



*Villagers visiting the ECCC watch the court proceedings on Tuesday from the ECCC's courtyard.*

### **The Prosecution Explores S-21 Procedures and Processes: Testimony of Duch Continues**

*“At the beginning, things were messy”*  
- Duch, referring to S-21 prison

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On Tuesday, March 27, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary and Khieu Samphan. Scheduled for the day was the continued testimony of convicted Case 001 accused Kaing Guek Eav, *alias* Duch, who had begun his testimony the previous week. During the previous day’s proceedings, it was established that the prosecution would conclude its questioning of Duch by the end of the morning session on Thursday, March 29, and thereafter the civil parties will be provided with one day to put questions to Duch.

### ***Prosecution Resumes Questioning of Duch***

Prosecution counsel William Smith began questioning for the day by explaining that he planned on showing Duch a series of documents and asking questions about such documents. He then placed the first document on the courtroom monitor, and Duch confirmed that the document was from S-21, noting that the handwriting appearing on the document was that of his deputy, Hor. Duch then read out the title of the document as “the history of a detainee.” He stated that the document was a routine one that was collected from each detainee at S-21 upon arrival.

Duch then testified about the process of photographing detainees upon arrival at S-21, stating that it was standard procedure to take a photograph of each detainee upon arrival. He did note, however, that “special” prisoners would not have their picture taken and no date would appear in the written record of their arrest. This procedure was used to maintain secrecy, and according to Duch, special prisoners were identified by Son Sen. Duch then explained that photographs were taken to record the entry of prisoners into S-21 and used to track down any prisoners who managed to escape.

Next, Mr. Smith asked Duch about another document, which Duch identified as a list of S-21 prisoners who had worked at the Democratic Kampuchea (DK) Ministry of Foreign Affairs. He testified that it was Hor’s idea to create lists of prisoners, because “at the beginning, things were messy.”

The next document displayed by the prosecution was identified by Duch as being sourced from S-21, but he explained that the document pertained to a special hospital unit that was under the direct authority of the “upper echelons” of the Communist Party of Kampuchea (CPK). He stated that the paper on which the document was printed was inconsistent with the type used at S-21 generally, and he surmised that the document was found near S-21 after the end of the DK period. Upon further questioning, Duch noted that the document had a date in 1978 on it and thus references to interrogations in the document meant that prisoners at the time were being hurriedly interrogated because of the impending arrival of the Vietnamese army in Phnom Penh.



Duch next explained that the term “confession” was used at S-21 to refer generally to “answers” to questions put to prisoners. He then stated that most interrogations involved torture but noted that his superiors ordered him specifically not to torture certain prisoners, such as former senior CPK official Koy Thuon. Upon further questioning, Duch stated that the length of interrogations varied, depending on the prisoner. He also noted that initially interrogations were audio-recorded, but this process was altered in favor of written summaries upon the orders of Nuon Chea, who preferred to read, rather than listen to, confessions. Duch stated that confessions varied in length, but some ran into hundreds of pages. The main purpose of S-21, according to Duch, was to obtain confessions to transmit to the upper echelons of the CPK.

Mr. Smith then presented Duch with a document that Duch identified as the cover page of an S-21 confession. Duch stated that he had received and read the confession shortly after it was completed and made a brief report on it to his superior in which he noted that the confession mentioned individuals from the previous regime. He also identified his own handwriting, as well as that of his superior, Son Sen, on the document. Duch stated that Son Sen's notation indicated that the document had been copied to "brother Nuon," *i.e.*, Nuon Chea. Upon further questioning, Duch affirmed that standard procedure was to execute detainees after their confession was completed.

Next, Duch identified another document as a "smash list" from S-21 and stated that the individuals named in the document were former Lon Nol soldiers. He testified that the document was from 1976, though he acknowledged that, at this early stage in his command over the prison, the dates on such documents were not precise. The next document was a list of names of prisoners at S-21 dated January 1977. Upon further questioning, Duch affirmed that the list contained the names of various prisoners arrested in different places and that these detainees had held a range of professions, from students to hospital workers, prior to arrest. Another document identified by Duch consisted of a statistical summary prepared for Duch by Hor.

Mr. Smith then displayed the cover page of a *Revolutionary Flag* booklet on the courtroom monitors. Duch identified the booklet and explained that it was considered an "internal" CPK document during the DK period and was published monthly to educate party members. He stated that the specific issue displayed was a special issue for May and June of 1978. Upon further questioning, Duch stated that the booklets were used to educate "each and every member" of the CPK. Duch also testified that the booklets were sent by messengers of the CPK general staff on a monthly basis to S-21 to be used for education of the prison staff. He stated that he taught the contents of the booklets to his staff during internal education sessions at S-21.

Duch next testified about the note-taking process at S-21 and stated that he had a specific assistant who took meticulous notes. He further stated that in some instances this assistant stood in for Duch, including conducting interrogations of Vietnamese soldiers so that they could be recorded and broadcast on the radio.

Mr. Smith then asked Duch about a CPK general assembly held in Phnom Penh. Duch responded that he remembered the assembly well, because it coincided with the birth of his first child. He stated that the assembly was held specifically for S-21 staff only, was chaired by Son Sen and was held at S-21 itself.

Duch then testified regarding a certain document that he stated did not come from S-21 because it had Latin characters appearing on it, while S-21 documents were solely written in Khmer script. He surmised that the cover page was likely written by the former chairman of the S-21 museum and not actual S-21 staff members. When asked to turn to the second page of the document, Duch identified the document as a confession and noted his own annotation that appeared on it, which instructed one of his subordinates to remove certain names from the confession. Mr. Smith then asked Duch whether the document in Khmer indicated from where

the instruction to remove the names came. Duch responded that it was Nuon Chea who issued such instructions and that Nuon Chea's name was specifically mentioned in the annotation.

### ***Ieng Sary Retires at Usual Hour***

At this point, the Chamber prepared to take its regular morning break, and as usual, Ieng Sary counsel Ang Udom rose and requested that Ieng Sary be excused from the courtroom for the remainder of the day to observe the proceedings from the courtroom holding cell via audio-visual link. As has become customary, Chamber President Nil Nonn granted the request.

### ***Prosecution Resumes Questioning of Duch***

Following the break, Mr. Smith informed Duch that he planned on asking for commentary on five additional documents. Prior to proceeding with this process, Mr. Smith asked Duch a series of questions in order to clarify the reasons why certain names were removed from confessions mentioned earlier in the day's questioning. Duch testified that the names were removed only to maintain secrecy and ensure that the individuals remained unaware they had come under the scrutiny of the CPK command. He also stated that these individuals were indeed later arrested and executed and that all of them had ties to the East Zone.

Mr. Smith then proceeded with the first of the final five documents, which Duch identified as an interrogation report submitted to him by a subordinate in 1976. He stated that in this document, his subordinate had noted that Duch personally gave permission to torture the detainee, named Ya, during interrogation. Duch noted that this was not typical as usually Duch issued instructions on what interrogation methods to apply orally rather than in writing.

The second document presented to Duch by Mr. Smith was a summary of activities in S-21. Duch testified that the passages in the report stating that Duch had reported to "*Angkar*" referred to reports he had given to Son Sen. Duch explained, however, that the document, which stated that the CPK (*Angkar*) instructed Duch to execute prisoner Ya if he did not become more forthcoming and confess, was actually never transmitted to anyone outside of S-21 and was indeed created at S-21. He stated that Ya had not confessed easily, so Duch had to devise alternative tactics other than torture to convince Ya to confess. Thus, Duch stated, he had fabricated the document as a ploy to obtain a confession from Ya. He additionally testified that he met Son Sen every three days or so to report on the work done at S-21 and that he was the only individual Son Sen trusted within S-21.

Mr. Smith then asked Duch a series of questions concerning his relationship with Son Sen. Duch testified that he had regular meetings with Son Sen, who was his direct supervisor until mid-1977. During this questioning, Nuon Chea defense counsel Michiel Pestman interjected and pointed out that Duch had provided a different date during previous testimony for when he began reporting to Nuon Chea rather than Son Sen. In response, Mr. Smith noted that Duch had indeed given conflicting answers in the past concerning when Nuon Chea replaced Son Sen and asked Duch to clarify. Duch stated that in mid-July of 1977, Nuon Chea called him to a meeting and informed Duch that from that point on, he would report to Nuon Chea directly. Duch then testified that, from this point forward, he reported to Nuon Chea.

### ***Nuon Chea Defense Objects, Claims Prosecution Seeking to Expand Scope of Trial 1***

This line of questioning prompted a “general objection” from Mr. Pestman, who argued that the prosecution was proceeding down a path unrelated to the topics covered in Case 002, Trial 1. He argued that it would be prejudicial to Nuon Chea to discuss his alleged authority and roles in late 1977 and thereafter because doing so could conflate Nuon Chea’s authority in 1975 with that which he may have had in 1977. Moreover, Mr. Pestman argued, S-21 is outside the scope of Case 002, Trial 1 and, as such, questioning Duch and others about Nuon Chea’s role could prejudice Nuon Chea by exploring extraneous matters.



Mr. Smith responded to the objection by arguing that the prosecution was seeking solely to explore the communications structures in place at S-21 and how the prison communicated with other parts of the DK government and CPK hierarchy. He also noted that the

second population transfer, which was included as part of Case 002, Trial 1, continued into 1977 and denied that the prosecution was seeking to question Duch on Nuon Chea’s participation in S-21 activities in a detailed manner. He also noted that the prosecution was seeking to fulfill its duty to persuade the Chamber of key facts beyond a reasonable doubt.

Mr. Pestman responded that if the prosecution planned on proving the role of Nuon Chea in relationship to S-21 “beyond a reasonable doubt,” then doing so would obviate the need for a later trial related to S-21 specifically. He argued that allowing the prosecution to do so would strip Nuon Chea of the ability to mount a legal defense to allegations against him related to S-21 and requested that the Chamber strictly limit the scope of the prosecution’s current line of questioning.

The Chamber judges conferred briefly before the President announced that the Chamber had already ruled on the issue and overruled the objection. Nonetheless, the President instructed the prosecution to limit its questioning to topics covered in Case 002, Trial 1 and to avoid questions which go beyond the framework of S-21.

Mr. Smith then asked Duch again about meetings with his superiors and the topics discussed at such meetings. Duch testified that during the meetings, he and his superiors would discuss the processes in place at S-21 and any other pressing issues. He stated that before Nuon Chea traveled to China, Duch typically met him every three days and, after Nuon Chea returned from China, Duch would typically meet him approximately every five days. He also stated that the CPK leadership identified certain prisoners as important and that Duch would carefully report on the interrogation status of these prisoners and any resulting confessions. Duch then stated that in two instances confessions implicated powerful people, including one of Ieng Sary’s family members and Khieu Samphan himself. In these instances, the names of the two individuals were removed from the confessions. He summarized that the main purpose of meeting Nuon Chea was

to keep him informed of the overall situation at S-21 so that Nuon Chea could provide him with “direction or guidance.”

### ***Nuon Chea Retires at Usual Hour***

At this point, the Chamber prepared to adjourn for lunch, at which point Mr. Pestman rose, informed the Chamber that Nuon Chea was too tired to continue sitting in the courtroom and requested that he be permitted to waive his right to be present in the courtroom and follow the remainder of the day’s proceedings via audio-visual link. The President granted this request and the proceedings were adjourned for the lunch break.

### ***Prosecution Continues Questioning Duch***

Following the lunch break, Mr. Smith informed Duch that he wished to move to the topic of the actual state government in place in DK. He began this portion by asking how many parties there were in DK, to which Duch replied that there was only one party, which controlled everything in a complete “monopoly.” Duch elaborated that the CPK ruled alone and its political lines were not influenced by any other person or entity. Upon further questioning, Duch stated that “any means of production . . . was in total control of the party.” Similarly, public institutions such as schools and hospitals were also under the exclusive control of the CPK. Duch also testified that, sometime shortly after April 17, 1975, it was announced over the radio that the country was officially renamed “Democratic Kampuchea.” He then noted that party members were invited to a meeting where the DK constitution was announced and thereafter the constitution was broadcast over the radio, which is where Duch learned its contents. Although he was unsure, Duch speculated that Pol Pot and/or Nuon Chea must have drafted the DK constitution, and he stated that he had a copy of the constitution at S-21, noting that the copy used at the ECCC was, in fact, this exact copy.

### ***Nuon Chea Defense Again Claims Duch Treated Like Expert***

Mr. Smith then provided Duch with a copy of the DK constitution, which Duch identified. Before Mr. Smith could continue asking Duch questions concerning the constitution however, Mr. Pestman objected again, arguing that Duch had no specialized knowledge of the DK constitution yet was being treated like an expert by the prosecution. He submitted that Duch could provide no sensible testimony concerning the contents of the constitution and therefore should not be questioned on the subject.

Mr. Smith asserted in response that the document was not an especially technical one and that the extent of Duch’s knowledge concerning the document could only be determined through questioning.

Mr. Pestman countered that, if Duch has knowledge of the constitution, the prosecution should simply ask him questions about elections and related issues in DK drawn from Duch’s own personal experiences, without providing Duch with the constitution document itself.

Mr. Smith responded that the document contains phrases and terminology that Duch may be able to explain because he had read the document and was privy to party information during the DK period.

The Chamber overruled the objection and directed the prosecution to continue. At this point, however, Nuon Chea national defense counsel Son Arun interjected and argued that Duch had just indicated that he had never read the constitution itself during the DK period. Thus, Son Arun argued, Duch had no knowledge of the constitution and should not therefore answer questions pertaining to the constitution.

The Chamber President then asked Duch to clarify, and Duch stated that the copy of the constitution before the Court was taken from S-21 and therefore of course he had read it during the DK period. The floor was then turned back over to the prosecution.

#### ***Prosecution Questions Duch on DK Constitution***

Mr. Smith then asked Duch if, at any time during the DK period, he recollected hearing of any election of the “representative people’s assembly.” Duch responded that there was only one polling station he knew of, which was located in Tuol Kork in Phnom Penh. He stated that Nuon Chea ran this polling station, but he knew of no other election station anywhere in DK. He identified the wife of his former superior, Nath, as a candidate in the election. Upon further questioning, Duch stated that the representative assembly had an election, but he stated that this election was illusory only because the group only met once and its members were selected by the upper echelons of the CPK. Furthermore, Duch stated, many members of the representative assembly were later arrested and sent to S-21. He then explained that the “state presidium” in DK was similarly a “symbolic body” with no actual power and that did not even have an office. Mr. Smith then asked Duch what happened to state presidium member Ros Nhim.

#### ***Nuon Chea Defense Objects Again Unsuccessfully***

This question prompted another objection by Mr. Pestman, who noted that the prosecution had declared its intent to delve into the background of Duch’s knowledge regarding the constitution but had failed to do so. Mr. Pestman argued that by not doing so, the prosecution had opened up the possibility that Duch was providing testimony based solely on his own speculation drawn from confessions under torture at S-21. Mr. Pestman stated that if this is the case, the prosecution could be seen as “whitewashing” torture evidence.

Mr. Smith responded that it is the role of cross-examination to determine the basis of Duch’s knowledge and there was no indication that Duch was drawing on information from S-21 confessions in his current testimony.

Mr. Pestman replied that the situation is “not that easy” for the prosecution to simply not explore the source of Duch’s knowledge and rely completely on other parties to explore this issue during cross-examination. He opined that the prosecution had a professional obligation to explore the basis of Duch’s testimony.

The Chamber overruled the objection and directed Mr. Smith to continue. After Mr. Smith repeated his question, Duch stated that Ros Nhim was the former Secretary of the North Zone in DK who was arrested and sent to S-21.

Upon further questioning, Duch read out provisions in the DK constitution that stated that men and women were equal and guaranteed certain rights and equality for all. He then stated that the

constitution was not truly implemented, citing the subjugation of deported “new people” to the authority of “base people” an example of inequality.

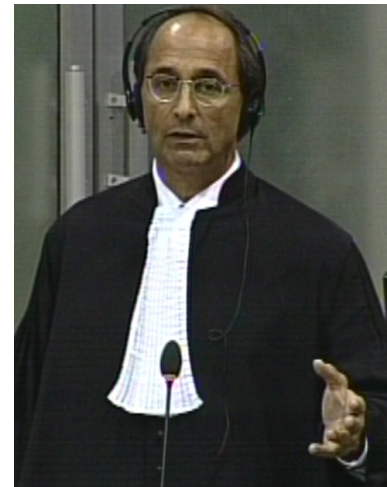
When asked about any democracy in DK, Duch stated that the principle applied at the time was “democratic centralism,” which meant “democracy” as dictated by Pol Pot.

Mr. Smith then asked Duch about additional provisions in the DK constitution, such as article 23, which outlined the tasks of the CPK Central Committee. For each section, Duch read out the relevant provisions and then provided some commentary.

### ***Prosecution Questions Duch Concerning the CPK Central Committee***

Regarding the Central Committee, Duch testified that the Committee had seven members including: Pol Pot, Nuon Chea, Sao Phim, Ta Mok, Ieng Sary, Son Sen and Vorn Vet. He stated that he found out who was in the Central Committee because CPK member Pang, who was later arrested and sent to S-21, desired to join the Central Committee and had told Duch about the membership while still working as a full-rights party member. Duch also stated that later he asked S-21 prisoner Koy Thuon about the Central Committee and was provided with the same seven names. He noted that Koy Thuon was the only prisoner at S-21 who was not tortured.

Next, Duch testified that on a separate occasion, Son Sen informed Duch that the “upper echelon brothers” were going to meet and instructed him to create confession summaries to use at the meetings. Following an objection from the Nuon Chea defense and some confusion regarding the precise wording of Duch’s testimony, Duch clarified that he was never instructed on how many copies of the documents he should prepare for the meeting but had created seven copies on his own accord because he assumed the Central Committee had seven members.



### ***Ieng Sary Defense Objects to Leading Questions***

Mr. Smith then began to ask Duch a question prefaced by a long summary of Duch’s previous statements. At this point, the courtroom audio feed picked up Ieng Sary defense counsel Michael Karnavas exclaiming, “God, this is so leading!” Mr. Karnavas then formally objected, stating that if Duch is such a knowledgeable witness, the prosecution should not need to resort to asking leading questions. He further argued, “When you have a very clever individual who has spent years training himself in the art of deception,” the result is that such person could pick up the cues of what testimony was expected from him and provide that testimony. He then requested that the prosecution be instructed to ask more general questions.

Mr. Smith responded that he had only been summarizing one of Duch’s previous answers in the challenged question, but offered to move more slowly with simpler questions if needs be.

The judges then conferred briefly before Judge Sylvia Cartwright instructed the prosecution to make it clear to the Chamber that questions asked are not leading. She also requested that Mr.



Karnavas cease using one of his preferred terms – “confabulation” – because she believed the word was not being accurately translated into Khmer.

Mr. Smith then proceeded by asking a series of shorter, simpler questions concerning how Pang had told Duch about the Central Committee. In the midst of this process, the Chamber President interjected and announced the afternoon break.

Following the break and upon additional questioning, Duch testified that he could not recall when a CPK cadre named “Choeuk” was arrested, but estimated that the arrest took place in late 1976 or early 1977. Duch then testified that Son Sen had told him about a meeting Son Sen had with Pol Pot where it was decided that leaders could be “fifty-percent” sure that Choeuk was an enemy. When Duch asked Son Sen about this, he allegedly responded that “in politics” fifty percent really meant “one hundred percent.” Duch then explained that Choeuk was the direct subordinate of Sao Phim.

Mr. Smith then asked Duch to clarify an earlier statement regarding the echelons of power within the Central Committee. Duch responded that there were four levels of authority in the Central Committee: in ascending order, assistants to committee members; candidate committee members; full-rights committee members; and Standing Committee members, who held the highest position.

Duch then testified that he was unsure how often the Central Committee met, but he did testify that all Zone Secretaries in DK were also members of the Central Committee. Therefore, the body could not meet with its full membership very regularly.

Regarding the Standing Committee, Duch testified that each member of the Committee had their own “portfolio” of which he was in charge. He provided the example of Ieng Sary, who maintained the relationships between DK and other socialist states. Duch then stated that all power was still consolidated in the hands of Pol Pot, though, he claimed, any time Pol Pot was unavailable, Nuon Chea would assume command.

### ***All Defense Teams Object***

Mr. Smith then sought to provide Duch with an additional document, which was apparently authored by the CPK central committee. This action triggered another objection from the Nuon Chea defense, and Mr. Pestman requested that the prosecutor be instructed to elicit the sources of Duch’s knowledge prior to moving on.

Mr. Smith responded that the document was being used to expedite the process because the prosecution wished to ask Duch about dates and names appearing in the document.

Ieng Sary defense counsel Michael Karnavas then added his voice to the objection, asserting that in a previous statement to the ECCC Co-Investigating Judges (CIJs), Duch had stated that he had never before seen the challenged document. Mr. Karnavas stated that Duch could perhaps be questioned on the topics and names appearing in the document, but he argued that Duch should not be given the actual document to read and inspect.

Mr. Pestman then clarified his objection, stating that he had not objected to the use of the document, but had objected to the prosecution's failure to ask "follow-up" questions to clarify Duch's knowledge about the Central Committee members.

Mr. Smith responded that the prosecution's understanding of the standard for the use of documents during questioning previously established by the Chamber allowed the use of documents, so long as the witness has some knowledge related to the topics contained therein. He further submitted that international standards support this position, citing various cases in support of this position. Mr. Smith characterized the test at the international as consisting of a determination of whether a witness has the "ability to add value to the evidence" contained in a document.



Civil party counsel Lyma Nguyen then responded to the objection made by the Ieng Sary defense and argued that, because the ECCC is a civil law environment, admission of documents is favored, noting that the specific document's authenticity was not currently being questioned.

At this point, Khieu Samphan defense counsel Arthur Vercken added his voice to the objection made by Mr. Karnavas, stating that the document had in fact, been challenged by the defense and so its authenticity cannot be presumed, as suggested by Ms. Nguyen.

After hearing these arguments, the Chamber judges conferred briefly before Judge Cartwright stated that the rule is that any party may put a document to a witness and ask the witness if he or she had seen the document previously. If the witness denies having seen the document before, then the document must be taken from the witness to avoid any possibility of the witness reading from the document. In such an event however, Judge Cartwright clarified, questions drawn from the document could still be asked in such a case. She then overruled the objections from the defense teams.

Duch was then given the document and asked if he had ever seen it before. Duch responded that he was asked about the document by the CIJs and had also based some of his previous testimony on the document as well.

At this point, Mr. Vercken interjected and objected to the continued use of the document. He stated that under the rule just stated by Judge Cartwright, Duch should not continue possessing the document because Duch had just denied any knowledge of the document prior to the CIJs showing it to him. Thus, Mr. Vercken argued, Duch had no knowledge of the document during the DK period or thereafter until much later. This argument was then reiterated by Khieu Samphan's national defense counsel, Kong Sam Onn.

Mr. Smith responded that the ruling made by the Chamber appeared to allow the use of documents the witnesses had read at any time previous to testifying, not only during the DK period.

Mr. Vercken then reiterated his position, stating that he believed it to be “perfectly logical” to interpret the Chamber’s ruling as precluding giving documents to witnesses they had only become familiar with through questioning by ECCC officials.

Civil party co-lead lawyer Elisabeth Simmoneau-Fort then rose and argued that it was immaterial who provided the document to Duch and therefore the prosecution should be permitted to proceed.

Judge Cartwright was then given the floor by the Chamber President to clarify the Chamber’s position “one more time.” It quickly became apparent, however, that the Chamber itself was not completely clear on this ruling, as the judges conferred for several minutes before Judge Cartwright stated that the Chamber wished to “confirm” that its ruling should not be understood to be limited solely to documents known to witnesses during the period of DK. She explained that documents could not be authenticated by a witness with no prior knowledge of the document but that a witness could be questioned on the contents of a document already admitted. Thus, the Chamber overruled the objection and instructed Mr. Smith to proceed.

Mr. Smith then indicated that the prosecution would seek in the future to discuss further the possible authentication of documents by individuals who had not seen the documents before. He then asked Duch to read the title of the document, which Duch read as “Decisions of the Central Committee.” Mr. Smith noted the discussion in the document of the right to “smash” people “inside and outside” the party ranks and asked whether, after the document’s date of March 30, 1976, the levels of executions increased at S-21. Duch responded that prior to March 30, 1976, the CPK only smashed people outside the party, but that after this date, the party began to purge its own members. Nonetheless, Duch stated that he believed more people were smashed overall prior to March 30, 1976, as opposed to after this change in policy.

At this point the Chamber announced the day’s adjournment. Proceedings will continue Wednesday morning at 9 a.m.