

E137

BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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**CIVIL PARTY GROUP 1 – REQUEST TO ESTABLISH THE STATUS OF LY HOR  
 AS A SURVIVOR OF S-21 AND AUTHENTICITY OF DOCUMENTS AS A  
 MATTER OF RECORD**

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## I. INTRODUCTION

1. On 6 July 2009, LY Hor, alias Ear Hor, appeared in court to testify to his time spent at S-21 as a prisoner. Due to apparent inconsistencies in his testimony, doubts were cast over the truthfulness and the veracity of his claim to have been detained at S-21. Linked to that, the documents said to pertain to him, which originated from S-21 were also subject to dispute.<sup>1</sup> Civil Party Group 1 (“CPG-1”) respectfully submits that two important issues raised pursuant to LY Hor’s testimony require further examination by the Chamber as detailed below.

## II. SUBMISSION

2. A preliminary issue raised by the Trial Chamber during the course of the proceedings relates to the origin of the documents presented to LY Hor during his detention at S-21.<sup>2</sup> The Trial Chamber found that the documents on their face did not “prove that they [came] from S-21.”<sup>3</sup> As announced by the Co-Lawyer for CPG-1, Mr. Alain Werner, CPG I have sought and hereby wish to provide clarification regarding the source of the documentation.<sup>4</sup> The Co-Lawyer for CPG-1 explained to the Chamber that CPG-1 is of the understanding that the documents attached to the Civil Party Application of LY Hor were retrieved by DC-Cam from S-21,<sup>5</sup> and respectfully attaches hereto a declaration from KE Sopannaka, head of Toul Sleng Genocide Museum, certifying that the original copies of the documents provided in support of Ly Hor's application are indeed to be found at S-21.<sup>6</sup>
3. Secondly, upon being given the opportunity to comment on Ly Hor's testimony the Accused observed that the person referenced in the documents by the name of ‘EAR Haur’, could not have been the same person as LY Hor, as the revised prisoners list

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<sup>1</sup> T. 6 July 2009, page 57.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, page 55-56

<sup>5</sup> *Ibid.*, page 57-58.

<sup>6</sup> Annex 1.

compiled by the Prosecution indicates that a man by the same name of 'EAR Haur' was executed at S-21 sometime in 1975.<sup>7</sup>

4. To clarify what appears to have been a degree of confusion that arose on this issue, the Trial Chamber requested, Mr. Werner to provide an explanation regarding the name listed on the prisoner's list, which is the same name taken by LY Hor, alias EAR Hor.<sup>8</sup> Mr. Werner explained to the Chamber that he could not comment further on the name of 'EAR Haur' appearing on the prisoners list as having been executed, without having first consulted with his client.<sup>9</sup>
5. After having discussed with his client and having examined the documents with care, CPG-1 wishes to provide the following analysis in the hope of assisting the Chamber in clarifying the ambiguity arising regarding the identity of LY Hor, alias EAR Hor. CPG-1 apologise to the Court for not being in a position to provide the requested clarification at the hearing itself. Notwithstanding this, given the importance of this issue, it is respectfully submitted that the present filing may assist the Trial Chamber in the proper assessment of the evidence put before it.
6. The revised prisoners list, used by the Accused as the basis for his observations, shows that a male individual by the name of 'EAR Haur' was arrested from Office 13 and entered S-21 on 10 November 1975.<sup>10</sup> On the very same date, a different individual by the name of EAR Hor, was interrogated at Office 15.<sup>11</sup>
7. Further, as noted by the Accused, the revised prisoner list also details that the individual 'EAR Haur' was executed in 1975.<sup>12</sup> CPG-1, however, wishes to draw the Chamber's attention to two documents provided in support of LY Hor's civil party application, recognised as authentic S-21 documents by the Accused, which are dated 1976. The first document, dated 7 January 1976, is a detailed biography of the activities of EAR Hor,<sup>13</sup> which the Accused declared to have been authored by S-21 staff member Comrade Nak

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<sup>7</sup> *Ibid.*, page 84-86, 95-97.

<sup>8</sup> *Ibid.*, page 95-96.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, E68,1, 19 May 2009, page 86.

<sup>11</sup> *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Ear Hor, E2/61.2, E2/61.2, page 13.

<sup>12</sup> *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Revised S-21 Prison List, E68,1, 19 May 2009, page 86

<sup>13</sup> *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Ear Hor, E2/61.2, E2/61.2, 4-11

at S-21.<sup>14</sup> The second document, dated both 15 February 1976 and 8 March 1976,<sup>15</sup> was similarly recognised by the Accused to have been written by S-21 staff Comrade Mam Nai.<sup>16</sup> Mam Nai subsequently confirmed this point during his testimony on 15 July 2009 testifying that he was the author of the confession section of the document.<sup>17</sup> It is therefore apparent that both documents independently demonstrate an individual named EAR Hor was detained at S-21 in 1976 after the individual 'EAR Haur' was executed in 1975.

8. Should the accuracy of the dates contained in the revised prisoner list be questioned CPG-1 respectfully submit that the death of an individual named 'EAR Haur' must also be questioned; accordingly a consideration of the content of the S-21 biography is appropriate. The S-21 biography demonstrates that EAR Hor was detained at Office 44, otherwise known as the Ta Khmau psychiatric hospital,<sup>18</sup> where LY Hor confirmed to have been detained for a period of time.<sup>19</sup>
9. Based on the foregoing, it is evident in the respectful submission of CPG-1 that LY Hor, alias EAR Hor, was detained and interrogated on 10 November 1975 at Office 15, transferred to Office 43 and 44 before a biography was created at S-21 in early 1976. Therefore he cannot physically be the same individual who arrived at S-21 on 10 November 1975 and, according to the prisoner list relied upon by the accused, was subsequently executed in 1975. LY Hor, alias EAR Hor was detained, as testified, at S-21.
10. The weight to be accorded to the testimony aside, the truthfulness of his presence at S-21 can and should be established as a matter of record, as this relates directly to the witness' overall credibility.
11. Through its submission, CPG-1 hopes to assist the Chamber in answering the questions which it was unable to provide in court and to put to rest the confusion surrounding LY

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<sup>14</sup> T. 6 July 2009, page 84.

<sup>15</sup> *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Biography of Ear Hor, E2/61.2, E2/61.2, page 2.

<sup>16</sup> T. 6 July 2009, page 83-84.

<sup>17</sup> T. 15 July 2009, page 43. Mam Nai expressly noted that he only recognised the handwriting on the confession section as his own. He stated he was not the author of the 'request section' of the document.

<sup>18</sup> T. 6 July 2009, page 79-80.

<sup>19</sup> *Ibid.*, page 9-13.

Hor's legitimate status as a survivor of S-21 and the authenticity of the documents presented to him.

**III. REQUEST**

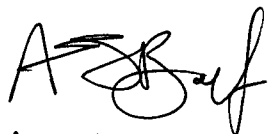
12. Civil Party Group 1 respectfully requests the Chamber to establish as a matter of record that LY Hor was detained at S-21 in 1976 and that the documents attached to his Civil Party Application belonged to LY Hor and are to be found at S-21.

Respectfully submitted by

Co-Lawyers for Civil Parties (Group 1)

Signed in Phnom Penh on 28 July 2009

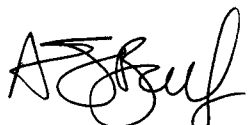
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ADAM BOND

Ty Srinna

PER ORDER

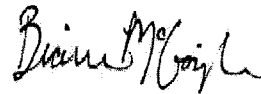


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