

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the
Courts of Cambodia

ការិយាល័យសហចៅក្រមនៃអង្គជំនុំជម្រះ

Office of the Co-Investigating Judges
Bureau des Co-juges d'instruction

សំណុំរឿងព្រហ្មទណ្ឌ

Criminal Case File /Dossier pénal

លេខ/No: 002/14-08-2006

លេខនៃស៊ើបសួរ/Investigation/Instruction

លេខ/No: 001/18-07-2007-ECCC-OCIJ

ដីកាបញ្ជូនរឿងទៅជំនុំជម្រះ

កំរង បញ្ជូនអធិក ហៅ ឌុច

**CLOSING ORDER indicting
Kaing Guek Eav alias Duch
ORDONNANCE DE RENVOI
Kaing Guek Eav alias Duch**

PUBLIC REDACTED VERSION

We, **You Bunleng ឃុំ ប៊ុនឡេង** and **Marcel Lemonde**, the Co-Investigating Judges of the
Extraordinary Chambers in the Courts of Cambodia (ECCC),

Noting the investigation opened against:

Kaing Guek Eav កាំង ហ្គេកក្រីវ alias **Duch ឌុច**, male, born on 17 November 1942,

Charged with **Crimes Against Humanity and Grave Breaches of the Geneva
Conventions of 12 August 1949**, offences defined and punishable under Articles 5, 6, 29
(New) and 39 (New) of the Law on the establishment of the Extraordinary Chambers,
dated 27 October 2004,

Detained (the Order of Provisional Detention dated 31 July 2007 and the Order on Extension of Provisional Detention dated 28 July 2008),

Civil Parties: [28 Civil Parties]

Noting the Separation Order of the Co-Investigating Judges dated 19 September 2007,

Noting the Final Submissions of the Co-Prosecutors dated 18 July 2008,

Noting the Reply of the Defence dated 24 July 2008,

Consider that the investigation has revealed the following facts:

INTRODUCTION

1. On 7 January 1979, as the Democratic Kampuchea (DK) regime, which had ruled Cambodia since 17 April 1975, collapsed and its leadership under POL Pot fled Phnom Penh, Vietnamese forces entering an empty capital stumbled upon what appeared to be a recently abandoned detention and interrogation centre in the heart of town. Upon entering, troops discovered a number of recently killed persons still chained to iron beds, and thousands of documents scattered in and around the buildings. This site, subsequently referred to as Tuol Sleng, was the headquarters of the Communist Party of Kampuchea (CPK) Special Branch of the secret police (*Santebal*) “Office S21” (S21). It was chaired for most of its existence by a man named DUCH, who would later be identified as the Charged Person, KAING Guek Eav.
2. DUCH, a former mathematics teacher, went into hiding with the communist movement known as the “Khmer Rouge” in 1967, after three of his students were arrested. On 5 January 1968, he too was arrested and sentenced to 20 years imprisonment for breaching State security in relation to foreign States. However, when set free following the coup on 18 March 1970, he soon recommenced his revolutionary activities. From July 1971 until January 1975, DUCH was Chairman of Office 13 (M13, another security office located in Amleang, Kompong Speu province) acting under the orders of [Person A] and SON Sen alias Khiev alias Brother 89 alias Brother 50, who was himself appointed Chairman of the General Staff of the communist armed forces in 1972. Subsequently, from 1975 to 1979, DUCH occupied posts at S21, when he was aged between 33 and 37.
3. Twenty years after the discovery of S21, DUCH was located living under another name, Ta Sanh, in the Samlaut district of Battambang province. Through press

reports and interviews, in which he admitted his real name and former role, his whereabouts became public knowledge. Consequently, in May 1999, Cambodian military authorities arrested DUCH and placed him in custody¹.

PROCEDURAL HISTORY

4. In 2006, the Extraordinary Chambers in the Courts of Cambodia (ECCC) was established to bring to trial senior leaders of the DK regime and other persons most responsible for crimes committed in Cambodia between 17 April 1975 and 6 January 1979. On 10 July 2006, the Co-Prosecutors initiated a preliminary investigation into these crimes. On 18 July 2007, they filed an Introductory Submission pursuant to ECCC Internal Rule 53 summarising their allegations against five suspects, including DUCH,² for criminal acts committed in numerous places. The case file was then transferred to the Office of the Co-Investigating Judges (OCIJ) to undertake a judicial investigation under Rule 55. On 30 July 2007, DUCH was detained by order of the Co-Investigating Judges and transferred to the ECCC Detention Centre. In the course of this investigation he was charged with crimes against humanity and grave breaches of the Geneva Conventions of 1949³.
5. On 19 September 2007, the Co-Investigating Judges ordered the separation of the case file concerning DUCH's responsibility in respect of S21, citing the need for an "expedited resolution"⁴. The remaining facts included within the Introductory Submission remain subject to what is now a separate and ongoing judicial investigation.
6. During the investigation, eight individuals joined the case file as Civil Parties pursuant to Rule 23 including former prisoners of S21 and immediate family members of former detainees executed at S21. Another 20 Civil Parties joined between the end of the judicial investigation and the closing order⁵.
7. On 15 May 2008 the Co-Investigating Judges notified the parties that they considered their investigation to be concluded⁶. On 23 June 2008, they forwarded the case file to the Office of the Co-Prosecutors (OCP) pursuant to Rule 66⁷.
8. On 18 July 2008, the Co-Prosecutors filed their Final Submission requesting the Co-Investigating Judges to indict DUCH and send him to trial for crimes against humanity, grave breaches of the Geneva Conventions of 1949, and for violations of the 1956 Penal Code of Cambodia⁸. On 24 July 2008, counsel for DUCH filed a Memorandum in response to the Co-Prosecutors' Final Submission.

9. Evidence on the case file includes the records of 21 interviews with DUCH; records of interviews with numerous witnesses, including former S21 personnel and detainees; records of reconstructions at two locations; various documents placed on the case file by the OCIJ, OCP, and the Charged Person and his lawyers; in addition to the documents filed by the OCP with its Introductory Submission.

PART I. SUMMARY OF FACTS

A. HISTORICAL AND POLITICAL CONTEXT

10. On 17 April 1975, the army of the Communist Party of Kampuchea (CPK), the Kampuchea People's National Liberation Armed Forces (KPNLAF), entered Phnom Penh and seized national power⁹. With the end of the civil war against LON Nol's Khmer Republic, the CPK's stated policy was to pass to "... *the next phase of making socialist revolution*"¹⁰. During the three years, eight months, and twenty days, that followed, the CPK exercised effective authority over Democratic Kampuchea, and pursued a policy of "*completely disintegrat[ing]*" the economic and political structures of the Khmer Republic¹¹ and creating a "*new, revolutionary State power*"¹².
11. Historians and observers agree that this programme was implemented through a number of means including the forced transfer of residents of Phnom Penh and other former Khmer Republic strongholds to the countryside; the creation of Party-controlled agricultural production cooperatives where people were made to work under extremely difficult conditions to increase food production; and the elimination of officials and supporters of the previous regime¹³. Many of these CPK policies required the transformation of "*new people*" into peasants. These individuals were broadly made up of evacuated city dwellers and peasants living under LON Nol control until April 1975, as distinct from "*old*" or "*base*" people who were essentially peasants from areas already under the authority of the CPK during the Khmer Republic period¹⁴.
12. Politically motivated extra-judicial executions were committed from the outset by military units. They continued thereafter in security centres throughout the country. The CPK foreshadowed these events by organising, in February 1975, a "Popular National Congress of the National United Front of Kampuchea", at which it publicly announced that seven so-called Khmer Republic "*super-traitors*" were to be summarily killed for treason, post-liberation¹⁵. The Congress also declared that lower-level Khmer Republic personnel would be welcomed by the revolutionary

forces “*provided they immediately cease their service to the seven traitors and stop cooperating with them*”¹⁶. This implied that any such personnel who did not immediately defect to the Communist side were vulnerable to summary execution. In fact, it appears that from the early 1970s¹⁷, CPK security organs such as M13, chaired by DUCH, had been tasked with executions, indicating that a policy of physically eliminating persons deemed “enemies” of the revolution was already institutionalised prior to 17 April 1975¹⁸.

13. The CPK destroyed the legal and judicial structures of the Khmer Republic¹⁹. While it is true that Democratic Kampuchea adopted a Constitution in January 1976, its Chapter 7, concerning “*Justice*,” showed the CPK’s priority was to protect the State from subversion. Article 10 provided for an unspecified “*highest level of punitive sanction*” for “*opposition and wrecking activities of a systematic character that endanger the State*”, while declaring that other “*crimes*” must be dealt with through “*re-education and refashioning within the context of State or popular organs*”²⁰. Although Article 9 promised that “*courts constituted as People’s Courts belonging to the people*” would “*embody the people’s justice and defend the people’s rights and democratic freedoms*,” there is no evidence that they were ever created²¹. Moreover, while the first, and apparently only meeting of what was said to be a popularly elected People’s Representative Assembly mandated the formation of a Judicial Committee²² in April 1976, no evidence exists of any implementation of Article 9. This left the punishments set forth in Article 10 to be applied arbitrarily²³. Furthermore, there is no evidence that the CPK established appropriate facilities for captured enemy combatants or civilians, or mechanisms to challenge the legality of their arrest, detention or punishment.
14. The old legal structures were replaced by re-education, interrogation and security centres where former Khmer Republic officials and supporters, as well as others accused of offences against the CPK, were detained and executed²⁴. This network of security centres was supplemented by a programme of surveillance at all levels of the regime which aimed to identify, report, and eliminate potential enemies of those in control of the Party²⁵.
15. Thus, numerous persons, rightly or wrongly linked to the Khmer Republic or its purported social class foundations, were punished or summarily executed by the CPK in the days and weeks immediately following the “liberation” of Phnom Penh, through to the end of the regime.

16. Almost immediately following the KPNLAF's entry into Phnom Penh on 17 April 1975, international armed conflict broke out between Vietnam and Cambodia²⁶. Protracted hostilities continued until at least 6 January 1979²⁷.
17. Although Democratic Kampuchea and the Socialist Republic of Vietnam only officially recognised the existence of international armed conflict on 31 December 1977²⁸, there is evidence that, from mid-April 1975, with the exception of several respites during peace negotiations or diplomatic and cultural visits, there was escalating and increasingly frequent armed violence between the two States. In particular, the former KPNLAF, renamed the Revolutionary Army of Kampuchea (RAK), fought the Vietnam People's Army at various times in the Cambodian territories of: Ratanakiri; Mondulakiri; Kratie; Kompong Cham; Prey Veng; Svay Rieng; Kandal; Takeo; Kampot; and the islands of Wai, Koh Ach, Koh Tral, Koh Ses, Koh Thmei, Koh Sampoch, Koh Rong, and Koh Muk Ream²⁹.
18. At the end of 1977, the conflict escalated into a full-scale war which reached deep into Democratic Kampuchea, and led the DK to seize the United Nations Security Council of the matter on 31 December 1978³⁰. By 7 January 1979, the RAK had been forced to flee Phnom Penh and, from that point forward, the regime rapidly lost effective control of the greater part of Cambodian territory.

19. It was against the backdrop of the creation of a radical new Cambodia and the war with Vietnam that S21 was established.

B. ESTABLISHMENT OF S21

20. On 15 August 1975, SON Sen, called DUCH to a meeting at the Phnom Penh train station together with [Person B] from Division 703 of the RAK. The purpose of the meeting was to plan the establishment of S21, which for the purpose of this closing order includes the detention centre and surrounding area (Tuol Sleng), as well as its execution and re-education camp branches on the outskirts of Phnom Penh, named Choeng Ek and Prey Sâr (S24), respectively³¹. S21 was unique in the network of security centres given its direct link to the Central Committee and its role in the detention and execution of CPK cadre.

21. SON Sen appointed [Person B] as Chairman of S21 and Committee Secretary³², with DUCH as his deputy in charge of the interrogation unit³³. Following the meeting, DUCH brought a number of his former M13 staff to Phnom Penh to join forces with the Division 703 personnel already conducting security operations against former LON Nol regime members in Phnom Penh³⁴. S21 became fully operational in October 1975³⁵.
22. In March 1976, [Person B] was transferred to the General Staff, and DUCH replaced him as Chairman and Secretary of S21³⁶. DUCH confirmed [Person C], a former Division 703 cadre, as his deputy responsible for the day-to-day operation of the office. However, DUCH admitted he continued personally to oversee the interrogation of the most important prisoners, and to be ultimately responsible for S21³⁷. The third member of the S21 Committee, and head of S24 was [Person D]³⁸.
23. DUCH stated that he was reluctant to accept his original appointment at S21 and that he tried to apply for an assignment with the Ministry of Industry³⁹. He further stated that, upon his promotion to Chairman and Secretary of S21, he asked that the appointment be given to someone else. In any event, DUCH took command of S21, and, by his own admission, understood, based on his experience at M13, that he was capable of performing this work better than his predecessor⁴⁰.
24. Under DUCH's command, S21 was divided into distinct units, each with its own function⁴¹. The defence section was administered by [Person C] and his subordinate, [Person E]. The interrogation section was directly overseen by DUCH, and was generally managed by [Person F] and by [Person G]⁴². [Person H] was responsible for maintaining the document unit, and he reported to DUCH through [Person C]⁴³. [Person I] was the head of the Special Unit which had a number of duties. It received those sent to S21; brought them to the Chairman of the Defence Unit; intervened in emergencies; and carried out executions⁴⁴. There were also a number of other units which included photography, medicine, cooking, and logistics. DUCH ran S21 along hierarchical lines and established reporting systems at all levels to ensure that his orders were carried out immediately and precisely⁴⁵.
25. Several witnesses said DUCH was feared by everyone at S21⁴⁶. He enforced both the general rules of the Party in relation to the work of the secret security police⁴⁷, as well as strict rules which he devised for the operation of S21⁴⁸. DUCH selected his staff personally⁴⁹, initially from amongst his most trusted subordinates at M-13⁵⁰, and later by recruiting children and adolescents as guards who, he said, were "*like a blank piece of paper*" and could be easily indoctrinated.⁵¹
26. The original S21 complex was located in Phnom Penh in Boeng Keng Kang 3 sub-district, Chamkar Mon district. The detention and interrogation facilities were

originally located in a block of houses on the corner of streets 163 and 360⁵². In late November 1975, S21 moved to the National Police Headquarters on Street 51 (Rue Pasteur) near Central Market (Phsar Thmei), yet in January 1976, it moved back to its original location⁵³.

27. Finally, in April 1976, upon DUCH's decision, the prisoners were moved to the premises of the Pohnea Yat Lycée, a high school located between streets 113, 131, 320, and 350⁵⁴. S21 operated at this location, which is now the site of the Tuol Sleng Genocide Museum, until 6 January 1979⁵⁵. The central building, referred to as Building E, was used to receive, register and photograph prisoners,⁵⁶ and a room was devoted to creating paintings and sculptures that glorified the regime. Four other buildings (A, B, C, and D) were used for detention⁵⁷. Buildings B, C and D held the general prisoner population in a mixture of large mass detention cells and small brick or wooden individual detention cells. Building A, together with the block of houses located south of the former Lycée called the "special prison," housed important prisoners⁵⁸.
28. The former school and the special prison were the heart of the most secure and secret part of the S21 complex. They were surrounded by fences and the interior and exterior were protected by armed guards⁵⁹. Many other buildings from the surrounding neighbourhood were also part of S21⁶⁰. These included interrogation houses, execution sites and mass graves, mess halls, a medical centre, houses for the staff, various offices and houses for DUCH and a house for the reception of prisoners⁶¹. These buildings were all situated within a second outer perimeter that was also protected by armed guards.
29. Initially, prisoners were executed and buried in and around the S21 complex⁶². At some time between 1976 and mid 1977, partly in order to avoid the risk of epidemic, DUCH decided to relocate the execution site to Choeng Ek⁶³, located approximately 15 km Southwest of Phnom Penh in Kandal province⁶⁴, and now the site of a memorial. The execution site consisted of a wooden house⁶⁵ where prisoners were held until just before their execution, and a large area that consisted of pits for executions⁶⁶. However, even after Choeng Ek became the main killing site, certain executions and burials took place at or near S21⁶⁷.
30. DUCH recognised that S24 was part of S21⁶⁸. In principle, S24 was tasked with reforming and re-educating combatants⁶⁹ and farming rice to supply Office S21 and its branches⁷⁰. It was located outside of Phnom Penh near the execution site of Choeng Ek in the area of Wat Kdol, in the Dangkao district of Kandal province⁷¹. Although witnesses state that the main structures and activities extended from the Prey Sâr prison to Chek Village, it appears the total area of S24 was larger⁷².

C. IMPLEMENTATION OF CPK POLICY AT S21

1. The Policy of "smashing" Enemies

31. The primary role of S21 was to implement "[t]he Party political line regarding the enemy" according to which prisoners "absolutely had to be smashed"⁷³. The term "smash" was used and widely understood at the relevant time to mean "kill"⁷⁴. Every prisoner who arrived at S21 was destined for execution. Although one witness⁷⁵ claimed he was able to leave S21, the vast majority of evidence demonstrates that the policy at S21 was that no prisoner could be released⁷⁶. This is confirmed by testimony that prisoners brought to S21 by mistake were executed in order to ensure secrecy and security⁷⁷. DUCH also claimed he tried to release prisoners on several occasions but was unsuccessful⁷⁸. Moreover, other prisoners pleaded with DUCH for their lives or wrote letters through him to senior leaders, but to no avail⁷⁹.

32. The CPK governed Democratic Kampuchea primarily through DK State organisations, CPK administrative bodies and the RAK⁸⁰. The 1976 Constitution of Democratic Kampuchea⁸¹, and the Party's own Statutes⁸², gave the CPK Central Committee wide powers, including the ability to formulate party-wide policy and the authority to issue orders to subordinate zones and sectors. In practice, however, a sub-committee of the Central Committee known as the Standing Committee⁸³, acted as the highest and most authoritative unit in DK.⁸⁴ A Standing Committee decision from 9 October 1975 gave POL Pot general responsibility over the military,⁸⁵ and SON Sen responsibility for the General Staff and Security⁸⁶. DUCH has repeatedly portrayed S21 as an integral part of the politico-military structure of the CPK at the Centre level, referred to variously by DUCH as "*Angkar*", the "*Organization*"⁸⁷, the "*Party Centre*"⁸⁸, the "*Central Committee*"⁸⁹ or the "*Standing Committee*"⁹⁰.

33. DUCH indicated that, as with all CPK political lines, the policy of smashing enemies was global. It stood "*for S21, for the entire Party, the military, the State authority in the bases, and the Police Offices throughout the country...*"⁹¹ DUCH stated that specific decisions concerning the persons to be sent to S21 were made by his "*superiors*"⁹². While the exact role of his "superiors" is currently the subject of a separate judicial investigation, DUCH has declared that S21 "*was run directly by the Central Committee*"⁹³. DUCH specified, however, that he primarily dealt directly with SON Sen and [Person J], both of whom he believed to be acting on behalf of the Standing Committee⁹⁴.

34. Although the policy of smashing enemies appears to have remained in force both before⁹⁵ and throughout the temporal jurisdiction of the ECCC, the definition of those perceived to be enemies of the CPK evolved and broadened over the period as a result of domestic developments and the international armed conflict between Cambodia and Vietnam.
35. Thus, from late 1975 and into 1976, S21 was significantly involved in the imprisonment, re-education, torture and execution of persons linked to the ousted Khmer Republic regime⁹⁶. However, by the time DUCH became Chairman of S21⁹⁷, the Party had clarified authority to execute at different levels within the regime⁹⁸, and increasingly sent members of the revolutionary ranks to S21⁹⁹. A document dated 30 March 1976, and attributed to the CPK Central Committee, reported a number of “decisions”, the first of which provided that, in order “*that there is a framework in absolute implementation of our revolution*”, and “*to strengthen our socialist democracy*”, the right to “*decide on smashing within and outside the ranks*” was to be bestowed as follows:
- *“If in the base framework, to be decided by the Zone Standing Committee.*
 - *Surrounding the Centre Office, to be decided by the Central Office Committee.*
 - *Independent Sectors, to be decided by the Standing Committee.*
 - *The Centre Military, to be decided by the General Staff*¹⁰⁰.
36. Shown this text by the Co-Investigating Judges, DUCH commented that it was “*a historical document. It shows a turning point, because it reveals the beginning of internal purges. Before that, mainly officials of the old regime were smashed. From that point, executions would take place mainly within the Party*”¹⁰¹. DUCH adds that “*[i]n 1976 Pol Pot had eliminated the exploiting classes private property, officials of the former regime, religions and teaching (teachers were sent to rice fields),...the decision of 30 March 1976 began a new period... during which the internal purges were predominant*”¹⁰². In the following months, internal CPK documents would be filled with variations on the theme of a need for heightened “*revolutionary vigilance*” with a view to “*ensuring that the enemy is unable to bore from within*” the Party and the Army¹⁰³.
37. DUCH recognised that his role as Chairman of S21 was to focus the office on smashing purported traitors within the ranks of the revolution itself. In this regard, DUCH said: “*Initially, S21 was just for important prisoners, or those from Phnom Penh, as well as members of the Central Committee. At first, low ranking combatants only came to S21 if arrested in Phnom Penh*”¹⁰⁴. As a general rule, high ranking enemies inside the Party, State, military or security apparatuses were sent to S21 having been implicated via a process which consisted of obtaining

confessions from others previously arrested¹⁰⁵. When a superior was arrested, such as [Person K], Minister of Commerce and member of the Central Committee, his or her subordinates would in turn, often be sent to S21¹⁰⁶. Moreover, DUCH recognised that the policy of smashing enemies almost always extended to their families, including children¹⁰⁷.

38. DUCH further recognised that “... *subsequently, when the repression intensified, S21 also received people from the countryside. I also witnessed massive arrivals of prisoners from certain zones: for instance, when the head of the West Zone Security Office, [Person L], was arrested, I saw many people arriving from that Zone. These arrests preceded the arrest of [Person L]’s superior, [Person M]. This was an implementation of Ho Chi Minh’s doctrine: ‘before cutting the bamboo, one must trim the thorns.’ Likewise for the Northwest Zone*”¹⁰⁸. This pattern is corroborated by prisoner lists that demonstrate clearly that by January 1979, S21 had detained persons from nearly every zone, every ministry, and every military unit in the nation¹⁰⁹.
39. The role of S21 further extended to executing those in the revolutionary ranks who were accused of being influenced by or under the control of Vietnam due to their former or contemporaneous associations with the Vietnamese Communist Party¹¹⁰. This rationale for arrest appears to have increased in direct correlation with the escalation of the international armed conflict. Similarly, as the conflict intensified, the numbers of Vietnamese civilians and soldiers arrested and sent to S21 also grew¹¹¹.

2. Dissemination of Policy at S21

40. The political line of the CPK was disseminated at S21. DUCH and other S21 cadre attended general political education¹¹² and agricultural production planning meetings convened under the auspices of the Centre General Staff¹¹³. DUCH and other former S21 cadre stated that they also attended training sessions convened by SON Sen to discuss the need to purge and smash enemies¹¹⁴. Former S21 personnel agreed that the policy of extra-judicial execution was widely disseminated throughout S21 at annual meetings of the entire unit, as well as at smaller meetings of its various subunits¹¹⁵.
41. DUCH and other CPK members and Youth League members at S21 were also made aware of the role of their office in implementing these policies through the Party journals *Revolutionary Flag* and *Revolutionary Youth*¹¹⁶. Allegations of treason, to which S21 prisoners had been compelled to confess, were presented as fact in these publications and alluded to in official DK propaganda. Alleged traitors such as

[Person N], [Person O], [Person P] and [Person K] were repeatedly referred to by name¹¹⁷. According to DUCH, extracts from tape-recorded S21 confessions or written texts were played or read out at meetings outside of S21 to justify the actions of the regime¹¹⁸.

42. DUCH conceded that from the time he became S21 Chairman, specific instructions to and from S21 regarding security matters were conveyed exclusively through him¹¹⁹. Former S21 personnel confirm that DUCH acted to further disseminate this line within the unit¹²⁰. In an S21 interrogator's notebook, a statement attributed to DUCH noted that the work of S21 "*is a task of class struggle. That is, it is aimed at smashing the oppressor class, digging out their trunk and roots to defend the Party, defend the proletariat class, defend Democratic Kampuchea, and defend the line of independence and mastery*"¹²¹. The notebooks of DUCH's assistant, the interrogator [Person F], seem to further corroborate DUCH's contention that his detailed training of S21 staff was based on "*instructions from the superiors*"¹²².

3. The Use of S21 Confessions

43. Confessions and related documents authenticated by DUCH, reveal the extent to which S21 played an active part in the process of "*attacking*" and "*eliminating*" enemies "*boring from within*"¹²³. In addition to executing prisoners condemned in advance as traitors, an overriding purpose of S21 was to extract confessions from prisoners in order to uncover further networks of possible traitors. DUCH stated that "*the content of the confessions was the most important work of S21*"¹²⁴. Confessions seem typically to have taken the form of political autobiographies by the prisoners in which they were compelled to denounce themselves and others as traitorously serving the intelligence agencies of foreign powers considered to be enemies of the Cambodian revolution¹²⁵. Those intelligence agencies included the United States CIA, the Soviet KGB and organs of the Vietnamese Communist Party. These confessions, some many hundreds of pages long, contain detailed descriptions not simply of alleged traitorous activities, but also of the structure and operation of all levels of the Party and of all administrative units. DUCH meticulously¹²⁶ read, analysed, annotated¹²⁷ and summarised the majority of these confessions for his superiors¹²⁸. He was therefore in a unique position to understand the DK-wide context of the CPK policies applied at S21.
44. DUCH said that the role of S21 was not to determine whether detainees were traitors as their guilt was already established by the fact that they had been arrested and sent to S21¹²⁹. It was their confessions which served the political interests of those in control the Party by justifying arrests, and implicating the networks of those sent to S21¹³⁰. DUCH now maintains that he was, from an early time, sceptical of the veracity of the confessions, claiming that they were demanded from

above¹³¹. He explained that the contents of the confessions were used as “*excuses to eliminate those who represented obstacles*”, adding that “[e]ven the Standing Committee, in my opinion, did not really believe in it”¹³². He also recognised that the operations of S21 were “*obviously not compatible with the existence of tribunals and procedural safeguards*”¹³³. DUCH stated that in many cases, he was given instructions concerning the extraction and content of specific confessions¹³⁴. In particular, he asserted that, at the instigation of his superiors, “*The words CIA and KGB were initially used by the interrogators themselves*”¹³⁵.

45. Regardless of whether they contained false or fabricated assertions, the confessions are said by DUCH to have been given formal weight in deciding upon the arrests of those denounced as enemy agents. He explained that “[n]ormally, implication in one confession was not sufficient for a person to be arrested. It had to occur several times”¹³⁶. Confessions obtained from one person often led to the arrest of many others they implicated as traitors¹³⁷. It also appears that names from different confessions were combined to form lists of enemies¹³⁸. Evidence of confessions annotated by DUCH support his contention that they were forwarded to high-ranking party members¹³⁹.

D. FUNCTIONING OF S21

46. The following sections describe and analyse the acts committed on a day-to-day basis at Tuol Sleng, Prey Sâr, and Choeng Ek, by DUCH and his subordinates in furtherance of CPK policy. They set out the general manner in which detainees were processed at S21, from arrest and detention, through to interrogation and ultimately execution.

1. Arrest and Detention

a) Composition of the Detainee Population

47. Surviving documents help clarify the number and identity of detainees held at S21. Much of this evidence was compiled by the OCP by combining the prisoner lists and execution logs to form a single master list of S21 prisoners (named the ‘Combined S21 Prisoner list’)¹⁴⁰. This list indicates that at least 12,380 men, women and children were detained at Tuol Sleng. This compilation is not exhaustive as some prisoners were not registered¹⁴¹ and some records have no doubt been lost. This fact is supported by DUCH, who identified a number of detainees whose names are missing from the compilation¹⁴².

48. The prisoners were predominantly Cambodian. The largest group was composed of cadre, workers, and combatants as well as their relatives¹⁴³ who came from virtually every office and unit in the country and from all existing zones and autonomous sectors. The list provides an approximate overview which shows that more than 5,000 prisoners came from DK government offices and over 4,500 came from DK military units. DK cadre represented by far the largest group and included a number of members of the Central and Standing Committees such as [Person A]¹⁴⁴, [Person K]¹⁴⁵, [Person O]¹⁴⁶, [Person N]¹⁴⁷ and [Person P]¹⁴⁸. There is also evidence that approximately 200 former S21 staff became prisoners at Tuol Sleng. In addition, it appears that S24 staff were sent to Tuol Sleng, however it is difficult to establish the precise number with any accuracy¹⁴⁹. Tuol Sleng also held other Cambodians including former Khmer Republic soldiers and officials. There is also evidence that a number of Cambodian minority groups including “Cham” were also detained¹⁵⁰.
49. A number of foreign nationals¹⁵¹ were also imprisoned at S21 including Vietnamese, Thais, Laotians, Indians, and “*Westerners*”¹⁵². The largest group of foreigners detained was Vietnamese. The list records at least 400 Vietnamese¹⁵³, of which approximately 150 were recorded as “Prisoners of War” and at least 100 were clearly civilians. Their presence is also confirmed by other evidence including: photos, witness interviews¹⁵⁴, written confessions¹⁵⁵ and transcripts of radio broadcasts. The first recorded arrest of someone described as “Vietnamese” was on 7 February 1976¹⁵⁶, and their number increased as the conflict with Vietnam escalated. DUCH admitted he was aware of the existence of armed hostilities with Vietnam from mid April 1975¹⁵⁷ to at least 6 January 1979¹⁵⁸. He acknowledged that Vietnamese civilians and soldiers were detained at S21¹⁵⁹ and estimated that they numbered in the hundreds¹⁶⁰.
50. Regarding S24, too few records have been found to precisely determine the total number of people sent there. Nevertheless it appears that there were several hundred people working at any one time¹⁶¹, an estimate which DUCH confirmed¹⁶². Several witnesses state that men, women¹⁶³ and children¹⁶⁴ were all held there. According to DUCH, there were two main categories of persons at Prey Sâr: persons whose relatives were considered suspect, and subordinates of arrested cadre¹⁶⁵. There were also combatants from various units and personnel from numerous ministries and offices around Phnom Penh together with members of their families¹⁶⁶. Despite some evidence to the contrary¹⁶⁷, DUCH stated that no foreigners were sent to Prey Sâr¹⁶⁸.

b) Arrest and Transfer to S21

51. According to DUCH, no one could be sent to S21 without a decision of the Party¹⁶⁹. DUCH explained that for the arrest of members of the Central Committee, the decision had to be made by its Standing Committee. For others, DUCH claimed that his superior, [Person J], called the head of the relevant unit for discussion and a joint decision on arrest. DUCH declared, and [Witness A] assumed, that for people coming from other regions, the decision to arrest was always made by the Central Committee, which contacted the relevant zones, sectors or districts in order to remove persons implicated by confessions¹⁷⁰. DUCH specified that, with the exception of important prisoners, he generally had no grasp of the specific rationale behind the imprisonment of persons at S21¹⁷¹.
52. Moreover, DUCH insisted “*S21 had no right to arrest anyone*”, adding that, in general, he was merely informed by the “*upper echelon*” of the arrest of prisoners so as to be ready to receive them¹⁷². In fact, it did appear that prisoners were most often brought in by their units¹⁷³. Nevertheless, there is evidence that S21 personnel did carry out arrests¹⁷⁴. When S21 arrested persons outside the security office perimeter, but still within Phnom Penh, [Witness B] explained that, in some cases, the unit arrested the person, but in other instances, the persons were already arrested and the unit was responsible solely for their transfer to S21¹⁷⁵. [Witness B] explained that he was sent outside of Phnom Penh to bring prisoners to S21 several times, and each time he received a list of persons to arrest from DUCH¹⁷⁶. [Witness C] confirmed that he also transported persons from Battambang with [Person I] in 1977¹⁷⁷. He further noted that he once drove two prisoners from the Independence Monument to the entrance of S21¹⁷⁸. According to [Witness B], DUCH provided the names of those persons to be arrested, where the arrest would take place, and how many forces were required to effect the arrest and transfer of cadre brought to S21¹⁷⁹. [Witness B] further maintained that, “*[d]uring arrests, Ta DUCH was the one who told [us] the plans and the names, and [Person C] made the arrangements along with the messenger of DUCH*”¹⁸⁰.
53. DUCH has admitted that, where necessary, the S21 special unit left Phnom Penh with an order of the Central Committee, and carried a special “*laissez passer*” signed by SON Sen, which authorised them to bring prisoners back to Tuol Sleng. However, DUCH specified that this system was later abandoned¹⁸¹, and the role of S21 was simply to “*receive prisoners, not to arrest them*”¹⁸². Even so, as the only cadre at S21 authorised to communicate with the “*upper echelon*”, it was necessarily DUCH’s role to implement and disseminate orders to arrest.

54. Vietnamese POWs were generally arrested in or near the main conflict zone on the border with Vietnam, and DUCH declared he was informed of their arrival by means of a list transmitted by either [Person J] or [Person Q], his direct subordinate, and former chief bodyguard of POL Pot¹⁸³. He further stated that S21 was never in charge of the transportation of Vietnamese from the battlefield, as this was undertaken by the unit that arrested them¹⁸⁴. On the contrary, [Witness B] declared that DUCH twice sent him to the battlefield at Svay Rieng (in 1977 and 1978), to transport Vietnamese soldiers to S21¹⁸⁵. In addition, [Witness D] was sent to work at the border in 1977 and declared that he saw Vietnamese POWs taken from the battlefield by S21 personnel in S21 trucks¹⁸⁶.

c) DUCH's Role in Arrests

55. Some sources suggest DUCH personally played a role in a number of decisions to arrest. For example, at times, he received direct reports from outside military and administrative units concerning arrests¹⁸⁷. There are also records of numerous written communications between DUCH and Division 502 Secretary [Person R], concerning the transfer of prisoners¹⁸⁸. Yet, when questioned on this point, DUCH explained that instructing [Person R] to address letters to him in this manner was a "*tactic used by SON Sen and [Person J] to avoid revealing their names*"¹⁸⁹.

56. DUCH explained that on 16 September 1976, he attended a military meeting of divisions 290 and 170, the purpose of which was to plan arrests. Those present included SON Sen, and [Person S]¹⁹⁰. According to DUCH this meeting was called because there were an exceptional number of arrests to be carried out within a single unit. He admits to attending two such meetings, adding that the "*upper echelon*" would occasionally consult him before arresting people, especially for important Party members¹⁹¹. DUCH explained how decisions concerning arrests took account of the need for secrecy and subterfuge to avoid leaks and ensure that there was no possibility of resistance, especially when large numbers of persons were to be arrested from one place¹⁹². In such cases, DUCH declared that he tasked [Person C] to talk with the person in charge of the unit to calm the personnel and facilitate orderly arrests¹⁹³.

57. DUCH explained that the decision to arrest people was often based on S21 confessions which implicated them as traitors¹⁹⁴. He has admitted aiding SON Sen, and later [Person J], in the arrest of perceived enemies by providing them with summarised confessions detailing those persons who had been implicated¹⁹⁵. DUCH not only reported the details of the confessions to SON Sen, but also discussed strategies and targets for arrest. DUCH stated that as a result of his reports, the important persons mentioned in confessions were sent to S21 almost without exception, although many less important persons were not arrested¹⁹⁶.

58. [Witness A] alleged that DUCH's power to propose arrests by reporting to the upper level extended to other cases as well. He gave the example of [Person T], the then chairman of the Energy Committee, who was arrested following a report by DUCH¹⁹⁷. DUCH recognised that [Person T] was arrested, but stated that this was not a result of his report¹⁹⁸.
59. Finally, DUCH was occasionally present at arrests. For example, [Person K] was arrested in DUCH's house. Similar arrests occurred on more than one occasion. DUCH said that, "*[t]hey sent people in from afar to be arrested at my place...In the case of the arrest of [Person P], there were three people involved - me, [Person C], and [Person P]. I was in command of the arrest...*"¹⁹⁹. [Witness B] and former interrogator [Witness E] claimed that DUCH sometimes led arrests in Phnom Penh²⁰⁰. Although DUCH denied ever personally arresting anyone²⁰¹, he admitted sometimes taking "*personal charge*" of important prisoners²⁰².

d) Arrest of S21 Personnel

60. S21 personnel were also arrested and either sent to Prey Sâr for re-education²⁰³ or detained at Tuol Sleng²⁰⁴. Cadre could be sent to Prey Sâr for minor mistakes or simply to be monitored, especially when someone they knew arrived as a prisoner at S21²⁰⁵. For more serious mistakes, such as allowing a prisoner to escape, commit suicide, or otherwise die before the completion of an interrogation²⁰⁶, the person responsible could be designated as a traitor to the revolution and detained²⁰⁷. Some witnesses suggest, however, that for the majority of S21 personnel arrested, especially those from Division 703, arrests occurred without any indication of a serious mistake²⁰⁸.
61. [Witness B] declared that only DUCH could give orders to arrest S21 personnel. He stated, "*If prisoners implicated people from the 703rd, DUCH had them arrested, interrogated, and killed... These were orders from DUCH. At this place, there was only DUCH who made the decisions*"²⁰⁹. The witness provided specific examples of S21 cadre who were arrested at the orders of DUCH. They included [Person U], Chairman of a defence company; [Person V], a company chairman who later moved to interrogation; [Person W], from company level; and later [Person X], from interrogation. [Witness B] specified that, "*all of these people are dead. I do not know what they were charged with*"²¹⁰. DUCH countered that, although "*[t]he S21 Committee was competent for the first form of purge*" whereby personnel were sent to S24, only "*Son Sen, and later [Person J], were competent for the second form of purge,*" whereby personnel were sent to S21²¹¹. However, he did acknowledge that he was the only person who could report mistakes to the upper level²¹², and that he did so whenever a report came to him from [Person C]. He claimed that he did this to avoid being implicated himself, since "*everyone, fearing for their lives, surveyed everyone else*"²¹³. When asked whether those he reported were always arrested,

DUCH replied, *“If I remember well, there never were any exceptions: I always reported to the superiors and they always ordered the arrest of the persons implicated”*²¹⁴.

e) Conditions of Detention at Tuol Sleng

62. The Reconstruction conducted at Tuol Sleng on 27 February 2008 allowed further clarification of the detention conditions. Prisoners entered S21 on nearly a daily basis²¹⁵. They were then brought inside the prison, generally blindfolded and handcuffed²¹⁶. Prisoners were registered²¹⁷ and lists of their names were compiled by former S21 cadre [Person H]. Prisoners were required to provide information regarding their biographies²¹⁸, which were then summarised²¹⁹. They were typically not informed of the reason for their arrest. Photos were taken of the newly arrived prisoners²²⁰, which generally included a number, and sometimes their name and date of arrest²²¹. According to DUCH, these photos were taken on instructions from SON Sen, to aid in the recapture of any escapees²²². Guards then took the prisoners to their cells²²³.
63. Prisoners were kept in restraints nearly twenty-four hours a day²²⁴. The S21 detention facility had both small individual cells²²⁵ and larger, collective cells where prisoners were chained side by side with their legs shackled²²⁶. [Witness F] explained that he could not stand up²²⁷. Female prisoners generally remained unshackled²²⁸ unless they created problems²²⁹. Prisoners were kept under permanent armed guard²³⁰. Guards both inside and outside the detention facilities were instructed to be vigilant in preventing escape attempts. However, it appears that a few detainees may have successfully escaped²³¹.
64. Stringent rules governed the lives of prisoners and deprived them of the most basic human needs. They were not permitted to speak to each other²³² or to the guards²³³. When prisoners first arrived at S21 they were often stripped of their clothes, leaving just their underwear²³⁴. They were not permitted to exercise or leave their cells²³⁵. No bedding was provided to the detainees. While some privileged prisoners were allowed old mats or mattresses to sleep on²³⁶, the majority of inmates slept on the concrete floor²³⁷. Many detainees were badly bitten by mosquitoes²³⁸.
65. Although a number of guards questioned said that they were not allowed to hit the prisoners²³⁹, this rule was not always obeyed.²⁴⁰ Former detainee [Witness F] recalled that guards punished some conduct by giving prisoners up to 200 strikes of the cane²⁴¹.

66. There were no washing facilities and prisoners remained shackled when “bathed”²⁴². Several witnesses explained that bathing consisted of spraying the room with a hose from the doorway²⁴³. Former S21 guard [Witness G] said that inmates were never properly washed because the primary purpose of hosing was to clean the cells rather than the prisoners²⁴⁴. Prisoners were not permitted to leave their cells to use the toilet, and were forced to urinate in jerry cans and defecate in ammunition boxes²⁴⁵.
67. Prisoners typically received food of poor quality twice a day which almost always consisted of gruel²⁴⁶. Though some of the guards declared that rice was also served to the prisoners²⁴⁷, evidence suggests that detainees were fed starvation rations²⁴⁸. As a result of this, many of them suffered substantial weight loss²⁴⁹ and physical deterioration²⁵⁰, which occasionally resulted in their death²⁵¹.
68. DUCH declared that the food regime was decided by the “superiors” and that he could not modify rations. He believed that starving the prisoners was a deliberate policy of the CPK²⁵². In any case, it is clear that guards and important prisoners received better nutrition than ordinary prisoners²⁵³.
69. Many detainees suffered from illness or injury. A basic medical service was provided²⁵⁴ by a team of three to five ‘medics’ who had not studied medicine and were responsible for treating the entire facility²⁵⁵. Some were children²⁵⁶, and they worked without the supervision of medical doctors²⁵⁷. Former S21 detainee, [Witness H] witnessed prisoners receiving intravenous fluids in the evening, and found them dead the following morning²⁵⁸. Many in need of urgent medical attention were left unattended or given insufficient treatment²⁵⁹. Medicine was in very short supply. Even when available, the medicine was locally produced by unskilled workers²⁶⁰. Former S21 medic [Witness I] understood that the purpose of medical treatment for prisoners was to keep them alive so that their interrogations could be completed²⁶¹.
70. Evidence suggests that S21 personnel performed medical experimentation on prisoners.²⁶² DUCH explained that “*research for poisons was carried out upon the orders of the Central Committee, more precisely upon those of [Person J]*”²⁶³. He declared: “*I know now that regarding medical matters, there were three forms of Crimes against Humanity in S21. Autopsies practiced on living persons, blood taking and medicine testing*”²⁶⁴. One confession contains an annotation from DUCH which reads, “*medical experiments*”²⁶⁵. DUCH explained that this annotation referred to “*new medicines prepared within the unit: from 1971, the manufacture of medicines based on ancestral formulas started...*”²⁶⁶
71. The living conditions described above, combined with detention, interrogation and the disappearance of prisoners, severely impaired the physical and psychological health of many of the detainees, and in many instances caused their death²⁶⁷.

[Witness H] reported that eight or nine prisoners died during one month in his cell²⁶⁸. Some prisoners also attempted to commit suicide²⁶⁹.

f) Detention conditions at Prey Sâr

72. At S24, people were sent for re-education through punitive hard labour, or “tempering”. It was staffed by S21 cadre and combatants. DUCH stated that these people were not in “prison” in the same sense as those imprisoned at Tuol Sleng²⁷⁰, a view shared by [Witness J], who was himself sent to S24 for re-education²⁷¹. DUCH added that detainees and staff at Prey Sâr could not move around freely without authorisation²⁷², and claimed this rule also applied to him – a fact which other witnesses corroborated²⁷³.
73. However, it is clear that those who were sent to S24 were deprived of their liberty. They were strictly guarded, both at work²⁷⁴ and at night²⁷⁵. Witnesses indicated that persons sent to Prey Sâr were separated into three levels: one, for light tempering; two, an intermediate level; and three, which was for the most serious cases²⁷⁶. Deprivation of liberty was more severe for people in level three as they were kept shackled at night²⁷⁷ and were not permitted to live in ordinary houses²⁷⁸. For others, who were lodged in houses²⁷⁹, it appears that only some of them were locked up at night²⁸⁰.
74. Former detainees stated that there were two meals a day, one at noon and one in the evening²⁸¹. With only a few exceptions²⁸², prisoners claimed that the food at Prey Sâr was insufficient²⁸³. Despite this, DUCH acknowledged delivering surplus rice to the Central Committee²⁸⁴. Again, persons in level 3 received lower rations than others²⁸⁵. DUCH declared that he could not modify the food regime and believed that starving the prisoners was a deliberate policy at S24²⁸⁶.
75. Detainees, including women and children, were forced to work in the rice fields; fish; grow vegetables; transplant rice; build paddy dikes; dig canals and carry soil to make ponds²⁸⁷. Several witnesses said they worked day and night²⁸⁸, seven days a week and were not permitted to rest during working hours²⁸⁹. A typical day working at Prey Sâr started at dawn – between 4 a.m. and 7 a.m. - and finished between 10 p.m. and 12 midnight²⁹⁰, with two hours to rest and eat²⁹¹.
76. The work was carried out under the supervision of guards²⁹² who required detainees to be efficient and berated them if they worked slowly²⁹³. When detainees were sick or late, or when their work was considered unsatisfactory, they were beaten and insulted²⁹⁴. Prisoners were also punished for ‘sexual misconduct,’ ‘illness,’ or ‘stealing’²⁹⁵. Former inmate [Witness K] said he was beaten two or three times. He also stated that, sometimes, the guards punished detainees by starvation²⁹⁶. Former S21 staff member [Witness C], who was sent to S24 for re-education, explained that

he worked as hard as he could to improve himself, knowing, without being told, that if he did not, he would end up dead²⁹⁷.

77. Regular re-education meetings were held at Prey Sâr at which detainees were instructed to work quickly and efficiently²⁹⁸; given political training and were indoctrination²⁹⁹; and required to partake in self-criticism sessions where they were forced to concede their faults and those of others³⁰⁰.
78. The fear of being transferred³⁰¹, killed or beaten³⁰² was ever-present. Disappearances during the night were common³⁰³, and those persons taken away never returned³⁰⁴. DUCH did not deny that some Prey Sâr detainees may have been transferred to Choeng Ek for execution³⁰⁵, and evidence suggests that it was people from level 3 who were most likely to have been executed in this way³⁰⁶. Some prisoners were also transferred to Tuol Sleng³⁰⁷. The Combined S21 Prisoner list names at least 571 persons transferred from S24 to Tuol Sleng, although this clearly includes S24 personnel as well as inmates³⁰⁸.

2. Interrogation

79. The majority of prisoners detained at S21 were systematically interrogated³⁰⁹. Interrogations were conducted by S21 personnel who were organised by DUCH and his deputy into various teams³¹⁰.
80. Evidence indicates that interrogators could not choose the prisoners they would question³¹¹. Once tasked, interrogators took prisoners out of their cells handcuffed and blindfolded, and relocated them into the interrogation rooms³¹². Prisoners would then typically have their legs shackled to the table and only then were their handcuffs removed to allow questioning and confession writing³¹³. The interrogators questioned the prisoners on their biographies and on the activities which led to their arrest³¹⁴. Not all of the interrogations led to a written confession³¹⁵.
81. Interrogations took place every day from 7.00 to 11.00 a.m., from 2.00 to 5.00 p.m. and then from 7.00 to 11.00 p.m.³¹⁶. There was no general principle regarding the number of times a prisoner was interrogated or how long an interrogation would last³¹⁷. The end came only when the confessions were considered completed³¹⁸. Prisoners could be interrogated repeatedly and forced to redraft their confessions numerous times³¹⁹.

82. A number of witnesses observed DUCH interrogating prisoners at S21³²⁰. [Witness E] said that interrogations conducted by DUCH were commonplace³²¹. For example, the confession of [Person Y] is annotated “*First interrogator: DUCH; second interrogator: [Person G]*”³²². With respect to this confession, DUCH admitted that he wrote the annotation but maintained he did not interrogate him³²³. In fact, DUCH insisted that [Person K] was the only prisoner he interrogated at S21³²⁴, which he said he did on the order of SON Sen³²⁵.
83. DUCH explained that he introduced three methods of interrogation: the “*cold*”, “*hot*” and “*chewing methods*”³²⁶. The cold method was interrogation through the use of propaganda without relying on torture or insults. The hot method expressly included “*insults, beatings and other torture authorised by the regulations*”³²⁷. The chewing method was an intermediate form which consisted of “*gentle explanations in order to establish confidence followed by prayers to the interrogated person, continually inviting her or him to write.*”³²⁸ Torture would also be used³²⁹. [Witness E], who was on the chewing team, noted that torture was not necessarily used from the very beginning, but that if the results were not satisfactory within two or three days, torture was used³³⁰.
84. DUCH said that S21 borrowed heavily from security centre M13 with respect to interrogation techniques, while recognising that M13 did not provide confessions which reflected the truth³³¹. This was confirmed by [Witness A]³³². Witnesses reported that at M13 DUCH personally controlled, and often personally participated in the interrogation process³³³. Evidence suggests that interrogators at M13 in the early 1970s frequently engaged in torture to extract confessions from prisoners. Several witnesses have said that DUCH would personally torture³³⁴ prisoners at M13. In particular, it is alleged that DUCH burned prisoners, beat them with bamboo, and submerged them in water³³⁵.

a) Systematic Use of Torture during Interrogation

85. DUCH confirmed that the use of torture within S21 was systematic and noted that “*anyone taken for interrogation mostly could not avoid torture*”³³⁶. The use of torture appears to have applied uniformly to all detainees without regard to the reason for their arrest³³⁷. With the sole exception of [Witness A]³³⁸, torture was conceded by every other interrogator³³⁹. Furthermore, considerable documentation from S21 revealed annotations relating directly to the use of torture³⁴⁰. DUCH explained, “*the situation was the following: for simple combatants, [Person C] controlled everything and could order torture. For important prisoners such as [Person O], SON Sen gave me his orders and decided on the use of torture*”³⁴¹.
86. Three notebooks belonging to S21 interrogators: the “*Statistical List of Security Office S21, Politics, Ideology, and Organization*”³⁴² (*Statistical List*); “*The [Person*

F] Notebook” (attributed to [Person F])³⁴³; and “*The [Person G-Person Z] Notebook*”³⁴⁴ detail the regime of interrogation and torture at S21. The *Statistical List* (incorrectly labelled the “torture manual” by some sources, and reputedly containing the notes of an interrogator³⁴⁵), included political and interrogation instructions which taught interrogators to “*break [prisoner] by propaganda or break [him] by torture*”³⁴⁶. The manual also instructed interrogators “[i]f Angkar instructs not to beat, absolutely do not beat. If the party orders us to beat, then we beat with mastery, beat them to talk, not to die, to escape, not to become so weak and feeble that they fall ill and we lose them”³⁴⁷. DUCH confirmed that the instructions and political ideologies contained in *The [Person F] Notebook* and in the “*Statistical List*” accurately reflected his teachings and instructions and were primarily his “thoughts”³⁴⁸.

87. The use of torture was well known by staff throughout S21. A guard, [Witness L], stated that he learned the principle of torture, “*from DUCH at the school, from the company chairmen, the platoon chairmen. They said that the prisoners were enemies, and if they did not answer, they could be tortured*”³⁴⁹.
88. The physical consequences of torture (*i.e.* lacerations, bleeding, bruises, unconsciousness and missing finger or toe nails) were visible to the extent that nearly all of the former S21 personnel interviewed conceded that they were aware that torture was being carried out even without having personally witnessed specific acts³⁵⁰. For example, [Witness M] reported that most of the prisoners detained at S21 “*had injuries and their faces were swollen and there were burns around their ears from electric shocks*”³⁵¹. Certain guards also declared that they personally saw³⁵² or heard³⁵³ torture being carried out.
89. The purpose of interrogations was to obtain a “complete” answer which included the prisoner’s alleged crimes and identified other purported enemies of the regime³⁵⁴. In respect to Vietnamese prisoners, DUCH indicated that the purpose behind their interrogation was to obtain confessions showing “*...that Vietnam had invaded Cambodia with a view to integrating it into an Indochinese federation*”³⁵⁵. Unlike Cambodians, Vietnamese prisoners were often tape recorded, and some of their confessions were then broadcast on the Radio for propaganda purposes³⁵⁶. There are more than 50 extant transcripts of radio broadcasts of Vietnamese confessions on the case file³⁵⁷. According to DUCH, the purpose was not to interrogate POWs on Vietnamese military plans³⁵⁸. However, [Witness A] stated that they were routinely interrogated on the battlefield and combat situation³⁵⁹. This statement, in connection with other remaining documents from S21, indicated that the interrogation of POWs had a dual purpose, namely propaganda and intelligence gathering.

b) DUCH's Personal Participation in Torture

90. In his interviews before the Co-Investigating Judges, DUCH consistently denied ever torturing prisoners at S21³⁶⁰. However, he admitted that while Deputy Secretary, he would sometimes “intervene” during interrogation sessions being carried out by S21 staff. In these instances he would occasionally give the prisoners a “few slaps.” He added that this might have continued for one or two months after he was appointed Chairman³⁶¹.
91. In interviews prior to his arrest, DUCH appeared to admit torturing prisoners, and in particular [Person K]³⁶², however, it is not entirely clear. During the judicial investigation, DUCH admitted interrogating [Person K] but stated that SON Sen ordered him not to use torture³⁶³.
92. Several witnesses declared that they saw DUCH beating prisoners, including: kicking prisoners³⁶⁴; beating a man with a piece of rattan³⁶⁵; and striking blows³⁶⁶. One witness claimed to have observed him beating a prisoner in front of S21³⁶⁷.
93. [Witness E] also said he saw DUCH electrocuting a woman during an interrogation. He told investigators that DUCH, together with five or six interrogators, including [Person F], [Person AA], [Person BB], [Person CC], and [Person G], tortured her from nine at night until three in the morning and, since the woman did not confess, they continued until she lost consciousness. [Witness E] added that he saw DUCH beat, electrocute and undress the woman, leaving her wearing only her panties. DUCH beat her until he got tired, whereupon someone else would interrogate while he listened for the responses. He said the interrogators were laughing and joking while they administered the torture³⁶⁸. DUCH denied this incident and said that [Witness E] was concealing his own activity and making up stories³⁶⁹. [Witness A] also denies the electrocution incident took place³⁷⁰.
94. However, DUCH confirmed the veracity of a separate incident between prisoners. [Witness N] declared that one day in the painters room, DUCH ordered him to exchange blows with a sculptor, [Person DD], by hitting each other with a rubber hose. DUCH conceded that he ordered this scene, but could not remember any particular reason for so doing³⁷¹.
95. Numerous witnesses, among them former interrogators, explained that DUCH, as Chairman, ordered the torture of prisoners. DUCH did not contest this, stating that “...if the prisoner was less important, I assigned [Person Z] because this [Person Z] liked to use torture very much...When a prisoner refused to answer, I told

[Person G] to send the prisoner to [Person Z]”³⁷². [Witness E] acknowledged that DUCH personally taught the use of torture to the interrogators. He continued, “[i]n torturing prisoners, he [DUCH] gave instructions; electric shock, beatings, putting their heads in plastic bags, pulling out finger/toe nails, but [he] prohibited letting them die”³⁷³.

96. [Witness E] further acknowledged that the interrogators had the right to torture if a prisoner did not respond. He stated that the decision to torture was given by DUCH verbally, either in person or by telephone. [Witness E] said that whenever he was unable to make a prisoner talk, he asked for advice from DUCH, who would respond by saying, “[s]o use torture”³⁷⁴.
97. Another interrogator, [Witness G], stated that he frequently received instructions from DUCH who provided training on how to interrogate prisoners pointing out weak points. [Witness G] added, “(a)s for me, the torture was assigned to [Person C], because I was a new interrogator. As for the old [more senior] interrogators, they had the right to torture”³⁷⁵.
98. For his part, DUCH admitted, to differing degrees, that he ordered the torture of prisoners. He claimed to have taught interrogation techniques only once, while he was still the Deputy Secretary under [Person B]. He continued, “[t]he training was for about one week, and two hours per day. After that I called Comrades individually to provide advice or to correct mistakes...The instructions were not to rely heavily on torture and be patient”³⁷⁶. Moreover, DUCH admitted that he set the rules concerning interrogation³⁷⁷.
99. When confronted by the Co-Investigating Judges with annotated confessions, DUCH recognised three written orders to conduct torture. He stated that it was he who had written, “[n]ot yet confessed. To be tortured”, and later, “interrogate meticulously, serious but moderate torture in order to find the networks. Hit until she stops saying she went to Vietnam with her grand father to cure his cancer and the problem of menstruation”. In these two instances, DUCH claimed he had not yet become Chairman of S21, and that he was relaying orders from his superiors, [Person B] and SON Sen³⁷⁸. In the final instance, DUCH acknowledged that when Chairman of S21, he wrote to his subordinate, interrogator [Person G], instructing him to use torture, and that in the event this torture resulted in the death of the detainee, that [Person G] would not be punished. DUCH stated that, on this occasion, he received instructions from SON Sen by telephone³⁷⁹.

c) Torture Techniques

100. Interrogators used several forms of torture in order to extract confessions from prisoners. According to DUCH, only four methods of torture were allowed: beating, electrocution, placing a plastic bag over the head and pouring water into the nose³⁸⁰.
101. DUCH specified that the method most used was beating with a stick because other methods wasted time³⁸¹. It appears that the severity of torture would increase if the detainee did not properly confess. A confession was improper if it was deemed insufficiently detailed or it failed to name other traitors³⁸².
102. DUCH stated that he was unaware of the use of other forms of torture³⁸³, some of which he said were prohibited at S21. Despite this, DUCH later acknowledged that he knew about the practice of puncturing or removing finger and toe-nails. He added that he reacted to this knowledge by writing a report³⁸⁴, but there is no other evidence that he ever disciplined interrogators for using this and other unauthorised techniques. In fact, [Witness E] stated that this form of torture was used under instructions from DUCH himself³⁸⁵. There is also evidence that at least one prisoner was force-fed excrement. DUCH said in this respect that he tended to refuse the idea that he was aware of these practices³⁸⁶, but that he could not rely on his memory for such specific points, as he was primarily interested in the content of the confessions and did not pay close attention to the manner in which prisoners were treated³⁸⁷. He also recognised that cold water and fans were a method used at S21, admitting that he did not react to this practice³⁸⁸. According to [Witness J], some other practices such as removing the clothes of prisoners and then using electrical equipment to shock the genitals or ears of prisoners were used during interrogations³⁸⁹. At the reconstruction, the possibility that prisoners had been tortured using a bath-tub, now exhibited at the Tuol Sleng Museum, was discussed. S21 guard, [Witness L], stated he had seen it, and [Witness H] explained that a Vietnamese detainee claimed he had been tortured in one. However, DUCH maintained that he had never ordered that a bath-tub be used to torture prisoners, and nor was he aware that one had been used³⁹⁰. The investigation also revealed the occurrence of practices such as forcing the detainees to pay homage to images of dogs³⁹¹. DUCH admitted to the Co-Investigating Judges that he was aware of this practice, insisting initially that he did not support it, but later acknowledging he did in fact encourage it at an interrogators training session on 28 May 1978³⁹². Moreover, [Witness H] recalled seeing a guard take a detainee to a portico, suspend him with a cord, and plunge his head into a full water jar. [Witness H] watched this scene from the window of the painters' room³⁹³.

103. Two former S21 prisoners told investigators about their experiences of being tortured. [Witness F] stated that he was repeatedly beaten on the back with a piece of wood³⁹⁴. Later, an interrogator pulled out the toenails from both of his feet. He also said he received electric shocks on his earlobes, and on the third day he fell unconscious twice. He specified that he was subjected to this treatment for 12 days and 12 nights. [Witness N], for his part, said that upon being taken to the interrogation room, the interrogators showed him the torture equipment and asked him to choose which implements would be used against him. He was then beaten on the back with a whip, a rattan stick and electrical cables while handcuffed and forced to lie face-down on the ground. He said his back was cut and bleeding all over the floor and that he was also electrocuted. He added that he was tortured twice a day over a consecutive two week period³⁹⁵.
104. The gravity of the physical abuse described above led to death in certain cases³⁹⁶. DUCH acknowledged this to be the case, and stated that he organised a study session to remedy this situation³⁹⁷. However, he also conceded that on 1 October 1976 he wrote a letter to a subordinate, [Person G], in which he instructed him to use torture. He said that if the torture resulted in the death of the detained person, [Person G] would not be considered responsible³⁹⁸.
105. There is evidence of rape being committed at S21, however, recollections differ, and it is not clear how many instances occurred³⁹⁹. DUCH stated that there was only one incident, involving his former school teacher, [Person EE], where an interrogator, originally from Division 703, inserted a stick into her genitals⁴⁰⁰. After the rape was reported, DUCH said that he discussed the incident with [Person C], who was responsible for the men of Division 703. He recalled that he told [Person C] to criticise the perpetrator. DUCH said he reported the incident to his superior, who “*did not say anything.*” Consequently, he did not punish the perpetrator, who was simply assigned to interrogate another person. He also suggested that in the future, wives of cadre were to interrogate female prisoners, a change which was implemented⁴⁰¹. However, [Witness E] stated that these female interrogators were all eventually arrested, and from at least 1977, female prisoners were again interrogated by male guards⁴⁰². DUCH finally stated that he now admits “*that he failed to punish serious crimes that violated human dignity [integrity]*”⁴⁰³.

d) Prey Sâr

106. DUCH said that Prey Sâr was not a place for interrogation or torture⁴⁰⁴. While he is corroborated by some witnesses on this point⁴⁰⁵, others stated that guards beat or insulted prisoners when they were sick or unable to work properly⁴⁰⁶. Former S24 detainee, [Witness O] mentioned the existence of a room where men and women were interrogated by electrocution, although she never personally witnessed these acts of torture⁴⁰⁷. Another witness, [Witness P], described how colleagues who were

sent to Prey Sâr would return with their head shaved and their skin flayed from the application of electric shocks, beatings and whippings during interrogation⁴⁰⁸.

3. Executions

a) Authority over executions

107. Over 12,380 detainees were executed at S21⁴⁰⁹. DUCH said that he initially delegated responsibility for executions to [Person C], who made all the necessary preparations upon his own initiative⁴¹⁰. However, following an incident where a prisoner was killed before the completion of his interrogation, SON Sen required DUCH to sign off on every execution⁴¹¹. Thereafter, DUCH necessarily decided how long a prisoner would live, since he ordered their execution based on a personal determination of whether a prisoner had fully confessed⁴¹². As there was no right to release⁴¹³, there was an implicit standing order from DUCH, as Chairman, to kill prisoners according to the system created at S21.
108. [Witness Q] stated that no one could be removed from S21 without authorisation from DUCH. He claimed that DUCH planned and ordered the execution of prisoners by annotating the removal lists with instructions such as “*kâm*”, a short form of “*kâmtech*”, which means “*to smash*”⁴¹⁴.
109. [Witness B] said DUCH and [Person C] gave the orders to carry out executions within the S21 complex⁴¹⁵. More specifically, he stated that DUCH personally ordered him to kill a person at Choeng EK and that, as DUCH looked on, he took an iron bar and killed a prisoner⁴¹⁶. DUCH denies this incident took place⁴¹⁷.
110. DUCH stated that killing could be carried out on instructions he received and conveyed to his subordinates⁴¹⁸ or, as he stated in interviews prior to his arrest, upon his unilateral decision after taking into account considerations such as overcrowding, lack of food, contagious illnesses or the fear of escapes⁴¹⁹. Beyond specifically authorising the execution of prisoners, DUCH allegedly taught execution techniques. [Witness B] specifically recollected a meeting where DUCH instructed that “*hitting their necks with the steel would not kill them, (so) their throat had to be cut too*”⁴²⁰.
111. Generally, prisoners were killed shortly after completing their confessions. However, DUCH said he had the authority to delay the execution of certain skilled prisoners. He described this as a “*certain margin granted by the superiors*” whereby [Person C] and DUCH could keep some prisoners to work within the S21

complex. He added, however, that they were all destined to be executed eventually⁴²¹.

b) Executions at Choeng Ek

112. Due to the circumstances directly following the collapse of the Khmer Rouge, it is extremely difficult, considering the passage of time, to estimate with any accuracy, the number of persons killed at Choeng Ek. However, with the testimony surrounding the system of executions at S21, in combination with execution logs, prisoner lists, and a preliminary forensic survey, it is clear that many thousands of persons, including men, women and children, were executed and buried at Choeng Ek⁴²². Although some witnesses denied ever seeing children there⁴²³, at least one grave was described as containing the remains of children⁴²⁴. An S21 execution log recorded that on a single day in July 1977, 160 children were killed at Choeng Ek⁴²⁵. During the Reconstruction conducted at Choeng Ek on 26 February 2008, DUCH said he did not know how children were executed there, but he did not deny they were executed at this site⁴²⁶.
113. [Witness B] confirmed he saw DUCH at Choeng Ek⁴²⁷. DUCH said that he went there only once⁴²⁸ in 1977⁴²⁹, at the request of SON Sen, and that he stayed only ten to 15 minutes⁴³⁰.
114. Prisoners were transported to Choeng Ek in trucks⁴³¹ two to three times a month⁴³². [Witness B] said they were transported in two vehicles, each containing approximately 30 to 40 prisoners. He said prisoners were told they were being transferred to a new home so that they would not scream during transport⁴³³. They were then taken to the waiting trucks, handcuffed and blindfolded⁴³⁴. During transportation, two guards were positioned in the rear of the truck so prisoners could not jump from the vehicles⁴³⁵.
115. According to DUCH, three to four guards were stationed at Choeng Ek. When joined by the transport guards, there were as many as ten guards present at an execution⁴³⁶. There were three teams, the special unit, [Person FF]'s team, and [Person GG]'s team⁴³⁷. DUCH said the methods of execution employed had existed since his time as Secretary of M13. Beyond knowing that prisoners were blindfolded and had their arms tied behind them⁴³⁸, DUCH said he was not aware of the technical “*details*” of the executions⁴³⁹.
116. After arriving at Choeng Ek⁴⁴⁰, a generator was switched on⁴⁴¹, and the prisoners were led to a house⁴⁴². The guards then took prisoners outside one at a time, telling them they were being transferred to a different house. [Person I] stood outside and recorded the names of prisoners before taking them to the pits to be killed⁴⁴³.

117. Several witnesses said that prisoners were killed using steel clubs, cart axles, and water pipes to hit the base of their necks⁴⁴⁴. Prisoners were then kicked into the pits, where their handcuffs were removed⁴⁴⁵. Finally the guards either cut open their bellies or their throats⁴⁴⁶. After the executions were complete, the guards covered the pits⁴⁴⁷.
118. Several large-scale executions also seem to have taken place at Choeng Ek. DUCH declared that on four separate occasions SON Sen and [Person J] ordered him to send the majority of prisoners detained at S21 to Choeng Ek to be executed⁴⁴⁸. The purpose of these executions was to make room for a large influx of prisoners following mass arrests⁴⁴⁹. DUCH admitted specifically ordering and implementing two mass executions⁴⁵⁰. According to DUCH, numerous mass executions occurred in which he received and conveyed orders to execute without interrogation. DUCH confirmed his handwriting on a number of prisoner lists. On one list he annotated “*to the attention of [Person FF], kill them all, 30 May 1978*”. DUCH said this was an exceptional mass execution, though he could not remember the number of victims. On another, containing the names of 29 prisoners, he wrote “*interrogate four persons, kill the rest*”⁴⁵¹.
119. DUCH declared that, later in December 1978, about 300 prisoners from the East Zone, who had allegedly rebelled, were sent directly to Choeng Ek and executed⁴⁵². He also stated that on 2 or 3 January 1979, [Person J] ordered him to smash all prisoners at S21⁴⁵³. Around 200 persons were transported to Choeng Ek and killed⁴⁵⁴. According to DUCH, it was the last time a mass execution was ordered⁴⁵⁵. [Witness L] was an eye witness to this mass killing⁴⁵⁶, and other S21 personnel were aware of the event⁴⁵⁷. DUCH expressly admitted that there were two categories of persons sent to this last mass execution: Cambodian Nationals and Vietnamese soldiers⁴⁵⁸.

c) Executions at Tuol Sleng

120. DUCH and other witnesses declared that while Choeng Ek became the main killing site, certain important persons, like [Person K], [Person A], [Person T], [Person B], and foreigners, continued to be executed within S21’s grounds or nearby⁴⁵⁹. Evidence on the case-file demonstrates the presence of mass graves within and around S21⁴⁶⁰.
121. DUCH, upon the request of his superiors, had pictures taken of important prisoners after they had been executed and buried⁴⁶¹. These pictures provided evidence that certain prisoners had not been released or escaped. According to DUCH, he specifically remembered photographing three dead prisoners namely [Person Y], [Person A] and [Person T]⁴⁶².

122. In 1978, four foreigners were burned to ashes using vehicle tires⁴⁶³ between Mao Tse Tong Boulevard and Boeng Tumpun⁴⁶⁴. [Person J] allegedly ordered DUCH to make sure the bodies could not be found⁴⁶⁵. [Witness E] heard about this event but did not witness it⁴⁶⁶. [Witness R], a guard at S21, stated that in 1977 or 1978 he saw a foreign prisoner being burned alive using vehicle tires at the crossroad of Toul Tumpoung Pagoda⁴⁶⁷.
123. Some prisoners were killed by having large quantities of blood withdrawn by medics⁴⁶⁸. [Witness E] told investigators that no fewer than a thousand persons were killed in this manner, indicating that this occurred to 20 to 30 prisoners, every four or five days⁴⁶⁹. [Witness Q] reported that [Person C] ordered him to write lists of those detainees who had their blood drawn on two occasions, the first time for two prisoners, and the second time for four to five prisoners⁴⁷⁰. The case file contains another list of prisoners who died in this manner⁴⁷¹. Former S21 medic, [Witness S], noted that on one occasion he saw approximately 30 or 40 blood bags⁴⁷².
124. [Witness E] recounted that four to five bags of blood were extracted in a process which left the prisoner “unconscious and [...] gasping”. He added that, “[w]hen I saw this I was strongly disturbed; when I tortured I was not that disturbed. But when they took the blood it was so terrifying. I have never forgotten it...”. The prisoners would die sometime thereafter and a vehicle would transport the bodies to Choeng Ek for disposal⁴⁷³.
125. Evidence indicates that once blood was taken from a prisoner, it was subsequently sent to hospitals⁴⁷⁴. [Witness E] told investigators that the doctors told him blood bags “were sent to Monivong Hospital or to 17 April Hospital”⁴⁷⁵. [Witness I] was notified by other medics that “blood was taken from prisoners and given to (a) hospital(s) outside S21”⁴⁷⁶. Former S21 guard, [Witness T] was told that “there was a place for preserving blood called Srak Srornng to the east of Tuol Sleng prison”⁴⁷⁷.
126. DUCH denied any role in the taking of blood from prisoners. However, he “would not dare to deny” that blood was drawn from detainees held at S21. He stated that, if there was a policy of blood extraction at S21, it must have been “a continuation from when [Person B] was Chairman”⁴⁷⁸. In subsequent interviews, DUCH reiterated his position that he could not deny that blood letting may have occurred at S21, but he said that he had no knowledge of the practice⁴⁷⁹.
127. Finally, a number of S21 personnel also affirmed that children were killed within the compound. Statements indicated that the children of prisoners were removed from their parents, killed and buried north of the prison⁴⁸⁰. One alleged method of

killing involved dropping the children from the third floor of the complex in order to break their necks⁴⁸¹.

128. Four combatants from a military unit that DUCH recalled was designated YO8 were also killed independently after the last mass execution on 2 or 3 January 1979. DUCH said that on 7 January 1979, interrogator [Person HH] killed these men using a bayonet, and that these were the bodies that remained left on the beds in S21⁴⁸² when the Vietnamese soldiers arrived⁴⁸³.

PART II. LEGAL CHARACTERISATION

129. The judicial investigation demonstrated that, while DUCH was not a senior leader of Democratic Kampuchea, he may be considered in the category of most responsible for crimes and serious violations committed between 17 April 1975 and 6 January 1979, due both to his formal and effective hierarchical authority and his personal participation as Deputy Secretary then Secretary of S21, a security centre which was directly controlled by the Central Committee.

130. In view of the facts set out above in paragraphs ten through 108, the Co-Investigating Judges consider there is sufficient evidence (*charges suffisantes*) to indict KAING Guek Eav alias DUCH and send him for trial for the following offences defined in the ECCC Law, and based on applicable law in 1975.

A. CRIMES AGAINST HUMANITY

Common Elements

131. S21 was specifically designed and authorised to detain and either reform or eliminate real or perceived political opponents of those in control of the Communist Party of Kampuchea. The large number of individual crimes committed repeatedly at S21 also served to perpetuate and widen this attack based upon a constantly evolving notion of those persons considered a threat to the Party. S21 operated as a political and military unit which reported directly to the highest levels of the Party and detained a population composed primarily of civilians, as defined by international law, taken from every geographical zone, and from virtually every administrative and military unit in Cambodia. Due to his position of authority at S21, DUCH knew the purpose that S21 served and intended his actions to contribute to that purpose. Even if there were a requirement that the crimes committed at S21 have a correlation to an international armed conflict, it is clear that the attack proliferated as the conflict with Vietnam intensified.

132. Notwithstanding an attack which may be characterised as against the civilian population of Cambodia in general, the crimes committed at S21 themselves constituted a discreet widespread or systematic attack against the civilian population detained therein.
133. Accordingly, the underlying criminal acts listed in Article 5 of the ECCC Law, characterised below with respect to S21, were committed as part of a widespread or systematic attack at S21 directed against a civilian population on political grounds, and with knowledge of the attack, under the customary definition of Crimes Against Humanity in 1975.

Imprisonment

134. There were no reasonable grounds and no legal basis justifying the arrest of the large number of individuals intentionally imprisoned at S21. Moreover, prisoners were clearly deprived of basic rights such as being informed of the reason for their arrest. There is no evidence that any legal or judicial system was established or functioned in Cambodia between 17 April 1975 and 6 January 1979. There were no procedural safeguards, whether judicial or administrative, whereby detainees could challenge their imprisonment.

Enslavement

135. Certain detainees at S21 and Prey Sâr were forced to work. Strict control and constructive ownership was exercised over all aspects of their lives by: limiting their movement and physical environment; taking measures to prevent and deter their escape; and subjecting them to cruel treatment and abuse. As a result of these acts, detainees were stripped of their free will.

Torture

136. The vast majority of persons interrogated at S21 were repeatedly and intentionally subjected to severe interrogation methods, which often resulted in serious physical injuries and severe mental harm. These methods were designed for the specific purpose of obtaining information or extracting confessions from the prisoners. Even if there were a requirement that perpetrators act in an official capacity, it is clear that in this case they acted in accordance with their defined roles within a clear command structure.

Rape

137. There is evidence of at least one coercive sexual penetration committed at S21, when an interrogator inserted a stick into a female prisoner's genitals.

Murder

138. At S21, personnel, both directly and indirectly, caused the death of a large number of detainees. In many instances prisoners were deliberately killed through a variety of means. In other instances the perpetrators may not have intended to kill, but were aware that death could occur as a result of their conduct, for example when they beat or tortured prisoners.

Extermination

139. The living conditions imposed at S21 were calculated to bring about the deaths of detainees. These conditions included but were not limited to the deprivation of access to adequate food and medical care.
140. The unlawful deaths of over 12,380 detainees which occurred as a result of murder or the imposition of living conditions calculated to bring about death, constituted the mass killing of members of a civilian population, evidenced by documentary records, eye-witness accounts and the discovery of large numbers of bodies in mass graves.

Persecution

141. The judicial investigation demonstrated that detainees at S21 were denied fundamental rights including: life; liberty; security of person; due process; and freedom of movement. These fundamental rights were denied or infringed from the moment of their arrest and throughout their detention, interrogation, re-education or execution. Detainees were denied these fundamental rights based upon their real or perceived political beliefs or political opposition to those in power in the CPK. Detainees were subject to arbitrary and unlawful detention, torture, enslavement, murder, and other inhumane acts.
142. DUCH was aware of the discriminatory policies by which S21 operated, and his intent to discriminate in accordance with these policies can be inferred from his

actions, his positions at S21, his status as a CPK Party member, and his relationships with the CPK leadership.

Other Inhumane Acts

143. Prisoners at S21 suffered serious bodily and mental harm from inhumane acts which included deliberate deprivation of adequate food, sanitation and medical treatment. Prisoners were beaten and subjected to stringent restrictions during detention. These severe conditions, individually or collectively, depressed, degraded, and dehumanised detainees ensuring that they were always afraid.

B. GRAVES BREACHES OF THE GENEVA CONVENTIONS OF 1949

Common Elements

144. Protracted armed violence between the regularly constituted armed forces of Democratic Kampuchea and Vietnam began in April 1975, and increased in intensity until at least 6 January 1979. During this time period, hundreds of Vietnamese prisoners of war and civilians were arrested and sent to S21. Additionally, many other persons characterised by the DK as Vietnamese “spies” or of Vietnamese descent were detained. The vast majority of these prisoners were removed directly from combat areas. Many written and recorded confessions of these persons, obtained under torture, contained military intelligence or were broadcast and published by official CPK organs as part of the military propaganda strategy. Due to his position of authority at S21, which put him in repeated contact with military and political leaders, DUCH was acutely aware that crimes committed at S21 took place both in the context of the international armed conflict with Vietnam and against persons who either owed no allegiance to the DK or belonged to the adverse party of the conflict.
145. Accordingly, the underlying criminal acts listed in Article 6 of the ECCC Law, characterised below, constitute grave breaches of the Geneva Conventions of 1949 because they were associated with and committed in the context of an international armed conflict against protected persons in full awareness of the factual circumstances that established the conflict and the protected status of the prisoners.

Unlawful Confinement of a Civilian

146. More than a hundred Vietnamese civilians were detained at S21. There was no difference in treatment between Vietnamese civilians and other individuals subjected to imprisonment at S21, all were arbitrarily deprived of their liberty.

Wilfully Depriving Rights to Fair Trial

147. At least 400 protected persons were wilfully denied their right to be judged by an independent and impartial court as defined by the Geneva Conventions of 1949. In particular, the right to be promptly informed of their offences; to be protected from collective penalty; to be protected by the principle of legality; or to be sentenced by a competent court.

Wilfully Causing Great Suffering

148. These protected persons were wilfully subjected to serious mental and physical suffering due to inhumane acts which included deliberate deprivation of adequate food, sanitation and medical treatment. Prisoners were beaten and subjected to stringent restrictions during detention. These severe conditions individually or collectively depressed, degraded, and dehumanised detainees ensuring that they were always afraid.

Torture and Inhumane Treatment

149. S21 personnel wilfully caused severe pain or suffering, whether physical or mental, to protected persons during interrogation. The purpose of using such methods within the course of the interrogation was to extract confessions aimed at obtaining military information and supporting CPK propaganda.

150. S21 personnel wilfully caused serious mental harm or physical suffering or injury, or submitted them to conditions which amounted to a serious attack upon the human dignity of the prisoners at S21.

Wilful Killing

151. S21 personnel wilfully caused the death of at least 400 protected persons both directly and indirectly, through a variety of means.

C. NATIONAL CRIMES

152. Certain acts characterised by the judicial investigation also constitute the domestic offences of homicide and torture pursuant to Articles 500, 501, 503, 506 of the 1956 Cambodian Penal Code under Article 3 of the ECCC Law. However, these acts must be accorded the highest available legal classification, in this case: Crimes against Humanity or Grave Breaches of the Geneva Conventions of 1949.

D. FORMS OF RESPONSIBILITY

Commission

153. DUCH personally tortured or mistreated detainees at S21 on a number of separate occasions and through a variety of means.

Ordering

154. DUCH held a position of authority at S21 throughout the temporal jurisdiction of the court. From this position of authority, DUCH had the ability to direct, instruct or order his subordinates to perform any task associated with the functioning of the S21 complex. The chain of command at S21 was clearly delineated and the roles of its staff members were rigorously defined and enforced.

155. Orders and instructions, whether originating from DUCH or his alleged superiors, were given or passed with the intent and awareness that they would be achieved and institutionalised. Orders at S21 could be implicit, explicit, broad or specific, and could be received directly or indirectly by the perpetrator.

156. The direction provided by DUCH contributed substantially to the events which took place at S21, and much of the conduct which was attempted or occurred can be described as criminal under the ECCC Law and Agreement.

Command Responsibility

157. As Deputy Secretary and later Secretary of S21, DUCH exercised effective *de jure* and *de facto* command and control over the entire staff of S21. This authority

included the capacity to issue orders concerning all operations conducted at the security complex.

158. Throughout his tenure at S21 DUCH either knew, should have known, or consciously disregarded information that demonstrated that his subordinates committed, or were about to commit the acts described in this Closing Order. These acts can be qualified as crimes within the jurisdiction of the ECCC. By failing to take all necessary and reasonable measures to prevent or punish the acts described, DUCH failed to exercise proper control over his subordinates.

Planning

159. DUCH was substantially involved in formulating or endorsing the plan to establish S21 with the knowledge that its function would be criminal in nature. Further, following S21's formation, DUCH planned the specific crimes committed therein, with the intention that they be carried out.

Instigation

160. As Deputy Chairman and Chairman of S21, and also as an active CPK Party member, DUCH induced, encouraged and prompted the staff at S21 to commit the crimes described in this Closing Order by instructing and teaching Party doctrine and practice, assigning tasks, and through his presence and participation in all aspects of the security complex. His leadership and participation were clear contributing factors to the overall functioning of S21 and demonstrated an intention that the staff of S21 carry out these crimes.

Aiding and Abetting

161. DUCH's subordinates respected his authority, and that at nearly every level of S21's operation, he gave them practical assistance, encouragement or moral support. This substantially contributed to the crimes described in this Closing Order. Further, DUCH appreciated his behaviour would assist in the commission of these crimes; knew their essential elements; and was aware of the intention of the perpetrators.

PART III. CHARACTER INFORMATION⁴⁸⁴

A. EARLY LIFE

162. DUCH was born on 17 November 1942 in Poevveuy village, Peam Bang Subdistrict, Stong District, in Kompong Thom Province⁴⁸⁵. His father (deceased in 1990) and mother (still living), were poor peasants of Chinese origin. DUCH appears in the Register of Births under the name, KAING Cheav. When he was two or three months old, his name was changed to YIM Cheav upon the advice of a fortune-teller. Since he did not like this name, at the age of 15, he asked his father to change it again. He took this opportunity to modify his date of birth, to appear younger, in order to register for school. Henceforth, his new identity would be KAING Guek Eav, born on 15 February 1945. During the Khmer Rouge period, he assumed and was referred to by his alias, "DUCH." However, when he lived in China, from late 1986 to July 1989, he asked to be called HANG Pin.

163. DUCH was the eldest of five children and the only son. He got on well with his parents and sisters. He often appears to have been ill when he was small, with what he calls "*illnesses caused by poverty and living in the countryside*"⁴⁸⁶. He began school late, at nine years of age. A good pupil, who simultaneously feared and was fascinated by his teachers, whom he respected highly, he completed his schooling successively at the Kompong Thom junior high school, followed by high school in Siem Reap and at *Lycée Sisowath* in Phnom Penh, where he passed his *Baccalaureate* in 1964.

B. PERSONAL, PROFESSIONAL AND POLITICAL EVOLUTION

164. In 1965, DUCH was appointed as a mathematics teacher at the junior high school in Skoun. His students would later describe him as a sincere, devoted man, always seeking to help the impoverished⁴⁸⁷. This professional activity did not last long, however, as DUCH was gradually becoming the revolutionary that he was to remain for more than twenty years. From age 15, he had been attracted by political activism, having felt humiliated when he became conscious of his family's social situation, especially when faced with the implacable demands of an usurious uncle. In this respect, he was undoubtedly influenced by several of his teachers who denounced corruption and social injustice and, in particular, by one of his instructors, [Person II], who would later be executed at S21⁴⁸⁸.

165. DUCH's family and emotional life was characterised by great stability. Except for an amorous disappointment during his youth, which he described as being important, DUCH only mentioned one woman in his life, his wife [Person JJ], who was a garment maker. He explained that, with SON Sen's approval, he had been able to choose his wife, whom he had met in 1974. DUCH married her in 1976, when he was already Chairman of S21. He would have four children: a girl, born on 27 April 1977; a boy born on 14 December 1978; another girl born on 30 June 1981, and a son born on 28 October 1985.
166. After the 1979 capitulation, DUCH followed in the wake of the Khmer Rouge for more than ten years. He said he wished to leave the movement but was incapable of doing so, being a sort of "prisoner" of the Regime in Samlaut, where he arrived on 30 December 1979. His main task there was teaching. In October 1986, his superior SON Sen (the head of DUCH's unit, Office K18), sent him to China to teach Khmer to Chinese students. He remained there for two years and worked under the supervision of SON Sen's wife, [Person KK]. In 1992, after POL Pot named him to oversee economic issues in Phkoâm village, Thmâr Puok district, in the province of Banteay Meanchey, DUCH lost contact with his commanders. He explained that the rupture was progressive, as Khmer Rouge soldiers dispersed little by little as the war continued. He became a school teacher, while trading in rice and breeding pigs⁴⁸⁹. On 11 November 1995, in Phkoâm, he was the victim of a mysterious "burglary", in the course of which his wife was killed by a bayonet wound to the chest, whereas he was only slightly injured. In this respect, DUCH alluded to a possible assassination attempt financed by POL Pot⁴⁹⁰. After the death of his wife, DUCH started to attend meetings of the Evangelist Church of Battambang. He converted to Christianity in 1996 and has had his children baptised. He then returned to live in Samlaut, yet, during renewed Khmer Rouge combat activities against the government, the sub-district was evacuated and its population crossed over to Thailand. In July 1997, DUCH began to work for an NGO called American Refugee Committee (ARC), where he remained until his identification by journalists in May 1999⁴⁹¹. Shortly thereafter, he was arrested by the Cambodian military authorities.

C. RECOGNITION OF RESPONSIBILITY

167. DUCH has consistently recognised his responsibility for the crimes committed at S21 under his command⁴⁹². He explained that he was led to speak out in 1999 because "*it was impossible not tell the truth about S-21*" after he heard that "*Pol Pot denied the existence of S21 and claimed that it was an invention of the Vietnamese*"⁴⁹³. DUCH has regularly expressed remorse to the victims and their families, but also to the S21 staff under his command⁴⁹⁴. He stated that none of his personnel were volunteers, or proud of what they had done, but rather terrorized and constantly in fear for their lives⁴⁹⁵.

168. Moreover, DUCH has cooperated willingly in the judicial investigation, neither attempting to implicate anyone who was under his orders, nor placing the blame on the upper echelons of the Party alone, in order to exonerate himself⁴⁹⁶. When confronted with some of the inconsistencies in his testimony before the Co-Investigating Judges, he indicated that they resulted from "*fear and embarrassment*" he felt when reminded of "*an extremely painful history of crime*"⁴⁹⁷.
169. He noted, in his defence: "*I joined the Khmer Rouge in order to liberate my people and not to commit crimes*", but that "*from 1971 onwards, when I was forced to supervise M-13, I became both an actor in criminal acts and also a hostage of the regime*"⁴⁹⁸. DUCH says that he only became aware of the criminal nature of the regime little by little, beginning when he saw people being evacuated and stripped of their private property, followed by the series of mass executions⁴⁹⁹. He added that when mass arrests were carried out based on [Person K]'s declarations, he "*understood that those who served their own people could be arrested as opponents of the Party*"⁵⁰⁰, explaining that he began to be concerned and afraid for his life when [Person J] arrested [Person LL] and [Person MM], followed by his superiors like [Person A]⁵⁰¹. DUCH claimed all this led him to be paralysed by fear for his life wondering when it would be his turn⁵⁰². He claimed that, as time passed, he was less and less able to do his work, turning over all interrogations to [Person C] and simply sitting in the sculpture room, specifying that in the end, he was terrified to the point that he slept day and night⁵⁰³.
170. DUCH also claims that, despite many attempts, he never succeeded in escaping from his post, either during the regime or after its fall. He justified this by noting that he was subjected to constant surveillance and that "*[e]scape would mean death for me and my family*"⁵⁰⁴.

D. PSYCHOLOGICAL EXAMINATION

171. A psychological examination of the Charged Person was ordered, and conducted by an international expert specialised in Geopolitical Clinical Psychology, and a Cambodian psychiatrist. These experts concluded that DUCH did not present any psychopathology. He is responsible for all of his acts. He is highly intelligent and has a very good memory. Although he is "*influenceable and impressionable*", this falls within a framework of beliefs, the ideological prerequisites of which he shares. DUCH shows a certain "*endeavour to distance himself from his past actions*", and shows good analytical capacity. However, this distance and analysis are not enough to come to terms with the Khmer Rouge "*fabrication process*" that is still perceptible sometimes in his vocabulary, thought processes, psychology and behaviour. There is a strong presence of obsessive traits in DUCH's personality, both past and present. He is meticulous, conscientious, control oriented, attentive to detail and seeks recognition from his superiors. He has difficulty in verbalising his emotions. He has managed to devise powerful defence mechanisms, especially

through splitting and denial. Nevertheless, positive progress in this respect has been perceptible in recent years. DUCH's imagination is limited in scope, as is his ability to put himself in other people's shoes. The experts noted that, despite this disempathy, DUCH has constantly expressed regret since 1999. They suggest that the question of whether DUCH's regrets are sincere or circumstantial is not of much relevance, because "*the answer lies beyond these two propositions*". They have also indicated that, in their opinion, "*Christianity, the West and the realm of international justice symbolized a new form of protection (also undeniably the most effective), because he suffered from insecurity*". With respect to the questions "*whether he can be rehabilitated and whether he can be reintegrated?*", the experts replied in the affirmative, specifying that these questions are obviously affected by three other factors: the outcome of the trial, the age of the Charged Person and his personal security⁵⁰⁵.

PART IV. DISPOSITIVE

Consequently, as a result of the judicial investigation, there is sufficient evidence (*charges suffisantes*) that **KAING Guek Eav alias DUCH**, through his acts or omissions in Phnom Penh and within the territory of Cambodia, between 17 April 1975 and 6 January 1979, as Deputy Secretary or Secretary of S21, planned, instigated, ordered, committed, or aided and abetted, or is responsible by virtue of superior responsibility for the following crimes:

1. CRIMES AGAINST HUMANITY

- murder
- extermination
- enslavement
- imprisonment
- torture
- rape
- persecutions on political grounds
- other inhumane acts

Offences defined and punishable under Articles 5, 29 (New) and 39 (New) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

2. GRAVE BREACHES OF THE GENEVA CONVENTIONS OF 1949

- wilful killing
- torture or inhumane treatment
- willfully causing great suffering or serious injury to body or health
- willfully depriving a prisoner of war or civilian the rights of fair and regular trial
- unlawful confinement of a civilian

Offences defined and punishable under Articles 6, 29 (New) and 39 (New) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

CONTINUATION OF DETENTION

Considering that the conditions laid down in Rule 63(3) of the ECCC Internal Rules are still satisfied; that the reasoning adopted by the Pre-Trial Chamber in its Decision dated 3 December 2007 (paras. 37 to 61) retains its force; and that, accordingly, it is necessary to maintain the Accused's Provisional Detention until he appears before the Trial Chamber in order to:

- ensure the presence of the Accused at trial;
- protect the security of the Accused; and
- preserve public order.

FOR THESE REASONS

Noting Rules 67 and 68 of the Internal Rules of ECCC:

We hereby indict **KAING Guek Eav alias DUCH;**

Order him to be sent for trial before the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia;

Order that he remain in Provisional Detention until he is brought before the Trial Chamber.

Done in Phnom Penh, on the eight day of August 2008

សហចៅក្រមស៊ើបអង្កេត
Co- Investigating Judges
Co-juges d'instruction

The present order was written in Khmer and in French and then translated into English.