

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No. : 001/18-07-2007-ECCC/IC
Date of Document : 10 November 2009
Party Filing : Co-Lawyers for the Civil Parties
Filed to : Trial Chamber
Original Language : English

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):	
10 / NOV / 2009	
ម៉ោង (Time/Heure) : 10:00	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé du dossier: <i>E. Any</i>	

CLASSIFICATION

Classification of the document suggested by filing party : Public

Classification by OCIJ or Chamber

Classification Status

Review of Interim Classification

Records Officer Name

Signature

ឯកសារបានបញ្ជាក់តាមច្បាប់ដើម	
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12 / 11 / 2009	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé du dossier: <i>S.A.N.N. RADA</i>	

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I. INTRODUCTION

1. Pursuant to the “Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions” The Trial Chamber invited the parties to file written submissions in preparation of the hearing of closing statements.¹ In furtherance of the Civil Parties’ mandate to “support the prosecution” as provided by Internal Rule 23.1(a) and the Trial Chamber’s direction, Civil Party Group 1 (CPG-1) hereby respectfully submits its final written submission.²
2. After waiting for over thirty years to have their voices heard, the victims of Tuol Sleng finally witnessed the conclusion of the presentation of evidence in the first trial before the ECCC against a top Khmer Rouge official, Kaing Guek Eav, alias Duch. This trial is unique in many respects. Most notably, because this marks the first international trial in which victims were given the mandate to participate as civil parties. CPG-1 has taken this task very seriously and has, endeavored to assist the Court throughout these proceedings in order to assist the Trial Chamber’s goal of ascertaining the truth so as to ensure that Justice is done.³
3. This final brief is divided into six parts: Part II will discuss the role of Civil Parties in these proceedings. In assessing the proper role of Civil Parties, this Part includes a comparative at the international and domestic level. Part III provides legal analysis on the standard of review to be applied to Civil Party applications. Part IV details the factual basis for the individual Civil Party claims in Group 1. Part V will discuss the evidence adduced at trial which CPG-1 respectfully submits, establishes the Accused’s guilt to the criminal standard of beyond reasonable doubt. Finally, Part VI will set out the specific reparations requested by the Civil Parties in Group 1.
4. In reviewing these parts, it is important to always bear in mind that the pain and trauma suffered by the various Civil Parties, as a result of the actions of the Accused, has not ceased.⁴ Questions remain as to the suffering endured by family members, of victims. CPG-I respectfully submit that any judgment rendered by the Trial Chamber must reflect the truth as it pertains to the culpability of the Accused and the suffering of victims.

¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, E159, para. 2.

² *Ibid.* at para. 6.

³ Agreement between the UN and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, 2003, [hereinafter “Agreement”] pmbl.

⁴ *See*, T. 17 August 2009, page 94. *See also* T. 18 August 2009, pages 51-58.

5. The present final brief submitted by CPG-1 will demonstrate that the evidence leaves no doubt as to the true role played by the Accused while working as Chairman of S-21. Moreover, contrary to the Defense's assertion, the expectations of the Civil Parties are neither endless nor unrealistic.⁵ The civil parties represented by CPG-1 have modest aims. They want accountability and redress. This includes the right to the truth and the right to reparations. In pursuit of that aim, the present closing brief is respectfully submitted.

II. THE ROLE OF CIVIL PARTIES

A. Introduction

6. Recent years have shown a general trend in international criminal law to increase the role of victims of mass atrocities in proceedings before *ad hoc* and international tribunals.⁶ The establishment of the ECCC marks the latest development in this area, by providing victims with the opportunity to join as parties to the criminal proceedings, on equal footing with the Prosecution and the Defence.⁷ The drafters of the Internal Rules thereby acknowledged the important role victims have to play in fully implementing the ECCC mandate,⁸ both in the "pursuit of justice" by assisting in the unearthing of the truth and in the furthering of "national reconciliation,"⁹ due to their very personal and direct involvement with the proceedings.¹⁰
7. Victim participation in criminal proceedings is not a novel issue. Courts on both the

⁵ See, e.g., T. 15 September 2009, pages 65-68.

⁶ See Timothy K. Kuhner, *The Status of Victims in the Enforcement of International Criminal Law*, 6 Or. Rev. Int'l L. 95 (2004), at page 134 ("A notable feature of developments in the thinking on criminal law during recent years is the increase in the emphasis being placed on the victim."); see also Carsten Stahn et al., *Participation of Victims in Pre-Trial Proceedings of the ICC*, 4 J. Int'l Crim. Just. 219 (2006), at page 226 (stating that the involvement of victims in ICC proceedings "can also be seen as a corollary of the broader trend in criminal proceedings generally to give victims access to justice").

⁷ Internal Rule (Rev.4), 23(6)(b).

⁸ Agreement, at pmbl.

⁹ Mere recognition of the plight of victims contributes to their healing, and to the healing of the entire nation. Eduardo Vetere and Irene Melup, *Victims of Crime: The Contribution of the United Nations Crime Prevention and Criminal Justice Programme*, in INTERNATIONAL RESPONSES TO TRAUMATIC STRESS, eds. Yael Danieli, Nigel S. Rodley & Lars Weisaeth, Baywood Publishing Company, Inc: New York (1996), pages 52, 55.

¹⁰ See, e.g., Irvin Waller, *Victims of Crime: Justice, Support and Public Safety*, in INTERNATIONAL RESPONSES TO TRAUMATIC STRESS, eds. Yael Danieli, Nigel S. Rodley & Lars Weisaeth, Baywood Publishing Company, Inc: New York (1996), page 81 ("Victims are the main source of information about crimes and criminals."), Gabriela Echeverria, *Codifying the Rights of Victims in International Law: Remedies and Reparation*, in REDRESSING INJUSTICES THROUGH MASS CLAIMS PROCESSES, ed. Permanent Court of Arbitration, Oxford University Press, Oxford (2006), page 296 (victim participation in criminal cases through claims for reparations "not only provide redress for the victims but also serve the community interest by punishing the perpetrator and deterring future violations by the same or other wrongdoers. [It serves] the rule of law at all levels of society and [is] an essential element of justice."), Heidi Rombouts, *VICTIM ORGANIZATIONS AND THE POLITICS OF REPARATIONS: A CASE STUDY ON RWANDA*, Antwerp Intersentia Press, (2004), Section 3.4 ("Restorative justice, increasingly popular as an alternative to retributive justice, envisages that both (all) parties to a conflict are brought together to resolve that conflict.").

domestic and international level have long recognized the unique contribution victims have to offer in criminal proceedings. On the domestic level, civil law countries including France and the Kingdom of Cambodia, allow for victims to request the prosecutor to initiate criminal proceedings,¹¹ to introduce evidence into the case, to question witness,¹² and to make victim impact statements before the Court.¹³ On the international level, tribunals have witnessed an augmentation in the rights afforded to victims at all stages of the proceedings.¹⁴

8. Along this vein, the ECCC Internal Rules provide for victims to join the proceedings as Civil Parties and to become parties to the proceedings. In addition to the role of Civil Parties in supporting the Prosecution, the Rules also acknowledge the unique contributions Civil Parties can make to the trial process, the discovery of truth, and the pursuit of justice. Nonetheless, several recent rulings by the Court attempting to “clarify” the role of Civil Parties in these proceedings have had the effect of actually eroding their participatory rights. These rulings go against the text, object, and purpose of the Court’s own Internal Rules and, concomitantly, diminish the ability of Civil Parties to contribute to the achievement of these goals. Ultimately, continuing to limit the role of victims will undermine the crucial mandate of the ECCC and the perception of its legitimacy among the Cambodian populace. The Chamber must therefore re-affirm the original goals of the framers of this institution and articulate an over-arching, and appropriately expansive, policy toward victim participation to govern the proceedings going forward.

B. The ECCC Internal Rules

9. Internal Rule 23 provides for the broad participatory rights of the Civil Parties by stating that the purpose of the Civil Party action is to “[p]articipate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution.”¹⁵ Once the Civil Party application has been accepted, “the Victim *becomes a party to the criminal proceedings.*”¹⁶ This inclusive approach is reflected in the Internal

¹¹Code of Criminal Procedure [hereinafter ‘CCP’], Inserted by Law n° 2000-516 of 15 June 2000 Article 1 Official Journal of 16 June 2000, Articles 1.

¹² See the French Criminal Code, Article 332.

¹³ See, e.g., Code of Criminal Procedure, (The Netherlands), Articles 302(1), 336(1).

¹⁴ See Rome Statute of the International Criminal Court, A/CONF.183/9, 17 July 1998 [hereinafter “Rome Statute”]; the Special Tribunal For Lebanon Rules of Evidence and Procedure; Basic Principles and Guidelines on the Right to a Remedy and Reparations of Victims of Violations of International Human Rights and Humanitarian Law, Comm’n on Hum. Rts. Res. 2005/30, U.N. Doc. E/2005/23 (Apr. 22, 2005), Art. VII, para.11(a)-(c).

¹⁵ Internal Rule (Rev.4), 23(1)(a) (emphasis added).

¹⁶ *Ibid.*, at Rule 23(6) (emphasis added).

Rules by allowing for the Civil Parties to “participate” in various ways at all stages of the proceedings.

10. To begin with, Rule 91(1) sets out the broad principle that Civil Parties shall be heard: they are allowed to provide statements to the Chamber,¹⁷ and may pose questions to the witnesses and the Accused through their attorneys.¹⁸ Civil Parties are also entitled to request that further investigative action be undertaken when the Co-Investigating Judges have concluded their investigations,¹⁹ receive notification of the Closing Order immediately upon its issuance,²⁰ and file submissions,²¹ including a list of proposed witnesses,²² exhibits they intend to introduce²³ and the legal issues they intend to raise.²⁴
11. The Internal Rules thus enable Civil Parties to “support the prosecution” by allowing them to contribute to the unearthing of the truth, by posing questions from a unique perspective and by providing legal and factual insights as an independent party to the proceedings.²⁵ However, the exact meaning of “supporting the prosecution” has been the cause of lengthy discussion during the proceedings, with the Defence often arguing that the Civil Parties act as “second prosecutors”²⁶ after which the Chamber has sought to clarify their role on a case-by-case basis.²⁷ For example, the Chamber ruled after a long debate surrounding a line of questioning pursued by a Civil Party Lawyer that Civil Parties are entitled to pose questions, provided they are not repetitious, “long winded” or outside the confines of the topic at hand.²⁸ While this case-by-case determination assists in the clarification of the scope of Civil Party participation, it continues to leave room for arduous Defence objections, adding to the length of the trial and the delay of a final delaying judgment.²⁹
12. It is the respectful submission of CPG-1 that the characterization of the role of Civil Parties as “supporting the prosecution” signifies the expansive and unique scope within which they should be allowed to participate. Nonetheless, the interests and abilities of the

¹⁷ *Ibid.*, at Rule 24(2).

¹⁸ *Ibid.*, at Rule 91(2).

¹⁹ *Ibid.*, at Rule 66(1).

²⁰ *Ibid.*, at Rule 67(5).

²¹ *Ibid.*, at Rule 79(9).

²² *Ibid.*, at Rule 79(9)(a).

²³ *Ibid.*, at Rule 79(9)(b).

²⁴ *Ibid.*, at Rule 79(9)(c).

²⁵ *Ibid.*, at Rule 23(1)(a).

²⁶ T. 22 June 2009, pages 91-92.

²⁷ *Ibid.*, at page 92.

²⁸ *Ibid.*

²⁹ See, e.g., T. 27 August 2009, page 74. The Chamber *proprio motu* rendered an oral decision which closed the door on the Civil Party Lawyers questioning of the Accused or expert witnesses regarding the character of the Accused.

Prosecution and the Civil Parties are not completely co-extensive. The Prosecution's interest naturally concerns the securing of a conviction of the Accused.³⁰ The Civil Parties however, focus on other matters, including extrapolating evidence relevant to the award for reparations,³¹ probing into the sincerity of the Accused's apologies,³² and generally adding a personal dimension to the presentation of proof. This enables the Chamber to have a fuller picture of the events in question and include a more complete account of events in the judgment, whether or not each particular fact provides proof of an element for the narrow scope of crimes charged. Given the passage of time since the events in question and the evidentiary challenges facing the Court, the Civil Parties are uniquely positioned to elicit testimony that sheds light on the Accused's responsibility for the crimes charged. For example, CPG-1 counsel elicited testimony from expert Dr. Craig Etcheson regarding the Accused's role in personally annotating prisoner confessions.³³

13. Moreover, the intention of the Internal Rules seem clear; namely to provide the Civil Parties with far-reaching rights, which enable them to participate on near-equal footing to the Prosecution and the Defence. The recent decisions by the Chamber that have increasingly limited the role of the Civil Parties therefore go against the true spirit and intent of the Internal Rules.³⁴ Where the Civil Parties are unable to exercise certain rights otherwise afforded to the Prosecution and the Defence, the Internal Rules are explicit in

³⁰ *Commentary to the Second Preparatory Commission on Rules of Procedure and Elements of Crimes*, Hum. Rts. Watch, July 1999, available at <http://www.iccnw.org/documents/HRWComment2ndPrepComJuly99.pdf> (stating that the "Prosecutor's actions most probably will be governed by a desire to gain a successful conviction.").

³¹ *Situation in the Democratic Republic of the Congo*, Case No. ICC-01/04-101, Decision on the Application for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 17 January 2006, at para. 72. ("The close link between the personal interests of the victims and the investigation is even more important in the regime established by the Rome Statute, given the effect that such an investigation can have on future orders for reparations ...").

³² See Annex B for a further discussion on the assessment of the apologies of the Accused as compared to the Truth and Reconciliation Commissions.

³³ T. 28 May 2009, pages 18-19 and T. 8 June 2009, pages 78-101 (Mr. WERNER extrapolated evidence from Dr. Etcheson regarding the annotation and drafting of prisoners' lists not otherwise obtained and continued to do so when questioning the Accused based on Dr. Etcheson's testimony. This important feat was recognized by the monitors of the trial) see the KRT Monitoring Report, *Prosecutor v. Kaing Guek Eav, alias 'Duch'*, Report Issue No. 8: week ending June 14, 2009, at page 1 ("Duch admitted, in response to questions from Civil Parties, his personal role in eliciting and annotating prisoner's confessions.").

³⁴ T. 27 August 2009, page 74, (prohibiting Civil Parties from questioning the Accused or other witnesses on the Accused's character), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts, and Witnesses Testifying on Character, 12 October 2009, Doc. No. E72/3, T. 27 August 2009, pages 41-42 (prohibiting Civil Parties from questioning witnesses or the Accused on character or making submissions as to sentencing).

providing such rights.³⁵ The general stance should thus remain that the Civil Parties are to retain the expansive rights afforded to them by the Internal Rules, including the right to participate in the questioning of the Accused and the witnesses on all topics, without permitting the practical and logistical challenges to obscure their invaluable contribution to the proceedings.

C. Practice at the International Tribunals

14. Internal Rule 2 provides that in the event of a lacunae, the Chamber shall decide in accordance with “Article 12(1) of the Agreement and Articles 20 new, 23 new, 33 new or 37 new of the ECCC Law as applicable, having particular attention to the fundamental principles set out in Rule 21 and the applicable criminal procedural laws.” The ECCC Law provides that the Chamber may look toward the rules of procedure and evidence established at the international level.³⁶
15. The ICC, like the ECCC provides for a broad form of victim participation. The victim participation before the ICC is seemingly more limited by providing victims with the possibility to express their “views and concerns” at the discretion of the Court, so long as their “personal interests are affected”³⁷ and it “does not infringe upon right of the accused to a fair and impartial trial”. However, practice has shown that the victims before the ICC have been granted extensive participatory rights.
16. As the Pre-Trial Chamber in *Katanga* explains, victims’ interests “go beyond the determination of what happened and the identification of those responsible, and extend[s] to securing a certain degree of punishment for those who are responsible for perpetrating the crimes for which they suffered harm.”³⁸ To facilitate their participation at the ICC, victims have been granted various rights, such as the right to introduce and to challenge evidence,³⁹ to (cross) examine witnesses,⁴⁰ to make legal submissions,⁴¹ to make opening

³⁵ See e.g., Internal Rule 82(3), which relates to the provisional detention and bail. It provides that the Chamber shall decide, “after hearing the Co-Prosecutors, the Accused and his or her lawyers.” The Civil Parties are not included within this Rule. See also Internal Rule 105(1)(d), which states that “[a]n Appeal may be filed by the Civil Parties ... only where the Co-Prosecutors have appealed.”

³⁶ Law on the Establishment of Extraordinary Chambers, with inclusion of amendments promulgated on 27 October 2004, (NS/RKM/1004/006), [hereinafter “ECCC Law”], Article 33 New.

³⁷ Rome Statute, Article 68(3).

³⁸ See *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Set of Procedural Rules Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, Pre-Trial Chamber I, (Single Judge), 13 May 2008, para. 38 (internal footnotes omitted).

³⁹ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1119, Decision on Victim’s Participation, Pre-Trial Chamber I, 18 January 2008, para. 108.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, at para. 117.

- and closing statements,⁴² and the right to participate in pre-trial detention hearings.⁴³
17. Similarly, the Rules and Procedures of the Special Tribunal for Lebanon (“STL”), which are partially based on the French Civil Code, allow, among other things, for victims to access documents and submissions on the case file,⁴⁴ question witnesses and present evidence,⁴⁵ and make a victim impact submission in the sentencing stage of the proceedings.⁴⁶ A victim may even participate during the appellate stage in a “manner deemed appropriate by the Appeals Chamber.”⁴⁷
18. The emerging jurisprudence and the Rules of Procedure and Evidence thus demonstrate that victim participation is an increasingly important reality within the *ad hoc* and international tribunals. The general approach adopted is premised on the fact that victim participation will *not* be limited, provided that it does not infringe upon the defendant’s fundamental rights. The ECCC Internal Rules reflect this stance by granting the victims full access to the proceedings, only limiting their involvement in narrow instances specifically identified in the Rules.

D. The Cambodian Code of Criminal Procedure

19. In the absence of sufficient guidance by the Internal Rules and International Law regarding the role of Civil Parties, the Court may consider Cambodian Law pursuant to Article 12(1) of the Agreement. The Cambodian Code of Criminal Procedure (“CCP”), like the ECCC Internal Rules,⁴⁸ provides for victims to attach their civil claims to a criminal proceeding and join as a Civil Party before the Investigating Judge,⁴⁹ or at a later stage before the Trial Chamber.⁵⁰ Mirroring the CCP, the ECCC Internal Rules afford the Civil Parties equal rights to be heard during the proceedings⁵¹ and to make closing statements at the conclusion of the hearing.⁵² Additionally, in some cases, withdrawal of the victim’s civil claim will even extinguish the criminal proceeding altogether.⁵³ The Internal Rules thus reflect the practice of the Cambodian Criminal Procedure in allowing

⁴² *Ibid.*

⁴³ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision, in limine, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision entitled “Decision on Victims’ Participation,” 16 May 2008, at para. 51.

⁴⁴ Rules of Procedure and Evidence [“RPE”], STL, Rule 87(A).

⁴⁵ *Ibid.*, at Rule 87(B).

⁴⁶ *Ibid.*, at Rule 87(C).

⁴⁷ *Ibid.*, at Rule 87(D).

⁴⁸ Internal Rules 23(6)(a) and 23(1)(a).

⁴⁹ CCP, Articles 137, 138.

⁵⁰ *Ibid.*, at Articles 291(3)(4), 311.

⁵¹ *Ibid.*, at Article 326.

⁵² *Ibid.*, at Article 335.

⁵³ *Ibid.*, at Article 8.

for broad participatory rights of the victims.

E. Domestic Courts

20. Many civil law jurisdictions allow for varied forms of victim participation in the criminal justice system. In France, for example, victims can join their civil claims for damages to the criminal case (*partie civile*), becoming a party to the criminal proceedings in order to prove their civil claims.⁵⁴ Civil Parties are entitled to visit places under judicial investigation, to hear witnesses as the charged person⁵⁵ and may provide observations on testimony provided by witnesses.⁵⁶

F. Conclusion

21. Having been silenced for over 30 years, the victims of S-21 are finally able to share their stories and insights as Civil Parties within the ECCC proceedings. The Civil Parties contribute to the national reconciliation efforts by providing their accounts of the events as they occurred 30 years ago thus breaking the taboo of talking about the atrocities. Furthermore, the Civil Parties, through their lawyers, have raised unique and distinct factual⁵⁷ and legal⁵⁸ issues before the Trial Chamber and have thereby greatly contributed to the legitimacy of the proceedings. In light of these important contributions, the Chamber should not re-write the Rules to diminish Civil Party involvement, even in the pursuit of efficiency or expediency. To silence or limit the victims' voices finds no support in the law, the object and purpose of the Internal Rules, or in domestic or international practice. CPG-1 therefore respectfully submits that the Role of the Civil Parties, in accordance with the current trend and practice is to remain equal to that of the Prosecution and Defence, unless explicitly limited by the Internal Rules. The importance of this trial and the continuance of Civil Party participation in international criminal law call for a clear delineation of the role of Civil Parties, which should be interpreted broadly within the context of the Court's Internal Rules and mandate.⁵⁹

⁵⁴ *Ibid.*, at Article 3.

⁵⁵ *Ibid.*, at Article 82(2).

⁵⁶ *Ibid.*, at Article 169.

⁵⁷ *See, e.g., supra*, n.33.

⁵⁸ *See, e.g., Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Group 1 – Civil Parties' Co-Lawyers' Request that the Trial Chamber Facilitate the Disclosure of an UN-OIOS Report to the Parties, 11 May 2009, Doc. No. 00327910-19, E65. Civil Party Group 1 filed this motion related to corruption, which was distinctly opposed by the Co-Prosecutors.

⁵⁹ The question of the scope of Civil Party participation will become particularly significant with the start of Case 002, where an estimated 2,000 victims have already applied for Civil Party status. Continued ambiguity as to their role will undoubtedly affect the conduct and length of the proceedings, as well as the legitimacy of the Court.

III. LEGAL STANDARD FOR CIVIL PARTY APPLICATIONS

A. Introduction

22. When the victim applicants in Case 001 obtained Civil Party status after a review had been conducted by the Trial Chamber at the Initial Hearing, they did not envision that they would find themselves wondering whether they would remain Civil Parties in the same case a mere two weeks prior to the end of the proceedings. The Internal Rules offer little guidance as to the legal standard to be applied when assessing Civil Party applications, particularly at this stage of the proceedings. This prompted the Trial Chamber to invite the Civil Parties to provide their analysis of this issue in their respective final briefs.⁶⁰ In addition to the arguments put forward by the Co-Lawyer for CPG-1, Alain Werner,⁶¹ CPG-1 respectfully submits the following analysis of the relevant principles that govern the assessment of victim applications before international tribunals, which may provide the Chamber with guidance in Case 001.

B. Internal Rule 23

23. Internal Rule 23(2) provides that victims of crimes that fall within the jurisdiction of the ECCC have the right to take civil action. The civil party action is admissible when the injury suffered is “physical, material or psychological” in nature, and “the direct consequence of the offence, personal and [having] actually come into being.”⁶² The victim is required to specify the harm suffered, to include any evidence thereto, and to provide details of his/her status as a victim.⁶³ Furthermore, the applications are required to contain “specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator.”⁶⁴

24. The previous Internal Rule 23 (Rev.3) provided that either the Co-Investigating Judges⁶⁵ or the Trial Chamber⁶⁶ could declare a Civil Party application “inadmissible” pursuant to a reasoned decision. The Internal Rules have recently been modified to bring the application process solely within the mandate of the Co-Investigating Judges, who may “reject Civil Party applications *at any time until the date of the Closing Order.*”⁶⁷ As the

⁶⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, E159, para. 5.

⁶¹ T. 27 August 2009, pages 9-18, 24-26.

⁶² Internal Rule (Rev.4) 23(2)(a)(b).

⁶³ *Ibid.*, at Rule 23(5).

⁶⁴ *Ibid.*

⁶⁵ Internal Rule (Rev.3) 23(3).

⁶⁶ *Ibid.*, at Rule 23(4).

⁶⁷ Internal Rule (Rev.4) 23(3) and (4) (emphasis added).

recently revised Internal Rules have no bearing on the status of Civil Parties in Case 001, CPG-1 respectfully limits itself to the standard of review to be maintained by the Trial Chamber at this stage. This analysis should, however apply with equal force to the standard used by the Co-Investigating Judges going forward under the new Rule.

25. Nevertheless, the recently amended Internal Rules 23(3) and (4) similarly reflect the preliminary nature of the Civil Party status determination by bringing the review process within the mandate of the Co-Investigating Judges. The determination at this stage is only natural, given the fact that participatory rights accrue to individuals granted Civil Party status from the beginning of the pre-trial process. Accordingly, while the original Internal Rules governing these proceedings originally contemplated the Trial Chamber making such a ruling, the old Rule should be read in light of the object and purpose of Civil Party determination as better reflected in the revised Rule and be interpreted such that it respect the victims right to certainty without subjecting them to the uncertainty of potentially having their Civil Party status revoked.
26. While the Internal Rules are silent on the standard to which a Civil Party application is held, the Chamber stated during the Initial Hearing that it had applied “a *prima facie* standard of proof for the existence of the criteria for the evaluation of the civil party application...”⁶⁸ Once the Chamber accepted the application on the basis of this *prima facie* standard, the victim was granted Civil Party status and exercised her rights as a party in the proceedings.⁶⁹ Civil Parties have exercised their rights to, for example, be represented in the proceedings by an attorney of their choosing,⁷⁰ access the case file⁷¹ and have questioned the Accused through their lawyers.⁷²
27. CPG-1 respectfully submits that any change in the procedural status of the Civil Parties, as requested by the Defence, can only be viewed as a reconsideration of the Trial Chamber’s decision during the Initial Hearing. CPG-1 submits as a preliminary matter that the Defence is precluded from bringing this motion two weeks prior to the end of trial, after a determination has already been made on this matter. Even if the Defence can bring such a motion at this late a stage, the heavy burden of revisiting Civil Party status at this final hour lies squarely on the Defence to prove the Civil Parties did not act in good faith. The Defence has the obligation to show that there has been “a clear error of

⁶⁸ T. 17 February 2009, page 38; Internal Rule 83(1).

⁶⁹ *Ibid.* See also *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Interim Recognition as Civil Party, 29 January 2009, Doc. No. E2/26/4, at para. 2.

⁷⁰ Internal Rule 23(7).

⁷¹ *Ibid.*, at Rule 86.

⁷² *Ibid.*, at Rule 90(2).

reasoning” or that “particular circumstances exist that justify reconsideration [of their status] to prevent injustice.”⁷³ The Defence has failed to meet this heavy burden. Indeed, all of the evidence and reasoning contemplated at the outset of the proceedings to grant Civil Party status to the victims of S-21 in the first place remain compelling and do not warrant a revision of the Trial Chamber’s prior ruling.

C. Standard for review at the Tribunals

28. While at the investigatory stage, a similar question presented itself before the International Criminal Court’s (“ICC”) Pre-Trial Chamber II, where the Single Judge in the *Situation of Uganda* held that the absence of any statutory guidance regarding the burden of proof for the victims’ applications provided the Chamber with a broad discretion “in assessing the soundness of a given statement or piece of evidence.”⁷⁴ The Single Judge reasoned that an assessment of the victim’s application should be in accordance with the general principle of law stating that the burden of proof lies on the claiming party.⁷⁵
29. In determining whether the threshold requirements for an application met the burden of proof, the Single Judge noted that the victims will not always be in a position to provide evidence that will fully substantiate their claim.⁷⁶ Where the victim is unable to provide direct proof of her claim due to objective obstacles, “indirect proof” (such as circumstantial evidence or inferences of fact) is considered to be sufficient.⁷⁷ The Single Judge reasoned that the Court should therefore assess each statement on the merits of its intrinsic coherence, as well as on the basis of information available to the Court.⁷⁸
30. As neither the Internal Rules Rev.3 nor Rev.4 provide further direction regarding the assessment of the applications and the elements to be taken into account, CPG-1 submits that the Chamber has broad discretion in assessing the reliability of the statements and evidence provided by the victims in determination of the applications.⁷⁹ Similar to the victims in the *Situation in Uganda*, the Civil Parties in Case 001 are faced with

⁷³ See *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgment, 23 May 2005, paras 203-204.

⁷⁴ *Situation in Uganda*, ICC-02/04-101, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, Pre-Trial Chamber II (Single Judge), 10 August 2007, para. 13.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, at para. 15.

⁷⁷ *Ibid.* (The Single Judge held that in a war-ravaged country such as Uganda, it would be “...inappropriate to expect applicants to be able to provide a proof of identity of the same type as would be required of individuals living in areas not experiencing the same kind of difficulties.”), *ibid.*, at para. 16.

⁷⁸ *Ibid.* at para. 15.

⁷⁹ This is particularly relevant in Case 002, where the Internal Rules provide for the application review process to take place solely in Pre-Trial phase of the proceedings.

difficulties in providing adequate “direct evidence,” as much of the evidence relating to their families and background have been destroyed.⁸⁰ Any other standard of review will amount to a *de facto* preclusion of thousands of Civil Party applications in Case 002 due to the inherent lack of corroborating evidence. This cannot be the intent of the Rules.

31. The failure to provide any corroborating evidence to Civil Parties’ applications should not, as argued by the Defence,⁸¹ form an obstacle to their acceptance as parties, as there is no requirement under international criminal law for corroboration.⁸² Indeed, an accused can be convicted on uncorroborated evidence of one witness if the Trial Chamber finds the witness credible.⁸³ A Civil Party who is thus believed to be credible as to their victim status, and who, as with the majority of the Civil Party applicants, does not incriminate the Accused during the proceedings, should not have their Civil Party status revoked simply for want of documentary proof.
32. Indeed, nothing in the ECCC Internal Rules or the Practice Direction on Victim Participation provides that the application shall fail for want of evidence.⁸⁴ Notably, Internal Rule 23(5) stated that Civil Party Application “must contain sufficient information ... and include *if necessary* any evidence that can determine the existence of the harm if it is necessary.”⁸⁵ There is thus no obligation on the part of the Civil Parties to provide material evidence in support of their application beyond their own testimony.⁸⁶

D. Procedural Status v. Substantial claim of harm

33. The Trial Chamber in Case 001 noted that while a preliminary review of the applications took place during the Initial Hearing, it would perform a subsequent review during the

⁸⁰ T. 26 August 2009, pages 26-27 (For example, Ms. TY Srinna explained how CPG-1 Civil Party Suon Sieng was not able to provide documentation linking him to his cousin at S-21, as this had been destroyed during the DK period to avoid being captured and executed like his cousin. This will be particularly true in Case 002, where very little or no documentary evidence exists that will corroborate the statements given by the Civil Parties in their applications) *see also ibid.*, at page 15 (Mr. WERNER illustrated by means of Nic Dunlop’s book how documentary evidence was destroyed after the fall of the Khmer Rouge. By way of example, Dunlop reports that confessions and other documentary material were used as a parcel for bananas in the post-Khmer Rouge era).

⁸¹ *See, e.g.*, T. 27 August 2009, page 9 (Defence Counsel Mr. ROUX argued that there are no documents present in the case file to substantiate the claim by Civil Parties E2/49, E2/69, E2/73, E2/74 and E2/75).

⁸² *See, e.g.*, *Prosecutor v. Akayesu*, Judgment, Case No. ICTR-96-4-T, 2 September 1998, para. 135 (where the Chamber held that it can rule on a fact on the basis of a single uncorroborated testimony, provided that it is “relevant and credible.”).

⁸³ *See, e.g.*, *Prosecutor v. Rutaganda*, Judgement, Case No ICTR- 96-3-T, 6 December 1999, para. 18, *Prosecutor v. Alfred Musema*, Judgement and Sentence, Case No. ICTR 96-13-T, 27 January 2000 (Trial Chamber), para. 43.

⁸⁴ Internal Rule(Rev.3) 23(5), Practice Direction on Victim Participation, 02/2007/Rev.1, Article 3.5(d).

⁸⁵ Emphasis added.

⁸⁶ *See* T. 27 August 2009, pages 11-12 (where Mr. WERNER of CPG-1 argued that the absence of material evidence should not affect civil parties who could not prove their kinship).

substantive hearings to ascertain whether “the alleged harm did in fact occur.”⁸⁷ While the Chamber did not explicitly say so, it based its reasoning on Internal Rule 100(1), which provides that the Chamber shall “rule on the admissibility and substance of the [Civil Party] claims against the Accused” in the judgment. This assessment however, pertains to the analysis of the guilt of the Accused, not to the procedural review of the status of the victims as envisioned by Rule 23.⁸⁸

34. Any discussion, therefore, regarding the admissibility of a Civil Party claim is more appropriately determined in the context of reparations than in the context of the procedural right of the victim to participate as a Civil Party to the proceedings. Guidance can be found in ICC proceedings where the Single Judge in the *Uganda Situation* adopted a “pragmatic, strictly factual approach, whereby the alleged harm will be held as ‘resulting from’ the alleged incident when the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”⁸⁹
35. While the Trial Chamber naturally has the duty to weigh the fundamental principle of the Accused’s right to a fair trial against the rights of the victims to participate as Civil Parties, it is submitted that the participation of the Civil Parties in this case does not affect the rights of the Accused.⁹⁰ The Civil Parties in Case 001 have provided minimal evidence during the proceedings, with most of their statements and testimony directed towards the issue of harm as it relates to reparations rather than the culpability of the Accused. Indeed the majority of the Civil Parties have not testified against the Accused at all, and have provided no statement to the Court other than their applications.⁹¹ Moreover, as the Co-Lawyer for Civil Party Group 1, Mr. Werner, explained, any individual monetary reparations rendered by the Chamber will not be borne by the Accused.⁹² The presence of the Civil Parties thus does not prejudice the Accused in any manner.

⁸⁷ T. 17 February 2009, page 31.

⁸⁸ *Situation of Uganda*, para. 13 (where the Single Judge in Pre-Trial Chamber II concurred with Pre-Trial Chamber I’s decision that the purpose of a review within ICC Rule 89 relating to the application of Victims is not “to make a definitive determination of the harm suffered by the victims, as this will be determined subsequently, when appropriate, by the Trial Chamber in the context of the case.”); see also *Situation in the Democratic Republic of Congo*, ICC-01/04-505, Pre-Trial Chamber I, 3 July 2008, para. 30.

⁸⁹ *Ibid.*, at para. 14.

⁹⁰ See *Separate and Dissenting Opinion* of Judge René Blattmann in the *Decision on victims’ participation* (Trial Chamber I), ICC-01/04-01/06-1119, para. 26, page 58.

⁹¹ T. 27 August 2009, pages 13-14 (where Mr. WERNER explained that indeed the 4 contested Civil Parties within CPG-1 did not provide any incriminating evidence against the Accused).

⁹² *Ibid.*, at page 14.

36. Indeed, the primary purpose of Civil Party status is the provision of *participatory* rights, which have already been accorded and fully exercised. It is not apparent what the purpose of an *ex post facto* rejection of this ruling is, other than to deny Civil Parties the right to make Closing Arguments or to deny them the right to reparations. As discussed above, reparations are not assigned against the Accused; rather they are collective and moral reparations that do not inure to any particular Civil Party individually.
37. One of the fundamental rights of the Accused is his presumption of innocence. CPG-1 submits that one of the fundamental rights that should be afforded to the Civil Parties is the presumption that they are acting in good faith when submitting their applications and participating in the proceedings. As such, their status as Civil Parties, already accorded to them in prior proceedings, should not be lightly revoked on the eleventh-hour demand of the Accused. The Accused bears the heavy burden in this instance of disproving each victim's right to Civil Party status in light of all the evidence in the record, including testimony, written statements, and documentary proof. They have thus far failed to meet this heavy burden. This Trial Chamber should approach these proceedings with the presumption, not easily rebutted, that Civil Party status should not be stripped from victims at the conclusion of the proceedings absent compelling new evidence.

IV. FACTUAL BASIS OF CIVIL PARTY CLAIMS

38. In addition to the legal basis for the Civil Party applications, the Trial Chamber requested the Civil Parties to elaborate on the factual basis for the applications.⁹³ According to the Internal Rules, “[a]ll Civil Party applications ... must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator.”⁹⁴ CPG-1 hereby respectfully submits the factual details for each Civil Party. In the majority of cases, the Civil Parties have provided testimonial and/or documentary evidence of the harm and suffering they sustained.⁹⁵ However, a number of Civil Parties were unable to provide documentary proof, due to the destruction of documents during the DK-period.⁹⁶ The Civil Parties indicated that they suffered both irreparable psychological and physical injury due to their

⁹³ *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, Doc. No. E159.

⁹⁴ Internal Rule 23(5).

⁹⁵ The documentary evidence is in the form of Prisoner Biographies of the direct victim, S-21 prisoner lists including the direct victim, photographs from S-21, and S-21 confessions of the direct victim prior to his or her execution.

⁹⁶ *See supra* at Part III.C, para. 30.

personal experience or loss of a close relative at S-21.⁹⁷ Where no specific injury is identified, it is implied that the party suffered psychological loss, as recognized under the Rules.⁹⁸

A. Individual Civil Party Claims

39. Civil Party LY Hor (E2/61) was a direct victim of S-21, proven by substantial documentary evidence which the Accused and witness MAM Nai verified.⁹⁹ Moreover, Ly Hor's own testimony confirms his detention at S-21.¹⁰⁰ Ly Hor suffered direct, personal, and irreparable injury due to his detention at S-21.¹⁰¹
40. Direct victim Kerry HAMILL was the brother of Civil Party Robert HAMILL (E2/87).¹⁰² The Accused recognised Kerry HAMILL as one of the foreigners detained and executed at S-21,¹⁰³ and S-21 confessions corroborate¹⁰⁴ this testimony. Kerry HAMILL's murder had "massive and incomprehensible" effects upon Robert HAMILL and his entire family.¹⁰⁵ His "family life disintegrated"¹⁰⁶ following Kerry's murder: his elder brother committed suicide,¹⁰⁷ his parents "lost their ability to parent for a long time" due to their overwhelming grief,¹⁰⁸ and he "took solace in alcohol" resulting in his education suffering.¹⁰⁹
41. Direct victim CHIN Sea, alias HAV Han, was the father of Civil Party HAV Sophea (D25/4).¹¹⁰ CHIN Sea's S-21 Prisoner Biography¹¹¹ and his entry on the Revised Prisoner

⁹⁷ Internal Rule 23(2).

⁹⁸ Practice Direction on Victim Participation, 02/2007/Rev. 1, Article 3.2(c) ("Psychological loss may include the death of kin who were the victim of such crimes.").

⁹⁹ See *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Request to Establish the Status of Ly Hor as a Survivor of S-21 and Authenticity of Documents as a Matter of Record, 28 July 2009, Doc. No. E137.

¹⁰⁰ T. 6 July 2009.

¹⁰¹ *Ibid.*

¹⁰² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of Robert Miles Hamill, E2/87.14, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of Kerry George Hamill, E2/87.15.

¹⁰³ T. 15 June 2009, page 52, T.17 June 2009, pages 28-29, T. 17 August 2009, pages 108-109.

¹⁰⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Confession of George Kerry Hamill, Doc. No. E2/87.7, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of John Dawson Dewhirst, Doc. No. E2/87.11.

¹⁰⁵ T. 17 August 2009, page 94.

¹⁰⁶ *Ibid.*, at page 92.

¹⁰⁷ *Ibid.*, at pages 93-94.

¹⁰⁸ *Ibid.*, at pages 96-97.

¹⁰⁹ *Ibid.*, at page 101.

¹¹⁰ See *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Group 1 – Motion to Establish Nature of Relationship Between Four Civil Parties of Group 1 and Direct Victims of S-21, 6 August 2009, Doc. No. E140, paras 9-15 [hereinafter "Motion on Four Civil Parties"], *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of HAV Sophea, Doc. No. E140.4, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Book of Residence of NHEM Sophat, Doc. No. E140.5, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Voting Card of HAV Sophea, Doc. No. E2/7.1, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of HAV Sophea, 9 May 2008, Doc. No. D25/4.

List¹¹² are corroborated by the Accused's express recognition that CHIN Sea was a victim of S-21.¹¹³ Civil Party HAV Sophea's injuries from the loss of her father are tangible: "financially, physically, [and] emotionally [her family is] in a very desperate position."¹¹⁴ For a long time, she was "struggling to hold onto life"¹¹⁵ and due to the loss of her father, she could not attend school, destroying her ambition to become a teacher.¹¹⁶ After visiting Tuol Sleng museum in 2007, she suffered from nightmares involving her father's death.¹¹⁷

42. Direct victim NETH Bunthy was the brother of Civil Party NETH Phally (E2/50).¹¹⁸ NETH Bunthy's S-21 Prisoner Biography is on the case file,¹¹⁹ corroborated by the Accused's recognition that NETH Bunthy was a victim of S-21.¹²⁰ Civil Party NETH Phally and his family became "deeply depressed" upon learning of his brother's execution at S-21.¹²¹ On one occasion, his grief so overwhelmed him that he was unable to avoid a falling tree branch and lost his left arm as a result.¹²²
43. Direct victim James W. CLARK was the uncle¹²³ of Civil Parties Joshua ROTHSCHILD (E2/88) and Jeffrey JAMES (E2/86).¹²⁴ James CLARK's name on an S-21 Prisoner

¹¹¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of Chen Sea aka Han, Doc. No. E140.3.

¹¹² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, page 64 (noting CHIN Sie/Sea, alias Han, was executed on 15 May 1976).

¹¹³ T. 18 August 2009, pages 57-58.

¹¹⁴ *Ibid.*, at page 50.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, at page 51.

¹¹⁷ *Ibid.*, at pages 52-53.

¹¹⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Book of Residence of Chhaet Phally, Doc. No. E2/140.8, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner in Detention Long Dany, Doc. No. E140.6 (evidencing same parentage for Civil Party and Victim); *see also* Motion on Four Civil Parties, paras 17-20.

¹¹⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner in Detention Long Dany, Doc. No. E140.6.

¹²⁰ T. 18 August 2009, pages 111-112.

¹²¹ *Ibid.*, at page 106.

¹²² *Ibid.*

¹²³ CCP, Article 16 ("In case of death of the victim, a civil action can be started or continued by his successor."), T. 27 August 2009, page 28 (explaining that "successor" refers to any blood relatives). *See also Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, Judgment on the appeal of the Defense against the decision entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a /0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II, Appeals Chamber, 23 February 2009, para. 38 (Pre-Trial Chamber's decision not to stipulate a certain family relationship for victim claims upheld by Appeals Chamber), *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case *the Prosecutor v. Thomas Lubanga Dyilo*, No. ICC-01/04-01/06-172, Pre-Trial Chamber I, 29 June 2006, pages 7-8 (recognizing that "close relatives" of a victim may claim on the victim's behalf).

¹²⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Certificate of Live Birth of Jeffrey James, Doc. No. E140.10, Motion on Four Civil Parties, para. 22-24. Joshua Rotshchild is the brother of Jeffrey James and so has the same relationship to James Clark as his brother. *See Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC,

List¹²⁵ and his S-21 confession confirm that he was held and executed at S-21.¹²⁶ The Civil Parties Joshua ROTHSCHILD and Jeffrey JAMES suffer ongoing insomnia, nightmares, and anxiety since learning of their uncle's death.¹²⁷

44. Direct victim MAN Sim was the son of Civil Party MAN Saut (D25/18).¹²⁸ MAN Sim, alias Riem, entered S-21 on 4 December 1976 and was executed 17 March 1977.¹²⁹ Civil Party MAN Saut is "still in pain today" because of his son's brutal murder at S-21, evidenced by debilitating anguish and persistent stomach pain.¹³⁰
45. Direct victim SMAN Sles was the brother of Civil Parties SMAN Nob (E2/44) and SMAN Sar (E2/45),¹³¹ and direct victim SA Math was Civil Party SMAN Nob's nephew and Civil Party SMAN Sar's son.¹³² SMAN Sles, alias LENG Sokahh, was detained and executed at S-21, as evidenced by an entry on the S-21 Revised Prisoner List,¹³³ and his

Report on Civil Party Application, Joshua Rothschild, 4 February 2009, Doc. No. E2/88/1, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter of Joshua Rothschild, 5 February 2009, Doc. No. E2/88.2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter of Jeffrey James, 23 January 2009, Doc. No. E2/86.2.

¹²⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, S-21 Prisoner List Containing Names of Prisoners Entered 21.4.78 – 28.4.78, Doc. No. D57, page 4.

¹²⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Confession of James William Clark, 23 August 1978, Doc. No. E2/88.3.

¹²⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised, Civil Party Petition of 23 January 2009, Doc. No. E2/86, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of Mr. Joshua Rothschild, 23 January 2009, Doc. No. E2/88, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter by Mr. Joshua Rothschild, Doc. No. E2/88.2.

¹²⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, MAN Saut, 8 August 2008, Doc. No. D25/18, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of Mr. MAN Sim, Doc. No. D25/18/2 (listing father as "Marn Saut").

¹²⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 5309, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Name List of Prisoners entry in Office S-21, House Kh and Chh, Introductory Submission 16.45, page 10, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Name list of Prisoners and Interrogators in Group 8 of Comrade Snguon, Introductory Submission 16.31, page 3. S-21 Biography of prisoner "MARN Sim" also applies to MAN Sim because these are merely differing anglicized versions of the same Khmer name, and the biographical details, namely age, sex and position, closely match the repeated entry on the prisoner lists. *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of Mr. MAN Sim, Doc. No. D25/18/2.

¹³⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of Mr. MAN Saut, 21 November 2008, Doc. No. D25/18.

¹³¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, S-21 Prisoner Biography of SMAN Sles, Doc. No. E2/44.1, page 2 (identifying siblings as "SMAN Nop" and "SMAN Sa"), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, SMAN Nob, 16 August 2008, Doc. No. E2/44, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, SMAN Sar, 16 August 2008, Doc. No. E2/45.

¹³² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of SA Math, alias Saroeun, Doc. No. E2/45.5. SA Math's mother was SMAN Sar. Because SMAN Sar and SMAN Nob are siblings, SA Math was SMAN Nob's nephew.

¹³³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 9399.

- S-21 Prisoner Biography.¹³⁴ SA Math, alias Saroeun, was also detained and executed at S-21, evidenced by his entry on the Revised Prison List¹³⁵ and his Prisoner Biography.¹³⁶
46. Direct victim TA Losmath, alias MAN Math and MAN Ma, was the son of Civil Party MAN Mas (E2/51), alias MAN Malymas.¹³⁷ TA Losmath's S-21 Prisoner Biography,¹³⁸ S-21 Confession¹³⁹ and entry on the Revised Prison List¹⁴⁰ confirm that he was held and executed at S-21.
47. Direct victim THLORK Luon, alias Yorn, was the father of Civil Party YIM Leng (D25/23).¹⁴¹ THLORK Luon's S-21 Prisoner Biography¹⁴² and the entry on the Revised Prisoner List¹⁴³ confirm that he was held and executed at S-21.
48. Direct victim SUOS Sovann was the sister of Civil Party SUOS Sarin (D25/24).¹⁴⁴ SUOS Sovann's S-21 Prisoner Biography,¹⁴⁵ S-21 photograph¹⁴⁶ and entry on the Revised Prisoner List¹⁴⁷ confirm that she was held and executed at S-21.
49. Direct victim KÉ Kengsy, alias Dan, was the brother of Civil Parties KÉ Khon (D25/25) and KÉ Samaut (E2/46).¹⁴⁸ KÉ Kengsy's S-21 Prisoner Biography¹⁴⁹ and entry on the Revised Prisoner List¹⁵⁰ confirm that he was held and executed at S-21.

¹³⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, S-21 Prisoner Biography of SMAN Sles, Doc. No. E2/44.1.

¹³⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 8423.

¹³⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of SA Math, alias Saroeun, Doc. No. E2/45.5.

¹³⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of MAN Mat, Doc. No. E2/51.3 (listing prisoner's mother as MAN Mas), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Decision on the Civil Party Status of Applicants E2/36, E2/51 and E2/69, 4 March 2009, Doc. No. E2/44/2, page 2 (confirming receipt of the election card of MAN Mas and confirming MAN Mas's Civil Party Status).

¹³⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of MAN Mat, Doc. No. E2/51.3.

¹³⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Confession of Man Math, alias Man, Doc. No. E2/51.5.

¹⁴⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 5302.

¹⁴¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, YIM Leng, 8 August 2008, Doc. No. D25/23.

¹⁴² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of THLORK Luon, alias Yorn, Doc. No. D25/23/2.

¹⁴³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 10646.

¹⁴⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, SUOS Sarin, 8 August 2008, Doc. No. D25/24, (identifying father as SUOS Phim and mother as CHIN Hin), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of SOUS Savann, Doc. No. D25/24/3 (identifying father as SUOS Lanh and mother as CHEN Hen). SUOS Sarin is now represented by her husband in these proceedings because of her death on 27 December 2009. *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Notification to Trial Chamber of Death of Civil Party SUOS Sarin, 23 January 2009, Doc. No. E2/S/1.

¹⁴⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of SOUS Savann, Doc. No. D25/24/3.

¹⁴⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Photo of Ms. SOUS Savann at Tuol Sleng, Doc. No. D25/24/5.

¹⁴⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 10208.

50. Direct victim CHE Heng was the brother of Civil Party CHE Heap (D25/10).¹⁵¹ CHE Heng's S-21 Prisoner Biography (with photograph) confirm that he was held and executed at S-21.¹⁵²
51. Direct victim Michael DEEDS was the brother of Civil Party Timothy DEEDS (D25/22).¹⁵³ Michael DEEDS'S S-21 confession demonstrates he was detained and executed at S-21.¹⁵⁴
52. Direct victim ROUN Math, alias ROUN Savy, was the brother of Civil Party ROUN Sreynob (E2/42).¹⁵⁵ ROUN Math, alias Savy is listed on a Revised Prisoner list,¹⁵⁶ and his S-21 confession¹⁵⁷ and biography¹⁵⁸ confirm he was detained and executed at S-21.
53. Direct victim ISMAEL Amat, alais Sokh, was the brother of Civil Party EL Li Mah (E2/43).¹⁵⁹ ISMAEL Amat's S-21 Prisoner Biography¹⁶⁰ and entry on the Revised Prisoner List¹⁶¹ confirm that he was held and executed at S-21.

¹⁴⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, KÉ Khon, 8 August 2008, Doc. No. D25/25, page 2 (identifying father as KÉ Siv and mother as YUNG Tan), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, KÉ Samaut, 3 September 2008, Doc. No. E2/46 (identifying father as KÉ Sv and mother as YUNG Tan), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of KÉ Kengsy, Doc. No. D25/25/2 (identifying father as KÉ Sv and mother as YUNG Tan).

¹⁴⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of KÉ Kengsy, Doc. No. D25/25/2.

¹⁵⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 3064.

¹⁵¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of Mr. Chhe Heng, Doc. No. D25/10/2, Birth Certificate of CHE Heap (Annex C), (The victim's prisoner biography (Doc. No. D25/10/2) names the same individuals as parents as the Civil Party's birth certificate); *see also Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, CHÉ Heap, 8 August 2008, Doc. No. D25/10.

¹⁵² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of Mr. Chhe Heng, Doc. No. D25/10/2.

¹⁵³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of Timothy Scott DEEDS, 8 August 2008, Doc. No. D25/22, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Copy of Passport of Timothy Deeds, Doc. No. D25/22/1, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Declaration of Michael Scott DEEDS, 1 June 2009, Doc. No. D25/22/3, page 2 (identifying brother as Timothy).

¹⁵⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Declaration of Michael Scott DEEDS, 1 June 2009, Doc. No. D25/22/3.

¹⁵⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of ROUN Math, alias Savy, Doc. No. E2/42.3, page 5 (identifying father as Roun and mother as LY Chip), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, ROUN Sreynob, 16 August 2008, Doc. No. E2/42.

¹⁵⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1.

¹⁵⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Confession of Roun SAVY, Doc. No. E5/2.5.

¹⁵⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of ROUN Math, alias Savy, 1 October 2009, Doc. No. E2/42.3.

¹⁵⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of EL Li Mah, 19 August 2008, Doc. No. E2/43, (identifying father as LY Ismael and mother as YOU Soh Aripas, and identifying as Khmer Muslim), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner Ismael Ahmad, Alias Sok, Doc. No. E2/43.3 (identifying father as Ly El and mother as So Phoas, and identifying as Khmer Muslim).

¹⁶⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner Ismael Ahmad, Alias Sok, Doc. No. E2/43.3.

¹⁶¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 3015.

54. Direct victim MIN Kan was the son of Civil Party MEN Lay (E2/47).¹⁶² MIN Kan is listed on a Revised Prisoner List as entering S-21 on 18 July 1975 and being executed later in 1975.¹⁶³
55. Direct victim NHEM Thol, alias Ra, was the sister of Civil Party NHEM Sophan (E2/48).¹⁶⁴ NHEM Thol, alias Ra, is entered on the Revised Prisoner List,¹⁶⁵ confirming she was detained and executed at S-21.
56. Direct victim SREI Yeng was the husband of Civil Party KOM Men/KUM Men (E2/52).¹⁶⁶ SREI Yeng's S-21 Prisoner Biography (with photograph)¹⁶⁷ and entry on the Revised Prisoner List¹⁶⁸ confirm he was detained and executed at S-21.
57. Direct victim KHOEURNG Mouy Sor, alias KHOEUNG Buoysoa, was the brother of Civil Party TRY Ngech Leang (E2/53).¹⁶⁹ Mouy Sor is listed on the List of victims executed at S-21 1976,¹⁷⁰ and the Revised Prisoner List indicates that he entered S-21 on 22 February 1977 and was executed on 20 July 1977.¹⁷¹
58. Direct victim SOK Heng was the father of Civil Party HENG Ngech Hong (E2/54).¹⁷² An S-21 Prisoner Biography of SOK Heng (with photograph)¹⁷³ and entry on the Revised Prisoner List¹⁷⁴ confirm he was detained and executed at S-21.

¹⁶² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, MEN Lay, 2 September 2008, Doc. No. E2/47.

¹⁶³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, in. 5723, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biographic Database, Min Kan, Doc. No. E2/47.3.

¹⁶⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, NHEM Sophan, 3 September 2008, Doc. No. E2/48.

¹⁶⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, in. 6401.

¹⁶⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, KOM Men, 9 September 2008, Doc. No. E2/52, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner in Detention, SREI Yeng, 28 August 2009, Doc. No. E2/52.6 (listing spouse as KUM Men).

¹⁶⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner in Detention, SREI Yeng, 28 August 2009, Doc. No. E2/52.6.

¹⁶⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, in. 9961.

¹⁶⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, TRY Ngech Leang, 16 September 2006, Doc. No. E2/53.

¹⁷⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, List of Victims executed at S-21 (Tuol Sleng Prison), Doc. No. E2/53.2, in. 4231.

¹⁷¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, in. 3686.

¹⁷² Carnet de Residence of HENG Ngech Hong (Annex C) (listing SOK Heng as her father), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, HENG Ngech Hong, 18 September 2008, Doc. No. E2/54 (identifying SOK Heng as father and place of birth as Prek Run village, Prek Kory sub-district, Sa-ang district, Kandal Province), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner SOK Heng, Doc. No. E2/54.3 (identifying place of birth as Preak Run Leu village, Preak Koy commune, district 20, Kandal province).

¹⁷³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Prisoner SOK Heng, Doc. No. E2/54.3.

59. Direct victim BENG Pum was the brother of Civil Party BENG Chanthorn (E2/55).¹⁷⁵ BENG Pum's S-21 Prisoner Biography¹⁷⁶ and entry on the Revised Prisoner List¹⁷⁷ confirm he was detained and executed at S-21.
60. Direct victim YUN Loeun was the nephew of Civil Party YON Chhoeun (E2/56).¹⁷⁸ YUN Loeun's S-21 Prisoner Biography confirms he was detained and executed at S-21.¹⁷⁹
61. Direct victim Auy Rèn/Auy Ven, alias Mao, was the sister of Civil Party LY Khiek (E2/57).¹⁸⁰ Auy Rèn's name is entered on the 'Daily Monitoring List for Prisoner of S-21' for 3 June 1977, evidencing her detention and execution at S-21.¹⁸¹
62. Direct victim POUL Khoeun, alias Chaing, was the father of Civil Party POUL Punloek alias Nget (E2/58).¹⁸² POUL Khoeun's S-21 confession¹⁸³ and entry on the Revised Prisoner List confirm he was detained and executed at S-21.¹⁸⁴
63. Direct victim CHANN Sinoun was the brother of Civil Party CHANN Kruoch (E2/59).¹⁸⁵ CHANN Sinoun's S-21 biography,¹⁸⁶ entry on a Name list of prisoners and interrogators

¹⁷⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, In. 9582.

¹⁷⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography of BENG Pum, Doc. No. E2/55.3 (listing mother SAO Heng and father NHEB Ben/NIEM Peng), identification card and birth certificate of BENG Chanthorn/Sao Chanthan (Annex C) (listing identifying mother SAO Heng and father NHEB Ben/NIEM Peng), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, BENG Chanthorn, 17 September 2008, Doc. No. E2/55.

¹⁷⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Prisoner Biography, E2/55.3.

¹⁷⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, In. 165.

¹⁷⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of YON Loeun, Doc. No. E2/56.2, YON Chhoeun, Civil Party Petition, YUN Chheun, 17 September 2008, Doc. No. E2/56, identification card and Carnet de residence of YUN Chheun (Annex C).

¹⁷⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of YON Loeun, Doc. No. E2/56.2.

¹⁸⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, Ly Khiek, 16 September 2008, Doc. No. E2/57, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of Ly Khiek, Doc. No. E165/1/4, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Carnet de Residence of Ly Khiek Doc. No. E165/1/4.1.

¹⁸¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, DC-Cam Bibliographic Database entry, Rec. D07177, Doc. No. E165/1/4.2.

¹⁸² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, PUOL Punloek, alias Nget, 2 July 2009/28 November 2008, Doc. No. E2/58.

¹⁸³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of Poul Toeun, aka Chaing, Doc. No. E2/58.6, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Summary of Biography of Puol Toeun, alias Chang, 24 August 2009, Doc. No. E2/58.5, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, DC-CAM Bibliographic Database, Prisoner Biography for Puol Toeun, Doc. No. E2/58.3.

¹⁸⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, In. 7833.

¹⁸⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, CHANN Kruoch, 22 January 2009, Doc. No. E2/59, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Identity Card of Chan Krouch, Doc. No. E2/59.2.

¹⁸⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Chann Sinoun, 3 September 2009, Doc. No. E2/59.5, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Confession of Chann Sinoun, 31 August 2009, Doc. No. E2/59.6, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Mr. Chann Sinoun's Confession during his 48th Interrogation, 22 September 2009, Doc. No. E2/59.7.

- in group 8 of Comrade Snguon,¹⁸⁷ and entry on the Revised Prisoner List¹⁸⁸ confirm he was detained and executed at S-21.
64. Direct victim NORNG Kim Vet was the elder sister of Civil Party NORNG Kim Leang (E2/60).¹⁸⁹ NORNG Kim Vet's S-21 Prisoner Biography confirms she was detained and executed at S-21.¹⁹⁰
65. Direct victim [REDACTED] was the brother of Civil Party [REDACTED] (E2/62).¹⁹¹ [REDACTED]'s S-21 Prisoner Photograph confirms he was detained and executed at S-21.¹⁹²
66. Direct victim PEN Um, alias Rith, was the cousin of Civil Party SUON Sieng (D25/15).¹⁹³ PEN Um's S-21 Prisoner Biography¹⁹⁴ and entry on the list of prisoners smashed 15 October 1977 confirm he was detained and executed at S-21.¹⁹⁵
67. Direct victim NOP Ngan, alias Sar, alias Chareun was the elder brother of Civil Party NGETH Sok (D25/20).¹⁹⁶ NOP Ngan's S-21 Prisoner Biography confirms he was detained and executed at S-21.¹⁹⁷

¹⁸⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Group number VIII of Comrade Snguon, 16.31, page 10.

¹⁸⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, 19 May 2009, Doc. No. E68.1, ln. 471.

¹⁸⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, NORNG Kim Leang, 22 January, Doc. No. E2/60, (identifying father as NORNG Cheng), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of NORNG Kimvet, 28 August 2009, Doc. No. E2/60.1 (identifying father as NORNG Cheng). Both siblings also identify the same place of birth.

¹⁹⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Tuol Sleng Prisoner Biography of NORNG Kimvet, 28 August 2009, Doc. No. E2/60.1.

¹⁹¹ See *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Group 1 – Motion to Provide Exhibits in Support of Five Civil Parties of Group 1, 3 September 2009, Doc. No. E165 [hereinafter “Motion on Five Civil Parties”], T. 26 August 2009, pages 37-40, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Photograph of [REDACTED] Doc. No. E165/1/1.2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of [REDACTED] Doc. No. E165/1/1, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Photograph of [REDACTED]'s brother at S-21, Doc. No. E165/1/1.2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition for [REDACTED], Additional Information for Part C, 27 August 2008, Doc. No. E2/62.2.

¹⁹² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Photograph of [REDACTED] Doc. No. E165/1/1.2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, DC-CAM Photographic Database, Doc. No. E165/1/1.6.

¹⁹³ See Motion on Five Civil Parties, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, SUON Sieng, 8 August 2008, Doc. No. D25/15, page 2, T. 26 August 2009, pages 26-27, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Family Record Book of Sourm Seang, Doc. No. E165/1/2.1, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, National Identity Card of Sourm Seang, Doc. No. E165/1/2.

¹⁹⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Pen Um from S-21, Doc. No. E165/1/2.6, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, DC-CAM Bibliographic Database, Biography and activities of Pen Um, alias Rith, Record No. J00071, Doc. No. E165/1/2.4, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, DC-CAM Biographic Database, Biography of Pen Um, Record No. B12605, Doc. No. D25/15/1 (listing victim as entering S-21 in July 1977).

¹⁹⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, List of Smashed Prisoners from 15 October 1977, Doc. No. E165/1/2.2.

¹⁹⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, NGETH Sok, 8 August 2009, Doc. No. D25/20, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of NHET Sok, Doc. No.

68. Direct victim PHEACH Kim was is the grandfather of Civil Party SIN Sinet (E2/41).¹⁹⁸ PHEACH Kim's S-21 photograph¹⁹⁹ and "disappearance record"²⁰⁰ confirm he was detained and executed at S-21.
69. Direct victim Mayith was the elder brother of Civil Party LIM Yon (E2/69).²⁰¹ LIM Yon provided personal knowledge of Mayith's detention and execution at S-21.²⁰² Not only did LIM Yon suffer severe psychological trauma with psychosomatic effects due to the loss of her brother, but she was also left to care for her brother's three children on her meager income.²⁰³
70. Direct victim Heng Pun/Chun, alias Chun was the husband of Civil Party KHIEV Neap (E2/75).²⁰⁴ KHIEV Neap's husband was killed at Prey Sar.²⁰⁵
71. Direct victim NORNG Sarouen was the cousin of Civil Party NORNG Sarath (E2/73).²⁰⁶ NORNG Sarouen was known to be detained and executed at S-21.²⁰⁷

E165/1/5 (when read in conjunction with the Prisoner Biography, evidences the individuals share the same parentage), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, National ID Card of Nhet Sok, Doc. No. E165/1/5.1.

¹⁹⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, DC-CAM CBIO Record of Mr. Sar, Doc. No. D25/20/2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Victim Biography, Doc. No. E165/1/5.2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Victim Biography, Doc. No. E165/1/5.3.

¹⁹⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter by Sin Sinet, alias Srun, 22 January 2009, Doc. No. E2/41.1, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Picture of Civil Party identifying victim's picture at S-21, Doc. No. E165/1/3.5, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party's Published Announcement to Find Other Relatives, Doc. No. E165/1/3.6, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of Sin Sinet, Doc. No. E165/1/3 (uses present address, not place of birth, because Civil Party has been separated from her family since she was very young), *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Family Record Book of Sin Sinet, Doc. No. E165/1/3.1, T. 26 August 2009, pages 35-36.

¹⁹⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Victim's Picture at S-21, Doc. No. E165/1/3.4, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Picture of Civil Party identifying victim's picture at S-21, Doc. No. E165/1/3.5.

²⁰⁰ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Victim's disappearance record, Doc. No. E165/1/3.3, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Picture of Civil Party identifying victim's picture at S-21, E165/1/3.5, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Victim, Doc. No. E165/1/3.2, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Victim's Picture at S-21, Doc. No. E165/1/3.4.

²⁰¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, Lim Yon, 13 March 2008, Doc. No. E2/69, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter by Ms. LIM Yon, 5 February 2009, (filing date of Khmer version) Doc. No. E2/69.1.

²⁰² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Additional Claiming Letter by LIM Yon, Doc. No. E2/69.3, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Request for the modification of type of participation, DC-Cam Victim Participation Project, 20 January 2009, Doc. No. E2/69.3, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter by Ms. LIM Yon, 21 August 2009, Doc. No. E2/69.1.

²⁰³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, Lim Yon, 6 February 2009, Doc. No. E2/69.

²⁰⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, Thiev Reab alias Khiev Reab, 5 February 2009, Doc. No. E2/75.

²⁰⁵ *Ibid.* See also *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter by Ms. THIEV Neab or KHIEV Neab, 5 February 2009, (filing date of Khmer version) Doc. No. E2/75.1.

²⁰⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, Norng Sarat alias Por, 30 January 2009, Doc. No. E2/73, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Birth Certificate of Norng Sarat, 5 February 2009, Doc. No. E2/73.1.

72. Direct victim Prak Pat was the husband of Civil Party NGET Uy (E2/74).²⁰⁸ Prak Pat was tortured and killed at S-21 because he was accused of being CIA/KGB.²⁰⁹

V. THE GUILT OF THE ACCUSED

A. Introduction

73. Out of the 37 Civil Parties in Group 1, 36 are relatives of those who were detained and executed at S-21. Not one of the victims knows precisely how long their family members were kept at S-21 before being brutally ‘smashed’. As expressed so devastatingly by Robert Hamill,²¹⁰ Hav Sophea²¹¹ and Net Phally,²¹² the Civil Parties cannot help but wonder how much pain and suffering was inflicted upon their family members while detained at S-21. To this day, the uncertainty of the duration and extent of their suffering as well as the cause of their deaths haunt each and every one of the Civil Parties.²¹³ The essential purposes of participation in the proceedings for them is to assist in the unearthing of the truth by exposing the nature of the Accused’s, alias Duch’s involvement at S-21, the functioning of the prison and his responsibility for the deaths of the prisoners at S-21. In order to come to grips with the fate of their relatives, the Civil Parties thus need a judgment that clearly establishes the truth as to Duch’s actual role at S-21, his state of mind, and his exact influence and impact beyond the walls of S-21. The Civil Parties, by virtue of their experiences and interest can provide a unique perspective and analysis of the evidence deduced during the proceedings.²¹⁴

74. While Duch frequently expressed remorse, took an apologetic stance, and attempted to distance himself from the horrific reality of S-21, the evidence presented at trial demonstrates that he has failed to tell the truth regarding crucial aspects of his role at S-21. Indeed, Duch was extremely selective about what aspects of S-21 he would talk about. CPG-1 respectfully submits that there are four areas where Duch was clearly not forthcoming or honest throughout the proceedings. CPG-1 will demonstrate how the evidence simply contradicts Duch’s and actually demonstrates (1) his substantial

²⁰⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, Norng Sarat alias Por, 20 August 2009, Doc. No. E2/74.

²⁰⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition, NGET Uy, 21 May 2009, Doc. No. E2/74, *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Claiming Letter by NGET Uy, 5 February 2009 (filing date of Khmer version), Doc. No. E2/74.1.

²⁰⁹ *Ibid.*

²¹⁰ T 17 August 2009, pages 98-99.

²¹¹ T. 18 August 2009, pages 47-49.

²¹² *Ibid.*, at pages 100-101.

²¹³ *See, e.g.*, T. 17 August 2009, page 111.

²¹⁴ *See supra* Part II.B, at para. 7.

autonomy as Chairman of S-21, (2) the extreme and unnecessary cruelty inflicted upon the prisoners at S-21, especially as compared to the level and kinds of abuse witnessed at other detention centers, (3) his direct and malevolent contribution to the system of interrogation at S-21, which fueled the Standing Committee's paranoia, and led to wide-scale purges and arrests, and (4) his state of mind and motivations at S-21. Duch was not formed by his job and the circumstances; it is very much the opposite, Duch formed the position of Chairman of S-21 to himself.

B. Duch had substantial autonomy as Chairman of S-21

75. During the proceedings Duch repeatedly stated that he had little to no autonomy while running S-21 on a day-to-day basis for 4 years.²¹⁵ In an argument reminiscent of that of Eichmann during his trial in Israel,²¹⁶ Duch maintained that he could have done nothing other than obey orders as they were directed to him from the upper echelon.²¹⁷ According to Duch, the system of secrecy and terror which permeated the Khmer Rouge ranks prevented any form of insubordination.²¹⁸
76. In Duch situation, this account could not be farther from the truth. Not only did Duch reign over S-21 with an iron fist, he did so while constantly innovating and improving in order to make S-21 the most efficient system he could through the exercise of his autonomy. Duch had the authority and discretion whether to spare someone's life,²¹⁹ he was able to request a specific category of people to be exempted from smashing,²²⁰ he alone took charge of the educating the S-21 staff in matters of interrogation and the party

²¹⁵ See, e.g., T. 22 June 2009, page 18 (Duch said that the decision to torture the key prisoners at S-21 was always taken by the upper echelon) *see ibid.*, at page 28 (Duch said that upper echelon would decide how long to detain the key prisoners), *ibid.*, at page 52 (Duch stated that Son Sen would contact him via phone every day to monitor his work and to provide instructions and would visit Duch every day to make sure he was accurately implementing the party line), T. 23 June 2009, pages 29-30.

²¹⁶ See *Attorney General v. Eichmann*, Criminal Case No. 40/61, Judgment, Dist. Ct. of Jerusalem, 11 December 1961, para. 243 ("We saw him again and again winding his way under the impact of the cross-examination, retreating from complete to partial denial, and only when left no alternative, to admission; but of course always taking refuge in the plea that in all matters, great or small, he was acting on explicit orders.").

²¹⁷ See, e.g., T. 7 April 2009, pages 24-25, 71, T. 22 June 2009, pages 41-42, 79.

²¹⁸ See, e.g., T. 8 April 2009, page 37.

²¹⁹ See, e.g., T. 22 June 2009, page 29 (DUCH: "I almost forget, but one female prisoner on 64, she was a dentist. I kept her in the prison. When the Vietnamese invaded, we fled together but she died of disease.") *see ibid.*, at pages 29-30 (recounts the fact that three people were spared by Duch, and subsequently fled with Duch when the Vietnamese troops entered the premises).

²²⁰ T. 8 June 2009, page 14. (DUCH: "At S-21, there were two kinds of people; the people who were painters or artists, and I asked the CPK to spare their life. I mean to be as prisoners who would not be smashed. They would be left to serve S-21.") T. 23 June 2009 page 9. (DUCH: "It means all the remaining prisoners had to be smashed except the four people from the YO-8 unit, which I requested them to remain alive ... I wanted to interrogate these four people.").

line,²²¹ he was empowered to construct new buildings at S-21,²²² he decided to select Choeng Ek as the killing field,²²³ he made the organizational chart at S-21²²⁴ and he ensured that there was better training.²²⁵ The large autonomy enjoyed by Duch at S-21 was confirmed in very clear and unambiguous terms both by Dr Etcheson²²⁶ and David Chandler.²²⁷

i. Duch had the power to protect people

77. There is ample evidence adduced at trial that reveals the weaknesses in the Khmer Rouge system, which would have allowed an influential cadre like Duch, who enjoyed with protection²²⁸ and who had unique inside knowledge of operations,²²⁹ to protect or save people in some situations, had he wished to do so. Indeed, one of Duch's former subordinates, Mam Nai, explained that Duch had made clear to him that he would be able to protect people with whom he had joined the revolution so long as they had not actually been arrested yet²³⁰ Expert witness Dr. Chandler confirmed that the cadres had the ability to prevent their friends and subordinates from being arrested,²³¹ and spoke of the degree to which the suffering could have been alleviated at S-21.²³² One former S-21 guard even spoke in Court of two examples where S-21 guards took concrete steps to help and save others.²³³

²²¹ T. 8 June 2009, page 36.

²²² *Ibid.*, at page 71; *see also* T. 28 April 2009, page 9, T. 4 August, 2009, page 33.

²²³ T. 29 April 2009, page 70.

²²⁴ T. 23 April 2009, page 30.

²²⁵ *Ibid.*, at page 47.

²²⁶ T. 27 May 2009, pages 89-90.

²²⁷ T. 6 August 2009, pages 98-99.

²²⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Psychological Report on Duch, E3/509, 12 August 2008, pages 18, 21 [hereinafter "Psychological Report"]. Duch admitted to the psychologist during the Pre-Trial phase that he was protected by Son Sen.

²²⁹ T. 8 June 2009, pages 99-100 (Despite the cloak of secrecy that hung around all those who operated within the DK, Son Sen would discuss "the speeches or talks of other members of the Standing Committee" with Duch) T. 28 May 2009, page 60 (Dr. ETCHESON: "He had the opportunity to interrogate persons from all units of organization at all echelons from all across the country. In the course of that work he gained a unique perspective on what was happening within Democratic Kampuchea.").

²³⁰ T. 15 July 2009, page 47 (MAM Nai: "if I had known before and they told me that this person was in trouble I could have guaranteed that [the person] was a student of mine.").

²³¹ T. 6 August 2009, page 95 (Dr. Chandler explains how the system of protecting one's friends works).

²³² *Voices from S-21*, page 154 (Dr. CHANDLER: "The "upper brothers" who followed S-21's operations and Son Sen and Duch, who were directly responsible for them, knew what they were doing and chose to do it. Conceivably they might have lessened the suffering of prisoners, released the hundreds of small children imprisoned with their parents, or curtailed the executions had they wished to do so. There were moments during the DK era when such choices could have been made and revolutionary justice been tempered with mercy...But "instead, Son Sen, Duch, and the people working under them inflicted enormous quantities of suffering on the prisoners coolly, systematically, and without remorse.").

²³³ T. 11 August 2009, pages 17-18 (testimony of Soam Met).

C. Duch used his position to inflict unnecessary and cruel measures upon the prisoners at S-21

i. Duch systematically tried to conceal the extent of his responsibility at S-21

78. As Dr. Etcheson testified, most other security centers “appeared to use a smaller range of techniques” compared to S-21.²³⁴ While Duch confirmed that he had bettered the torture techniques at S-21,²³⁵ he still tried to minimize his knowledge and role with regard to the practices.²³⁶ When confronted with specific acts of cruelty performed by Duch himself, he would simply distort the truth and try to minimize the extent of his responsibility.²³⁷ For example, Duch was confronted with a letter written by him to Pon, which instructed in unequivocal terms to continue to use a “hot method” with more force, which Duch knew could “lead to [the prisoner’s] death.”²³⁸ Duch refused to take responsibility, instead claiming that this was a “strategy to bluff [the prisoner], to scare him by letter so that he would confess.”²³⁹ When faced with accounts of torture techniques not in the basic manual, such as the pulling of fingernails or the usage of wet cement to cover the faces of prisoners, Duch stated that he had not been informed about these practices and that he put an end to the practices as soon as he did learn of them.²⁴⁰ If Duch did admit that his subordinates were never punished for acts of torture,²⁴¹ he only seemed to remember the “soft” forms of torture as opposed to the most sadistic and cruel forms.²⁴²

²³⁴ T. 28 May 2009, page 6.

²³⁵ T. 2 September 2009, page 67.

²³⁶ T. 23 June 2009, page 49 (DUCH: “... I can tell you, based on my recollections; if I am not mistaken I tortured only Chhit Iv only once when I was the deputy secretary of the office. That’s all I can say”); *see also* T. 22 June 2009, pages 18, 22 (where Duch maintained that the decision to torture key prisoners was solely within the mandate of the upper echelon).

²³⁷ *See, e.g.*, T. 22 June 2009, page 89 (DUCH stated that he refused to carry out a direct order given by Nuon Chea to provide the prisoners with medicine that potentially had dangerous contents, and instead replaced the substance in the capsules with paracetamol. Duch explained his insubordination by stating that he had a “sudden feeling of sympathy because he “did not want to have [his] hands involved directly in the killing of any person.”) T. 22 June 2009, page 24 (The reason for hitting one prisoner, in Duch’s words, was to “prevent Nat from going and beating [the prisoner] up).

²³⁸ T. 8 June 2009, page 39.

²³⁹ T. 22 June 2009, page 39 (where Duch further assured Pon that he “would not be facing disciplinary actions” if he continued to use the hot method of torture on the prisoner).

²⁴⁰ T. 23 June 2009, pages 86-87.

²⁴¹ T. 22 June 2009, page 21.

²⁴² T. 8 June 2009, page 107, *see also* T. 22 June 2009, page 88 (DUCH: “The paying homage to the dog was practiced because of its effectiveness I accepted it to be used because I saw that then the prisoners would not be hurt physically.”). Duch denied knowing about some of the cruelest forms of torture that came to light during the proceedings. *See e.g.*, T. 22 June 2009, page 115 (the surgery and anatomic studies were conducted on the prisoners), T. 8 June 2009, page 92 (breasts of female prisoners were burnt and poisonous insects were used on all prisoners.), T. 22 June 2009, page 21 (subordinates forced a detainee to eat his own excrement), T. 23 June 2009, page 7 (subordinates burnt detainees with cigarettes), T. 22 June 2009, page 114 (of the practicing of drawing blood from prisoners).

ii. Duch designed S-21 to encompass a system that would inflict the maximum amount of unnecessary suffering and cruelty

79. Duch's privileged position and autonomy allowed for him to perfect and reinforce the basic torture practices that were used at other security offices to create an intricate system that was designed to generate as many confessions as possible. While Duch repeatedly claimed that he was simply implementing orders from above,²⁴³ he was able to present into evidence no specific direction, manual, or order that indicated the level of cruelty that was to be inflicted upon the prisoners.²⁴⁴ Indeed, the Security Centers around the country operated largely independent from each other, with none displaying the same kinds and extent of cruelty as S-21.²⁴⁵ Evidence show that Duch used the expertise gained at M-13,²⁴⁶ where he worked as Chairman and developed torture techniques, to increase the efficiency and the cruelty of the system at S-21.²⁴⁷
80. Despite Duch's extensive effort to downplay his role in the practice of torture at S-21, the evidence unambiguously demonstrates that Duch went to great lengths to establish a system that was designed to inflict the maximum degree of suffering on the prisoners.²⁴⁸ Prak Khan personally witnessed how groups of four to ten people died because too much of their blood was drawn,²⁴⁹ and recounted how Duch gave him specific instructions to torture prisoners by using needles on their fingers.²⁵⁰ Contrary to Duch's statements, Prak Khan stated that he was instructed by Duch to force the prisoners to eat their own excrement,²⁵¹ and explained that prisoners were often so severely beaten that they would need medics or would fall unconscious.²⁵²

²⁴³ See, e.g., T. 8 June 2009, page 5, T. 23 June 2009, page 48.

²⁴⁴ T. 28 May, 2009, page 3 (Dr. ETCHESON: "I have never seen an order or a directive from the Standing Committee explicitly ordering torture..."), see also T. 22 June 2009, page 26.

²⁴⁵ T. 8 June 2009, page 91.

²⁴⁶ T. 7 April 2009, page 65 (where Duch admitted that he created the techniques of torture at M-13 and that he applied the same techniques at S-21).

²⁴⁷ T. 28 May 2009, page 5.

²⁴⁸ T. 21 July 2009, page 17 (as Prak Khan, one of the guards at S-21 testified, the staff was trained to "whip the prisoners with sticks, ... to electrocute them, ... [and] to use the plastic bag to suffocate them).

²⁴⁹ *Ibid.*, at page 6; see also T. 28 July 2009, page 37 (Suos Thy said that he "acknowledge[d] the fact of the drawing of blood. Hor instructed [him] to write down the names of the prisoners whose blood was drawn in the list of the prisoners to be smashed. The medical unit would request it to Hor and Hor would request to Duch for the authorization before the prisoners were taken to have their blood drawn.").

²⁵⁰ T. 21 July 2009, page 67 ("And we were taught to insert a needle underneath the nails and by doing so only – the detainees could sustain from the wounds in the fingers. not affecting the hand or the legs that the detainee could not walk to work. So this was a kind of torture that was light but painful (...) It was a theory instructed to us by Duch because it was the light torture technique that did not affect the heart of the detainee.").

²⁵¹ *Ibid.*, at pages 69-71.

²⁵² *Ibid.* This was confirmed by other former S-21 guards. See T. 28 July 2009, page 22 (SUOS Thy confirmed that the prisoners were tortured to death and starved to death at S-21), T. 3 August 2009, pages 9-19 (SEK Dan said that "most of the prisoners had diarrhea or fever or headaches and majority of them had wounds on their backs. Some of them had their fingernails or toenails missing (...) The majority of them, yes, they were tortured.

81. The handful of S-21 survivors similarly confirmed the abysmal level of suffering inflicted upon the prisoners. S-21 survivor Van Nath described how he was led into an interrogation room where there were “plastic bags hanging on the wall; there were screws; there were metal screws and clubs; and the chair where I sat there were blood drains, blood spots everywhere.”²⁵³ Van Nath went on to explain in horrible detail how electricity was used on him as a form of torture.²⁵⁴ Other S-21 survivors, through statements and direct testimony, described how guards would use poisonous insects²⁵⁵ on them, how prisoners were immersed in a basin filled with water,²⁵⁶ and how fingernails would be pulled out.²⁵⁷ The suffering would often be so unbearable that prisoners would end up committing suicide.²⁵⁸ Both the expert witnesses Dr. Chandler²⁵⁹ and Dr. Etcheson confirmed that the torture inflicted at S-21 was characterised by its extraordinary cruelty and diversity.²⁶⁰
82. Survivors of S-21 described the inhumane circumstances at the prison including (i) the lack of water²⁶¹ and food,²⁶² (ii) the lack of hygiene,²⁶³ (iii) having to wear shackles,²⁶⁴ (iv) having to sleep on filthy floors,²⁶⁵ (v) having to urinate and defecate in plastic cans inside the cells,²⁶⁶ (vi) the fact that it was impossible to sit up in the cells²⁶⁷ or (vii) to even to move at all without being beaten by guards,²⁶⁸ (viii) the absence of medical

They did not have common diseases. They were sick because they were tortured...) *ibid.*, at page 96 (LACH Mean added about the torture by electricity: “Regarding the shocking with electricity, it was like using a dynamo of a bicycle to produce the electricity to shock the prisoner”); *see also* T. 1 July 2009, pages 30, 73.

²⁵³ T. 29 June 2009, page 18, *see also* T. 30 June 2009, pages 11-14.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*, at page 45.

²⁵⁶ *Ibid.*, at pages 43-44.

²⁵⁷ *Ibid.*, at pages 45-46; *see also* T. 30 June 2009, page 25.

²⁵⁸ *Ibid.*, at pages 101-102.

²⁵⁹ *See* Voices from S-21, page 130 for a list of the types of torture.

²⁶⁰ T. 28 May 2009, pages 6-7.

²⁶¹ T. 7 July 2009, page 35 (CHAN Lay: “When I was thirsty and I did not dare ask for water or when I needed to relieve myself I had to collect my urine and drink it.”).

²⁶² T. 29 June 2009, pages 20-23 (VAN Nath: “And I did not think of any other thing other than being thirsty and hungry. I was so hungry that I had never experienced that hunger and I thought that even eating a human flesh would be a good meal for me also at that moment.”); *see also* T. 22 June 2009, page 14 (where Duch agreed that prisoners were forced to catch insects to fulfill their hunger); *see also* T. 30 June 2009, page 14; *see also* T. 7 July 2009, page 35 (LAY Chan: “Before I was detained in that location, my weight was between 42 to 45 kilograms. And after the three-month detention, I did not weigh myself and it’s hard for me to estimate. Roughly I was 35 kilograms or less.”).

²⁶³ *See, e.g.*, T. 1 July 2009, pages 25, 76.

²⁶⁴ *See, e.g.*, T. 30 June 2009, page 79, T. 7 July 2009, page 72, T. 9 July 2009, page 84.

²⁶⁵ T. 1 July, pages 12-13.

²⁶⁶ *See, e.g.*, T. 1 July 2009, pages 22-23.

²⁶⁷ T. 29 June 2009, page 41.

²⁶⁸ T. 30 June 2009, page 79; *see also* T. 1 July 2009, pages 22-23.

treatment,²⁶⁹ (ix) the absence of light in the cells,²⁷⁰ (x) the constant screaming heard from the buildings,²⁷¹ (xi) and the harrowing sight of dead bodies in the cells.²⁷²

83. As Chairman of S-21, Duch was in a position to alleviate, even fractionally, the extreme and deliberate suffering of the prisoners caused by the calculatedly abhorrent detention conditions, but Duch explicitly chose not to. Instead, Duch sought always to further his own interests. For example, Duch testified that the food rations for each prisoner at S-21 had been set before he came to work at S-21, implying that he could not have done anything about this.²⁷³ However, when Duch, who had been promoted to Chairman of S-21 by this point, realized that there was sufficient rice to feed all the prisoners who were dying of starvation who were by this point trying to survive by eating insects,²⁷⁴ he once decided to turn the rice over to the Standing Committee,²⁷⁵ as opposed to alleviating the extreme hunger in his prison.
84. Dr. Chandler testified that the prisoners “were mistreated physically and mentally, psychologically, from the moment they arrived.”²⁷⁶ The conditions at the prison were specifically designed to break the resistance of the prisoners before they had even been interrogated and to create the conditions for “total submission.”²⁷⁷ The same system of breaking the prisoners through atrocious conditions of detention was in place at M-13 under the leadership of Duch.²⁷⁸ Not only did Duch establish this system of absolute cruelty, but he also participated directly in inflicting extreme brutality on prisoners. Bou Meng told the court the chilling account of Duch having the prisoners beat each other up.²⁷⁹ This practice of Duch to personally inflict torture²⁸⁰ at S-21 was a continuation of the practice he also followed at M-13.²⁸¹ The complete ruthlessness and mercilessness of

²⁶⁹ *Ibid.*, at pages 26-27; *see also* T. 1 July 2009, pages 31-32.

²⁷⁰ *Ibid.*, at page 72.

²⁷¹ T. 29 June 2009, pages 33-34.

²⁷² T. 1 July 2009, page 47; *see also* T. 29 June 2009, pages 20-23.

²⁷³ T. 22 June 2009, pages 14, 57.

²⁷⁴ *Ibid.*, at page 14.

²⁷⁵ T. 23 June 2009, pages 18-20.

²⁷⁶ T. 6 August 2009, page 42.

²⁷⁷ Voices from S-21, page 38; *see also* T. 7 August 2009, page 88 (in Court, Chandler agreed that the lack of hygiene, the shackles, the beatings in the cells were all also designed to break down the resistance of prisoners and prepare them for submission).

²⁷⁸ T. 6 April 2009, page 22.

²⁷⁹ T. 1 July 2009, pages 37-38; *see also* Psychological Report, page 54.

²⁸⁰ *See* T. 4 August 2009, page 120 (“I saw him doing it in ’77 when prisoners were brought in since I know he wanted to get confessions to send Angkar (...) I saw it once. At that time I was by a motorcycle. I was riding a bicycle and saw him beating up a prisoner in front of Tuol Sleng. My workplace was also in that same area, so I saw it (...) He tortured prisoners by beating them up with a rattan stick (...) I rode by and saw it.”).

²⁸¹ T. 7 April 2009, page 12.

Duch at S-21 has been documented in terrifying detail in the “Psychological Assessment Report” under the Chapter “Examples of Duch’s lack of empathy.”²⁸²

iii. Duch encouraged his staff at S-21 to be as cruel as possible

85. The guards too displayed a particularly cruel and sadistic disposition, oftentimes reveling in their ability to inflict torture. One example is that of Thuy,²⁸³ who, according to Duch had “the intention or the tendency to do hot torture.”²⁸⁴ Another guard, Brak Nan, similarly “had the tendency to do hot torture, and used mainly the hot method of torture.”²⁸⁵ Duch was well aware of the extremely sadistic nature of these guards, but never punished or removed them from their position.²⁸⁶ Prak Khan testified to the fact that Duch was present when five interrogators beat a female prisoner up until she fell unconscious.²⁸⁷
86. Moreover, when Duch learnt that prisoners had been subjected to electrical shocks to their genitals, he took no action. This was not because he felt compassion towards the prisoner or abhorred the behavior itself, but out of concern for not being able to find anyone else to continue the interrogations.²⁸⁸ When a guard was found to have raped a female prisoner, he was not punished or suspended, he was simply “no longer allowed to interrogate female prisoners.”²⁸⁹ Indeed when pressed by in Court to explain why not a single guard at S-21 was ever removed or punished for having inflicted unnecessary suffering upon the prisoners, Duch replied unequivocally that extreme torture did not constitute a “mistake or fault for removal”, except in the circumstance where the prisoner died of his injuries prior to having provided a confession.²⁹⁰
87. Therefore, as Duch admitted, he encouraged the guards to continue their sadistic behavior, by allowing them to operate with impunity.²⁹¹ As Dr. Chandler noted, “the staff of S-21, rather like some of the people studied in the Holocaust (...) once their behavior was routinized and once people were not punished, and once they were permitted to go

²⁸² Psychological Report, pages 49-52; *see also* T. 6 August 2009, pages 89-90 (for the testimony of David Chandler on this issue).

²⁸³ T. 8 June 2009, page 106.

²⁸⁴ T. 23 June 2009, page 16; *see also* T. 11 August 2009, page 15.

²⁸⁵ *Ibid.*

²⁸⁶ T. 22 June 2009, page 21.

²⁸⁷ *See, e.g.*, T. 21 July 2009, pages 23-24, T. 21 July pages 82-83 for further corroboration: T. 7 July page 65, pages 75-76.

²⁸⁸ T. 8 June 2009, page 110.

²⁸⁹ T. 22 June 2009, page 42.

²⁹⁰ T. 23 June 2009, pages 17-18.

²⁹¹ *Ibid.*, at page 17 (DUCH: “Mr. Lawyer, you said that I pushed them further. I never do that. But I continued to trust him and give instruction and advice him more or less that allowed him to feel like the way of torture and to continue that torture. That is true.”).

further and further steps – you find the same thing in the cultural revolution among the Red Guards - they didn't pull up short; they operated generally with more enthusiasm, rather than less."²⁹²

iv. Duch considered the prisoners to be animals

88. Duch acted in this “merciless”²⁹³ manner because he regarded the prisoners who entered through the gates of S-21 to be animals who needed to be slaughtered. Dr. Chandler explained that “[t]hese people when they arrived in the trucks were already garbage; they're already non-humans.”²⁹⁴ Indeed the guards too were instructed to treat the prisoners as animals. Prak Kanh explained that “[a]t S-21 it was only Duch who indoctrinated our stance, our absolute stance against the enemy, and that we had to take it seriously and we had to consider the enemy as animals”.²⁹⁵ Duch made this clear to the Chamber when he described S-21 as not actually being a prison, but more “... the place to store people before killing,”²⁹⁶ “they were just a depository for people to be killed or we could say an execution chamber.”²⁹⁷
89. The survivors too corroborate the fact that they were no longer considered humans once they were brought to S-21. As Van Nath describes in frightening terms: “I lost my dignity because the conditions of the prisoners and the guards were so distant. It's like humans compared to animals. Even with animals they would give enough food (...) we ate our meal next to the dead body and we did not care anyway because we were like animals and everyone would be treated the same.”²⁹⁸
90. In Court, Duch claimed to be a coward, and that this prevented him from inspecting the prisoners in their cells who he knew were suffering from disease, torture and malnutrition under his authority.²⁹⁹ This excuse could not be farther from the truth: Duch did not go to

²⁹² T. 6 August 2009, page 75.

²⁹³ *Ibid.*, at pages 89-90.

²⁹⁴ *Ibid*; see also *ibid.*, at page 42 (“they were considered, from the moment they arrived, to have departed from the human world of people who had not committed crimes.”), T. 29 April 2009, page 90 (DUCH: “these crimes have been committed on the people who had been perceived as dead people already.”).

²⁹⁵ T. 22 July 2009, pages 24-25.

²⁹⁶ T. 23 June 2009, page 19.

²⁹⁷ T. 22 June 2009, page 86; see also T. 6 August 2009, pages 11-12 (referring to Voices from S-21 page 40, where Dr. Chandler aptly referred to S-21 as “an anteroom to death.”).

²⁹⁸ T. 29 June 2009, pages 20-23, see also T. 1 July 2009, pages 22-23, 37-38, 48, 62, 76 (where Bou Meng similarly described how he felt like an animal, witnessing people who were sickly thing and carried around by their arms and legs on a stick like a pig).

²⁹⁹ T. 15 June 2009, page 91.

see the prisoners because he no longer considered them to be human beings,³⁰⁰ they were animals who were to be slaughtered or used as fertilizer for the rice fields.³⁰¹

D. Duch fueled the paranoia of the upper echelon by creating an efficient confession producing interrogation machine

91. Although S-21 was a place where brutal torture and killing took place, it was primarily a place designed to conduct interrogations.³⁰² This was the “*raison d’être*” of S-21, namely to carry out an “anti-espionage” duty.³⁰³ Based on the evidence adduced during the proceedings, it has become clear that the production of large volumes of confessions after the interrogations was unique to S-21.³⁰⁴ There is no evidence in the record that similar confessions came from elsewhere. Such voluminous confessions have certainly not been obtained at other security offices. Duch himself, however, stated to have encountered a prisoner at S-21 with a confession obtained elsewhere only once.³⁰⁵ Indeed, Duch seemed to take pride in the fact that the system he designed and implemented to extract confessions and in turn uncover more “enemies” was unique to S-21.³⁰⁶

i. The purpose of the Interrogations

92. Duch, as Chairman of S-21, designed and implemented a brutally efficient interrogation machine,³⁰⁷ with the sole purpose of churning out confessions that would validate the arrest of the prisoner³⁰⁸ and would uncover new and vast networks of “traitors and enemies.”³⁰⁹ Duch’s interrogation system aimed to, firstly, validate the suspicions that

³⁰⁰ T. 23 June 2009, page 23. Every time Duch spoke in Court about the fact that he did not go to visit the cells, he mentioned his friends and teachers but not the other prisoners. Even 30 years later they do not matter much.

³⁰¹ T. 1 July 2009, page 44; *see also* page 64 (“He said that if I could not resemble the portrait of Pol Pot then I would be used as human fertilizer. And I didn’t understand whether I would be used to produce fertilizer or would I be used as fertilizer myself for the rice field.”).

³⁰² T. 6 August 2009, page 56 (Dr. CHANDLER: “What was really going on at S-21 was the interrogations. That was the major business of the place.”).

³⁰³ T. 28 April 2009, page 31.

³⁰⁴ *Ibid.*, at pages 13-14; *see also* T. 6 August 2009, page 23 (Dr. CHANDLER: “I’m pretty sure the archives of S-21 were the most extensive in the Santebal apparatus (...) I’ve no idea about the size of the archives. My suspicion would be that these archives, such as those of the Party Centre itself, would have been less extensive than those of Tuol Sleng. These would have been working archives of particularly sensitive materials, rather than the voluminous hundreds of thousands of pages that were assembled at S-21.”), T. 28 May 2009, page 15 (Dr. ETCHESON: “But based on the totality of this evidence, it is clear to me that the interrogation and confession-producing process at S-21 was far more elaborated, detailed and rigorous than at any other security office of which I am aware (...) Consequently, there are some confessions in the S-21 archive which were extracted over a period of many months, and are very long; some in excess of 1000 pages. There is nothing comparable, of which I am aware, at any other security office”).

³⁰⁵ T. 8 June 2009, page 93.

³⁰⁶ T. 27 April 2009, page 91.

³⁰⁷ T. 6 August 2009, page 13 (Dr. CHANDLER: “S-21 was probably the most efficient institution in the country”, “one of the most important.”); *see also* T. 27 May 2009, page 69 (Dr. ETCHESON: “In my own opinion, S-21 was unique among all the security offices of Democratic Kampuchea.”).

³⁰⁸ T. 22 June 2009, page 19 (DUCH: “My intention to my interrogator is to find the network...”).

³⁰⁹ T. 8 June 2009, page 110.

had led to their arrests and secondly, provide further evidence or “lists” of incriminated persons, thereby fueling the paranoia of the upper echelon. In furtherance thereof, Duch ensured that the confessions were “sharpened” in order to fabricate a reason for arresting a particular person they had in mind.³¹⁰ This killing machine would prove to be “pivotal to the fulfillment of Party Centre’s objectives in controlling the enemies.”³¹¹

93. In fulfilling this objective, Duch trained his subordinates on how to conduct the interrogations to extract the confessions he wanted to see.³¹² Duch was no stranger to the designing of interrogation methods at security centers. In fact one of the reasons that Duch was promoted to Chairman of S-21, at the expense of his predecessor Nat, was his excellent skills in creating and implanting efficient interrogation mechanisms.³¹³ Duch was not concerned with the truthfulness of the confessions, despite his experience at M-13,³¹⁴ which taught him that the forced confessions obtained often produced absurd results.³¹⁵ Duch trained the interrogators from the outset to view the prisoners as enemies to facilitate the process of uncovering networks of traitors.³¹⁶ The guards conducting the interrogations were not concerned with the charges against the prisoners; they only knew these were the charges that had to be confirmed against the prisoners.³¹⁷ According to Dr. Chandler, Duch was probably the only one amongst the senior cadres who knew how

³¹⁰ See, e.g., T. 18 May 2009, page 53, see also Psychological Report, page 43 (“[t]he confessions were obtained through “manipulation” to make sure that they matched the suspicions. The victims were expected to go along with the masters’ theory. They were operating in a paralogical system.”), T. 8 June 2009, page 9 (DUCH: “[s]o for those people who were sent to S-21 whether the categorization of the offence according to the morality or the plans or the enemy, there was no such category. As long as there are confessions, then that’s it.”).

³¹¹ T. 6 August 2009, page 23.

³¹² T. 21 July 2009, page 18-19 (PRAK Khan: “[w]hile obtaining confession we were strictly advised to obtain the information regarding the network of a detainee.”).

³¹³ T. 8 June 2009, page 37.

³¹⁴ *Ibid.*, at page 106.

³¹⁵ T. 23 June 2009, page 16 (DUCH: “The confession of Siet Chhe, alias Tum – so after the interrogation by Toy and Siet Chhe alias Tum, he confessed that he committed a rape against his daughter. It seemed to me that it’s too extreme.”); see also Psychological Report, page 43 (DUCH: “During interrogation, people would give names because they could not bear the torture anymore.”), T. 6 August 2009, page 43 (Dr. CHANDLER “I think the defendant is accurate in saying at this point that at the time probably, and certainly with hindsight – or at the time he knew and with hindsight he declares that he knew this to be the case, but had statements like that gone up to the leadership I think his position and his life might well have been in danger.”).

³¹⁶ See, e.g., T. 8 June 2009, page 44 (DUCH: “So I talked to every cadre to regard people who were sent as enemies; otherwise, we would have contradictory opinions towards the Parties, and we would be ending up having problems ourselves.”) see also *ibid.*, at page 105 (DUCH: “For those who were arrested by the Party, they were regarded as enemy in order for extracting the confessions.”), T. 22 July 2009, pages 24-25 (PRAK Khan: “At S-21, it was only Duch who indoctrinated our stance, our absolute stance against the enemy, and that we had to take it seriously and we had to consider the enemy as animals so then we would be in the position to extract the confessions from the enemy.”).

³¹⁷ *Ibid.*, at page 29; see e.g., T. 23 April 2009, page 33 (Duch made it clear that he had to “indoctrinate them to make them absolute, to make them dare to interrogate”), T. 5 August 2009, page 91.

fabricated the confessions at S-21 were at the time.³¹⁸ Chum Mey, an S-21 survivor, explained that the torture would stop only when he would provide the interrogators with the “correct” confession.³¹⁹ Bou Meng, another S-21 survivor, added that he would obviously sign the confession, even though he knew in his heart that he did not stand behind the confession.³²⁰

94. The interrogation system created by Duch worked remarkably well. As Dr. Chandler stated “the confessions and the whole machinery of producing confessions was allowed to just run steadily, in some senses regardless of the accuracy or usefulness of a good of the information ...”³²¹

ii. Duch’s annotations and lists of names created during interrogations single-handedly fueled the paranoia of the upper echelon

95. Duch worked like a maniac on annotating the confessions.³²² Dr. Chandler testified that the annotations by Duch appear neatly in hundreds of confessions, “[t]hey frequently correct and denigrate what prisoners confessed. They suggest beatings and torture. They urge interrogators to unearth the buried truth that the prisoners are hiding. Duch also summarized dozens of confessions, pointing out the links he perceived with earlier ones and suggesting fresh lines of inquiry.”³²³ Moreover, Duch’s unique inside-knowledge allowed him to analyze the confessions through the annotations to conform to the wishes of the upper echelon to a degree not available to other security centers. Mam Nai, who is a former S-21 guard, explained that “[f]rom what [he] observed, probably after [Duch] looked at the responses [Duch] analyzed the responses to see if they had to be further interrogated or if the responses could be sent on up, and if they had to be re-interrogated Duch made the annotations to re-interrogate.”³²⁴

³¹⁸ T. 6 August 2009, page 43 (Dr. CHANDLER “I think the defendant is accurate in saying at this point that at the time probably, and certainly with hindsight – or at the time he knew and with hindsight he declares that he knew this to be the case, but had statements like that gone up to the leadership I think his position and his life might well have been in danger.”).

³¹⁹ T. 30 June 2009, page 29 (CHUM Mey: “They stopped interrogating me because I confessed that I joined the CIA and the KGB. It was due to my confession.”).

³²⁰ T. 1 July 2009, page 85 (BOU Meng: “Of course physically I signed the confession but inside my heart I of course did not approve the confession.”).

³²¹ T. 6 August 2009, page 43.

³²² T. 22 June 2009 page 54 (Duch said he reviewed according to his own estimation 200,000 pages of confessions), *see also* T. 8 June 2009, page 94, T. 22 June 2009, page 61, T. 2 September 2009, page 65.

³²³ Voices From S-21, page 22.

³²⁴ T. 15 July 2009, pages 44-45, T. 21 July 2009, pages 28-29 (PRAK Khan: “For the incomplete confessions the annotation would write, “Comrade, you have to interrogate further on this matter; for instance, on the treacherous network.” So it depends on the actual annotation on the confession – on the report that I sent (...) (Duch) wanted to follow the progress of that matter, so that I had to really dig the root to find the source of

96. Duch would not only provide written annotations instructing the guards, but he would also directly call or visit the interrogators to instruct³²⁵ them on how to proceed with the confessions.³²⁶ Prak Kahn explained that when Duch had reviewed a confession and wanted him to “research further”, this would mean that he had to “interrogate thoroughly and more in-depth to find the more network association, for example.”³²⁷
97. In addition to individual confessions, Duch would order the prisoner to identify the names of those involved in subversive activities against the Khmer Rouge.³²⁸ The prisoners were essentially forced to create a list of people³²⁹ who would then be arrested and sent to S-21.³³⁰ In addition to the list created by the prisoners, Duch would also have the interrogators compile lists of names, based on the confessions they obtained from the prisoners.³³¹ Dr. Etcheson testified that there were possibly thousands of all these lists of enemies created at S-21.³³² It is the development of this intricate system that attracted the

that prisoner, of that network.”), *see also ibid.*, at page 65, T. 4 August 2009, pages 29-30 (LACH Mean: “After the confessions were finished typing they were sent to Duch to check and find out the string of traitors based on those confessions.”).

³²⁵ T. 28 May 2009, page 20 (Dr. Etcheson testified that Duch’s system of annotations “was a product of the accused person’s personal work methods. By profession, the accused person was a school teacher, and thus, he was accustomed to marking up the papers of his pupils. My surmise is that he carried this practice over into his new profession as an interrogator.”), *see also ibid.*, at pages 21-22 (about all the different kind of annotations), T. 2 September 2009, page 67 (Duch seemed to admit that he is the one who initiated the system of annotations at S-21, even if his statement was not clear. DUCH: “On the second part of the development, for people whom Nath knew that I knew those people, then he would send me those confessions for my annotation and once he received them he would make additional annotations on those confessions.”).

³²⁶ T. 22 July 2009, pages 45-46 (PRAK Khan: “... that this one is in that network, in that zone, so interrogate and get responses so we can research further.”).

³²⁷ *Ibid.*

³²⁸ T. 8 June 2009, page 80.

³²⁹ *See, e.g.*, T. 18 May 2009, page 56 (Dr. ETCHESON: “... how S-21 writes the confessions is that they were made to confess their traitorous activities. So in that confession the other people’s names were required to be listed down. Other people who were implicated then would be arrested because of the previous prisoners were implicating them, because normally when a person was arrested he would have been associated with other people to conduct traitorous activities so he himself or she herself could not do that activity alone. That’s why more names were listed down in such confessions.”), *see also* T. 8 June 2009, page 87-90; T. 15 July 2009, page 46 (MAM Nai: “What I said is the truth, the list of the prisoners made by the interrogators were the names of those people who were implicated in the confessions.” Dr. Chandler similarly confirmed the existence of the lists), T. 28 May 2009, page 18 (Dr. ETCHESON: “In the archives of S-21, we also find lists of proposed traitors which appear to have been created by the interrogators or other S-21 staff members through a process of analyzing the confessions that had been produced by a victim. So this is another type of list; one produced by the staff rather than the victim.”).

³³⁰ *Ibid.*, at page 79; *see also* T. 22 July 2009, pages 45-46.

³³¹ *Ibid.* *See, e.g.*, T. 28 May 2009, page 91 (“Then those lists are used to go out and round up new batches of traitors to whom the same process is applied and you see a very nearly exponential growth in the number of accused traitors and in the number of victims of purges. In part, it is the zeal with which the accused pursued this project that caused this methodology to result in such a large number of victims. This is why I proposed, in answer to that question, that on the one hand the policies of the Standing Committee certainly played a role in the unfolding of this tragedy while at the same time, the creativity, inventiveness, and zeal of the cadre who were tasked with implementing those policies also contributed substantially to the magnitude of the disaster.”).

³³² T. 28 May 2009, page 19.

attention of the upper echelon, further fueling their paranoia, which ultimately lead to the innovator and architect of these systems, Duch, being promoted to Chairman of S-21.³³³

98. The creation of the infamous lists was not at the behest of the upper echelon; on the contrary, Duch was the architect of this refined practice in the exercise of his autonomy.³³⁴ Duch's creativity and excellent execution of this killing machine ultimately led to his promotion of Chairman of S-21 by the upper echelon.³³⁵ Indeed, an important consideration that accompanied his promotion at the expense of his predecessor Nat, was his extremely resourceful, efficient and successful implementation of interrogation and torture techniques.³³⁶

iii. The increase in paranoia created by Duch directly led to the arrest and execution of many more "enemies and traitors" at S-21.

99. Once the confessions had been obtained and annotated to the satisfaction of Duch, the lists of names would be sent from S-21 up the chain of command to the Secretaries of zones.³³⁷ The lists generated by Duch essentially persuaded the upper echelon that there was a vast conspiracy against them,³³⁸ thus fueling the arrests and purges which surged after Duch commenced this process.³³⁹ Duch single-handedly created a vicious cycle of arrests, confessions and certain death.³⁴⁰

100. It is thus no coincidence that the amount of people arrested and sent to S-21 increased exponentially starting in August 1976 and only decreased after June 1978.³⁴¹ Indeed the number of people arrested sharply dropped in the very periods that Duch did not work on the confessions.³⁴² No less than four former guards testified to the fact that the work of

³³³ *Ibid*; see also T. 6 August 2009, page 87 (Dr. Chandler confirmed that Dr. Etcheson's assertion is a "reasonable supposition.").

³³⁴ *Ibid.*, at page 18.

³³⁵ *Ibid.*, at page 87.

³³⁶ T. 8 June 2009, page 37.

³³⁷ *Ibid.*, page 84.

³³⁸ T. 28 May 2009, page 28 (Dr. ETCHESON: "I believe it was the contents of confessions extracted at S-21 which persuaded the upper leadership that there was a conspiracy against them on the part of several military leaders."), T. 2 September 2009, page 63 (referencing Elisabeth Becker's book, in which she stated that "by controlling confessions of victims, hence the evidence of crimes, [Duch] was gradually able to manipulate the Party leaders and point to unsuspected enemies.").

³³⁹ *Ibid.*, at page 82.

³⁴⁰ T. 27 May 2009, page 81, T. 28 May 2009 pages 28-29 (Dr. Etcheson explains how the paranoia and Duch's system of lists fueled the purges), see also T. 6 August 2009, page 114 (Dr. CHANDLER: "I mean everything was going out of hand. At the same time as the place was coming apart the enemies multiplied, the paranoia intensified, the prophecies became self-fulfilling because if so many guilty people – "raksa" as they say in Cambodia – were pouring into S-21, well, then surely the extent of genuine conspiracies was enormous and surely you just had to keep going.").

³⁴¹ T. 22 June 2009, pages 66-67, "OCP Revised S-21 Prisoner list: index and charts: chart 3".

³⁴² "OCP Revised S-21 Prisoner list: index and charts: chart 3". Chandler confirmed the charts prepared by the Co-Prosecutors and the fact that the purged slowed down in 1978. T. 6 August 2009, pages 20-22.

identifying “traitors” and their networks directly led to the transfer of prisoners to S-21.³⁴³

Dr. Etcheson also clearly explained this direct causal effect between the system put in place by Duch at S-21 and massive subsequent arrests.³⁴⁴

101. Despite the overwhelming evidence to the contrary, Duch continues to claim that his work at S-21 had no direct or causal effect on the increase in arrests made subsequent to the implementation of his interrogation and annotation system.³⁴⁵ Duch maintains that he merely implemented what was ordered by the upper echelon, and had no authority to arrest anyone independently.³⁴⁶ Duch even went so far as to say that he “did not have the intention to arrest people and [to] send them to S-21.”³⁴⁷ Duch claimed that even if he did order his subordinates to locate all of the enemy networks, he had only done so to “identify [the enemies] clearly” and “not to absolutely get them arrested.”³⁴⁸

102. However, when Duch was confronted with a particular confession, he found himself forced to admit that he had been untruthful and that he had indeed requested the Standing Committee to have people arrested.³⁴⁹ In one instance his request included the arrest of over 100 people³⁵⁰ and maintained close communications with the upper echelon to effectuate arrests.³⁵¹ Duch was fully aware that the annotations of the people on his lists

³⁴³ T. 28 July 2009, pages 65-66 (SUOS Thy: “For instance, if a prisoner had escaped the guards would be arrested and tortured. The more they were tortured, the more they implicated others and more arrests allowed. It was too complicated...”), T. 16 July 2009, pages 41-42 (Him Huy describes how Division 703 were continuously arrested and sent to S-21.), T. 15 July 2009, page 46 (Mam Nai explains the process of arrests that followed the creation of lists by the interrogators.), *see also* T. 22 July 2009, page 47 (Prak Kahn).

³⁴⁴ T. 18 May 2009, page 56, T. 19 May 2009, pages 7-8, T. 28 May 2009, pages 28, 91.

³⁴⁵ *See, e.g.*, T. 8 June 2009, page 18 (DUCH: “... the reason why people why people were – decided to arrest people, the authority were vested with those four groups of people. No other people had any other authority. I’m talking about the four groups of people, to the four people. S-21 did not have the authority to make any decision. Even the secretary of the division had no authority. Even the Minister of Commerce had not authority. Even he was decided by these four groups of people then he had to be arrested. So I, at S-21, find it difficult to explain how we can reject such a decision.”); *see also* T. 23 June 2009, page 47.

³⁴⁶ T. 22 June 2009, pages 42, 46, 69 (DUCH: “the line said S-21 has no authority to arrest any person, then I had to implement it and I practiced this since I was at M-13.”).

³⁴⁷ *Ibid.*, at page 10.

³⁴⁸ *Ibid.*, at page 7.

³⁴⁹ T. 22 June 2009, page 10.

³⁵⁰ *Ibid.*, at page 12; *see also* T. 16 July 2009, pages 29-30 (Him Huy describes other examples of arrests conducted by S-21 staff: “For the arrest of Pang, we were instructed to arrest one important person – that was Pang – and we were instructed on the exact time that he would arrive. So we concealed ourselves and when he came to his house on a motorbike, he came and sit with him and then we made the arrest (...) (Duch’s) role was a major one. He supervised us in making the arrests and have to implement the instructions successfully (...) In making the arrest, he was not present at the arrest vicinity. It was my team who conducted the arrest because he knew every one of them, so if they saw him they would realize that they would be arrested.”), T. 18 May 2009, pages 47-48 (Duch talking about an open meeting of General Staff where they discussed arrests in Divisions 170 and 290).

³⁵¹ T. 21 May 2009, page 59 (Dr. ETCHESON: “According to this document, another person attending this meeting was Son Sen (...). Thus, the accused person liaised upward to the very apex of authority in the Communist Party of Kampuchea and then reached down through Son Sen into operating divisions to assist in the planning and conduct of what became a very large scale purge in the military, connected with the affair of

meant that they would be transferred to S-21, with the sole purpose of obtaining more confessions, after which they would be ‘smashed’.³⁵² Moreover, Duch had his own staff leave the premises of S-21 to make arrests in other units.³⁵³ Duch would further personally assist in the planning and execution of large scale purges.³⁵⁴ It is thus abundantly clear from the evidence adduced during the proceedings that the intricate system of interrogations, obtaining of confessions, analyzing and annotating the confessions and finally the creation of lists of enemies by Duch directly resulted in the arrest and ‘smashing’ of a large number of ‘traitors’ and their families at S-21.³⁵⁵

E. Duch was a fanatic Khmer Rouge Cadre who was willing to stop at nothing to maintain his position of power at S-21

103. The proceedings before the Chamber have unquestionably revealed that Duch was meticulous in his actions and always wanted to improve himself. These traits became apparent during his tenure as Chairman of S-21 through his constant desire to “satisfy his superiors.”³⁵⁶ Duch would push his subordinates to work harder, his annotations were done with the pleasing of his superiors in mind, and he generally did what he could to live up the expectations of the upper echelon.³⁵⁷ Moreover, Duch admitted that he constantly thought of ways of improving the functioning of S-21³⁵⁸ and that he thought of himself as “very honest and very loyal”³⁵⁹ vis-à-vis his superiors: he was determined to be the one

Chiang Shakrang (...) It seems clear to me, Mr. Prosecutor, that this operation is being carried on the direct authority of the Party Centre, authorizing such communications between S-21 and the targeted units that are necessary to implement the planned purge”).

³⁵² Psychological Report, page 43 (DUCH: “During interrogation, people would give names because they could not bear the torture anymore. The individuals named were systematically killed.” Further noted by the psychiatrists: “It was arguably a factor for making human sacrifices used in feeding the self-perpetuating system. Systems of this nature are unique in that they have a life of their own, since they constantly reset themselves. This was no doubt the purpose of the strings of betrayals. What mattered was not the truth, but the semblance of truth. The whole idea was to keep Angkar fed by ensuring a ready supply of sacrifices.”).

³⁵³ T. 19 May 2009, page 56 (Dr. ETCHESON: “The accused person has also described for the Co-Investigating Judges at least one instance where forces under his command left the premises of S-21 to effect the arrest of prisoners in other units. I believe there are probably considerably more instances of that happening than the accused person has discussed with us thus far”).

³⁵⁴ T. 21 May 2009 page 59 (Dr. Etcheson: “Thus, the accused person liaised upward to the very apex of authority in the Communist Party of Kampuchea and then reached down through Son Sen into operating divisions to assist in the planning and conduct of what became a very large purge in the military.”) T. 18 May 2009, pages 47-48 (Duch corroborated this).

³⁵⁵ T. 6 August 2009, pages 12-13 (Dr. CHANDLER: “But locating the enemies more precisely than the suspicions of other people that had brought these prisoners to S-21 was the job of the interrogators working under the accused’s supervision, and so the more precise location of enemies can be derived from the texts – or some of the texts probably because some of the texts were not helpful in this regard – in locating enemies.”); *see also ibid.*, at page 24.

³⁵⁶ T. 23 June 2009, page 22.

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*, at page 24.

³⁵⁹ T. 8 June 2009, pages 101-102.

who did a good job.³⁶⁰ Unfortunately for the prisoners and their families, there is no doubt that Duch lived up to expectations.³⁶¹

104. Yet Duch also claimed that he had never wanted to become Chairman of S-21 and that he did not like his job. He often described his feelings as being “hopeless”³⁶² or “desperate”,³⁶³ to the extent that he could no longer walk.³⁶⁴ Duch repeatedly claimed that there was no choice but to implement the policy line of the party³⁶⁵ and that he worked at S-21 to avoid being arrested and smashed.³⁶⁶ Duch maintained that he had tried to find ways out of his position, but was unsuccessful.³⁶⁷ It is thus apparent that now that he is on trial, Duch is trying to portray himself as an involuntary Chairman of S-21, whose actions are attributable to his forced participation in the system rather than to the fact that he fully embraced of the position he had achieved.³⁶⁸

i. Duch was not formed by the job: rather, he formed the job

105. Duch claims that he was involuntarily thrust into the position of Chairman at S-21. The evidence paints an entirely different picture. While running any prison during the Khmer Rouge regime would have been a horrible job, Duch made this horrible job that much more cruel and sadistic, because of his personal characteristics.³⁶⁹ Dr. Etcheson described Duch as “very much an innovator, a creator, a developer and an institutionalizer....” of the interrogation system which churned out lists of traitors, demonstrating traits that Duch had already displayed well before his ascent to Chairman of S-21.³⁷⁰ Duch had already made use of the notion of “traitors” and devised elaborate schemes of purges while he worked as Chairman of M-13 in 1972.³⁷¹ Duch’s *modus*

³⁶⁰ T. 22 June 2009, page 79.

³⁶¹ T. 6 August 2009, page 23 (Dr. Chandler agreed that under the leadership of Duch the archive at S-21 was kept in a particularly professional and detailed way).

³⁶² T. 23 June 2009, page 13.

³⁶³ *Ibid.*

³⁶⁴ T. 22 June 2009, pages 71-72.

³⁶⁵ T. 2 September 2009, pages 73, 77.

³⁶⁶ T. 22 June 2009, page 85.

³⁶⁷ T. 2 September 2009, pages 68-69.

³⁶⁸ T. 1 July 2009, page 91 (DUCH: “I would like to emphasize again that this crime is so severe, although it was committed by the upper echelon. But members of the Party were part of the process across the country, because more than one million people were executed, and emotionally I am responsible for all the crimes, although they were committed by the senior people. I am responsible in the eyes of the law, and I now would like to be tried by the ECCC alone, and I don’t want his subordinates to be on trial too.”).

³⁶⁹ Psychological Report, page 33 (“Duch operates in a binary system. This meant that to him, you are either “for” or “against.”); *see also* T. 8 April 2009, page 100 (F. BIZOT: “...the recollection that I have of a young man who committed his life and his existence to a cause and to a purpose that was based on the idea that crime was not only legitimate but that it was deserved.”).

³⁷⁰ T. 28 May 2009, page 91.

³⁷¹ Voices from S-21, pages 21-22.

operandi for S-21 was already established.³⁷² Not only did Duch have experience, he was proud of his success as an architect of efficient interrogation machines.³⁷³ Duch rose to the occasion and shaped the title of “Chairman” to conform to his ideas; namely a lethal and sadistic machine that would generate the maximum amount of “enemies and traitors.”

ii. Duch was a fanatical believer in the Khmer Rouge revolution

106. Duch’s zeal and belief in the extreme ideology of the Khmer Rouge was born well before the Khmer Rouge took power and lasted until well after they were defeated.³⁷⁴ Duch already found himself deeply involved while working as the Chairman of M-13.³⁷⁵ It is at M-13 that Duch found his true passion and qualifications that led him to be appointed Chairman of S-21,³⁷⁶ and ultimately accept and implement even the most cruel and inhumane of the Khmer Rouge policies, namely the smashing of babies and children.³⁷⁷ Duch further educated his staff according to what he had learnt during his tenure at M-13, training efficient and brutal interrogators.³⁷⁸
107. Duch’s deep and indisputable belief in the Khmer Rouge revolution was a key factor underpinning every single action he took.³⁷⁹ Duch obeyed orders in a fanatical and dedicated way because his character demanded perfection and because he truly believed in the cause.³⁸⁰ Duch did not become Chairman of S-21 on an involuntary basis or because he himself was terrorized.³⁸¹ He was a pragmatic and zealous ideologue.

³⁷² *Ibid*; see also Psychological Report, page 33 (“For example, in 1970, he forced Bizot to write several biographies until the reality ‘matched’ his ideal or the ‘ideology’. He considered otherness, difference, uniqueness, diversity and multiplicity as a threat to his psychical integrity. To him, Cambodians whose views differed from his were traitors, liars.”).

³⁷³ T. 27 April 2009, page 91 (DUCH “Firstly, I am better than Nat in terms of interrogation. I taught the people to interrogate. I did better than that (sic). This is true. I do not deny that.”).

³⁷⁴ T. 2 September 2009, page 82 (When Duch was asked in Court about the reasons why he left the party only years after the end of DK, his answer demonstrated how rational are his choices in life: “So before I stepped forward, I had to make sure that my back foot was firm enough for me to do so, and that what the process that I outweighed and that I considered before I made my next move during the process, Madam Judge.”).

³⁷⁵ T. 6 April 2009, page 20. *Duch OCII*, Written Record of Interview of Charged Person, Procès-verbal d’interrogatoire, 29 April 2008, Doc. No. D70, page 3.

³⁷⁶ T. 18 May 2009, pages 51, 83.

³⁷⁷ T. 8 June 2009, pages 19-20.

³⁷⁸ T. 27 April 2009, page 90 (DUCH: “the nature in which S-21 continued from the nature implemented in M-13, and the education and the training of the youth to the direction of crime and cruelty, it was the same in nature. Secondly, the interrogation methods with torture and the effort to convince them and to like them in the interrogation (sic), it was a continuation (from M-13.”).

³⁷⁹ Psychological Report, page 65 (“[Duch] made the choices he made because he considered them to be the right ones at the time. He genuinely believed in the philosophy behind communism; he continued to believe in communism for quite some time, including during his stint as head of S-21.”).

³⁸⁰ Psychological Report, pages 30, 32 (“... The choices he made were the ones he considered to be the right ones at the time. He was a willing participant. Even though he was influenceable and impressionable, he accepted the ground rules of the ideological belief system in which he was operating. ... Obedience was not the motivation for his acts, but a consequence thereof ...”).

³⁸¹ *Ibid.*, at page 64.

108. Indeed the conclusions drawn by the psychiatrists in their report evaluating Duch prior to trial indicate that Duch was able to play such an effective and pivotal role as Chairman of S-21 because he lacks any form of empathy, a characteristic which the psychiatrists found to predate his tenure at S-21.³⁸² Even after 30 years Duch would at times revert back to the Khmer Rouge style of thinking and vocabulary when speaking with the expert psychiatrists about the DK-period.³⁸³

iii. Duch loved his job as Chairman of S-21 and the power that accompanied it

109. No evidence unearthed during the proceedings corroborates Duch's assertion that he detested his job as Chairman of S-21, or that he secretly suffered because of it.³⁸⁴ Duch himself asserted that he wholeheartedly agreed with the policy of the Khmer Rouge that all enemies detained at S-21 be smashed.³⁸⁵ It did not even occur to Duch that he could have spared the very last prisoners at S-21, as the prison was being evacuated; instead he smashed them all in the waning moments.³⁸⁶

110. While Duch claimed to have lost his spirit in 1978, as evidence by his sleeping a lot at the time, the evidence suggests the contrary. Duch was highly active in 1978, conducting multiple training sessions and educating as many interrogators as possible to meet the needs of the party.³⁸⁷ It is in 1978, and not earlier, that Duch – either himself or through

³⁸² Psychological Report, page 49 (The psychological assessment of Duch's personality reveals the presence of "a lack of empathy." Duch's lack of empathy pre-dates the Khmer Rouge "fabrication" process and "immersion" its culture (sic). The fabrication process shaped his character and engendered his disempathy. However, it simply compounded a psychical process which existed before the fabrication.").

³⁸³ Psychological Report, page 44 ("At this stage of the judicial investigation proceedings, he was reverting back to the Khmer Rouge style of thinking whereby he analyzed confessions painstakingly, directed some of interrogations, and gave instructions to his subordinates. His thinking was modeled on the logic of the interrogations ..."), *see also ibid.*, at page 52.

³⁸⁴ T. 1 July 2009, pages 37-38 (This is surely not what the witnesses who testified observed. Bou Meng for example said testified that Duch's "... facial expression was normal. If he needed to laugh, he laughed. Sometimes he smiled..."), T. 6 August 2009 pages 64-65 (Dr. CHANDLER: "I can't see from the documentary evidence the very deep remorse followed his – came from his knowledge of the day-to-day activities of the prison or the – what we would call excesses that shine through a lot of the confessions and certainly through the testimonials of survivors."), T. 8 June 2009, page 20 (Duch only mentioned that he felt 'defeated' at times).

³⁸⁵ *Ibid.*, at page 6 (DUCH: "So I was ordered to release only these three people and the rest had to be smashed. That was the CPK policy enforced on S-21... [Pol Pot] said that S-21 did not have to ask any questions. Those who were sent to you, you had to keep them. So I was happy. I thought, "Oh, it's good for us, S-21." And I would not say it's a danger or it was a crime in killing the people at the time.").

³⁸⁶ T. 23 June 2009, page 12 (DUCH: "And the second point, for the remaining prisoners that I was ordered to smash, the order came on the 2nd – and that I had to smash, the order came on the 2nd or the 3rd of January at the latest, and only four prisoners remained for the interrogation, and I think about 14 or 15 prisoners were also spared for providing the service to S-21. So there were only about three of the staff who fled with me when I fled. So that the situation at the time. I did not think that the DK would be defeated and that the remaining prisoners had to be released in order to satisfied my feeling or emotion. This is my response.").

³⁸⁷ T. 8 June 2009, pages 54, 77 (Duch felt really good when he met Pol Pot in 1978 during a training).

his subordinate Pon³⁸⁸ – wrote “the last plan,” which according to Dr. Chandler was Duch’s “*chef-d’oeuvre*,” “his attempt to draw together what he saw and interpreted as evidence, ... a true and sensible interpretation of the data that had come to his attention.”³⁸⁹

111. Duch became Chairman of S-21 mainly because he wanted to. He believed in what he did and the ideals that the Khmer Rouge propagated, doing all he could to impress the upper echelon.³⁹⁰ Beyond wanting to please his superiors, Duch wanted to realize his own belief in the revolution, despite fully understanding since the time he started at M-13 that “killing people without any reason is a crime.”³⁹¹ Duch adhered so rigorously to the party line that he had no trouble systematically denouncing people he considered a threat to the revolution.³⁹²
112. Dr. Chandler explained that it was clear Duch believed in what he did and knew this is what he wanted to do, “he was doing not only what was accepted but what he wanted to do. They coincided because you’re not independent from the party. You and the party are one force.”³⁹³ It is this same political fanaticism that led Duch to lecture his staff on the fact that the Khmer Rouge “should kill all and keep only four million”³⁹⁴ and that “everyone would be smashed or killed.”³⁹⁵ In order to facilitate this extreme party line, Duch would teach his subordinates to “use the sword frequently, for it becomes more sharpened.”³⁹⁶ Duch made sure that the training of his staff was designed to ensure that

³⁸⁸ T. 6 August 2009, pages 114-115.

³⁸⁹ *Ibid.*, at page 88.

³⁹⁰ T. 27 April 2009, page 91; *see also* T. 6 August 2009, page 50 (Dr. CHANDLER: “[t]he written annotations in red ink ... reveal what can only be described as his professional enthusiasm for the job which he had taken on.”).

³⁹¹ T. 2 September 2009, pages 67-68.

³⁹² *See, e.g.*, 15 July 2009, pages 48-49 (MAM Nai: “It is like Chhay Kim Huor alias Hok, saying that American oil was better than Chinese oil. Duch told me that he reported this to the Central Committee (...) Duch had gone to visit Hok’s house. Hok was bold and spoke frankly with those who knew him. Duch was quick to report, as in my case when only one regimental cadre had implicated me saying that I had visited his uncle’s house and that uncle had accused me of being a Khmer Serei. Just that and Duch wanted to report to the centre. Duch was very quick to make reports.”).

³⁹³ T. 6 August 2009, page 109.

³⁹⁴ *See, e.g.*, T. 20 July 2009, page 33; *see also ibid.*, at page 61 (HIM Huy: “Duch stated – he said everyone has to be killed, leaving only four million people, and then later on he said everyone shall be smashed to bits. And that statement I still remember ever since.”), T. 6 August 2009 page 91, T. 10 July 2009, pages 34-35 (The same extreme devotion to the revolution led Duch to systematically take the harshest measures against mistakes made by his own staff at S-21).

³⁹⁵ T. 20 July 2009, page 61 (Him Huy explained that he had interpreted Duch’s instructions to mean that all people were to be killed, not only those at S-21).

³⁹⁶ T. 8 June 2009, pages 46, 50, 10 (DUCH: “So then we have to sharpen their positions constantly, and for the special unit they have their team leader to sharpen their position. That is the normal principle of conducting their duties.”).

the interrogators work as quickly and as efficiently as possible, in what he called “the fast attack/fast success” method.³⁹⁷

113. Not surprisingly Duch is one of the few Khmer Rouge members who managed to remain in a leadership position at detention facilities for 8 years without being purged.³⁹⁸ He was also one of the privileged few who could find himself implicated in confessions obtained at S-21³⁹⁹ and even have a family member brought to S-21 or another detention facility without being arrested or even implicated himself.⁴⁰⁰ This is a stance that directly contradicted the party line.

iv. Duch would stop at nothing to maintain his position of power and privilege

114. Duch accepted his position and acted concordantly from 1976 to 1979 for two reasons: he wanted to (1) maintain his power position and (2) to retain the privileges that came with his position, such as his jeep and motorbike,⁴⁰¹ his messengers and clerks,⁴⁰² his two-story house and private office,⁴⁰³ and his two telephone lines.⁴⁰⁴ In order to maintain his power and control over S-21, Duch systematically and in cold blood, got rid of those who posed a threat to him: Division 703.⁴⁰⁵ Prak Kahn confirmed what he had stated before the OCIJ, namely that Duch was out to kill every single member of Division 703 working at S-21 for fear of losing his position as Chairman of S-21.⁴⁰⁶ Duch did not stop at Division 703: after smashing almost all of these men at S-21, Duch went after

³⁹⁷ *Ibid.*, at pages 50, 52, T. 23 June 2009, page 24.

³⁹⁸ T. 28 May 2009, page 36.

³⁹⁹ T. 23 June 2009, pages 25-26 (The Accused had said in front of the Co-Instructing Judges that Vorn Veth and Ke Kim Huot had implicated him in their confessions at S-21. In Court he agreed that Vorn Veth indeed had implicated him and said that he survived because he was “honest and loyal” to the top leadership).

⁴⁰⁰ T. 2 September 2009, pages 70-71.

⁴⁰¹ *Ibid.*, at page 48.

⁴⁰² *Ibid.*, at page 49.

⁴⁰³ *Ibid.*, at page 51.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ T. 16 July 2009, pages 93-94 (HIM Huy: “I have learned this information from Ta Hor. Ta Hor told me that he had feuds with Duch for three times regarding his people because he said that he was in favour of 703 while Duch was not ... The feud started before the arrest of staff members at S-21 were made ... The reason I said this, because Ta Hor said that Duch accused him of being biased toward the 703 forces at S-21. Later on, 703 people were arrested and implicated the 703 people who were working at S-21. And then the 703 people at Tuol Sleng were subsequently arrested ... I don’t know how they were treated. The only thing I knew for sure is that people kept disappearing and I don’t know what happened to them; why they were arrested.”) (emphasis added); *see also* T. 21 July 2009, page 36 (PRAK Khan: “At the outside there was no significant rift but later on there were arrests of those senior people of the division, and in my interrogators group only I myself was spared, others were arrested and detained – people from 703; I mean only I was left or spared.”), T. 22 July 2009, page 50 (PRAK Kahn “Those arrested and put in S-21, Tuol Sleng, those who worked there in the interrogation section and defence, all of their origins were from the 703 from the beginning. I estimate about 300, not fewer than 300, including defence and interrogation...”).

⁴⁰⁶ T. 22 July 2009, pages 51-52, *see also* T. 27 April 2009, page 77 (Duch did make sure that none of “his” people were purged at S-21).

their superior, Hor, during the retreat from Phnom Penh in 1979. According to Prak Khan and Him Huy, Duch, either personally or through his subordinates, had Hor shot during an outing to Amleang province, when the Vietnamese came.⁴⁰⁷

115. This behavior is surely not characteristic of someone who hated his job, abhorred the policies that he implementing, and who was simply over-obedient and zealous. To the contrary, these are the acts of an ideologue, who passionately and wholeheartedly believed in the revolution, and was willing to act ruthlessly to ensure the security of his position of power and privileges during the DK regime.
116. Duch's character and proven track record is exactly why the Standing Committee appointed him to the position of Chairman of S-21, at a time when the decision had been made to conduct purges within the ranks.⁴⁰⁸ The Standing Committee needed someone they could trust implicitly to implement this crucial party line, who would not merely "arrest people by mistake," but would properly "kill people by mistake."⁴⁰⁹ This person was Duch. The evidence shows beyond any reasonable doubt that Duch was the architect of the practices at S-21, who created a ruthlessly efficient weapon of the regime designed to uncover networks of "enemies" and "traitors."⁴¹⁰ The Party needed a leader who was not afraid to act under extreme circumstances, like his predecessor, Nat. As Duch himself said "the Party did not trust Nat, but the Party trusted me. My superior, Son Sen, when Nat has left, he kept saying that Nat was full of tactics, full of tricks. And they trusted in me because I was honest to him...".⁴¹¹
117. The Standing Committee was right to trust Duch, as he remained loyal to the revolution well after the fall of the Democratic Kampuchea, despite his 'regrets'.⁴¹² The

⁴⁰⁷ T. 22 July 2009, page 51-52, *see also* T. 20 July 2009, pages 28-29.

⁴⁰⁸ T. 23 June 2009, page 45 (DUCH "The third incident, in March 1976, Angkar removed Nat from S-21, based on the basic need for the work. He was removed in March. And the fourth incident, the most important incident, that Pol Pot approved a number of matters on the 30th of March 1976. ... In April, on the 19th, the 20th, the 21st, the Standing Committee hold three days meetings and Pol Pot tried to suspend from his position.") *see also* T. 6 August 2009, page 45 (Dr. Chandler explains how the paranoia intensified after April 1976, necessitating a full scale interrogation facility to uncover the network of traitors).

⁴⁰⁹ T. 6 August 2009, page 28.

⁴¹⁰ *Ibid.*, at page 70 (Dr. CHANDLER: "Duch was and enthusiastic and proud administrator of S-21 who worked out techniques and organizational methodology from scratch ... there were no precedents for this kind of place ... he was obviously innovating, as you say, improving all the time.").

⁴¹¹ T. 27 April 2009, page 91.

⁴¹² *Ibid.*, at page 110; *see also* Psychological Report, page 51 ("After 1990, Duch disrupted a teachers' discussion regarding the Khmer Rouges, and snapped: "If you don't know about the Khmer Rouges then you shouldn't say anything."), *see also Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Nic Dunlop, *The Lost Executioner: A Story of the Khmer Rouge*, Doc. No. E160.1, page 251, T. 6 August 2009, page 110 (Dr. CHANDLER: "I think you have documented series of regrets on the part of the defendant. These did not extend to his – and I'm not being accusatory here. I know I'm getting outside the frame of the Tribunal but these regrets

expert psychiatrists further noted in their report that the ‘regrets’ expressed by Duch at Tuol Sleng in 2008 before the victims was insincere: “[o]n analysis, this statement reveals that he does not regret the killing of the victims, but the torture and inhumane treatment they endured before being killed. Duch talks about ‘unfortunate victims’, as if there was anything called ‘fortunate’ victims.”⁴¹³

118. Duch testified, by means of excuse, that there would have been someone else to carry out his tasks the same way had he not done it himself,⁴¹⁴ implying that anyone else would have been as brutal as he was. Unfortunately for the victims, the evidence adduced in Court and summarized in this brief shows that is far from the truth.

VI. REPARATIONS

119. On 27 August 2009, the Trial Chamber issued its *Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions*, in which it directed the parties to elaborate on Civil Parties’ claims for reparation in their final brief,⁴¹⁵ in addition to filing a motion on the “form or forms of the award of collective and moral reparations [the Civil Parties] contend should be awarded against the accused, if convicted.”⁴¹⁶

120. On 14 September 2009, the Civil Parties filed a joint submission, signed by all four groups, detailing the forms of reparations they request be awarded against the Accused and the manner in which this can be accomplished.⁴¹⁷ CPG-1 hereby wishes to adopt and incorporate in its entirety the above referenced joint Civil Party motion (hereinafter “joint motion”) into this final brief. Due to the detailed analysis provided in the joint motion, CPG-1 will limit itself to the specific requests for reparations made by the Civil Parties in Group 1, which does not purport to represent an exhaustive listing of the moral and collective reparations that can or should be awarded to the Civil Parties in Case 001.

did not extend to his deserting the movement in 1979 and 1980. He stayed with the movement. He still, I guess, considered himself to be a revolutionary ...”).

⁴¹³ Psychological Report, page 51, *see also ibid.*, at pages 49-52 (“Examples of Duch’s lack of empathy” with numerous examples of the Duch’s complete lack of any empathy at 2008 when the interviews were conducted).

⁴¹⁴ T. 8 April 2009, pages 32-33.

⁴¹⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, *Direction on Proceedings relevant to Reparations and on the Filing of Final Written Submissions*, 27 August 2009, at para. 5.

⁴¹⁶ *Ibid.*, at para. 1.

⁴¹⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Parties’ Co-Lawyers’ Joint Submission on Reparations, 14 September 2009, Doc. No. E159/3 [hereinafter “Joint Submission on Reparations”].

A. Specific claims for reparations

121. As explained in the joint motion, the Chamber is mandated to award “collective and moral reparations to the Civil Parties”, which are to be borne by the Accused.⁴¹⁸ The Civil Parties in Group 1 respectfully list below their specific requests for reparation, *in addition and including* the claims detailed in the joint submission.⁴¹⁹

Acknowledgement

- i. As an initial matter, CPG-1 requests for the Chamber to explicitly recognize in the final judgment, the right to reparations and the right to have the truth ascertained.⁴²⁰

Outreach Activities

- ii. The distribution of trial findings through outreach and various media outlets, including, but not limited to, print media, television and radio.⁴²¹

Medical and Psychological Care

- iii. The Civil Parties of Group 1 have indicated that they find the provision of medical care to the Civil Parties and their families particularly important, due to the increase in their age and poor medical system in place. Medical care, including social services, psychological care and education are often inaccessible due to location and costs.⁴²²
- iv. The provision of psychological therapy to rehabilitate victims by assisting them in confronting and processing the trauma and abuse sustained at the hands of the Khmer Rouge, more specifically due to the loss of loved ones at S-21.⁴²³
- v. The existing Trans-Cultural Psychosocial Organization (TPO), which is currently providing psychological assistance free of cost to many of the victims and witnesses should be supported and reinforced through a reparations award, particularly due to the existing structure through which they are better placed to because offer immediate assistance.⁴²⁴

⁴¹⁸ Internal Rule (rev.4) 23(11). *See also* Joint Submission on Reparations, paras 2-3.

⁴¹⁹ *See* Joint Submission on Reparations, paras 11-30.

⁴²⁰ G.A. Res. A/RED/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 21 March 2006 [hereinafter “Basic Principles”]. According to these basic principles and guidelines, which were originally developed by Cherif Bassiouni and Theo van Boven, remedies for gross violations of international human rights law and serious violations of international humanitarian law should include “adequate, effective and prompt reparation for harm suffered.” *Ibid.*, at para. 11. Also, reparations should be “proportional to the gravity of the violations and the harm suffered.” *Ibid.*, at para. 15.

⁴²¹ *Ibid.* at paras 12-16.

⁴²² *Ibid.* at para. 17. *See Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Victims Unit statistical report, Doc. No. E139/3.

⁴²³ Basic Principles, paras 18-19.

⁴²⁴ *Ibid.*, at para. 20.

- vi. The past harm inflicted, both physical and psychological may have long lasting physical effects on the victims, thus necessitating free medical care for the victims in general, and S-21 in particular. The medical care should include the transportation to the medical facilities.⁴²⁵

Education programs

- vii. The lawyers for CPG-1 further respectfully request that an increased effort be displayed in educating the Cambodian society on the study of mass human rights abuses, genocide and crimes against humanity. The documentation of the historical ‘truth’ behind the Khmer Rouge can be adapted into textbooks, thus furthering education goals. Any form of reparations can be allocated to the salaries and training of teachers, provision of facilities, curriculum design, publication of educational materials, and ongoing training for local participants in the rights education program.⁴²⁶
- viii. The Khmer Rouge were incredibly disruptive in the victims’ educational and vocational development. CPG-1 thus respectfully request assistance in the form of a scholarship fund for the Civil Parties, vocational training, micro-enterprise loans and business skills training to ensure that the future generations do receive the best means available to grow both on a professional and personal level.

Memorialization

- ix. The Civil Parties of Group 1 request that memorials specific to their relatives, the victims of S-21 be constructed.⁴²⁷
- x. CPG-1 specifically requests for the erection of memorials at the locations of S-21, Choeung Ek, and Prey Sar. Requests include a commemorative plaque that lists the names of all known victims, information boards listing the names of Civil Parties, being provided the opportunity to tell their stories to the public, and statutes which symbolize the suffering of victims.⁴²⁸

⁴²⁵ *Ibid.*, at para. 21.

⁴²⁶ *Ibid.*, at paras 23-25.

⁴²⁷ Basic Principles, paras 26-27.

⁴²⁸ *Ibid.*, at para. 28. Other requested forms of memorialization include: writing the names of the victims in a stupa or on a commemorative plaque to be placed at S-21, circulating the names of victims to all educational institutions, a traveling museum where photos and victim accounts can be shared with Cambodians unable to make it to Phnom Penh, the erection of memorial statues at S-21, Choeung Ek and Prey Sar, the inclusion of the names of Civil Parties as part of the existing exhibit at S-21, and the naming of important institutions such as hospitals after the countless victims of S-21.

- xi. In addition to memorials or statues at S-21, the Civil Parties of Group 1 request the erection of pagodas or pagoda fences in order to honor their loved ones.⁴²⁹ In fact, many of the Civil Parties in Case 001 do not live near Phnom Penh and having a small pagoda or pagoda fence in their local community, in addition to memorials set up at S-21, would better serve their interests.
- xii. While there currently exists a “Victory Day” on January 7th to celebrate the day the Khmer Rouge fell, this day centers on political victories rather than the suffering and pain caused to the victims. The Civil Parties thus expressed the need for a national commemoration day to commemorate the victims who died and suffered at the hands of the Khmer Rouge.

Miscellaneous

- xiii. The full and frank disclosure of assets in name of the Accused.

B. State Obligation under International Law

122. It is increasingly settled law that the commission of acts of mass atrocities gives rise to the right to reparations for the victims of these crimes.⁴³⁰ The actual enforcement and implementation of reparation awards has generally fallen within the realm of the State’s responsibility. Indeed State practice has moved toward accepting the general obligation⁴³¹ to provide reparations as a general principle of international law.⁴³² This is best illustrated by the willingness of States to establish administrative reparations programs, not only

⁴²⁹ There are a number of pagodas throughout Cambodia which provide a place to remember those who died during the Khmer Rouge. The Kdey Doung Pagoda, for example, is in the center for mass graves, where individuals were buried between 1975 and 1979 by the Khmer Rouge regime. The bones of the victims rest at the base of the pagoda in a stupa as a memorial, see Khmer Rouge Trial Web Portal, “Sacred Kdey Doung Pagoda, A Former Khmer Rouge’s Killing Field,” *available at* http://www.krtrial.info/showarticle.php?language=english&action=showarticle&art_id=2918&needback=1.

⁴³⁰ See, e.g., *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, I.C.J. Reports 2005; see also, G.A. Res. 217A, Universal Declaration of Human Rights, 10 December 1948, Article 8, G.A. Res. 2200A (XXI), The International Covenant on Civil and Political Rights, 16 December 1966, Article 2, G.A. Res. 2106, The International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, Article 6, G.A. Res. A/RES/39/46, The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (CAT/C/4/Rev.3, 18 July 2005), Article 14, *Rome Statute*, Article 75, Basic Principles, paras 19-23.

⁴³¹ As stated by the Human Rights Committee, the duty of States to make reparations to individuals whose rights under the Covenant have been violated is a component of effective domestic remedies: “without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy [...] is not discharged.” General comment N° 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant: 26/05/2004. International Covenant on Civil and Political Rights/C/21/Rev.1/Add.13 (General Comments).

⁴³² Basic Principles, para. 16.

after courts have ordered reparations for victims,⁴³³ but also of their own accord, and even in cases where existing hybrid courts had no explicit reparations mandate.⁴³⁴ It should be no different for the Kingdom of Cambodia, which should take on the responsibility of aiding the Court in ensuring that the victims of the Khmer Rouge are adequately compensated for their suffering, based on the collective and moral reparations they are entitled to.⁴³⁵

123. It is crucial that the Court succeed in awarding and enforcing adequate compensation for the Civil Parties, for failure to do so will tarnish the legitimacy of the proceedings and the Court as a whole. As there are few examples of courts awarding reparations to civil parties on an international level, one could turn to several French cases for guidance. In the cases of *Paul Touvier* and *Klaus Barbie*, the domestic French court awarded the victims of mass crimes symbolic forms of reparations, such as one franc per civil party.⁴³⁶ These two cases however, differ substantially from the present case before the ECCC, where the Civil Parties do not merely ask for symbolic awards. To the contrary, our Civil Parties have requested concrete forms of collective reparations within the mandate of this Court, including substantive, collective reparations, which require funding. In contrast to these two cases where only symbolic reparations were awarded, the French court in the *Maurice Papon court*, ordered Papon to pay FF 4.6 million (US\$817,000) in damages to the victims and court costs. Although he tried to show insolvency, years of litigation following his conviction finally disallowed transfers of his assets to his children, paving the way for a settlement with his victims. Situations as the one's described above,

⁴³³ Many countries have demonstrated this by enacting administrative programs to provide reparations through various measures, for certain violations of certain victims. *See for example* the cases of Argentina, where different laws have been enacted to benefit different victims; Peru, where the government created the Comprehensive Reparations Plan, approved in late July 2005 for victims of the internal conflict which lasted from 1980 to 2000; Guatemala, which created the *Programa Nacional de Resarcimiento* in 2003 for victims of an internal conflict that raged from 1960 to 1996 and Germany, which created a reparations program in 2001 to compensate World War II victims of forced labor.

⁴³⁴ *See* the ICTY, ICTR (the Rwandan government enabled the domestic judiciary and Gacaca courts to deal with issues of compensation, and instituted the *Fonds d'Assistance aux Rescapés du Génocide in 1998*), and SCSL (where Sierra Leone's reparations program was legislated separately).

⁴³⁵ In fact, Cambodia became a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 15 October 1992, which confers upon a signatory State the obligation to provide redress to victims of acts of torture. *See* Article 14. There is no question that the victims of S-21 were tortured and executed.

⁴³⁶ Paul Touvier was sentenced to life imprisonment, where he died in 1996, and the symbolic one franc requested by the civil parties was awarded (Judgment of 2 June 1993, Cour d'Appel de Versailles (1er); affm'd Cour de Cassation, judgment of 28 November 1994) Similarly in the Klaus Barbie trial, the Court ordered the defense to make a symbolic payment of one franc to each of 62 individuals and Jewish and French Resistance organizations representing the victims of the former Nazi Gestapo chief of Lyon. (*Matter of Barbie*, Gaz.Pal. Jur. 710 (Cass. Crim., Oct. 6 1983); Judgment of Oct. 6, 1983, Cass. Crim 1984 D.S. Jur. 113, Gaz. Pal. Nos. 352-54 (Dec. 18-20).

whereby protracted litigation, the hiding of assets, or the Court's unwillingness prevents any meaningful form of reparations can and should be avoided in the present case.

124. In order to further transparency of the proceedings, CPG-1 respectfully requests that the Chamber delineate its framework for the enforcement and implementation of any reparations award, whether symbolic or monetary in nature, in a clear and accessible manner. Furthermore, to facilitate an effective rendering and enforcement of reparations, CPG-1 respectfully requests for the Court to allow the Victims Unit to be given the mandate to undertake a wider consultation (beyond that of the Civil Party Groups) on how reparations are to be approached in this context.

VII. CONCLUSION

125. The ending of the present case is a singular event in the history of the ECCC and indeed in Cambodia as a whole. For the first time in the history of the international and *ad hoc* tribunals, the victims of mass atrocities were able to participate to the criminal proceedings as Civil Parties. CPG-1 respectfully submit that the participation of the victims of Tuol Sleng has had an immense impact on the proceedings, both by contributing to the sense of empowerment and healing of the victims, and by assisting the Trial Chamber in ascertaining the truth.
126. The Chamber has before it thousands of pages of documentary evidence, witness testimonies, Civil Party statements, and the testimony provided by the Accused himself. One of the most notable aspects that emerged from the hearing of the evidence is the fact that the Accused, while apologizing at times, did not provide the Chamber with the entire truth. Rather, CPG-1 submits that time and again, the Accused lied about the full extent of his responsibilities during his tenure as Chairman of S-21. The evidence, as previously detailed in this final brief, unambiguously demonstrates that the Accused shaped and molded the position of Chairman of S-21 and the prison itself, based on his own character, own wishes and his own prior experience. He was successful in that S-21 became a most efficient killing facility, mostly devoid of any compassion or humanity. Ruthless extermination was the order of the day.
127. Despite all the protestations of sorrow and remorse, the evidence discloses that, even at the close of the trial, the Accused was still attempting to evade responsibility by shifting the burden of the healing process back to the Civil Parties. The Trial Chamber will recall that, in the course of proceedings, the Accused turned to the Civil Parties and informed them that they could visit him at the detention center to obtain answers from

him, in order to assist them in their healing process if they so wished.⁴³⁷ This statement of the Accused amounts, in the respectful submission of CPG-1, to a cynical attempt to create the superficial appearance of remorse, contrition, care and concern whilst continuing to divert attention away from reality.

128. Throughout the last 6 months the Civil Parties have stood before the Accused in Court and demanded honest answers from him. It is regrettable that the Accused purports a willingness to provide the victims with truthful answers after the trial has completed, after the media scrutiny has subsided and at a time when the Chamber may no longer be present to take note of his words. The Civil Parties are entitled to the truth, and CPG-1 are confident that the Trial Chamber will strive to achieve nothing less and, in this regard, will approach large segments of the Accused's evidence and the answers he has provided, with proper skepticism and appropriate caution.

REQUEST

129. For all the above reasons, CPG-1 respectfully requests that the Trial Chamber:

RE-AFFIRM the original goals of the drafters of the Internal Rules to provide for expansive and broad Civil Party participatory rights;

DECIDE that the Civil Party status in Case 001 has been granted and therefore cannot be retro-actively revoked;

CONSIDER the facts pertaining to the Accused's guilt, as discussed herein, for purposes of the final judgment and an award on reparations;

RECOGNIZE the right of the Civil Parties to reparations;

AWARD the Civil Parties the full extent of the reparations requested.

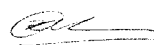
Respectfully submitted by

Co-Lawyers for Civil Parties (Group 1)

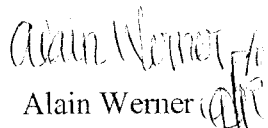
Signed in Phnom Penh on 10 November 2009,



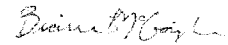
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Karim A. A. Khan



Alain Werner



Brianne McGonigle

⁴³⁷ T. 16 September 2009, page 51.