the three CT brain scans
21 and consulted with Dr. Hey Leang as Dr. Lina indicated earlier;
22 is that correct?

23 MR. FAZEL:

24 A. Yes, it is.

25 Q. And a detailed neurological examination completed by

1 Professor Campbell as part of his assessment of Ieng Thirith
2 earlier this year, you also reviewed that. Is that right?

3 MR. FAZEL:

4 A. Yes.

5 Q. Thank you.

6 [14.03.00]

7 As the result of the consultations you had and the reports and
8 tests that you have examined, can you give the court your
9 conclusions about her physical health and is there anything of
10 particular concern given the assignment that you have been asked
11 to conclude when you reviewed her regular medical reports?

12 MR. FAZEL:

13 A. We found that there was consistent reference to the
14 following physical health problems. These included high blood
15 pressure, some problems with her joints, including pain to her
16 knees, and a previous history of some digestion problems for
17 which she currently receives some medication.

18 [14.04.03]

19 In summary, they were the main physical health problems that
20 stood out.

21 Q. And in your view, are they being adequately treated or
22 managed at the present time?

23 MR. FAZEL:

24 A. Yes.

25 Q. Then there is the report following Ieng Thirith's admission

88

1 to the Thai Hospital that you mentioned earlier. And I'd like you
2 to comment on those parts of that report that are relevant to her
3 mental or cognitive status, please.

4 MR. FAZEL:

5 A. Yes. Madam Thirith was diagnosed with what was described as
6 an organic mental disorder, and our understanding of this is it
7 is what is now called a delirium, according to international
8 classification criteria.

9 [14.05.07]

10 And a delirium can occur in individuals with or without any
11 underlying cognitive impairment and is a self-limiting illness
12 which is not uncommon in older people if they're in hospital, but
13 is not associated necessarily with an underlying mental illness.
14 And our view was that this delirium was treated and that Madam
15 Ieng Thirith had no ongoing psychotic symptoms after 2006.

16 Q. Thank you.

17 [15.05.54]

18 Now, you also, of course, discussed your assignment with those
19 who treat Madam Ieng Thirith regularly and also those who are not
20 medically qualified, such as Mr. Sopheron, whom Dr. Lina
21 mentioned a few minutes ago.

22 Are you able to specify any particular matters that arose out of
23 those consultations, please?

24 MR. FAZEL:

25 A. I think we would highlight three, the first being that

89

1 there was from Dr. Cham Roeun of Calmette Hospital, he provided
2 us with useful information with regards to the fact that Madam
3 Ieng Thirith had not changed since there was an alteration in her
4 medication which had been instituted over the last few months.
5 And his opinion was there was no obvious change to her cognitive
6 function or her mood.

7 [14.07.06]

8 In relation to our conference with Mr. Sopheron, it provided us
9 with some information which we were able to corroborate through
10 other sources and through our own examination that Madam Ieng
11 Thirith had some memory problems.

12 And finally, when we spoke to our radiologist colleague, Dr. Hey
13 Leang, he helped us looking at the CT scan. And our impression
14 was, after speaking to him and looking at the scans with him,
15 that there were -- there was what is described as cerebral
16 atrophy on those scans. That, and also that there was no other
17 possible brain problems such as a tumour or evidence of a large
18 stroke which were important things to exclude in making the
19 diagnosis that we did in our report.

20 Q. Thank you.

21 [14.08.22]

22 Now, at paragraphs 20 to 25 of your report, you explain the sorts
23 of interviews that you conducted with Ieng Thirith on three
24 occasions over two days. It would helpful if you could explain
25 the tests and the assessments that you undertook simply and in

1 summary and then we will turn later to the diagnosis and the
2 specific -- the answers to specific questions.

3 MR. LINA HUOT:

4 A. We examined her and administered some tests, including the
5 MMSE. These tests were meant to assess her cognitive function and
6 intelligence, and these tests is universally -- are frequently
7 used to see whether a person has cognitive impairment or not.

8 [14.10.08]

9 On the first day, we observed the test, based on orientation, and
10 questions were classified into two, first about her orientation
11 concerning the time of the day and places, but her response for
12 -- at the beginning was negative. Then we also put questions
13 concerning location and street numbers or offices, and she could
14 respond that she was in Phnom Penh in Cambodia, so she scored two
15 scores in that -- in those questions.

16 However, she -- that's the only two questions she could manage to
17 respond. She could have answered or scored 10 scores.

18 [14.11.14]

19 With regard to the three objects, she could actually respond and
20 she done very well on the first day. And the second day, we also
21 administered the same test and she also responded very well.

22 With regard to the attention and concentration -- and
23 calculation, rather, the test was administered and she was asked
24 some questions. And since she can speak English, we asked her to
25 spell the word "world" and asked her to spell reversely, or

1 backwards. And on the first day, she could only spell correctly
2 one letter from that word. But on the second day, she could do
3 well because she could spell the whole word correctly.

4 [14.12.19]

5 And a while later, we also asked her the same questions whether
6 she still remembered the objects we presented to her, but she
7 could not remember the three objects that we asked her to say
8 again. Without which, she scored zero in that particular test.

9 With regard to the language, we raised a pen and asked her
10 whether she recognized it as a pen, she responded very well, she
11 scored well in that particular question.

12 We asked her to repeat "nor, if, or, and but", and she could
13 really repeat the phrase very well. We instructed her to hold
14 piece of paper, fold it into half, put it -- drop it on the floor
15 and she followed these three stages properly and she scored three
16 scores. On the second day she could also do well in that test.

17 [14.14.02]

18 And we asked her to write, close your eyes and asked her to
19 follow as what the writing was about and she closed her eyes; so
20 she scored well on those tests. And we asked her to write a
21 phrase, for example, a phrase beginning with a subject, verb and
22 an object, a full sentence; she would write in English that full
23 sentence on the first day, she scored one score on the first day
24 but later on when we asked her to write that sentence again she
25 refused to do that so she didn't score on that particular

1 purpose.

2 We asked her later on to draw two pentagons, it's a diagram of a
3 pentagon and she could score one score actually for that test.

4 Altogether on the first day she scored 15 out of 30, on the
5 second day she scored 18 out of 30, so it is interpreted that if
6 you score 21 to 26 your cognitive is impaired but it's just a
7 mild impairment.

8 If she scored from only 10 to 20 -- between 10 and 20 the
9 cognitive impairment is moderate but scoring lower than that is
10 resulted in the very low performance in the cognitive function.

11 So Ieng Thirith scored between 10 to 20, so it is between this
12 moderate level.

13 MR. FAZEL:

14 A. If I may add something, broadly speaking, we did three
15 types of examinations; first is what's called a mental state
16 examination which is a psychiatric interview where we look at
17 issues relating to mood, psychotic symptoms, speech and that is a
18 psychiatric -- a type of psychiatric interview which is
19 undertaken on all individuals, irrespective of their cognitive
20 function.

21 [14.17.01]

22 And then after that we did some specific cognitive tests, among
23 them include this screening test which my colleague has just
24 described, and that screening test is called the mini-mental
25 state examination, some abbreviate it to MMSE.

93

1 But we also administered some other tests of cognitive function
2 and those tests measure what is described as executive function,
3 which are cognitive abilities relating to judgement and decision
4 making and reasoning which are not adequately tested by this
5 screening test, the mini-mental state examination.

6 And then we supplemented these cognitive tests with other
7 questions relating to memory which are not part of any formal
8 instrument but we thought were relevant. So for instance we asked
9 other questions in relation to long-term memory, short-term
10 memory and we asked them in slightly different ways, and we asked
11 them on three separate occasions, as a way of clarifying, in our
12 minds, the degree and extent of cognitive impairment.

13 And finally we asked some questions in relation to fitness to
14 stand trial criteria, and again we asked them in many different
15 ways over the three interviews and we broadly followed the
16 criteria which were outlined in our Appointment Order but we
17 asked questions in some level of detail about each one of these
18 criteria.

19 So in summary, three types of tests; the tests, generally of
20 psychiatric functioning, called the mental state examination,
21 then tests of cognitive functioning and then finally some tests
22 relating to fitness to plead and stand trial.

23 Q. Yes, thank you very much for that very helpful overview.

24 [14.19.27]

25 You have -- you came to some conclusions concerning Ieng

94

1 Thirith's -- the degree of Ieng Thirith's cognitive impairment
2 but during the course of these tests, from time to time you
3 mentioned that she did better on one day than on another day or
4 she, on one occasion, declined to answer one of your questions.
5 Is this indicative of -- indicate any psychiatric conclusion to
6 you.

7 MR. FAZEL:

8 A. It is common in people with cognitive impairment that their
9 abilities fluctuate and so it is consistent with individuals who
10 do suffer psychiatric problems, not only cognitive impairment but
11 it may also be a sign of other psychiatric disorders that
12 people's abilities fluctuate. It's not definitive in any way but
13 it's consistent.

14 Q. Thank you.

15 Now, moving on a little, in your report you discussed the
16 interchangeable use of the terms cognitive impairment and
17 dementia and as a consequence you specifically stated that you
18 used the International Classification of Diseases Guidelines.
19 Could you explain that guideline and its purpose, please?

20 MR. FAZEL:

21 A. Yes, these are guidelines that have been developed under
22 the aegis of the World Health Organization and are used
23 internationally to diagnose psychiatric disorders and for that
24 matter, to diagnose physical disorders as well. They are in the
25 current 10th Edition, so they have already gone through quite a

95

1 lot of revision and development over the last 20-30 years, I'm
2 not certain of the exact date of when they were first introduced.
3 [14.21.50]

4 The current guideline is called ICD-10 which refers to the fact
5 that we're in the tenth edition of this international
6 classification of diseases. What these guidelines do is they
7 provide criteria for diagnosis and they give specific information
8 as to how an individual would meet a specific diagnosis and it
9 does so in terms of items under examination or the history which
10 an individual needs to meet but also items which need to be
11 excluded in order to make a diagnosis.

12 So in summary, the international classification of diseases is an
13 internationally agreed set of criteria. There is one competing
14 set which is used very much in North America called DSM and you
15 may have heard reference to it which stands for Diagnostic and
16 Statistical Manual. These two diagnostic criteria heavily overlap
17 and we chose to use the ICD-10 because it has probably more
18 international -- has a more international usage than the DSM.

19 Q. Thank you very much.

20 Now, Drs. Lina and Fazel, as a consequence of the examination of
21 all the medical and other reports available to you, your
22 consultations with other medical personnel and those who are in
23 close proximity with Ieng Thirith, and as well as that your
24 extensive expert testing of her, you have come to certain
25 conclusions which would normally be called a diagnosis.

1 Would you please go through your diagnosis and explain it. It
2 might be helpful if you did it paragraph by paragraph, perhaps
3 starting with paragraph 27 of your -- of your report because some
4 of these -- some of these diagnoses relate to the assignment you
5 were given and part answer questions that have been raised by the
6 prosecutors or the defence, so it's helpful, I think, to go
7 through in the way you've set it out in your report.

8 [14.24.24]

9 Thank you.

10 MR. FAZEL:

11 A. Thank you. Yes.

12 Our view is that she has a diagnosis of dementia, that is a
13 clinical diagnosis so it's made having reviewed the previous
14 reports, gathering as much information about the medical but also
15 personal history of Ieng Thirith and also based on our
16 examination over two days and discussion amongst us. So I'd say
17 the first of all this was a consensus diagnosis, we all agreed on
18 this.

19 Specifically, in order to meet the ICD or international
20 classification criteria there are five items that have to be
21 fulfilled and it was our view that all five were fulfilled and
22 again, this was a consensus view of our team.

23 The first of the criteria is that there's a decline in memory and
24 more specifically that this is most evident in the learning of
25 new information, but it's also possible that previously learned

1 information is also affected. And in our examination we felt that
2 there was clear evidence of a decline in memory. This was
3 information that was also corroborated by speaking to the people
4 -- for instance the medical doctor that we referred to and
5 detention staff but also verified by simple tests, cognitive
6 tests that we performed.

7 And we would describe this memory impairment as moderate because
8 it does render some serious handicap to the ability to live
9 independently, that is without assistance from others.

10 [14.26.36]

11 The second criteria is that there should be a decline in other
12 cognitive abilities which relate to judgement and thinking and
13 they can be, for instance, in planning or organizing activities
14 or general processing of information. And again, it was our view
15 that there was evidence of decline in judgement and reasoning or
16 thinking.

17 From informant history, but also our examination of Ieng
18 Thirith's cognitive functioning, and we described this decline as
19 mild to moderate in severity because it did restrict her
20 activities to some extent but we were not able to assess to a
21 complete degree whether they restricted all of her activities in
22 relation to daily living because of the fact that she's in
23 detention.

24 The third criteria is that awareness of the environment is
25 preserved and that is another way of saying that there is no

1 alteration in her level of consciousness so that -- another way
2 of saying it is her consciousness is normal and doesn't fluctuate
3 and it was our view that since the episode of delirium in 2006 in
4 Bangkok there was no evidence of any fluctuation in her state of
5 consciousness, and over the two days we examined Ieng Thirith
6 there was no evidence too of any fluctuation in her
7 consciousness. So we felt that item was clearly met.

8 Fourth criteria is that there is a decline in emotional control
9 or motivation or a change in social behaviour that is manifest in
10 at least one of the following; emotional ability which is another
11 way of saying that there is a lot of variation in ones mood,
12 irritability, apathy and coarsening of social behaviour.

13 [14.29.29]

14 And our assessment of this was that there was clear evidence,
15 particularly we were drawn to a number of items in the medical
16 records which document episodes of irritability in 2008 and 2009,
17 which in our view would amount to a decline in emotional control.
18 Our own assessment was that there was less irritability now,
19 although there was a clear restriction in her social interactions
20 which would also fit with this criteria.

21 The fifth criteria that needs to be met and the final criteria is
22 that the symptoms of memory decline need to be present for at
23 least six months. And it was our impression that the symptoms of
24 memory decline had been present for at least over one year and
25 possibly for a longer period than that.

1 Q. Thank you.

2 You did note that there was one report that you considered that
3 differed from the other reports and conclusions of previous
4 experts have, a part from this report, been in your opinion,
5 consistent with your diagnosis; is that correct?

6 MR. FAZEL:

7 A. Yes. The previous expert reports have all been consistent
8 with this diagnosis and stated explicitly that Ieng Thirith has
9 dementia.

10 Q. The one report that contrasted with those, is there
11 anything significant in that that you would wish to discuss now?

12 MR. FAZEL:

13 A. The only comment we would make about this report, which is
14 dated 16th of February 2011, is that there are no details about
15 how those tests of cognition were conducted and therefore we
16 found it difficult to comment any further on this report.

17 [14.32.22]

18 Q. Thank you.

19 Now, there are a number of specific matters that you were asked
20 to comment on, raised by the Prosecutors or by the Defence. The
21 first of these is commented on in your paragraph 12 which was
22 Ieng Thirith's ability to comprehend the purpose of your
23 interviews. Could you comment on that, please?

24 MR. FAZEL:

25 A. Yes. On page 12, paragraph 28, we discussed the fact that

100

1 we felt she had a limited understanding of the purpose of our
2 interviews. She agreed to be interviewed but on the second day
3 was unable to remember the purpose of the interviews. Yes.

4 Q. Thank you.

5 The next is set out in paragraph 29, her ability to maintain
6 concentration and engage in interviews.

7 MR. FAZEL:

8 A. Our impression was that she demonstrated some ability to
9 maintain concentration and engage in interviews. We interviewed
10 her for over two hours on two of the occasions that we saw her
11 and she did not appear to tire, she appeared to understand the
12 questions that were put her and did not complain to us of being
13 tired or fatigued at the end of those interviews.

14 [14.34.09]

15 So that our feeling was that there was some ability to maintain
16 concentration. We note that she did occasionally go off on
17 tangents and in that sense we did agree with Professor Campbell's
18 finding that she did sometimes not answer the questions that we
19 posed to her.

20 Q. And you have already touched, to some degree, on memory but
21 you were specifically asked about her long-term memory by the
22 Prosecutors. Can you comment on that? That's at paragraph 30 of
23 your report.

24 MR. LINA HUOT:

25 A. Mrs. Ieng Thirith's long-term memory is decreasing or

101

1 declining because she could not remember her school when we met
2 her during the first time. She could not name the school. But
3 during the second interview she could name Sisowath as her
4 school.

5 She also could not name her primary school and the name of the
6 King during the first interview. She could not remember the
7 locations, addresses for example, although we tried to ask her
8 time and again, she could not remember how many children she has.
9 Her ability to recall the main events changes. The fluctuation in
10 her memory is noted to be consistent with the clinical diagnosis
11 of dementia. We asked Mrs. Ieng Thirith the same questions during
12 the course of two days and we observed that her long-term memory
13 declines.

14 [14.37.10]

15 Thank you.

16 Q. A supplementary question to that response, Dr. Lina, both
17 of you have emphasized that this is a clinical diagnosis that you
18 have reached, can you just clarify for the Trial Chamber and for
19 the public what that entails or what other sort of diagnosis
20 could there be.

21 Thank you.

22 MR. FAZEL:

23 A. I mean, for some diagnoses you can rely on blood tests or
24 radiological evidence, such as a tumour but for psychiatric
25 diagnosis you rely on a range of pieces of evidence that you tie

102

1 together and make a clinical judgement because often one item on
2 its own, one piece of information on its own is not enough and so
3 you really rely on a range of possible factors to inform the
4 diagnosis.

5 So in psychiatry we rely on history, we rely on examination, we
6 rely on tests, such as blood tests and radiological tests, such
7 as brain scans. And sometimes we rely on the course of an
8 illness, so that is the repeated examination of somebody on a
9 number of occasions and our own views were informed by Mrs. Ieng
10 Thirith's previous examinations over a period of time which are
11 well documented.

12 Q. Thank you very much.

13 Now, the next specific question that you were asked to comment on
14 is responded to in paragraph 1 and that relates to the
15 recognition of Ieng Thirith's family members and others,
16 presumably those whom she would be expected to be familiar with.
17 Can you comment on that, please?

18 MR. LINA HUOT:

19 A. Well, we found that she cannot recall the names of her
20 family members. For example, her husband, in our first interview,
21 she could not remember her husband's name and she even mentioned
22 Ieng Sary as her brother instead of her husband.

23 [14.40.11]

24 And in the first interview she did not even remember her mother's
25 name and even her children's name. And in the second interview

103

1 she could recall the name of her mother. She said her mother --
2 she called her mother's name but she mentioned that her mother
3 was still alive which is contradictory. And she cannot recall her
4 children's name; she does not even know that she has a son at
5 all.

6 On the second day of the interview we asked her whether or not
7 she remembered the members of the interviewers or not and she
8 said no, she did not know our role but she knows one of the
9 translator. But then the next day we ask her whether or not she
10 know our roles or not she repeats that she does not know.

11 So upon examination we note that she can write the names
12 correctly. She made an effort to write our name because we
13 provided our name to her on the first day we met her but then on
14 the second day when we went to meet her again she could not
15 remember our names and she could not even remember our role, she
16 only remembered the translator. She knows that all this --
17 particular person is a translator for her, that's all she could
18 remember.

19 [14.42.14]

20 Thank you.

21 Q. You were also asked to comment on her ability to
22 communicate. Can you expand on that, please?

23 MR. FAZEL:

24 A. Yes. It was our view that she can communicate clearly.

25 There were no obvious word finding difficulties. The grammar, the

104

1 form of the sentences was normal. The rate and rhythm of her
2 speech were normal.

3 She was able to respond to questions and the impression was that
4 she understood the questions that were put to her.

5 However, we did notice very little initiation of conversation.

6 There was very little spontaneous conversation. It was really
7 focused over the two days on her specific answers to our specific
8 questions.

9 MR. PRESIDENT:

10 Due to a technical problem with transcription, and in light of
11 the time for the break, so the Trial Chamber would like to
12 declare a short recess until three-fifteen. We will come back by
13 three-fifteen.

14 (Court recesses from 1444H to 1512H)

15 MR. PRESIDENT: Please be seated. The Court is now back in
16 session.

17 [15:12:29]

18 We would like to hand over the floor to Judge Cartwright to
19 continue her questions to the two experts, please.

20 QUESTIONING BY JUDGE CARTWRIGHT:

21 Thank you, President.

22 Q. Now, continuing on the specific questions and issues raised
23 by the Prosecutors and by the Defence for Ieng Thirith, you were
24 asked about Ieng Thirith's orientation and you covered that in
25 paragraph 33 of your report. Could you expand in summary on that,

1 please?

2 MR. LINA HUOT:

3 A. Well, the expert team found out that she has orientation in
4 person during our interview with her. It means that she is
5 capable of recalling her name. But when we asked her about the
6 time she appears to have lost a sense of time. For example, she
7 knows that the interview was conducted during the day time but
8 she did not know that it was the night time, and she cannot even
9 recall the day of the week, for example, Monday, or Tuesday, or
10 Wednesday. She does not know that. And even the year she cannot
11 remember either.

12 And as for her sense of place, our team has found that she knows
13 the building -- she does not know which building she is in and
14 she does not even know the function of that building, but she
15 knows she is residing in Phnom Penh, which is in the Kingdom of
16 Cambodia.

17 Thank you.

18 [15:14:43]

19 Q. Thank you.

20 Now, given the seriousness of the charges that Ieng Thirith
21 faces, there is also -- always some concern expressed by the
22 Prosecutors about whether or not she could tailor her answers to
23 your questions and to your assessments to get the best possible
24 result for herself. Do you think that this is possible, given the
25 range of tests and assessments that you carried out? And you've

106

1 discussed this at paragraph 34 of your report.

2 MR. FAZEL:

3 A. It's a difficult question and we considered it very
4 seriously and went to some detail and care to address this issue.
5 Our feeling was that it was very unlikely that she could pretend
6 she had dementia or feign dementia. The reason for that is
7 because we asked questions in many different ways at different
8 times. Her responses wouldn't be obvious if you were feigning
9 dementia.

10 For example, you could quite easily -- it may be more obvious
11 that you would not recall certain things compared to other
12 things. It's not obvious why you would change your responses and
13 actually improve in the second day. For instance, she spelled
14 "world" correctly on the second day but not the first day. She
15 remembered her secondary school on the second day but not the
16 first day. She remembered the name of the King on the second day
17 but not the first day. Our clinical impression is that if you
18 were intending to feign dementia or pretend that you had
19 cognitive impairment, you wouldn't suddenly improve on some of
20 these simple items; actually, you would make sure that you would
21 be consistent on these simple items.

22 [15:16:53]

23 And also this is consistent over time so we saw that some of her
24 responses to questions that were put to her by a previous expert
25 were also of similar nature so that there were clear deficits and

107

1 things, some fluctuation in ability, but not in any obvious
2 direction that would indicate that you would be feigning it.
3 It's not impossible. I mean, you can never be 100 percent certain
4 about this. But our clinical view is that it is very unlikely
5 that this was pretended or feigned.

6 Q. Thank you.

7 Now, we have discussed briefly the three CT scans and the
8 assistance you received in reading them earlier on this
9 afternoon. Is there anything that you wish to add to that, given
10 that you were questioned about these matters by both the Defence
11 and the Prosecutors?

12 MR. FAZEL:

13 A. First, despite the fact that we are not trained
14 radiologists so that this is
15 not an area of specific expertise any of us have. We, as part of
16 our training and our practice, look at scans but always with the
17 assistance of a trained radiologist.

18 The important thing really to emphasize is that the scans don't
19 help you one way or the other with a diagnosis. They're
20 consistent with dementia but they're also consistent with
21 somebody who is 79 years old.

22 And the important thing, in addition, was that it excluded other
23 explanations for Ieng Thirith's memory problems, and those other
24 explanations are brain tumour or other what are called
25 space-occupying lesions or other lesions where you would have

108

1 obvious brain injury or damage.

2 Q. Thank you.

3 [15:19:14]

4 Now, you were specifically asked by the Prosecutors to comment on
5 whether Ieng Thirith suffers from Alzheimer's disease. You
6 haven't referred to that as part of your diagnosis but you may
7 wish to comment on that aspect.

8 MR. FAZEL:

9 A. Our impression was that that was the most likely form of
10 dementia for Ieng Thirith. However, the diagnosis of Alzheimer's
11 is only made when you can examine the brain either post-mortem or
12 by biopsy, so where you take a piece of brain which has obviously
13 not occurred. So that was our impression, and that is made mostly
14 through an awareness of the history of the disease, the progress
15 of the disease and someone with Alzheimer's disease is likely to
16 have a slow insidious decline in memory rather than step-wise and
17 sudden changes in memory, which would be consistent with what's
18 called vascular dementia, which is another common sub-type of
19 dementia.

20 Q. Remaining on that issue, further back in your report you
21 refer to the various examinations and reports that have been
22 concluded in relation to Ieng Thirith, and this is at paragraph
23 27-5, and it seems that you came to a conclusion that the age
24 related dementing process that we mild in nature recorded in 2009
25 effectively progressed, though that's a very un-technical term to

109

1 use. But would you care to comment on my use of that terminology?

2 MR. FAZEL:

3 A. I think there is evidence of progression, and I think we
4 agreed that there was progression in memory decline, from a
5 clinical perspective, but also there's evidence of progression on
6 the basis of the CT brain scans. So, yes, there is evidence of
7 progression.

8 [15:21:55]

9 Whether you would call the level of dementia mild or moderate
10 partly depends on what guidelines you're using. We use the
11 international classification of diseases guidelines. And on the
12 basis of that we felt that the dementia could be described as
13 between mild and moderate severity because there is a degree of
14 handicap to serious -- to independent living, but that degree of
15 handicap is not serious enough to render it a severe form of
16 dementia.

17 Q. Thank you.

18 Now, one of the features of Professor Campbell's examination and
19 report was the changes in medication that were recommended for
20 Ieng Thirith and also a proposal that he made, albeit parched and
21 not very optimistic terms, of the use of further medication.
22 Would you care to comment on that issue, please? It's at -- you
23 mention it at paragraph 37 of your report and it arises from
24 questions by both the Prosecutor and the Defence.

25 MR. FAZEL:

110

1 A. Yes, our understanding was that Professor Campbell
2 recommended three
3 things; one is a withdrawal of two oral sedatives; two, a
4 withdrawal of quetiapine, which is an oral anti-psychotic
5 medication, and thirdly, possibility of a trial of donepezil,
6 which is a medication that can be used to improve cognition in
7 people with mild dementia.

8 Our feeling was that in relation to Items 1 and 2 we very much
9 agreed with Professor Campbell that it is good practice to
10 withdraw these medications and monitor very closely if there's
11 any changes to Ieng Thirith's mental state or functioning which
12 would mean that you would reconsider that.

13 So our understanding was that in relation to the discontinuation
14 of two oral sedatives that that has not had a deleterious effect
15 and there is a possibility that it improves cognitive function.

16 It was our impression that there's no obvious evidence of that
17 but there was always a possibility that it might do.

18 [15:24:40]

19 Secondly, the quetiapine, which is an anti-psychotic medication,
20 at the time that we interviewed Ieng Thirith this had been halved
21 in dose and there was no effect one way or the other on her
22 mental state of cognitive function. And again, it is our view
23 that that is good practice because it is associated with side
24 effects and in some individuals it does actually speed up the
25 decline in one's cognitive functioning.

111

1 And finally, in relation to a trial of donepezil, which is a
2 medication used in some individuals with mild dementia, we don't,
3 as a team, have -- we have very limited experience of this, and
4 so our view was that we did not disagree with it but we felt that
5 in line with Professor Campbell that any improvements would be
6 limited to a minority of individuals who take it and may be quite
7 small in magnitude in relation to improving cognitive function.

8 Q. So were you her treating psychiatrists, in summary, you
9 would not be recommending that she be given donepezil?

10 MR. FAZEL:

11 A. If I was in this particular setting no, I would not
12 recommend it.

13 Q. And by stating, I presume, you're also taking into account
14 experience in its use and the facilities available for
15 prescribing this medication in Cambodia?

16 MR. FAZEL:

17 A. That is correct.

18 [15:26:41]

19 Q. Thank you.

20 Now, you were finally asked by the Prosecutors to comment on any
21 treatment or measures -- other treatment or measures that might
22 be of benefit to Ieng Thirith's mental state or cognitive
23 function, and you discuss those at paragraph 38, and again you
24 note the constraints of some measures that might be available in
25 other countries. Could you comment, please?

1 MR. FAZEL:

2 A. I think at the -- I'll just start again. I think the most
3 important of these
4 measures would be treatment of any co-existing medical problems,
5 which is currently being done in our opinion, treatment of her
6 pain, which is currently being done, and regular monitoring of
7 her physical health so that any illnesses are treated quickly and
8 appropriately. So that in a way is the most important measure
9 that could be -- that is beneficial to Ieng Thirith's health,
10 mental health and cognitive functioning.

11 There are other things which may be helpful and they include
12 having staff that are consistent, having staff that accommodate
13 her fluctuating abilities so that her -- are aware of her
14 limitations and respond in an empathic or sympathetic way to
15 these fluctuating abilities.

16 Other things would include supporting her in any activities she
17 enjoys. So, for instance, our understanding was that she enjoys
18 receiving a daily newspaper and she enjoys visitors, so continued
19 support for those things.

20 And there are other things which may be beneficial but are more
21 difficult, I think, to implement in the current setting, and that
22 is physical exercise some people find beneficial, and an activity
23 which stimulates her mind, which is called conscious stimulation
24 in jargon, I think is simply put more simply is really an
25 activity -- any activities, often in a group setting, which

113

1 stimulate an individual's thinking and reasoning and use of their
2 memory and other related activities. So that may be helpful.

3 [15:29:52]

4 And finally, if there are any environmental modifications to her
5 current living situation, we would -- in individuals who have
6 more problems than Mrs. Thirith, we would ask for advice from an
7 occupational therapist, and that may be something in the future
8 that is appropriate, but currently our feeling was that she does
9 receive appropriate help as and when is required and therefore
10 that wouldn't be necessary at this point but may well be in the
11 future something worth considering.

12 Q. Thank you.

13 Now, just to take you back briefly to comment on a small detail,
14 the questions that were asked concerning Ieng Thirith's
15 recognition of family members, I think, Dr. Lina, you spoke of
16 Ieng Thirith referring to her husband as her brother. Am I
17 correct in saying that sometimes it is customary in Cambodia to
18 do that, and if it is, does it make any difference to your
19 assessment under that particular heading?

20 MR. LINA HUOT:

21 A. Well, Your Honour, as the custom in Cambodia, if you
22 address him
23 as "Bong" it's okay, but during our interview she did not say
24 "Bong" but she referred to "brother". So "brother" means "elder
25 brother" or "younger brother", but "Bong" itself is a sweet word

114

1 for husbands and wife. So I could infer that she did not mean
2 Ieng Sary was her husband but what she really meant was that Ieng
3 Sary was her elder brother.

4 Thank you.

5 Q. Thank you very much for that clarification.

6 [15:32:11]

7 Now, in your expert assignment you were asked to bear in mind
8 five points, and I'm just going to take you through those because
9 you have also commented on these five points. I know that you
10 went through some other jurisprudence but I'll just take you to
11 the five points that the Trial Chamber asked you to comment on.
12 The first of those was, does Ieng Thirith have the ability to
13 understand the charges against her. And you discussed that in
14 paragraph 42 of your report.

15 [15.32.50]

16 Can you summarize that, please?

17 MR. FAZEL:

18 A. In summary, we felt she did have the capacity to understand
19 the charges. It was difficult -- a difficult assessment because
20 she mostly refused to discuss these issues when we raised them,
21 and we did so repeatedly over three interviews.

22 But over the course of these three interviews, she discussed the
23 meaning quite clearly of two or three of these charges, and our
24 inference from another charge was that she probably understood
25 what they meant. So specifically in relation to crimes against

115

1 humanity, she noted on one occasion that was "really severe" and
2 she said, and I quote: "The whole population of a country
3 vanished."

4 [15.34.03]

5 And then, when we asked her about murder, she said that she had
6 never killed anyone, quotation marks around "killed", and at
7 another point she said that murder meant, and I quote, "a man
8 killing another human being". And by that, we understood that she
9 understood what murder meant.

10 When we discussed and asked her about what genocide meant, she
11 did say that it referred to the whole population. In relation to
12 the word "torture", she stated that, and I quote, "no one
13 inflicted such harm". And again, our inference from that was that
14 she understood the term.

15 [15.35.01]

16 And finally, in relation to religious persecution, her response
17 to that was more ambiguous in that she said, "Cambodians were not
18 ambitious". And we thought it was possible to interpret that as
19 saying that Cambodians were not the type of people to harm other
20 ethnic groups. And again, our inference was that she probably
21 understood that in order to make a comment like that.

22 So although her responses were not direct and were not in the
23 course of one interview or a small part of one interview, over
24 the course of three interviews our impression was that she did
25 understand the charges, broadly speaking.

116

1 Q. Thank you.

2 [15.35.57]

3 The next question you were asked to address was whether Ieng
4 Thirith had an adequate level of understanding of court
5 procedures.

6 Now, in your report, you have, rightly, inferred from that that
7 we do not expect her to have a detailed knowledge, but a general
8 knowledge of court proceedings as they affect her.

9 Would you care to summarize your answer to that question, please?

10 MR. FAZEL:

11 A. We felt that Ieng Thirith had considerable difficulty with
12 this particular understanding, and specifically, although she
13 appeared to understand the role of the Judge, she did not seem to
14 understand the adversarial nature of the legal process even after
15 we repeatedly explained what would happen in court in relation to
16 questions from a prosecuting side and a defence side. She did not
17 seem to comprehend this or understand this.

18 [15.37.10]

19 Furthermore, our feeling was that she was not able to retain
20 information long enough in order to weigh it and to reason, to
21 reason on it in order to make any intelligible comments on
22 anything she heard. And so we had -- we came to the view that she
23 would have considerable difficulty in understanding court
24 procedures. She would have considerable difficulty in commenting
25 on anything that was said by the speeches of witnesses and

117

1 lawyers, and considerable difficulty in communicating on anything
2 that was aid by witnesses and lawyers.

3 Q. Thank you.

4 And the next point is whether she has the ability to instruct
5 counsel. Can you summarize, please?

6 MR. FAZEL:

7 A. Yes. We understood that to be -- it would be possible to
8 break that notion down or that ability down to cooperating with
9 counsel, informing counsel of the facts of the case as she saw it
10 and assisting counsel in the preparation of her defence.

11 [15.38.42]

12 And in relation to those three related items, our impression was
13 that she was able to cooperate with her lawyers and she did state
14 to us that she thought her lawyers were trying to help her, but
15 we're not sure and we felt that there were -- she would have
16 considerable difficulty in assisting her lawyers in the
17 preparation of a defence because she had severe memory impairment
18 in relation to her activities or her involvement at the time of
19 the alleged offenses and also the wider context of her life at
20 the time, so there was some ability in instructing counsel in
21 that she was able to cooperate with them, but some difficulty in
22 assisting counsel in preparing her defence because of her memory
23 impairment.

24 Q. Thank you.

25 [15.39.50]

118

1 You also spoke about her ability to assist in the identification
2 and examination of witnesses and whether she's capable of
3 deciding whether or not to speak during her trial. That is at
4 paragraph 48 of your report.

5 Would you care to summarize your views on that, please?

6 MR. FAZEL:

7 A. Yes. We felt that Ieng Thirith was able to recognize
8 persons with whom she is familiar with, although she may not be
9 able to name them or remember their roles, and we felt that she
10 was able to offer relevant answers to questions and relevant in
11 the sense that she would understand the meaning of the questions
12 posed and that her answers could provide some defence, although
13 our impression was that they -- these answers sometimes
14 contradicted each other and were not internally consistent.

15 [15.41.06]

16 For example, on a number of occasions, she said she was a young
17 girl at the time of the alleged crimes, which is not consistent
18 with other information, obviously.

19 Q. Thank you.

20 [15.41.23]

21 And the next question -- and the next point was, does she have
22 the ability to testify?

23 MR. FAZEL:

24 A. Yes. Our feeling was that she could understand questions
25 put to her, and she could apply her mind to answering them and,

119

1 therefore, because she had no difficulty in comprehending
2 questions and was able to respond to questions, we felt that she
3 did have the ability to testify. And we note that although her
4 answers may not be credible, they nevertheless are still answers
5 and they provide some defence.

6 [15.42.16]

7 So our understanding of the ability to testify does not relate to
8 the content of the answers, but more the ability to comprehend
9 questions and respond to them.

10 Q. And the fifth point was her ability to understand the
11 consequences of a conviction, which you comment on at paragraph
12 46 of your report.

13 MR. FAZEL:

14 A. She refused to answer any questions in relation to the
15 consequences of any conviction. Nevertheless, she did demonstrate
16 some ability to see through the consequences of other related
17 matters, in particular, she understood the consequences of being
18 found, in quotation marks, "mad".

19 [15.43.17]

20 We showed her a photograph of herself during a previous court
21 appearance, and she read out the -- in English the caption
22 accompanying the photograph, and she said to us, "They dare not
23 call me again to court, as many people support me".

24 Then we showed her another article, and this article mentioned
25 the word "dementia" in its -- in the title of the article. And

120

1 she pointed at that word and said, "You see, they accused me of
2 being mad so no one can do anything to the mad person".

3 [15.44.13]

4 By that, we understood that she was able to see the consequences
5 of being found mad and, therefore, we inferred from that that she
6 has some ability to see the consequences of any conviction.

7 Q. Thank you.

8 You were asked to consider some further issues by the defence
9 concerning Ieng Thirith's ability to follow proceedings and
10 participate adequately in her trial through audiovisual
11 techniques.

12 [15.44.45]

13 Could you comment on that, please?

14 MR. FAZEL:

15 A. Yes. I mean, the -- our feeling was that -- was partly that
16 we were not aware of any evidence and had no experience of
17 whether this would enhance the abilities that were discussed or
18 not. Nevertheless, we felt that she would be able to follow
19 proceedings through audiovisual techniques, particularly if there
20 was support staff and Khmer-speaking lawyers with her.

21 [15.45.32]

22 We don't -- we were not able to say whether that would enhance
23 her capacity to stand trial or not, and we're not aware of any
24 research evidence on this technique being used to help people
25 improve their abilities to stand trial.

121

1 Q. Thank you.

2 Now, at the end of your report, you give an overall conclusion
3 and you note in your -- the professional opinion of the four
4 experts that the court's decision on Ieng Thirith's fitness to
5 stand trial will be a finely balanced one. And you go on to
6 explain that to some degree.

7 [15.46.21]

8 You say that it depends on the threshold that the court uses,
9 that on balance -- on what common lawyers say the balance of
10 probabilities, you -- the four of you concluded that she did not
11 have sufficient understanding on the basis of your examination;
12 is that correct?

13 MR. FAZEL:

14 A. Yes, it is.

15 Q. You also note that that conclusion is, in part, influenced
16 by the fact that her abilities will fluctuate; is that correct?

17 MR. FAZEL:

18 A. Yes, it is.

19 Q. Which is not an unexpected consequence of dementia, as I
20 understand your report.

21 [15.47.08]

22 You have indicated in response to the Co-Prosecutor's questions
23 that oral summaries, regular and continuous contact throughout
24 the trial, having Khmer-speaking lawyers engaged in consultations
25 would not, in your view, using the threshold that you have

122

1 adopted, provide the improvements that would be needed for her to
2 gain a sufficient level of understanding to follow the course of
3 proceedings.

4 Is that correct?

5 MR. FAZEL:

6 A. Yes, it is.

7 Q. And finally, you say that other possible options to improve
8 her fitness, which we've already gone through, are unlikely to
9 improve her cognitive ability to the extent that she would have a
10 sufficient understanding of the course of legal proceedings.

11 [15.48.07]

12 Is that your agreed view?

13 MR. FAZEL:

14 A. Yes, it is.

15 Q. Thank you.

16 Well, I have a few questions relating to the future for each of
17 the two experts here this afternoon, or whichever of you wish to
18 comment.

19 [15.48.32]

20 First of all, if the Trial Chamber were to decide that Ieng
21 Thirith is fit to stand trial, are you able to comment on the
22 impact of her condition as you have described it on the conduct
23 of a trial which will involve three other elderly accused, some
24 of whom have their own physical issues?

25 MR. FAZEL:

123

1 A. Can I just clarify? By the "conduct of the trial", do you
2 mean the time that will be taken to proceed?

3 Q. Her condition as you have described it interrupt, or not,
4 the course of the trial which, of course, you've got to bear in
5 mind there are three other elderly accused who have their own --
6 some of whom have their own problems, but would her condition
7 alone cause any interruptions, any alteration to the usual smooth
8 running of the trial?

9 MR. FAZEL:

10 A. Yes, I think there would be, and in particular because it's
11 likely her abilities will fluctuate, that there will be occasions
12 where she may not be able to attend court and she may -- there
13 may be times where she'll need some extra input from her legal
14 team because of her problems with her memory. So I think in all
15 likelihood it would interrupt the smooth running of any trial.

16 Q. Now, you have made it clear that you consider the Trial
17 Chamber's decision will be a finely-balanced one on Ieng
18 Thirith's fitness.

19 [15.50.43]

20 If the Trial Chamber were to decide that she is currently fit to
21 stand trial, would you be suggesting any further assessments and,
22 if so, how often and would you have in mind any particular
23 medical specialty or specialties that would be required to
24 examine her?

25 MR. FAZEL:

124

1 A. I think it would be helpful to monitor her cognitive state
2 and a psychiatrist could do so. That would be my primary concern,
3 that it would be monitored and clearly documented if there are
4 any clear-cut changes to her cognitive state. How often that
5 would occur would be partly guided on her -- how she's presenting
6 herself to staff, but I think it would be reasonable to do so
7 every three months.

8 Q. Thank you very much.

9 [15.52.07]

10 Now, Dr. Lina and Dr. Fazel, I'm now going to conclude my part of
11 the questioning and give the floor back to the President. Thank
12 you very much for your detailed assistance this afternoon.

13 MR. PRESIDENT:

14 Thank you, Judge Cartwright, and the experts.

15 Next, I would like to hand over to the other Judges of the bench
16 who would wish to put questions to the experts.

17 Judge Lavergne, you may now proceed.

18 QUESTIONING BY JUDGE LAVERGNE:

19 Yes, thank you, Mr. President.

20 I also wish to thank the experts for all of their clarifications
21 they gave us this afternoon, and I however do have a few brief
22 questions to put to you.

23 [15.53.11]

24 Q. And, first of all, the first question involves the
25 diagnosis of the pathology that Ieng Thirith seems to be

125

1 suffering from. You indicated that you're rather inclined to
2 consider that Ieng Thirith is suffering from Alzheimer's and, on
3 the other hand, you also indicated that her degree of severity
4 would be 5 on the scale that includes 7 levels.

5 And the first question I'd like to ask you is, is Reisberg Scale
6 something that is specific to Alzheimer's or is this simply a
7 general clinical evaluation that can be applied to all forms of
8 dementia? You spoke about vascular dementia, for example, so does
9 this evaluation have an impact on the diagnosis?

10 MR. FAZEL:

11 A. In relation to the first part of your question, this is not
12 specific to Alzheimer's disease, from my understanding. It is a
13 scale that is used to describe dementia but also changes to
14 people's cognitive ability before they have dementia. So it can
15 be used in people who don't have a diagnosis of Alzheimer's
16 disease, but it can then be also used to document the extent of
17 the Alzheimer's disease.

18 So that's a slightly confused answer but, basically, it can be
19 used at a range of levels but is commonly used in Alzheimer's
20 disease from our knowledge from my -- from the -- from our
21 knowledge.

22 I'm not sure if there was another part of your question which
23 I've now forgotten?

24 Q. You said that she was at level 5 on this scale, and if I
25 look at your report you also specified that this level 5 would

126

1 mean that she is suffering from precocious dementia and something
2 from moderately severe cognitive impairment.

3 Is that what we must understand or do you have any extra
4 clarification to provide? If I were to make things a bit easier
5 for you, this you can find at the end of paragraph 36.

6 MR. FAZEL:

7 A. No, I don't have anything to add. Just to clarify that the
8 terms "dementia" and "cognitive decline", you know, sometimes
9 people use it in an overlapping sense, and we've tried to
10 distinguish between them so that our understanding of stage 5 is
11 that it refers to early dementia which is consistent with a
12 moderately severe cognitive decline.

13 Q. And one of the advantages of acting over duration means
14 that we have several expert reports on the case file already, and
15 if I refer to the expert report that was produced by Professors
16 Brinded and Ka Sunbaunat that are practically two years old, it
17 is interesting to note that these experts considered that Ieng
18 Thirith was showing light cognitive impairment, and that would
19 affect her short-term memory in particular, but they also
20 specified that these disorders seemed normal given her age and
21 that these disorders had not worsened in a significant manner
22 since 2006.

23 And regarding this cognitive disorder, they also provide the
24 following specifications. And at page 8 of their report, they
25 said -- they stated that:

127

1 "The short-term memory problems transpired clearly during our
2 interviews with her, although Ieng Thirith remembered that she
3 has three lawyers and that she was able to explain what their
4 role consists of but she had to look at her notes to remember
5 their names however. And at each interview, she remembered the
6 place and the time of the interview. She was quite redundant when
7 she went back to describing the past and she would repeat certain
8 traumatic experiences that she had already related to us. And
9 she, of course, might have had trouble remembering the
10 chronological order of certain events but, aside from that, she
11 was able to provide important elements of information, a long and
12 detailed account to support her views of her roles and functions
13 within Democratic Kampuchea."

14 So if I recall all of this, it's maybe to put you a rather
15 obvious question, but would you say that her condition over the
16 past two years -- that the change in her condition is quite
17 significant or is this a normal change in her condition that is
18 no more in regard to Alzheimer's; or do you have anything else to
19 say in this regard?

20 MR. FAZEL:

21 A. It's difficult to be very precise on this issue. I think
22 there is evidence of a decline in her memory and that is -- you
23 can see this from -- as you pointed out, her responses to some of
24 the questions put to her in 2009 and her responses to the
25 questions put to us in 2011 and also to Professor Campbell, as we

128

1 understand it, there were similar problems as we have highlighted
2 in relation to orientation of place and time. So there does seem
3 to be some progression.

4 Whether this is to be expected or not, it's very difficult to
5 know, partly because individuals have such different trajectories
6 of their illness and there's no way of being certain which
7 trajectory someone will take; whether they will decline very
8 quickly or decline very slowly, it's very difficult to know how
9 fast or how slowly someone will decline.

10 All we can, I think, say is that there is some evidence of
11 decline. It's clearly in relation to some of the orientation
12 questions about time and place, but also there are pockets of
13 long-term memory that also seem to have declined over this
14 period.

15 The other thing we would say is that the report of Professor
16 Brinded and Professor Sunbaunat Ka does, nevertheless, still use
17 the term "dementia" and it's not our understanding that dementia
18 is just an age-related normal change. We are of the view that it
19 is still -- it's a disease process, a disease of the brain, and
20 so with that in mind we believe that there's some consistency at
21 least in terms of diagnosis between 2009 and 2011.

22 Q. You've indicated that it is difficult to gauge the pace at
23 which this pathology changes, but if I understand correctly,
24 there is certainty surrounding the fact that the disease will
25 necessarily entail a gradual deterioration of memory and her

1 cognitive abilities; is this certain?

2 [16.03.03]

3 MR. FAZEL:

4 A. In someone with Alzheimer's disease, this is certain.

5 There are some forms of dementia, for instance, if they're caused
6 by a thyroid problem which if you treat the thyroid problem, the
7 dementia may not decline. So it is the case, in our view, that in
8 Ieng Thirith's diagnosis -- with Ieng Thirith's diagnosis that
9 there will be a decline, but that is not to say that everyone
10 with dementia does decline because there are some causes of
11 dementia that are treatable. We do not believe that Ieng Thirith
12 has a -- one of these reversible causes or treatable causes of
13 dementia and we note a number of blood tests to exclude these
14 reversible causes including normal thyroid tests.

15 Q. With respect to vascular dementia, what would be the
16 altering(sic) -- or what would be the factors that change that
17 relative to Alzheimer's?

18 MR. FAZEL:

19 A. Do you mean what would enable you to make a diagnosis or
20 how does the prognosis or the course of the illness differ?

21 Q. With respect to the prognosis, with respect to the changes
22 over time.

23 MR. FAZEL:

24 A. Yes, our understanding is that with vascular dementia, the
25 changes are more stepwise so there still is a decline over time,

130

1 but there are sudden changes in cognitive function and those are
2 thought to be associated with vascular events in the brain
3 otherwise known as small strokes. They can also be large strokes
4 where there would be clear neurological deficits, as well, such
5 as paralysis of part of the body, speech changes so as slurring
6 of speech. So in vascular dementia, there's also a decline over
7 time that the decline will happen in more stepwise changes rather
8 than in Alzheimer's where it's a more gradual, insidious decline
9 over time.

10 [16.05.39]

11 Q. One final question for you, doctor; now, in some of these
12 expertize reports there was discussion of elements of paranoia;
13 is this something that you detected while examining Ms. Ieng
14 Thirith? Is this something that is significant or is this part
15 and parcel of any examination to diagnose Alzheimer's or
16 dementia?

17 MR. FAZEL:

18 A. It was not a very prominent feature of our examination so
19 there was no, in our view, clear-cut delusion or fixed false
20 beliefs about other people. She, at one point, referred to one of
21 the co-defendants or co-accused as a traitor and that -- our
22 understanding is that's not necessarily paranoid. So there was
23 no, as I say, clear-cut paranoid thoughts or she did not, for
24 instance, misinterpret anything we said in a paranoid way and
25 what we were really looking for was what are called delusions

131

1 which are fixed, unshakeable, false beliefs which cannot be
2 explained by her background and those we didn't find any
3 clear-cut evidence of. Yes.

4 JUDGE LAVERGNE:

5 Thank you very much, Mr. President. I have no further questions
6 to put. Thank you.

7 MR. PRESIDENT:

8 Thank you, Judge Lavergne, and the experts for the questionings
9 and for the responses.

10 I feel that Judges of the bench would not have any further
11 questions and since it is an appropriate time already to conclude
12 today's session, we may adjourn. However, before the adjournment,
13 we would like to inform the Counsel for Ieng Thirith and the
14 Prosecutors and the Lead Co-Lawyers for the Civil Parties that
15 this morning the Chamber already informed with regard to the
16 order for questionings -- the order of the group to put questions
17 to the experts. However, after some discussion, we unanimously
18 agreed that the orders should be amended a bit.

19 [16.08.55]

20 So for tomorrow's session, in the morning when we convene, the
21 questions will be put by the Defence team for Ieng Thirith and
22 the team will have one hour for this questioning. And then the
23 Co-Prosecutors will be allocated one hour to proceed with their
24 questions followed by the Lead Co-Lawyers for the Civil Parties
25 for 30 minutes.

132

1 We hope that to ensure the smooth -- the functioning of
2 tomorrow's session, these orders are now well informed to the
3 parties and the Chamber will also inform the party if there is
4 anything else they need to be informed about.

5 (Discussion between judges)

6 MR. PRESIDENT:

7 We would like to also inform that the session will conclude after
8 the questionings and that the parties are advised to also prepare
9 for the closing arguments with regard to this session and the
10 Chamber will also discuss to see whether it is appropriate to
11 speak to the current allotted time. We also will reserve some
12 time for the other defence team to respond to the remaining
13 question.

14 And the hearing is adjourned. The session will be resumed
15 tomorrow by 9 o'clock.

16 The security personnel are now instructed to take Ieng Thirith
17 and Ieng Sary back to the detention facility and bring them here
18 tomorrow -- bring Ieng Thirith back to the court tomorrow by 9
19 o'clock. With regard to Ieng Sary, the floor is his and their
20 counsel.

21 THE GREFFIER:

22 All rise.

23 (Court adjourns at 1612H)

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Extraordinary Chambers in the Courts of Cambodia
Trial Chamber
Case No. 002/19-09-2007-ECCC/TC
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