

BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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**CIVIL PARTY GROUP 1 – MOTION TO ESTABLISH NATURE OF
RELATIONSHIP BETWEEN FOUR CIVIL PARTIES OF GROUP 1 AND DIRECT
VICTIMS OF S-21.**

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I. INTRODUCTION

1. In order to assist the Chamber in conducting efficient and expeditious proceedings in relation to Civil Parties appearing before the Chamber on the issue of reparations Civil Party Group 1 (“CPG-1”) hereby seeks to provide additional details regarding Civil Parties Robert HAMILL, HAV Sophea, NETH Phally and Jeffrey JAMES. After review of all documents provided in support of these Civil Party Applications and further consultation with these Civil Parties, CPG-1 wishes to submit additional documents and analysis thereof in advance of the scheduled hearing of these Civil Parties.
2. The purpose of the additional material is threefold: (i) to clarify and provide documentary evidence of the relationship between the Civil Parties appearing before the Chamber and the direct victims of S-21, (ii) to clarify and provide declarations as to the source of the original copies of the documents provided in support of the above mentioned Civil Party Applications, and (iii) to clarify the documents on the case file which indicate the presence of the victims at S-21.¹
3. Through the provision of such detailed information CPG-1 seeks establish the nature of the relationship between the four Civil Parties and the direct victims of S-21 and therefore to preempt any misunderstanding or confusion which may arise during the course of proceedings on these preliminary matters. Such establishment prior to the appearance of Civil Parties before the Chamber will facilitate all parties to utilise allotted time effectively without expending time focusing on these preliminary matters. CPG-1 hopes this motion will assist the Chamber in ensuring proceedings on the issue of reparations are both effective and expeditious.

II. SUBMISSIONS

¹ Prior to the filing of this motion CPG-1 have already contacted the defence lawyers of *Kaing Guek Eav* and informed this party of the existence of the new exhibits relevant to the Civil Party Applications of the above named Civil Parties. Such exhibits have been made available to this party for inspection before the filing of this motion.

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Robert HAMILL

4. Civil Party Robert HAMILL will appear before the Chamber on the issue of reparations in relation to the detention and execution of his brother, Kerry George HAMILL at S-21.
5. With regard to the documents included in the Civil Party Application of Robert HAMILL², CPG-1 respectfully attaches hereto, as Annex 1, a declaration from KE Sopannaka, head of Tuol Sleng Genocide Museum, certifying that the original copies of the documents provided in support of Robert HAMILL's application are to be found at S-21.
6. Further, CPG-1 have noted that the accused has already voluntarily confirmed on two separate occasions in Court that Kerry HAMILL was detained and executed at S-21.³
7. Civil Party Robert HAMILL will provide documentary evidence during the scheduled hearing which shall clearly establish the family relationship between himself and Kerry HAMILL.
8. It is therefore submitted that this additional material establishes that that the brother of Civil Party Robert HAMILL was detained at S-21.

HAV Sophea

9. Civil Party HAV Sophea will appear before the Chamber on the issue of reparations in relation to the detention and execution of her father, CHEN Sea, alias Han, at S-21. The veracity of her claim that her father, CHEN Sea, was detained at S-21 is confirmed by the Revised Prisoner List which lists an individual named CHEN Sea, alias Han, as being detained at S-21 in 1976 and being executed on 15 May 1976.⁴ Civil Party HAV Sophea is also in a position to affirm the accuracy of the other biographical information contained in the Revised Prisoner List, however, as is to be

² *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Confession of George Kerry Hamill, E2/87.7, 17 September 1978.

³ T. 15 June 2009, page 52. T.17 June 2009, page 28 and 29.

⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, E68,1, 19 May 2009, page 64

expected with this civil party, HAV Sophea has learnt of these details from her mother, NHEM Sophat.. An individual named CHEN Sea, alias Han, also appears on a second prisoner list, which according the Documentation Centre of Cambodia (“DC-Cam”) database is a S-21 prisoner list⁵, and is listed as executed on 15 May 1976.⁶

10. A prisoner biography of CHEN Sea was filed with the application of Hav Sophea to become a civil party in the case.⁷ After having consulted with their client and examined the prisoner biography of CHEN Sea, CPG-1 respectfully submits that this biography belongs to the same individual as listed in the aforementioned prisoner lists.⁸ Civil Party HAV Sophea is in a position to confirm the accuracy of much of the information contained in the prisoner biography of CHEN Sea, including; his age, place of birth, his position prior to liberation of Phnom Penh, his position during 1975, parentage, the name of spouse and the date of detention. Again, the confirmation of the veracity of such biographical details has been obtained from her mother, CHEN Sea’s wife, NHEM Sophat. Further, HAV Sophea’s mother recognised the picture of CHEN Sea⁹ as being her husband. According to DC-Cam the document originates from the Democratic Kampuchea Ministry of the Interior dossier¹⁰; however, *prima facie* analysis suggests its format is not dissimilar to that of many S-21 biographies.
11. In order to clearly identify the relationship between HAV Sophea and CHEN Sie / Sea CPG-1 has sought and hereby provide, attached hereto as Annex 4 , a copy of the birth certificate of HAV Sophea. It must be noted that no birth certificate was made at the time of HAV Sophea’s birth in 1976 and therefore the birth certificate prepared

⁵ DC-Cam Biographical Database record number D21897, attached hereto as Annex 2

⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of HAV Sophea, D25/4, 9 May 2008, page 11.

⁷ *Ibid.*, page 8.

⁸ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, E68,1, 19 May 2009, page 64. *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of HAV Sophea, D25/4, 9 May 2008, page 11.

⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of HAV Sophea, D25/4, 9 May 2008, page 9.

¹⁰ DC-Cam Biographical Database record number IO9685, attached hereto as Annex 3

in 2005 is the authoritative original. This document lists the father of HAV Sophea as “HAV Han” and the mother as NHEM Sophat. Cognisant of the difference between the father named on the birth certificate and the individual named on the Civil Party Application the above mentioned prisoner lists and the prisoner biography, CPG-1 has further consulted with their client and are in a position to provide the following explanation.

12. In the period prior to 1975, HAV Sophea’s mother, NHEM Sophat, married a man she knew as ‘Han’, whose father she knew was named ‘Hav’. In 1982 when completing documents for her daughter to attend school NHEM Sophat regarded her husband as being “HAV Han”; therefore entering her daughter as HAV Sophea. Only in 1994 did NHEM Sophat learn, from a sister of “HAV Han” whom she had never met before, that the real name of her husband was ‘Sea’. In 2006 HAV Sophea collected from her aunt, Nun (CHEN Sea’s younger sister), the biography of CHEN Sea; Nun had received this biography from a cousin of CHEN Sea whom DC-Cam had approached the previous year. HAV Sophea showed this document to her mother in 2006 and NHEM Sophat confirmed the biography was that of her late husband. At this point HAV Sophea learnt that her father was named CHEN Sea. In 2007 HAV Sophea visited DC-Cam and obtained a photo of her father which NHEM Sophat also confirmed to be her late husband, CHEN Sea. Civil Party HAV Sophea will provide further explanation on these matters during her scheduled hearing should the Chamber require greater clarification.

13. In addition, the prisoner biography of CHEN Sea demonstrates that the father of CHEN Sea was named CHEN Hav and the spouse of CHEN Sea was NHEM Phat.¹¹ Firstly, it should be noted that HAV Sophea’s grandfather, CHEN Sea’s father, used the name Hav. It is also clear from both the prisoner biography of CHEN Sea and the names listed on the above mentioned prisoner lists that CHEN Sea used the alias ‘Han’. This lends credence to HAV Sophea’s mother’s use of the name “HAV Han”

¹¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Party Petition of HAV Sophea, D25/4, 9 May 2008, page 8.

as the name of her husband. Secondly, it is clear that the mother of HAV Sophea, listed as NHEM Sophat in both the family book, attached hereto as Annex 5, and the birth certificate of HAV Sophea¹², was the wife of the individual CHEN Sea. CPG-1 is aware that a small inconsistency exists between the names listed, NHEM Phat and NHEM Sophat; however, through consultation with their client CPG-1 can provide the following explanation. Prior to the regime of the Democratic Kampuchea, HAV Sophea's mother was known as NHEM Sophat, however, during the regime she changed her name to NHEM Phat which is the name listed as the spouse of CHEN Sea on the prisoner biography of CHEN Sea. After the fall of the regime, HAV Sophea's mother once reverted to the name NHEM Sophat and this is the name listed on both the family book and birth certificate of HAV Sophea.

14. It is therefore clear that NHEM Sophat, also known as NHEM Phat during 1975 - 1978, was the mother of HAV Sophea and the wife of CHEN Sea, also known as "HAV Han". CPG-1 notes that on the prisoner biography of CHEN Sea, NHEM Phat is listed as having an alias, 'Mallang'. It is the understanding of CPG-1 that NHEM Phat did not have an alias and that the alias listed is a fabrication utilising the subdistrict of NHEM Sophat's birth, "Mallang", as a fictional alias. Civil Party HAV Sophea will provide further clarification on these matters during her scheduled hearing should the Chamber so require.
15. It is therefore submitted, on the basis of the above information, that CHEN Sea, alias Han, was the father of Civil Party HAV Sophea and was detained at S-21.

NET Phally

16. Civil Party NET Phally will appear before the Chamber on the issue of reparations in relation to the detention and execution of his brother, NET Bunthy, at S-21.
17. Relevantly, CPG-1 hereby attaches as Annex 6 the prisoner biography of NET Bunthy in support of the Civil Party Application of NET Phally. This document

¹² Annex 4

which was not filed with his Civil Party Application contains details of NET Bunthy's parentage, age, place of birth, positions held after 1975 and arrest record.¹³ These biographical details are consistent with the information provided by NET Phally in his Civil Party Application. Furthermore, CPG-1 has sought and attaches hereto, as Annex 7, a declaration from KE Sopannaka, head of Tuol Sleng Genocide Museum, certifying that the original copy of the prisoner biography of NET Phally is to be found at S-21.

18. CPG-1 also submits a copy of the family book of NET Phally, attached hereto as Annex 8. It is noted that Civil Party NET Phally appears under the name CHHAET Phally in this document, dated 25 January 1999; however, as the photograph on the identity card, attached hereto in Annex 9, can amply demonstrate CHHAET Phally and NET Phally are the same individual. Civil Party NET Phally will provide further clarification on this matter during his scheduled hearing should the Chamber so require. The family book of NET Phally, also known as CHHAET Phally, states that his parents are NET Chhaet (father) and NGUON Touch (mother); these names exactly match the names listed as the parents of NET Bunthy contained in the prisoner biography.¹⁴ Therefore these documents independently verify that both the Civil Party NET Phally and the deceased S-21 detainee shared the same parentage and were therefore brothers.
19. At this stage CPG-1 respectfully informs the Chamber that NET Phally is in the processing of locating and transmitting to CPG-1 additional documents pertaining to his brother from the Democratic Kampuchea period. Upon receipt and examination of these documents CPG-1 shall make an assessment of their probative value and shall submit these documents during the hearing of this Civil Party if they assist in the clarification of any of the matters addressed in this motion.
20. It is therefore submitted that this additional material establishes that the brother of Civil Party NET Phally was detained at S-21.

¹³ Prior to the filing of this motion CPG-1 have already contacted the defence lawyers of *Kaing Guek Eav* and informed this party of the existence of this new exhibit relevant to the Civil Party Applications of NET Phally. This exhibit has been made available to this party for inspection before the filing of this motion

¹⁴ Annex 6

Jeffrey JAMES

21. Civil Party Jeffrey JAMES will appear before the Chamber on the issue of reparations in relation to the detention and execution of his uncle, James W. CLARK, at S-21.
22. Relevantly, CPG-1 hereby provides the birth certificate of Civil Party Jeffrey James, attached hereto as Annex 10; this document clearly states lists the mother of Jeffrey James as Sherry Alice Clark. Further documentation demonstrating the clear family relationship between the Civil Party and direct victim of S-21 shall be provided at the scheduled hearing.
23. With regard to the documents included in the Civil Party Application of Jeffrey JAMES,¹⁵ CPG-1 respectfully attaches hereto, as Annex 1, a declaration from KE Sopannaka, head of Tuol Sleng Genocide Museum, certifying that the original copies of the documents provided in support of Jeffrey JAMES application are to be found at S-21.
24. At this stage CPG-1 is also in a position to provide an explanation of the link between the deceased individual, James W. CLARK, and S-21. As detailed in the 'S-21 Prisoner List Containing Names of Prisoners Entered 21.4.78 – 28.4.78' James W. CLARK entered S-21 on 23 April 1978.¹⁶ The biographical information provided in this document is in concordance with the biographical details contained in the confession of James W. CLARK¹⁷; namely that this individual was a 35 year old male American.
25. Civil Party Jeffrey JAMES will provide documentary evidence during the scheduled hearing which shall clearly establish the family relationship between himself and James. W. CLARK.

¹⁵ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Annex 3: Confession of James William Clark, E2/88.3, 23 August 1978.

¹⁶ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Annex 187: S-21 Prisoner List Containing Names of Prisoners Entered 21.4.78 – 28.4.78, D57, page 4.

¹⁷ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Annex 3: Confession of James William Clark, E2/88.3, 23 August 1978.

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26. It is therefore submitted that this additional material establishes that the uncle of Civil Party Jeffrey JAMES was detained at S-21.

III. REQUEST

27. CPG-1 respectfully requests that the Chamber consider the additional materials provided in the current Motion as establishing the nature of the relationship between the four Civil Parties and the direct victims of S-21. This would allow the hearing of these Civil Parties to focus on the substance of their contribution to the question of reparations, and contribute to the expeditious conduct of proceedings.

Respectfully submitted by

Co-Lawyers for Civil Parties (Group 1)

Signed in Phnom Penh on 6 August 2009

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