

**BEFORE THE CO-INVESTIGATING JUDGES  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**PUBLIC INFORMATION BY THE CO-PROSECUTORS PURSUANT TO RULE 54  
CONCERNING THEIR RULE 66 FINAL SUBMISSION REGARDING  
KAING GUEK EAV alias “DUCH”**

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**Filed by:**

**Office of the  
Co-Prosecutors:**  
Ms. CHEA Leang  
Mr. Robert PETIT  
Mr. YET Chakriya  
Mr. William SMITH  
Mr. PICH Sambath  
Mr. Alex BATES

**Distributed to:**

**Office of the  
Co-Investigating Judges:**  
Judge YOU Bunleng  
Judge Marcel LEMONDE

**Copied to:**

**Counsel for the  
Charged Person:**  
Mr. KAR Savuth  
Mr. François ROUX

**Counsel for the  
Civil Parties:**  
Mr. KONG Pisey  
Mr. HONG Kimsuon  
Mr. YONG Panith  
Ms. Silke STUDZINSKY

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The following objective summary of the information contained in the Co-Prosecutors' Rule 66 Final Submission is being provided to ensure that the public is duly informed of ongoing proceedings at the ECCC. In order to ensure the confidentiality of the proceedings, the rights of the defense, the requirements of ongoing investigations, and the interests of the victims, witnesses and any other persons mentioned in the Final Submission, the Co-Prosecutors have removed references to the evidence and have anonymized the names. In the course of the summarization process, more than 100 pages of material have been removed from the Final Submission.

## INTRODUCTION

1. We, the Co-Prosecutors of the Extraordinary Chambers in the Courts of Cambodia (ECCC):
  - (a) Having seen the Co-Prosecutors' Criminal Case File No. 002 dated 14 August 2006,
  - (b) Having seen and reviewed the Investigation Case File No. 001/18-07-2007/ECCC/OCIJ commenced on 18 July 2007 by the Co-Investigating Judges,
  - (c) Considering Article 1 of the Law on the Establishment of the ECCC,
  - (d) Considering Rule 66 (5) of the Internal Rules of the ECCC ("The Internal Rules") and considering that the above Investigation has been concluded,
  - (e) Having seen the forwarding order dated 23 June 2008,
  - (f) Have found the following facts:
2. **KAING Guek Eav alias DUCH ("DUCH")** was Secretary of Office S-21 ("S-21"), the most important security office in Democratic Kampuchea ("DK"), from March 1976 until 7 January 1979. He had been Deputy Secretary of S-21 from August 1975 until March 1976. **DUCH** had knowledge of, supervised, and was responsible for every aspect of the operation of S-21 from arrest, detention, interrogation, torture and execution. In total, **DUCH** and subordinates under his authority and control imprisoned, inhumanely treated, tortured and executed more than 12,380 men, women and children at S-21.
3. **DUCH's** involvement in these acts makes him responsible for the crimes of Imprisonment, Enslavement, Inhumane Acts, Torture, Murder, Extermination and Persecution on political

and racial grounds. These constitute **CRIMES AGAINST HUMANITY**, punishable under Article 5, 29 (new) and 39 (new) of the ECCC Law. **DUCH** is also responsible for the crimes of Unlawful Confinement of Civilians, Wilfully Depriving a Prisoner of War or Civilian the Rights of Fair and Regular Trial, Inhumane Treatment, Wilfully Causing Great Suffering or Serious Injury to Body or Health, Torture and Wilful Killing. These constitute **GRAVE BREACHES OF THE GENEVA CONVENTIONS OF 12 AUGUST 1949**, punishable under Article 6, 29 (new) and 39 (new) of the ECCC Law. **DUCH** is also responsible for Torture and Homicide, violations of the **1956 PENAL CODE** (Articles 500, 501, 503 and 506), punishable under Article 3 (new), 29 (new) and 39 (new) of the ECCC Law.

#### INVESTIGATION HISTORY

4. On 10 July 2006 the Co-Prosecutors initiated preliminary investigations into the crimes under the ECCC Law. After receiving several witness complaints, the Co-Prosecutors conducted a series of witness interviews and field investigations and collected extensive documentary evidence. On 18 July 2007 the results of these preliminary investigations were incorporated into an Introductory Submission, which requested the Co-Investigating Judges to open a judicial investigation into a number of criminal facts and to arrest and provisionally detain five suspects.
5. On 30 July 2007 the Co-Investigating Judges issued a warrant for the arrest of **DUCH** whereupon that day he was arrested from the Phnom Penh Military Court Prison and brought to the ECCC. The following day, on 31 July 2007, the Co-Investigating Judges notified **DUCH** that he was under judicial investigation for the facts that were alleged in the Introductory Submission, and charged him with crimes against humanity. On the same day the Judges ordered **DUCH**'s provisional detention for an initial period not exceeding one year.
6. On 19 September 2007 the Co-Investigating Judges ordered the separation of the Case File. Consequently, the acts committed at S-21 have since been investigated in Case File No. 1 whereas the other acts specified in the Introductory Submission, including **DUCH**'s criminal responsibility for them, are being investigated in Case File No. 2. On 2 October

2007 the Co-Investigating Judges additionally charged **DUCH** with Grave Breaches of the Geneva Conventions of 1949 relating to the facts in Case File No. 1.

7. On 15 May 2008, the Co-Investigating Judges notified the Co-Prosecutors that they intended to close the judicial investigation according to Rule 66 (1). Prior to this numerous interrogations of the Charged Person had occurred, including visits to the crime scenes at S-21 and Cheung Ek. During the judicial investigation investigators from the Co-Investigating Judges Office have interviewed at least 63 witnesses and collected further documentary evidence.

#### CIVIL PARTY PARTICIPATION

8. Six civil parties have joined the proceedings during the judicial investigation in Case File No. 1 pursuant to ECCC Internal Rule 23 (3). These parties have already significantly contributed to the process, especially through their testimony and the clarifications provided in the respective victim application forms.
9. **[Paragraph relating to Civil Party redacted.]**
10. **[Paragraph relating to Civil Party redacted.]**
11. **[Paragraph relating to Civil Party redacted.]**
12. **[Paragraph relating to Civil Party redacted.]**
13. **[Paragraph relating to Civil Party redacted.]**
14. **[Paragraph relating to Civil Party redacted.]**

## **MATERIAL FACTS**

### **S-21 IN CONTEXT**

#### **OVERVIEW OF DK PERIOD**

15. Between 17 April 1975 and 6 January 1979, the Communist Party of Kampuchea (“CPK” or “The Party”) set out to alter Cambodian society along ideological lines through unlawful forcible economic and social means. To accomplish this change, the leaders of the CPK formed a common plan which was, in its conception, aims and execution, fundamentally criminal in character. Their criminal activities included the forcible movement of population and the virtual enslavement of the entire population in co-operatives, factories, worksites, military divisions and other units of organization, where people were often forced to engage in hard labour without adequate food and medical care.
16. Beginning on 17 April 1975 CPK officials forcibly evacuated the entire population of Phnom Penh, approximately 2 million people, to the countryside. Many people were forced to travel long distances on foot before being unlawfully confined to rural cooperatives. This forced evacuation resulted in many deaths.
17. **[Information related to ongoing judicial investigations redacted.]**
18. Another aspect of the CPK’s criminal plan was the unlawful confinement of virtually the entire population in cooperatives. On or immediately after 17 April 1975, residents in urban areas, including Phnom Penh, Kampong Cham, Kampong Som, Prey Veng, Battambang, Pursat and Siem Reap, were forcibly transferred to the countryside, where they were forced to labour in rural cooperatives. Conditions in the cooperatives were inhumane and people were forced to labour while receiving inadequate food and medical care. There was widespread use of torture and physical violence. Former Khmer Republic soldiers and officials and those who complained about the conditions in the cooperatives were accused of being enemies, arrested and executed.

19. Similar inhumane conditions existed at government worksites. **[Information related to ongoing judicial investigations redacted.]**
20. The CPK sought to eradicate all those they considered to be enemies, opponents of their regime and other undesirable elements. The definition of such groups was very wide, and developed through increasingly far-reaching purges across the whole country and within the regime itself. Upon seizing power, the CPK actively searched for and executed former Khmer Republic officers and officials. Initially, this policy applied to officers and high-ranking officials, but beginning in 1976, the policy expanded to include non-commissioned officers, ordinary soldiers, and minor officials. The CPK also pursued an explicit policy of eliminating the “feudalists,” “capitalists” and “bourgeois.” The Party declared that due to their class nature, the feudalists and capitalists could not be re-educated, and asserted that enemy infiltration would not stop until the “reactionary classes” were completely eliminated.
21. The CPK also discriminated between “new” people and “old” or “base” people. According to the CPK, even those “new people” who did not belong to other targeted groups were infected with “imperialist-feudalist-capitalist outlooks,” and the CPK actively promoted the idea that the “old” or “base” people were superior to the new people.
22. The CPK pursued a policy of discriminating against and killing ethnic Vietnamese. Initially, the CPK adopted a policy of purging those who were considered Vietnamese or who had some association with Vietnam. As the CPK’s relationship with Vietnam continued to deteriorate, Vietnam was increasingly viewed as the enemy. This coincided with a belief that Vietnamese “spies” were seeking to overthrow the CPK. By mid to late 1977, the policy evolved into one of eliminating all those with any connections to Vietnam.
23. Ultimately, the CPK also executed many tens and possibly hundreds of thousands of its own cadres in the belief that they were “enemies” infiltrating all administrative, political and military levels. The CPK conducted repeated purges in which cadre were removed

from positions of authority and killed (“smashed”) because of real or perceived opposition to the CPK. Leading cadre, security personnel, and people at all levels in society were under instructions to be on guard against enemies “boring from within” and to “continuously attack and purge” bad elements.

24. The CPK enforced its criminal policies and rules through a nationwide network of detention and security offices that unlawfully detained, mistreated, tortured and executed vast numbers of the Cambodian population. These policies resulted in systematic brutality, inhumane living conditions and the deaths of between 1.7 and 2.2 million people out of a population of about seven million, by overwork, starvation, disease or execution. The crimes at S-21 took place within this larger framework of crimes that were committed throughout Cambodia during the DK period.

### **CPK AUTHORITY STRUCTURE**

25. The CPK controlled Cambodia throughout the entire temporal jurisdiction of the ECCC. The Party exercised its authority and control using three channels: the CPK administrative bodies, the Revolutionary Army of Kampuchea (“RAK”), and the state organizations.

#### *Communist Party of Kampuchea*

26. While the CPK Statute vested the highest power rights throughout the country in the hands of the General Conference, which was to be convened every four years, it identified the Central Committee as the highest operational unit throughout the country for the intervening four-year period. In practice, a sub-committee of the Central Committee known as the Standing Committee acted as the highest and most authoritative unit within the CPK and in DK. The CPK Standing Committee consisted of POL Pot as Secretary, [Redacted], [Person V], [Person W] and [Person B] as Full Members, and [Person W] and SON Sen as Candidate Members.
27. The CPK Standing Committee exercised, created, directed, executed and monitored the implementation of all policies related to the CPK and to matters of State. Specifically, the Standing Committee controlled policies regarding internal and external security, foreign affairs, domestic affairs including finance, commerce, industry, agriculture, health and

social affairs, propaganda and re-education, and CPK and State personnel and administrative matters. The Standing Committee discussed and ordered large-scale forced movements, discussed and ordered the use of forced labour, ordered the arrest and interrogation of “enemies”, remained aware of inhumane living conditions throughout the country, and had the authority to order the summary execution of people at will.

28. The CPK was structured in a hierarchical fashion. The country was initially divided into six “Zones.” The Zones were then subdivided into units known as “Sectors,” which were in turn divided into “Districts.” A district was composed of several “Communes” or “Sub-districts.” CPK administrative units were established at each echelon of this hierarchy throughout the territory of DK, where they implemented the Standing Committee’s instructions and reported back to the Standing Committee through Office 870. Office 870 monitored the implementation of Standing Committee policies and acted as a secretariat for the Standing Committee. Office 870 transmitted Standing Committee policy directives to the lower CPK administrative bodies, and distributed reports received from the Zones and other CPK administrative bodies to the Standing Committee.

*Revolutionary Army of Kampuchea*

29. The Constitution of DK gave the RAK the task to “defend the State power” and “help to build [the] country.” The three branches of the RAK - the regular army, sector army, and the militias – provided internal and external security under the absolute leadership monopoly of the CPK. The RAK was under the direct supervision of the CPK Standing Committee members responsible for military and security affairs. A Standing Committee decision from 9 October 1975 gave POL Pot general responsibility over the military, and SON Sen responsibility for the General Staff and Security. The General Staff of the RAK performed functions such as command, planning, operations, intelligence, and logistics for the military. SON Sen as Chairman of the General Staff was in charge of regular meetings of all division and independent regiment commanders. There were also periodic General Staff study sessions.

*State of Democratic Kampuchea*

30. From 17 April 1975 until 13 April 1976, the CPK maintained the illusion that the Royal Government of National Union of Kampuchea (“GRUNK”) was the government. Formally, the GRUNK participated in preparing the Constitution of Democratic Kampuchea promulgated on 5 January 1976, which established the state organisations of DK. Later, GRUNK allegedly carried out elections to select and appoint the People’s Representative Assembly of Kampuchea, which replaced the GRUNK. On 13 April 1976, the People’s Representative Assembly (“PRA”) purportedly selected the government of DK, appointing the members of the Standing Committee and other CPK senior cadres to the highest positions in the government.
31. In reality, the CPK Standing Committee had already appointed the government of DK at least by October 1975. The CPK had been responsible for setting up the constitution and carrying out the elections, as well as for establishing the Assembly (i.e. the PRA), the Presidium of State, and the government. All these institutions were “state organizations totally of our Party.” The Standing Committee deemed the PRA to be worthless and no evidence exists of the PRA ever passing or promulgating any laws. In fact, the CPK Standing Committee exercised *de jure* and *de facto* authority throughout Cambodia during the DK period, along with some other CPK senior cadres.

**ARMED CONFLICT**

32. Beginning in April 1975, Cambodian and Vietnamese forces engaged in an armed conflict. This conflict resulted from border disputes between DK and Vietnam (after 2 July 1976, the Socialist Republic of Vietnam or “SRV”) and a belief among the leaders of DK that Vietnam wanted to occupy Cambodia and create an Indochinese Federation ruled by Vietnam. Intensive propaganda through Party magazines and speeches of senior CPK cadres accompanied the conflict. The scope and intensity of this conflict increased steadily over time and eventually led to a full-scale invasion of Cambodia by Vietnamese forces on 25 December 1978, which resulted in the collapse of the DK government. Throughout the hostilities, the state of war had never been formally declared by either of the belligerents. At regular intervals from 1977 onwards members of the Vietnamese military as well as

Vietnamese civilians captured at or near the border between DK and the SRV were sent to S-21.

33. The borders between Cambodia and Vietnam had long been in dispute, exacerbated by the drawing of the Brevié Line in 1939. This was a source of tension between the two countries that resulted in repeated negotiations between delegations from DK and SRV during the DK period. In addition, thousands of Vietnamese troops had been based in Cambodia during the 1960s and 1970s. In April 1975, an estimated 20,000 Vietnamese troops were still based in Cambodia, but by the end of the month the DK government ordered these troops to leave. The DK government sent troops to border areas to ensure that Vietnamese forces left Cambodia, and some of the first armed clashes occurred in this context.
  
34. There were six main phases to the armed conflict with Vietnam. The first phase began in mid-1975 and continued through 1976, and was characterized by border clashes from Ratanakiri and Mondulakiri Provinces down to the Poulo Wai Islands, along with a maritime conflict over Koh Tral (Phu Quoc). In the second phase, from March to August 1977, the conflict spread south from Mondulakiri Province to Takeo Province, with particular intensity in Svay Rieng Province, and escalated with DK attacks into Vietnam's Tay Ninh Province in August. The third phase lasted from September to November 1977, with Vietnamese forces attacking along the border in Kampong Cham, Prey Veng, Svay Rieng and Takeo Provinces using heavy weapons and a force of approximately 20,000 troops. The fourth phase lasted from December 1977 until January 1978, when 11 Vietnamese divisions penetrated up to 25 miles into Cambodian territory before being repulsed by the RAK. During the fifth phase from February until September 1978, there were repeated Vietnamese incursions into Takeo, Prey Veng and Kampong Cham Provinces and DK incursions into Vietnam's Chau Doc, An Giang, Kien Giang and Tay Ninh Provinces. The sixth and final phase began in September of 1978, with large scale Vietnamese raids into DK territory in early December 1978, and culminated in a massive invasion with 150,000 SRV troops on 25 December 1978 and the capture of Phnom Penh on 7 January 1979.

**S-21 AND THE NATIONWIDE SECURITY OFFICE NETWORK**

35. At no time during the DK period were substantive criminal laws applied to those who were arrested, nor was there any functioning judicial system or other legal mechanism through which those arrested and detained could challenge the legality of their arrest, detention and punishment.
36. Instead, a system of security and re-education offices existed throughout the country for those considered “enemies” or opponents of the regime. In total, there were more than 195 such security offices covering every District, Sector and Zone of DK. These security offices functioned as detention, torture and interrogation facilities, re-education camps and execution sites.
37. All security offices functioned alike in accordance with general CPK policy. As part of this general policy, torture and physical violence were used to extract “confessions” of alleged “crimes”. “Confessions” were used to justify the arrest and execution of the victim and to obtain the names of others, who would then be arrested, tortured into making “confessions” and then executed.
38. Evidence in the case file reveals that acts of unlawful imprisonment, torture and execution were committed in security offices in different Zones all around the country, including but not limited to the following examples.
39. **[Information related to ongoing judicial investigations redacted.]**
40. **[Information related to ongoing judicial investigations redacted.]**
41. **[Information related to ongoing judicial investigations redacted.]**
42. **[Information related to ongoing judicial investigations redacted.]**
43. **[Information related to ongoing judicial investigations redacted.]**

44. S-21 operated within the scope and at the top of the hierarchical system of security offices. **DUCH** has recognized its unique character. Unlike other security offices, which operated only locally, S-21 had the authority to arrest, torture and execute people from every Zone, every ministry, and every military unit in the nation. The most important prisoners were sent to S-21, and it was the only security office that received arrested cadres of the Central Committee. For example, chiefs of security offices at District, Sector and Zone levels in the Northeast, East, Southwest, West, Northwest, North and Central Zones were all sent to S-21 to be interrogated and executed. S-21 was also the largest DK security office in terms of staff. The General Staff reported in April 1977 that S-21 had more than 2,327 staff. In contrast, district-level security offices, which were the most numerous kind, typically had a staff of 10-15 cadres, while Sector and Zone security offices were generally twice as large.
  
45. S-21 was instrumental to the process of purging suspected “enemies” from the entire Party hierarchy of the Zones. Before the Standing Committee decided to arrest a Zone Secretary, the security cadres of the Zone were first purged in order to clear a path to their primary target. As **DUCH** has observed, “before cutting the bamboo, one must trim the thorns.” **DUCH** has admitted witnessing massive arrivals of prisoners from the West and Northwest Zone, including the senior security cadres of both Zones.
  
46. S-21 facilitated one of the most dramatic purges of any Zone leadership, that of the Northwest Zone. This began with the arrest of Deputy Secretary of Security, **[Person Y]**, on 15 January 1978, who was then “smashed” at S-21 in March. In February and March 1978, entire military committees – secretaries, deputy secretaries and members – from Northwest Zone battalions, regiments and divisions were purged and “smashed” at S-21. By April, Northwest Zone Secretary **[Person Z]** was purged and “smashed” at S-21. **[Person Y]**’s two successors as Deputy Secretary of Zone Security were also arrested by S-21 in May and July, respectively, and later executed.

## S-21 SECURITY OFFICE

### ESTABLISHMENT AND OPERATION

47. The S-21 Security Office was established by the Standing Committee early in the DK regime. On 15 August 1975, SON Sen instructed Division 703 Secretary [**Person C**] and **DUCH** to set up S-21. Most of the original personnel for S-21 came from [**Person C**]'s Division 703. They were supplemented with additional experienced cadres from M-13, a security office where **DUCH** had previously been Chairman.
48. In October 1975, S-21 began full-scale operations. The S-21 interrogation facility was initially located at the corner of Streets 163 and 360, with prisoners detained in the surrounding houses. In late November 1975, S-21 moved to the Police Judiciaire ('PJ', or the General Directorate of National Police) compound on Street 51 (Rue Pasteur) near Central Market (Phsar Thmei). In January 1976, S-21 was moved back to its original location at Streets 163 and 360.

### S-21 CENTRAL COMPOUND AND SURROUNDING AREA

49. In April 1976, **DUCH** moved S-21's detention operation to the nearby Lycée Pongh a Yat, which is bounded by Streets 113, 131, 320 and 350. The school compound, known today as Tuol Sleng Prison or the Museum of Genocidal Crimes, was primarily used for the detention of prisoners, as well as for certain administrative functions. Many buildings in the surrounding neighbourhood – an area of approximately 94 city blocks bounded roughly by Mao Tse Tung Boulevard, Monivong Boulevard, Sihanouk Boulevard, and Street 163 – were used by S-21 for interrogation, torture, dormitories, mess halls, warehousing, and various administrative purposes. S-21 headquarters remained at this location under the control of **DUCH** until the fall of the DK regime on 7 January 1979.
50. The central S-21 detention compound at the school was surrounded by a complex barrier. The outer shell of the barrier was a zinc wall two metre high, topped with 50 centimetres of barbed wire. The inner layer of the barrier was a two metre high concrete and wrought iron fence. There was a thick roll of barbed wire between the zinc fence and the wrought iron fence, and another roll of barbed wire on the inner face of the wrought iron fence. The entire barrier was electrified to further prevent escape attempts. There were multiple

cordons of armed guards, beginning with an internal guard force inside the central compound. A second layer of guards patrolled just outside the barrier around the central compound. A third company of guards controlled the surrounding neighborhood and maintained the external perimeter.

51. Within the central S-21 compound, there were five main structures, designated Buildings A, B, C, D and E. Building E, a one-story structure situated in the middle of the compound, was used for administrative purposes including prisoner registration and photographic documentation of prisoners. Four three-story buildings, A, B, C and D, were used to detain prisoners. Special prisoners were detained in Building A, where, unlike ordinary prisoners, they were sometimes tortured and interrogated in their detention cells. Buildings B, C and D contained a mixture of large mass detention cells and small brick or wooden individual detention cells. The central S-21 detention compound could hold approximately 1,500 prisoners at a time.
52. The neighborhood surrounding the central S-21 compound was dedicated to support activities. Most of the houses immediately east and south of central S-21 compound were used as interrogation offices. Regular interrogation houses were to the east of the central compound, directly in front of the entrance to Tuol Sleng between streets 105, 360, 113, and 310. A “special group” of interrogation houses for “special prisoners” was to the south of the central compound, between streets 360, 143 and 350. It was in these houses to the south that senior CPK cadres such as [Person AA], [Person X], [Person BB] and [Person CC] were detained and interrogated, together with Western prisoners.
53. Other facilities were scattered all around the approximately one square kilometer area controlled by S-21 in Phnom Penh. **DUCH** moved his office and personal residence frequently, but he stayed the longest in a villa on Monivong opposite the corner of Street 334. **DUCH** held political education classes in a building on Street 95 adjacent to this villa, as well as in a church at the southeast corner of Streets 360 and 163. There was an S-21 photography laboratory near **DUCH**'s house in front of the Ministry of Planning. Prisoner reception was on the south side of Street 360 between Streets 105 and 113. S-21's

communal cooking and dining hall were on the northeast corner of Streets 360 and 113. A typographical services office was east of the houses used for interrogation, and another to the west of the central compound on Street 348. The medical centre was right in front of the central S-21 compound, and here live autopsies and “destruction by blood-taking” were done. Medicine was stored in buildings near the medics’ residence.

54. In addition to the central compound and its immediate neighborhood, S-21 also controlled a huge area south of Phnom Penh. In Takhmao, about eight kilometers south of the main compound, S-21 used a former psychiatric hospital for detention overflow, training, and farming. A few kilometres to the west of Takhmao, at a Chinese cemetery called Cheung Ek, S-21 established a mass execution site. Finally, in a large area surrounding the old colonial prison at Prey Sar, about ten kilometres southwest of Phnom Penh, S-21 operated a re-education centre known as S-24. The land surrounding and connecting these three sites was used by S-21 as its economic support base, with prisoners providing the forced labour.

#### CHEUNG EK

55. Initially, S-21 prisoners were executed and buried in a field to the west of the current Tuol Sleng Museum, then later, all around the adjacent neighbourhood. As mass graves proliferated in the vicinity of the main facility in early 1976, **DUCH** began to worry about hygiene issues and instructed his subordinates to find a dedicated execution and burial site. **DUCH**’s deputy, **[Person D]**, selected Cheung Ek as the new site. Thereafter, **[Person D]** was responsible for organising the transport of prisoners to Cheung Ek for execution.

#### S-24 (PREY SAR)

56. After Division 703 captured the area immediately south of Phnom Penh during the 1970-1975 war, Division 703 Secretary **[Person C]** used the area as an agricultural base, and also established security offices there in the old prison called Prey Sar and at a former Takhmao psychiatric hospital. When **[Person C]** and **DUCH** established S-21, they used this area to establish a series of forced labour or “re-education” camps. This unit of S-21 was designated as S-24, but was more generally known simply as Prey Sar.

57. **[Person E]** was the S-21 official responsible for the day-to-day management of S-24, basing himself in the village of Stoeng Baku. On the premises of the psychiatric hospital in Takhmao, S-24 also operated a multi-purpose facility, initially under the command of **[Person D]**. The Takhmao site was only in active use until mid- to late-1976. It was used for detention, production, training, execution and burials, but investigations of this particular site have been insufficient to determine the scope of the crimes and the responsibility.
58. S-24 was used to incarcerate “light offenders” who would undergo “tempering” or re-education through hard labour. Prisoners were divided into three categories: (1) those whose “mistake” was minimal and who worked hard at S-24 and otherwise behaved themselves; (2) an intermediate category, occupants of which could rise to category 1 through good performance or fall to category 3 through various failings; and (3) those who were judged incorrigible and were likely to be executed at S-24 or sent to S-21 for interrogation and execution. The forced labour provided economic support for S-21.

### **AUTHORITY STRUCTURE**

#### S-21 REPORTED TO THE STANDING COMMITTEE

59. Formally, S-21 was considered part of the military, and had the status of an independent regiment under the General Staff of the RAK for purposes of personnel, logistics, production and training. However, S-21 reported exclusively to the CPK Standing Committee on all issues relating to the detention, interrogation and execution of prisoners, which were its most important functions. Until August 1977, **DUCH** reported through SON Sen. SON Sen was Deputy Prime Minister for National Defence and a member of the Standing Committee. From 15 August 1977 until the end of the DK regime, **DUCH** reported through **[Person A]**. **[Redacted.]**

#### S-21 COMMITTEE

60. S-21 was commanded by a Committee, which was structured in a fashion similar to other military or administrative units within DK, with a Secretary, a Deputy Secretary responsible for security, and a Member responsible for economics. Initially, **[Person C]** was the Secretary of S-21 and **DUCH** was the Deputy Secretary. At this time, **DUCH** was

primarily responsible for interrogations. In March 1976, **[Person C]** was transferred to the General Staff, and **DUCH** replaced him as Secretary of S-21. **DUCH** remained in that position until 7 January 1979, without significantly changing the structure of S-21. **[Person C]** was himself eventually arrested and executed at S-21.

61. In March 1976, at the same time that **DUCH** was promoted to Secretary of S-21, **[Person D]** became the Deputy Secretary, where he was primarily responsible for defence. He had previously been the Member of the S-21 Committee, and had been assigned to operate the S-21's Takhmao detention facility. **[Person D]** remained the Deputy Secretary until 7 January 1979. However, he had little authority to make decisions without **DUCH**'s permission. **[Person D]** is believed to be dead. In March 1976, **[Person E]**, who was in charge of rice production of Prey Sar, became the Member of the S-21 Committee. **[Person E]** was arrested in late 1978 and executed at S-21. **[Person F]**, a senior cadre in S-21's defence section, took over as commander at Prey Sar, although it is not clear if he took **[Person E]**'s place as Member of the S-21 Committee.

#### S-21 CENTRAL COMPOUND AND SURROUNDING AREA

62. Personnel at S-21 were divided into different sections depending on their tasks, including guards, interrogators, economics personnel, cooks, medics, document specialists, and photographers. Staffing tables prepared by the General Staff in April 1977 indicate that more than 2,300 staff worked at S-21.

#### *Defence Section*

63. S-21 Deputy Secretary **[Person D]** had overall responsibility for security within S-21, and he delegated management of the defence section to **[Person F]**. When **[Person F]** was sent to take command of Prey Sar in late 1978 he was replaced by **[Person G]**. One witness suggested that the guards were organized into 18 groups, each group had 12 people.
64. The guards at Prey Sar and Cheung Ek were also considered to be part of the defence section. However, the various guard units were not allowed to talk to each other, so individuals generally did not know how other units operated.

65. Two key units in the S-21 defence section were those who guarded inside the central compound and those who guarded outside it. Initially, the inside unit was led by **[Person G]**. The inside guards were assigned to guard the prisoners in the buildings on the inside of the central compound. The inside guards consisted of at least 10 teams who worked in shifts guarding the prisoners. There were four shifts each day, and each guard worked two of the shifts. The primary purpose of the inside guards was to prevent the prisoners from escaping or killing themselves. The outside guards were assigned to guard around the central compound and the approaches to S-21. There were “many” outside guard teams that guarded various locations around S-21, each with 12 members. The outside guards allowed the entry and exit of trucks carrying prisoners, but prevented anybody else from approaching S-21.
66. **[Person G]**, and later **[Witness]**, led the arrest unit or the special unit. This unit reported directly to Deputy Secretary **[Person D]**, though **DUCH** sometimes gave them orders. The special unit had about 30 members. It received prisoners from locations all over DK and transferred them to the inside guard units at S-21. It also travelled beyond S-21 to arrest prisoners. There was also a separate unit assigned to guard the special prison for high-ranking cadres. This unit reported to **[Witness]**.

*Interrogation Section*

67. The interrogation section was under the direct control of **DUCH**, and was generally managed by **[Witness]** and **[Person H]**. This section was divided into two groups: a special section that interrogated important prisoners and a general section that interrogated ordinary prisoners, particularly combatants. The most senior CPK prisoners, and foreigners, were interrogated either by **DUCH**, **[Witness]**, **[Person H]** and **[Person I]**. Vietnamese prisoners were interrogated by **[Witness]**.
68. The interrogation section was responsible for extracting “confessions” from the detainees at S-21. The “confessions” contained detailed descriptions of the alleged traitorous activities of the “confessor”, but also contained detailed information on the structure, operation and policies of all levels of government, military and civilian administration throughout the country. These “confessions” were collected by the interrogators and then sent to **DUCH**,

the majority being read and analysed by him. The original “confessions” were sent by **DUCH** to the senior leaders of the CPK, whilst he kept a copy for his own records.

69. The general interrogation section was subdivided into 3 groups: the “cool” group, the “hot” group, and the “chewing” group. Each group had 12 people in it. The “cool” group “did politics,” which meant interrogating prisoners with verbal cajoling and harassment, but no torture. The “hot” group beat and tortured prisoners to obtain “responses.” The “chewing” group applied continuous severe torture, asking the same question over and over again until the prisoner answered in the desired manner. These three groups were separate from the special interrogation section, which appears to have used a combination of these methods. At one point, there was also a small group of female interrogators who interrogated female prisoners.

*Document Section*

70. **[Witness]** was responsible for maintaining the lists of prisoners at S-21, and he reported to **DUCH** through Deputy Secretary **[Person D]**. Before coming to S-21, **[Witness]** had been in charge of the lists of prisoners at a prison run by the RAK General Staff. Initially, **[Witness]** worked alone but in 1978 he was provided an assistant. **[Witness]**'s office was located inside the central compound in Building E. He worked in the same office as the photographers.
71. The document section maintained detailed records of the detainees at S-21. **[Witness]**'s responsibilities included: (1) making summary biographies of the prisoners; (2) compiling the totals of the prisoners who entered daily; (3) compiling totals of the prisoners who were taken away to be killed; (4) compiling the totals of the sick prisoners; (5) acknowledging receipt of prisoners from various locations; (6) receiving the photographs from the photographers and attaching them to the summary biographies; and (7) maintaining a list of where prisoners were being held so that they could be located for interrogation or execution. Only **DUCH** had the authority to decide which prisoners were to be killed. **DUCH** would so indicate by writing “smash” on the prisoner lists next to the names of those who were to be killed.

*Photography Section*

72. **[Witness]** was the leader of the photography team, and reported to **[Witness]** and **DUCH**. In total, there were six or seven photographers. Several of the S-21 photographers had been photographers for Division 703 before they were assigned to S-21.
73. The Photography section took pictures of the incoming prisoners to be attached to detainee biographies. The photography team did not usually photograph senior cadres, who were photographed by the special unit upon arrival. The photography section also developed pictures taken by the special unit of the corpses of particular prisoners to prove that such prisoners had in fact been killed. The photography office was located inside the central S-21 compound in Building E, with the Document Section, where the prisoners were photographed. The film was developed and the photographs printed in the house where the photographers lived, which was outside the central compound, near **DUCH**'s house.

*Medical Unit*

74. **[Person J]** was Chairman of the medical unit, and reported directly to **DUCH**. There were a number of teams in the medical unit. The medics examined and treated prisoners in their cells.
75. The primary purpose of medical treatment was to prevent prisoners dying before their interrogation had been completed. The medics were also responsible for extracting the blood of healthy prisoners, against their will, for use in DK hospitals. The medics were also responsible for burying the bodies of those that died in their cells at S-21. By the time the DK regime fell, only child medics remained at S-21; all of the adult medics had been arrested and executed.

*Other Units*

76. In addition to the guards, interrogators, medics, photographers and record-keepers, there were several other units that carried out specialized functions at S-21. **DUCH** had a personal courier named **[Person K]** who carried messages to senior CPK leaders. There was also a small group of couriers who reported to **[Person F]**. There was a "children's unit" that raised rabbits and chickens. This unit reported to **[Witness]**. S-21 guards were often chosen from the children's unit. There was a cooking section, which was sometimes

also called the economics section. It prepared food for the S-21 staff and reported to **[Person D]**. The cooking section was located south of the S-21 compound. Finally, a logistics section was responsible for communications, telephones, telegrams, weapons, vehicles, water and electricity. This unit also reported to **[Person D]**.

#### CHEUNG EK

77. **[Witness]** was chief of the guard unit at Cheung Ek, and he reported to **[Witness]**. **[Witness]** then reported to **[Person D]**. There were 10 guards in the unit at Cheung Ek. This unit was assigned to dig the mass graves, guard the prisoners when they arrived, and then execute them. **DUCH** visited Cheung Ek at least once to conduct an inspection. The special unit based at S-21 was responsible for transporting prisoners to Cheung Ek for execution.

#### S-24 (PREY SAR)

78. **[Person E]** was in charge of S-24, which was based at and operated around Prey Sar. In that capacity, he and his subordinates authored numerous documents. He reported to **DUCH**. **[Person F]** later replaced **[Person E]** as chief of Prey Sar after Sre was arrested in late 1978 and sent to S-21. **DUCH** visited S-24 occasionally.

### DETAINEES

#### S-21 CENTRAL COMPOUND AND SURROUNDING AREA

79. A wide variety of prisoners were detained at the S-21 compound and in the surrounding area. The largest group of prisoners was composed of Cambodians who had worked for either the DK government or the DK military. In many cases, their wives were arrested as well. Other categories of prisoners included: former Khmer Republic soldiers and officials, Chinese, captured Vietnamese soldiers and civilians, “17 April” or “new” people, “base” or “old” people, intellectuals, Cambodians who returned from overseas, and a small number of foreigners from Australia, France, India, Laos, New Zealand, Pakistan, Thailand, the UK and the USA.
80. An analysis conducted by the Office of the Co-Prosecutors of the extant prisoner lists from S-21 (“the Combined S-21 Prisoner List”) shows that more than 12,380 prisoners were imprisoned and then executed at S-21 or at Cheung Ek. Prisoners at S-21 included men,

women and children. There were also pregnant women, some of whom gave birth during their detention. There is little doubt that male prisoners were considerably more numerous than female prisoners, but it is difficult to determine the exact ratio. An analysis of the 5,183 extant S-21 prisoner photographs shows that 84% of the prisoners in the photographs were adult males, 13% were adult females, and 3% were children. However, an analysis of the data from the Combined S-21 Prisoner List suggests that about 70% of the prisoners were male. The average age of S-21 prisoners was 29 and the average stay at S-21 before they were executed was 61 days.

81. While there were a number of foreigners killed at S-21, the overwhelming majority of the detainees were former cadres, workers and combatants who came from locations all over the country. An analysis of the S-21 Combined Prisoner List by the Office of the Co-Prosecutors demonstrates that slightly more than 78% of the S-21 prisoners came from either a DK government office or a DK military unit. Out of 12,380 S-21 prisoners, 5,184 (42%) came from DK government offices and 4,557 (37%) came from DK military units. The DK cadres represent by far the largest group of prisoners at S-21. A further 533 (4%) are listed as being the wives of those cadres.
82. Often these workers and combatants arrived in conjunction with the purge of a particular unit or location. Prisoners came from the Northwest Zone, the North Zone, the West Zone and the East Zone during their respective purges. There were also purges of military units, like those of Divisions 310 and 703. Purges also occurred in the various ministries and units stationed in Phnom Penh, including the ministries of Industry, Commerce Social Affairs, and Foreign Affairs. In the end, DK government workers and soldiers were arrested from virtually every office and unit in the country.
83. A large number of former S-21 and S-24 staff members were imprisoned and executed at S-21. Although the surviving witnesses agree that staff members were arrested and imprisoned at S-21, the Combined S-21 Prisoner List is the most reliable source of information on the total number of S-21 staff members who were killed. A total of 734 of the prisoners are listed as having been arrested from S-21 or S-24 or are described as

having worked at S-21 or S-24. Of these, at least 191 can be identified as former staff members with reasonable certainty. A further 543 were arrested from S-24, but it is unclear from the descriptions of their positions whether they were staff members at S-24 or prisoners who were undergoing tempering. The descriptions suggest that some were S-24 staff members and others were probably S-24 prisoners. Consequently, the minimum number of former staff members imprisoned and executed at S-21 is 191, but the actual number could be significantly higher.

84. The largest group of foreigners imprisoned at S-21 was Vietnamese, which comprised of prisoners of war, civilians, and those described in S-21 prisoner lists as “spies”. Vietnamese prisoners were subjected to the same treatment as other detainees, including torture and were killed after their “confessions” were completed. The “confessions” of some Vietnamese prisoners of war were also broadcast on DK radio and the victims were forced to participate in propaganda films whilst they were detained at S-21.
85. The physical detention at S-21 of Vietnamese prisoners of war is evidenced by “confessions,” reports, prisoner lists and a number of photographs taken at S-21 of prisoners wearing Vietnamese military uniforms. In addition, there are more than 75 extant transcripts of radio broadcasts of Vietnamese “confessions.” Some of these radio transcripts contain the “confessions” of more than one Vietnamese prisoner of war. “Confessions” of alleged Vietnamese prisoners of war were also published in English and French by the DK embassy in China and by the Department of Press and Information of the Ministry of Foreign Affairs as “News from Democratic Kampuchea.”
86. Evidence suggests that several hundred Vietnamese prisoners of war were detained at S-21; that soldiers who had been captured during the fighting were brought into S-21 several times in the same year; and that there was at least one occasion on which 40 Vietnamese prisoners of war arrived at the same time. **DUCH** has himself stated that there were hundreds of Vietnamese prisoners of war at S-21. An analysis of the Combined S-21 Prisoner List by the Office of the Co-Prosecutors has identified at least 150 prisoners who are described as being Vietnamese prisoners of war. This suggests that the actual number

of Vietnamese prisoners of war detained and executed at S-21 is between 150 and several hundred.

87. Among the Vietnamese detainees at S-21, there were also Vietnamese civilians who were arrested on or near the front line when military operations were carried out. **DUCH** acknowledges that at S-21 he saw lists carrying the names of Vietnamese who were still living in Cambodia. Various surviving S-21 documents list prisoners as being either Vietnamese or Vietnamese “spies”. An analysis of the Combined S-21 Prisoner List by the Office of the Co-Prosecutors identified 147 prisoners who were described as Vietnamese “spies” and 100 that were described as Vietnamese civilians.
88. In total there were at least 397 identified Vietnamese prisoners. Of these, the Combined S-21 Prisoner List indicates that 179 (45%) show complete dates of arrest and execution recorded against their entries. Of these complete records, the longest stay in S-21 appears to be 451 days, and the shortest, one day. However, the average time a Vietnamese prisoner stayed in S-21 was 18 days. A further 71 Vietnamese show only the date of execution with no or an ill-defined date of arrest. The Combined S-21 Prisoner List shows that at least 250 Vietnamese were documented by S-21 staff as being executed during its operation.
89. Prisoners entered S-21 on a daily basis. They arrived in covered trucks, sometimes packed so full that there was no place to sit. They would pass through the outside guard units and be received by the special guard unit. The detainees were unloaded and temporarily kept at houses near the compound before being transferred into S-21. Upon arrival, the victims were blindfolded and bound. They were then taken to a house on Street 360 where their arrival was registered. Prisoners were then bound together in a line and walked into the main compound to Building E.
90. When prisoners arrived, **[Person D]** would prepare lists of them for **DUCH**. At Building E, **[Witness]** would record their entry and question the prisoners about their name, birthplace and position so that he could create a summary biography. The prisoner would

then be photographed. The photograph was then printed and attached to the summary biography. After the paperwork was done, guards walked prisoners to their cells, and **[Witness]** would record the assigned building and cell number for each prisoner. Prisoners were often stripped of their clothes at this point. Husbands and wives who were brought in together were usually detained in different buildings.

91. There were several types of detention at S-21. Women, children and important prisoners were detained separately from the general population. Building A, and a structure behind it known as the “Special Prison”, were used to hold important prisoners, and were off-limits to most S-21 staff. Foreigners were kept separately from Cambodians; for example, Thai prisoners were detained on the second floor of Building B. Female prisoners were usually put on the ground floor of Building C, some in common cells without shackles. Prisoners who had been interrogated and prisoners who were awaiting interrogation were kept on separate floors.
92. Prisoners were often held in individual cells initially, but were later transferred to mass detention cells once their interrogations were completed and they were awaiting execution, along with those who it was not necessary to interrogate. Those in small cells were shackled by both legs unless they had gone through more than two interrogations, when they were shackled by only one leg. Some prisoners were required to work, and would be released from physical restraints for this purpose.

#### S-24 (PREY SAR)

93. S-24 was a site used to “temper” cadres, workers and combatants who had made mistakes or who were suspected of being “enemies.” There were hundreds of people at individual worksites and thousands of people in total were detained at S-24 at any one time. Many of the detainees came from various units within the RAK, including many from Division 703, or from various units within the Party Centre. There were also ordinary villagers who had allegedly traitorous connections, such as relatives of former Khmer Republic soldiers. **DUCH** had the authority to send S-21 staff members to S-24 to be tempered if their relatives were accused of being “enemies.” In 1978, hundreds of soldiers from the East Zone were sent to S-24, although many were quickly transferred to S-21.

## INHUMANE CONDITIONS OF DETENTION

### S-21 CENTRAL COMPOUND AND SURROUNDING AREA

94. Prisoners at S-21 were subjected to inhumane conditions that affected all aspects of their detention. These included inadequate detention facilities and the use of restraints, inadequate food and water, lack of sanitation, inadequate clothing and inadequate medical care. Detainees were threatened by guards, shackled with leg-irons, held in extremely cramped conditions and deliberately starved. They were guarded at all times and the inhumane rules were strictly enforced. A large number of the detainees fell seriously ill and prisoners frequently died from disease and malnutrition. Conditions were so inhumane that some prisoners tried to commit suicide.

#### *Inadequate Facilities and the Use of Restraints*

95. The detention facilities at S-21 lacked even the most basic amenities and were often overcrowded. There were several different types of cells at S-21, varying in both description and size. Large detention cells typically housed between 40 and 60 prisoners lined up in rows. They generally held people who had already been interrogated. Small cells held up to twelve people. The individual cells were often used to house important detainees and new inmates. The cells did not have pillows, blankets or mosquito nets; prisoners slept on old mats. Many detainees were badly bitten by mosquitoes. Children and pregnant women were kept in locked rooms. Detainees were prohibited from making any sound or talking to each other. Prisoners had to inform the guards if they wanted to change position in their sleep; if they made a noise, the guards would beat them.
96. Prisoners were restrained inside their cells at all times. They were handcuffed and blindfolded during transport to S-21. At S-21, prisoners were ordinarily kept handcuffed and shackled, and some remained blindfolded. Some were shackled to bars 60 – 70 centimetres long, others were shackled together at the ankle with long bars and forced to lie on the ground in rows. Pregnant women were kept shackled by their ankles. Detainees remained shackled when they ate, when they were hosed down by guards, or when they were being photographed. Detainees were blindfolded and handcuffed with their hands behind their backs when being taken to and from interrogation, and were shackled during interrogation.

*Inadequate Food*

97. S-21 prisoners received food that was insufficient and of poor quality twice a day, served at 11am and 5pm. Important prisoners sometimes received a single bowl of rice, or had their ration supplemented with a few small pieces of water grass or banana stump. However, the food was insufficient and prisoners quickly became emaciated, many dying from starvation: Prisoners were sometimes deprived of food as a form of punishment, and prisoners that had been severely tortured sometimes could not eat. By contrast, S-21 guards had adequate food rations, including meat and fish.

*Lack of Sanitation*

98. Sanitary conditions at S-21 were appalling. The cells did not have toilet facilities. Detainees remained shackled when they urinated or defecated and were required to relieve themselves in ammunition crates or water containers, which were passed from prisoner to prisoner. The cells were not regularly cleaned. Cells were cleaned only when it was deemed necessary, for example if they smelled too strongly of urine.
99. Prisoners were not allowed to wash themselves. Guards would hose them down in the cells “once every week, sometimes once every ten days” or when it was judged necessary. The prisoners would only be hosed down when the room was simultaneously being cleaned, and remained shackled throughout.

*Inadequate Clothing*

100. Prisoners’ clothing at S-21 was inadequate. [Witness] describes being ordered to undress down to his underwear upon arrival at S-21, a practice also encountered by other detainees. During the cold months, prisoners were only allowed to wear shorts and a shirt. One witness notes that often clothing was torn during torture, sometimes to the point that it could no longer be worn.

*Inadequate Medical Care*

101. The medical facilities at S-21 were basic. Detainees were usually treated in their cells, regardless of how ill they were. Medics were inadequately trained, and only gave prisoners inferior, locally-produced medicines which included “Rabbit Dung Tablet[s].” Medics were inadequately equipped to treat torture wounds, merely cleaning the wounds with

iodine. Some prisoners died from dysentery or other illnesses and were buried on the premises. In one instance, a detainee swallowed screws in a suicide attempt: **DUCH** stated that “we had to have him operated upon by a doctor in order to continue the interrogation.” An S-21 medic describes having been ordered to treat a prisoner: “Comrade you must treat [this one] because I have not yet finished interrogating him.” These examples demonstrate that care was provided solely to keep prisoners alive for interrogation. Guards, by contrast, received a much higher standard of medical treatment.

#### *Climate of Fear*

102. There was a climate of fear at S-21. Prisoners were aware that other detainees were being tortured. They heard other prisoners screaming and crying for help, and they saw prisoners returning from interrogation bleeding, wounded, and with lash marks, scarred from electric burns, and in shock. Conditions at S-21 were so inhumane that suicide was a serious problem amongst the prisoners. Guards were instructed to be vigilant in stopping prisoners from committing suicide and were punished if detainees succeeded. Despite preventative measures, such as prohibiting the wearing of trousers, some prisoners succeeded in committing suicide. Even S-21 staff members suffered from this climate of fear, and sometimes committed suicide rather than face imprisonment at S-21.

#### *S-24 (PREY SAR)*

103. S-24 was a “re-education site.” The “tempering” at S-24 consisted of a gruelling regime of forced labour, a starvation diet, political indoctrination, and brutal treatment. Prisoners held at S-24 were divided into units depending on an assessment of their characters. Prey Sar’s Unit 3 was reserved for inmates who were “beyond the pale,” “undisciplined,” and who had the “strongest connection to tendencies.” Unit 2 at Wat Kdol and Wat Ha contained prisoners who were considered moderate offenders. Unit 1, situated at Takhmao, contained the lightest offenders and had the best living conditions. Prisoners held at S-24 were sometimes moved between these units.

#### *Inadequate Facilities and the Use of Restraints*

104. Although S-24 encompassed a number of different living quarters at various locations, conditions on the whole were basic and often cramped. One witness describes how he slept

in a cell “stuffed” with twelve other people. Some prisoners, particularly those in Unit 3, were shackled at night. Some detainees remained shackled even while they worked. Detainees were not allowed to leave their work site or to talk freely to other inmates because of a fear the inmates would form “movements” and conspire against the guards.

*Inadequate Food*

105. The food at S-24 was insufficient, particularly in light of the harsh forced labour routine. Rations varied among types of prisoners depending on how intensely inmates were being “tempered.” If the tempering was strong, inmates would only be given three scoops of gruel. This was the case in Unit 3. Inmates who were only being moderately tempered received rice, as they did in Unit 1. Food was distributed twice a day. Sometimes banana stump or papaya stump would be added. Detainees were sometimes punished with starvation, although many prisoners were already emaciated when they first arrived at Prey Sar. One witness describes how children died from starvation and lack of breast milk.

*Lack of Sanitation and Medical Care*

106. The sanitary conditions and medical care at S-24 varied but were generally of poor quality. Although those held at S-24 had access to medical care, many died as a result of the conditions there. One witness describes how his group was eventually reduced to only a few people. Others who were sick were accused of feigning illness or of being lazy. Those held in Unit 3 were given inferior medical treatment administered by medics on the spot and were never taken to the medical unit. In addition, they were made to defecate in ammunition boxes when locked up at night.

*Forced Labour*

107. Those held at S-24 were forced to work very hard. Individual tasks included digging ditches, paddy farming, construction work, animal rearing and harvesting. Those in Unit 3, who were being harshly tempered, performed land-clearing; those in Unit 2 were allowed to serve as human draft animals; and those in Unit 1 reared animals. Work was often done without the appropriate tools, which included ploughing fields by hand. Rest was not permitted. Working hours differed but examples include working from 3am to 11pm or even midnight. Sometimes work would continue through the night. Anyone who failed to

work hard enough was whipped and beaten, including women. Children were also forced to work at S-24.

*Climate of Fear*

108. Prisoners at S-24 deemed incapable of reeducation were destined to be killed. Trucks would come during the night to seize them and take them to S-21, or even directly to Cheung Ek, with such arrests occurring “frequently.” Inmates who were sent to S-21 never returned and all are believed to have been killed. The commonly and correctly held belief at S-24 was that those who were taken away had been killed. This created an atmosphere of fear and uncertainty within S-24.

**TORTURE**

*Purposes of Interrogation and Torture*

109. The primary purposes of interrogation were to: (1) force the detainee to “confess” to being a traitor thus justifying his or her arrest; and (2) to uncover their alleged traitorous “networks.” Torture was a tool used to facilitate the extraction of “confessions”. Interrogation often commenced with detainees being questioned about alleged “links” to the CIA, the KGB or the “Yuon” (a pejorative term for the Vietnamese). If a detainee failed to adequately “confess” to their traitorous activities or did not otherwise provide the desired answer to the question, the detainee was tortured or threatened with torture. The detainees were also told that if they did not provide the desired information the torture would continue. Faced with the prospect of continuing torture, detainees would confess to traitorous activities, even if such a “confession” was untrue and far-fetched.
110. Additionally, the “confessions” extracted at S-21 through interrogation and torture provided material for DK government propaganda. Foreigners were tortured with the purpose of extracting “confessions” that were broadcast in Cambodia and internationally. “Confessions” of Cambodians extracted under torture were also broadcast on radio or read out at meetings to further justify the CPK policy of arresting and smashing “enemies” to prevent them from seeking to overthrow the CPK. As part of CPK propaganda against Vietnam, the “confessions” of captured Vietnamese prisoners of war were also broadcast on DK radio.

*Mechanics of Interrogation*

111. Most detainees were interrogated and tortured outside of the central S-21 compound. Interrogation took place in houses directly across from the main entrance of S-21, and houses west of the sewage canal near S-21. Interrogations of special prisoners were conducted in Building A inside the S-21 compound or in the special prison located to the south of the central S-21 compound. Interrogations often commenced as soon as a prisoner arrived at S-21, but some prisoners were not interrogated until a few months into their imprisonment. Interrogations were typically conducted between 7-11 a.m., 2-5 p.m., and 7-11 p.m. There was usually one interrogator and one detainee during the interrogation session. The prisoners' responses were either typed during the interrogation or handwritten and later typed. After 1978, interrogations were tape recorded to monitor both the prisoners and the interrogator. **DUCH** would review the "confessions" and make annotations on some "confessions" indicating that the prisoner should be re-interrogated with regard to some of their responses.

*Forms of Torture*

112. As described above, interrogators at S-21 used three different styles of interrogation. The "hot" and "chewing" methods both involved torture. The vast majority of S-21 prisoners were tortured. Methods of torture included: beating with bars and weapons; whipping with electrical cable; electrocution; burning with electric lamps; freezing with cold water and electric fans; puncturing or ripping out fingernails and toenails; simulated drowning in water-tanks; tearing flesh with pliers; suffocating prisoners with plastic bags; forcing inmates to beat each other; hanging upside down; and the force-feeding of excrement and urine. Beatings and electric shock were the most frequently applied methods of torture, as they were perceived as the most efficient. Weapons used in beatings included whips, electrical wire, guava branches or rattan sticks. Some prisoners were beaten to the point of permanent physical impairment and death.

113. Electrocution and water tortures were favoured by interrogators. Electric shocks were administered by attaching electric wires to prisoners' ears and genitals. Prisoners were sometimes shocked to the point of unconsciousness or death. Former S-21 prisoner

[Witness] observed how a prisoner was suspended with a cord and then plunged head-down into a full water jar.”

114. **DUCH** has stated that the CPK Standing Committee recommended to him that S-21 standardise on four principal methods of torture: beating with a stick; electrocution; covering the head with a plastic bag; and covering the face with a cloth whilst pouring water into the nostrils.
115. Detainees frequently had visible marks from their torture, including wounds, missing nails, and split skulls. Some detainees could no longer walk after torture. Evidence of torture and torture devices were found at S-21 and in the surrounding houses after the DK period. Former guards, medics and other S-21 staff and detainees remember seeing and hearing the evidence of torture at S-21, including the screams of those prisoners being tortured.
116. [Witness]’s torture was typical. 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 forced to lie face down, handcuffed and repeatedly beaten with a whip, rattan stick and electrical cable until his back was cut and bleeding. He could hear other prisoners screaming from a nearby room. He was also electrocuted, rendering him unconscious until the interrogator poured water on his head to revive him, only to torture him further. He was then asked when he had joined the CIA, an organization he had never heard of. [Witness] was tortured similarly twice a day for two consecutive weeks before finally agreeing to sign a false “confession” drafted by his interrogators. The beatings about his face and head caused [Witness] permanent hearing loss.
117. Another example is the case of [Person L]. [Person L] was the Secretary of the Northeast Zone, a Full Rights Member of the Central Committee, the former Deputy Secretary of the General Staff and the number ten ranked CPK cadre in terms of seniority. After [Person L] was arrested on 20 September 1976 and taken to S-21, he initially refused to confess to accusations that he was a traitor to the revolution. **DUCH**, working with his most trusted

interrogator **[Person H]**, developed a plan to break **[Person L]** using a combination of false reassurances (promises of rehabilitation made to him by **DUCH** in person), brutal threats (teasing **[Person L]** about his family, who had also been arrested), and severe torture. Under this pressure, **[Person L]** began to “confess” on 29 September 1976, but added that he was doing so as a result of torture.

118. **DUCH** returned **[Person L]**’s “confession” to him on 30 September with the allusion to torture crossed out, ordering **[Person L]** never to mention torture in his responses again and declaring that only he, **DUCH** had the authority to report to the upper echelon on such matters. **[Person L]** duly re-wrote and back-dated a new cover-sheet for the 29 September “confession”, omitting any reference to torture. On 1 October 1976, **DUCH** wrote a note to **[Person H]** complaining that **[Person L]** was insulting the Party, and instructing **[Person H]** to increase the intensity of the torture, adding that if **[Person H]** should accidentally torture **[Person L]** to death, it would not be a violation of revolutionary discipline. When **[Person H]** showed **[Person L]** this note from **DUCH**, **[Person L]** agreed to confess to whatever was required, before being ultimately killed. Using these tactics, **DUCH** and his S-21 interrogators could get their victims to confess to virtually anything.

### UNLAWFUL KILLINGS

119. Every prisoner who arrived at S-21 was destined for execution; the policy was that no prisoners could be released. This applied even when prisoners were arrested and brought to S-21 by mistake, in order to prevent a leak of information which might compromise security operations. An unknown but significant number of S-21 prisoners were killed and buried in and around the main compound, but the majority were executed at Cheung Ek, a cluster of mass graves located approximately 14km south of Phnom Penh.

#### S-21 CENTRAL COMPOUND AND SURROUNDING AREA

120. The location of the executions and burials at S-21 changed over time. When S-21 was first established, the executions and burials primarily took place inside the S-21 compound and its immediate vicinity to maintain the secrecy of S-21’s operations. Those killed in or near the S-21 compound included children, Vietnamese soldiers, foreigners and DK cadres. Many execution sites and mass graves have been found in the S-21 compound and the

surrounding area, containing human remains bearing signs of violent death and including weapons, shackles and blindfolds. These execution sites and mass graves were excavated at different times as people returned to live in the area around S-21, and although no accurate figure can be given, the human remains discovered suggest that hundreds if not thousands of people were killed. Even after the development of off-site execution locations, smaller groups of prisoners or particularly important prisoners were still executed and buried at S-21, in various areas in the vicinity of the central detention compound.

121. Executions occurred both during the day and at night. **[Person D]** would organize the list of persons to be executed, then **DUCH** would sign the list to confirm that the interrogation of those individuals had been completed, thereby authorizing their execution. The list of prisoners to be executed would then be presented to the internal guards at S-21, who would retrieve the prisoners from their cells, handcuff and blindfold them, before delivering them to the outside guards. If the killing site was to be Cheung Ek, they would be loaded onto trucks and transported there.
122. Prisoners killed in or near the central S-21 compound were usually beaten to death with metal bars. The perpetrators would also occasionally slit the prisoners' stomachs open with knives before covering them in pits or handing them over to the medics who abused the fresh bodies for pseudo-medical experimentation. The medics were usually responsible for the burial of those who died in detention or during torture, and buried about ten bodies in each pit. If the bodies were not buried on site, **[Person D]** was responsible for organizing the transport of the bodies in S-21 trucks for disposal.
123. Many children were detained at S-21 following the arrest and detention of their parents. Generally two or three days after an infant or young child arrived at S-21 they were killed by **[Person G]** and other guards, including by throwing them from a third story window onto the concrete below. They were usually buried about 100 meters north of the central S-21 compound. At other times, children were executed at Cheung Ek; on a single day in July 1977 alone, 160 children were killed at Cheung Ek.

124. Some prisoners were executed in different ways. A small number of Westerners detained at S-21 were either tortured to death or burned alive in the immediate vicinity of S-21. These prisoners were forced to wear oil soaked tyres that were set on fire. This was done to eliminate the evidence of their presence at S-21. Special prisoners such as **[Person X]**, **[Person M]**, and **[Person C]** were also killed near the central S-21 compound, at the corner of Mao Tse Tung Boulevard and Street 163. Vietnamese prisoners of war were executed at S-21 immediately after their interrogations.
125. Medics regularly killed prisoners by draining their bodies of blood. This method of execution was used for thousands of prisoners. **[Person D]** and the medics selected prisoners who were still in reasonably good health when their interrogation was completed and then delivered them to the S-21 infirmary on Street 113. After the medics had finished draining all the blood from victims into blood bags, **[Person D]** would instruct **[Witness]** to add their names to lists of those who had been “smashed.” The blood was used for transfusions for the wounded DK soldiers fighting in the war against Vietnam.
126. While a majority of S-21 prisoners died as a result of executions, prisoners also died from other causes, including torture, starvation, and disease. Prisoners frequently died as a result of the torture inflicted during their interrogations. Many prisoners were tortured to death, including a foreign prisoner who was bleeding from the mouth when he died. Both at S-21 and Prey Sar, prisoners commonly died as a result of the inhumane living conditions. Adults and children alike died from starvation. One witness has described how five prisoners out of a group of seven arrested from Sector 15 died while imprisoned at S-21 due to the inhumane living conditions. Other witnesses have described how prisoners regularly died in detention from disease, lack of hygiene and starvation.
127. In addition, prisoners were sometimes killed at S-21 in mass executions. On several occasions, the prison reached capacity and prisoners were executed in large numbers to make room for new arrivals. Higher-ranking prisoners would be singled out and kept for interrogation, while the remaining prison population was taken to Cheung Ek for execution.

[**Person A**] also ordered **DUCH** to carry out a mass killing on 30 May 1978, and another in December 1978, when 300 prisoners from the East Zone were executed without interrogation. In the days leading up to the fall of Phnom Penh in January 1979, [**Person A**] ordered that the entire S-21 prisoner population should be executed. Most were taken away in trucks to be killed at Cheung Ek, although some remained at S-21 and were killed in their cells; an interrogator named [**Person N**] used a bayonet to execute the last remaining prisoners in Building A, decapitating two of them.

#### CHEUNG EK

128. In 1976, **DUCH** decided to transfer executions to Cheung Ek away from the main S-21 compound to prevent the spread of disease. Preparations at the Cheung Ek site were completed in early 1977. The remains of more than 9,000 men, women and children of all ages have been discovered in twenty or thirty mass graves at Cheung Ek. In addition to victims from the central S-21 detention compound in Phnom Penh, S-24 also supplied victims to Cheung Ek.
129. Prisoners usually arrived at Cheung Ek in trucks between 7 and 9 pm. There would be 30-40 people in each truck, and usually there were two truck-loads of victims per trip. Upon arrival, prisoners were taken from the truck and sent to a holding room in a nearby wooden house. They were then led one at a time to be killed at the pits. The guards forced detainees to sit or stand at the edge of a pit, struck the base of the detainee's neck with a water pipe or similar implement, and then kicked their body into the pit. Each pit was filled with more than ten bodies, some containing up to forty prisoners. If the force of the blow to the neck did not kill the prisoner, the killing team then used a knife to kill the prisoner.

#### ROLE OF DUCH

130. **DUCH** played the pivotal role in ensuring that S-21 functioned effectively as an instrument of persecution and extermination. Although **DUCH** now accepts that S-21 was a wholly criminal institution, as its Deputy and then Secretary he ruthlessly and efficiently implemented the CPK policy of smashing "enemies", which had existed since the early 1970s. The vast majority of the more than 12,380 victims were killed after **DUCH** had

been promoted to Secretary of S-21. Thousands of these victims had been repeatedly interrogated and tortured before they were executed.

131. **DUCH** was critical to the operation of S-21. He was the only person at S-21 with the authority to report directly to his superiors in the Standing Committee of the Central Committee of the CPK, and he was entrusted with matters of utmost secrecy and sensitivity that were hidden from everyone else working at S-21. **DUCH** had authority over every aspect of the operation of S-21, and he personally directed the interrogation and torture.
  
132. **DUCH** had extensive knowledge of the crimes that were being committed at S-21. He knew that detainees had been arrested upon no justifiable legal basis and that none of the victims had access to any legal or judicial process through which they could challenge their arrest and eventual execution. He knew that the prisoners were kept in inhumane conditions, with insufficient food and inadequate access to medical or sanitary facilities. He knew that the prisoners were beaten, tortured and ill-treated by S-21 staff, and he knew that all of the victims sent to S-21 would be and were eventually executed. Through his position as Deputy Secretary and Secretary of S-21, his attendance at CPK meetings and communications with other senior CPK officials, and through reading the “confessions” extracted at S-21, **DUCH** also had extensive knowledge of the crimes being committed throughout the country, including the forced movement, forced labour, inhumane treatment, torture and execution in every Zone and at every level of administration.

#### EARLY YEARS

133. **DUCH** was born to a poor family of Chinese ethnic origin on 17 November 1942 in Chayok Village, Kampong Chen Tbaung subdistrict, Stung District, Kampong Thom province, Cambodia. A brilliant and hard-working mathematics student at the local primary school, **DUCH** quickly progressed with the help of his teacher, **[Person O]**. In Phnom Penh, he earned a scholarship to the *Lycée Sisowath* and then attended the *Institut de Pédagogie* for his teaching certificate under **[Person M]**. **DUCH** later presided over the arrest, torture and execution of both these men at S-21.

134. After completing his education at the *Institut de Pédagogie*, **DUCH** became a teacher. He had been influenced at the *Institut de Pédagogie* by the communist ideals of his future Khmer Rouge superior, SON Sen, and he began to agitate for the communist cause. This resulted in his arrest and imprisonment. Upon his release from prison following the Lon Nol *coup d'état* in 1970, **DUCH** became a full member of the CPK.

SECRETARY OF M-13

135. **DUCH's** ideological commitment and diligence were soon recognized by the CPK, and he quickly became the leading security cadre in the Sector 15 of the Special Zone. In October 1971, he was assigned to establish and direct the Special Zone security office, code-named M-13, which was located in a Khmer Rouge "liberated" zone at Thmar Kup village, Amleang sub-district, Thpong district, Kampong Speu province. **DUCH** remained the Secretary of M-13 until April 1975. At M-13, **DUCH** reported directly to SON Sen, the CPK Armed Forces General Staff Chairman and Special Zone Deputy Secretary and to Special Zone Secretary [**Person X**]. Together with [**Person M**], [**Person X**] in particular gave **DUCH** guidance and instruction on methods of interrogation. As with **DUCH's** earlier mentors, [**Person X**] later also became a victim of S-21.

136. M-13 served as a model for what **DUCH** would later implement at S-21, and it was where **DUCH** developed his reputation as a feared security chief. At M-13, **DUCH** set up teams of guards, interrogators and executioners; he organized the keeping of written records for the entry and exit of prisoners; he instituted a harsh regime of discipline; he institutionalized inhumane living and detention conditions (prisoners were held under armed guard, chained together in large pits and received insufficient food and water). **DUCH** ordered torture and beatings; he implemented a system of reporting the "confessions" of prisoners to his superiors and receiving their instructions for further interrogation; and he ultimately gave the order for the prisoners' execution and burial in mass grave pits. M-13 also served as the training-ground for many interrogators and other subordinates whom **DUCH** subsequently took with him to S-21, in particular [**Witness**], [**Person H**], [**Person F**] and [**Person P**]. The interrogation techniques developed at M-13 were used at S-21.

137. In addition to running the general operation of M-13, **DUCH** personally participated in the interrogation, torture, and killing of prisoners. **DUCH** had the power of life and death over detainees: he ordered executions and on at least one occasion he successfully obtained permission from his superiors to release a prisoner. Several hundred prisoners were detained at any one time at M-13. In total during the course of its operation, many thousands of prisoners were detained and killed at M-13. After the fall of Phnom Penh on 17 April 1975, M-13 was closed and the remaining prisoners either killed or transferred. Some of these prisoners were sent to the former PJ compound in Phnom Penh near Central Market (Phsar Thmei), a detention facility over which **DUCH** assumed responsibility. **DUCH** remained in Phnom Penh for the next four months, residing with the senior leaders of the CPK in the railway station. On 15 August 1975, SON Sen ordered **DUCH** to help set up S-21. Specifically, in September 1975 **DUCH** was asked to seize all the important documents which the Khmer Republic administration had left behind in the premises of the National Police Administration and the Headquarters of the Army Administration.

SECRETARY OF S-21

138. During [**Person C**]'s brief period as Secretary of S-21, **DUCH** was Deputy Secretary and was responsible for interrogations, training interrogators and reporting on the "confessions". Surviving documents from the period before he became S-21 Secretary indicate that **DUCH** was actively investigating "enemies" of the revolution, ordering his interrogators to inflict torture, and requesting that people be arrested and delivered to S-21. When [**Person C**] was transferred to the General Staff in March 1976, **DUCH** was appointed as Secretary of S-21. From then until the fall of the regime, **DUCH** was at all times the highest-ranking cadre within S-21, responsible for the entire operation of the security office.

*Responsibilities & Competencies*

139. **DUCH** was required to ensure that S-21 effectively implemented the CPK's security policies. This task was twofold: the search for and then "smashing" of "enemies", and responding to any specific security incidents in the Party Centre or elsewhere. To fulfil his mandate, **DUCH** regularly reported to the members of the CPK Standing Committee, in

person, over the telephone and in writing. **DUCH** was the only person at S-21 with the authority to report directly to members of the Standing Committee.

140. **DUCH** also regularly participated in meetings with senior party officials, relating to the general policy of smashing “enemies” and any specific security issues, at which he would give briefings and make suggestions. Initially and until some time in 1977, **DUCH**’s immediate superior at S-21 was SON Sen. Later, when SON Sen left Phnom Penh to personally command the RAK in the armed conflict with Vietnam, **DUCH** reported directly to **[Person A]**. One witness has also described how **DUCH** frequently attended meetings at the Ministry of Foreign Affairs from 1977 to 1979 with the senior leaders.
141. **DUCH** and SON Sen had a particularly close working relationship. They spoke every day via a secure telephone line. **DUCH** reported the details of the “confessions” to SON Sen, discussed strategies and targets for arrest and received his further orders. SON Sen also made regular visits to S-21 for training courses, including teaching S-21 cadres about “CIA and Yuon” “enemy” agents. SON Sen would also visit **DUCH**’s home. After SON Sen left Phnom Penh for the battlefield, **DUCH** reported to his new superior **[Person A]** at least every three days, either in person or via messenger. **DUCH** also corresponded with **[Person A]** through written instructions, sometimes visiting him at his office.
142. **DUCH** worked closely with senior cadres from the Standing Committee’s Secretariat, Office 870, in particular **[Person Q]**, who frequently visited S-21. **DUCH** also corresponded regularly with the heads of other administrative and military units as he sought to follow up the “strings” of traitors named in the “confessions” extracted at S-21 or other security offices. Such units would send reports directly to **DUCH** of “enemies” they had arrested, would in turn request, and would systematically receive, the “confessions” of prisoners interrogated in S-21 to enable them to search within their own units for additional “enemies.”

*The “Confessions”*

143. **DUCH** has himself stated that “the content of the confessions was the most important work of S-21”. S-21 generated a vast number of pages of “confessions”, extracted mainly under

torture and often over a period of several weeks or months. 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** meticulously read, analysed, annotated and summarised the majority of these confessions for his superiors. He was therefore in a unique position at S-21 to understand the DK-wide context of the CPK policies within which S-21 functioned.

*Scope of Authority*

144. **DUCH** performed his tasks with diligence and enthusiasm, and was the *de facto* as well as the *de jure* head of S-21, including Prey Sar. **DUCH**'s immediate subordinates in every unit reported directly to him. According to one senior S-21 interrogator, **DUCH** “knew everything at S-21 and made all the decisions at S-21.”
145. **DUCH** selected his staff personally, initially from amongst his most trusted subordinates at M-13, and later by recruiting children and adolescents as guards who, **DUCH** has admitted, were “like a blank piece of paper” and could be easily indoctrinated. **DUCH** organized his personnel into different units according to their strengths, running S-21 along very hierarchical lines and implementing systems of reporting at every level.
146. **DUCH** and his threats were feared by everyone at S-21. His orders were carried out immediately and precisely. **DUCH** ensured that both the general rules of the Party in relation to the work of the security police, or *Santebal*, were respected, together with the strict rules he had devised for the operation of S-21. **DUCH** regularly held education classes for his subordinates in a building on Street 95 adjacent to his own villa on Monivong Boulevard, as well as in a church at the southeast corner of Streets 360 and 163, relating both to CPK political theory and also to specific techniques of guarding, interrogation and torture.
147. Indiscipline, laziness and incompetence were severely punished, being seen as the mark of “enemy” activity. On **DUCH**'s order, staff at S-21 could be arrested and executed for the slightest mistake. Additionally, **DUCH** was responsible for preparing reports for his superiors on any breaches of security at S-21. None of these breaches resulted in **DUCH**

himself being removed from office or disciplined, although they did result in the arrest and execution of his subordinates, including **[Person E]**, the Member of the S-21 Committee and the third most senior official at S-21. From an analysis of the Combined Prisoner Lists, at least 191 detainees executed between 1975 and 1979 can be identified as former S-21 staff with reasonable certainty, but as described above in paragraph 83 the actual number could be significantly higher.

*Relationship with [Person D]*

148. The evidence demonstrates that **[Person D]** had significantly less power and authority than **DUCH** within S-21. **DUCH's** statements about his own authority and that of his Deputy, **[Person D]**, have been inconsistent and unconvincing. Contrary to the testimony of former S-21 staff, **DUCH** has repeatedly claimed that he had little or no authority at S-21. **DUCH** states that during **[Person C]**'s time as Secretary of S-21, it was **[Person C]** who controlled everything, yet **DUCH** has said that after he became Secretary, it was **[Person D]** who controlled everything. At other times, **DUCH** has stated that **[Person D]** only took over all responsibilities at S-21 beginning sometime in late 1977 or 1978. **DUCH** has repeatedly said that **[Person D]** was responsible for all or almost all tasks at S-21, including interrogations and executions. **DUCH** describes his own role as simply that of summarizing the "confessions" and generally managing S-21, claiming he did not know the details of what actually happened. According to **DUCH**, he made almost no decisions at all.

149. **DUCH** admits that he was brought to S-21 because he was better at interrogation than **[Person C]**, and that his sole responsibility as Deputy Secretary was "leading interrogations." After he became Secretary, he was still in charge of interrogations and he was the one who "assigned" interrogators to their tasks. He even admits interrogating key prisoners himself. **DUCH** also admits to significant involvement in arrests. For example, he arrested people himself, he took personal charge of important arrestees, and he "delegated" the details of other arrests to **[Person D]**. **DUCH** has also acknowledged that, following a mistake by **[Person D]**, he had to personally authorize every execution carried out at S-21. He even admits that when **[Person D]** was away on a "prolonged" absence, **DUCH** himself "intervened personally" to organize the executions.

150. **DUCH's** relationship to **[Person D]** was clearly one of superior to subordinate. **DUCH** was Secretary of S-21 and **[Person D]** was his Deputy. **[Person D]** reported to **DUCH** and **DUCH** reported to the Standing Committee, something that **[Person D]** did not have the right to do. **DUCH** withheld information from **[Person D]** and there is evidence that **[Person D]** was afraid of him. **DUCH's** personal involvement in arrests, interrogations and executions, as well as his description of his relationship with **[Person D]**, both demonstrate that **DUCH** was the key decision-maker at S-21.

*Participation and Knowledge of Crimes*

151. **DUCH** frequently visited the central S-21 compound and surrounding sites, as well as Prey Sar, and he visited Cheung Ek at least once to inspect the killing. **DUCH** lived and worked close to the main S-21 compound, moving house and office frequently. He ate his meals together with the other S-21 staff in a communal dining room. Although he delegated individual functions to his subordinates, **DUCH** was involved at every stage of S-21's operations: coordinating the arrests, receiving the new prisoners, and overseeing their interrogation and torture, and ordering their eventual execution.

*Stage 1 : Arrest*

152. **DUCH's** personal involvement in the arrest process would depend on the importance of the intended target. For the vast majority of arrests, **DUCH** would delegate the responsibility of the planning and implementation to his senior subordinates. However, **DUCH** would also "personally lead" arrests on occasion. For arrests within the military units, **DUCH** was heavily involved in planning the arrests, attending meetings with SON Sen and other senior cadres, proposing strategies, and occasionally sending senior S-21 personnel to "calm the units" in advance. **DUCH** often corresponded with the Secretary of the military unit both before and after the arrest. For the highest-ranking targets, in particular for those from within the upper echelons of the Party, secrecy was essential and **DUCH** would be personally involved. The targets would be asked to attend a meeting at **DUCH's** house, from where they would be arrested and taken to a cell outside the main S-21 compound.

153. For the Vietnamese civilians or soldiers captured during the armed conflict with Vietnam, **DUCH** ordered S-21 guards to travel to Svay Rieng province in the East Zone to arrest them. **DUCH** assigned **[Witness]** together with a former Hanoi cadre **[Person R]** to interrogate the captured Vietnamese soldiers and civilians, whose “confessions” were broadcast on DK radio. The Vietnamese soldiers were also the subject of a propaganda film, which was shot in part in **DUCH’s** office. For the few surviving ethnic Vietnamese Cambodian citizens at the time, **DUCH** has acknowledged that some of them were executed at S-21.

*Stage 2 : Detention*

154. When prisoners arrived at S-21, **DUCH** would sign the lists that had been drawn up by his staff. **DUCH** was aware that when new prisoners were brought in or out of S-21, they were blindfolded and shackled. **DUCH** was also aware of the conditions in which the detainees were kept. He was a frequent visitor to the main compound, to the interrogation sites and would have seen that the prisoners were injured from beatings and torture and emaciated from insufficient food, water and medical care. Additionally, **DUCH** personally visited certain “important” prisoners in their individual cells, and would have seen first-hand the conditions in which they were held and their physical state.

*Stage 3 : Interrogation, Torture and “Confessions”*

155. **DUCH’s** speciality was interrogation. It was through the extraction of the resulting “confessions” that he was able to fully implement the Party’s strategy of seeking and smashing “enemies”. **DUCH** ensured that interrogation at S-21 was conducted methodically by personally controlling the operations at every stage. **DUCH** ensured that his key interrogators, selected from his most trusted former subordinates at M-13, knew what they had to do and the manner in which they had to do it:

- (a) the interrogation section reported directly to **DUCH**;
- (b) he held regular interrogator training sessions, in which he issued instructions on both specific interrogation techniques, on the political rationale for interrogation, and on avoiding the “enemy sabotage” of torturing prisoners to death and prematurely cutting short their “confession” or allowing prisoners to commit suicide;

- (c) he regularly communicated with his interrogators in person, on the telephone, and in writing;
- (d) in many instances, he ordered his interrogators to interrogate particular prisoners, ask specific questions, or apply specific torture methods;
- (e) he often supervised interrogations by sitting in with or taking over from his subordinates;
- (f) he would send “confessions” back to be redone if the interrogators had not obtained satisfactory answers;
- (g) he decided when an interrogation was complete.

156. Consistent with CPK policy, **DUCH** instructed his subordinates that torture should be used in conjunction with other techniques of interrogation. When prisoners refused to provide the answers that **DUCH** required, he authorised his staff to use torture. **DUCH** personally issued orders to carry out torture, sometimes verbally and sometimes in writing, including by annotating the “confessions” with orders to apply torture. **DUCH** was familiar with all the techniques of torture used at S-21, having personally used many of them at M-13. **DUCH** has claimed that some methods of torture were prohibited at S-21, but there is no evidence that he disciplined interrogators for using them. Indeed, on at least one occasion, **DUCH** told an interrogator that he could torture a prisoner to death, if the prisoner would not answer questions, and that the interrogator would not be punished for the prisoner’s death.

157. Although **DUCH** delegated to his subordinates, he also conducted some interrogations personally. **DUCH** occasionally interrogated certain important or high-ranking prisoners. **DUCH** also interrogated Western prisoners. Additionally, **DUCH** would write to or visit important prisoners in their cells and threaten them when they were not providing the required answers. Certain prisoners pleaded with **DUCH** for their lives and wrote letters through him to the senior leaders, but no-one was spared. In fact, **DUCH** showed no clemency to any prisoner at S-21, including those with whom he had family ties or longstanding friendships such as his former mentors and superiors [**Person O**], [**Person M**] and [**Person X**].

158. **DUCH** also personally ill-treated and tortured prisoners, including by kicking, inflicting beatings with a rattan stick and through other humiliations. **[Witness]** described how **DUCH** ordered him to fight another detainee whilst **DUCH** watched. One S-21 interrogator has described seeing **DUCH** together with four or five of his subordinates beating and torturing a female prisoner at length with electric shocks. The same witness has described how **DUCH** would regularly visit the interrogation sites and strike “a blow or two” at the prisoners. **DUCH** has himself admitted “slapping” prisoners when he went to supervise the interrogations.
159. At S-21, the interrogators submitted the “confessions” to **DUCH**. **DUCH** had sole authority to read and annotate them and transmit them to the senior leaders, which he did on a daily basis. **DUCH** meticulously studied the “confessions”, annotating in the margins, highlighting passages of text in red ink or providing detailed summaries for his superiors.

*Stage 4: Execution*

160. **DUCH** knew that all prisoners at S-21 were destined for execution, whether they were interrogated or not, whether male or female, young or old, healthy or sick. Although in some instances **DUCH** temporarily retained prisoners who had useful skills, he knew that they would eventually be executed. Former S-21 staff members state that **DUCH** decided who should be killed. **DUCH** would also sign the execution logs before the prisoners were taken out to be killed, or would annotate the lists directing which prisoners should be “smashed.” After the mistaken killing of a prisoner whose interrogation had not been finished, **DUCH** personally authorised every execution in writing. Moreover, **DUCH** has also admitted that during **[Person D]**’s prolonged absence from S-21, he “intervened personally” to implement the executions.
161. **DUCH** visited the Cheung Ek execution site at least once to watch the executions. The witness **[Witness]** has described how **DUCH** ordered him to kill a prisoner as proof of his revolutionary commitment, and that **DUCH** sat beside the grave pit watching the executions as they happened.

162. **DUCH** acknowledges that medical experiments were conducted on living prisoners at S-21. In addition, **DUCH** ordered the forcible extraction of blood, which occurred on a massive scale at S-21 **DUCH** does not dispute that prisoners were killed through the forcible extraction of blood. In other cases, to satisfy the senior leaders' request for confirmation that certain prisoners had been killed, **DUCH** ordered his subordinates to exhume and photograph the corpses.
163. For some prisoners, **DUCH** implemented special execution orders. **DUCH** ordered that high-ranking CPK prisoners and Vietnamese prisoners be smashed near S-21 rather than at Cheung Ek. For four Western prisoners detained at S-21, **DUCH** implemented [**Person A**]'s order that they should be burned so as to leave no trace. **DUCH** also orchestrated mass executions at S-21, when hundreds of prisoners would be executed at any one time, often to make room for large numbers of new prisoners at the instruction of his superiors. Such mass executions took place at least four times during the course of S-21's operation. As Vietnamese forces were about to enter Phnom Penh in early January 1979, [**Person A**] ordered **DUCH** to execute all remaining S-21 detainees. There is some evidence that **DUCH** was personally involved in killing one or more of the prisoners as they were chained to their beds in the interrogation rooms.

AFTER S-21

164. After the fall of Phnom Penh, **DUCH** fled with other S-21 staff to the Thai border. One witness has described how during this time **DUCH** remained a man of influence and authority. Although his exact whereabouts and precise functions are unclear, for the following thirteen years or more **DUCH** has admitted the following contact with the senior leaders of the CPK:
- (a) on 30 December 1979 after arriving in Samlaut district he was "assigned" (by CPK officials) to teach;
  - (b) in 1983 he attended a training given by [**Person A**] in Samlaut;
  - (c) in June 1986 SON Sen called him to office K-18 near Trat City in Trat Province, Thailand, requesting him to change his name to HANG Pin and to go to China to teach Khmer;

- (d) between June 1986 and 1988 and travelling under a DK passport, he lived in China and for the whole two years he was under the supervision of **[Person DD]**;
- (e) upon his return to Cambodia in 1988 **DUCH** retained the name HANG Pin and worked for SON Sen at Office K-18;
- (f) **DUCH** lived in Samlaut with **[Person S]** and was at first nominated as the chief of transportation;
- (g) in 1992, POL Pot assigned him to oversee economic issues in Phkoam village, Banteay Meanchey province.

165. **DUCH** has stated that it was whilst working in Banteay Meanchey province that he finally “broke” with the Khmer Rouge movement. Following his conversion to Christianity in 1995, **DUCH** began working in the refugee camps in the border area with Thailand. In Samlaut he was traced by journalists **[Person T]** and **[Person U]** in April 1999. He was subsequently interviewed by representatives from the United Nations’ High Commissioner for Human Rights between 30 April and 3 May 1999. **DUCH** has stated that he was arrested by Battambang police on 6 May 1999 and was transferred to Phnom Penh, where he was immediately placed in detention under the jurisdiction of the Military Court. On 30 July 2007 the Co-Investigating Judges issued an arrest warrant for **DUCH**, since which time he has been in the custody of the ECCC.

## LEGAL CHARACTERISATION

166. We, the Co-Prosecutors of the ECCC, having considered the material facts in the Case File submit that **DUCH**’s involvement in these acts as described in this Final Submission makes him responsible for crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949 and the crimes of homicide and torture under the 1956 Cambodian Penal Law, punishable under Articles 3, 5, 6, 29 (new) and 39 (new) of the ECCC Law for the reasons outlined below.
167. Crimes against humanity and grave breaches of the Geneva Conventions are part of international criminal law and have been applied primarily by international tribunals.

While in recent years states have increasingly incorporated elements of international criminal law into their national legal systems, the jurisprudence of the international and hybrid criminal tribunals established since World War II provides the primary source of authority on the elements of these offences.

168. The decisions of the International Military Tribunal at Nuremberg (“IMT”); the International Military Tribunal for the Far East (“IMTFE”); the International Criminal Tribunals for the Former Yugoslavia and for Rwanda (“ICTY” and “ICTR”); the Special Court for Sierra Leone (“SCSL”); and the International Criminal Court (“ICC”) are the most relevant for the application of crimes against humanity and the Geneva Conventions at the ECCC. No Cambodian jurisprudence is available because, as far as the Co-Prosecutors are aware, crimes against humanity and grave breaches of the Geneva Conventions have not been prosecuted by the courts of the Kingdom of Cambodia.

#### CRIMES AGAINST HUMANITY

169. Article 5 of the ECCC Law authorises the ECCC to try individuals suspected of committing crimes against humanity. The specific offences listed in Article 5 include murder, extermination, enslavement, imprisonment, torture, persecution on political, racial or religious grounds, and other inhumane acts. Similarly, the ICTY, ICTR, SCSL and ICC all have the power to prosecute the same specific crimes as provided by Article 5 of the ECCC Law, namely murder, extermination, enslavement, imprisonment, torture, persecutions on political, racial and religious grounds, and other inhumane acts. The elements of each of these offences are discussed below.
170. For the commission of these offences to constitute crimes against humanity, certain jurisdictional elements must also be present. The specific offences must be committed: (1) as part of; (2) a widespread or systematic; (3) attack; (4) directed against a civilian population; (5) on national, political, ethnical, racial or religious grounds.

## **JURISDICTIONAL REQUIREMENTS**

### **1. WIDESPREAD OR SYSTEMATIC**

171. The attack must be either widespread or systematic. These requirements are disjunctive. The term “widespread” refers to “the large-scale nature of the attack and the number of targeted persons” and may be established by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.” An attack can therefore be constituted by a single act, but it must have had a substantial effect or affect a large number of people.
172. The term “systematic” does not require the attack to be large-scale but relates to the “organised nature of the acts of violence and the improbability of their random occurrence.” Systematicity may be established by evidence of a “non-accidental repetition of similar criminal conduct”.
173. Other indicators which would tend to prove the occurrence of a widespread or systematic attack are “the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes.” Whilst no plan or policy is required to prove a widespread or systematic attack, the existence of such a plan may be further evidence of the nature of the attack.

#### *Widespread*

174. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that the attack may be characterized as either widespread or systematic in nature. The crimes committed in Cambodia during the DK period were widespread on the basis of: (1) the large-scale nature of the attack; (2) its duration; and (3) the number of victims affected. This attack covered the entire country, and included the use of forced movements, the unlawful confinement of virtually the whole population to rural cooperatives and worksites and the creation of a network of security centres across the whole of DK.

175. It was also widespread in the sense that victims were sent to S-21 from every geographical region. It commenced before the collapse of the Lon Nol regime in the Khmer Rouge “liberated zones”, but gathered momentum after Phnom Penh fell on 17 April 1975 and continued uninterrupted until the CPK was forced from power on 7 January 1979. It resulted in the victimization and killing of millions of people within DK, and at least 12,380 people within S-21. Whether the crimes committed at S-21 are viewed as thousands of cumulative inhumane acts or as one single inhumane act of an extraordinary magnitude, the crimes were widespread.

Systematic

176. The concerted forced evacuations of all urban areas, the confinement of virtually the whole population in rural cooperatives and worksites and the similarity of the inhumane conditions at those cooperatives and worksites demonstrate that the attack as a whole was systematic. The functioning of the network of security centres across the entire country, and of S-21 in particular, also constituted a systematic attack because of the highly organized and repetitive nature of the violence and repression. The network of security centres operated hierarchically. The highest-ranking and most important prisoners were sent to S-21.

177. All security centres functioned in a similar manner. Prisoners were detained in inhumane conditions, tortured during interrogation to extract “confessions” and killed. The killings were methodical and highly-organised, with many dozens or more prisoners killed at any one time and buried in mass graves. Those who had been implicated in the “confessions” were in turn arrested, tortured and killed, resulting in ever-widening purges. Such a process cannot reasonably be characterized as either random or accidental. **DUCH** ensured that this process operated within S-21 in a disciplined and organised manner, including implementing a comprehensive system of record-keeping and documentation.

2. ATTACK

178. Acts constituting crimes against humanity must be committed as part of an “attack”. An attack has been defined as “a course of conduct involving the commission of acts of violence” such as murder, extermination and enslavement. An “attack” for the purposes of establishing crimes against humanity is not required to be a military attack nor be part of an

armed conflict. An attack may be non-violent in nature, such as the imposition of a system of apartheid or repression, or the exerting of pressure on the population to act in a particular manner, particularly “if orchestrated on a massive scale or in a systematic manner.”

179. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that in cooperatives, worksites and security centres across the entire country, and within S-21 itself, the attack was constituted by a course of conduct involving the commission of violent acts including but not limited to beating, torture, killing and other inhumane acts. Additionally, the creation, management and operation of security centres throughout the country amounted to orchestrated repression on a massive scale. Implemented systematically, such repression in itself constituted an attack for the purposes of Article 5 of the ECCC Law.

### 3. DIRECTED AGAINST A CIVILIAN POPULATION

180. A crime against humanity must be “directed against” a civilian population which requires that the civilian population be the primary object of the attack. The factors determining whether an attack was directed against a civilian population include: the means and method used in the course of the attack; the status of the victims; their number; the discriminatory nature of the attack; the nature of the crimes committed in its course; the resistance to the assailants at the time; and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.
181. The term “civilian” refers to “persons not taking part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause.” Therefore, members and former members of the military are classified as civilians for the purposes of crimes against humanity if they did not take an active part in any hostilities during the attack. This is also the case if they are in detention at the time they become the victims of the attack. The “civilian population” is not required to include the entire population of the particular geographical area attacked. Similarly, a “civilian population” may include non-civilians as long as the population is predominately civilian.

182. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that the object of the attack in cooperatives, worksites, security centres and S-21 itself, was the entire population of Cambodia and that this population was predominantly civilian. The purpose of the attack was to eliminate from the population of Cambodia any potential enemies or opponents of the DK regime. The attack began with the forced evacuation of the entire civilian population of Phnom Penh and other cities, the enslavement of the country's population in cooperatives and worksites, and the elimination of all intellectuals, "capitalists" and persons associated with the former government. Once this was achieved, the attacks then focused on any individuals within the cooperatives, worksites and CPK organization who were determined to be potential enemies of the state. Even within S-21, the targets of the attack were predominantly civilian. Former Khmer Republic soldiers, former DK soldiers and Vietnamese soldiers captured in the fighting at the border had all been placed *hors de combat* once they had been arrested, and so must be considered civilians for the purpose of determining whether or not the attack was directed against a civilian population.

#### 4. DISCRIMINATORY GROUNDS

183. Crimes against humanity require that the attack be committed on a discriminatory basis. This discrimination must be based on national, political, ethnical, racial or religious grounds. This element refers to the nature of the attack but is not an element of the specific offences.

184. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that the attack was carried out on political, religious and ethnic grounds in cooperatives, worksites, and security centres throughout the whole of Cambodia. The attack was driven by the CPK's political ideology, which dictated that all undesirable elements of society had to be destroyed. In carrying out their radical re-shaping of Cambodian society, the CPK systematically engaged in political persecution by actively searching for, imprisoning and executing all those considered to be "enemies" or otherwise undesirable, which included former Khmer Republic soldiers and officials, as well as former CPK cadres, combatants and workers who were suspected of being associated with undesirable elements. The CPK also systematically engaged in religious

persecution by suppressing all “reactionary religions,” which included Buddhism, Islam and Christianity, and pursued a policy of discriminating against ethnic Vietnamese in an attempt to purge the country of all those believed to support Vietnam.

#### 5. KNOWLEDGE OF THE ATTACK

185. In order for the specific offences to be “part of” a crime against humanity, the perpetrator must have knowledge of the acts that constitute the attack and must know that his or her acts are part of that attack. Knowledge of the details of the attack is not required, but it will be sufficient if the perpetrator knew of the overall context within which his acts took place. The motive of the perpetrator is irrelevant, and it is not necessary for the perpetrator to have approved of the attack.
186. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that **DUCH** knew the crimes that occurred at S-21 were part of a widespread and systematic attack that took place throughout Cambodia. He has testified that he knew that the crimes committed at S-21 were similar to and part of the crimes committed at other security centres throughout Cambodia. He also knew about the conditions in the rest of Cambodia through his regular communications with his superiors in the CPK hierarchy and his meetings with the units within the DK government and military. Consequently, he had sufficient knowledge of the overall context to be aware of the attack. More particularly, **DUCH** knew that his acts were part of that attack. For example, **DUCH** knew that S-21 helped carry out the purges ordered by the CPK leadership and that he contributed to those purges by identifying supposedly disloyal CPK cadres and workers on the basis of “confessions” obtained at S-21.

### SPECIFIC OFFENCES

#### 1. IMPRISONMENT

187. Imprisonment as a crime against humanity requires three elements to be established namely that: (1) an individual is deprived of his or her liberty; (2) the deprivation of liberty is imposed arbitrarily; and (3) the act or omission by which the individual is deprived of his or her physical liberty is performed by the accused, or a person or persons for whom the accused bears criminal responsibility, with the intent to deprive the individual arbitrarily of

his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty. Imprisonment is defined as arbitrary where it is imposed without a justifiable legal basis and without due process of law. Those in charge of a prison with effective or constructive knowledge that the detainees were unlawfully detained may be held liable of imprisonment as a crime against humanity.

188. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that at least 12,380 people were imprisoned at S-21. Their imprisonment was arbitrary as detainees at S-21 had been arrested without a justifiable legal basis. They were mainly arrested because they were considered “enemies” or “undesirable elements.” Such putative offences were never described by any legal decree, law or statute. Arrest and imprisonment were justified either retrospectively through the “confessions” of each prisoner, or after they had been implicated in the “confessions” of others. There was never any functioning legal system in Cambodia during the DK period. There were no courts, no judges and no legal process by which detainees at S-21 could challenge their imprisonment. Every prisoner detained at S-21 was destined to be executed, without exception.
189. As Secretary of S-21, **DUCH** intended to arbitrarily deprive the detainees of their liberty. **DUCH** and those under his control knew that the detainees were unlawfully detained. **DUCH** knew that the acts allegedly committed by the detainees which led to their arrest and imprisonment were not criminalised whether by legal decree, law or statute. **DUCH** knew that there was never any functioning legal system nor legal process by which detainees at S-21 could challenge their imprisonment. **DUCH** nevertheless ordered the imprisonment of the detainees at S-21.

## 2. OTHER INHUMANE ACTS

190. “Other inhumane acts” is a residual category of crimes against humanity which criminalises acts of similar gravity to those that are specifically enumerated. The following elements are required for an act to be considered as inhumane: (1) the victim must have suffered serious bodily or mental harm (the degree of severity being assessed on a case-by-case basis with due regard for the individual circumstances); (2) the suffering

must be the result of an act or omission of the accused or his subordinate; and (3) when the offence was committed, the accused or his subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim. The severity of the act must be of “similar seriousness” to the enumerated crimes against humanity, but the victim does not need to suffer long-term effects.

191. Jurisprudence specifically relating to prison camps have established that serious physical or psychological harm including beatings, torture, sexual violence, humiliation, harassment, mental abuse and detention in deplorable conditions constitute inhumane acts. Regular beatings, mistreatment of detainees during their interrogation, recurring brutality and the constant fear of being beaten have also been held to constitute inhumane treatment.
192. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that the detainees at S-21 suffered serious bodily and/or mental harm from inhumane acts which included:
- (a) the creation of inhumane conditions of detention, in particular through overcrowding and a lack of adequate food, sanitation and medical treatment;
  - (b) forcible, invasive and collective restraint during detention;
  - (c) physical violence by beating, both during and outside interrogation;
  - (d) the creation of a climate of fear at S-21 by imposing a harsh system of discipline and by intimidating and threatening the detainees;
  - (e) psychological abuse by detaining prisoners in the same or adjacent cells as persons who were being tortured, who had been tortured, or who had died from torture, disease, or malnutrition (or a combination of all three).

Some prisoners attempted suicide rather than continue to suffer these acts at S-21.

193. All such inhumane acts, whether taken individually or cumulatively, may be properly characterized as severe. These acts were committed by **DUCH** as the Secretary of S-21 and, under his authority, by his subordinates. **DUCH** has admitted that he knew that the

prisoners at S-21 were being held in similar detention conditions to those at M-13. He admitted wilfully attempting to ignore the conditions of detention at S-21.

194. **DUCH** intended to inflict serious bodily or mental harm upon the detainees. He gave direct orders to his subordinates to intimidate and threaten them. As Secretary of S-21 he intentionally created and managed the system of ill-treatment which he knew or had reason to know was comprised of the specific inhumane acts described above.

### 3. ENSLAVEMENT

195. Enslavement is defined as the intentional exercise of powers of ownership over a person. The consent or free will of the victim is absent. Factors which indicate the existence of enslavement include: “the control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.”
196. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that every aspect of the lives of the prisoners at S-21 were controlled. Prisoners were kept in cells and constantly guarded. They were restrained using handcuffs, shackles and blindfolds. Discipline was extremely strict and detainees were not permitted to speak, make any noise or move without permission. Access to sanitary conditions was restricted and inmates were only washed at the discretion of the prison guards. Prisoners had to ask for permission to urinate or defecate, which they would do whilst chained, often together, in their cells. Access to drinking water was also at the discretion of the guards. These detention conditions go far beyond what is reasonable or necessary at a prison. This level of control over the prisoners deprived them entirely of their free will.
197. Prisoners especially at S-24 were forced to work under the constant threat of eventual execution. Non-compliance with the work quotas by any prisoner, regardless of whether man or woman, adult or child, led to physical punishment. The workforce at S-24 was

subjected to cruel treatment, a lack of sufficient food and rest as well as an excessive workload, which included working from 3 am through the following night.

198. **DUCH** personally and through his subordinates intended to exercise such ownership and total control of the detainees. This can be inferred from the fact that he knew that every prisoner at S-21 was to be executed and from his treatment of any prisoner who disobeyed or displeased him. Moreover, **DUCH** was aware that those prisoners who were forced to work within the prison, especially at S-24, were considered as means of production.

#### 4. TORTURE

199. Torture as a crime against humanity requires three elements: (1) there must be an act or omission inflicting severe pain or suffering, whether physical or mental; (2) the act or omission must be intentional; and (3) the act or omission must have been carried out with a specific purpose such as to obtain information or a “confession,” to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person. Permanent injury is not a requirement for torture, nor is a minimum level of pain which must be inflicted: torture depends on the circumstances of each individual case. Additionally, the perpetrator need not have acted in an official capacity.
200. Jurisprudence specifically relating to prison camps has established that conditions of detention, absence of medical care and repetitive and systematic abuse of detainees can be indicia of torture. Extreme abuse during interrogation, coupled with an intention to extract a “confession” or information from the detainee, also amounts to torture as a crime against humanity. Prison commanders have a responsibility under international law to protect detainees from unlawful abuse and to ensure that living conditions are humane. Prison commanders who personally mistreat detainees set an example for their subordinates, contributing to “an environment of impunity,” and may thus be criminally responsible.
201. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that torture was committed on S-21 prisoners. These acts inflicted severe mental and physical pain and suffering upon the prisoners, often resulting in death. The injuries from torture were obvious to both detainees and S-21 staff. The torture caused

the prisoners to scream with pain, which could be heard by staff and other prisoners. The practice of torture at S-21 on prisoners was a recognized method of extracting “confessions” from prisoners during the DK regime.

202. Both at M-13 and S-21, **DUCH** had taught methods of torture to his staff, as he was well informed of the impact these methods would have upon victims. **DUCH** ordered and authorised beatings, torture, medical experiments, forcible extraction of blood and inhumane methods of execution. Significantly, by committing acts of torture and mistreating the prisoners himself, **DUCH** set an example to his subordinates and therefore contributed directly to the environment of impunity at S-21.

#### 5. MURDER

203. Murder as a crime against humanity requires three elements: (1) the death of the victim; (2) the death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility; and (3) the act was done, or the omission was made, by the accused, or a person or persons for whose acts or omissions he/she bears criminal responsibility, with an intent to kill or to inflict grievous bodily harm or serious injury, in the reasonable knowledge that such act or omission was likely to cause death. The victim’s body is not required as evidence to prove death.
204. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that at least 12,380 individuals were killed at S-21. The compilation of names of detainees obtained from execution logs and prisoner lists from S-21 (the “Combined S-21 Prisoner List”) provides the most accurate figure of the number of people executed. This figure is supported by other evidence. Although the bodies of those executed have not been individually identified, more than 9,000 human remains have been exhumed from mass graves at Cheung Ek the location where the majority of S-21 detainees were executed. Witness testimony also indicates the existence of hundreds and possibly thousands of additional human remains buried in and around the main S-21 compound. Witness testimony establishing the systematic killing process at S-21 combined with documents found at S-21 indicating written orders to kill, detainee photographs and “confessions” provides corroborative evidence of the killings. Significantly, **DUCH** has

admitted that the figure of 12,380 detainees killed underestimates the actual number of deaths.

205. The evidence demonstrates that the deaths resulted from violent and deliberate acts of killing inflicted by S-21 staff members under the control of **DUCH**, rather than from natural causes. The vast majority of detainees were executed by being clubbed or knifed to death at Cheung Ek. Those killed in or near the S-21 compound were also usually clubbed to death, although a small number were killed in other ways, including by setting them on fire. The forcible extraction of blood, surgery on living prisoners and other pseudo-medical experiments leading to death were premeditated and intentional. Killing by electrocution during interrogation similarly was premeditated or at least reckless as to whether death would occur. The inhumane conditions at S-21 although not specifically designed to kill, in fact caused the deaths of a large number of detainees.
206. **DUCH**, and his subordinates operating under his authority, specifically intended to kill the victims at S-21. **DUCH** and his subordinates knew that, as a matter of CPK policy, everyone detained at S-21 had to be executed. **DUCH** and his subordinates ensured that this policy was carried out. **DUCH** has admitted that he signed lists of prisoners to be executed and annotated other lists with the word “smash” beside the names of the prisoners to be killed. He has also admitted that when his Deputy, **[Person D]**, was away from S-21 he personally took charge of the executions. For particular groups of prisoners, **DUCH** took personal charge of the executions, such as in the case of Vietnamese prisoners of war, high-ranking CPK cadres, and a small number of Westerners who were captured and sent to S-21. **DUCH** admitted that he implemented orders from his superiors to conduct mass executions.
207. Additionally, **DUCH** and his subordinates inflicted grievous bodily harm during the torture of a number of victims in the reasonable knowledge that this was likely to cause death. **DUCH**'s knowledge that torture could and sometimes did lead to death can be established by an incident in which he ordered an interrogator named Pon to torture a particular prisoner named NEY Saran alias Ya, and told Pon that Ya could be tortured to death.

## 6. EXTERMINATION

208. Extermination as a crime against humanity requires two elements to substantiate the offence: (1) that an act or omission resulted in the death of persons on a massive scale; and (2) the accused intended to kill persons on a massive scale or to create conditions of life that lead to the death of a large number of people. Mass killings may be proved by evidence that victims were subjected to conditions that contributed to their death, such as the deprivation of food and medicine, which was calculated to cause the destruction of part of the population. There is no minimum number of victims needed to satisfy the requirement that the scale of deaths must be “massive”; this must be assessed on a case-by-case basis in light of the proven criminal conduct and all relevant factors.
209. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that the number of deaths at S-21 was massive. As described above in the section on murder as a crime against humanity, more than 12,380 people were executed at S-21 and Cheung Ek, and these deaths were the result of a deliberate policy to kill all prisoners at S-21, which was implemented by **DUCH** and his subordinates.

## 7. PERSECUTION

210. Persecution is a crime defined by discrimination on “political, racial and religious grounds.” To substantiate the offence two elements must be satisfied: (1) the act or omission discriminated in fact and either denied or infringed upon a fundamental right defined in either customary international law or treaty law; and (2) the act or omission was carried out deliberately with the intention to discriminate on one of the listed grounds. A single act may be sufficient to constitute persecution as long as both elements are proved, but the particular persecutory acts must be specified.
211. Persecutory acts include acts which are of equal gravity to the enumerated acts of crimes against humanity and thus include murder, extermination, enslavement, imprisonment and torture. Humiliating treatment can constitute persecution, and being forced to witness or hear torture, interrogation and random brutality in a prison camp has been found to constitute psychological abuse and a form of persecution. Prolonged imprisonment may also constitute persecution where it is clearly carried out with the intent to discriminate on

religious, political, or ethnic grounds. Beatings or torture committed because of the political or religious affiliation of the victims can prove the requisite discriminatory intent. The discriminatory intent required can also be inferred from the discriminatory character of a detention centre as a whole.

212. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes the crime of persecution. The persecutory acts are the acts described above in the sections on imprisonment, enslavement, torture, murder and other inhumane acts as crimes against humanity. The discriminatory intent can be inferred from the discriminatory character of S-21 and from the specific acts of **DUCH** and his subordinates. All prisoners were victims of political discrimination because the CPK viewed all opposition, whether real or perceived, as political opposition to the CPK itself. This applied to former soldiers and officials of the Khmer Republic, former CPK cadres and everyone in between. Vietnamese soldiers and civilians were also discriminated against on racial grounds. **DUCH** and his subordinates carried out the persecutory acts with the intention to discriminate on political and/or racial grounds. This intention can be inferred from the fact that **DUCH** and his subordinates knew about the CPK's policies of political and racial discrimination and fully implemented them within S-21.

### GRAVE BREACHES OF THE GENEVA CONVENTIONS

213. Article 6 of the ECCC Law authorises the ECCC to bring to trial individuals suspected of committing grave breaches of the Geneva Conventions ('grave breaches'). The specific offences listed in Article 6 include wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian. Similarly, the ICTY and the ICC have the power to prosecute the same crimes as provided in Article 6 namely the unlawful confinement of a civilian; deprivation of a fair and regular trial; wilfully causing great suffering or serious injury to body or health; torture or inhumane treatment; and willful killing. The elements of these offences are discussed below.

214. For the commission of these offences to constitute grave breaches, certain jurisdictional elements must exist: (1) the specific offences must be committed in the context of and be associated with an international armed conflict; (2) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict; (3) the acts were committed against person(s) or property that was protected under one or more of the Geneva Conventions of 1949; and (4) the perpetrator was aware of the factual circumstances that established this protected status.

## **JURISDICTIONAL REQUIREMENTS**

### **1. INTERNATIONAL ARMED CONFLICT**

215. An international armed conflict must exist in fact. Additionally, there must be a nexus between the international armed conflict and the crimes alleged. An armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between government authorities and organized armed groups or between such groups within a State.” An armed conflict becomes an international armed conflict when the conflict involves two or more States. The nexus requirement between the armed conflict and the crimes alleged is met when the alleged crimes were “*closely related*” to the hostilities. It is not necessary to establish that the crimes were committed in the same area as the actual combat activities.
216. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that an international armed conflict existed between the armed forces of Democratic Kampuchea (DK) and the armed forces of Vietnam from April 1975 and continuing until 6 January 1979. The conflict was between the regularly constituted armed forces of two sovereign States. The overall intensity of the conflict increased over time and border clashes, skirmishes and outright invasions occurred between the two States’ armed forces throughout this period. The armed conflict eventually culminated in the full-scale invasion of Cambodia by Vietnamese forces resulting in the collapse of the DK government.

## 2. PROTECTED PERSON

217. Geneva Convention IV extends “protected person” status to civilians from one of the belligerent states that are “in the hands of a party to the conflict or Occupying Power of which they are not nationals.” This protects civilians who find themselves on territory controlled by an enemy state. Usually protected person status is determined by the citizenship of the person but it can also be determined by applying the “allegiance” test, which focuses on the allegiance of the person to a party to the armed conflict rather than their nationality. Protected status may apply to individuals who have the same nationality as their captors because in modern conflicts victims may be “assimilated” to the external State involved in the conflict, despite the fact that they formally have the same nationality as their captors. Geneva Convention III extends protection to “members of the armed forces of a Party to the conflict” who have “fallen into the power of the enemy.” This class of protected persons is usually referred to as “prisoners of war.”
218. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes the existence of the protected person status of the Vietnamese soldiers, civilians and alleged “spies” who were interrogated and executed at S-21. Between 150 and several hundred members of the regular Vietnamese military who were captured near the border with DK during the course of hostilities were imprisoned and eventually executed at S-21. Having fallen into the power of Democratic Kampuchea, the Vietnamese soldiers were entitled to Prisoner of War status under the Third Geneva Convention. At least 100 Vietnamese civilians were imprisoned at S-21. Finding themselves in the hands of a party to the conflict of which they were not nationals, the Vietnamese civilians were entitled to protected status under the Fourth Geneva Convention. In addition, at least 147 S-21 prisoners were alleged to be Vietnamese “spies”. Some or all of them were entitled to protected status under the Fourth Geneva Convention because they were either Vietnamese nationals or ethnic Vietnamese Cambodians who were believed to owe their allegiance to Vietnam.

## 3. AWARENESS OF FACTUAL CIRCUMSTANCES

219. The perpetrator, in addition to having the requisite *mens rea* for the specific crimes, must:
- (1) be aware of the factual circumstances of the existence of an international armed

conflict; and (2) be aware of the factual circumstances that established the protected status. Knowledge that a foreign State was involved in the armed conflict will satisfy the first element regarding the existence of an international armed conflict. Knowledge that the victim belonged to an adverse party to the conflict will satisfy the second element regarding the status of the victim.

220. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that **DUCH** was aware of the factual circumstances of the international armed conflict between DK and Vietnam and of the protected status of the captured Vietnamese soldiers and civilians. Speeches by the senior leaders of the CPK, Party magazines and other CPK propaganda constantly referred to Vietnam and Vietnamese as the enemy of DK. The RAK fought regular battles with Vietnam throughout the international armed conflict. Vietnamese soldiers in uniform and Vietnamese civilians were captured in large numbers and sent to S-21. **DUCH** has admitted that he knew there was an armed conflict between Cambodia and Vietnam at the relevant time. **DUCH** has admitted that he knew that the Vietnamese captives were soldiers in the Vietnamese army who had been captured on the battlefield or Vietnamese civilians who were captured on Vietnamese territory by DK forces.

## **SPECIFIC OFFENCES**

### **1. UNLAWFUL CONFINEMENT OF A CIVILIAN**

221. The elements of unlawful confinement are identical to the elements of imprisonment as a crime against humanity. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that at least 100 Vietnamese civilians and 147 alleged Vietnamese “spies” were detained arbitrarily at S-21 because of their nationality or because of their perceived allegiance to Vietnam. Their detention was deliberate and the result of orders issued by **DUCH** and his subordinates.

### **2. DEPRIVATION OF A FAIR AND REGULAR TRIAL**

222. Depriving a protected person(s) of a fair and regular trial by denying judicial guarantees as defined, in particular, in the Third and Fourth Geneva Conventions of 1949 is a grave breach of those conventions. The following rights cannot be denied: (1) the right of the

accused to be judged by an independent and impartial court; (2) the right to be promptly informed of the offences with which the accused is charged; (3) the protection against collective penalty; (4) the right to protection under the principle of legality; (5) the right not to be punished more than once for the same act or on the same charge (*ne bis in idem*); (6) the right to be informed of rights of appeal; and (7) the right not to be sentenced or executed without previous judgement pronounced by a regularly constituted court.

223. The evidence on the Case File referred to in the material facts section of this Final Submission confirms that between 150 and several hundred Vietnamese prisoners of war, at least 100 Vietnamese civilians and 147 Vietnamese “spies” were deprived of their rights to a fair and regular trial. As has been established in relation to the crime of imprisonment, there was no functioning legal system in Cambodia during the DK period. Thus there was no effective legal process through which Vietnamese military or civilian prisoners at S-21 could have challenged their imprisonment or status, nor were they able to exercise any of the rights they were entitled to under the Geneva Conventions. All Vietnamese prisoners at S-21, both civilian and military, were executed without trial.

224. **DUCH** has admitted that he knew at the time there were no judicial guarantees or due process for any prisoners at S-21. **DUCH** was aware that Vietnamese prisoners of war and civilians alike were deprived of their right to challenge the legitimacy of their arrest, detention, classification or execution. **DUCH** nevertheless ordered, planned and participated in the arbitrary unlawful detention and execution of the Vietnamese prisoners. He further denied their rights under the Geneva Conventions by ordering and planning the extraction and recording of “confessions” for propaganda purposes.

### 3. WILFULLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR HEALTH

225. This crime is defined as an intentional act or omission which causes serious mental or physical suffering or injury. This category of crimes includes acts which do not fulfill the requirements of torture, although all acts of torture could fall within the scope of this offence. Although the victim must be “seriously” harmed, there is no need to prove that the injury or injuries suffered are permanent or irremediable. This crime is distinguished from that of inhumane treatment because it requires a showing of serious mental or

physical injury. Injuries to an individual's human dignity are not included within this offence.

226. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that between 150 and several hundred Vietnamese prisoners of war, at least 100 Vietnamese civilians and 147 Vietnamese "spies" were wilfully caused serious mental and physical suffering. The prisoners' physical suffering included but was not limited to the acute physical pain and discomfort caused by the inhumane conditions of detention within S-21, the lack of adequate food, medical care and sanitation, and the inhumane methods of execution including beating to death and the slitting of throats and stomachs. The prisoners' mental suffering included but was not limited to: the mental anguish caused by seeing fellow prisoners' wounds from physical abuse and torture, including seeing fellow prisoners die from such wounds, illness or malnutrition; the mental anguish caused by hearing the screams of other prisoners being tortured and killed; and the constant fear of beatings, torture and execution.
227. The evidence of **DUCH**'s and/or his subordinates' intent to cause great suffering or serious injury is clear. Under **DUCH**'s authority, S-21 operated according to a deliberately and systematically imposed series of inhumane conditions of detention and cruel practices of interrogation, torture and execution. The physical and mental suffering of all prisoners was apparent to all staff at the prison, including **DUCH** himself. **DUCH** and his subordinates nevertheless persisted in the commission of the criminal acts. **DUCH** regularly visited the main compound and other S-21 locations. He knew that the prisoners were being beaten and tortured because he had trained the interrogators and ordered the tortures. **DUCH** was aware of the conditions of detention at S-21, having imposed similar conditions at M-13.

#### 4. TORTURE OR INHUMANE TREATMENT

##### *Torture*

228. The elements of torture as a grave breach of the Geneva Conventions are identical to the elements of torture as a crime against humanity. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that the criminal acts of torture as a grave breach were committed. Although there is no specific

evidence that Vietnamese prisoners of war and civilians were tortured, it can be reasonably inferred that, as the vast majority if not all S-21 detainees were tortured, the Vietnamese received the same treatment as described above in the section discussing torture as a crime against humanity. The specific purpose of the torture was to extract “confessions” which would be used as propaganda and broadcast by DK radio. **DUCH** ordered and planned the interrogation and torture of the Vietnamese combatants and civilians by delegating his subordinate [**Witness**] to lead the interrogations.

#### *Inhumane Treatment*

229. Inhumane treatment is defined as an intentional act or omission which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity, committed against a protected person. All acts found to constitute torture or wilfully causing great suffering or serious injury also constitute inhumane treatment. However, this third category of offence also extends to other acts which violate the basic principle of humane treatment, particularly the respect for human dignity. The question of whether any particular act constitutes inhumane treatment is a question of fact to be judged in light of all the circumstances. The evidence supporting the wilful causing of great suffering and serious injury and torture of Vietnamese prisoners of war and civilians described above also demonstrates that they were inhumanely treated.

#### 5. WILFUL KILLING

230. The definition of wilful killing as a grave breach of the Geneva Conventions is identical to the definition of the crime of murder as a crime against humanity (described above) except that it must be proved the victim was a “protected person.” The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that between 150 and several hundred Vietnamese prisoners of war, at least 100 Vietnamese civilians and 147 Vietnamese “spies” were detained and deliberately executed at S-21 on the orders of **DUCH** and his subordinates. Witness testimony, photographs, information obtained from S-21 prisoner lists, surviving “confessions” and documented radio broadcasts all prove the presence and deliberate execution of these protected persons.

## NATIONAL CRIMES

231. **DUCH** is criminally liable for acts of torture and homicide at S-21 under Article 3 (new) of the ECCC Law, which provides this Court jurisdiction over offences against Articles 500, 501, 502, 504, 505, 506 and 507 of the Cambodian Penal Code of 1956.

### 1. TORTURE

232. Torture is an offence pursuant to Article 500 of the 1956 Penal Code. Torture occurs when acts of torture are committed: (1) with the intent to obtain information useful for the commission of a felony or misdemeanour by causing pain; or (2) in a spirit of repression or barbarity.

233. The evidence on the Case File, referred to in the material facts section of this Final Submission and discussed above as torture as a crime against humanity and as a grave breach, establishes that thousands of prisoners at S-21 were tortured. The torture was committed with the intent to obtain “confessions” which resulted in the execution of those tortured and others implicated in these “confessions”. The torture was committed as a tool of repression against those alleged to be “enemies,” and involved barbaric acts of brutality.

234. **DUCH** is therefore criminally responsible as a direct participant for the acts of torture pursuant to Article 500 of the Penal Code. Alternatively, he is criminally responsible as an accomplice for his role in inciting, instructing and aiding and abetting the acts of torture under Article 83 of the 1956 Penal Code.

### 2. MURDER

235. Homicide or premeditated murder is an offence pursuant to Articles 501 and 506 of the Penal Code of 1956. Homicide occurs when death results from acts committed or deliberately attempted with the intent to cause death. If the homicide results from acts accomplished or undertaken deliberately with the aim of causing injury but not death, the act is characterized as homicide without murderous intent pursuant to Articles 501 and 503 of the Penal Code.

236. The evidence on the Case File, referred to in the material facts section of this Final Submission and discussed above as murder as a crime against humanity and willful killing as a grave breach, establishes that at least 12,380 individuals were unlawfully killed at S-21. Those killings arising out of executions or torture were deliberately carried out with the intent to cause death and therefore should be characterized as homicide with murderous intent. Those deaths resulting from the inhumane conditions at S-21 should be characterized as homicide without murderous intent, as **DUCH** was aware of and responsible for creating those conditions whilst making no efforts to improve them or prevent the resulting deaths.
237. **DUCH** is therefore criminally responsible as a direct participant for acts of murder pursuant to Articles 501, 503 and 506 of the Penal Code. Alternatively, he is criminally responsible as an accomplice for his role in inciting, instructing and aiding and abetting the acts of murder pursuant to Article 83 of the 1956 Penal Code.

### LIABILITY

238. Article 29 of the ECCC Law on individual criminal liability states that suspects who “planned, instigated, ordered, aided and abetted, or committed” crimes within the jurisdiction of the ECCC shall bear individual criminal responsibility. Criminal responsibility is also attributed to superiors who fail to prevent or punish crimes committed or committed by their subordinates. The other international or internationalized criminal tribunals such as the ICTY, ICTR, SCSL and the ICC have the power to convict individuals on the same modes of liability namely planning, instigating, ordering, aiding and abetting and committing as well as failing to prevent or punish crimes as a superior. The elements of these modes of liability and their applicability to **DUCH** in this case are discussed below.

## 1. COMMITTED

### PHYSICAL COMMISSION

239. Whilst a crime is typically committed by a single person, several perpetrators can be guilty of committing a crime if “the conduct of each one of them fulfills the requisite elements” of the crime(s) charged. The *actus reus* of commission is when the Accused “physically perpetrates the relevant criminal act or engenders a culpable omission.” As for the required *mens rea* for commission, the Accused must have intended the act or omission and intended for the crime to occur. Alternatively, an Accused’s knowledge or awareness of a “substantial likelihood” that a criminal act or omission would result from his or her conduct is sufficient.

240. The evidence on the Case File and referred to in the material facts section of this Final Submission establishing **DUCH**’s liability based on physical commission is limited to a small but significant number of acts. During the interrogation and torture process at S-21, **DUCH** personally ill-treated and tortured prisoners by slapping, beating, kicking and electrocuting prisoners. **DUCH** also took gratification from ordering prisoners, including **[Witness]**, to fight each other. In the final days of S-21, **DUCH** played a personal role in killing some remaining high-ranking prisoners. The circumstances surrounding **DUCH**’s physical perpetration of the ill-treatment and torture of prisoners clearly indicates that he intended these crimes to occur.

### VIA JOINT CRIMINAL ENTERPRISE

241. Committing an offence through a joint criminal enterprise (“JCE”) has been recognised in the case law of the ICTY, ICTR and the SCSL. As the ECCC Law was drafted after the creation of the ICTY and ICTR Statutes and contains very similar language on modes of liability, it is very likely that the language of Article 29 of the ECCC Law was also intended to encompass joint criminal enterprise.

242. JCE is a mode of liability that imposes criminal responsibility on individuals for actions perpetrated by a collectivity of persons in furtherance of a common criminal design. While the technical term “JCE” is quite modern, the underlying legal concepts have existed in both national and international law since at least World War II. There were thousands of

criminal trials that arose out of crimes committed during World War II, both national and international in character. These trials established that individuals could be criminally liable as co-perpetrators for their participation in a common criminal plan or design, even if the mode of liability was not called JCE.

243. In 1945, Article 6 of the Charter of the International Military Tribunal (IMT) stated that individuals “participating in the formulation or execution of a common plan or conspiracy” to commit war crimes, crimes against humanity or crimes against peace would be “responsible for all acts performed by any persons in execution of such plan.” A similar provision appeared in Article 5 of the International Military Tribunal for the Far East in 1946. Article II of Control Council Law No. 10 (1945) also extended liability to individuals who were “connected with plans or enterprises” to commit crimes against peace, war crimes or crimes against humanity. As the ICTY Appeals Chamber demonstrated in *Tadic*, there were numerous World War II trials where people were held to be liable for their participation in a common criminal plan or purpose.

244. While the concept of JCE first appeared in international law shortly after World War II, it was not a new idea at that time. Rather, the concept that multiple individuals can be equally liable for criminal acts resulting from participation in a common criminal plan or design had its origins in the domestic laws of various countries and exists in both common law and civil law jurisdictions. A similar idea was also present in Cambodian law prior to the commission of the crimes described in this final submission. The 1956 Penal Code made any voluntary participant in a crime, whether a direct or indirect participant, equally liable with the principal author of the crime. Consequently, **DUCH** could reasonably have foreseen that he would be directly liable for the acts of other S-21 staff if they were carried out pursuant to a common criminal plan or design.

245. There are three different but interrelated forms of JCE. Basic: all Accused participants act pursuant to a common criminal design, and all possess the same criminal intent when acting in fulfillment of the common criminal design. Systematic: all Accused participants act pursuant to a common criminal design, all possess the same criminal intent when acting

in fulfilment of the common criminal design, and the charged crimes occurred in the context of a common criminal design *usually* carried out by members of a military or administrative unit. Typically, this form of JCE is associated with concentration or extermination camps or any “organized system of ill-treatment.” The existence and/or membership in a military or administrative unit is not a formal requirement, but merely an indicator of an organized system of ill-treatment. Extended: all Accused participants act pursuant to a common criminal design, all possess the same criminal intent when acting in fulfilment of the common criminal design, and one of the participants carries out an act that, despite being outside of the original criminal purpose, is nevertheless attributed to the other members because the act was a “natural and foreseeable consequence” of the criminal design.

246. The *actus reus* of all types of JCE is comprised of three elements. First, a “plurality of persons” is required. The group of people need not be organized in any formal or informal structure, such as a military, political, or administrative organization. Second, a common criminal design or purpose must entail criminal activity prohibited under the statute of the tribunal with jurisdiction over the Accused(s). The common criminal purpose, design, or plan need not be previously arranged or formulated. The perpetrator of the crime and the Accused need not have an express understanding or agreement between them in regards to committing the crime(s). Additionally, the common criminal plan or purpose may materialize extemporaneously and can be inferred from the facts. Third, the Accused must participate in some capacity with the common criminal design. The Accused’s contribution needs not be necessary, but must be significant for carrying out the common criminal plan. The presence of the Accused at the time when the crime is committed is not necessary.
247. Whereas the three forms of JCE share these same elements of *actus reus*, they do not share the same *mens rea*. The “basic” JCE form requires that the Accused has the intent to perpetrate the charged crime(s) and all participants of the common criminal design share this intent. The “systematic” form of JCE requires a similar level of criminal intent: the Accused must have personal knowledge of the system of ill-treatment and the intent to further that system. Members of a JCE can be liable for crimes physically committed by

outsiders to the JCE if these crime(s) form a part of the common criminal purpose and one member of the JCE uses the outside perpetrator(s) as a tool to carry out the common criminal purpose.

248. As for the extended JCE form, the accused must have the intention to take part in and contribute to the common criminal purpose. Liability for those crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, requires two additional elements. The accused must know that such crimes might be perpetrated by a member of the group and willingly took that risk by joining or continuing to participate in the enterprise. If an outside perpetrator commits a crime beyond the scope of the JCE, the Accused is responsible under extended JCE whenever:

- (a) the Accused participated in the common criminal design with the requisite intent;
- (b) the commission of such crime by an outside perpetrator was a natural and foreseeable consequence of the common criminal purpose; and
- (c) the Accused nevertheless willingly took this risk and decided to participate in the common criminal purpose.

249. Jurisprudence specifically relating to prison camps has established that where detainees have been unlawfully imprisoned, kept in inhumane conditions, beaten, tortured and executed, these crimes can be seen as manifestations of a JCE. Accordingly, prison commanders or deputy commanders have been found to be co-perpetrators of JCEs within prison camps. At the ICTY the factors indicating such an enterprise have been identified as follows :

- (a) the fact that guards sought instructions from a commander and that he gave them orders that they then executed;
- (b) the significant contribution of the commander's presence during the early stage of the prison camp's existence, his participation in its formation, and his experience as a police officer; and
- (c) the key role of the commander in the everyday functioning and maintenance of the camp which contributed to the continued discriminatory criminal practices.

250. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that **DUCH** committed the crimes described as a participant in a JCE. The JCE came into existence on 15 August 1975 when SON Sen instructed [**Person C**] and **DUCH** to set up S-21. The JCE existed through October 1975, when S-21 began its full-scale operations, to at least 7 January 1979 when the DK regime collapsed. The purpose of the JCE was the systematic arrest, detention, ill-treatment, interrogation, torture and execution of “enemies” of the DK regime by committing the crimes described in this Final Submission. An organized system of repression existed at S-21 throughout the entirety of the duration of the JCE. All crimes occurring in S-21 and described in this Final Submission were within the purpose of this JCE.
251. **DUCH** participated throughout the entire existence of the JCE, together with other participants in this JCE who themselves participated for various durations and who included the former Secretary of S-21 [**Person C**], and the other members of the S-21 Committee, namely [**Person D**] and [**Person E**] as well as their subordinates.
252. **DUCH** participated in the JCE as a co-perpetrator. **DUCH** and the other members of the JCE acted according to the common purpose and with the shared intent to bring about this common purpose (the “basic” form of JCE ). Additionally, **DUCH** actively participated in the enforcement of the system of repression at S-21 through his positions as Deputy and then as Secretary. **DUCH** was fully aware of the nature of this system of repression at S-21. Together with the other members of the JCE, **DUCH** intended to further the system of repression at S-21 (the “systematic” form of JCE).
253. Alternatively, the crimes enumerated in this Final Submission were the natural and foreseeable consequences of the execution of the purpose of the JCE. **DUCH** was aware that such crimes were a possible consequence of the S-21 enterprise and with that awareness decided to participate in the enterprise (the “extended” form of JCE). He could foresee that potential outside perpetrators would commit barbarous crimes while fulfilling their tasks and nevertheless decided to participate in the enterprise.

## 2. ORDERED

254. The act of ordering occurs when “a person in a position of authority us[es] that position to convince another to commit an offence.” The order is not required to be illegal on its face nor is it necessary that the order be given directly or personally by the Accused to the perpetrator(s). Reissuing an order by passing an illegal order down the chain of command similarly creates criminal liability. The Accused must have the authority to order for liability to arise, however the jurisprudence is unsettled whether a formal superior-subordinate relationship is necessary. The order can either be explicit or implicit and be proved circumstantially. As to intent, the Accused must directly or indirectly have intended for the underlying crime(s) to be committed. He or she must have the knowledge that the execution of the order would lead to the substantial likelihood that a crime will be committed.
255. Jurisprudence specifically relating to prison camps has established that prison commanders can be held liable for ordering the mistreatment of detainees during interrogations as well as for ordering serious violence towards detainees who were regularly beaten after the commander initially led the guards who beat them to their cells. One prison commander was also convicted for ordering guards to continue beating detainees when they had initially stopped.
256. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that **DUCH** ordered the commission of the crimes at S-21. **DUCH** was at the top of the chain of command inside S-21. This position enabled him to intervene in S-21’s criminal activity at every level. **DUCH** exercised this authority both by ordering his subordinates to commit specific crimes and also by transmitting the orders he had received from his superiors. **DUCH** personally issued orders to carry out torture. The killing of almost all S-21 detainees also followed orders of **DUCH** either issued directly, orally or in writing, or indirectly through the delegation of his authority to [**Person D**] and the Defence Section.

### 3. PLANNED

257. Planning a crime implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution stage. The act of planning a crime must be sufficiently “substantial” to justify individual criminal liability, such as “formulating a criminal plan or endorsing a plan proposed by another.” Evidence of “planning a crime” may be circumstantial. Additionally, the Accused must have the criminal intent, directly or indirectly, that the planned crime be committed.
258. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that **DUCH** planned the crimes at S-21. In August 1975 together with **[Person C]**, **DUCH** attended the meeting at which SON Sen announced the creation of S-21. **DUCH** had resided in the same premises as the senior leaders after the fall of Phnom Penh and fully endorsed the plans suggested by his superior. Given his previous security experience as Secretary of M-13 and the substantive and highly sensitive tasks he was charged with immediately after the decision, it can be reasonably inferred that **DUCH** also contributed to the planning and design of S-21. **DUCH** was fully aware of the nature and function of the institution the Party Centre intended to establish.
259. Specifically in relation to the arrests, **DUCH** also took part in the planning of certain arrests by participating in meetings with SON Sen and other senior cadre, corresponding with the chairmen of the units from which the arrests would take place and by sending his own S-21 staff to facilitate the arrests from within the units in advance. **DUCH’s** conduct contributed substantially to the commission of the crimes. He knew the purpose behind the creation of S-21, the purpose of the arrests and of the ultimate fate of all those detained at S-21. These facts therefore provide the basis from which it can be inferred that **DUCH** planned the crimes at S-21.

### 4. INSTIGATED

260. Instigating a crime means to “prompt another to commit an offence” and is synonymous with “provoke” and “incite”. The *actus reus* of instigation is “urging, encouraging, or prompting.” A causal connection between the instigation and the underlying crime(s) is necessary. The instigation must have been a “clear contributing factor to the conduct of the

person who actually committed the crime.” Instigation can be an act or an omission. The mere presence of someone holding authority who fails to act has been held to be an act of instigation. In terms of the *mens rea* element, the Accused must have “intended to provoke or induce the commission of the crime.” The awareness of the substantial likelihood that the crime(s) would be committed as a consequence of the Accused’s actions is sufficient.

261. Jurisprudence specifically relating to prison camps has found camp staff liable for instigating mistreatment on detainees during their interrogation and detention by bringing guards who beat the prisoners to their cells and by remaining silent when they could have opposed or repressed the abusive treatment. Prison commanders have also been held liable for instigating persecutions, murder, torture, and beatings of detainees by not taking action while in a position of authority and influence, and by virtue of the commander’s “approval, encouragement, acquiescence, and assistance in the development and continuation of the conditions in the camp and the on-going commission of crimes” against the prisoners within the prison.
262. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes **DUCH** instigated the commission of the crimes at S-21. **DUCH** exercised this authority both by encouraging his subordinates to commit specific crimes and by transmitting the orders he had received from his superiors. Besides his orders and threats of punishment for their disobedience, his presence and participation in every stage of S-21’s operations contributed clearly to the crimes described in this Final Submission. The leadership he exercised over all subordinate staff at S-21 was the key factor that resulted in them remaining committed to their work and continuing to perform their criminal activities. **DUCH’s** actions show his intent to instigate or induce the commission of those crimes and that he was aware of the substantial likelihood that the crimes would be committed as a consequence of his instigation.

## **5. AIDED AND ABETTED**

263. Aiding and abetting a crime is otherwise known as accessory or accomplice liability. To aid and abet is to give “practical assistance, encouragement, or moral support” to the

perpetrator that “substantially contributes” to the commission of the crime. Substantial contribution means that the crime would most likely not have occurred in the same manner had it not been for the accused’s participation. However, the accused’s role need not be indispensable. The mere presence of the accused can be an act of aiding and abetting if the presence is shown to have significantly encouraged the perpetrator(s). The aiding and abetting can occur before, during, or after the commission of the crime(s). Whilst it needs to be established at trial that the underlying crime(s) was in fact committed, this should not be conflated with a simultaneous prosecution or conviction of the direct perpetrator(s).

264. As for the requisite criminal intent, the accused is not required to “share” the *mens rea* of the perpetrator(s), nor to know the precise crime(s) that the perpetrator(s) intended to commit or actually did commit. The accused, however, must: (1) be aware of or know that his or her acts will assist in the commission of a crime(s); (2) be aware of the essential elements of the crime(s); and (3) know the intentions of the perpetrator(s).
265. Jurisprudence specifically relating to prison camps has established that defendants are criminally liable who aided and abetted “recurring brutality” and violence in prisons. In the circumstances of the *Aleksovski* case, the accused was found to have led the guards to the cells of the detainees who were then beaten by the guards, in addition to being occasionally present during the frequent beatings or being nearby in his office. The presence of an accused during the systematic mistreatment of detainees created an inference that he was aware that such tacit approval would be construed as a sign of support and encouragement.
266. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that, in the alternative to his liability for committing the crimes at S-21, **DUCH** is responsible for them as an aider and abettor. He participated at every stage of S-21’s operations and contributed substantially to the crimes described in this Final Submission. He provided practical assistance, encouragement and support to the perpetrators. His mere presence must be considered an act of aiding and abetting, as it significantly encouraged the perpetrators to commit the crimes. **DUCH** knew that his

presence would have such an effect. **DUCH** was aware of and knew that his acts would assist in the commission of the crimes. He was aware of the essential elements of those crimes and knew the intentions of the perpetrators, who were working under his orders and effective control.

## 6. SUPERIOR RESPONSIBILITY

267. Superior or command responsibility is a form of criminal liability which is firmly entrenched in customary and conventional international law and applies regardless of the nature of the underlying conflict, be it internal or international. In order to establish criminal liability through superior responsibility, three elements must be satisfied:

- (a) a superior-subordinate relationship;
- (b) the superior knew or had reason to know that his or her subordinate had committed or was about to commit a crime;
- (c) the superior failed to prevent the commission of the crime or to punish the perpetrators.

268. As for the first element, a superior-subordinate relationship can exist either formally or informally, and either directly or indirectly between the accused and the alleged perpetrator(s) of the crime(s). An accused must have either *de jure* or *de facto* authority over the perpetrator(s) which may apply to civilian as well as military commanders as long as the civilian exercises control similar to that of a military commander. A superior-subordinate relationship exists if the accused had “effective control” over the perpetrator(s), meaning that the accused could have prevented the crime(s) from being committed or could have punished the perpetrator(s) who committed the crime(s). This must be more than simply substantial influence. An accused may possess either permanent or temporary “effective control” over the perpetrator(s), but this must have existed at the time of the commission of the crime(s).

269. An accused failed to prevent and punish when he failed to exercise “necessary and reasonable measures to prevent or punish the crimes of his subordinates”. An individual determination must be made of the measures legally required of each accused, but there are a number of basic obligations every superior must follow. As a minimum requirement, an

accused must “investigate the crimes to establish the facts and report them to the competent authorities, if (he) does not have the power to sanction himself.” A superior may be required to go beyond legal or structural formalities in an effort to prevent and/or punish the commission of crimes. The failure to prevent or to punish must be the product of a deliberate, culpable, or wilful choice on the part of the accused to disregard his or her duty. Mere negligence is not sufficient.

270. For both military and civilian commanders, the mental element of superior responsibility requires the accused to have known or have had reason to know that his subordinates had been about to commit or had committed a crime. “Knew” means actual knowledge, whereas “had reason to know” means that the accused “had in his possession information of a nature, which at the very least, would put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates.” The accused must not deliberately refrain from fulfilling his duty as a superior by ignoring or disregarding evidence of criminal activity. Knowledge must correlate to the crimes for which the accused is prosecuted.
271. Jurisprudence specifically relating to prison camps has established that an accused had reason to know that specific crimes inside a prison had been committed from both the external context (namely the circumstances in which the prison was established) and the internal context (namely the operation of the prison, in particular the widespread nature of the beatings and the frequency of the interrogations). Camp commanders have been found to have effective control because they had power to issue orders to their subordinates, held an elevated status within the prison, and had the right to report offences by their subordinates to superior authorities.
272. The evidence on the Case File and referred to in the material facts section of this Final Submission establishes that **DUCH** bears superior responsibility for crimes committed at S-21. In his capacity as Deputy Secretary and then Secretary of S-21, **DUCH** was respectively the second highest and the highest authority within S-21. These positions gave

him effective control over the immediate perpetrators of the crimes. **DUCH** exercised complete, effective and overall *de jure* and *de facto* command and control over all subordinate staff at S-21, which operated following military principles. All perpetrators were under an obligation to carry out every order given by **DUCH**. His authority existed over the whole period of S-21's operation. Even during **[Person C]**'s chairmanship, **DUCH** was Deputy Secretary of the S-21 Committee and its second highest ranking cadre. This position would have equally enabled him to issue orders preventing or punishing the crimes. **DUCH** had a minimum obligation to report to **[Person C]** with a view to preventing or punishing the crimes. **DUCH** never took such an initiative to intervene in this way.

273. **DUCH** knew or had reason to know that the crimes alleged in this Final Submission were about to be or had been committed by his subordinates. **DUCH** was involved in every phase of the S-21 cycle, from coordinating the arrests, receiving new prisoners, through to their interrogation, torture, "confessions" and their ultimate execution. As a participant in the meeting at which SON Sen announced the creation of S-21, **DUCH** knew about the purpose of S-21 and about the fate of every individual prisoner. This knowledge gave him sufficient reason to assume that the numerous crimes detailed in this Final Submission were about to be committed at S-21. Although **DUCH** might not have actually known of every individual crime alleged in this Final Submission, he had reason to know about all of them. Given the efficient reporting structure, the close monitoring of staff activity, and his contribution to the setting-up of S-21, **DUCH** certainly had information of a nature that made him aware of the risk that the crimes were about to be or had been committed.
274. **DUCH** failed to comply with his obligation to prevent or punish his subordinates who committed the crimes. **DUCH** had a duty under international criminal law to investigate and establish the facts of the crimes and to impose appropriate punitive measures. **DUCH** made no efforts to initiate any legitimate investigation into the crimes committed by his subordinates. Although **DUCH** punished S-21 staff for failure to implement his criminal orders, follow S-21 rules or for non-compliance with Party policy, he did not discharge his

responsibility as a superior because he had no intention to punish as crimes the criminal behaviour of his staff.

## CHARGES

275. Given the facts set out herein, we, the Co-Prosecutors of the Extraordinary Chambers in the Courts of Cambodia therefore find that **Kaing Guek EAV alias DUCH**, born on 17 November 1942 in Chayok Village, Kampong Chen Tbaung subdistrict, Stung District, Kampong Thom province, Cambodia by his acts and omissions, must be prosecuted in accordance with Article 6 (3) of the Agreement and Article 2 of the Law on the following charges :

(a) **VIOLATIONS OF THE 1956 PENAL CODE**, punishable under Articles 3 (new), 29 (new) and 39 (new) of the ECCC Law, specifically :

- (1) homicide (Article 501, 503 and 506);
- (2) torture (Article 500).

(b) **CRIMES AGAINST HUMANITY**, punishable under Articles 5, 29 (new) and 39 (new) of the ECCC Law, specifically :

- (1) murder;
- (2) extermination;
- (3) enslavement;
- (4) imprisonment;
- (5) torture;
- (6) persecutions on political, racial and religious grounds;
- (7) other inhumane acts;

(c) **GRAVE BREACHES OF THE GENEVA CONVENTIONS OF 12 AUG 1949**, punishable under Articles 6, 29 (new) and 39 (new) of the ECCC Law, specifically :

- (1) wilful killing;
- (2) torture and inhumane treatment;
- (3) wilfully causing great suffering or serious injury to body or health;

- (4) wilfully depriving a prisoner of war or civilian the rights of fair and regular trial;
- (5) unlawful confinement of a civilian.

276. We **SUBMIT** the Criminal Case File No.002 dated 14 August 2006 with the Investigation No. 001/18-07-2007/ECCC/OCIJ to the Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia to act upon the law and **REQUEST** that the Charged Person be sent to the ECCC Trial Chamber for hearing on the entirety of the facts relating to Office S-21.

277. We **REQUEST** that the Charged Person be maintained in Provisional Detention until he is brought before the Trial Chamber pursuant to Rule 68 (1) of the Internal Rules, considering that the grounds for provisional detention pursuant to Rule 63 (3) of the Internal Rules as found by the Co-Investigating Judges and the Pre-Trial Chamber are still satisfied.

Respectfully submitted,

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CHEA Leang  
Co-Prosecutor

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Robert PETIT  
Co-Prosecutor

Signed in Phnom Penh, Kingdom of Cambodia on this 18th day of July 2008.