



Prosecutor v Kaing Guek Eav,  
alias 'Duch'

## The KRT Trial Monitor

Asian Justice Initiative: a Collaboration between the UC Berkeley War Crimes Studies Center and East-West Center

Report Issue No. 21:  
Week Ending Sept. 20, 2009

***In this week's KRT Trial Monitor ...***

***Is The ECCC Legal Process Worth the Cost? Expert Witnesses Shed Light (p.3); Duch Concludes Evidence on his Character and the Extent of his Responsibility (pp. 3-4); Parties Put Evidence Before the Chamber (pp. 4-5); Civil Party Lawyers' Limited Resources Purportedly Contribute to Delay in Submission of New Evidence (pp. 6-7); Closing Statements to be Heard on 23 November 2009 (p. 7)...***

### **I. SUMMARY**

*"I don't believe justice can ever come too late for victims that survive..."<sup>ii</sup>*

*"Reconciliation is a process that must not leave justice by the wayside..."<sup>iii</sup>*

Case 001's substantive hearing came to a close on Wednesday, about 7 months after the trial's commencement. Its conclusion was marked by a distinctly emotive presentation and course of questioning by International Defense Counsel François Roux. This ended with Duch welcoming visits to him by victims, declaring that "I open the door to [the victims] emotionally. I would like to express [my] inner emotion[s]... so that they can see my true self." Particularly resonant were observations by this week's 3 distinguished expert witnesses on the overarching significance of this justice process, coming as they did in the final stages of the ECCC's first trial. The trial's potentially positive contribution to national reconciliation was a theme that ran throughout their testimonies.

The first expert witness to testify this week was Justice Richard J. Goldstone, who expounded on the positive effect on victims of a sincere admission of criminal responsibility, as well as national reconciliation and the justice process. This ostensibly buttressed the Defense's case that Duch's admission of guilt be a weighty mitigating consideration, should he be convicted. Mr. Raoul M. Jennar proved to be the Defense's answer to Mr. David Chandler's testimony, as he drew certain differing conclusions tending to support the Defense's position that Duch had carried out his superiors' orders under extreme duress – to either kill others or be killed himself. To Mr. Stéphane Hessel, a former detainee in WWII concentration camps and participant in the drafting of the Universal Declaration of Human Rights, however, judicial processes like those at the ECCC "should not be compromised and sparing to those who bear responsibility for these events."

Following the close of the substantive hearing, the Chamber allowed the Parties time to put additional documents before the Chamber. Considerable objections were raised by the Prosecution and Defense in relation to each other's submissions, and attempts outside the Courtroom to reach mutual agreement proved futile. Notably, the Civil Parties sought to

introduce new evidence. Resource constraints faced by Civil Party lawyers were cited as a reason for their late submission of newly-discovered evidence, bringing to the fore the need for improvements to the provision and management of funding and resources to ensure effective and adequate Civil Party representation in future cases.

Points of controversy raised on several earlier occasions during the proceedings were revisited yet again, namely, the Civil Parties' role as a second prosecutor and the Prosecution's posing of 'leading' questions to the Accused. That these issues remain unresolved at this stage of the trial highlights the apparent need for concrete clarification by the Chamber on its reasoning for rulings made during the course of proceedings.

Proceedings are scheduled to resume on 23 November 2009, at which time the Chamber will hear the Parties' Closing Statements.

## **II. LEGAL AND PROCEDURAL ISSUES**

### **A. Summary of Testimonies**

Testimonies relating generally to the Accused's character were heard from 3 expert witnesses, 1 character witness and the Accused this week. Summaries of these testimonies are set out below. For a more detailed account, please refer to Annexure A to this report. Please note that Annexure A comprises monitors' notes from the proceedings.

#### **1. Expert Witnesses**

##### **Richard Joseph Goldstone<sup>iii</sup>**

Justice Goldstone was invited by the Chamber at the Defense's request, primarily to testify on the significance of an accused's admission of responsibility on sentencing under international criminal law, as well as its potential impact on national reconciliation. He made clear that the extent and genuineness of the Accused's confession and expressions of remorse remained a matter for the Trial Chamber to determine.

Justice Goldstone was of the opinion that a sincere admission of responsibility was an important consideration in sentencing. In support of this, he identified three important aspects of such an admission. *First*, an admission of responsibility given in a court forum provided public acknowledgment from an official source of what had happened to the victims, which, in his experience, enabled victims to begin their healing and closure. *Secondly*, an admission and acceptance of guilt was crucial from a societal perspective to end fabricated denials that usually accompany all serious human rights violations. He also stated that the effect of acknowledgements of responsibility greatly assisted national reconciliation, notwithstanding its acceptance or otherwise by the victims. *Thirdly*, an acknowledgment of guilt and cooperation with the court could well influence others coming before the tribunal to do the same. In view of the fact that the Accused was the first to admit responsibility since the Pol Pot era, Justice Goldstone suggested that this was a very important mitigating factor.

##### **Raoul Marc Jennar<sup>iv</sup>**

During the investigative phase, Mr. Jennar had submitted a report at the Defense's request containing responses to specific questions posed to him by the Defense. These questions related to the ideological inspiration of Democratic Kampuchea (DK), the regime's enforcement of secrecy, its reign of terror, and its chain of command and security apparatus. The Defense also requested Mr. Jennar to elaborate on the role of the Accused and his superior Son Sen in the DK regime.

Mr. Jennar's conclusions tended to support the existence of mitigating sentencing considerations, most notably that the Accused had carried out his superiors' orders under extreme duress – to either kill others or be killed himself. He disagreed with Mr. David Chandler's opinion that S21 under the Accused's leadership was the most efficient institution in Cambodia, and opined that Mr. Chandler had overstated S21's uniqueness.

### **Stéphane Hessel<sup>v</sup>**

Although called at the Defense's request to share his experience with forgiveness, the main theme of Mr. Hessel's testimony appeared to be that of national reconciliation and the role of judicial proceedings in that regard.

To Mr. Hessel, forgiveness was a personal matter for the victims, and it was not essential to national reconciliation to expect their forgiveness. The role of judicial proceedings in national reconciliation was to bring to public knowledge the horrors that occurred, and "should not be compromised and sparing to those who bear responsibility for these events." Recalling and revealing the truth of the criminal acts that had occurred was the *sine qua non* condition of reconciliation; reconciliation could be considered only if impunity was brought to an end; reconciliation did not mean forgiveness, but instead meant building up a peaceful nation.

***Is The ECCC Legal Process Worth the Cost? Expert Witnesses Shed Light.*** The ECCC legal process has been plagued with delays and comes with an ever-burgeoning price tag,<sup>vi</sup> raising a fundamental question: is this legal process worth the cost? As the ECCC's first trial reaches its final stages, observations by this week's 3 distinguished expert witnesses on the overarching significance of this justice process were particularly resonant.

To Justice Goldstone, the International Criminal Tribunals for the Former Yugoslavia and Rwanda's most significant contribution to national reconciliation was their work in putting an end to fabricated denials, such that the truth of what happened was revealed and publicly acknowledged. The role of the legal process was put in perspective when Justice Goldstone further observed, in relation to the ICTY, that there would nevertheless be a long road to travel before true reconciliation and enduring peace took place.

To Mr. Jennar, the ECCC was important to ensure that the Cambodian people knew that justice had been done. While achieving justice may be viewed as being at odds with the needs of national reconciliation in Cambodia,<sup>vii</sup> Mr. Jennar emphasized that "reconciliation is a process that must not leave justice by the wayside." Only when the Cambodian people had "settled their past" could they then confidently turn towards their future.

Drawing on the experience at the Nuremburg trials, Mr. Hessel saw in the ECCC legal process promise for improvement in relations among all Cambodians, subject to the important qualification that judgment be handed down in total independence, and the trial conducted in a manner that guaranteed the Defense all its ordinary rights.

## **2. Character Witness**

### **Christopher Lapel**

Christopher Lapel is the pastor who baptized the Accused in January 1996. Questioning of Pastor Lapel centered on the genuineness of the Accused's conversion and remorse, which Pastor Lapel affirmed.

### 3. The Accused's Testimony

The questioning of Duch concentrated on the extent of Duch's influence and independence within the CPK ranks as well as his motivation to remain with the Khmer Rouge even after the Vietnamese invasion in 1979. International Defense Counsel François Roux focused on Duch's willingness to assist the ascertainment of the truth and the genuineness of Duch's remorse. Demonstrating his willingness to facilitate reconciliation, Duch welcomed visits from any victim who wished to do so, stating, "I open the door to them emotionally. I would like to express [my] inner emotion[s]... so that they can see my true self."

***Duch's Loyalty to the CPK.*** Duch explained that in the period before 1970 he had already been "hooked" to Mao's communist theories. After Lon Nol's coup d'état in the 1970s, Duch had joined the Khmer Rouge guerilla movement. Prior to doing so, he had attempted to persuade his family to believe in the cause.

Despite his devotion to the ideology, Duch explained that he had loathed his assignment to M13 to do what he termed as "police work". He rejected the notion that he was pleased with his appointments as Chairman of M13, and Deputy Chairman and subsequently Chairman of S21. In his opinion, these positions were assigned to him not because he had deliberately competed with Nath, but because he was found to be better at pleasing his superiors. He confirmed his earlier stance that he had only agreed to do "police work" because his superior had promised him that "Angkar would take full responsibility" and that his position would require him to receive and gather information from people others had arrested and not to conduct arrests himself.

***The Extent of Duch's Autonomy and Influence.*** One of the contentious issues throughout this trial has been to what extent Duch enjoyed autonomy in decision-making as the Chairperson of S21. The Prosecution has constantly questioned the genuineness of Duch's claim that he had been at risk of being purged, and that it was this fear that motivated him to execute the tasks assigned to him by his superiors as efficiently as possible. It was to this end that Duch was questioned on how his siblings could avoid arrest even after their spouses were smashed, and how Duch himself had not been eliminated even after his former superiors, such as Koy Tun and Von Vet were smashed at S21. This seemed to suggest that he was to a certain extent exempt from the CPK policy of eliminating not only enemies but also their family members and associates. Duch claimed that the arrest of his former superiors had in fact deepened his fear of being purged. Duch also stated that although he did have limited influence enabling him to vouch for his siblings, ultimately, he still had to obey his superiors' orders.

### B. Legal Procedural Issues

***Parties Put Evidence Before the Chamber.*** Pursuant to the Chamber's trial management directive,<sup>viii</sup> the Parties spent the last two days of this week 'putting evidence' before the Chamber.<sup>ix</sup> Apart from allowing the Parties to propose evidence which they believe would help the Chamber reach its judgment, this process likewise gave each of the Parties the opportunity to comment on the requests made by the other Parties. The Chamber made no immediate decision, and will instead issue its written decisions after holding meetings to consider their submissions and objections.

Set out below is a summary of what transpired during this process. For a more detailed account, please refer to Annexure B to this report. Please note that Annexure B comprises monitors' notes from the proceedings.

The Prosecution, through Deputy International Co-Prosecutor Anees Ahmed, sought to put before the Chamber the following 4 categories of documents: (a) a map of S21 and its vicinity; (b) documents purportedly establishing the existence of an international armed conflict between Cambodia and Vietnam; (c) testimonies given before the OCIJ and statements recorded during the February 2008 reenactments at Choeung Eak and S21, and confessions from S21 purportedly annotated by the Accused; and (d) *The Lost Executioner*, a book written by Nic Dunlop.<sup>x</sup> Besides detailing the nature and relevance of these documents, Mr. Ahmed assured the Chamber that these additional documents were crucial to the discharge of the Prosecution's duty to prove the Accused's guilt beyond reasonable doubt, in accordance with the Internal Rules.<sup>xi</sup> When the Defense protested that the documents were unnecessary given that the Accused had already admitted responsibility, Mr. Ahmed stated in rebuttal that no conviction could be made under international law if based solely on an accused's plea of guilt.

The Defense sought to put the following evidence before the Chamber: (a) a selection of books,<sup>xii</sup> (b) materials from the ICTY *Obrenović* case,<sup>xiii</sup> such as transcripts, video footage of the hearings and the judgment; (c) several maps from DC-Cam, including illustrations of mass graves; (d) a letter-affidavit executed by Mr. Henry King, a witness for the Accused who passed away prior to giving testimony; and (e) an interview of Mr. Chun Met featured in French magazine *Paris Match*, which the Defense deliberately released only after presentation of the video of the re-enactment in S21. The Defense explained in relation to the books, *Obrenović* case materials and Mr. Henry King's letter-affidavit that they would be referred to by the Defense in its closing submissions.<sup>xiv</sup> The Defense's request in relation to the *Obrenović* case materials proved particularly controversial, as they appeared relevant solely as case authority and not evidence. Mr. Roux explained that he would be relying on these materials in his closing submissions for illustrative rather than evidentiary purposes.

Lawyers for Civil Party Group 1 sought to put before the Chamber the confession of one Meng Sar, also known as "Yar", purportedly annotated by the Accused. The Defense objected to this on the ground that the confession did not relate to any of the Civil Parties from Group 1 and their submission was an unwarranted attempt to assume a prosecutorial role .

**Civil Parties Seek to Submit New Evidence.** Requests to submit new evidence pursuant to Internal Rule 87.4 were made on behalf of Civil Parties from Group 1 and 2.<sup>xv</sup> The new evidence sought to be submitted by Civil Party Group 1 was a compilation of newly-discovered daily lists of S21 prisoners and their activities, and contained names of S21 detainees that were absent from the Prosecution's consolidated S21 prisoners list. According to lawyer for Civil Party Group 1 Alain Werner, these lists support the position that the absence of the names of 4 of his clients' relatives from the Prosecution's consolidated prisoners list was insufficient to prove that they had not in fact been detained at S21.

As this request came at the end of trial, Judges Nil Nonn and Sylvia Cartwright were led to inquire into the reasons for the submission's timing. Pursuant to Internal Rule 87.4, the requesting party must show that such evidence was not available before the opening of the trial. It was explained that the lists had been unearthed fairly recently and the translated document was received on 26 August 2009. Resource constraints were cited as a reason for this late discovery (see "Victim Participation And Witness And Victim Protection And Support"). Further, the evidence had not been submitted immediately upon discovery because of the need for internal discussions on its relevance and discussions with the Prosecution.

The new evidence sought to be submitted on behalf of Civil Party E-32 from Group 2 was an affidavit stating that this Civil Party, a medic, had been raped by a guard at S21. Civil Party lawyer Hong Kimsuon had previously made known to the Chamber his intention to adduce this evidence.<sup>xvi</sup>

***Defense Objects to ‘Closed’ / ‘Leading’ Questions.*** On Wednesday, Acting International Co-Prosecutor William Smith clearly adopted a strategy of using ‘closed’ or ‘leading’ questions to elicit desired answers from the Accused.<sup>xvii</sup> International Defense Counsel Roux eventually rose to object on the ground that posing ‘leading’ questions to the Accused was prohibited, although the legal basis of his assertion was unclear.<sup>xviii</sup> Smith defended his strategy, pointing out that the Accused had a tendency to speak at length in response to ‘open’ questions. Although President Nil Nonn identified the questions asked as ‘leading’ ones, and instructed Smith to rephrase and simplify his questions, it was unclear if this was a result of the Chamber finding Smith’s questions long and complex, or because they were ‘leading’. In fact, Smith continued thereafter to pose ‘leading’ questions, which went uncontested by the Defense.<sup>xix</sup>

Objections on this ground have previously been raised by Roux,<sup>xx</sup> although this issue has not featured significantly in the proceedings. No clear instruction on whether ‘leading’ questions are generally allowed was given then. Ambiguity remains, particularly as the Chamber had overruled previous similar objections by the Defense. It appears that the Chamber favours a practical case-by-case approach to such objections.

### **III. VICTIM PARTICIPATION AND WITNESS AND VICTIM PROTECTION AND SUPPORT**

***Attendance of Civil Parties.*** Civil Parties resumed their attendance at trial on Monday following their boycott of proceedings the entire week before the court recess. They were thus present to observe their lawyers question 3 of the scheduled witnesses this week, in accordance with the Chamber’s 27 August 2009 decision.<sup>xxi</sup>

Attendance of Civil Parties was 25 on Monday and Tuesday, and 27 on Wednesday and Thursday. 10 Civil Parties were in the Courtroom each day, with the rest in the public gallery.

***Attendance of Civil Party lawyers.*** Lawyer for Civil Party Group 2 Ms. Silke Studzinsky remains unable to attend trial due to her health condition. National lawyer Mr. Hong Kimsuon thus represented Groups 2 and 4 this week, except on Monday when Mr. Kong Pisey assumed that role. Lawyers for Civil Party Group 1 Mr. Alain Werner and Ms. Ty Srinna, and lawyers for Civil Party Group 3 Ms. Christine Martineau and Mr. Kim Mengkhy were in attendance throughout.

***Disgruntled clients prompt Civil Party lawyers’ request for speedier issue of the Chamber’s written grounds of decision.*** On Monday, Civil Party lawyer Alain Werner repeated his request for the speedy issue of written reasons for the Chamber’s 27 August 2009 decision, which held that Civil Party lawyers had no standing to question the Accused and certain witnesses on the topic of the Accused’s character. His request was motivated by the need to meet the protests of Civil Parties disgruntled by this decision. In an apparent call for patience on the part of the Civil Party lawyers, President Nil Nonn pointed out that the Chamber had been engaged with significant commitments in the previous week’s plenary session. He gave assurance that the Chamber’s decision had been thoroughly considered and the written reasons were currently being translated.

***Civil Party Lawyers’ Limited Resources Purportedly Contribute to Delay in Submission of New Evidence.*** Civil Party Group 1 lawyers’ request to submit new evidence at the end of trial to support their clients’ Civil Party applications, referred to above, led Judges Nil Nonn and Sylvia Cartwright to inquire into the reasons for the submission’s timing. Pursuant to Internal Rule 87.4, the requesting party must show that such evidence was not available before the

opening of the trial. Among the reasons cited for the delay was that the Civil Party Group 1 lawyers were brought into the case only in January 2009 after the investigation had ended, and faced resource constraints. Amidst the business of getting up to speed with the case's voluminous documents and attending hearings, the team claimed to have limited time and resources to search for more evidence.

International Defence Counsel François Roux expressed little sympathy for this consideration, noting that the Civil Party Group 1 lawyers worked with DC-Cam, an NGO arguably well-equipped to aid in the search for relevant S21 documents. The Co-Prosecutors took no position on the matter, except to observe that Internal Rule 87.4 required due diligence to be demonstrated before the document could be accepted, and to acknowledge the limited resources of Civil Party lawyers. Whether the Chamber will regard this as a valid consideration under Internal Rule 87.4 remains to be seen.

On a related note, the Chamber has in a written decision acknowledged the practical difficulties faced by Civil Parties in retrieving documents to support their claims.<sup>xxii</sup>

In light of the impact of such resource constraints, evidently needed are improvements to the provision and management of funding and resources to ensure effective and adequate Civil Party representation in future cases. With regard to the effective management of resources, the adapted concept of Civil Party participation agreed upon at the recent Sixth ECCC Plenary Session appears a positive development. The agreed concept, to be applied from Case 002 onwards, sees all Civil Parties represented as a single, consolidated group by two lead counsel supported by the Civil Party lawyers.<sup>xxiii</sup> This model may facilitate the pooling of resources and efficient division of labour.

***Commendable Coordination between Civil Party Lawyers and the Co-Prosecutors.*** In the course of justifying the timing of his request to admit new evidence at the end of trial, lawyer for Civil Party Group 1 Alain Werner disclosed that one of the preparatory steps taken was verifying with the Co-Prosecutors that the evidence found was not deliberately left out of the Case File by the Co-Prosecutors. Presumably, such verification was needed to ensure that the Civil Party lawyers' intended submission of new evidence was not inconsistent with the Co-Prosecutors' case strategy. Such coordination between Civil Party lawyers and the Co-Prosecutors, rarely highlighted in the proceedings, is commendable, being a necessary aspect of the mandate under Internal Rule 23.1 that Civil Parties participate by "*supporting* the prosecution" (emphasis added).

***Defense Continues to Object to Civil Parties' Prosecutorial Role.*** The issue of equality of arms was raised yet again by Mr. Roux in objecting to the submission of new evidence by Civil Party Group 1 lawyers. He argued that the Civil Party lawyers were overstepping their role in attempting to submit documents that made no direct reference to their clients. Mr. Roux's objection highlights how, even at the end of the trial's substantive hearing, whether the ECCC intended to confer on Civil Parties a secondary prosecutorial role is an issue still not clearly resolved.<sup>xxiv</sup> Clarification by the Chamber in its final judgment, or by the planned amendments to the Internal Rules, would be desirable to avoid time spent on repetitious debate on this issue in future proceedings.

#### IV. TRIAL MANAGEMENT

**Scheduling.** Wednesday marked the close of Case 001's substantive hearing. Further hearings on procedural issues may still take place. Proceedings are scheduled to resume on 23 November 2009 for the hearing of the Parties' Closing Statements, notwithstanding the Co-Prosecutors' request for this to be postponed.<sup>xxv</sup>

Before closing the week's proceedings, the Chamber invited the parties to propose the timeframes needed for making their Closing Statements. The Defense indicated that they would require a total of 9 hours.<sup>xxvi</sup> The Prosecution and Civil Party lawyers were unprepared to provide an answer at the time, and undertook to do so as soon as possible. Also to be decided among Civil Party lawyers is whether they will deliver a single collective final submission or individual ones.

**Request for Disclosure of UN-OIOS Report Still Pending Resolution.** Just before the close of proceedings on Thursday, Civil Party Group 1 lawyer Alain Werner referred the Chamber to a motion his team had filed on 11 May 2009 requesting that the Chamber facilitate the disclosure of the UN-OIOS report on corruption at the ECCC.<sup>xxvii</sup> The other Civil Party Groups have since joined this motion. The Chamber revealed that it had delivered a letter to the UN relating to the matters raised in the UN-OIOS report. The UN had replied following a second reminder from the Chamber. The Chamber's decision on the matter has been finalized and will be issued to the Parties in due course.

**Interpretation Issues.** A serious lapse of professionalism in interpretation occurred on Wednesday, when a derisive remark, ostensibly made by an interpreter, was relayed over the English channel.<sup>xxviii</sup> The expression of personal comments over a live interpretation feed is clearly out of line and highly unprofessional.

Also, content of the testimonies of Justice Goldstone and Mr. Jennar appeared incompletely relayed in Khmer. This may have been caused in part or whole by the witnesses' fast speaking pace, which went on without any intervention from the Chamber. It is crucial for the Chamber and the interpreters to continue maintaining coordination in this regard, namely, for the former to promptly alert the Chamber of any difficulties encountered and the latter to instruct all parties and witnesses accordingly.

**Technical Problems.** Two witnesses testified via video-conference this week, namely Justice Goldstone on Monday and Mr. Hessel on Tuesday. Technical problems occasionally disrupted communication, including an abrupt though temporary termination of audio feed during Justice Goldstone's testimony and the freezing of visual feed during Mr. Hessel's testimony. Although technical hiccups may sometimes be difficult to anticipate, more can perhaps be done to ensure the smooth running of video-conferences in future.

**Parties' Attendance.** On Monday, the Prosecution was represented by Mr. Vincent de Wilde (International) and Mr. Tan Senarong (National). On Tuesday, National Co-Prosecutor Chea Leang's attendance in Court was significant, being her first Court appearance in 4 months. She kept her stay brief and left after the morning session, leaving Deputy National Co-Prosecutor Mr. Tan Senarong to take up the baton again. Also present on Tuesday were Acting International Co-Prosecutor William Smith and Mr. de Wilde. On Wednesday, the Prosecution comprised Mr. William Smith, Mr. de Wilde, Deputy International Co-Prosecutor Anees Ahmed, and Deputy National Co-Prosecutor Seng Bunkheang. The latter two were again present on Thursday. The Defense was represented by Mr. François Roux (International) and Mr. Kar Savuth (National) throughout the week.

**Public Attendance.** The ECCC Public Affairs Section continued to facilitate the attendance of the Cambodian public this week. There were approximately 550 people from Kean Svay District



together with 50 law students from Royal University of Law and Economics attending the hearing on Monday. On Tuesday, around 450 people from Siem Reap province attended the trial. On Wednesday, there were 40 Cambodians attending the proceedings from Pursat Province, 100 from Kompong Cham province and approximately another 100 from Banteay Meanchey. On Thursday, even though the day was scheduled for document submission and procedural matters, 400 people from Kampong Cham, Kampong Thom, and Prey Veng province still turned up for the hearing.

**Courtroom Etiquette.** Judges Thou Mony and Ya Sokhan appeared to have fallen asleep at certain points during Monday’s proceedings. Members of the public were also observed nodding off that day, especially during the testimony of the international expert witnesses. The Court’s security officers were vigilant in waking up sleeping visitors to maintain respect for the proceedings.

**Time Management.**

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON. 14/09/09	9.05AM	10.50AM- 11.15AM	12.15- 1.35PM	2.45PM- 3.05PM	4.25PM	5HOURS 15 MINS
TUE 15/09/09	9.05AM	10.40AM- 11.05AM	12.10- 1.35PM	3.10PM- 3.30PM	4.16PM	5HOURS 01 MINS
WED 16/09/09	9.05AM	10.20AM- 10.45AM	11.53- 1.30PM	3.15PM- 3.35PM	4.25PM	4HOURS 58 MINS
THU 17/09/09	9.10AM	10.25- 10.53AM	11.30PM	-	-	1 HOUR 48 MINS
<b>AVERAGE NO. OF HOURS IN SESSION : 4HOURS 7MINS</b>						
<b>TOTAL NO. OF HOURS THIS WEEK : 17HOURS 2MINS</b>						
<b>TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL: 305 HOURS AND 4 MINS OVER 68 TRIAL DAYS OVER 20 WEEKS</b>						

<sup>i</sup> Expert witness Justice Richard Joseph Goldstone, during the hearing on Monday, 14 September 2009.

<sup>ii</sup> Expert witness Mr. Raoul Marc Jennar, during the hearing on Monday, 14 September 2009.

<sup>iii</sup> Justice Goldstone has been both a trial and appellate judge of the South African Transvaal Supreme Court, and from 1994 to 2003 was a justice of the Constitutional Court of South Africa. He was chief prosecutor at the International Criminal Tribunal for the Former Yugoslavia (ICTY), and chairperson of the South African Standing Commission of Inquiry Regarding Public Violence and Intimidation investigating serious violations of human rights and violence in South Africa. From 1993 to 2007, he was Chancellor of the University of [robttersran] in Johannesburg. He is presently a visiting professor of law in Fordham law school in the USA, and has been visiting professor at the law schools of Harvard, New York University and Georgetown. He has been a member of advisory boards broadly concerned with human rights, justice and reconciliation, such as the Institute of Historical Justice and Reconciliation and the International Human Rights Institute of the International Bar Association. From 1999 to 2003, he was a member of the international group of advisors of the International Committee of the Red Cross, and from 1985 to 2000 was national president for the National Institute for Crime Prevention and Rehabilitation of Offenders [in????]. He also led the UN fact-finding mission to Gaza, the International Independent Inquiry on Kosovo, and was co-chairperson of the International Task Force on Terrorism established by the International Bar Association.

<sup>iv</sup> Mr. Raoul Marc Jennar is a 63-year old French professor, journalist, and author of various books on Cambodia, including *The Cambodian Chronicles* and *The Keys to Cambodia*. He is also a consultant to the Royal Government of

---

Cambodia on foreign relations and border issues. He holds doctorate degrees in political science from Belgium and France, as well as a doctorate in Khmer Science and Studies from *Institut National des Langues et Civilisations Orientales* (INALCO). His past experiences include a stint as advisor to the French Government and Parliament, a consultant to the United Nations Transitional Authority in Cambodia, an international observer on the withdrawal of the Vietnamese expedition corps in 1979 and an advisor to Yale University's Cambodian Genocide Program, which subsequently established the Documentation Center of Cambodia.

<sup>v</sup> Mr. Stéphane Hessel is a former member of the French resistance in World War II who had been deported to concentration camps, and who had gone on to participate in the drafting of the Universal Declaration of Human Rights and work towards Franco-German reconciliation.

<sup>vi</sup> See BBC News, Guy De Launey, "The Trials of Pursuing the Khmer Rouge" 29 March 2009, available at <<http://news.bbc.co.uk/2/hi/asia-pacific/7970881.stm>>. ("In reality, the budget has tripled, local and international officials have frequently been at loggerheads, and the three-year time frame has been dismissed as unrealistic.")

<sup>vii</sup> Reference was made to how granting amnesty and pardon to perpetrators of atrocities in Cambodia may on one hand further peace and reconciliation, but on the other hand, would ignore the conflicting need for justice for victims.

<sup>viii</sup> See KRT Monitoring Report 20 at page 8.

<sup>ix</sup> Evidence the parties wish the Chamber to rely on must be put before the Chamber. This is required by Internal Rule 87.2, which states that "Any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination." See KRT Monitoring Report 6 at page 5.

<sup>x</sup> Nic Dunlop is the British photographer who tracked down and revealed the whereabouts of Duch in 1999.

<sup>xi</sup> Internal Rule 87.1 provides that "... The onus is on the Co-Prosecutors to prove the guilt of the accused. In order to convict the accused, the Chamber must be convinced of the guilt of the accused beyond reasonable doubt."

<sup>xii</sup> Namely, *Pol Pot: Anatomy of a Nightmare* by Philip Short, *The Gate* by François Bizot, *A History of Cambodia* by David Chandler, *Les Cles du Cambodge* by Raoul Marc Jennar, and *God Has a Dream: A Vision of Hope for Our Time* by Desmond Tutu.

<sup>xiii</sup> Dragan Obrenović (Srebrenica Case No. IT-02-60/2) available at <[http://www.icty.org/x/cases/obrenovic/cis/en/cis\\_obrenovic.pdf](http://www.icty.org/x/cases/obrenovic/cis/en/cis_obrenovic.pdf)>. Obrenović was found guilty of committing the crime against humanity of persecution based on political, religious and racial grounds and was sentenced to 17 years of imprisonment on 10 December 2003.

<sup>xiv</sup> The Defense had indicated on Wednesday that it wished only to inform the parties of its intention to do so as a matter of courtesy.

<sup>xv</sup> Internal Rule 87.4 reads, "During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial."

<sup>xvi</sup> See KRT Monitoring Report 19 at page 6.

<sup>xvii</sup> The following are several examples: "But you believed that what you were doing at S21 was a means to an ends. It was a way in which you and others could achieve a Communist revolution and create a new society as you had planned, correct?"; "At S21 you felt sure enough of your own safety, that you would not be implicated, otherwise you would not have had children, correct?"; "Would you agree with me that when you first took on the job at S21 you were proud of that fact?"

<sup>xviii</sup> Roux stated that the prohibition on 'leading' questions was part of the common law system Smith had been trained in. However, notwithstanding Internal Rule 21.1(a) providing that "ECCC proceedings shall be... adversarial," ECCC procedure is largely based on Cambodian legal procedure, which is a product of a civil law system. Further, in most common law jurisdictions, 'leading' questions posed to an opposing or hostile witness are the norm.

<sup>xix</sup> For example, shortly after the Defense's objection and the Chamber's instruction in response, Smith asked the Accused, "Is it not the case that in 1990 you were still a revolutionary, still believed in the regime, and hence was still with the Khmer Rouge?"

<sup>xx</sup> See KRT Monitoring Report 5 at pages 4-5.

<sup>xxi</sup> See KRT Monitoring Report 19 at pages 5-6.

---

<sup>xxii</sup> ECCC Trial Chamber, “Decision on the Request by Co-Lawyers Group 2 For Extension of Time For Filing Documents Relevant to Civil Parties”, 4 September 2009 at paragraph 3, available at <[http://www.eccc.gov.kh/english/cabinet/courtDoc/430/E163\\_2\\_EN.pdf](http://www.eccc.gov.kh/english/cabinet/courtDoc/430/E163_2_EN.pdf)>.

<sup>xxiii</sup> See ECCC News “Sixth ECCC Plenary Session Concludes” 11 September 2009 available at <[http://www.eccc.gov.kh/english/news.view.aspx?doc\\_id=311](http://www.eccc.gov.kh/english/news.view.aspx?doc_id=311)>.

<sup>xxiv</sup> A plain reading of Internal Rule 23.1 ostensibly confers on Civil Parties a secondary prosecutorial role. The Rule reads, “The purpose of Civil Party action before the ECCC is to: a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution...”

<sup>xxv</sup> ECCC Trial Chamber, “Decision on the Co-Prosecutors’ Request for Postponement of the Hearing of Closing Statements”, 4 September 2009, available at <[http://www.eccc.gov.kh/english/cabinet/courtDoc/429/E159\\_2\\_EN.pdf](http://www.eccc.gov.kh/english/cabinet/courtDoc/429/E159_2_EN.pdf)>.

<sup>xxvi</sup> This comprises 3 hours for the National Defense Counsel and 6 hours for both the International Defense Counsel and the Accused. The Accused will inform the Chamber of the time required for his closing speech in due course.

<sup>xxvii</sup> “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, available at [http://www.eccc.gov.kh/english/cabinet/courtDoc/351/E65\\_EN.pdf](http://www.eccc.gov.kh/english/cabinet/courtDoc/351/E65_EN.pdf).

<sup>xxviii</sup> At the end of a rather emotive course of questioning of the Accused by International Defense Counsel Roux, and immediately after the Accused indicated that he welcomed visits by victims, it was remarked, “This is a play!”.



**WSDHANDACENTER**  
FOR HUMAN RIGHTS & INTERNATIONAL JUSTICE  
*Stanford University*

This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

A complete archive of trial monitoring reports is available online at:

<http://handacenter.stanford.edu/reports-list>

For more information about Handa Center programs, please visit:

<http://handacenter.stanford.edu>

---

## Summary of Parties' Requests to Put Evidence before the Chamber and Submit New Evidence

The afternoon session of the 16 September 2009 hearing and the half-day session on 17 September 2009 were devoted to the presentation of requests by the Parties for submission of additional evidence to be put before the Chamber. Apart from allowing the Parties to propose evidence which they believe would help the Chambers reach its judgment, this process likewise gave each of the Parties the opportunity to comment on the requests made by the other Parties.

### The Prosecution

The Prosecution, through Deputy International Co-Prosecutor Anees Ahmed, sought to put before the Chamber the following 4 categories of documents: (a) a map of S21 and its vicinity;<sup>i</sup> (b) documents purportedly establishing the existence of an international armed conflict between Cambodia and Vietnam;<sup>ii</sup> (c) testimonies given before the OCIJ and statements recorded during the February 2008 reenactments at Choeung Eak and S21, and confessions from S21 purportedly annotated by the Accused; and (d) *The Lost Executioner*, a book written by Nic Dunlop.<sup>iii</sup>

**Justifications for the Prosecution's Submission.** Mr. Ahmed assured the Chamber that the putting of the foregoing additional documents before it was crucial to the discharge of the Prosecution's duty to prove the Accused's guilt beyond reasonable doubt, in accordance with the Internal Rules.<sup>iv</sup> When the Defense protested that the documents were unnecessary given that Duch had already admitted responsibility, Mr. Ahmed responded by stating that in international law, no conviction could be made if based solely on an accused's plea of guilt.

The nature and relevance of the above documents were described as follows:

- (a) Map of S21: This provides a complete pictorial representation of the S21 prison and its vicinity.
- (b) Documents tending to establish the existence of an armed conflict between Cambodia and Vietnam: These consist of over 200 press articles from domestic and international sources, and seek to establish that there was protracted armed violence amounting to an international armed conflict between Cambodia and Vietnam during the temporal jurisdiction of the Chambers.<sup>v</sup>
- (c) Testimonial statements and annotated S21 confessions: These documents are expected to assist in giving the Trial Chamber a complete picture of what occurred in S21, in view of the lack of witnesses who could testify on the matter. Mr. Ahmed stressed that these documents comprise best evidence that is crucial, contemporaneous, and directly relevant to the case at hand.
- (d) *The Lost Executioner* by Nic Dunlop: This book was used as a basis for questioning during the judicial investigation and the trial. It is purportedly the most comprehensive account of Duch's activities after the fall of the Khmer Rouge regime. The book is available in two official languages of the Chambers, English and Khmer.

**The Defense's Response.** Only the submission of the map was spared from objection by the Defense. With regard to the documents tending to establish the existence of an international armed conflict between Cambodia and Vietnam, International Defence Counsel François Roux

protested that the over 200 news articles were redundant and had the effect of overwhelming the Trial Chambers with “useless” information. He stressed that he had asked for a one-page summary of these articles in French, an official language of the Chambers, but this had yet to be provided by the Co-Prosecutors. The Co-Prosecutors undertook to comply with Mr. Roux’s request at the soonest possible opportunity. In addition, National Defense Counsel Kar Savuth objected to these documents insofar as they comprised inter-governmental level communiqués and minutes of governmental-level meetings, opining that these documents would be more appropriately used in Case 002 as they did not involve Duch but higher ranking officials of the Khmer Rouge such as Ieng Sary.

With regard to the annotated S21 confessions, the Defense expressed its strong objections on the basis that the Accused had not been afforded the opportunity to have them examined by means of an adversarial debate before the Chambers. Adversarial debate was of especial necessity given that numerous errors in the translation of such S21 documents had previously been discovered. Mr. Roux also contended that although the Prosecution had adequate time to subject the documents in question to adversarial debate, it had chosen not to do so.

Finally, the Defense stated that the Accused had expressed reservations to a number of passages in Mr. Dunlop’s book.

## **Civil Parties**

***Civil Parties Seek to Submit New Evidence.*** Requests to submit new evidence pursuant to Internal Rule 87.4 were made on behalf of Civil Parties from Group 1 and 2.<sup>vi</sup> The new evidence sought to be submitted by Civil Party Group 1 (“CP1”) was a compilation of newly-discovered 18 one-page daily lists of S21 prisoners and their activities. This submission was argued to be justified on the basis that the daily lists contain names of S21 detainees that were absent from the Prosecution’s consolidated S21 prisoners list. While the Prosecution’s consolidated prisoners list was of S21 prisoners who had been ‘smashed’, the daily lists indicated that prisoners had died at S21 due to causes other than ‘smashing’, such as torture, blood-drawing, illness and suicide. According to lawyer for CP1 Alain Werner, these lists support his team’s position that the absence from the Prosecution’s consolidated prisoners list of the names of four of his clients’ relatives was insufficient to prove that they were not in fact detained at S21, and that it was probable that these persons had died from means other than ‘smashing’.

As this request comes at the end of trial, Judges Nil Nonn and Sylvia Cartwright were led to inquire into the reasons for the submission’s timing. Counsel for CP1 explained that they had unearthed the lists fairly recently and had received the translated document on 26 August 2009. Resource constraints were cited as reason for this late discovery (see “Victim Participation And Witness And Victim Protection And Support”). Further, the evidence had not been submitted immediately upon discovery because of internal discussions on its relevance and discussions with the Prosecution to ensure they had not deliberately refrained from submitting it. Also of concern to CP1 lawyers was the absence of an appropriate opportunity for the Civil Party lawyers to intervene during the previous week of hearings.

The Defense expressed vigorous objection to the inclusion of these documents. One of the grounds raised was that the lists did not contain the names of any of the Civil Parties from CP1, and hence was an unwarranted attempt by the Civil Parties to play prosecutor. Another was that admission of these lists would necessitate the reopening of the trial in order to allow the Accused to examine and comment on these documents. During the course of the

proceedings, however, the Accused confirmed that all 18 documents originated from S21.<sup>vii</sup> Notwithstanding this development, the Defense adamantly maintained that the lists should not be admitted before the Chambers this late in the proceedings. Despite initially adopting a neutral position on the issue, the Prosecution was prompted by Duch's authentication of these documents to strongly urge its admission by the Chamber.

The new evidence sought to be submitted on behalf of Civil Party E-32 from Group 2 was an affidavit stating that this Civil Party, a medic, had been raped by a guard at S21. National Defense Counsel Kar Savuth objected to this request on the ground that that it alleges a newly discovered fact not alleged in the Indictment.

**Civil Party Group 1 Requests to Put Documents Before the Chamber.** CP1 also sought to put before the Chamber the confession of one Meng Sar, also known as "Yar", purportedly annotated by the Accused. Again, the Defense objected to this on the ground that the confession did not relate to any of the CP1 Civil Parties and hence was not for them to adduce as evidence.

### **The Defense**

The Defense sought to put the following evidence before the Chamber:

- (a) A number of books, namely, *Pol Pot: Anatomy of a Nightmare* by Philip Short, *The Gate* by François Bizot, *A History of Cambodia* by David Chandler, *Les Cles du Cambodge* by Raoul Marc Jennar, and *God Has a Dream: A Vision of Hope for Our Time* by Desmond Tutu;
- (b) Materials from the ICTY *Obrenović* case,<sup>viii</sup> such as transcripts, video footage of the hearings and the judgment;
- (c) Several maps from DC-Cam, including illustrations of mass graves;
- (d) A letter-affidavit executed by Mr. Henry King, a witness for the Accused who passed away prior to giving testimony; and
- (e) An interview of Mr. Chum Mei featured in French magazine *Paris Match*, which the Defense deliberately released only after presentation of the video of the re-enactment in S21.

**Justifications for the Defense's Submissions.** The Defense explained in relation to the books, *Obrenović* case materials and Mr. Henry King's letter-affidavit that they would be referred to by the Defense in its closing submissions. The Defense had indicated on Wednesday that it wished only to inform the parties of its intention to do so as a matter of courtesy. The Defense's request in relation to the *Obrenović* case materials proved particularly controversial. In response to Judge Lavergne's request for clarification on the purpose of these materials, Mr. Roux explained that he would be relying on them in his closing submissions for illustrative rather than evidentiary purposes.

**The Parties' Responses.** With regard to the books enumerated above, the Prosecution raised objections only in respect of *The Gate* by François Bizot, on the basis that it was repetitious,<sup>ix</sup> and *Pol Pot: Anatomy of a Nightmare* by Philip Short, as the author had not been called as a witness. With regard to the *Obrenović* case materials, Mr. Ahmed expressed opposition by

distinguishing evidence which the Chamber may use as basis for deciding the case and the authority which any of the parties may use to bolster their claims. According to Mr. Ahmed, the request for the inclusion of the materials on *Obrenović* case should be denied since they are not evidence but authority to which the Defense may refer.

The Prosecution agreed to the submission of Mr. Henry King's letter-affidavit, provided that it is limited to the page which refers to Mr. Albert Speer and that, for purposes of completing the records of the Chamber, the letter by the Defense to which Mr. King responded be likewise included.

Finally, the Prosecution insisted on the exclusion of the interview of Mr. Chum Mei featured in *Paris Match* on the ground that it was merely a journalistic version of Mr. Chum Mei's testimony. Civil Party lawyer Mr. Hong Kimsoun objected to the submission of the article, which he characterized as "tricky." Furthermore, Civil Party lawyer Mr. Werner maintained that as an elementary precaution, Mr. Chun Met should be recalled in order to give the latter an opportunity to verify what he may or may not have said during the interview. While ostensibly conceding to the exclusion of the materials on the *Obrenović* case and the interview of Mr. Chum Mei, the Defense expressed that it will leave the matter to the discretion of the Chamber.

---

<sup>i</sup> This document is attached as Annex "A" to the OCIJ's Indictment.

<sup>ii</sup> These documents are attached as Annex "A" to the document filed by the Deputy Co-Prosecutors on 29 April 2009.

<sup>iii</sup> Nic Dunlop is the British photographer who tracked down and revealed the whereabouts of Duch in 1999.

<sup>iv</sup> Internal Rule 87.1 provides that "... The onus is on the Co-Prosecutors to prove the guilt of the accused. In order to convict the accused, the Chamber must be convinced of the guilt of the accused beyond reasonable doubt."

<sup>v</sup> Mr. Ahmed explained that since the Accused is indicted for grave breaches of the Geneva Conventions of 1949, it is necessary to prove the elements thereof, which are the existence of an international armed conflict and a nexus between such international armed conflict and the crimes committed by the Accused.

<sup>vi</sup> Internal Rule 87.4 reads, "During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial."

<sup>vii</sup> Duch verified these matters during the morning session of the 17 September 2009 hearing.

<sup>viii</sup> Dragan Obrenović (Srebrenica Case No. IT-02-60/2) available at [http://www.icty.org/x/cases/obrenovic/cis/en/cis\\_obrenovic.pdf](http://www.icty.org/x/cases/obrenovic/cis/en/cis_obrenovic.pdf). Obrenović was found guilty of committing the crime against humanity of persecution based on political, religious and racial grounds and was sentenced to 17 years of imprisonment on 10 December 2003.

<sup>ix</sup> In this regard, the Prosecution cited Internal Rule 87.3, which authorizes the Chamber to reject a request for evidence where it finds that it is repetitious.



## ANNEXURE A

### Summary of Testimonies

#### Richard Joseph Goldstone

On Monday morning, Justice Richard Joseph Goldstone testified before the Chamber via video-link from New York, USA. In the course of his testimony, he expressly drew from his experience as trial, appeals and constitutional court judge in South Africa, chief prosecutor at the International Criminal Tribunal for the Former Yugoslavia (ICTY), and chairperson of the South African Standing Commission of Inquiry Regarding Public Violence and Intimidation investigating serious violations of human rights and violence in South Africa.<sup>i</sup> The last-mentioned endeavour eventually led to the establishment of South Africa's truth and reconciliation commissions.

Justice Goldstone was invited by the Chamber at the Defense's request primarily to testify on the effect and importance of an accused's admission of responsibility in terms of international justice and national reconciliation. He made clear that the prior question of the extent and genuineness of the Accused's confession and expressions of remorse remained for the Trial Chamber to determine.

**Effect And Importance Of The Accused's Admission Of Responsibility And Remorse.** Three important aspects of a sincere admission of responsibility were identified by Justice Goldstone. First, an admission of responsibility given in a court forum provided public acknowledgment from an official source of what happened to the victims. While difficult to generalize, victims had, in his experience, been able to begin their healing and closure as a consequence of such public acknowledgement. Notably, Justice Goldstone suggested that primary regard should be given to the interests of victims in sentencing, because the essential purpose of international and domestic criminal courts was to bring justice to victims.

Secondly, an admission and acceptance of guilt was crucial from a societal perspective to end fabricated denials that usually accompany all serious human rights violations. In this regard, Justice Goldstone drew from his experience at the ICTY, specifically, the case of *Erdemović*.<sup>ii</sup> He also stated that the effect of acknowledgements of responsibility greatly assisted national reconciliation, notwithstanding its acceptance or otherwise by the victims.

Thirdly, an acknowledgment of guilt and cooperation with the court could well influence others coming before the tribunal to do the same. In view of the fact that the Accused was the first to admit responsibility since the Pol Pot era, Justice Goldstone suggested that this was a very important mitigating factor.

**Retribution.** Ostensibly to shift emphasis from national reconciliation to the retributive element in sentencing, Civil Party lawyer Alain Werner read a portion of Justice Goldstone's article "The Role of the United Nations in the Prosecution of International World Criminals", in which he had stated that providing victims with a sense of retribution did play an important role in international justice. Justice Goldstone reaffirmed this position.

**Remorse.** International Defense Counsel Francois Roux referred Justice Goldstone to the ICTY case of *Obrenović*, where the accused had pleaded guilty from the outset to killing over 6000 people in a week, and had never sought to evade responsibility. The ICTY Trial Chamber had concluded that *Obrenović*'s guilty plea represented an important mitigating circumstance, because it contributed to the establishment of the truth and favoured reconciliation. Justice Goldstone agreed with the Defense's view

that Duch and Obrenović were in the same situation, although whether the expressed remorse was genuine was to be determined by the Chamber. He confirmed that the degree of cooperation displayed by the Accused was one of the means available to verify the sincerity of his remorse.

Justice Goldstone agreed with Deputy International Co-Prosecutor de Wilde that an admission of responsibility that was specific to the crimes charged in the indictment, as opposed to being merely a general one, was an important indicator of the confession's genuineness.

**Reparations.** The question of whether reparations should be granted and in what form was put by Civil Party lawyer Kong Pisey to Justice Goldstone. While acknowledging that reparations were a difficult matter, especially where they had no source of payment, Justice Goldstone maintained that reparations were extremely important and helpful not only to victims, but also to repairing society. Assisting education and memorializing relevant events were examples he gave of reparations.

### **Raoul Marc Jennar**

Mr. Jennar, an expert witness for the Defense, took the stand on Monday. Mr. Jennar is a 63-year old French professor, journalist, and author of various books on Cambodia, including *The Cambodian Chronicles* and *The Keys to Cambodia*. He is, also a consultant to the Royal Government of Cambodia on foreign relations and border issues.<sup>iii</sup> During the investigative phase, Mr. Jennar had submitted a report at the Defense's request containing responses to specific questions posed to him by the Defense. These questions related to the ideological inspiration of Democratic Kampuchea (DK), the regime's enforcement of secrecy, its reign of terror, and its chain of command and security apparatus. The Defense also requested Mr. Jennar to elaborate on the role of the Accused and his superior Son Sen in the DK regime.

The absence of references and footnotes in Mr. Jennar's report came under scrutiny by Deputy International Co-Prosecutor Vincent de Wilde and lawyer for Civil Party Group 1 Mr. Alain Werner, in an apparent attempt to negate the credibility of Mr. Jennar's report. Mr. Jennar explained that his specific instructions were to keep his report brief, and he had consequently prepared the report without references. When specific conclusions drawn in the report were highlighted for Mr. Jennar to provide his supporting references,<sup>iv</sup> Mr. Jennar stated that he was unable to do so from memory, and that these documents are in DC-Cam's archives.

**Culture of Violence in Cambodia.** According to Mr. Jennar, a culture of violence had existed in Cambodia even before the DK period. He referred to the harsh repression of the opposition by incumbent regimes since the Cambodia's independence in 1953. Violence was applied by Sihanouk's regime and, subsequently, General Lon Nol. The culture of violence was exacerbated by the US bombing of the country, which Mr. Jennar stated had been far worse than the superpower's bombing of Germany and Japan during World War II. In Cambodia, "violence became the rule [and] physical liquidification (*sic*) was a method of conflict resolution."

**Ideologies Influencing CPK Policies.** While Mr. Jennar acknowledged that Maoism inspired the CPK's implementation of property collectivization and agricultural revolution, albeit at a more extreme level, he asserted that many of the practices during the DK regime was inspired by the Bolshevik revolution. He based this conclusion mainly on the fact that many top leaders of the CPK, including Pol Pot

and Son Sen, had been members of the French Communist Party (PCF) when they had studied in Paris. It was then that they were exposed to Leninism and Stalinism, and were indoctrinated by these ideologies' exhortation of the need for total control by a central committee, secrecy and the purging of enemies. They had been taught to follow the "21 Obligations" as expounded by Lenin, which required a communist party to, among other things, install a central committee with iron commitment and unchallenged authority, maintain strict discipline, and purge enemies, members who are "lukewarm" and *petite bourgeoisie*. With regard to the elimination of enemies, one of the principles taught by the PCF was that "it is better to arrest 10 innocent people than let 1 guilty person go free". These principles became the basis of the practices in the CPK, including the establishment and operation of Security Offices such as S21.

**CPK Policy.** To Mr. Jennar, the interpretation of Marxism by Pol Pot was extreme, and could be defined as "Pol Pot-ism". This ideology required a more rapid transformation to communism - "one great leap forward" without any transitional period, unlike what was implemented in the USSR and Mao's China. Another major difference between "Pol Pot-ism" and other interpretations of Marxism was its nationalist element. While others strived to achieve an international communist regime, "Pol Pot-ism" was oriented primarily towards promoting Khmer nationalism and the annexation of other countries' territories with a Khmer population to Cambodia. This resulted in CPK's racist policies, such as the denial of minority rights, as well as its expansionist practices.

Mr. Jennar also echoed previous testimonies that described the CPK as a party that demanded iron discipline, cloaked itself in secrecy, and required all members to vigilantly report on others' mistakes to their superiors. Influenced by USSR practices, the CPK maintained tight control over all aspects of life. Purging of enemies was the norm, and total obedience of the cadres was an absolute requirement.

**Uniqueness of S21.** Mr. Jennar asserted that there was no hierarchy among the Security Offices and that each had the same function and role. He disagreed with Mr. David Chandler's findings that S21 was arguably the most efficient institution in the DK regime.<sup>v</sup> He also maintained that there was insufficient evidence to substantiate the claim that S21 torture practices had been far crueler than that of other Security Offices. Mr. Jennar stated that the purging of CPK cadres was not a feature exclusive to S21, as such purges also occurred in other Security Offices.

Notwithstanding these assertions, Mr. Jennar recognized two unique characteristics of S21: first, unlike other Security Offices, S21 was under the direct purview of the Standing Committee and closely monitored by Son Sen; secondly, S21 exercised country-wide jurisdiction, holding detainees from all DK zones.

**Extent of the Accused's Autonomy.** The Accused was characterized by Mr. Jennar as both a "servant and hostage." Duch had little room to maneuver as he was faced with the horrible choice of either obeying the Standing Committee's orders to kill or being killed himself. The strict obedience required by the CPK offered members of Duch's rank no autonomy in decision-making.<sup>vi</sup> Moreover, since each member operated as a spy against all the other members, no one, except for members of the Standing Committee, was safe from being purged. Consequently, everyone, including Duch, merely executed orders issued by the Standing Committee.

In response to the question of why Duch did not resign from or abandon his post, Mr. Jennar explained that DK cadres were not at liberty to travel to zones beyond those they were assigned to. He added that any attempt to leave was punishable by

execution, not only of the person seeking to abscond, but also his family. While there had been successful desertions by cadres during the DK period, this could only occur under special circumstances,<sup>vii</sup> and not without risk.<sup>viii</sup>

### **Stéphane Hessel**

On Tuesday afternoon, 91-year-old Stéphane Hessel gave lucid and poignant testimony on national reconciliation and forgiveness. Mr. Hessel is a former member of the French resistance in World War II who had been deported to concentration camps, and who had gone on to participate in the drafting of the Universal Declaration of Human Rights and work towards Franco-German reconciliation. Interestingly, Mr. Hessel expressed surprise when informed by the Chamber at the outset that the supposed purpose of the Defense's request to have him testify was for him to share his experience with forgiveness. In the end, the main themes of his testimony appeared to be that of national reconciliation and, under the Defense's questioning, of the possibility of the Accused's redemption.

To Mr. Hessel, forgiveness was a personal matter for the victims, and it was not essential to national reconciliation to expect forgiveness from victims. The role of judicial proceedings in national reconciliation was to bring to public knowledge the horrors that occurred, and "should not be compromised and sparing to those who bear responsibility for these events." Recalling and revealing the truth of the criminal acts that had occurred was the *sine qua non* condition of reconciliation; reconciliation could be considered only if impunity was brought to an end; reconciliation did not mean forgiveness, but instead meant building up a peaceful nation.

When asked by International Defense Counsel Francois Roux if the possibility of the Accused's redemption was what justice saw as truly at stake, Mr. Hessel saw this view as "embarrassing" in light of the victims' pain. When an evocative passage from the poem "The Death of a Wolf" by Alfred de Vigny,<sup>ix</sup> which the Accused had quoted earlier in the trial, were again read out by Roux, Mr. Hessel pointed out that if the poem expressed the aspirations of the Accused, the Accused would suffer through his possible sentence with the same strength and courage as the protagonist – "a genuinely honorable and stoic man would not wish for anything but fair retribution for crimes of which he knows he is guilty."

### **Christopher Lapel**

On Tuesday, Christopher Lapel appeared before the Chamber to testify as a character witness for the Accused. In January 1996, the 51-year old pastor of Goldenwest Christian Church of Los Angeles baptized the Accused in Battambang. After Duch's arrest in 1999, Pastor Lapel had visited the Accused several times during his detention. He confirmed that at the time of the Accused's conversion, he had known him as Hang Pin and only came to know about his past in April 1999 from a reporter from the Associated Press.

***The Accused's Conversion to Christianity.*** In December 1995, Pastor Lapel's church organized a 2-week Christian leadership training programme, at the conclusion of which the Accused was baptized. This training was deemed sufficient to qualify the Accused as a lay minister with authority to lead services and baptize new believers. It was therefore not peculiar for the Accused to establish a house church in his own village with a membership of 14 families almost immediately after his baptism.

**Character of the Accused.** Pastor Lapel described the Accused as “a man with certain heart, a man who loved the Lord, committing his life to share the Lord with others ... a man who is friendly, with hospitality ...” He acknowledged, however, that in the period prior to the Accused’s detention he did not have much chance to personally converse with him. He was unaware of Duch’s past, and came to know of the passing of the Accused’s wife from a member of his congregation. Pastor Lapel attributed this lack of personal contact to the fact that there were many participants at the leadership training attended by the Accused.

**Genuineness of the Accused’s Conversion and Remorse.** Pastor Lapel confirmed his earlier statement to journalist Nic Dunlop that during the leadership training, the Accused had stepped forward and stated that “he had sinned to such extent that he did not think his brothers and sisters would not forgive him.” However, he did not inquire further about the nature of his past. He was of the opinion that the Accused’s conversion to Christianity was due to him “finding Jesus in his heart” and not out of pragmatism. He further confirmed that during his visits to the Accused in detention, the Accused had expressed his remorse for the crimes committed against the Cambodian people.

**Forgiveness.** Pastor Lapel, whose immediate family members had also fallen victim to Khmer Rouge, claimed that he had forgiven the Accused. He admitted however that his forgiveness was due to his faith and perhaps for other victims this may not come easily. He also expressed his pride that the Accused had “...admit[ted] his guilt [and taken responsibility for] crimes he did during the Khmer Rouge,” and had expressed his willingness to accept punishment.

### **Kaing Gek Eav alias Duch**

On Tuesday, the questioning of Duch regarding his character resumed and was completed on Wednesday. Much of the examination was concentrated on the extent of Duch’s influence and independence within the CPK ranks as well as his motivation to remain with Khmer Rouge even after the Vietnamese invasion. International Defense Counsel Roux focused on Duch’s willingness to assist the ascertainment of the truth and the genuineness of Duch’s remorse. Upon inquiry on his willingness to facilitate reconciliation with the victims, Duch welcomed visits from any victim who wished to do so, stating, “I open the door to them emotionally. I would like to express [my] inner emotion[s]... so that they can see my true self.”

**Duch’s Loyalty to the CPK.** Duch claimed that he had been largely inspired by Mao’s revolutionary ideology. Duch explained that in the period before 1970 he had already been “hooked” to Mao’s theories. His reading of books led him to believe that Mao’s principle that “the true love of the people is the sacrifice and to provide total authoritarianism to the proletariat class”, was more applicable than other theories he had learnt. He also reiterated his motivation for joining the CPK, namely, the arbitrary political arrest of six of his school’s students in the 1960s by the Government.

Duch again recounted his earlier devotion to Communism. During his stint as school teacher, for example, he had given most of his 7000 riel salary to Angkar rather than his parents. He had also been imprisoned for his participation in the movement. After Lon Nol’s coup d’état in the 1970s, Duch had joined the Khmer Rouge guerilla movement. Prior to doing so, he had attempted to persuade his family to believe in the cause. He had also adhered to the Party’s requirements in terms of the choices made in his private life. He explained for example, that he was prohibited from choosing a spouse from amongst the “17 April people”. He thus chose to marry a

party member who had participated in the struggle against Lon Nol's regime. Duch also confirmed that he regarded his own children as "children of Angkar" and raised them to serve the revolution.

Despite his devotion to the ideology, Duch explained that he had loathed his assignment to M13 to do what he termed as "police work". He rejected the notion that he was pleased with his appointments as Chairman of M13, and Deputy Chairman and subsequently Chairman of S21. In his opinion, these positions were assigned to him not because he had deliberately competed with Nath, but because he was found to be better at pleasing his superiors. He confirmed his earlier stance that he had only agreed to do "police work" because his superior had promised him that "Angkar would take full responsibility" and that his position would require him to receive and gather information from people others had arrested and not to conduct arrests himself. He claimed to have also been assured that he would not be required to murder anyone, and was to let his staff with peasant backgrounds to do the deed. Duch stated that he had only learnt how to shoot firearms years after the Vietnamese invasion in 1979 as part of his bird-shooting hobby.

Duch's claim of disillusionment of CPK's brand of revolution appeared inconsistent with the fact that he had stayed with the party even after the Vietnamese invasion. This, the International Co Prosecution asserted, signified that he had not committed the crimes at S21 out of fear of being purged, but rather out of faithfulness to the cause that continued until the 1990s. Duch rejected this notion. He emphasized his lack of choice at the time. According to him, it was not possible to surrender to the invading forces given the position he held at the time, and his concern for the fate of hundreds of his subordinates if he chose to abscond.

***The Extent of Duch's Autonomy and Influence.*** One of the contentious issues throughout this trial has been to what extent Duch enjoyed autonomy in decision-making as the Chairperson of S21. The Prosecution has constantly questioned the genuineness of Duch's claim that he had been at risk of being purged, and that it was this fear that motivated him to execute the tasks assigned to him by his superiors as efficiently as possible. It was to this end that Duch was questioned on how his siblings could avoid arrest even after their spouses were smashed, and how Duch himself had not been eliminated even after his former superiors, such as Koy Tun and Von Vet were smashed at S21. This seemed to suggest that he was to a certain extent exempt from the CPK policy of eliminating not only enemies but also their family members and associates. Duch claimed that the arrest of his former superiors had in fact deepened his fear of being purged. Duch also stated that although he had limited influence enabling him to vouch for his siblings, ultimately, he still had to obey his superiors' orders.

It was revealed that Duch had lost a number of family members, namely the husbands of his two sisters, both of whom were members of the Party, and the brother of his wife, a traditional musician who was buried in a mass grave with other artists. One brother-in-law, Sieb Sokharn, had been arrested in Kampong Thom Sector. Duch claimed to have not been informed of this. Keo Li Tong Hout, the husband of Duch's second sister, had been smashed in S21. Both sisters and their children escaped being smashed. Duch explained that he could vouch for his sisters to his superiors by promising to re-educate them. However, Duch emphasized that his influence was limited, a point that he attempted to substantiate by emphasizing Keo Li Tong Hout's demise.

Keo Li Tong Hout was the husband of Duch's second sister and worked as the Deputy Chief of the Security Office at Kampong Thom. Duch had received a letter from Kao informing him of the latter's detention. After Duch reported the letter to Son Sen, Keo was subsequently released. Duch maintained that he did not know whether this was a direct consequence of his report. Keo's family stayed with Duch for some time, and when Son Sen ordered his arrest, Duch again tried to delay this. He instead ordered Kao to write his own confession, which was subsequently sent to Son Sen. Duch also tried to install Keo in S21's map drawing unit as a form of reeducation. However, Keo made several more "mistakes", such as insisting in participating in interrogations. After Son Sen warned Duch of the danger of covering for an enemy, Duch ordered Keo's arrest and execution. Duch explained that he had to do so because Keo's continued freedom would have endangered his whole family. Vouching for Keo's continued misdeeds could mean that he himself and subsequently his entire immediate family would be purged.

***Duch's Remorse and Cooperation with the Judicial Process.*** International Defense Counsel Roux reminded the Court that Duch was the first defendant in an International Criminal Tribunal who had agreed to participate in a reconstruction visit to the site of the crimes charged against him. Duch also pledged to continue contributing to the process to ascertain the truth. He promised to keep his door open to the Co-Prosecutors and victims to answer any further inquiries they may have with regards to the crimes he had committed

---

<sup>i</sup> Justice Goldstone has been both a trial and appellate judge of the South African Transvaal Supreme Court, and from 1994 to 2003 was a justice of the Constitutional Court of South Africa. Other distinctions in his career include the following: From 1993 to 2007, he was Chancellor of the University of [robttersran] in Johannesburg. He is presently a visiting professor of law in Fordham law school in the USA, and has been visiting professor at the law schools of Harvard, New York University and Georgetown. He has been a member of advisory boards broadly concerned with human rights, justice and reconciliation, such as the Institute of Historical Justice and Reconciliation and the International Human Rights Institute of the International Bar Association. From 1999 to 2003, he was a member of the international group of advisors of the International Committee of the Red Cross, and from 1985 to 2000 was national president for the National Institute for Crime Prevention and Rehabilitation of Offenders in South Africa. He also led the UN fact-finding mission to Gaza, the International Independent Inquiry on Kosovo, and was co-chairperson of the International Task Force on Terrorism established by the International Bar Association.

<sup>ii</sup> Erdemović was a member of the Bosnian-Serb army who admitted to joining a firing squad and shooting and killing at least 70 men and boys. After being charged before the ICTY, he pleaded guilty, gave a full confession, apologized to the victims and significantly, gave evidence that led to the discovery of mass graves that proved that a massacre had occurred. As a result, the Bosnian-Serb government and army's fabricated denials of the occurrence of the massacre were put to an end. See Drazen Erdemović (Pilica Farm Case No. IT-96-22).

<sup>iii</sup> In addition, Raoul Marc Jennar holds doctorate degrees in political science from Belgium and France, as well as a doctorate in Khmer Science and Studies from *Institut National des Langues et Civilisations Orientales* (INALCO). His past experiences include a stint as advisor to the French Government and Parliament, a consultant to the United Nations Transitional Authority in Cambodia, an international observer on the withdrawal of the Vietnamese expedition corps in 1979 and an advisor to Yale University's Cambodian Genocide Program, which subsequently established the Documentation Center of Cambodia.

<sup>iv</sup> For example, Deputy International Co-Prosecutor de Wilde asked Mr. Jennar for a list of sources he relied on in making his conclusion that no hierarchy existed among the 196 DK Security Offices.

<sup>v</sup> Mr. Jennar gave the following reasons for this conclusion. Warning to the Accused of the arrival of the Vietnamese in Phnom Penh had come to late for him to order the destruction of S21 records, while other Security Offices had been given prior warning. This likely explained why S21 records were significantly more extensive than at other Security Offices. Further, whether other Security Offices were truly less efficient than S21 was questionable given that the total number of people who perished during the DK regime – over 1 million – was far greater than the figure of 12,000-odd persons estimated to

---

have died at S21. He also pointed out that the figures of victims at other Security Offices were sometimes a lot higher than at S21, but did not elaborate on these figures.

<sup>vi</sup> Mr. Jennar regarded Duch's rank as equivalent to that of commander and below the rank of general.

<sup>vii</sup> An example cited was the desertion of current Cambodian Prime Minister Hun Sen, who could do so only because he had been stationed 5km from the Vietnamese border. Duch, who was in Phnom Penh, would likely have found it more difficult to do so.

<sup>viii</sup> The example cited was the risk of deportation back to Cambodia at least until 1978, when Vietnam severed diplomatic relations with the DK regime and ceased such deportations of Cambodian refugees.

<sup>ix</sup> The relevant passage from the poem reads "*With all your being you must strive/ With strength and purpose and with all your thought/ To gain that high degree of stoic pride/ To which, although a beast I have aspired/ Weeping or praying - all this is in vain. / Shoulder your long and energetic task,/ The way that Destiny sees fit to ask,/ Then suffer and so die without complaint.*"





**WSDHANDACENTER**  
FOR HUMAN RIGHTS & INTERNATIONAL JUSTICE  
*Stanford University*

This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

A complete archive of trial monitoring reports is available online at:

<http://handacenter.stanford.edu/reports-list>

For more information about Handa Center programs, please visit:

<http://handacenter.stanford.edu>

---