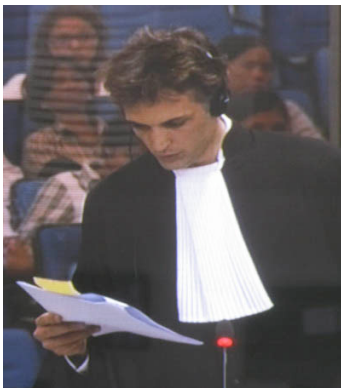


INTERVIEW WITH ALAIN WERNER

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Alain Werner is the Co-Counsel for Civil Party Group One in the trial of Kaing Guek Eav (alias Duch). His team is led by Karim A. A. Khan from Great Britain. Previously, Alain Werner spent several years working directly with victims as a prosecutor at the Special Court for Sierra Leone. More recently, he joined a team under Human Rights Watch working to bring the former dictator of Chad, Hissene Habre, to justice in Senegal. On September 14, 2009, Alain Werner sat down with the Cambodia Tribunal Monitor (CTM) to discuss the role of civil parties in the Duch trial specifically, and in international criminal proceedings more generally.

CTM: Late last month, the Trial Chamber rendered several decisions that led to a civil party boycott. Specifically, the court prohibited civil parties from pleading on sentencing and from questioning certain character witnesses. Do you plan on officially appealing these decisions as provided for in the Internal Rules?

WERNER: The Internal Rules are clear and we cannot appeal the two decisions rendered on the 27th of August. Indeed there are limited categories of decisions which can be subjected to immediate appeal under Rule 104 paragraph 4 of the Internal Rules; the two decisions you mentioned (prohibition against questioning of some experts and witnesses, and prohibition against pleading on sentencing) do not fall under any of these categories. These two decisions could therefore only be appealed at the same time as an appeal against the judgment on the merits.

Some civil parties have reacted very strongly after these two decisions, boycotting the hearings. It has been very difficult for us to explain these decisions to our clients as legally I do not understand them either. Furthermore, we are still waiting for the Court to issue the written decisions, as they only read the final part of these decisions in open Court.

CTM: The Internal Rules specify that one of the main purposes of civil party participation is to allow them to seek collective and moral reparations. Have you determined the forms of the awards that you will seek on behalf of your clients?

WERNER: The four groups of civil party lawyers will file a joint motion on this precise subject on September 17, 2009. We are requesting that the Trial Chamber award our clients, at a minimum, the following:

- The compilation and dissemination of apologetic statements made by Duch throughout the trial which acknowledge the pain and suffering of victims, including the comments of civil parties on these apologies;
- Access to free medical care, including psychological and physical care and transportation to medical facilities;
- The funding of educational programs, both in schools and museums, that inform Cambodians of the crimes that took place under the Khmer Rouge at Tuol Sleng prison (S-21) in particular;
- The erection of memorials, pagodas and pagoda fences both at S-21 (Choeung Ek and Prey Sar) as well as in the local communities of civil parties
- Include the names of all civil parties in this case in any final judgment, including a specification as to their connection to S-21.

If the Accused is unable to bear the costs of the above mentioned reparation awards, we are requesting that the Court ensure that either the Government of Cambodia, in accordance with its international obligations, implement the awards or the Victims Unit, through the creation of a voluntary trust fund, carry out the awards.

These awards are the minimum requested and each Civil Party Group may make further specific claims of reparations in their final briefs, as directed by the Trial Chamber.

CTM: Civil parties were often very emotional when testifying, as they recounted their experiences during the rule of the Khmer Rouge. Has participation in this process eased their pain and suffering by increasing feelings of justice, or increased their pain and suffering by reviving many of their traumatic memories?

WERNER: About 20 Civil Parties recounted their experiences in Court, and it is difficult just after these hearings to make a global assessment of their experiences. I know that some of my own clients were very relieved immediately after their testimony and some even felt empowered. I hope that the final judgment will give to all the civil parties the sense that their involvement has been useful for this Chamber in understanding the extent of the grief still suffered by the survivors and the families of the people who died at S-21.

CTM: You have been involved in the first international criminal trial that provides for such comprehensive participation of civil parties. How do you respond to certain criticisms that this participation has had the unintended effect of lengthening the trial or

that the model of civil party participation cannot be adapted to a trial of mass crimes?

WERNER: Concerning this precise trial, I do not believe that an argument could seriously be made that our participation lengthened the trial to an unacceptable extent. The hearings will have lasted less than 6 months, for one Accused facing, amongst others, several counts of war crimes and crimes against humanity. Considering that it was the first experience of an international court applying mainly civil law with the participation for the first time of more than 90 civil parties and four groups of lawyers, I believe that this is an achievement. So, on the contrary, my view is that this trial has shown that the system can certainly work in theory, maybe with some adaptations depending on the total number of accused persons and civil parties, provided you have good lawyers on all sides.

CTM: There has been a lot of discussion about changing the model of civil party participation in Case 002. Based on your experience, what changes do you think would be beneficial to future cases at the ECCC?

WERNER: My team, led by Karim A. A. Khan, will not be present in Case 002. We have been operating almost exclusively pro bono and committed ourselves only for this first case. I understand the need to find some adaptations for this second case, considering the fact that there will be several hundreds of civil parties and four accused persons. However, I am glad that the Plenary Session, which took place last week, took the principled position to maintain the role of civil parties. It seems that we are heading towards a system with one consolidated group of civil parties, represented by two senior lawyers paid by the Court, who will be in charge of coordinating with the civil party lawyers of different interest groups. These two senior lawyers will need to have a very solid experience in high profile trials in other international courts.

CTM: Can the experiences of victim representation before the ECCC be replicated for the ICC and what lessons can be drawn from your work with victims here for how lawyers should represent victims before the ICC?

WERNER: The extent of participation for civil parties in the ICC is not as extensive as in the ECCC. They are not equal parties to the proceedings. And of course the work with victims is always very specific depending on the context where the atrocities took place. In Cambodia the main factor was the fact that so much time passed after the commission of the crimes and that therefore our clients had waited for a very long time to see justice done. However, this experience has taught me many important things in my dealing with victims, for example how crucial it is to explain to them that the rights guaranteed to the Accused (who is well fed and treated by the Court, allowed proficient and fully funded legal representation and presumed innocent until the verdict) does not in any way constitute an offence for the victims, even where some of them have do not enough money to properly feed their families.

CTM: Do you have any impression of how the government regards an activist representation of victims before the ECCC? Has the government ever tried to influence your work?

WERNER: We filed a motion in May 2009 asking that the Trial Chamber make a request to the United Nations Headquarters for a disclosure of a UN report on alleged corruption at the ECCC. The next day some officials in the government made comments in the press about the fact that they were keeping a record of presumed “enemies of the ECCC”. I felt at the time that some people in the government were not happy with our filing. However, there has not been any direct interference.

CTM: How significant has been the role of Cambodian lawyers in representing victims?

WERNER: The national lawyer on our team, TY Srinna, is someone of great talent. Her contribution has been fundamental in our work, inside and outside the courtroom. I do not think you can really pretend to be representing the victims without having people on your team who can understand the context and the culture of the country. However, it is challenging for any Cambodian lawyers to deal with colleagues of various nationalities and in several languages. TY Srinna has demonstrated real willingness to learn and adapt herself to the requirements of international trials and her work and contribution in court is a source of great pride for our team.

CTM: How would you describe the lawyerly skills needed to properly represent the victims?

WERNER: For the victims of international crimes of this magnitude any trial is an incredibly difficult and sometimes a painful experience. Their lawyers need to have enough empathy to really understand these factors but at the same time always maintain a distance which allows them to perform adequately as lawyers, in the defense of the interest of their clients. My view is that a lawyer of victims cannot also feel somehow victimized. This almost always leads to bad representation and much confusion.