

Civil Party Co-Lawyers Present Their Closing Arguments

At 9 a.m. on June 13, 2017, Judge Nil Nonn, President of the Trial Chamber, opened the proceedings for the hearing of closing arguments in Case 002/02. He called on the Greffier, who confirmed that all parties were present.

Judge Nonn reminded the public of the schedule for hearing closing arguments. He noted the timely filing of closing briefs by all parties.

The schedule for the hearing of closing arguments will be as follows:

- Civil Parties will have one day to present;
- Co-Prosecutors will have two days to present;
- Nuon Chea will have two days to present;
- Khieu Samphan will have one and a half days to present;
- One day is reserved for rebuttal by Civil Party Lead Co-Lawyers and the Co-Prosecutors; and
- Final rebuttal and the final statements of Accused, 4 hours, on June 23.

Judge Nonn stated that after the hearings on final arguments conclude, the Chamber will close the proceedings and notify the public of the date of judgment at the appropriate time.

Next, Judge Nonn reminded the parties to speak clearly and slowly for the translators.

He also stated that he had instructed guards to bring Accused Nuon Chea to the courtroom, according to recommendations made by the doctor at the ECCC who provided a certificate to the Chamber this morning. According to the doctor, Nuon Chea is physically able to sit in the courtroom for about 20 minutes. Judge Nonn informed Nuon Chea that after this period, if he feels that he cannot stay in the courtroom, upon request to the Chamber, he may return to a room downstairs. This request was made approximately 25 minutes into the hearing, and Nuon Chea moved to a room where he could participate in the proceedings remotely.

Judge Nonn reminded the parties to adhere to the guidelines issued on June 7, 2017 (see document E457/7). Judge Nonn read the guidelines in full in open court.

The guidelines are intended to help closing arguments go smoothly, with one guideline of particular note, and that was how parties are to address torture-tainted statements within the closing statements.

Judge Nonn stated that under the Cambodia Code of Criminal Procedure, coerced statements have no evidentiary value, and under the Convention against Torture, statements made as a result of torture may only be used against a person accused of torture as evidence that the statement was made. Moreover, this Chamber has held that torture-tainted evidence cannot be used for the truth of the content stated, but objective information contained within the confessions and annotations made by an interrogator or his superiors can be used.

He also recalled this Chamber's findings related to the "real risk" that torture was used at S-21 and other security centers to obtain confessions, and that any party seeking to rely on this evidence should first show that the statement was not torture-tainted. Because the Accused in this case are charged with the crime of torture, the Chamber must apply a higher standard of proof to determine whether torture occurred. The Chamber's previous determination that a real risk that evidence obtained by torture may differ from its final conclusion.

Lastly, Judge Nonn read from the guidelines that as the evidentiary hearings have concluded and there is no danger that witnesses and civil parties could be improperly influenced by torture-tainted evidence, where necessary the Chamber will allow the parties to reference such information during closing statements, so long as the party indicates that the Chamber has attached a presumption that the evidence to be discussed was obtained by torture.

Judge Nonn gave the floor to Civil Party Lead Co-Lawyer Pich Ang.

Mr. Ang introduced himself and stated that this was a good day to present closing statements and reparation proposals, after the close of evidentiary hearings of more than 200 days.

He explained that the Civil Party Lead Co-Lawyers represent a consolidated group of civil parties of 3,867 persons, and discussed the composition of this group. Of these, 2195 live in Phnom Penh and surrounding provinces, and the remainder outside Phnom Penh. He noted that the total number of civil parties has not been constant as 181 parties have passed away since the start of the trial, and from these, 34 claims have continued through the filing of a successor claim. Mr. Ang noted that 64 civil parties testified during trial, ten of these were only 16 years old during time of the Khmer Rouge, and those who testified included "new" and "base" people, and sixteen where Khmer Rouge at the time.

Mr. Ang noted that, as stipulated in Internal Rule 23 *quinquies*, the civil parties filed their complaint against the Accused in support of the Co-Prosecutors and for moral and collective reparations.

Mr. Ang also stated that in closing arguments, the Civil Party Co-Lawyers will provide highlights of testimony before this Chamber, so as to assist the Chamber to see elements of crimes, and to highlight the harms suffered by civil parties.

He laid out the order of presentations. First, Mr. Ang will discuss the testimony relating to worksites and the persecution of the Cham people. Civil Party Co-Lawyer Chet Anly will present information related to the Tram Kok cooperative, the persecution of Buddhists, and the Kraing Ta Chan security center. Civil Party Co-Lawyer Hong Kim Suon will present on three security centers and internal purges. Civil Party Lead Co-Lawyer Marie Guiraud will present the treatment of the Vietnamese during the Democratic Kampuchea period, and on forced marriage. In the final session of today's proceedings, Ms. Guiraud and Mr. Ang will cover reparations where funds have been secured for implementation.

Mr. Ang requested that the Chamber allow the Civil Party Co-Lawyers to present video clips and projections of documents during the presentations. Judge Nonn granted the request, but only

for those materials previously put before the Chamber. Mr. Ang agreed.

Mr. Ang stated that the goal of the cooperatives was to provide food for internal consumption and for export. This was to be accomplished by rapidly increasing agricultural output to three tons of rice per hectare, creating a country-wide irrigation network, and building infrastructure such as airfields or dams. It is alleged that another objective for the cooperative was to further the policy of detecting, defending against, and smashing the enemy, and to eliminate the private sphere while destroying the social structure and replacing it with a collective regime that disallowed any individual interests.

Mr. Ang explained that first the Chamber will need to determine whether crimes against humanity occurred at each of the worksites and cooperatives. Second, the Chamber will need to determine whether the Accused can be held responsible for those crimes. The aim of today's presentations will be to show how civil party evidence supports the elements of the individual crimes alleged, specifically, enslavement, torture, and political persecution.

Mr. Ang presented civil party evidence related to the Trapeang Thma Dam, 1st January Dam, and the Kampong Chhnang Airport. Civil parties described the conditions they endured, such as overwork, high quotas, inadequate nutrition, and lack of healthcare and hygiene. Their testimony is relevant to the crimes of enslavement, other inhumane acts, murder, extermination, and persecution on political grounds against "new" people. Their testimony covers, in great deal, their living and working conditions.

Mr. Ang stated that each worksite had different characteristics: for example, at Trapeang Thma Dam, each person described being attached to 100-person units and the control that was exerted over them. At the January 1st Dam, each of the civil parties described in detail the living conditions and lack of sanitation at a worksite that covered three sectors. At the Kampong Chhnang Airport, civil parties described grueling labor while being under "total instruction."

With regards to the Trapeang Thma Dam, 101 civil parties were admitted in the context of the crimes committed there. Of these, four civil parties testified on the crimes of enslavement, murder, extermination, and persecution on political grounds against the "new" people at the worksite. Mr. Ang noted that the Chamber will have to decide if the conditions at the Trapeang Thma Dam meet the standard for enslavement, and this will include an analysis of the control of speech, family, the supervising of people, and imposition of punishment.

Mr. Ang's presentation of civil party testimony on Trapeang Thma Dam included statements on the difficulty of daily life and meeting work quotas, the meetings held by superiors, and the ways in which "new" people were discriminated against by the "base" people.

Mr. Ang stated that for the 1st January Dam, 47 civil parties were admitted in the context of the crimes committed there. Five of these civil parties testified on crimes of enslavement, other inhumane acts, murder, extermination, and persecution on political grounds against "new" people. The civil parties who testified on the conditions at the 1st January Dam were all women. Their statements included also descriptions of the discrimination of the "base" people against the "new" people, the lack of autonomy, medicine, and hygiene, the particular suffering of

women as they did not receive bras, underwear, or feminine hygiene products with which to manage their menstruation, the control of workers through reeducation meetings, the restriction on speaking to anyone, including one's siblings, and the fear of showing grief for family members who were killed.

Eleven civil parties were admitted in the context of the crimes committed at Kampong Chhnang Airport, and three of those testified on crimes of enslavement and other inhumane acts. Their statements included descriptions on their restriction of movement and on communication with others, the strict regulations, and the ways that they were encouraged to report on one another.

Mr. Ang noted that throughout the trial, civil parties were allowed to ask questions of the Accused, and 51 civil parties have asked questions of Accused through the president. The Accused have decided to exercise their right to be silent.

Next, Mr. Ang yielded the floor to Civil Party Co-Lawyer Chet Vanly.

Ms. Vanly stated that after the forced evacuation of cities and towns in April 1975, the Cambodian population was sent to work in rural areas, where people were organized in cooperatives where they had to work, regardless of age, status, or previous job. The workers had to follow Angkor policies, and as a result of such policies, millions of Cambodians became slaves and were forced labor. And the harm they suffered then continues today.

She stated that the crimes committed during the Khmer Rouge regime did not just happen, rather, they were committed as part of a common plan which included Nuon Chea and Khieu Samphan.

Ms. Vanly reviewed the civil party testimony on the Tram Kok cooperatives, which included 77 communes. The conditions of the people living there was that they were subject to arrest and detention. This includes the working and living conditions of people who were sent there, the identification of people as enemies, the reeducation, and the arrest or disappearance of people for various offenses. 52 civil parties were admitted related to the crimes committed at the Tram Kok cooperatives, of these, eleven testified.

Three civil parties provided evidence linking the Accused to the Tram Kok cooperatives. They also described loss of private property on transfer to the cooperatives, having to eat and sleep communally, and the killing of their family members. Five civil parties testified about the working and living conditions they experienced and harm they suffered as children or adolescents during that time. Two civil parties testified about their transfers to Tram Kok and working long hours without sufficient food or medical care. One civil party described his arrest and detention. One civil party testified on cruel treatment and abuse she endured.

Ms. Vanly stated that the abuse of power in Tram Kok led to the crimes of enslavement and all the other crimes that happened there. To find that there was enslavement, the Chamber will need to characterize the degree of control that the CPK exercised over its population, including psychological control, such as fostering climate of fear, control of over labor, and control of speech, life, and sexuality. She stated that a climate of fear was created through the use of

reeducation meetings, the supervision of “new” people by “base” people, and imposition of punishments for deviations from the newly imposed structure.

Ms. Vanly noted that the Chamber will also need to determine if inadequate medical care, lack of food and amenities, and harsh living conditions amounts to the crime against humanity of other inhumane acts. Civil party evidence showed that poor quality medicines were used coupled with untrained medics, resulting in a walking disability in one civil party, and the death of another civil party’s 3-year old daughter.

Ms. Vanly also noted that one of the most striking features of civil party evidence from Tram Kok was the disappearances of friends and family members. Ms. Vanly reminded the Chamber that disappearances can characterize other inhumane acts, but they can also characterize the climate of fear which is one of the indicia for enslavement.

Ms. Vanly stated that other crimes committed at Tram Kok included torture and detention, and she presented civil party testimony describing a civil party’s arrest, beating, torture and detention.

Another important issue at Tram Kok was the religious persecution against Buddhists. Ms. Vanly noted that the Chamber has heard testimony on how important Buddhism was in Cambodia before the DK regime. She presented civil party evidence on the destruction and repurposing of religious pagodas for sacrilegious purposes.

Next, Ms. Vanly presented information on the Kraing Ta Chan Security Center. There was a main prison at Kraing Ta Chan, which was in the Tram Kok cooperative. She noted that this security center was not created accidentally, but that that incidents that happened there were indicative of the Khmer Rouge policies to destroy the enemies of the Khmer Rouge by way of the torture, killing and detention at the security center. Two civil parties testified about the events they experienced at this security center and four civil parties testified about their family members or friends who were taken to Kraing Ta Chan.

Ms. Vanly stated that victims at Kraing Ta Chan were deprived of their rights and freedom, and they were deprived of their right to trial. She highlighted evidence from one civil party who had been detained for a month, and then released to work outside. The civil party testified that he was released because he was the youngest, and that if he told anyone he would be killed. He was released to tend buffalo, dig graves, carry dead prisoners outside, and bury them. He was instructed to grow coconuts on the graves.

Ms. Vanly noted that this was not the first time that this Chamber determined the status of a prisoner who was then released to work outside the prison, as the Chamber had received this question regarding a prisoner who was allowed to work at S-21 in Case 001. The Chamber had characterized that prisoner’s experience as enslavement in that instance, and the Civil Part Co-Lawyers consider that a similar approach should be taken in this case.

Ms. Vanly presented evidence from civil parties who witnessed beatings and torture at Kraing Ta Chan, especially that of “new” people, who did not last more than a month due to lack of

food and poor treatment.

Next, Ms. Vanly yielded the floor to her colleague, Civil Party Co-Lawyer Hong Kim Suon, who presented evidence on S-21 Security Center, Phnom Kraol Security Center, and Au Kanseng Security Centers.

Mr. Suon noted that first the Chamber will need to determine whether the crimes of imprisonment, murder, enslavement, extermination, persecution, and other inhumane acts were committed at the security centers, and, second, to determine whether the Accused can be held responsible for those crimes.

Mr. Suon reported that 296 civil parties were admitted on the basis for crimes alleged at security centers and execution sites. Two civil parties testified regarding the crimes committed at Phnom Kraol and Office K-11 in the Mondulkiri province. One of the civil parties was detained, interrogated, and tortured at Phnom Kraol and testified to the harm he suffered there, made more painful as he had served Angkor wholeheartedly, felt betrayed by Angkor when he was detained, and especially devastated when his parents were killed by the regime.

Mr. Suon next covered the crimes committed at S-21, noting that this was not a repetition of the crimes committed in Case 001. Through analysis of new documents on the case file, the Civil Party Co-Lawyers found approximately 114 new civil parties who had relatives or friends detained in S-21, and that this will help the Chamber determine whether the crimes of imprisonment and extermination occurred at S-21. Ten civil parties testified to crimes at S-21 including Chum Mey, who was a direct victim. The other civil parties testified to the indirect harm they suffered as a result of their loved ones who were killed at S-21.

Mr. Suon presented testimony from Mr. Mey on his torture, interrogation, and the loss of vision and hearing he has suffered as a result. Mr. Suon also explained Mr. Mey would not have confessed but for the pain he suffered at the hands of his interrogators, which was why Mr. Mey told them some things that were real and some that were false in his confession. Specifically, his references to the KGB and CIA were false, but Mr. Mey suffered so much that he said that he just gave them what they wanted.

The remaining S-21 civil party testimony described how the civil party discovered that a family member or loved one had been detained and killed at S-21, his or her reaction upon the discovery, and the long-term suffering caused by the death of the loved one.

Next, Mr. Suon presented evidence related to the internal purges in the East Zone. He noted that the Chamber is seized with the facts regarding the assistance and implementation of the policy to implement and defend the CPK revolution through the education of bad elements and killing of enemies, both inside and outside of party ranks, by whatever means necessary. This includes the internal purges of the East Zone, which allegedly started in 1976.

Mr. Suon stated that 118 civil parties were admitted on the basis of the purges, and three civil parties, who were direct victims of the purges, described their experiences as former cadres and how they were harmed by the targeting of cadres and soldiers from the East Zone. Each civil

party testified regarding the deep sense of betrayal and shock he felt because of the purges of the East Zone as contrasted with his prior allegiance to the regime. The living conditions of the cadres before the purges was described as difficult, with long hours and insufficient food and water. One civil party, who has a permanently disabled hand as a result of his arrest during the purges, asked the Accused who is responsible for his disability and the difficulty he continues to have to make a living.

Despite the morning session being a long and intense review of civil party testimony, Civil Party Lead Co-Lawyer Pich Ang requested an extra 15 minutes, which Judge Nonn granted at the end of Mr. Suon's presentation, before the lunch break.

Mr. Ang began his discussion of the treatment of the Cham. He noted that the Office of the Co-Investigating Judges admitted 46 civil parties and Pre-Trial Chamber had admitted an additional 95 civil parties related to the treatment of the Cham. Out of that number, six Cham civil parties testified during the hearings. The civil parties gave evidence on the targeting of mosques, the destruction of the Koran, the prevention of Cham from praying, how people's hair was cut against their wishes, women prevented from wearing head scarves, and people were told to eat pork. Everything related to practice of religion was prohibited, and how at least one person who refused to abandon his religion by eating pork was starved.

In October 1975, the Cham rebelled against the RAK, and the civil parties testified to the murder, torture, imprisonment, and disappearances of the Cham before and after the rebellion. Mr. Ang described the testimony of one civil party, who fought in the rebellion with a machete against the Khmer Rouge, but who said that many more Cham died than Khmer Rouge, as the RAK forces had much better weapons.

After the rebellion, the Cham were forced to evacuate their villages by boats, with orders not to return to their native village. These civil parties described being transferred multiple times, given insufficient food rations, and were separated from their families. One civil party was taken to the pit at Wat Au Trakuon, where people were being killed. He hid and could hear the screaming of the people and believed that his mother and elder siblings were some of those who were screaming. These civil parties survived by escaping or lying about whether they were Cham or Khmer.

At 1:30 p.m., Judge Nonn reconvened the hearing after the lunch break and gave the floor to the Civil Party Lead Co-Lawyer Pich Ang.

Mr. Ang continued the presentation on the persecution of the Cham. He stated that each civil party testified to the harm that they suffered, including the grief from the deaths of their family members, their loss at not being able to practice their religion. Most civil parties testified to the immediate physical harm of not having enough food, being forced to work, the fear that came from witnessing others suffer around them. They also testified to the material harm they suffered. They described how their livelihoods and long-term prospects were reduced because they lost their family's property or had their education prospects reduced.

Mr. Ang showed a video of one civil party who asked the following question of the Accused,

“Why were all religions abolished, including my Islamic religion? We Cham people were persecuted on a permanent basis during that time. All Cham people living in Kampuchea wanted to live peacefully, ask my people at the time, but instead they lived with great suffering”.

Mr. Ang yielded the floor to Ms. Guiraud with the president’s approval.

Ms. Guiraud addressed the court and dedicated the session to speak about the treatment of the Vietnamese and the regulation of marriage, and said she would conclude with a discussion of the probative value of civil party testimony.

Ms. Guiraud stated that the Chamber is seized with a closing order that the Vietnamese constituted a national, ethnic, and religious group. The Chamber is also seized of facts related to the eviction of people of Vietnamese origin in 1975 and 1976, and targeted murders of Vietnamese civilians. In this context of these targeted murders, the Chamber will have to determine whether these murders were committed on the basis of matrilineal descentance.

Ms. Guiraud noted that in total, 73 civil parties were admitted on the basis of the harm they suffered linked to the treatment of the Vietnamese. Seven civil parties testified before the court. Only one civil party of Vietnamese origin came to testify before this court, the other six civil parties are ethnic Khmer who testified on behalf of their family or neighbors of Vietnamese origin.

She reviewed the names and highlights of the civil parties who testified on Vietnamese treatment, and stated that she would highlight the testimony supporting the crime of deportation and the crime of genocide through the commission of murder. Ms. Guiraud said that the testimony of these civil parties has led the Civil Party Co-Lawyers to establish that all of the ethnic Vietnamese who lived in Pou Chentam in 1977 were taken away and never seen again.

Ms. Guiraud presented civil party testimony about the questioning of people on their ethnicity and the “taking away” of those who were determined to be Vietnamese. She also presented testimony on the exchange of rice and salt offered from a Vietnamese ferry to Khmer Rouge ferry for Vietnamese passengers. Civil party testimony also described the disappearances of family members, including young children, and the suffering of the family left behind. One civil party’s father was Vietnamese, and after he witnessed the rape of two daughters of a Vietnamese major, he eventually killed himself in an attempt to protect his wife and family from the danger of being related to him.

Ms. Guiraud presented evidence from four civil parties who described how the Khmer Rouge targeted Vietnamese mothers and their children for execution, leaving the Khmer husband/father to live. The children of Vietnamese fathers and Khmer mothers were spared (though the Vietnamese father was not). She stated that this indicates the existence and implementation of the theory of matrilineal descentance.

Next, Ms. Guiraud addressed the regulation of marriage. She stated that the Chamber is seized of the nationwide issue of forced marriage under the DK regime. 25 civil parties testified on the subject of the nationwide marriages during the trial. Twelve civil parties testified during the

segment dedicated to marriages, and eight civil parties who were called to testify on other facts were also heard on their own marriages, and five testified on the marriages of their relatives.

These twenty-five testimonies are analyzed in final brief. Marriages took place during the entire time of Democratic Kampuchea, and marriages took place in all zones of the Democratic Kampuchea, including three autonomous sectors. The men were generally around 25 years old; the women were around 20 years old.

Before presenting testimony, Ms. Guiraud spoke on what she termed a “crucial legal issue.” She asked the Chamber, “Which crime are we speaking about, exactly? What are the elements that must be proven beyond a reasonable doubt?” She said that if the possible criminalization of marriage is determined under the crime against humanity of other inhumane acts, then the Supreme Court Chamber clarified the elements of this crime in its appeal decision in Case 002/01. In that decision, the Supreme Court Chamber considered that it was anachronistic to qualify crimes in view of elements that were not yet crystallized in 1975. In simpler language, the Accused cannot be found guilty of a crime that did not exist legally at the time that they committed the acts that today would be considered criminal.

Ms. Guiraud next reviewed the Supreme Court Chamber decision in detail. She stated that in the appeal decision, the Supreme Court Chamber applied this reasoning to the crime of forced population movement and forced disappearance, but Ms. Guiraud considers that this same reasoning applies to issue of marriages, before the Chamber today. To this end, Ms. Guiraud discussed the “road map” that the Supreme Court Chamber outlined in its decision.

She stated that according to the Supreme Court Chamber, the first step is to articulate the notion of “other inhumane acts” around conduct. In Case 002/01, the first and second movements of the populations were what constituted conduct. In this case, the Civil Party Co-Lawyers are of the view that the conduct that the Chamber should analyze is the regulation of marriage, noting that this is conduct whose existence has not been challenged by any of the parties, including Nuon Chea and Khieu Samphan.

Ms. Guiraud stated that the second step is to carry out a holistic analysis of all the elements of the conduct in question. The Civil Party Co-Lawyers are of the view that as regards conduct related to the regulation of marriage, the different elements that the Chamber must analyze are:

- the entry into marriage, which includes the circumstances under which the decision to marry was taken, the possibility to refuse or not refuse to enter the marriage, the existence of punishment (physical abuse, rape, disappearances) for those who refuse to marry;
- the choice of the spouses, i.e., the ability of spouses of choosing their partner and the degree of control that Angkor had over the choice;
- the ceremony of the marriage, and the issue of whether the spouses were aware of the ceremony prior to the marriage, whether the spouses knew each other, whether families were present during the ceremony, what role Angkor played in the ceremony, whether commitments were made vis a vis Angkor, and whether or not it was possible to continue traditional wedding rites;

- the matrimonial relations following the ceremony, including the existence of conjugal visits, possible monitoring of couples to ensure consummation, possible threats related to the refusal to consummate the marriage, punishment for having refused to consummate the marriage, which could take the form of rape, and the consummation of the marriage as such; and
- the consequences of the marriage with regards to pregnancy and miscarriages.

With these elements in mind, the Civil Party Co-Lawyers are of the opinion that the issue of the regulation of marriage is broader than just the consent to the marriage.

Ms. Guiraud said that the third step will be for this Chamber to identify the rights and prohibitions that were in force in 1975 in legal texts that affected the conduct of the regulation of marriages. The Supreme Court Chamber gave the Universal Declaration of Human Rights of 1948 as an example. In this declaration, article 3 guarantees the right of all to freedom and safety of his or her person, article 5 states that no one should be subject to torture or punishment which involves cruel and inhumane or degrading treatment, article 12 states that no one shall be the victim of arbitrary interference in their private or public life, and article 16 provides that marriage can only be concluded with the full and free consent of the future spouses. The right to free and full consent to marriage includes the right to choose whether, when and who you marry.

Ms. Guiraud noted that the fourth point in road map set out by the Supreme Court Chamber concerns the gravity of the breach. And to do so the Supreme Court Chamber invited the Trial Chamber to consider subsequent norms related to article 16 relating to the full and free consent to marriage. Ms. Guiraud mentioned various international conventions on human rights that adopted full and free consent to marriage, from the U.N. convention on human rights in 1966, to the Convention on the Elimination of all Forms of Discrimination Against Women in 1979, and the Sisay case before the SCSL. This last point in road map is to determine whether the conduct caused major moral or physical suffering, caused serious bodily harm, or affected human dignity.

Ms. Guiraud stated that with regard to the violation of physical integrity, which occurs when the consummation of marriage is imposed or when the punishment is imposed for failing to consummate the marriage, these are grave breaches.

Ms. Guiraud next spoke about the distinction between arranged marriage and forced marriages. She noted that the Defense says the Angkor regulation of marriage were just arranged marriages in which Angkor assumed the role of the parents in arranging the marriage. And Defense says that if the Chamber finds that these are forced marriage, then the Chamber will be ruling against arranged marriages. But, Ms. Guiraud countered, in arranged marriages, the spouses still consent. And conversely, if in an arranged marriages one spouse does not consent, then this becomes a forced marriage.

Ms. Guiraud next reviewed whether the spouses gave their full and free consent, and concluded that the evidence shows the contrary due to the relevant climate of fear, as it created a circumstance in which full and free consent would be impossible. Ms. Guiraud discussed civil

party testimony that supported the existence of a climate of fear, and the inability of the spouses, both male and female, to refuse the marriage. Moreover, civil parties testified they were not informed of the date of marriage or who they were to marry ahead of time. The ceremony itself could contain instructions from Angkor to procreate, and civil parties testified of being raped by their husbands, who were sometimes driven by fear of the consequences of failing to consummate the marriage. All of the civil parties testified that they felt pressure to marry.

Next, Ms. Guiraud discussed the probative value of civil party testimony. First, she reminded the court that civil party participation only exists because it is in accordance with the Cambodian penal procedure. She also highlighted the special nature of civil parties, in that they are persons who lived through the Khmer Rouge regime and suffered from the crimes committed then. Civil parties will therefore have a higher range of the experiences under the Khmer Rouge

Second, Ms. Guiraud reminded the Chamber that civil parties are parties, just as the defendants are parties. And just as defendants do not take an oath when they come before the Chamber, neither do civil parties, and it is not because the civil parties do not wish to take an oath. She challenged Nuon Chea's position that civil party testimony somehow has less weight because the parties did not take an oath.

Third, Ms. Guiraud addressed the challenges of the passage of time between the events in question and the testimony given, asking "How can we assess the reliability or credibility of a civil party forty years after the fact and assess the role of collective memory and personal experience?" She reminded the Chamber that the same issues apply to all persons who have testified before the Chamber. In addition, Ms. Guiraud noted that the Chamber heard civil parties who are aged and often illiterate. They come from a generation where traditions prevailed and hierarchy is respected, and then they came into a court room and were questioned by judges in robes on a stage.

She reminded the Chamber that international jurisprudence is homogenous in that details that are vague do not discredit the testimony provided. And with this in mind, Ms. Guiraud asked that when the Chamber consider the probative value of civil party testimony, it consider the testimony on a case-by-case base, and determine what is an essential detail (like the act of rape) and what is secondary (such as not remembering the names of cellmates in a culture where names are not as important as in the West), and also consider the cultural context of the civil party before it.

Lastly, Ms. Guiraud noted that while the Defense has used the civil party applications

extensively to test the reliability and credibility of civil parties, the applications were designed and used by different non-government organizations, they were not designed to be exhaustive, and they were filled out when the investigation details were not yet known or complete. The Civil Party Co-Lawyers decided to not use these documents to support their final brief. Ms. Guiraud then asked, if everyone agrees that these documents are not sufficiently reliable, how far can they be used by the Chamber to tarnish the reliability or credibility of the civil parties?

Ms. Guiraud asked the Chamber to take the evidence provided by the civil parties and to acknowledge the harm suffered by the civil party collective by these crimes. She also reminded the Chamber that a sentence is often a form of reparation, to which the civil parties are entitled. The last completion plan from the ECCC indicated that the trial judgment would be issued in a year, and she stated that it was far too long.

Court adjourned for the afternoon break, and proceedings started again at 3pm.

Judge Nonn informed the parties in Case 002/02 that in the proceedings for the following days, Judge Claudia Fenz will not be sitting due to health reasons, and will be replaced by International Reserve Judge Martin Karopkin until such time that Judge Fenz can return.

Ms. Guiraud began the last session of the day by devoting it to the second component of civil party participation, which is the question of moral and collective reparations. She noted that civil parties have shown extraordinary resilience, and have found their own means to overcome their suffering and move forward in life. Meanwhile, significant governmental and nongovernmental initiatives have been established for the victims of the Khmer Rouge, so it is with humility that the Civil Party Co-Lawyers approach the question of reparations.

Ms. Guiraud spent about ten minutes discussing the consequence of a change in the language in the Internal Rules in 2010, specifically the rules which governs the source(s) of funding for civil party reparations. She said that while there have been many positive outcomes to the changes, there are two limitations that should be noted.

The first limitation is the prohibition of the award of monetary compensation to the civil parties. Ms. Guiraud noted that where many civil parties live in abject poverty, a financial reparation could make a real difference in their lives. She also mentioned that there is a request before the Chamber that has been accepted into evidence, from about 100 civil parties who are interested in petitioning for financial reparations.

Ms. Guiraud stated that the second limitation is that the rules were changed with the intention to allow civil parties to receive funding from third party sources for reparation projects, in the event that the Accused is indigent. The language chosen, however, was determined by this Chamber to provide two mutually exclusive paths for funding reparations projects: either the Accused pays for the reparation or a third party pays. In this way, it has limited the right of civil parties to hold the person who caused them harm accountable.

Lastly, the Civil Party Co-Lawyers began the process of reparations before the judgment is final so as to expedite an already lengthy process. This meant that they had to propose reparations projects while reminding donors that the presumption of innocence must be respected, which means that the reparations has little to do with the Accused as they start before the finding of guilt of the accused, and are not paid for by Accused.

The last limitation is the mode of funding. In Case 001, there was the establishment of a compensation fund which left the reparation projects subject to the requirements of the donors. There were at least two reparations projects (building stupas across the country and improving

access to better healthcare) that were hugely supported by the civil parties which did not get implemented for lack of donor interest.

Consequently, the Civil Party Co-Lawyers proposed only reparation project, which will be presented by Civil Party Lead Co-Lawyer Pich Ang.

Ms. Guiraud discussed the qualifications of the reparations projects to be presented today. She said they are a result of a permanent compromise between judicial and non-judicial reparations. First, the projects must first and foremost offer some benefits to the civil parties, and the Civil Party Co-Lawyers tried the best of their abilities and with assistance of the Victim Support Section to consult civil parties. The Co-Lawyers also invited partner NGOs to design projects. Ms. Guiraud said they made an effort to be as transparent as possible in closing arguments, and they have all the data on the consultations that were organized. Secondly, the projects are in line with the jurisprudence in Case 002/01. None of these limits undermine the quality of the projects.

She stated that there are twelve projects are fully funded and partially or totally implemented that she is asking the Chamber to recognize. There are seven projects that have incomplete funding and she asked the Chamber for time until the end of November to finalize funding.

The twelve projects presented by both Pich Ang and Ms. Guiraud comply with the principle of non-repetition, and are as follows:

1. App for learning the history of the Khmer Rouge, developed in partnership with the Bophana Center, and is funded by the Wright Foundation (spelling?) at the EU. The contents, objectives, and benefits were developed with a memorandum of understanding with the Ministry of Education. That project was presented by 300+ civil parties in various forums. The target audience can use a table or smart phone to access the app, where there are written articles, audio films, testimonies of civil parties at the ECCC, and other Khmer Rouge documents included. Three teams work on the project – one team writes articles on Khmer Rouge history with validation from scientific committee; the second team is a film production team who interviewed survivors of Khmer Rouge, both civil parties and experts, then produced documentary films and video clips; and the third team is the technology team that is responsible for coding and development of app platform. The program records the stories of survivors to share with the next generation, so it is important to civil parties and survivors alike.
2. The training of teachers on the Khmer Rouge in partnership with DC Cam, and fully funded by the EU.
3. The Turtle Project, which is a play written by and performed by young Cambodians about acts of courage. It is developed with Meta House in association with Khmer Action Art with Youth for Peace. This was developed with a memorandum of understanding with the Ministry of Education and is to be performed in all schools in Cambodia. Civil parties attend dialogues at the schools after the play. It strengthens intergenerational dialogue, and the interaction between civil parties and younger generation is a way that civil parties identified to prevent future atrocities, and helps civil parties to speak with the children at schools. Entirely funded by EU and German institution.

4. Cambodia German cultural association collaboration on Cham people and treatment during Democratic Kampuchea. Filmmakers developed Cham stories into two films, this project began implementation in 2016. “The Cham people and the Khmer Rouge” – this will be a multimedia package in Cham, Khmer and English. The documentary features several civil parties and involves their children in development and production of the project. It is fully funded through embassy of Switzerland in Bangkok and the Henry Bull Foundation (spelling?).
5. Phka Sla Krom Angkor Project in collaboration with Bophana Center and others. The proposal is for a classical dance production on the regulation of marriage during the Democratic Kampuchea. The project proposes community discussions and dialogue on how marriage was regulated during Democratic Kampuchea. Implementation began in 2016 and is expected to continue to 2018. Performances performed and scheduled in Phnom Penh, Battambang, and Kampot. The project gives platform for civil parties to tell their stories of marriage to the next generation, and will produce a performance as well. The project is intended to document the history of the victims, particularly those of forced marriage. Documents will be stored in a center and provide public access. It addresses issues like gender equality. Project fully funded by Swiss, German donors and USAID.
6. Voices from Ethnic Minorities – in collaboration with Civil Party Lead Co-Lawyers and the Victim Support Section. This project documents the experiences of Cham and ethnic Vietnamese and addresses the harm that they suffered within the scope of Case 002/02 by addressing stereotypes. In November 2016, the mobile exhibition launched. Project is fully funded by German donors and the embassy of Switzerland in Bangkok.
7. “Satisfaction” – this is a truth-telling project, as the reparation includes the verification of facts and full and public disclosure of truths to victims. Civil parties have consistently requested that memorials be built and that they can share their experiences through truth telling activities.
8. Unheard Stories of Civil Parties Participating at the ECCC – this is an illustrated book of what civil parties suffered in Case 002/02. The production completed in 2016, and it has given civil parties a forum for their story and allows relief through recognition of their suffering in forced marriages, the treatment of Buddhists and minorities, security centers, worksites, and cooperatives. 500 copies have been printed to distribute to education institutions. Funding by Henry Bull Foundation (spelling).
9. A Time to Remember – this is a song-writing contest for Cambodian youth in collaboration with the Youth Resource Development Program. The project acknowledged experiences of survivors via intergenerational dialogue. Support from Ministry of Culture and Fine Arts. Final performance was in 2016 before an audience of about 400 people. Goal was to raise awareness among youth. Fully funded.
10. Memory Sketches of Kraing Ta Chan – created an exhibition of memory sketches in consultation with civil parties. Launched in 2016 with representatives of youths, monks, and local authorities in attendance. Sketches from some students. Fully funded by international coalition of sites of conscience.
11. Access to Judicial Records of Khmer Rouge Trials and Civil Party Materials – through documentation at the ECCC. Public events will be held to raise awareness of history, full list of civil parties in Case 002 will be displayed, documents and video will be available to public for free. Fully funded by Royal Government of Cambodia through national budget.

The facility has already been built, funded by embassy of Japan.

12. Rehabilitation – includes access to medical and psychological care – this is one of civil parties' main concerns. As presented in part four of the final brief, civil parties have expressed this. The project is about healing and reconciliation for survivors of regime. Provide access to mental health, provide capacity development for staff. Self-help groups, testimonial therapy, and educate and provide assistance for survivors of torture, including Cham Muslims, and survivors of forced labor. Funding secured by USAID.
13. Civic and Legal Education for Minorities: in collaboration with MIRO – minority rights organization. The purpose is to allow civil parties of Vietnamese origin to receive legal information with regard to their status. Financed and implemented.

Ms. Guiraud thanked the Chamber for its attention; Judge Nonn thanked the Civil Party Co-Lawyers, and adjourned until tomorrow at 9am.