

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

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Before:

The Trial Chamber:

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
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Judge Jean-Marc LAVERGNE
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E159/5

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I. FACTUAL AND PROCEDURAL BACKGROUND**A. PROCEDURAL BACKGROUND**

1. On 3 July 2006, the Co-Prosecutors initiated a preliminary investigation into crimes under the ECCC Law committed during the period of Democratic Kampuchea.
2. On 18 July 2007, the Co-Prosecutors submitted an Introductory Submission involving five suspects including DUCH.
3. On 30 July 2007, DUCH was placed under a detention order and transferred to the ECCC Detention Centre.
4. On 19 September 2007, the Co-Investigating Judges ordered the separation of the case file dealing with DUCH's responsibility for the crimes committed at S21.
5. On 18 July 2008, the Co-Prosecutors filed their Final Submission requesting the Co-Investigating Judges to indict DUCH and send him for trial.
6. On 8 August 2008, the Co-Investigating Judges issued a Closing Order by which they indicted DUCH and sent him for trial.
7. On 5 August 2008, the Co-Prosecutors appealed the Closing Order requesting that DUCH be charged for violations of the Cambodian Penal Code and for his participation in a joint criminal enterprise.
8. On 16 September 2008, the Defence filed a brief in response to the appeal of the Co-Prosecutors against the Closing Order.
9. On 13 January 2009, the Pre-Trial Chamber issued its decision on the Co-Prosecutors' appeal, adding to the charges laid in the indictment, a charge of violating the 1956 Cambodian Penal Code.

10. During this period, 93 victims were joined to the proceedings as Civil Parties. Twenty eight of them are represented by the Co-Lawyers for Group 3.
11. On 17 February 2009, the trial of the Accused commenced.
12. By direction dated 27 August 2009, the Trial Chamber ordered the Civil Parties to file their final written submissions in preparation of the hearing of the closing statements. The said final written submissions were required to stipulate the form or forms of awards of collective or moral reparations which, according to them, should be awarded against the accused, if convicted.

B. THE FACTS

13. The Civil Parties (Group3) (CG3) will limit themselves to a brief summary of the facts as well as the characterisations and rely on the briefs of the Prosecution to establish and recall these elements more comprehensively.¹

1. THE S21 COMPLEX

14. On 17 April 1975, the Communist Party of Kampuchea (CPK), which had taken over power in Cambodia, set out to radically alter Cambodian society along ideological lines forcibly introducing economic and social changes.
15. For three years, eight months and twenty days, the CPK and its members governed Democratic Kampuchea and implemented its policies by relying on a nation-wide network of detention and security centres where a large number of Cambodians were unlawfully detained, mistreated, tortured and executed.
16. This is the context in which the S21 Security Centre was established shortly after the Khmer Rouge took power. On 15 August 1975, a meeting attended by Son Sen, In Lorn alias

¹ In particular, Introductory Submission No. 008, dated on 18-07-2007, Document D3, ERN 00185898-00186167 (Khmer), ERN 00197410-00197545 (French), ERN 00147244-00147399 (English); but also Closing Order KAING Guek EAV, alias Duch, ERN 00212144-00212279 (Khmer), ERN 00210861-00210938 (French), ERN 00210783-00210860 (English)

² Testimony of the Accused, Transcript of the trial proceedings of 16 June 2009, document E1/33.1, ERN 00342749-00342828 (Khmer), ERN 00342059-00342169 (French), ERN 00341955-00342058 (English).

Nat and DUCH was held for the purpose of establishing S21. Nat was appointed Chairman of S21 and Committee Secretary with DUCH as his deputy in charge of the interrogation unit. S21 became fully operational in October 1975.

17. In 1976, DUCH was promoted to Secretary of S21 because, to use his own words, “[i]t was because I was the best in the practice of interrogations”.² He performed these duties until the fall of the Khmer Rouge regime.

18. The S21 Detention Centre played a central role within the Angkar. It had a direct link to the Central Committee and the Standing Committee and it was tasked with implementing the Party’s policy to smash the enemies of the Party.

19. The S21 Security Centre was moved several times before it was located in April 1976, on Duch’s order, in the premises of the Lycée Pohnea Yat, known today as the Tuol Sleng Genocide Museum, where it remained until the collapse of the regime.

20. About 12,800 individuals were detained at S21,³ the majority of them being Cambodians, but also including Vietnamese civilians and soldiers as well as foreigners.⁴ This figure is only an estimate and the Accused himself acknowledges that the actual number of detainees is higher than the number that can be established with the help of existing archives.⁵

21. Arrests were decided by the Party, notably by the Central Committee. Those deemed enemies were arbitrarily arrested and detained. There was no judicial process by which detainees could challenge their detention.⁶

³ Revised list of S21 prisoners, Document E68.1, ERN 00329596-00330129 (Khmer and English)

⁴ Testimony of Man Nai, Transcript of the trial proceedings of 15 July 2009, Document E1.49, ERN 00353827 (Khmer), ERN 00351882 (French), ERN 00351798 (English)

⁵ Defence Position on the Facts Contained in the Closing Order, Document Document E5/11/6.1 Annex 1, para.102, ERN 00294707 (KH), ERN 00294650 (FR), ERN 00326428 (ANG)

⁶ Introductory Submission No. 008, dated on 18-07-2007, Document D3, ERN 00185898-00186167 (Khmer), ERN 00197410-00197545 (French), ERN 00147244-00147399 (English); Closing Order KAING Guek EAV, alias Duch, ERN 00212144-00212279 (Khmer), ERN 00210861-00210938 (French), ERN 00210783-00210860 (English), Transcript of the trial proceedings of 15 June 2009, Document E1/32.1, ERN 00341819 (French).

22. Prisoners were detained under inhuman conditions and were deprived of their most basic rights. Detention facilities were inadequate. In collective cells, prisoners were shackled and their feet were chained side by side. Prisoners were kept in restraints nearly twenty-four hours a day and slept on the floor. They could only wear underwear and could not wash themselves. Sanitation conditions were more than awful. Detainees had to urinate and defecate in their cells in containers kept for that purpose. In fact, they had to obtain permission from the guards before they could relieve themselves. The food regime was inadequate and some detainees died of hunger. The sole purpose of the basic medical services provided was to keep the detainees alive so that their confessions could be extracted. S21 detainees lived in a permanent climate of fear.

23. At S21, detainees were almost routinely subjected to interrogation and tortured to make them confess. Once prisoners were deemed to have properly confessed, they were executed either inside the S21 compound and its vicinity or at Takmao. In 1976, in order to avoid epidemics, DUCH relocated the execution site to Choeung Ek where the remains of more than 9,000 persons were uncovered.

24. The S24 Re-education Centre was also part of this complex. Men, women and children detained at S24 were subjected to hard labour and deprived of freedom. Food was very inadequate, especially given that the amount of work required of the detainees was enormous. Sanitation conditions were deplorable and detainees had no access to medical services; they were beaten and lived in constant fear of disappearing, of being arrested or executed.⁷

2. THE ROLE OF THE ACCUSED

25. From August 1975 to October 1976, DUCH was Deputy Secretary of S21, and during that period, he was in charge of the interrogators. In 1976, DUCH was appointed Chairman of

⁷ Testimonies of Civil Parties Chin Meth, Transcript of the trial proceedings of 08 July 2009, Document E1/45.1, ERN 00350344-00350432 (Khmer), ERN 00349829-00349942 (French), ERN 00349723-00349828 (English) and of 09 July 2009, Document E1/46.1, ERN 00350447-00350548 (Khmer), ERN 00350549-00350654 (French), ERN 00350671-00350756 (English); and Testimonies of Civil Parties Chum Neou, Transcript of the trial proceedings of 20 August 2009, Document E1/66.1, ERN 00368463-00368538 (Khmer), ERN 00368367-00368462 (French), ERN 00368274-00368366 (English) and Transcript of the trial proceedings of 24 August 2009, E1/67.1, ERN 00370855-00370949 (Khmer), ERN 00370737-00370854 (French), ERN 00370628-00370736 (English)

⁸ See, in particular: Testimony of the Accused, Transcript of the trial proceedings of 16 June 2009, Document E1/33.1, ERN 00342148 (French).

S21; thus, until the collapse of the Khmer Rouge regime, he held the highest position at S21. The entire staff at S21 was under DUCH's authority and his direct subordinates reported to him personally.

26. DUCH's primary duty was to implement the PCK's policy on the search and smashing of the enemies of the Party. DUCH was also the guarantor of the security of the Party Centre and had to ensure that the "secret" not be disclosed. DUCH reported directly to the Standing Committee and participated in certain meetings of Senior Party leaders.

27. By reason of his functions, DUCH participated in and was aware of the crimes committed at S21. In devising the confession technique of implicating strings of traitors, DUCH participated in the arrest, detention and execution of thousands of persons.

28. DUCH claims that he only carried out orders given and that any non-compliance with his superiors or Party policy would have meant his death.⁸ However, DUCH was able to exercise a degree of freedom from Party orders. According to the Accused, Uncle Nuon allegedly ordered him to give poison pills to some prisoners, an order that he did not follow.⁹ The Accused was never bothered as a result of this non-compliance with a direct order from one of the most senior leaders of the PCK.

29. Similarly, the Accused enjoyed a certain latitude with respect to reporting and following up on the implication of others in detainees' confessions. According to Him Huy, DUCH was partial to people from the East Zone. When members of the East Zone were implicated by detainees, DUCH did not have them arrested. However, when former members

⁹ Testimony of the Accused, Transcript of the trial proceedings of 16 June 2009, Document E1/33.1, ERN 00342164-00342168 (French).

¹⁰ Testimony of Him Huy, Transcript of the trial proceedings of 2 July 2009, Document E1/51.1, ERN 00354747 (French); Testimony of Him Huy before the OCIJ, D19/V, 18 September 2007, ERN 00146653-00146653 (Khmer), ERN 00148089-00148101 (French).

¹¹ Testimony of the Accused, Transcript of the trial proceedings of 16 June 2009, Document E1/33.1, ERN 00342775 (Khmer), ERN 00342091 (French).

¹² Testimony of Him Huy, Transcript of the trial proceedings of 2 July 2009, Document E1/51.1, Questioning of Him Huy before the OCIJ, D5/22, ERN 00104913 (English).

¹³ Testimony of Man Nai, Transcript of 15 July 2009, Document E1/49.1, ERN 00353814-00353877 (Khmer), ERN 00351867-00351952 (French), ERN 00351784-00351866 (English).

¹⁴ Testimony of the Accused, Transcript of 15 June 2009, Document E1/32.1, ERN 00341881-00341954 (Khmer), ERN 00341803-00341804 (French), ERN 00341683-00341779 (English).

of the 703rd Division were implicated, DUCH would order that they be arrested.¹⁰ The Accused himself acknowledge having opposed the arrest of someone he knew and who had been implicated in Khoy Thuon's confessions. If his request was not acted upon it is because in this particular case, the confessions came from an important prisoner.¹¹ Duch's subordinates themselves could block a given arrest and thus his or her smashing at S21. Him Huy states that he received an order to arrest someone, but refused to carry out the order. His preference was to request the re-education of the prisoner rather than arrest him.¹² Mam Nai states that he could protect certain persons he knew and thus avoid their arrest and detention at S21.¹³

30. DUCH was responsible for arrests of S21 and S24 staff. While the Accused claims that he could not decide to carry out an arrest without the approval of his superiors, he also admits that whenever he reported any person to the higher echelon, his reports were always given the green light.¹⁴ The approval of his superiors can thus be considered as a mere formality.

II. LEGAL CHARACTERISATION

31. Mr Kaing Guek Eav alias DUCH is charged with the following crimes:

- a. Crimes against humanity, punishable under articles 5, 29 (new) and 39 (new) of the ECCC Law, and more specifically murder, extermination, enslavement, imprisonment, torture, rape, persecution and other inhumane acts.
 - b. Grave breaches of the Geneva Conventions of 12 August 1949, punishable under articles 6, 29 (new) and 39 (new) of the ECCC Law, and more specifically wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial and unlawful confinement of civilians.
 - c. Violations of the 1956 Penal Code punishable under articles 5, 29 (new) and 39 (new) of the ECCC Law, and more specifically murder and torture. This
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characterisation must be maintained because, as the CPG3 argued in its 18 May 2009 brief, it cannot be assumed that the prosecution of the domestic crimes was time-barred.¹⁵

32. Article 29 of the ECCC Law states that a person who “planned, instigated, ordered, aided and abetted, or committed the crimes referred to in article 3, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime”. In his capacity as Deputy Secretary, then Secretary of S21, DUCH committed, by these material acts and by his participation in a joint criminal enterprise¹⁶ crimes within the jurisdiction of the ECCC. DUCH also planned, instigated and ordered the commission of the said crimes. By aiding and abetting the perpetration of these crimes, DUCH aided and abetted these offences. Throughout the existence of S21, DUCH was in a position of command and exercised *de jure* and *de facto* authority over all the staff of the Security Centre and, as such, he must also be held responsible in his capacity as a superior.

III. ADMISSIBILITY OF CIVIL PARTY APPLICATIONS

33. Group 3 includes direct and indirect victims of the atrocities perpetrated at the Tuol Sleng Detention Centre, known as S21, at Prey Sar Camp, known as S24, at Choeung Ek, the execution site of which Kaing Guek Eav alias DUCH was one of the organisers, one of those in charge before ultimately becoming its director.

A. LEGAL BASIS

34. Rule 23(2) of the Internal Rules (Rev.4, 11 September 2009) states that “[t]he right to take civil action may be exercised by Victims of a crime coming within the jurisdiction of the ECCC, without any distinction based on criteria such as current residence or nationality. In order for Civil Party action to be admissible, the injury must be:

- a) physical, material or psychological;

¹⁵ Response (Group 3) to the Preliminary Objection Concerning Expiry of the Statute of Limitations for Domestic Crimes of 18 May 2009, Document E9/6, ERN 00330673-00330682 (French).

¹⁶ Foreign Co-Lawyers (Ms. Martine JACQUIN and Mr. Philippe CANONNE) for the Civil Parties Response to the amicus curiae Briefs, 17 November 2008, Document D99/3/33, ERN 00239132-00239140 (FR), ERN 002391141-00239153 (KH), ERN 00239124-00239131 (ANG) and CPL3’s submission in support at the request of the co-prosecutors to make apply in the case in point the theory of joint criminal enterprise on 16 September 2009, Document E73/3, ERN 00378196-00378206 (Khmer), ERN 00378187-00378195 (French).

b) the direct consequence of the offence, personal and have actually come into being”.

35. Rule 23(5) states that “[a]ll Civil Party applications must contain sufficient information to allow verification of their compliance with these IRs. In particular, the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator...”.

36. Rule 23(10) states that “[a]t any time, a Civil Party may expressly waive the right to request reparation, or abandon a Civil Party action ...”.

37. Rule 80 bis (3) states that “[t]he Chamber shall consider matters dealt with in Rule 83 and Rule 89.”

38. Rule 83(1) states that “[a]t the initial hearing, the Chamber shall consider any applications submitted by Victims to be joined as Civil Parties, as provided in Rule 23(4)...”.

B. ANALYSIS OF THE ADMISSIBILITY OF THE CIVIL PARTY APPLICATIONS

39. Group 3 is composed of 27 Civil Parties recognised at the judicial investigation stage and by the Trial Chamber: Mrs MEAS Keth Sampotre, Mrs TIOULONG Antonya, Mrs TIOULONG Néva, Mrs KIMARI Névinka, Mr KHUON Sarine, Mrs KIMARI Visaka, Mrs SUON Sokhomaly, Mr OUK Vasouthin, Mrs MEAS Saroeun, Mrs KAN San, Mrs SEK Siek, Mrs CHIN Meth, Mr PHOUK Khân, Mr LAY Chan, Mrs Martine LEFEUVRE, Miss OUK Neary, Mrs SO Saung, Mrs NHOEM Kim Hoeun, Mr KLAN Fit, Mrs HEAT Tey Chov, Mrs BUN Srey, Mrs PANN Pech, Mrs CHANN Yoeung, Mrs SOEM Pov, Mrs HOL Voeun or UNG Voeun, Mr CHHAT Kim Chhun, and Mr MÂN Sothea.

40. The Trial Chamber rejected E2/39’s civil party application and one of the civil parties, Mrs BUN Srey abandoned her action after she had been granted civil party status.

41. At the various hearings, the Accused disputed a number of civil party applications.

42. Accordingly, we shall now analyse each civil party application by distinguishing those the Accused recognises from those that he disputes. Then there is a third category: those that are not disputed by the Accused.

1. APPLICATIONS RECOGNISED BY THE ACCUSED

43. During the trial proceedings, the Accused recognised the merits of certain civil party applications. He also admitted his responsibility and apologised to the Civil Parties.

44. Accordingly, the following civil party applications will be declared admissible:

a. CASES OF MRS MEAS KETH SAMPOTRE (D25/8), MRS TIOULONG ANTONYA (D25/27), MRS TIOULONG NÉVA (D25/28), MRS KIMARI NÉVINKA (D25/26), and MRS KIMARI VISAKA (E2/29)

45. Mrs MEAS Keth Sampotre (D25/8), wife of Samdech NHOEK Tioulong, applied to be joined as a civil party on account of the death of her daughter Mrs TIOULONG Raingsy¹⁷ who was detained, tortured and smashed at S21.

46. Mrs TIOULONG Antonya and Mrs TIOULONG Néva applied to be joined as civil parties on account of the death of their sister TIOULONG Raingsy.

47. Mrs KIMARI Névinka and Mrs KIMARI Visaka are the daughters of Mrs Raingsy TIOULONG and Mr Lim KIMARI who were detained and smashed at S21. They applied to be joined as civil parties on account of the loss of their parents.

48. The following documents were submitted to the Chamber in order to establish the connection between the victims and S21:

- a. The confession of Mrs TIOULONG Raingsy¹⁸ as well as her S21 photograph and biography.¹⁹

¹⁷ Testimony of Civil Party, Transcript of the trial proceedings of 18 August 2009, Document E1/64.1, ERN 00366386 (Khmer), ERN 00366278 (French)

b. Mr LIM Kimari's S21 photograph and prisoner biography.²⁰

49. At the trial proceedings, the Accused referred several times to the fact that Raingsy Tioulong was detained at S21.²¹ As a result of Antonya Tioulong's testimony, DUCH admitted the detention and execution of Raingsy Tioulong and Lim Kimari.²²

50. The Civil Party's testimony²³ also highlighted the suffering caused to the entire family by the disappearance of the couple, a trauma that lasts to this day. A medical certificate concerning Mrs KIMARI Visaka²⁴ was also led into evidence providing proof of the psychological impact caused by the execution of her parents.

51. Mrs MEAS KETH, Mrs TIOULONG Antonya Mrs TIOULONG Néva, Mrs KIMARI Névinka and Mrs MIMARI Visaka therefore suffered an indisputable psychological injury as a result of the death of Raingsy TIOULONG and Lim Kimari at S21, and are therefore entitled to be joined as civil parties and to seek reparation for the injury.

b. CASE OF MRS CHIN METH (E2/80)

52. Mrs CHIN Meth is a survivor of the Prey Sar Re-education Centre. In her civil party application, she described the crimes that caused her suffering.²⁵ This was more fully described during her testimony before the Trial Chamber.²⁶

¹⁸ Biography and confession of TIOULONG Raingsy, Document D25/8/ 2, ERN 00198659-00198697 (Khmer), ERN 00198653-00198656 (French), ERN 00198698- 00198698 (English).

¹⁹ Biography and confession of TIOULONG Raingsy, Document D25/8/ 2, ERN 00198659-00198697 (Khmer), ERN 00198653-00198656 (French), ERN 00198698- 00198698 (English).

²⁰ S21 photography of Lim Kimari, Document E2/29.3 Annexe 3, ERN 00211859 ; Biographie S21 de Lim Kimari, Document E2/29.2 Annexe 2, ERN 00088813 (KH), ERN 00211838(FR), ERN 00226076 (ANG).

²¹ Testimony of the accused, Transcript of the trial proceeding of 29 April 2009, Document E1/18.1, ERN 00325977(FR), Testimony of the accused, Transcript of the trial proceeding of 16 June 2009, Document E1/33.1, ERN 00342140 (FR), Testimony of the accused, Transcript of the trial proceeding of 22 June 2009, Document E1/35.1, ERN 00344341(FR), Testimony of Civil Party, Transcript of the trial proceedings of 18 August 2009, Document E1/64.1, ERN 00366386 (Khmer), ERN 00366278 (French).

²² Testimony of Civil Party, Transcript of the trial proceedings of 18 August 2009, Document E1/64.1, ERN 00366386 (Khmer), ERN 00366278 (French).

²³ Testimony of civil party, Antonya TIOULONG, Transcript of trial proceedings of 18 August 2009, Document E1/64.1, ERN 00366121-00366236 (Khmer), ERN 00366237-00366358 (French), ERN 00198698-00198698 (English).

²⁴ Letter of Brigitte Lutz, Document E5/7.1 Annexe 1, ERN00271924 (French).

²⁵ Victim Information Form -- Chin Met, Document E2/80, ERN 00281149- 00281154 (Khmer), ERN 00286722-00286725 (French), ERN 00322287- 00322291 (English).

²⁶ Testimonies of Civil Parties Chin Meth, Transcript of trial proceedings of 08 July 2009, Document E1/45.1, ERN 00350344-00350432 (Khmer), ERN 00349829-00349942 (French), ERN 00349723-00349828 (English)

53. In support of her testimony, her Prisoner photography and biography were filed.²⁷

54. Following the adversarial debate concerning the evidence in support of her civil party application, DUCH admitted his responsibility for the detention of Mrs CHIN Meth at S24.²⁸

55. Mrs CHIN Meth still displays all the evidence from her time at Prey Sar. The shackles she wore bit into her flesh and the scars are still visible. Her health was destroyed by the hard labour and inadequate food. Mrs CHIN Meth was psychologically scarred by the arbitrary detention, the beatings, the hard labour, the lack of food and the constant climate of fear. Her suffering is the direct consequence of the doings of the Accused.

56. It is clear that she has suffered an indisputable physical and psychological injury for which she is entitled to reparation and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

c. CASE OF MRS MARTINE LEFEUVRE (E2/85) AND MISS OUK NEARY (E2/89)

57. Mrs Martine LEFEUVRE and Miss OUK Neary are respectively the wife and daughter of the victim, Mr OUK Ket, who was First Secretary at the Cambodian Embassy in Senegal.

58. The victim returned to Cambodia 'at the request of the Government of Democratic Kampuchea'.²⁹ On his arrival, he was arrested and sent to S21 where he was detained, tortured and executed.

and Transcript of trial proceedings of 09 July 2009, Document E1/46.1, ERN 00350447-00350548 (Khmer), ERN 00350549-00350654 (French), ERN 00350671-00350756 (English).

²⁷ Photo of Chin Meth, Document E2/80/4.1, ERN 00343199-00343199 (Khmer), Document E2/80/4.2, ERN 00343200-00343200 (Khmer), ERN 00347466-00347467 (English).

²⁸ Transcript of trial proceedings of 13 July 2009, Document E1/47.1, ERN 00351059 (Khmer), ERN 00350983 (French), ERN 00350895 (English).

²⁹ Letter of Ambassador of Democratic Kampuchea, Document E2/85.11, ERN 00281227-00281227 (Khmer), ERN 00338993-00338993 (French), ERN 00326564-00326564 (English).

59. Their civil party applications were substantiated by a number of documents filed before the Chamber. With respect to the kinship between the victim and the Civil Parties, a copy of Mrs Martine LEFEUVRE and Mr OUK Ket's marriage certificate³⁰ and a copy of the Miss OUK Neary birth³¹ certificate were submitted.

60. The connection with S21 is established by the photograph of Mr OUK Ket taken at S21³² and by the fact that the name of the victim appears on the S21 list of prisoners to be executed on 09 December 1977³³ and on the list of S21 prisoners from the Ministry of Foreign Affairs.³⁴ Following the Civil Parties' testimony, DUCH admitted his responsibility for the arbitrary detention, torture and execution of Mr Ouk Ket at S21.³⁵

61. The Civil Parties were deprived of a father and a husband by the fault of the Accused. This suffering which was expressed during their testimony³⁶ is still being felt to this day. A copy of a medical certificate concerning the psychological treatment of Miss OUK Neary prepared by Dr Michel DEPEYROUX, an expert on children whose parents are or have been in detention³⁷ was led into evidence.

62. Mrs LEFEUVRE and Miss OUK suffered an indisputable injury as a result of the death of Mr OUK Ket at S21, and are therefore entitled to be joined as civil parties and to seek reparation for the injury.

³⁰ Extract of marriage certificate of OUK Ket and LEFEUVRE Martine, Document E2/85.4, Annex 4, ERN 00281224- 00281224 (French).

³¹ Extract of birth certificate-OUK Neary, Document E2/89.5, Annex 5, ERN 00281225-00281225 (French).

³² Photograph of OUK Ket at S21, Document E5/13.1 Annexe 1, ERN 00285014.

³³ Names of prisoners executed on 9 December 1977, Document E2/89.20, Annex 20, ERN 00281230-00281230 (Khmer), ERN 00339169-00339169 (French), ERN 00328268-00328270 (English).

³⁴ List of prisoners, Document D25/5/9 Annexe 9, ERN 00188857 (Khmer).

³⁵ Testimony of Civil Parties, Transcript of the trial proceedings of 17 August 2009, Document E1/63.1, ERN 00366032-00366120 (Khmer), ERN 00365906-00366031 (French).

³⁶ Testimony of Civil Parties. Transcript of the trial proceedings of 17 August 2009, Document E1/63.1, ERN 00366032-00366120 (Khmer), ERN 00365906-00366031 (French).

³⁷ *Attestation de Suivi d'une Psychothérapie*, Document E2/89.11, Annex 11: ERN 00281297-00281297 (French).

d. CASE OF MRS SUON SOKHOMALY (E2/39)

63. Mrs Suon Sokhomaly applied to be joined as a civil party in order to seek reparations for the death of her husband, Mr SUON Kaset, who was one of the S21 victims.

64. Mr SUON Kaset confessions,³⁸ which were submitted to the Court, are proof of his presence at S21. During the trial proceedings, the Accused himself admitted to the interrogation, torture and execution of Mr SUON Kaset.³⁹

65. The Civil Party⁴⁰ suffered psychological injury as a result of the death of her husband.

66. Mrs SUON has therefore suffered an indisputable psychological injury as a result of the death of her husband at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

2. CIVIL PARTY APPLICATIONS NOT DISPUTED BY THE DEFENCE

67. It should be noted that the Defence does not dispute these applications⁴¹ which should therefore be declared admissible.

a. CASE OF MR KHUON SARINE (D25/11)

68. Mr KHUON Sarine applied to be joined as a civil party⁴² on account of the arrest, detention and execution of his uncle, Mr KHIEU Sakour. The victim worked at the Cambodian Embassy in Japan during the Lon Nol regime.⁴³ When the Khmer Rouge took power, he took refuge in Japan and returned to Cambodia following an appeal by the Khmer

³⁸ Victim information form- SUON Sokhomaly, Document E2/39, ERN 00274757-00274762 (Khmer), ERN 00274767-00274770 (French), ERN 00274763-00274766 (English).

³⁹ Confession of SUON Kaset at S21, Document E2/39.5, ERN 00362401-00362475 (Khmer).

⁴⁰ Testimony of the Accused, Transcript of trial proceedings of 22 June 2009, Document E1/35.1, ERN 00344440-00344440 (Khmer), ERN 00344341-00344341 (French).

⁴¹ Transcript of trial proceedings of 17 August 2009, Document E1/63.1, ERN 00366032-00366120 (Khmer), ERN 00365906-00366031 (French), ERN 00365783-00365905 (English).

⁴² Victim information form-KHUON Sarine, Document D25/11, ERN 00211271-00211281 (Khmer), ERN 00337473-00337479 (French), ERN 00239017-00239022 (English).

⁴³ Victim Information Form – KHOUN Sarine, Document D25/11, ERN 00211271-00211281 (Khmer), ERN 00337473-00337479 (French), ERN 00239017-00239022 (English).

Rouge Government to Cambodians to return to their country. On his arrival, he was arrested, detained and executed at S21.

69. In support of his civil party application, Mr KHUON Sarine submitted personal information concerning the victim from the Documentation Centre of Cambodia,⁴⁴ as well as his S21 file.⁴⁵ Mr KHIEU Sakour's name also features on the list of prisoners filed by the Co-Prosecutors.⁴⁶

70. The civil party application of Mr KHUON Sarin will be declared admissible since it has not been disputed by the Accused.

71. Mr KHUON Sarine has thus suffered an indisputable psychological injury as a result of the death of his uncle at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

b. CASE OF MR OUK VASOTHIN (E2/84)

72. Mr OUK Vasothin⁴⁷ submitted his civil party application⁴⁸ on account of the arbitrary arrest, detention and execution of his father, Mr OUK Chi, a Member of Parliament under the former regime.

73. In support of his civil party application, Mr OUK Chi's S21 file⁴⁹ and the list of prisoners identified as officials of the former regime were filed.⁵⁰ The defence did not challenge the admissibility of this civil party application.

74. Mr OUK Vasothin has thus suffered an indisputable psychological injury as a result of the death of his father at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

⁴⁴ DCCAM digital file of KHIEU Sakour, Document D25/11/2: ERN 00239023-00239023 (Khmer), ERN 00211284-00211284 (English).

⁴⁵ S21 file of KHIEU Sakour, Document E2/12, ERN 00362319-00362400 (Khmer).

⁴⁶ Prisoner list, Document D57, ERN 00181639-00181639 (Khmer).

⁴⁷ Copy of Mr UK Va So Thin's identity card, Document E2/84.1: ERN 00281209-00281209 (Khmer)

⁴⁸ Victim Information Form - UK Va So Thin, Document E2/84, ERN 00281203-00281208 (Khmer), ERN 00316761-00316766 (French) ERN 00328204-00328207 (English).

⁴⁹ S21 file of M.OUK Chi, Document E2/84.5, ERN 00362476-00362726 (Khmer).

⁵⁰ List of Prisoner, Document E2/84.3, ERN 00281210-00281210 (Khmer), ERN 00363489 (French).

c. CASE OF MRS SEK SIEK (E2/79)

75. Mrs SEK Siek⁵¹ applied to be joined as a civil party on account of the death of her fiancé and cousin Mr MOK Chhoeun. Mr MOK Chhoeun lived in Boeng Phé village, Mream sub-district, Romeas Hèk district, in Svay Rieng Province. In 1977, when the soldiers of the Southwest Zone entered the region, they arrested the victim because of his ties to the former regime.

76. In support of her civil party application, Mrs SEK Siek submitted Mr MOK Chhoeun's S21 biography and an attestation of her kinship with the victim. In this particular case, other factual elements will also have to be taken into consideration. It is established that upon their arrival, people from the Southwest Zone in Sector 23 (previously under the control of SOU Phoem), all those who were connected to the former regime were arrested and some of them sent to S21.⁵³

77. Mrs SEK has thus suffered an indisputable psychological injury as a result of the death of her fiancé and cousin, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

d. CASE OF MRS KAN SAN (E2/72)

78. Mrs. KAN San applied to be joined as a civil party before the ECCC⁵⁴ as a sister to Mr KAN Kân, a soldier in Koh Thom district. In 1977, Mr KAN Kân was arrested by the Khmer Rouge and transferred to S21 as evidenced by his biography which was found there.⁵⁵

79. Mrs KAN San supplies evidence of kinship with the victim: in fact, in the information provided with the civil party application, it appears that she shares with the victim the same father (Mr KHUON Kan) and mother (Mrs LOEK Theang) and the same home (Kbal

⁵¹ Mrs SEK Siek Cambodian national identity card, Document E2/79.1 Annexe 1, ERN 00280732-00280732 (Khmer).

⁵² Biography of Mak Chhoeun, Document E2/79.2, ERN 00281143-00281143 (Khmer), ERN 00286721-00286721(French).

⁵³ See case of Mr. Chhat Kim Chhun

⁵⁴ Victim information form – Kan San, Document E2/72, ERN 00280739 (Khmer), ERN 00286703-00286707 (French), ERN 00336607-00336607 (English).

⁵⁵ Biography of Kan Kân at S21, Document E2/72.2 ERN 00280746-00280747 (Khmer), ERN 00367797-00367798 (English).

Domreyleu village, Kompong Kong sub-district, Koh Thom district, in Kandal Province). An attestation of kinship between Mrs KAN San and Mr KAN Kan certified by the Mayor of the sub-district was also filed⁵⁶.

80. She has thus suffered an indisputable psychological injury as a result of the death of her brother, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

e. CASE OF MRS MEAS SAROEUN (E2/78)

81. Mrs MEAS Saroeun⁵⁷ applied to be joined as a civil party⁵⁸ as the daughter of Mr OUK Tob. It cannot be disputed that Mr OUK Tob was arrested in 1977 and transferred to S21⁵⁹. Mr OUK can thus be rightly considered an S21 victim.

82. The Defence does not dispute this point.

83. Mrs MEAS Saroeun has thus suffered an indisputable psychological injury as a result of the death of her father at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

3. CIVIL PARTY APPLICATIONS DISPUTED BY THE DEFENCE

84. The submissions made by Group 3 during the trial proceedings as well as those set out in its request in support of the filing of new documents⁶⁰ should be recalled at this stage.

85. The defence attempted to challenge certain civil party applications on the basis of a strict interpretation of the notion of kinship with the victim and by invoking the absence of any evidence of the presence of the victim at S21. The Court is aware, as indeed acknowledged by the Accused, that the S21 archives are very incomplete. DUCH also

⁵⁶ Attestation of kinship between Mrs Kan San and her brother Kan Kân certified by the Mayor of sub-district, Document E161.7, ERN 00368576 (Khmer).

⁵⁷ Copy of identity card of Mrs Meas Saroeun, Document E2/78.1, ERN 00281126 (Khmer).

⁵⁸ Victim information form – Mrs Meas Saroeun, Document E2/78, ERN 00281117-00281125 (Khmer), ERN 00286708-00286714 (French), ERN 00339162-00339168 (English).

⁵⁹ Photo of Mr. Ouk Tob at S21, Document E2/78.2, ERN 00281127.

⁶⁰ CPL3, submission in support to submit new documents related to civil parties, Document E2/30/3, ERN 00368563-00368566 (Khmer), ERN 00368559-00368562 (French).

mentioned the names of detainees in respect of whom there is in fact no indication in the Tuol Sleng⁶¹ archives. As such, the absence of S21 archival documents should not be considered as evidence of the fact that the victim was never at S21.

86. With respect to the kinship, the practice direction refers to the notion of “kin”. If it had intended to restrict civil party applications to direct descendants or ascendants, it would certainly have said so. It will be incumbent upon the Court to provide a definition which takes into consideration Cambodian specificities. This notion of “kin” must be understood here as including uncles or aunts, nephews or nieces, and even relatives further removed.

87. With respect to evidence of kinship or even of affiliation, the particular context of Cambodia must be taken into consideration since it is now accepted that in several sub-districts, civil status documents have disappeared or perhaps never existed. Moreover, certain people who could have testified on the affiliation or kinship disappeared during the Khmer Rouge regime or are deceased. The Chamber must therefore adopt a form of evidence and an interpretation reflecting this reality.

c. Case of Mr LAY CHAN (E2/23)

88. Mr. LAY Chan applied to be joined as a civil party on account of his suffering⁶². When he testified before the Trial Chamber, he was able to provide facts in support of his request⁶³.

89. The Court will, on the basis of these elements, take note of the likelihood of the facts invoked by Mr LAY and grant his civil party application.

90. He personally suffered from his detention and the conditions under which he was detained at S21.

⁶¹ Position of defence on facts contained in Closing Order, Document E5/11/6.1, ERN 00294707 (Khmer), ERN 00294650 (French).

⁶² Victim information form – Lay Chan, Document E2/23, ERN 00275193-00275198 (Khmer), ERN 00286676-00286679 (French), ERN 00322275-00322279 (English); Annexe 3, Additional information of Lay Chan, Document E2/23.3, ERN 00275193 (Khmer), ERN 00322273 (French) and ERN 00322272 (English).

⁶³ Testimony of civil party Lay Chan, Transcript of trial proceedings of 07 July 2009, Document E1/44.1, ERN 00349636-00349722 (Khmer), ERN 00349341-00349392 (French), ERN 00349235-00349336 (English).

91. Thus, Mr LAY suffered physical and psychological injury and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

b. Case of Mr PHOK KHAN (E2/33)

92. Mr PHOK Khan applied to be joined as a civil party on account of the death of his wife and his cousin, and for what he personally went through at the detention centre. In support of his civil party application, Mr PHOK Khan supplied:

- a. his testimony,
- b. the S21 biography of SOK implicating him as a CIA agent and the biography of his cousin TIN Neth⁶⁴.

93. Taking into consideration the foregoing (51 to 53), it is impossible for Mr PHOK to supply the evidence of this kinship or affiliation with the victims.

94. The evidence adduced by him is sufficiently credible to be beyond dispute by DUCH.

95. Mr PHOK applies to be joined as a civil party as a former S21 prisoner, but also on account of the death of his wife and his cousin.

96. He suffered indisputable physical and psychological injury and applies to be joined as a civil party in order to seek reparation for the injury.

c. Case of Mrs SO SAUNG (E2/34)

97. Mrs SO Saung applied to be joined as a civil party⁶⁵ on account of the execution of her brother-in-law, Mr MEAS Sun alias TENG Sun at S21. She was heard by the Court and

⁶⁴ Biography of Mr. Phok Sakhon, Document E5/7/1.3, ERN 00282314 (Khmer) and ERN 00345917-00345918 (English).

⁶⁵ Victim information form – So Saung, Document E2/34, ERN 0274459-00274466 (Khmer), ERN 00286686-00286691 (French), ERN 00360767-00360771 (English).

submitted a photograph of her brother-in-law⁶⁶ and a witness attestation certifying her kinship with the victim.⁶⁷

98. The photograph of the victim was disputed by Mr DUCH during the testimony of Mrs SO, who claimed that the photograph did not come from S21.

99. However, Mrs SO has produced in evidence a certificate from the Deputy Head of the TUOL SLENG Genocide Museum verifying the authenticity of the photograph.⁶⁸

100. Thus, it appears that Mrs SO Saung is in fact the sister-in-law of Mr MEAS Sun and that she was the victim of an indisputable psychological injury as a result of the death of her brother-in-law at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

d. Case of Mrs NHOEM KIM HOEURN (E2/30)

101. Mrs NHOEM Kim applied to be joined as a civil party⁶⁹ as a result of the execution at S21 in 1977 of her two brothers, Mr NHOEM Chan⁷⁰ and Mr NHOEM KUY⁷¹ and her sister-in-law, Mrs Doung Rom⁷². Following the Defence challenge of the kinship between the Civil Party and the victims, a declaration verifying their kinship certified by the mayor of the sub-district was led into evidence.⁷³

102. NHOEM Chan's Prisoner biography⁷⁴, held in the DC Cam digital database,⁷⁵ in fact establishes that he was one of the prisoners at S21. The photographs of Nhoem Chan,

⁶⁶ Photo of Meas Sun at S21, Document E5/7/1.4, ERN 00282315.

⁶⁷ Letter, Document E2/34/5.2, ERN 00364928 (FR), ERN 00364929 (KH)

⁶⁸ Attestation, Document E 161.2, ERN 00368571 (KH), ERN 00368570 (FR)

⁶⁹ Victim information form -Nhoem Kim Hoeurn, Document E2/30 ERN 00273293-00273299(KH), ERN 00286680-00286685(FR) et ERN 00328162-00328166(EN)

⁷⁰ Photo of NHOEM Chan, Document E2/30.3 ERN 00273310 (KH) ; Photo of NHOEM Chan took at S-21, Document E2/30.9 ERN 00273317 (KH)

⁷¹ Photo of NHOEM KUY, Document E2/30.2 ERN 00273309 (KH) ; Photo of NHOEM KUY took at S-21, Document E2/30.8, ERN 00273316 (KH)

⁷² Photo of DUONG Rom, NHOEM Kuoy, and NHOEUM Chan, Document E2/30.4 ERN 00273311 ; Appendix 7: Photo of DUONG Rom took at S-21, Document E2/30.7 ERN 00273315 (KH)

⁷³ CPLG3: Submission for supporting the submission of new documents related to civil parties E2/30, E2/38 and E2/76, Document E164 : ERN 00372274-00372276 (FR) and ERN 00372277-00372279(KH), appendix.

⁷⁴ : Biography of Nhoem Chan at S21, Document E2/30.6 ERN 00273314-00273314(KH), ERN 00369263-00369263 (FR) and ERN 00365544-00365544 (EN)

NHOEM Kim, NHOEM Dong found at S21 were filed and certificates from the Deputy Head of the TUOL SLENG Genocide Museum verifying their authenticity were led into evidence.

103. The Accused claimed that the photographs had not been taken at S21 as he had done during the trial when Mrs CHIM Meth testified. However, it became apparent during the proceedings that the photograph in question had been taken at the S24 Re-education Centre under the responsibility of DUCH. The photograph of NOEM Dong has the same characteristics as that of CHIM Meth and, like the photograph of CHIM Meth, it is posted on the walls of the TUOL SLENG Museum.

104. Thus, it appears that Mrs NHOEM Kim is in fact the sister of Mr NHOEM Chan and Mr NHOEM Kuy and that she was the victim of an indisputable psychological injury as a result of the execution of her two brothers and her sister-in-law, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

e. Case of Mr KLAN Fit (E2/37)

105. Mr KLAN Fit applied to be joined as a civil party⁷⁵ on account of the execution of his comrades who were detained and killed at S21. In September 1978, several district officials including KLAN Fit were invited to Phnom Penh. Upon their arrival, comrades Poy, Yornng and Chhom were sent to S21. On 7 January 1979, it was the turn of Klan Fit, Roman Yun alias Kam PHY, Pha and PHONG. These are persons with whom Mr KLAN was very close for having shared part of their life and who may reasonably be considered as his “kin”.

106. Mr KLAN considers therefore having been very distressed by the disappearance of his comrades.

107. Having suffered a psychological injury as a result of “these disappearances”, Mr KLAN is entitled to be joined as a civil party and to seek reparation for the injury.

⁷⁵Biography of NHOEM Chan, Document E2/30.5 ERN 00365542-00365543 (KH), ERN 00366558-00366559(FR), ERN 00273312-00273313 (EN).

⁷⁶Victim information form - Klan Phit, Document E2/37 ERN 00274545- 00274556(KH), ERN 00290465-00290470(FR), ERN00346106-00346112(EN)

f. Case of Mrs HEIT TEI CHOV (E2/37)

108. Mrs HEIT Tei Chov applied to be joined as a civil party on account of the detention of her uncle at S21. Mr SOSS EI was arrested in April 1975 and it was only after the collapse of the Khmer Rouge regime that the Civil Party learned of the fate of her uncle.⁷⁷

109. In support of her civil party application, an attestation verifying her kinship with the victim was filed.⁷⁸

110. It is indisputable that this disappearance and the fate which befell Mr SOSS caused psychological injury to Mrs HEIT, an injury for which there must be reparation.

111. That is why she applies to be joined as a civil party in order that the Court grant her request for reparation.

g. Case of Mrs PAN PECH (E2/63)

112. Mrs PAN Pech applied to be joined as a civil party on account of the detention at S21 of her brother-in-law, PLAING Hoy.⁷⁹ In support of her civil party application, an attestation verifying her kinship with the victim was filed.⁸⁰

113. It is indisputable that this disappearance and the fate which befell Mr PLAING caused psychological injury to Mrs PAN, an injury for which there must be reparation.

114. That is why she applies to be joined as a civil party in order that the Court grant her request for reparation.

⁷⁷ Victim information form - Heat Tei Chov, Document E2/38 ERN 00290471-00290476 (FR), ERN 00274571-00274581(KH) and ERN 00340096-00340103 (EN) ;

⁷⁸ Attestation, document E164/1.8, ERN 00372287-00372287 (KH)

⁷⁹ Victim information form – Pann Pech, Document E2/63 ERN 00286758-00286761(FR), ERN 00364533-00364533(EN) and ERN 00279154-00279159(KH); Letter of supplementary information of PANN Pech, Document E2/63.1 : ERN 00279160-00279160 (KH), ERN 00369390-00369390 (FR), ERN 00366611-00366611 (EN)

⁸⁰Declaration certified by Chief of commune for CHAN Yoeun, document E161.5 ERN 00368574-00368574(KH)

h. Case of Mrs CHAN YOEUNG (E2/70)

115. Mrs CHAN Yoeung applied to be joined as a civil party on account of the execution of her uncle, Mr SOK Bun. An attestation verifying the kinship between the victim and the Civil Party was filed before the Chamber.⁸¹ Mrs CHAN does not have written evidence of his detention and execution at S21. However, she submitted to the Court facts tending to give credence to her claims.

116. From her complaint, it appears that in early 1978, in Romeas Hek sub-district, Rovieng district, in Prah Vihear Province, certain village chiefs and mayors were arrested and taken to Ro Vieng College before being transferred to S21 in Phnom Penh. Mr SOK, who was mayor of the town at the time, was among the group of individuals arrested.

117. During the proceedings, DUCH confirmed that the second phase of the enemy smashing process consisted in internal purges and admitted that village, sub-district and district cadres and regional secretaries were arrested and transferred to S21.

118. In the absence of written documents, it can therefore be reasonably admitted that Mr SOK Bun was transferred, detained and executed at S21.

119. Mrs CHAN Yoeung has been the victim of an indisputable psychological injury as a result of the death of her uncle, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

i. Case of Mrs SOEM POV (E2/71)

120. Mrs SOEM Pov⁸² applied to be joined as a civil party on account of the execution of her husband,⁸³ Mr NGUY Sreng, at S21. In 1976, Mr NGUY Sreng was arrested, his hands handcuffed in his back, and taken to the SALACHIN Detention Centre, in KAM PONG KONG village, KOH THOM district, in KANDAL Province. His family was unaware of his transfer and execution at S21.

⁸¹Attestation, document E161.5 ERN 00368574-00368574(KH)

⁸² Copy of Cambodian national identity card of SOEM Pov, Document E2/71.1 ERN 00280745-00280745(KH):

⁸³ Attestation by the village chief of the kinship between Mrs SOEM Pov and her brother-in-law, NGUY Sreng, Document E161.6, ERN 00368575-00368575 (Khmer).

121. It was thanks to the victim's biography⁸⁴ discovered at Tuol Sleng that the family discovered the exact and sad truth.

122. Proof of kinship with the victim and of his connection with S21 was supplied.⁸⁵

123. Accordingly, it is indisputable that Mrs SOEM Pov was a victim of a psychological injury as a result of the death of her husband, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

j. Case of Mrs UNG VOEUN ALIAS HUL VOEUN (E2/76)

124. Mrs UNG Voeun⁸⁶ applied to be joined as a civil party on account of the execution of her brother, Mr UNG Koam,⁸⁷ at S21.

125. Mr DUCH attempted to challenge this civil party application.⁸⁸ However, evidence was provided at the trial to show that not only was the victim in fact the brother of Mrs UNG Voeun⁸⁹ (attestation of affiliation, same parents, same address at the time of the events, identity card and interview of his mother, Mrs HUL Soeun, by DC Cam.), but also that he was present at S21.⁹⁰

126. Mrs UNG Voeun has been the victim of an indisputable psychological injury as a result of the death of her brother at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

⁸⁴Biography of Nguy Sreng, Document E2/71.2 ERN 00280733-00280733 (KH), ERN 00369394-00369395 (FR), ERN 00364191-00364192 (EN).

⁸⁵ Attestation by the village chief of the kinship between Mrs SOEM Pov and her brother-in-law, NGUY Sreng, Document E161.6, ERN 00368575-00368575 (Khmer).

⁸⁶ Copy of Cambodian national identity card of Mrs. UNG Voeun, Document E2/76.1 ERN 00280809-00280809 (KH)

⁸⁷ Victim information form of Mrs. UNG Voeun, Document E2/76 ERN 00280801-00280808(KH), ERN en 00290477-00290482 (FR) and ERN 00340104-00340110 (EN)

⁸⁸ Testimony of civil parties, Transcript of proceeding, 17 August 2009, document E1/63.1, ERN 00366038(KH), ERN 00365912 (FR), ERN 00365789 (EN).

⁸⁹ Attestation by the chief of commune of the kinship between OUNG Voeun and OUNG Khoam, Document E164/1.9, ERN 00374069 (KH), ERN 00372288 (English).

⁹⁰ Biography of UNG Koam at Tuol Sleng Document E2/76.4, ERN 00280812 (KH), ERN 00369414 (FR), ERN 00371552 (EN).

k. Case of Mr CHAT KIM CHHUN (E2/76)

127. Mr CHHAT Kim Chunn applied to be joined as a civil party on account of the execution of his father, Mr AM Thatt,⁹¹ his grandfather, Mr AM Sabin and his grand uncle, Mr POT Moy.⁹² Proof of the identity of these persons and their affiliation is provided by the information form relating to the civil party application⁹³ and attestations by the mayor of the sub-district produced in evidence.⁹⁴

128. Mr CHHAT's complaint sets out the reasons for the arrest of the sub-district and district cadres of Zone 23 and their transfer to S21.⁹⁵ The Accused attempted to challenge this civil party application.⁹⁶ Pot Moy's S21 biography,⁹⁷ AM Thatt's S21 photograph⁹⁸ provide proof of their presence at S21. Both AM Savin and AM Thatt were under the orders of SAO Pem and were summoned together when the Southwest Zone groups arrived. AM Savin was arrested at the same time as AM Thatt who was sent to S21, and it is therefore probable that the latter also came to a similar end. Thus, it has been established that the 3 victims were arrested and detained at S21 and that Mr CHAT Kim Chunn has established his kinship with the victims.

129. Mr CHAT Kim Chunn has suffered an indisputable psychological injury as a result of the death of his father, grandfather and grand uncle at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

⁹¹ Photo of AM Thatt, Document E161.13 ERN 00368582-00368582 (KH) ; Photo of AM Thon alias Thatt, Document E161.12 ERN P 00004055-00004055 ; certificate of the, document E161.10, ERN 00368579-00368579(KH).

⁹² CHHAT Kim Chhun found the S21 biography of his grand uncle POT Moy during the research made in order to find the S21 documents of his father and grand father : Biography of POT Moy, document E2/81.3 and 4, ERN 00362274-00362276(KH)

⁹³ Victim information form - ChhatKim Chhun, document E2/81- ERN 00281167-00281176(KH), ERN 00286731-00286739(FR), ERN 00340111-00340118 (EN) and : similarity of address either in victim information form or identity card or in biography of POT Moy, Khlar Laut village, KAM Pong Trach commune, Râmeas Hek district, Svay Rieng province.

⁹⁴ certificat of ROMEAS HEK Chief of commune on photo of AM Thon alias Thatt, document E161.10 ERN 00368579-00368579 (KH)

⁹⁵: Prisoners list at S-21 from East zone, document E68.45, ERN 00333729-00333777.

⁹⁶ Testimony of civil parties, Transcript of proceeding, 17 August 2009, document E1/63.1 ERN 00366038(KH), ERN 00365912 (FR), ERN 00365789 (EN)

⁹⁷ Biography of POT Moy, document E2/81.3 and 4 ERN 00362274-00362276(KH)

⁹⁸ Photo of AM Thon alias Thatt, Document E161.12 ERN P 00004055-00004055.

I. Case of Mr MAN SOTHEA (E2/76)

130. Mr MAN Sothea applied to be joined as a civil party as a result of the disappearance of his mother, Mrs SEM Sok Lim, who was a former secretary at the Cambodian Embassy in the Philippines during the Khmer Republic regime under Marshal LON NOL. In April 1975, she was one of the intellectuals evacuated from Phnom Penh. During the evacuation, she stated publicly that the Democratic Kampuchea regime was a cruel regime.⁹⁹

131. In his testimony, Mr DUCH stated that intellectuals and former officials were the first targets of the Khmer Rouge, who were thus arrested, detained and tortured in order to extract their confessions.

132. The arrest of intellectuals and students was followed by that of former officials who had served in Cambodian embassies abroad. Thus, through the Ministry of Foreign Affairs, the leaders of Democratic Kampuchea invited these officials to come to Cambodia to build the country. Upon their arrival, they were sent to S21. Mrs SEM Sok Lim, mother of Mr MAN, was among these intellectuals.

133. Mr MAN has thus suffered an indisputable psychological injury as a result of the death of his brother at S21, and is therefore entitled to be joined as a civil party and to seek reparation for the injury.

4. MRS BUN SREY'S ABANDONMENT OF HER CIVIL PARTY ACTION (E2/65)

134. During the proceedings, Mrs BUN Srey abandoned her civil party action.

135. In accordance with Rule 23(10) of the Internal Rules, the Court will have to acknowledge the abandonment of her action.

⁹⁹ Victim information form - MAN Sothea, Document E2/82 ERN 00281184-00281192 (KH), ERN 00286740-00286747 (FR), ERN 00328310-00328317 (EN)

IV. CIVIL PARTY REQUESTS FOR REPARATION

136. The Co-Lawyers for the Civil Parties (Group 3) do not intend to reiterate the submissions made in the joint submission on reparations¹⁰⁰ and in their supplementary brief,¹⁰¹ but only wish to elaborate thereon.

137. In principle, in case of gross violations of International Human Rights Law and serious violations of International Humanitarian Law, victims are entitled to full and effective reparation which may take the form of: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

138. As Mr Richard GOLDSTONE recalled when he testified before the Court, “[r]eparations clearly are important not only for the victims, but I think for reconciliation. (...). But to the extent that reparations are possible, I have no doubt that they are extremely important and can be very helpful in repairing society.”¹⁰²

139. The victims of crimes within the jurisdiction of the ECCC have suffered and suffer many physical as well as psychological traumas. They have therefore suffered injury for which there must be reparation.

A. LEGAL BASIS FOR REPARATIONS

140. In its resolution 60/174 of 21 March 2006 entitled Basic Principles (...) on the Right to a (...) Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the United Nations General Assembly stated that “[a]dequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.”

¹⁰⁰ Civil Parties' Co-Lawyers' Joint Submission on Reparations, Document E159/3, ERN 00384693-00384715(FR).

¹⁰¹ CCLG3- Additional submission relating to reparations, Document E159/3/1, ERN 00378091-00378096 (KH), ERN 00378086-00378090 (FR) .

¹⁰² Testimony of experts, Transcript of proceeding, 14 september 2009, document E1/74.1, ERN 00377584-00377686 (KH), ERN 00377438-00377539 (FR) and ERN 00378482-00378584 (EN)

141. Rule 23(1)(b) of the Internal Rules (Rev.4) of the ECCC (revised on 5 September 2008, 6 March 2009 and 11 September 2009) allows victims to seek collective and moral reparations.

142. Rule 23(11) of the Internal Rules specifies that “[s]ubject to Article 39 of the ECCC Law, the Chambers may award only collective and moral reparations to Civil Parties. These shall be awarded against, and be borne by convicted persons”.

143. Rule 23(12) of the Internal Rules sets out the various forms of reparations: “Such awards may take the following forms:

- a) An order to publish the judgment in any appropriate news or other media at the convicted person’s expense;
- b) An order to fund any non-profit activity or service that is intended for the benefit of Victims; or
- c) Other appropriate and comparable forms of reparation”.

B. REQUEST FOR MORAL AND COLLECTIVE REPARATIONS

1. Reparation and admission of guilt

144. During the trial proceedings, it was argued that admission of guilt by the Accused could be considered as a form of reparation. Ascertaining the truth and determining responsibility are critical aspects of the victim rehabilitation process. In this case, as a form of reparation, admission of guilt only by the Accused cannot be considered adequate.

145. Is it necessary to recall that DUCH’s repressive activities carried on non-stop are contrary to basic rights both before the Khmer Rouge took power and during the regime they created?

146. The Accused’s activities at M13 were very quickly revealed and his activities at S21 became known immediately after the discovery of that place of torture and death.

147. Confronted with these facts, upon his arrest, DUCH chose to admit minimum responsibility for the atrocities committed from October 1975 to 7 January 1979 and apologised to the victims several times.

148. As far as the Civil Parties are concerned, the admission of guilt and the apologies maybe one of the elements of the reparation for their suffering, but also of the reconciliation process; however, for this to happen, one condition is absolutely necessary, that is, a sincere acknowledgement of the truth, at the very least, of the crimes for which the Accused is being prosecuted.

149. This element is critical if DUCH admits guilt generally; however, the fact of the matter is that, faced with the testimonies of the Civil Parties or when confronted with the facts adduced during the trial, he went into denial and exhibited negation.¹⁰³ His lawyers have admitted that their client has only admitted 85% percent of the facts put before him.¹⁰⁴ Even if there were only 15% of the crimes for which the Accused is not admitting guilt, an opinion not shared by the Civil Parties, the sincerity of his admission of guilt is seriously undermined. Judge GOLDSTONE, who was called by the Defence, considers that facts must be established at more than 95% for there to be any admission of guilt.¹⁰⁵

150. The Defence cited to the Court examples of criminals who have pleaded guilty, apologised and shown remorse. They cited Albert SPEER, who was the only person to plead guilty before the Nuremberg Tribunal and then Dragan OBRENOVIC who, having struck an agreement with Prosecutors of the ICTR, pleaded guilty and also showed remorse.

151. In these two cases, the facts were admitted almost unreservedly, the Accused cooperated significantly with the prosecution; furthermore, they were not the brains behind the crimes committed and both of them had a positive attitude, in the case of Speer, by

¹⁰³ Psychological assessment report on Duch, document B1/IV, ERN 00210946-00211081 (KH), ERN00177506-00177576 (FR) and ERN 00211082-00211151(EN)

¹⁰⁴ Testimony of experts, Transcript of proceeding, 14 September 2009, Document E1/74.1, ERN 00377444(FR), ERN 0037789(KH), et ERN 00378488(ANG) .

¹⁰⁵ Testimony of experts, Transcript of proceeding, 14 September 2009, Document E1/74.1 ERN 00377437(FR), ERN 0037784(KH),ERN 00378481(ANG).

refusing to implement certain deportation orders and, in the case of Obrenovic, by helping Muslims escape during the war.

152. It must also be borne in mind that these trials were held either immediately after the crimes were committed or during a transitional period, which is not the case for this trial. This is an important aspect because like all the victims of the Khmer Rouge regime, the Civil Parties have been waiting for 30 years for an acknowledgement, if not without reservations, at least, a sincere acknowledgement of what took place at S21.

153. DUCH's guilty plea and remorse are not sincere enough to provide the Civil Parties and victims with an adequate measure of reparation for their suffering.

2. Outreach, publication and dissemination of information about the trial

154. In order to participate in the national reconciliation process, information about the DUCH trial must be disseminated throughout Cambodia.

155. In this regard, the Court must ensure that documents recounting the trial are available to the population in each province of Cambodia, at a location accessible to all. This could take the form of exhibits including photographs and audiovisual material.

3. Psychological and medical support

156. The trauma related to S21 has had an impact on the physical and mental health of the Civil Parties.

157. It is therefore imperative that free medical care be provided to S21 and S24 survivors. Such services must be provided in a hospital designated for that purpose and coverage must include the cost of travel.

158. Treatment must also be provided for the psychological trauma suffered by direct and indirect victims. Victims' consultation fees must be paid and access to NGOs providing psychological support must be ensured.

5. Emotional and symbolic rehabilitation of victims

159. Reparation can also be achieved through the rehabilitation of the victims. The Co-Lawyers for the Civil Parties (Group 3) request that the names of the victims of S21 be engraved on the external wall of the Genocide Museum. The names must be engraved on the inside face of the wall in order to preserve this tribute to the victims. In particular, the names will include those featured on the list of S21 prisoners compiled by the Co-Prosecutors.¹⁰⁶

160. Each Civil Party will be entitled to include a 10-line text to be engraved next to the name of the detainee.

161. In order not to forget those detainees for whom there is no trace in the archives, a plaque should also be erected on the wall in memory of all anonymous victims.

162. A board explaining the reasons for all this must be placed at the entrance of the Museum.

C. EFFECTIVENESS OF THE REPARATION

163. As submitted in the joint submission, one of the challenges faced by the Court will be to ensure the effectiveness of the reparation if the Accused is indigent. Failure to take any measures would be tantamount to denying the victims' right to reparation.

164. It is therefore necessary to establish an alternative mechanism to provide for such reparation. A trust fund managed by the Victim Unit could be created.¹⁰⁷

165. In this regard, the Cambodian State must be reminded of its responsibility for reparation of violations, in particular, having regard to resolution 60/174.

¹⁰⁶ Revised list of prisoners at S-21, document E68.1 ERN 00329596-00330129, dated on 19 May 2009.

¹⁰⁷ A percentage of S21 et choeung Ek entrance fee must be given to the trust fund.

166. In conclusion, we wish to recall the words of Judge CANÇADO TRINDADE of the Inter-American Court of Human Rights:

The evil perpetrated in the persons of the (direct and indirect) victims is not removed by the reparations: *the victims continue being victims, before and after the reparations*, - and this requires a greater importance to be attributed to the measures in favour of their *rehabilitation* [...] The direct victims have suffered an irreparable harm [...] the indirect victims [...] have suffered an irreparable loss [...] The realization of justice contributes at least to structure their psychic life, to reawake their faith and hope, and to set in order their human relations with their fellowmen [...] there is *stricto sensu* no true or full reparation possible, in the literal sense of the term (from the Latin *reparatio*, derived from *reparare*, "to prepare or dispose again"), what reveals the limits of Law [...] the reparations [...] instead of truly *repairing*, rather *alleviate* the human suffering of the surviving relatives, seeking to rehabilitate them for life, - and *thereby* they become absolutely necessary.¹⁰⁸

FOR THESE REASONS

MAY IT PLEASE THE COURT

Noting Law No. NS/RKM/0801/12 KRAM establishing the ECCC;

Noting the Internal Rules of the ECCC;

Noting Final Submission of the Co-Prosecutors dated 18 July 2008;

Noting the indictment by the Co-Investigating Judges dated 8 August 2008,

I- With respect to the criminal prosecution

- To find Mr Kaing Guek Eay, alias DUCH, guilty of all the charges brought against him;
- To sentence him to such lawful penalty as requested by the Co-Prosecutors.

II- With respect to the civil actions

- To acknowledge Mrs BUN Srey's abandonment of her civil action;
- To declare admissible and grant all Group 3 civil party applications;

¹⁰⁸*Revue Droits fondamentaux*, No. 6, January-December 2006, available at www.droits-fondamentaux.org.

- Pursuant to Rule 23 of the Internal Rules, to award the Civil Parties the following moral and collective reparations:
- Dissemination of information about the trial in each Cambodian province by setting up exhibits in a public location;
 - Compilation and publication of the apologetic statements made by Mr Kaing Guek Eav, alias DUCH, during the trial, acknowledging the suffering caused to the victims, together with comments of the Civil Parties;
 - Access to free medical care, including physical and psychological therapy, and payment of transportation costs to and from appropriate health facilities;
 - Funding of educational programs, both in schools and museums, that inform Cambodians of the crimes that took place under the Khmer Rouge at S-21, S24 and Cheung Ek in particular;
 - Erection of memorials both at Cheung Ek and Prey Sar;
 - Engraving the names of all Tuol Sleng detainees on the external wall of S21;
 - Erection of a plaque memorialising all the victims that have not been identified;
 - Construction of a walkway along the external wall of S21;
 - Preservation of the buildings and cells at S21 in their current state and preservation of the instruments of torture that were found there;
 - Preservation of the existing archives at S21, including those that are on display and those that are in storage and not accessible to the public;
 - Conservation of the Vann Nath paintings displayed at S21;
 - Protection of the Choeng Ek site;
 - Inclusion of the names of all the Civil Parties in the final judgment, including a specification as to their connection with S-21;
 - Publication of the part of the judgment recounting the facts, dealing with the responsibility of the Accused, as well as the disposition, within six months to one year following its notification, in the official gazette and other national newspapers and ensure their regular broadcast on national radio and television channels.

- If DUCH is properly determined to be indigent, to request the Cambodian Government to implement reparation measures, in compliance with its State obligations or order the establishment of a voluntary trust fund to be managed by Victims Unit;
- To establish processes for the implementation of reparations and a mechanism for Civil Parties to seek recourse in case of non-compliance.

WITHOUT PREJUDICE

Case File No. 001/18-07-2007-ECCC/TC

Signed in Phnom Penh on 11 November 2009

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