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FINAL WORDS

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Visitors gather to witness the final day of the Duch appeal  
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Today marked the end of the Kaing Guek Eav (alias “Duch”) appeals before the Supreme Court Chamber. A gallery full of Cambodian visitors provided a fitting background to the day’s topic of civil party appeals, which centered around complaints that the Trial Chamber failed in its duty to provide an adequate forum for reparations to victims of the Khmer Rouge. However, what most will remember from today was Duch’s final statement, an oddly formulated and self-indulgent request for release that brought a close to Case 1 hearings.

## Civil Party Appeals

Each of the civil parties had an opportunity to address the court today and present their appeals related to victim participation and reparations. The three main contentions of the civil parties were that the Trial Chamber 1) misinterpreted the Internal Rules by creating a two-tier review of civil party admissibility, 2) erred by applying an excessively high standard of admissibility for civil party applications, and 3) failed to provide adequate reparations to the victims.

Karim Khan, co-counsel for Civil Party Group 1, began oral arguments with an emphatic request to the Chamber to recognize the traumatic effect that the Trial Chamber's decision to reject certain civil party applications at the judgment phase had on those victims. "After enduring months of trial, after doing everything that was asked of them...on the day of the judgment for the very first time they were told that the civil party status that had been granted to them had been revoked." He contended that nothing in the Internal Rules could justify the Trial Chamber's decision to impose a two-tiered review of civil party status. The standard was "conjured up."

The other civil parties echoed this argument and submitted that the Trial Chamber's decision amounted to a deprivation of their client's rights. These clients relied on the initial approval of their civil party status during the entire trial. Judge Klonowiecka-Milart expressed sympathy for the civil parties who had been rejected, but questioned whose responsibility it was to manage their expectations. She also pointed out that the Cambodian Code of Civil Procedure does include a two-tiered review of applications, possibly indicating some support for the Trial Chamber's ruling.

Related to this alleged error of law, civil parties contended that the Trial Chamber also applied an unnecessarily high burden of proof when deciding that some civil party applicants had failed to show sufficient evidence that they were related to individuals killed at S-21.

Civil Party Group 2 and 3 also took issue with the reparations awarded by the Trial Chamber, which were limited to an inclusion of the civil parties' names within the judgment and on the court's website. The civil parties made numerous suggestions for more appropriate "moral and collective" reparations, such as the construction of memorials, the publication and dissemination of Duch's statements of remorse, and the provision of medical care for those victims still suffering physical or mental harm.

Frustrated with the lack of resources provided by the court, Silke Studzinsky, co-counsel for Civil Party Group 2, expressed dissatisfaction with the Trial Chamber's decision not to impose the costs of reparations on Duch directly. She questioned why the ECCC assumed that Duch was indigent, pointing out that he had profited from selling the rights to his autobiography and from participating in the production of the film "The Last Executioner."

Studzinsky also lamented that this hearing was the last time civil party co-counsel would act in an autonomous capacity in court. Newly added Internal Rule 12<sup>ter</sup> creates two civil party co-lawyers and directs them to "coordinate civil party representation at trial"

and grants them “ultimate responsibility to the court for the overall advocacy, strategy and in-court presentation of the consolidated group of civil parties during the trial stage and beyond.”

### **Duch’s Closing Statement**

All hearings for Case 1 ended today with a closing statement from Duch in which he tried to walk an impossible line between showing remorse for his crimes and asking for a full acquittal. He began by reiterating his main point that the ECCC lacks personal jurisdiction to try him because he was not a senior leader or among those most responsible for crimes of the Khmer Rouge. He opposed the prosecution’s characterization of S-21 as a key organ of the Standing Committee. Duch equated himself to mid-level cadre and said, “S-21 was not unique. It was like all the other security centers where torture was employed.” He then transitioned into a duress argument, saying that he only survived the Khmer Rouge regime because he “respectfully and strictly followed orders.” Duch also argued that he had acted as a cooperative and remorseful witness, a noticeably odd claim given that it was sandwiched between denials of guilt and requests for release. “I maintain remorse for the victims and ask for forgiveness... Finally, I return to my principle. I do not fit within the personal jurisdiction of the court.”