



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

26 July 2010, 0958H

Judgment

Before the Judges:

NIL Nonn, Presiding
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Jean-Marc LAVERGNE
THOU Mony
YOU Ottara (Reserve)
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KAING Guek Eav

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*Extraordinary Chambers in the Courts of Cambodia
Trial Chamber - Judgment*

*Case No. 001/18-07-2007-ECCC/TC
KAING GUEK EAV
26/7/2010*

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
THE PRESIDENT (NIL NONN, Presiding)	Khmer

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1 P R O C E E D I N G S

2 (Judges enter courtroom)

3 MR. PRESIDENT:

4 Please be seated.

5 Today, Monday the 26th of July 2010, the Trial Chamber in the
6 Extraordinary Chambers in the Courts of Cambodia declares the
7 commencement of the hearing for pronouncement of the judgment in
8 case file number 001, 10-07-2007/ECCC/TC, concerning the accused,
9 Kaing Guek Eav, alias Duch, aged 68, who was charged with crimes
10 against humanity, grave breaches of the Geneva Conventions of 12
11 August 1949, violation of the 1956 Cambodian Penal Code which
12 consists of premeditated murder, Articles 501 and 506, and
13 torture, Article 500, offences defined and punishable under
14 Articles 3 (new), 5, 6, 29 (new) and 39 (new) of the law on the
15 establishment of the Extraordinary Chambers in the Courts of
16 Cambodia, related to S-21 in Phnom Penh of Cambodia and committed
17 during the period of Democratic Kampuchea between 17 April 1975
18 and 6 January 1979.

19 Greffier, Ms. Se Kolvuthy, please report the presence of the
20 parties in this proceeding.

21 THE GREFFIER:

22 Mr. President, all parties in this proceeding are present.

23 MR. PRESIDENT:

24 Thank you, Ms. Se Kolvuthy. The detention facility guards, you
25 are instructed to bring the accused, Kaing Guek Eav, alias Duch,

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1 to the dock.

2 Before the pronouncement of the judgment, the Chamber would like
3 to inform all the parties in the public that today only the
4 summary of the judgment will be pronounced. In the judgment, the
5 Chamber will use the word ECCC for the Extraordinary Chambers in
6 the Courts of Cambodia.

7 [10.02.30]

8 Summary of judgment, case file 001, 18-07-2007/ECCC/TC, Kaing
9 Guek Eav. 26 July 2010.

10 A. Introduction

11 The following is a summary of the Chamber's findings in the
12 judgment. The authoritative account of those findings is
13 contained in the written judgment, which will be made available
14 in its Khmer, French and English versions following this hearing.
15 At the outset, the Chamber wishes to express its gratitude to the
16 Parties, the interpreters, translators, court officers and
17 transcribers, ECCC administrative, audio-visual and security
18 staff, the Chamber's own staff, and all others who have
19 contributed to the smooth and efficient conduct of this trial.
20 The trial proceedings commenced on 17 February 2009 and concluded
21 on 27 November 2009. Over the course of 72 trial days, the
22 Chamber heard the testimony of 24 witnesses, 22 civil parties and
23 nine experts. Approximately 1,000 documents were put before the
24 Chamber and subjected to examination. The length of the
25 proceedings and that of the judgment reflects both the historic

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1 nature of this trial, the first before the ECCC, and the scope of
2 the charges against the accused.

3 [10.05.25]

4 The accused was charged under all form of responsibility set out
5 in Article 29 (new) of the ECCC Law for his alleged role in
6 crimes said to have been committed between 17 April 1975 and 6
7 January 1979 at the S-21 security centre. Specifically, the
8 accused was alleged to have served as Deputy and then Chairman of
9 S-21 and to be responsible for the crimes against humanity of
10 murder, extermination, enslavement, imprisonment, torture, rape,
11 persecution on political grounds, and other inhumane acts. He was
12 also charged with the grave breaches of the 1949 Geneva
13 Conventions of wilful killing, torture or inhumane treatment,
14 wilfully causing great suffering or serious injury to body or
15 health, wilfully depriving a prisoner of war or civilian of the
16 rights of fair and regular trial, and unlawful confinement of a
17 civilian, as well as pre-meditated murder and torture as
18 violations of the 1956 Penal Code of Cambodia.

19 In its separate "Decision on the Defence Preliminary Objection
20 Concerning the Statute of Limitations of Domestic Crimes," which
21 is also issued today, the Chamber explains that it has not
22 examined the responsibility of the accused for the charges of
23 premeditated murder and torture as violations of the 1956 Penal
24 Code of Cambodia, punishable before the ECCC pursuant to Article
25 3 (new) of the ECCC Law. As this decision indicates, the Chamber

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1 was divided on the question of whether responsibility for these
2 crimes had been extinguished before the ECCC investigation of the
3 accused commenced. The absence of the required majority on this
4 issue created a barrier to the Chamber's exercise of jurisdiction
5 in relation to these national crimes.

6 [10.08.35]

7 In its judgment, the Chamber has detailed the reasons supporting
8 its exercise of jurisdiction over the accused. The Chamber
9 concurs with the assessment of the Co-Investigating Judges that
10 Kaing Guek Eav was one of the persons allegedly most responsible
11 for the crimes committed in Democratic Kampuchea between 17 April
12 1975 and 6 January 1979.

13 The applicable law before the ECCC, unlike the legal frameworks
14 of other international tribunals, provides no procedure for the
15 acceptance and recording of a plea of guilty by an accused. Thus,
16 while the accused has, broadly speaking, agreed with or not
17 disputed a significant number of facts contained in the Amended
18 Closing Order, the Chamber was compelled to hear and evaluate all
19 evidence put before it, including in relation to matters not in
20 dispute.

21 [10.10.00]

22 B. Historical and Political Context

23 As a preliminary matter, the Chamber examined the context in
24 which the Democratic Kampuchea regime took power. The Chamber
25 found that border clashes between Cambodia and Vietnam occurred

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1 soon after the fall of Phnom Penh to the army of the Communist
2 Party of Kampuchea on 17 April 1975. During most of the period of
3 the Democratic Kampuchea regime, Cambodian and Vietnamese armed
4 forces engaged in increasingly violent hostilities, which
5 culminated in the fall of Phnom Penh on 7 January 1979 and the
6 Democratic Kampuchea leadership fleeing the capital.

7 The Chamber also examined the general structure and policy of the
8 Communist Party of Kampuchea during the relevant time,
9 particularly as it applied to the operation of S-21. The
10 Communist Party of Kampuchea met at a Party Congress in January
11 1976 to formalise by statute a complex, centrally-organised
12 structure, which sought to place the entire government apparatus
13 and the armed forces under its complete control. In practice,
14 power within Democratic Kampuchea was exercised by the Standing
15 Committee, the executive branch of the Central Committee, whose
16 membership comprised the Secretary or Prime Minister, Pol Pot and
17 a select number of other high-level members of the Communist
18 Party of Kampuchea. All bodies, including the military, were
19 required to report to the Central Committee through the Standing
20 Committee.

21 Further, the entire civilian population was governed by a network
22 of bodies tightly controlled by the Central Committee through the
23 Standing Committee. Communist Party of Kampuchea policy was
24 disseminated throughout Democratic Kampuchea by various means,
25 including directives, rallies, trainings, radio broadcasts and

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1 periodicals. The most critical aspect of Communist Party of
2 Kampuchea policy in relation to this trial was known as
3 "smashing": a term used to describe the arrest, interrogation and
4 execution of individuals perceived to be enemies or spies.

5 It is against this historical and political backdrop that the
6 Chamber has examined the charges against Kaing Guek Eav.

7 [10.13.15]

8 C. S-21 and the role of the accused

9 The accused was born on 17 November 1942 in the village of Poev
10 Veuy, Peam Bang Sub-District, Stoeung District, in the province
11 of Kompong Thom. Upon completion of his education, he was
12 appointed as a mathematics teacher at the junior high school in
13 Skoun, Kompong Cham in 1965, prior to joining the underground
14 resistance in 1967. In 1971, the accused was tasked with
15 directing the Communist Party of Kampuchea's M-13 security
16 centre. He relied on many of the same techniques and policies in
17 his operation of both M-13 and S-21, including the use of torture
18 during interrogations, the recruitment and indoctrination of
19 youths as staff members, and the systematic execution of
20 detainees following the completion of their interrogation.

21 The Amended Closing Order stated, and the accused acknowledged,
22 that he served as Deputy and then Chairman of S-21, a security
23 centre tasked with interrogating and executing persons perceived
24 as enemies of Democratic Kampuchea by the Communist Party of
25 Kampuchea. S-21 was operational between 1975 and 1979.

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1 Following an initial meeting with Son Sen, the accused, as the
2 Deputy of S-21 Chairman In Lorn alias Nat, established and began
3 supervising the S-21 interrogation unit in October 1975. The
4 accused had four main tasks as head of the interrogation unit:
5 (i) collating documents collected from the institutions of the
6 Lon Nol government; (ii) preparing reports for his superiors
7 based on these documents; (iii) teaching interrogation methods to
8 the staff of the interrogation unit; and (iv) reporting
9 detainees' confessions to his superiors. The accused acknowledged
10 that, as Deputy, he permitted S-21 interrogators to use torture.
11 The accused was also aware that, following the completion of
12 their interrogation, detainees were taken away and executed.
13 In March 1976, the accused replaced In Lorn alias Nat as Chairman
14 of S-21. In that capacity, the accused reported to Son Sen from
15 March 1976 until September 1977 and then to Nuon Chea, the
16 Communist Party of Kampuchea Deputy Secretary. In conjunction
17 with his appointment as Chairman of S-21, the accused was named
18 Secretary of the S-21 Committee. As Chairman and Secretary, the
19 accused had full authority over all S-21 staff, including the two
20 other members of the S-21 Committee, Khim Vak alias Hor, and Nun
21 Huy alias Huy Sre. The role of the accused as the undisputed head
22 of S-21 is confirmed by the accused's own admissions, the
23 testimony of witnesses and civil parties, as well as documents
24 put before the Chamber during the proceedings.

25 [10.17.20]

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1 In April 1976, upon the accused's decision, S-21 detainees were
2 moved to the premises of the Pohnea Yat Lycée, a high school
3 located in Phnom Penh. S-21 operated at this location, which is
4 now the site of the Tuol Sleng Genocide Museum, until the 6th
5 January 1979.

6 The S-21 detainee population was comprised of former Lon Nol
7 cadres and soldiers, military personnel of the Revolutionary Army
8 of Kampuchea, numerous Democratic Kampuchea and Communist Party
9 of Kampuchea high and low-ranking cadres, their family members
10 and affiliates, women, children, foreign nationals from various
11 countries, particularly Vietnamese soldiers and civilians, as
12 well as a number of S-21 staff members and their relatives. While
13 documents put before the Chamber establish that no fewer than
14 12,273 individuals were detained at S-21, the actual number of
15 detainees is likely to have been considerably greater than
16 indicated.

17 The accused ran S-21 along hierarchical lines and established
18 reporting systems at all levels to ensure that his orders were
19 carried out immediately and precisely. S-21 was divided into
20 various units, including a Documentation Unit, an Interrogation
21 Unit and a Defence Unit, each of which operated under the
22 accused's command. In addition to supervising these units, the
23 accused carried out particular tasks within S-21, the most
24 significant of which are as follows:

25 Recruitment of staff: The accused acknowledged that a number of

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1 his S-21 staff were former M-13 subordinates. Further, he agreed
2 that, as Chairman of S-21, he continued his former M-13 practice
3 of recruiting young and impressionable staff to work as his
4 subordinates.

5 Training of staff: Teaching, particularly political training, was
6 one of the most significant responsibilities of Kaing Guek Eav at
7 S-21, who noted that he alone was responsible for educating those
8 who worked there. Further regular sessions at the training school
9 included practical training in interrogation methods, increasing
10 from annually in 1977 to monthly and weekly sessions in 1978. The
11 accused trained his interrogators to use physical and
12 psychological violence but instructed them to keep detainees
13 alive until he considered their confessions to be complete.

14 [10.21.05]

15 Role in arrests: In general, the echelons above the accused made
16 decisions regarding whom to arrest and send to S-21. There is
17 nevertheless evidence indicating that the accused played a more
18 active role in initiating some arrests and that his views were
19 sought and acted upon by his superiors. Further, the accused had
20 significant influence with regard to the arrest of S-21 staff and
21 was present during the arrest of certain notable detainees.

22 Role as regards confessions: The accused reviewed detainees'
23 confessions and provided continued instructions to the
24 interrogators, including on the use of torture, until he
25 considered a confession to be complete. A confession was improper

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1 if it was deemed insufficiently detailed or it failed to name
2 other "traitors". Following his review, the accused was solely
3 responsible for communicating the detainees' confessions and the
4 list of those they had implicated to his superiors. The accused
5 was aware that much of the information in the confessions he
6 passed along to his supervisors was fabricated. S-21 confessions
7 were nevertheless used to decide upon the arrest of those
8 denounced as enemy agents and often led to the arrest of many
9 others implicated as traitors.

10 Role in executions: Initially, the accused allowed his Deputy
11 Khim Vak alias Hor to manage the timing of the detainees'
12 executions. However, following an incident in which a detainee
13 was killed before he provided a complete confession, the accused
14 insisted on personally verifying that an interrogation was
15 complete before a detainee could be executed.

16 In addition, as Chairman of S-21, the accused chose to relocate
17 the S-21 execution and burial site to Choeung Ek, located
18 approximately 15 km southwest of Phnom Penh. Detainees held
19 within S-21 were typically transferred to Choeung Ek following
20 the completion of their interrogation, where they were summarily
21 executed.

22 The accused also exercised authority over S-24, also known as
23 Prey Sar, which was located outside of Phnom Penh and used as a
24 re-education camp. Nun Huy alias Huy Sre worked exclusively at
25 S-24, where he directly oversaw its day-to-day operations.

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1 Following Huy Sre's arrest in December 1978, Phal was assigned to
2 directly manage S-24 until its abandonment on 7 January 1979.
3 Throughout, the accused received regular reports regarding the
4 operations of S-24. Detainees at S-24 largely comprised the
5 relatives or subordinates of people detained at S-21, and of
6 combatants and personnel from ministries or from other public
7 institutions. Based on the limited and fragmentary documentation
8 placed before it, the Chamber has found that no fewer than 1,300
9 individuals were detained at S-24.

10 [10.25.35]

11 D. Facts Relevant to Crimes Against Humanity committed at S-21
12 During the course of the trial, evidence was put before the
13 Chamber regarding the following crimes against humanity committed
14 at S-21. Other facts which specifically concern Vietnamese
15 prisoners of war and civilians, as well as Vietnamese
16 sympathisers detained at S-21, have also been addressed by the
17 Chamber in relation to grave breaches of the Geneva Conventions
18 of 1949.

19 Murder and extermination: Every individual detained within S-21
20 was destined for execution in accordance with the Communist Party
21 of Kampuchea policy to "smash" all enemies. Amongst those
22 executed were former Lon Nol supporters, foreign nationals,
23 children, high-ranking detainees and former S-21 staff. Mass
24 executions of detainees were ordered by the Party Centre and also
25 took place on several occasions. In addition to those who were

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1 executed, many detainees died as a result of torture and their
2 detention conditions. Further, at least 100 S-21 detainees died
3 after having been literally bled to death by the S-21 Medical
4 Unit. The accused acknowledged that the number of detainees who
5 died or were executed was greater than the 12,273 individuals
6 contained in the Revised S-21 Prisoner List.

7 Enslavement: The accused agreed that S-24 was a place of
8 enslavement where detainees, known as "elements", performed
9 forced labour. Witnesses Bou Thon and Meas Pengkry, as well as
10 civil party Chin Met, described the harsh working conditions they
11 were forced to endure during their detention at S-24. In
12 addition, a very limited number of detainees were forced to work
13 within S-21. They included witness Vann Nath and civil parties
14 Bou Meng and Chum Mey, all of whom were first arrested, shackled
15 and imprisoned at S-21, before being selected to work within the
16 S-21 complex.

17 Imprisonment: At least 12,273 men, women and children were
18 detained at S-21. Some destined for S-21 were arrested by
19 stealth, others simply handcuffed, blindfolded, processed and
20 taken ultimately to a cell or large room where they would be
21 shackled alongside other detainees. S-24 also detained several
22 hundred men, women and children at any one time. With rare
23 exceptions, none of the detainees were released. There was no
24 trial, or other mechanism to challenge their arrest, detention or
25 execution. The accused conceded that the practice of arrest,

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1 detention and execution without recourse to trial was not
2 compatible with the existence of tribunals and procedural
3 safeguards.
4 [10.30.10]
5 Torture and rape: A variety of torture techniques were applied
6 within S-21. The accused admitted that interrogators were
7 permitted to use four violent interrogation techniques: beating,
8 electrocution, asphyxiation with a plastic bag, and
9 "water-boarding". In addition to these four authorised methods,
10 the accused recognised that a number of additional techniques
11 were carried out by interrogators, including one incident where
12 an S-21 staff member inserted a stick into the vagina of a
13 detainee during the interrogation. The use of these various
14 interrogation techniques were designed to obtain confessions,
15 which detailed the detainee's biography, the nature of the crimes
16 and "traitorous" activities and his or her personal involvement
17 in them, as well as networks of "traitors".
18 The Chamber heard testimony from former S-21 detainees who
19 endured these interrogation sessions. Civil party Bou Meng
20 testified that he was tortured twice a day over two consecutive
21 weeks. He was shackled by the ankles and forced to lie face down
22 on the ground, whilst derogatory language was used against him.
23 His interrogators showed him the torture equipment and asked him
24 to select the device he preferred. They took turns beating him on
25 the back with a rattan stick and a whip, causing him to bleed all

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1 over the floor. He was also electrocuted resulting in his loss of
2 consciousness. Civil party Bou Meng still has scars as a result
3 of these beatings. Every time he was beaten, he was asked
4 questions regarding his involvement with the CIA and the KGB.
5 Civil party Chum Mey, another former S-21 detainee, stated that
6 he was interrogated for twelve days and nights. During these
7 interrogations, he was repeatedly beaten and lashed with sticks.
8 When he persisted in denying any involvement with the CIA or KGB,
9 an interrogator pulled out toenails from both his feet, causing
10 him to tremble in pain. He was also electrocuted on two occasions
11 and fell unconscious each time. The interrogation only stopped
12 after he "confessed" to having joined both the CIA and the KGB.
13 [11.33.35]

14 Torture was also employed at S-24 to punish detainees, to prevent
15 them from escaping, and during the more limited interrogations
16 carried out at S-24.

17 S-21 and S-24 staff, including interrogators, acted under a
18 clearly established hierarchy, under the orders or delegated
19 authority of the accused, who himself acted on the orders of the
20 Standing Committee. Given their position in the State apparatus,
21 the Chamber has found that the S-21 interrogators and S-24 staff
22 who perpetrated acts of torture acted in an official capacity.

23 Other inhumane acts: The accused agreed that the living
24 conditions, combined with the detention, interrogation and
25 disappearance of detainees, severely impaired their physical and

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1 psychological health and that they lived in a permanent climate
2 of fear. Moreover, detainees suffered from a lack of adequate
3 food, sanitation and medical treatment. The sole purpose of any
4 medical treatment provided was to keep the detainees alive for
5 their interrogations. Evidence was also put before the Chamber
6 regarding the mistreatment of detainees at Choeung Ek and S-24.
7 Persecution on political grounds: Persecution describes the
8 violation of fundamental rights, committed on a discriminatory
9 basis. This is an umbrella offence that may encompass a number of
10 other specified crimes, where the required discriminatory intent
11 is proved. The denial of fundamental rights which the Amended
12 Closing Order indicate amounts to persecution comprise the
13 discrete crimes against humanity of murder, extermination,
14 enslavement, imprisonment, torture (including rape), and other
15 inhumane acts. The Chamber has described the nature of these
16 offences committed at S-21 and will detail its findings on
17 whether they amount to persecution later in this summary.

18 [10.36.30]

19 E. Applicable Law and Findings on the Accused's Individual
20 Criminal Responsibility

21 As detailed fully in the judgment, the Chamber has found that
22 offences charged against the accused pursuant to Articles 5 and 6
23 of the ECCC Law, as well as the forms of responsibility charged
24 pursuant to Article 29 (new) of the ECCC Law, were recognized
25 offences within international law at the time of their

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1 commission.

2 The Chamber is further satisfied that the necessary preconditions

3 for crimes against humanity (namely, the existence of a

4 widespread or systematic attack directed against any civilian

5 population on national, political, ethnical, racial or religious

6 grounds) to have existed at the relevant time. In light of its

7 findings regarding S-21, the Chamber has found that offences

8 charged in the Amended Closing Order pursuant to Article 5 of the

9 ECCC Law have been established. By a majority, the Chamber has

10 also found that these offences cumulatively amount to persecution

11 on grounds that the accused's criminal conduct in relation to

12 them was accompanied by a specific intent to discriminate on

13 political grounds.

14 The Chamber is also satisfied that an international armed

15 conflict existed between Democratic Kampuchea and Vietnam at all

16 times relevant to the charges against the accused and that the

17 necessary preconditions for conviction under Article 6 of the

18 ECCC Law, which concerns grave breaches of the Geneva Conventions

19 of 1949, were satisfied. The Chamber has found that Vietnamese

20 prisoners of war and civilians as well as Vietnamese sympathisers

21 detained at S-21 were subjected to the same detention conditions

22 as other detainees and were also destined for execution, with no

23 more favourable conditions applying to them due to their

24 nationality or protected status. In light of the Chamber's

25 previous findings regarding S-21, it follows that the grave

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1 breaches of wilful killing, torture and inhumane treatment,
2 wilfully causing great suffering or serious injury to body or
3 health, wilfully depriving a prisoner of war or civilian of the
4 rights of fair and regular trial, and unlawful confinement of a
5 civilian, punishable pursuant to Article 6 of the ECCC Law, have
6 also been made out.

7 There remains the further issue of whether the accused has been
8 proven to be criminally responsible for the offences committed at
9 S-21.

10 [10.40.25]

11 The Amended Closing Order alleges that the accused personally
12 tortured or mistreated detainees at S-21 on a number of
13 occasions. The Chamber has found that the evidence before it is
14 insufficient to establish that the accused is responsible for
15 having personally committed torture or other inhumane acts
16 through physical perpetration or culpable omission.

17 The Chamber has determined, however, that commission through
18 participation in a joint criminal enterprise is an applicable
19 mode of responsibility both before the ECCC and in the present
20 case, at least in its basic and so-called systemic forms. In
21 particular, the Chamber made extensive findings regarding the
22 criminal nature of the S-21 system supervised by the accused.
23 This clearly resonates with the second, systemic form of joint
24 criminal enterprise, which has been applied before other
25 international tribunals in relation to detention facilities or

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1 other organized structures carrying out systemic abuses against
2 detainees.

3 The Chamber has found that, following the 15 August 1975 meeting
4 with Son Sen, the accused helped establish S-21, along with In
5 Lorn alias Nat, its initial Chairman. As Chairman and Secretary
6 of S-21, the accused continued to refine and direct S-21's
7 operations with the assistance of the junior members of the S-21
8 Committee, namely Khim Vak alias Hor, and Nun Huy alias Huy Sre,
9 until its abandonment on 7 January 1979. The accused acted with
10 these individuals, and through his subordinates, to operate the
11 S-21 complex, a facility dedicated to the unlawful detention,
12 interrogation and execution of perceived enemies of the Communist
13 Party of Kampuchea, both domestic and foreign. A concerted system
14 of ill treatment and torture was purposefully implemented,
15 designed to subjugate detainees and obtain their confessions
16 during interrogations. S 24 was also used as an adjunct facility
17 devoted to forced labour for detainees viewed as suspect by the
18 Communist Party of Kampuchea.

19 As Deputy and then Chairman and Secretary of S-21, the accused
20 was deeply enmeshed in this criminal system, and contributed
21 substantially to its implementation and development, including by
22 collaboration in the arrest of certain notable detainees, by
23 ensuring the detention and execution of some S-21 staff, and by
24 physical presence. Moreover, the accused knew of the criminal
25 nature of the S-21 system and acted with the intent to further

1 its criminal purpose. Accordingly, the Chamber has found that, as
2 a result of his participation in the systemic joint criminal
3 enterprise at S-21, the accused bears individual criminal
4 responsibility for the offences committed at S-21.

5 [10.44.30]

6 The Chamber has made additional findings establishing the
7 accused's responsibility for having planned, instigated, ordered,
8 and aided and abetted the crimes committed at S-21. The Chamber
9 has also found that the responsibility of the accused could be
10 established on the basis of his superior responsibility. The
11 Chamber has used these additional findings at sentencing in
12 determining the full extent of the accused's participation in the
13 crimes for which he is responsible.

14 The Chamber has rejected the claim made by the Defence that the
15 accused's criminal responsibility should be excluded on the
16 grounds that he acted pursuant to superior orders and under
17 duress. Acting pursuant to superior orders does not, as a matter
18 of law, constitute a legitimate defence to charges of crimes
19 against humanity. In the present case, the accused also knew that
20 the orders to kill, torture and arbitrarily detain persons
21 protected under the Geneva Conventions were unlawful.

22 Further, the accused cannot be considered to have acted under
23 duress as a Deputy and later Chairman of S-21. Although the
24 Chamber accepts that towards the end of the existence of S-21,
25 the accused may have feared that he or his close relatives would

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1 be killed if his superiors found his conduct unsatisfactory,
2 duress cannot be invoked when the perceived threat results from
3 the implementation of a policy of terror in which he himself has
4 willingly and actively participated. Indeed, the accused's
5 conduct in carrying out these functions evidenced a high degree
6 of efficiency and zeal.

7 The Chamber has thus found the accused individually criminally
8 responsible pursuant to Article 29 (new) of the ECCC Law for the
9 following offences as crimes against humanity: murder,
10 extermination, enslavement, imprisonment, torture (including one
11 instance of rape), persecution on political grounds, and other
12 inhumane acts, as well as for the following grave breaches of the
13 Geneva Conventions of 1949: wilful killing, torture and inhumane
14 treatment, wilfully causing great suffering or serious injury to
15 body or health, wilfully depriving a prisoner of war or civilian
16 of the rights of fair and regular trial, and unlawful confinement
17 of a civilian.

18 Where multiple convictions are entered, the relevant
19 international case law has established guidelines for determining
20 which convictions should be retained, and which are considered as
21 subsumed within more serious offences. In accordance with these
22 guidelines, the Chamber has (a) entered convictions for analogous
23 crimes as both crimes against humanity and grave breaches of the
24 Geneva Conventions, in view of the distinctive character of both
25 categories of offences; (b) subsumed murder as a crime against

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1 humanity within extermination as a crime against humanity; and
2 (c) subsumed the convictions of all offences as crimes against
3 humanity within the offence of persecution as a crime against
4 humanity.

5 [10.49.05]

6 The Chamber has considered the gravity of the crimes for which
7 the accused has been convicted as well as all aggravating and
8 mitigating circumstances at sentencing. The Chamber has also
9 noted the psychiatric and psychological assessment of the
10 accused, as well as the character witnesses who appeared before
11 the Chamber, in addition to his relative position within the
12 hierarchy of Democratic Kampuchea. In determining the sentence,
13 the Chamber has also taken into account precedents from other
14 international tribunals, whose decisions have also evaluated
15 sentencing considerations in relation to crimes of a massive
16 scale.

17 Finally, the Chamber recalls its Decision on Request for Release
18 dated 15 June 2009, in which it ruled that the accused would be
19 entitled to a reduction of any sentence, as a result of his
20 unlawful detention by the Cambodian Military Court between 10 May
21 1999 and 30 July 2007, to be decided at the sentencing stage.

22 Although the gravity of the accused's crimes unambiguously
23 mandates a substantial term of imprisonment, these factors, when
24 considered cumulatively, have ensured that the Chamber was unable
25 to issue the most serious penalty available to it under the ECCC

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1 Law of life imprisonment.

2 The Chamber will now address civil party reparations prior to the
3 announcement of its disposition in the judgment.

4 [10.51.00]

5 F. Civil Party Reparations

6 The Chamber has, pursuant to Internal Rule 100(1), ruled on the
7 admissibility and the substance of the civil party claims against
8 Kaing Guek Eav. The provisions of the Internal Rules pertaining
9 to civil party participation have, since the commencement of
10 trial, undergone significant modification. These amendments are
11 aimed at ensuring, amongst other things, that ECCC proceedings
12 allow effective victim participation in relation to mass crimes
13 and the specific Cambodian context. Due to the advanced stage of
14 proceedings in Case 001 at the time these reforms were commenced,
15 these revised provisions have not been applied to the present
16 case.

17 Initial decisions on the admissibility of civil party
18 applications ascertained that the criteria for participation as a
19 civil party were satisfied. This process is distinct from the
20 Chamber's determination of the merits of all applications in the
21 verdict, on the basis of all evidence submitted in the course of
22 proceedings. Once declared admissible in the early stages of the
23 proceedings, civil parties must satisfy the Chamber of the
24 existence of wrongdoing attributable to the accused which has a
25 direct causal connection to a demonstrable injury personally

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1 suffered by the civil party.

2 Internal Rule 23(2) provides that in order for civil party action

3 to be admissible, the injury must be "physical, material or

4 psychological", and the "direct consequence of the offence,

5 personal and have actually come into being". The injury suffered

6 must result directly from the criminal conduct of the accused.

7 Although the immediate family members of a victim fall within the

8 scope of Rule 23(2)(b), direct harm may be more difficult to

9 substantiate in relation to more attenuated familial

10 relationships. The Chamber nevertheless considers that harm

11 alleged by members of a victim's extended family may, in

12 exceptional circumstances, amount to a direct and demonstrable

13 consequence of the crime where the applicants are able to prove

14 both the alleged kinship and the existence of circumstances

15 giving rise to special bonds of affection or dependence on the

16 deceased.

17 [10.54.30]

18 The Chamber has considered whether Kaing Guek Eav can be found

19 responsible for the particular harm alleged by two categories of

20 civil parties, namely those who claim to be survivors of S-21 or

21 S-24, and those whose claims were instead based on alleged

22 kinship or special bonds of affection or dependency in relation

23 to their direct victims. For the reasons detailed in the

24 judgment, the Chamber has found that the following four civil

25 parties who claim to be survivors of S-21 or S-24 have

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1 substantiated their claim and to have established that the
2 accused is directly responsible for their harm suffered: Bou
3 Meng; Chum Mey; Chum Neou; and Chin Met.
4 The Chamber has found that the following 66 civil parties have
5 established their claim to be immediate victims of S-21 or S-24,
6 or to have proved the existence of immediate victims of S-21 or
7 S-24 and either close kinship or particular bonds of affection or
8 dependency in relation to these victims. They have further shown
9 that the death of these victims caused demonstrable injury within
10 the scope of Internal Rule 23(2) and that this harm was a direct
11 consequence of the accused's wrongdoing:
12 Bou Meng, as a survivor of S-21 and for the loss of his wife Ma
13 Yoeun alias Thy;
14 Chum Mey, as a survivor of S-21;
15 Chum Neou, as a survivor of S-24 and for the loss of her husband
16 Nou Samouen and her child;
17 Chin Met, as a survivor of S-24;
18 Chhin Navy, for the loss of her husband Tea Havtek;
19 Hav Sophea, for the loss of her father Chin Sea alias Hav Han;
20 Phung Guth Sunthary and Im Sunthy, for the loss of their father
21 and husband Phung Ton, respectively;
22 Chum Sirath, for the loss of his two brothers Chum Narith and
23 Chum Sinareth;
24 Measketh Samphotre, Tioulong Antonya, Tioulong-Rohmer Neva,
25 Kimari Nevinka and Kimari Visaka for the loss of their daughter,

25

1 sister, and mother Tioulong Raingsy and son-in-law,
2 brother-in-law and father Lim Kimari, respectively;
3 Ros Men, for the loss of her brother Ros Thim;
4 Che Heap, for the loss of his brother Che Heng;
5 Chraing Sam-Ean, for the loss of his brother Chraing Sam On alias
6 Soam Sam On;
7 Seang Vanndi, for the loss of his brother Seang Phon;
8 Toch Monin, for the loss of his cousin Chea Khan with whom he was
9 raised and of whom he is the only surviving relative;
10 Kaun Sunthara, for the loss of her brother Chim Lang and
11 sister-in-law Aom Kin Daunny;
12 Man Saut, for the loss of his son Man Sim alias Riem;
13 Kong Teis, for the loss of her husband Sek Chhiek;
14 Ngeth Sok, for the loss of her brother Nob Sar alias Nob Ngan,
15 alias Chareun, alias Ngeth Ngem;
16 Tath Lorn, for the loss of his father Sok Sort alias Sok Pon;
17 Timothy Scott Deeds, for the loss of his brother Michael Deeds;
18 Yim Leng, for the loss of his father Thlork Luon alias Yorn;
19 Um Pyseth as successor of his late wife Suos Sarin, for the loss
20 of the latter's sister Suos Sovann;
21 Ke Khon and Ke Samaut, for the loss of their brother Ke Kengsy;
22 Iem Soy, for the loss of her brother Chuh Choy alias Cheiv;
23 Ul Say alias Riem, for the loss of her husband Eng Mak alias
24 Venn;
25 Sin Lim Sea, for the loss of his elder sister Sin Chhun Lim;

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1 Ou Savrith, Nhek Ou Davy and Ou Kamela, for the loss of their
2 brother, husband and father Ou Vindy, respectively;
3 Ros Chuor Siy, for the loss of her husband Ros Sarin;
4 Nhoem Kim Hoeurn, for the loss of her two brothers Nhoem Kuy and
5 Nhoem Chan;
6 Suon Sokhomaly, for the loss of her husband Suon Kaset;
7 Sin Sinet alias Srun, for the loss of her grandfather Pheach Kim
8 alias Sin, in whose house she had lived since the age of 7;
9 Roun Sreynob, for the loss of her brother Roun Math alias Savy;
10 El Li Mah, for the loss of her brother Ismael Asmat alias Sokh;
11 Sman Sar and Sman Nob, for the loss of their brother Sman Sles
12 alias Leng Sokha and for the loss of their son and nephew, Sa
13 Math alias Saroeun, respectively;
14 Men Lay, for the loss of her son Min Kan;
15 Nhem Sophan, for the loss of her sister Nhem Thol alias Ra;
16 Neth Phally, for the loss of his brother Neth Bunthy;
17 Man Mas alias Man Malymas, for the loss of her son Ta Losmath
18 alias Man Math;
19 Kom Men alias Kum Men, for the loss of her husband Srei Yeng;
20 Try Ngech Leang, for the loss of her brother Khoeung Muoysoa;
21 Heng Ngech Hong, for the loss of her father Sok Heng;
22 Beng Chanthorn, for the loss of his brother Beng Pum;
23 Yun Chhoeun, for the loss of a nephew Yun Loeun, who lived in his
24 house until aged 15, when he was conscripted into the army;
25 Ly Khiek, for the loss of his sister Auy Mao alias Ren;

1 Puol Punloek alias Nget, for the loss of his father Poul Toeun
2 alias Chaing;
3 Chann Krouch, for the loss of his brother Chann Noun alias
4 Sinoun;
5 Norng Kim Leang, for the loss of her sister Norng Kim Guek alias
6 Norng Kimvet;
7 Penh Sokkhun, for the loss of her sister Penh Sopheap;
8 Kan San, for the loss of her brother Kan Kan;
9 Ung Voearn alias Hul Voearn, for the loss of her brother Ung Koam
10 alias Phoan;
11 Meas Saroeurn, for the loss of her father Ouk Tob;
12 Sek Siek, for the loss of her cousin and fiancé Mork Chhoeun, who
13 was living in the family's house;
14 Chhat Kim Chhun, for the loss of his father Am Thoat and a
15 relative called Pot Mouy alias Sa Phal;
16 Uk Vasorthin, for the loss of his father Ouk Chy;
17 Martine LeFeuvre and Ouk Neary, for the loss respectively of
18 their husband and father Ouk Ket; and
19 Robert Hamill, for the loss of his brother Kerry Hamill.
20 [11.02.50]
21 The claims by the remaining civil parties are denied either
22 because they have failed to satisfy the Chamber that they are
23 immediate victims of S-21 or S-24, or because they have failed to
24 prove close kinship or bonds of affection or dependency on
25 victims of S-21 or S-24. Their consequential claims for

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1 reparation must also fail.

2 The Chamber has also ruled upon the civil parties' requests for
3 reparations. To succeed, these requests must qualify as
4 collective and moral reparations within the meaning of Internal
5 Rule 23(1)(b) of the Internal Rules, and be sufficiently certain
6 or ascertainable to give rise to an enforceable order against the
7 convicted person.

8 The key features of civil party participation are that awards are
9 borne exclusively by convicted persons following a determination
10 of responsibility for the harm established by civil parties to
11 have resulted from the criminal offending. The ECCC lacks the
12 competence to enforce reparations awards. The Chamber has no
13 jurisdiction over Cambodian or other national authorities or
14 international bodies. Nor can it properly impose obligations on
15 or grant rights to persons or entities that were not parties to
16 the proceedings before it. In the present context, constraints
17 also stem from the overwhelming losses suffered by the civil
18 parties and the unlikelihood of recovery from the accused, who
19 appears to be indigent.

20 The Chamber has granted the civil parties' request that their
21 names be included in the final judgment, including a
22 specification as to their connection with the crimes committed at
23 S-21. The Chamber has also granted their request for the
24 compilation and publication of all statements of apology made by
25 the accused during the trial.

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1 The Chamber has rejected all other requests made by the civil
2 parties on the grounds that they either lacked specificity, or
3 were beyond the scope of available reparations before the ECCC.
4 [11.05.55]

5 G. Disposition

6 The Chamber will now read its disposition. Will the accused Kaing
7 Guek Eav please rise.

8 Having considered all the evidence and the submissions of the
9 Parties, the Chamber decides as follows:

10 The Chamber finds Kaing Guek Eav guilty pursuant to Articles 5, 6
11 and Article 29 (new) of the ECCC Law of:

12 Crimes against humanity (persecution on political grounds)

13 (subsuming the crimes against humanity of extermination

14 (encompassing murder), enslavement, imprisonment, torture

15 (including one instance of rape), and other inhumane acts);

16 Grave breaches of the Geneva Conventions of 1949 (wilful killing,

17 torture and inhumane treatment, wilfully causing great suffering

18 or serious injury to body or health, wilfully depriving a

19 prisoner of war or civilian of the rights of a fair and regular

20 trial, and unlawful confinement of a civilian).

21 For the reasons given in its Decision on the Preliminary

22 Objection, the Chamber has not evaluated the guilt or otherwise

23 of the accused in respect of national crimes of premeditated

24 murder and torture, violations of Articles 501, 506 and 500 of

25 the 1956 Penal Code and punishable before the ECCC pursuant to

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1 Article 3 (new) of the ECCC Law.

2 In deciding on an appropriate sentence, the Chamber has taken
3 into account the entirety of the circumstances of the case. The
4 Chamber has noted a number of aggravating features, including the
5 shocking and heinous character of the offences, which were
6 perpetrated against at least 12,273 victims over a prolonged
7 period. Such factors, when considered cumulatively, warrant a
8 substantial term of imprisonment.

9 The Chamber has decided that there are significant mitigating
10 factors which mandate the imposition of a finite term of
11 imprisonment rather than one of life imprisonment. These factors
12 include cooperation with the Chamber, admission of
13 responsibility, limited expressions of remorse, the coercive
14 environment in Democratic Kampuchea, and the potential for
15 rehabilitation.

16 On the basis of the foregoing, the majority of the Chamber
17 sentences Kaing Guek Eav to a single sentence of 35 years of
18 imprisonment.

19 The Chamber considers that a reduction in the above sentence of 5
20 years is appropriate given the violation of Kaing Guek Eav's
21 rights occasioned by his illegal detention by the Cambodian
22 Military Court between 10 May 1999 and 30 July 2007.

23 The accused is entitled to credit for the entirety of his time
24 spent in detention, that is from 10 May 1999 to 30 July 2007

25 (under the authority of the Cambodian Military Court) and from 31

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1 July 2007 until the judgment becomes final (under the authority
2 of the ECCC).

3 The Chamber has previously named all civil parties who have
4 suffered harm as a direct consequence of the crimes for which
5 Kaing Guek Eav has been convicted. The Chamber shall compile all
6 statements of apology and acknowledgements of responsibility made
7 by Kaing Guek Eav during the course of the trial. This
8 compilation shall be posted on the ECCC official website within
9 14 days of the date of this judgment becoming final. It rejects
10 all other civil party claims.

11 This judgment is appealable by the parties in accordance with the
12 Internal Rules. Given the gravity of the crimes for which he has
13 been convicted, Kaing Guek Eav shall remain in detention until
14 this judgment becomes final.

15 This was the summary of the judgment. The trial proceedings in
16 this case have come to an end. The Chamber will now adjourn and
17 the convicted person returned to the Detention Facility.

18 (Judges exit courtroom)

19 (Court adjourns at 1112H)

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