



Prosecutor v Kaing Guek Eav,
alias 'Duch'

The KRT Trial Monitor

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

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I. SUMMARY

"I don't believe justice can ever come too late for victims that survive..."ⁱⁱ

"Reconciliation is a process that must not leave justice by the wayside..."ⁱⁱⁱ

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

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

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

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

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

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

II. LEGAL AND PROCEDURAL ISSUES

A. Summary of Testimonies

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

1. Expert Witnesses

Richard Joseph Goldstoneⁱⁱⁱ

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

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

Raoul Marc Jennar^{iv}

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

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

Stéphane Hessel^v

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

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

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

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

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

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

2. Character Witness

Christopher Lapel

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

3. The Accused's Testimony

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

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

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

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

B. Legal Procedural Issues

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

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

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

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

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

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

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

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

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

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

III. VICTIM PARTICIPATION AND WITNESS AND VICTIM PROTECTION AND SUPPORT

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

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

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

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

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

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

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

On a related note, the Chamber has in a written decision acknowledged the practical difficulties faced by Civil Parties in retrieving documents to support their claims.^{xxii}

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

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

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

IV. TRIAL MANAGEMENT

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

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

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

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

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

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

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

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

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

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

Time Management.

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

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

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

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

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

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

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

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

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

^{viii} See KRT Monitoring Report 20 at page 8.

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

^x Nic Dunlop is the British photographer who tracked down and revealed the whereabouts of Duch in 1999.

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

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

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

^{xiv} The Defense had indicated on Wednesday that it wished only to inform the parties of its intention to do so as a matter of courtesy.

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

^{xvi} See KRT Monitoring Report 19 at page 6.

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

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

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

^{xx} See KRT Monitoring Report 5 at pages 4-5.

^{xxi} See KRT Monitoring Report 19 at pages 5-6.

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

^{xxiii} See ECCC News “Sixth ECCC Plenary Session Concludes” 11 September 2009 available at <http://www.eccc.gov.kh/english/news.view.aspx?doc_id=311>.

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

^{xxv} ECCC Trial Chamber, “Decision on the Co-Prosecutors’ Request for Postponement of the Hearing of Closing Statements”, 4 September 2009, available at <http://www.eccc.gov.kh/english/cabinet/courtDoc/429/E159_2_EN.pdf>.

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

^{xxvii} “Group 1—Civil Parties’ Co-Lawyers Request That The Trial Chamber Facilitate The Disclosure Of An UN-OIOS Report To The Parties”, 11 May 2009, available at http://www.eccc.gov.kh/english/cabinet/courtDoc/351/E65_EN.pdf.

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