

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.ⁱ 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*.ⁱⁱ 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.ⁱⁱⁱ 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,^{iv} 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.^v 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.^{vi} 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,^{vii} and not without risk.^{viii}

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,^{ix} 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

ⁱ 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.

ⁱⁱ 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).

ⁱⁱⁱ 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.

^{iv} 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.

^v 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.

^{vi} Mr. Jennar regarded Duch's rank as equivalent to that of commander and below the rank of general.

^{vii} 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.

^{viii} 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.

^{ix} 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.*"