



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King

Royaume du Cambodge  
Nation Religion Roi

## **SUMMARY OF JUDGEMENT**

**Case File 001/18-07-2007/ECCC/TC (KAING Guek Eav)**

**26 July 2010**

### A. Introduction

1. The following is a summary of the Chamber’s findings in the judgement. The authoritative account of those findings is contained in the written judgement, which will be made available in its Khmer, French and English versions following this hearing.

2. At the outset, the Chamber wishes to express its gratitude to the Parties, the interpreters, translators, court officers and transcribers, ECCC administrative, audio-visual and security staff, the Chamber’s own staff, and all others who have contributed to the smooth and efficient conduct of this trial.

3. The trial proceedings commenced on 17 February 2009 and concluded on 27 November 2009. Over the course of 72 trial days, the Chamber heard the testimony of 24 witnesses, 22 Civil Parties and nine experts. Approximately 1,000 documents were put before the Chamber and subjected to examination. The length of the proceedings and that of the judgement reflects both the historic nature of this trial, the first before the ECCC, and the scope of the charges against the Accused.

4. The Accused was charged under all form of responsibility set out in Article 29 (new) of the ECCC Law for his alleged role in crimes said to have been committed between 17 April 1975 and 6 January 1979 at the S-21 security centre. Specifically, the Accused was alleged to have served as Deputy and then Chairman of S-21 and to be responsible for the crimes against humanity of murder, extermination, enslavement, imprisonment, torture, rape, persecution on political grounds, and other inhumane acts. He was also charged with the grave breaches of the 1949 Geneva Conventions of 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 of the rights of fair and regular trial, and unlawful confinement of a civilian, as well as pre-meditated murder and torture as violations of the 1956 Penal Code of Cambodia.

5. In its separate “Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes,” which is also issued today, the Chamber explains that it has not examined the responsibility of the Accused for the charges of premeditated murder and torture as violations of the 1956 Penal Code of Cambodia, punishable before the ECCC pursuant to Article 3 (new) of the ECCC Law. As this decision indicates, the Chamber was divided on the question of whether responsibility for these crimes had been extinguished before the ECCC investigation of the Accused commenced. The absence of the required majority on this issue created a barrier to the Chamber’s exercise of jurisdiction in relation to these national crimes.

6. In its judgement, the Chamber has detailed the reasons supporting its exercise of jurisdiction over the Accused. The Chamber concurs with the assessment of the Co-Investigating Judges that KAING Guek Eav was one of the persons allegedly most responsible

for the crimes committed in Democratic Kampuchea between 17 April 1975 and 6 January 1979.

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

#### B. Historical and Political Context

8. As a preliminary matter, the Chamber examined the context in which the Democratic Kampuchea regime took power. The Chamber found that border clashes between Cambodia and Vietnam occurred soon after the fall of Phnom Penh to the army of the Communist Party of Kampuchea on 17 April 1975. During most of the period of the Democratic Kampuchea regime, Cambodian and Vietnamese armed forces engaged in increasingly violent hostilities, which culminated in the fall of Phnom Penh on 7 January 1979 and the Democratic Kampuchea leadership fleeing the capital.

9. The Chamber also examined the general structure and policy of the Communist Party of Kampuchea during the relevant time, particularly as it applied to the operation of S-21. The Communist Party of Kampuchea met at a Party Congress in January 1976 to formalise by statute a complex, centrally-organised structure, which sought to place the entire government apparatus and the armed forces under its complete control. In practice, power within Democratic Kampuchea was exercised by the Standing Committee, the executive branch of the Central Committee, whose membership comprised the Secretary or Prime Minister, POL Pot and a select number of other high-level members of the Communist Party of Kampuchea. All bodies, including the military, were required to report to the Central Committee through the Standing Committee. Further, the entire civilian population was governed by a network of bodies tightly controlled by the Central Committee through the Standing Committee. Communist Party of Kampuchea policy was disseminated throughout Democratic Kampuchea by various means, including directives, rallies, trainings, radio broadcasts and periodicals. The most critical aspect of Communist Party of Kampuchea policy in relation to this trial was known as “smashing”: a term used to describe the arrest, interrogation and execution of individuals perceived to be enemies or spies.

10. It is against this historical and political backdrop that the Chamber has examined the charges against KAING Guek Eav.

#### C. S-21 and the role of the Accused

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



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

13. Following an initial meeting with SON Sen, the Accused, as the Deputy of S-21 Chairman IN Lorn *alias* Nat, established and began supervising the S-21 interrogation unit in October 1975. The Accused had four main tasks as head of the interrogation unit: (i) collating documents collected from the institutions of the LON Nol government; (ii) preparing reports for his superiors based on these documents; (iii) teaching interrogation methods to the staff of the interrogation unit; and (iv) reporting detainees' confessions to his superiors. The Accused acknowledged that, as Deputy, he permitted S-21 interrogators to use torture. The Accused was also aware that, following the completion of their interrogation, detainees were taken away and executed.

14. In March 1976, the Accused replaced IN Lorn *alias* Nat as Chairman of S-21. In that capacity, the Accused reported to SON Sen from March 1976 until September 1977 and then to NUON Chea, the Communist Party of Kampuchea Deputy Secretary. In conjunction with his appointment as Chairman of S-21, the Accused was named Secretary of the S-21 Committee. As Chairman and Secretary, the Accused had full authority over all S-21 staff, including the two other members of the S-21 Committee, KHIM Vak *alias* Hor, and NUN Huy *alias* HUY Sre. The role of the Accused as the undisputed head of S-21 is confirmed by the Accused's own admissions, the testimony of Witnesses and Civil Parties, as well as documents put before the Chamber during the proceedings.

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

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

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

*Recruitment of staff:* The Accused acknowledged that a number of his S-21 staff were former M-13 subordinates. Further, he agreed that, as Chairman of S-21, he continued his former M-13 practice of recruiting young and impressionable staff to work as his subordinates.

*Training of staff:* Teaching, particularly political training, was one of the most significant responsibilities of KAING Guek Eav at S-21, who noted that he alone was responsible for



educating those who worked there. Further regular sessions at the training school included practical training in interrogation methods, increasing from annually in 1977 to monthly and weekly sessions in 1978. The Accused trained his interrogators to use physical and psychological violence but instructed them to keep detainees alive until he considered their confessions to be complete.

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

*Role as regards confessions:* The Accused reviewed detainees' confessions and provided continued instructions to the interrogators, including on the use of torture, until he considered a confession to be complete. A confession was improper if it was deemed insufficiently detailed or it failed to name other "traitors". Following his review, the Accused was solely responsible for communicating the detainees' confessions and the list of those they had implicated to his superiors. The Accused was aware that much of the information in the confessions he passed along to his supervisors was fabricated. S-21 confessions were nevertheless used to decide upon the arrest of those denounced as enemy agents and often led to the arrest of many others implicated as traitors.

*Role in executions:* Initially, the Accused allowed his Deputy KHIM Vak *alias* Hor to manage the timing of the detainees' executions. However, following an incident in which a detainee was killed before he provided a complete confession, the Accused insisted on personally verifying that an interrogation was complete before a detainee could be executed.

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

19. The Accused also exercised authority over S-24, also known as Prey Sar, which was located outside of Phnom Penh and used as a re-education camp. NUN Huy *alias* HUY Sre worked exclusively at S-24, where he directly oversaw its day-to-day operations. Following HUY Sre's arrest in December 1978, Phal was assigned to directly manage S-24 until its abandonment on 7 January 1979. Throughout, the Accused received regular reports regarding the operations of S-24. Detainees at S-24 largely comprised the relatives or subordinates of people detained at S-21, and of combatants and personnel from ministries or from other public institutions. Based on the limited and fragmentary documentation placed before it, the Chamber has found that no fewer than 1,300 individuals were detained at S-24.

#### D. Facts Relevant to Crimes Against Humanity committed at S-21

20. During the course of the trial, evidence was put before the Chamber regarding the following crimes against humanity committed at S-21. Other facts which specifically concern Vietnamese prisoners of war and civilians, as well as Vietnamese sympathisers detained at S-21, have also been addressed by the Chamber in relation to grave breaches of the Geneva Conventions of 1949.

*Murder and extermination:* Every individual detained within S-21 was destined for execution in accordance with the Communist Party of Kampuchea policy to "smash" all enemies. Amongst those executed were former LON Nol supporters, foreign nationals,



children, high-ranking detainees and former S-21 staff. Mass executions of detainees were ordered by the Party Centre and also took place on several occasions. In addition to those who were executed, many detainees died as a result of torture and their detention conditions. Further, at least 100 S-21 detainees died after having been literally bled to death by the S-21 Medical Unit. The Accused acknowledged that the number of detainees who died or were executed was greater than the 12,273 individuals contained in the Revised S-21 Prisoner List.

*Enslavement:* The Accused agreed that S-24 was a place of enslavement where detainees, known as “elements”, performed forced labour. Witnesses BOU Thon and MEAS Pengkry, as well as Civil Party CHIN Met, described the harsh working conditions they were forced to endure during their detention at S-24. In addition, a very limited number of detainees were forced to work within S-21. They included Witness VANN Nath and Civil Parties BOU Meng and CHUM Mey, all of whom were first arrested, shackled and imprisoned at S-21, before being selected to work within the S-21 complex.

*Imprisonment:* At least 12,273 men, women and children were detained at S-21. Some destined for S-21 were arrested by stealth, others simply handcuffed, blindfolded, processed and taken ultimately to a cell or large room where they would be shackled alongside other detainees. S-24 also detained several hundred men, women and children at any one time. With rare exceptions, none of the detainees were released. There was no trial, or other mechanism to challenge their arrest, detention or execution. The Accused conceded that the practice of arrest, detention and execution without recourse to trial was not compatible with the existence of tribunals and procedural safeguards.

*Torture and rape:* A variety of torture techniques were applied within S-21. The Accused admitted that interrogators were permitted to use four violent interrogation techniques: beating, electrocution, asphyxiation with a plastic bag, and “water-boarding”. In addition to these four authorised methods, the Accused recognised that a number of additional techniques were carried out by interrogators, including one incident where an S-21 staff member inserted a stick into the vagina of a detainee during the interrogation. The use of these various interrogation techniques were designed to obtain confessions, which detailed the detainee’s biography, the nature of the crimes and “traitorous” activities and his or her personal involvement in them, as well as networks of “traitors”.

21. The Chamber heard testimony from former S-21 detainees who endured these interrogation sessions. Civil Party BOU Meng testified that he was tortured twice a day over two consecutive weeks. He was shackled by the ankles and forced to lie face down on the ground, whilst derogatory language was used against him. His interrogators showed him the torture equipment and asked him to select the device he preferred. They took turns beating him on the back with a rattan stick and a whip, causing him to bleed all over the floor. He was also electrocuted resulting in his loss of consciousness. Civil Party BOU Meng still has scars as a result of these beatings. Every time he was beaten, he was asked questions regarding his involvement with the CIA and the KGB. Civil Party CHUM Mey, another former S-21 detainee, stated that he was interrogated for twelve days and nights. During these interrogations, he was repeatedly beaten and lashed with sticks. When he persisted in denying any involvement with the CIA or KGB, an interrogator pulled out toenails from both his feet, causing him to tremble in pain. He was also electrocuted on two occasions and fell unconscious each time. The interrogation only stopped after he “confessed” to having joined both the CIA and the KGB.

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



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

*Other inhumane acts:* The Accused agreed that the living conditions, combined with the detention, interrogation and disappearance of detainees, severely impaired their physical and psychological health and that they lived in a permanent climate of fear. Moreover, detainees suffered from a lack of adequate food, sanitation and medical treatment. The sole purpose of any medical treatment provided was to keep the detainees alive for their interrogations. Evidence was also put before the Chamber regarding the mistreatment of detainees at Choeng Ek and S-24.

*Persecution on political grounds:* Persecution describes the violation of fundamental rights, committed on a discriminatory basis. This is an umbrella offence that may encompass a number of other specified crimes, where the required discriminatory intent is proved. The denial of fundamental rights which the Amended Closing Order indicate amounts to persecution comprise the discrete crimes against humanity of murder, extermination, enslavement, imprisonment, torture (including rape), and other inhumane acts. The Chamber has described the nature of these offences committed at S-21 and will detail its findings on whether they amount to persecution later in this summary.

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

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

25. The Chamber is further satisfied that the necessary preconditions for crimes against humanity (namely, the existence of a widespread or systematic attack directed against any civilian population on national, political, ethnical, racial or religious grounds) to have existed at the relevant time. In light of its findings regarding S-21, the Chamber has found that offences charged in the Amended Closing Order pursuant to Article 5 of the ECCC Law have been established. By a majority, the Chamber has also found that these offences cumulatively amount to persecution on grounds that the Accused's criminal conduct in relation to them was accompanied by a specific intent to discriminate on political grounds.

26. The Chamber is also satisfied that an international armed conflict existed between Democratic Kampuchea and Vietnam at all times relevant to the charges against the Accused and that the necessary preconditions for conviction under Article 6 of the ECCC Law, which concerns grave breaches of the Geneva Conventions of 1949, were satisfied. The Chamber has found that Vietnamese prisoners of war and civilians as well as Vietnamese sympathisers detained at S-21 were subjected to the same detention conditions as other detainees and were also destined for execution, with no more favourable conditions applying to them due to their nationality or protected status. In light of the Chamber's previous findings regarding S-21, it follows that the grave breaches of wilful killing, torture and inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and unlawful confinement of a civilian, punishable pursuant to Article 6 of the ECCC Law, have also been made out.



27. There remains the further issue of whether the Accused has been proven to be criminally responsible for the offences committed at S-21.

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

29. The Chamber has determined, however, that commission through participation in a joint criminal enterprise is an applicable mode of responsibility both before the ECCC and in the present case, at least in its basic and so-called systemic forms. In particular, the Chamber made extensive findings regarding the criminal nature of the S-21 system supervised by the Accused. This clearly resonates with the second, systemic form of joint criminal enterprise, which has been applied before other international tribunals in relation to detention facilities or other organized structures carrying out systemic abuses against detainees.

30. The Chamber has found that, following the 15 August 1975 meeting with SON Sen, the Accused helped establish S-21, along with IN Lorn *alias* Nat, its initial Chairman. As Chairman and Secretary of S-21, the Accused continued to refine and direct S-21's operations with the assistance of the junior members of the S-21 Committee, namely KHIM Vak *alias* Hor, and NUN Huy *alias* HUY Sre, until its abandonment on 7 January 1979. The Accused acted with these individuals, and through his subordinates, to operate the S-21 complex, a facility dedicated to the unlawful detention, interrogation and execution of perceived enemies of the Communist Party of Kampuchea, both domestic and foreign. A concerted system of ill treatment and torture was purposefully implemented, designed to subjugate detainees and obtain their confessions during interrogations. S-24 was also used as an adjunct facility devoted to forced labour for detainees viewed as suspect by the Communist Party of Kampuchea. As Deputy and then Chairman and Secretary of S-21, the Accused was deeply enmeshed in this criminal system, and contributed substantially to its implementation and development, including by collaboration in the arrest of certain notable detainees, by ensuring the detention and execution of some S-21 staff, and by physical presence. Moreover, the Accused knew of the criminal nature of the S-21 system and acted with the intent to further its criminal purpose. Accordingly, the Chamber has found that, as a result of his participation in the systemic joint criminal enterprise at S-21, the Accused bears individual criminal responsibility for the offences committed at S-21.

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

32. The Chamber has rejected the claim made by the Defence that the Accused's criminal responsibility should be excluded on the grounds that he acted pursuant to superior orders and under duress. Acting pursuant to superior orders does not, as a matter of law, constitute a legitimate defence to charges of crimes against humanity. In the present case, the Accused also knew that the orders to kill, torture and arbitrarily detain persons protected under the Geneva Conventions were unlawful. Further, the Accused cannot be considered to have acted under duress as a Deputy and later Chairman of S-21. Although the Chamber accepts that towards the end of the existence of S-21, the Accused may have feared that he or his close relatives would



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

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

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

35. The Chamber has considered the gravity of the crimes for which the Accused has been convicted as well as all aggravating and mitigating circumstances at sentencing. The Chamber has also noted the psychiatric and psychological assessment of the Accused, as well as the character witnesses who appeared before the Chamber, in addition to his relative position within the hierarchy of Democratic Kampuchea. In determining the sentence, the Chamber has also taken into account precedents from other international tribunals, whose decisions have also evaluated sentencing considerations in relation to crimes of a massive scale. Finally, the Chamber recalls its Decision on Request for Release dated 15 June 2009, in which it ruled that the Accused would be entitled to a reduction of any sentence, as a result of his unlawful detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007, to be decided at the sentencing stage. Although the gravity of the Accused's crimes unambiguously mandates a substantial term of imprisonment, these factors, when considered cumulatively, have ensured that the Chamber was unable to issue the most serious penalty available to it under the ECCC Law of life imprisonment.

36. The Chamber will now address Civil Party reparations prior to the announcement of its disposition in the judgement.

#### F. Civil Party Reparations

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



38. Initial decisions on the admissibility of Civil Party applications ascertained that the criteria for participation as a Civil Party were satisfied. This process is distinct from the Chamber’s determination of the merits of all applications in the verdict, on the basis of all evidence submitted in the course of proceedings. Once declared admissible in the early stages of the proceedings, Civil Parties must satisfy the Chamber of the existence of wrongdoing attributable to the Accused which has a direct causal connection to a demonstrable injury personally suffered by the Civil Party.

39. Internal Rule 23(2) provides that in order for Civil Party action to be admissible, the injury must be “physical, material or psychological”, and the “direct consequence of the offence, personal and have actually come into being”. The injury suffered must result directly from the criminal conduct of the Accused. Although the immediate family members of a victim fall within the scope of Rule 23(2)(b), direct harm may be more difficult to substantiate in relation to more attenuated familial relationships. The Chamber nevertheless considers that harm alleged by members of a victim’s extended family may, in exceptional circumstances, amount to a direct and demonstrable consequence of the crime where the applicants are able to prove both the alleged kinship and the existence of circumstances giving rise to special bonds of affection or dependence on the deceased.

40. The Chamber has considered whether KAING Guek Eav can be found responsible for the particular harm alleged by two categories of Civil Parties, namely those who claim to be survivors of S-21 or S-24, and those whose claims were instead based on alleged kinship or special bonds of affection or dependency in relation to their direct victims. For the reasons detailed in the judgement, the Chamber has found that the following four Civil Parties who claim to be survivors of S-21 or S-24 have substantiated their claim and to have established that the Accused is directly responsible for their harm suffered:

- BOU Meng;
- CHUM Mey;
- CHUM Neou; and
- CHIN Met.

41. The Chamber has found that the following 66 Civil Parties have established their claim to be immediate victims of S-21 or S-24, or to have proved the existence of immediate victims of S-21 or S-24 and either close kinship or particular bonds of affection or dependency in relation to these victims. They have further shown that the death of these victims caused demonstrable injury within the scope of Internal Rule 23(2) and that this harm was a direct consequence of the Accused’s wrongdoing:

- BOU Meng, as a survivor of S-21 and for the loss of his wife MA Yoeun *alias* Thy;
- CHUM Mey, as a survivor of S-21;
- CHUM Neou, as a survivor of S-24 and for the loss of her husband NOU Samouen and her child;
- CHIN Met, as a survivor of S-24;
- CHHIN Navy, for the loss of her husband TEA Havtek;
- HAV Sophea, for the loss of her father CHIN Sea *alias* HAV Han;
- PHUNG Guth Sunthary and IM Sunthy, for the loss of their father and husband PHUNG Ton, respectively;



- CHUM Sirath, for the loss of his two brothers CHUM Narith and CHUM Sinareth;
- MEASKETH Samphotre, TIOULONG Antonya, TIOULONG-ROHMER Neva, KIMARI Nevinka and KIMARI Visaka for the loss of their daughter, sister, and mother TIOULONG Raingsy and son-in-law, brother-in-law and father LIM Kimari, respectively;
- ROS Men, for the loss of her brother ROS Thim;
- CHE Heap, for the loss of his brother CHE Heng;
- CHRAING Sam-Ean, for the loss of his brother CHRAING Sam On *alias* SOAM Sam On;
- SEANG Vanndi, for the loss of his brother SEANG Phon;
- TOCH Monin, for the loss of his cousin CHEA Khan with whom he was raised and of whom he is the only surviving relative;
- KAUN Sunthara, for the loss of her brother CHIM Lang and sister-in-law AOM Kin Daunny;
- MAN Saut, for the loss of his son MAN Sim *alias* Riem;
- KONG Teis, for the loss of her husband SEK Chhiek;
- NGETH Sok, for the loss of her brother NOB Sar *alias* NOB Ngan, *alias* Chareun, *alias* NGETH Ngem;
- TATH Lorn, for the loss of his father SOK Sort *alias* SOK Pon;
- Timothy Scott DEEDS, for the loss of his brother Michael DEEDS;
- YIM Leng, for the loss of his father THLORK Luon *alias* Yorn;
- UM Pyseth as successor of his late wife SUOS Sarin, for the loss of the latter's sister SUOS Sovann;
- KE Khon and KE Samaut, for the loss of their brother KE Kengsy;
- IEM Soy, for the loss of her brother CHUH Choy *alias* Cheiv;
- UL Say *alias* Riem, for the loss of her husband ENG Mak *alias* Venn;
- SIN Lim Sea, for the loss of his elder sister SIN Chhun Lim;
- OU Savrith, NHEK OU Davy and OU Kamela, for the loss of their brother, husband and father OU Vindy, respectively;
- ROS CHUOR Siy, for the loss of her husband ROS Sarin;
- NHOEM Kim Hoeurn, for the loss of her two brothers NHOEM Kuy and NHOEM Chan;
- SUON Sokhomaly, for the loss of her husband SUON Kaset;
- SIN Sinet *alias* Srun, for the loss of her grandfather PHEACH Kim *alias* Sin, in whose house she had lived since the age of 7;
- ROUN Sreynob, for the loss of her brother ROUN Math *alias* Savy;
- EL Li Mah, for the loss of her brother ISMAEL Asmat *alias* Sokh;
- SMAN Sar and SMAN Nob, for the loss of their brother SMAN Sles *alias* LENG Sokha and for the loss of their son and nephew, SA Math *alias* Saroeun, respectively;



- MEN Lay, for the loss of her son MIN Kan;
- NHEM Sophan, for the loss of her sister NHEM Thol *alias* Ra;
- NETH Phally, for the loss of his brother NETH Bunthy;
- MAN MAS *alias* MAN Malymas, for the loss of her son TA Losmath *alias* Man Math;
- KOM Men *alias* KUM Men, for the loss of her husband SREI Yeng;
- TRY Ngech Leang, for the loss of her brother KHOEUNG Muoysoa;
- HENG Ngech Hong, for the loss of her father SOK Heng;
- BENG Chanthorn, for the loss of his brother BENG Pum;
- YUN Chhoeun, for the loss of a nephew YUN Loeun, who lived in his house until aged 15, when he was conscripted into the army;
- LY Khiek, for the loss of his sister AUY Mao *alias* Ren;
- PUOL Punloek *alias* Nget, for the loss of his father POUL Toeun *alias* Chaing;
- CHANN Krouch, for the loss of his brother CHANN Noun *alias* Sinoun;
- NORNG Kim Leang, for the loss of her sister NORNG Kim Guek *alias* NORNG Kimvet;
- PENH Sokkhun, for the loss of her sister PENH Sopheap;
- KAN San, for the loss of her brother KAN Kan;
- UNG Voern *alias* HUL Voern, for the loss of her brother UNG Koam *alias* Phoan;
- MEAS Saroeurn, for the loss of her father OUK Tob;
- SEK Siek, for the loss of her cousin and fiancé MORK Chhoeun, who was living in the family's house;
- CHHAT Kim Chhun, for the loss of his father AM Thoat and a relative called POT Mouy *alias* SA Phal;
- UK Vasorthin, for the loss of his father OUK Chy;
- Martine LEFEUVRE and OUK Neary, for the loss respectively of their husband and father OUK Ket; and
- Robert HAMILL, for the loss of his brother Kerry HAMILL

42. The claims by the remaining Civil Parties are denied either because they have failed to satisfy the Chamber that they are immediate victims of S-21 or S-24, or because they have failed to prove close kinship or bonds of affection or dependency on victims of S-21 or S-24. Their consequential claims for reparation must also fail.

43. The Chamber has also ruled upon the Civil Parties' requests for reparations. To succeed, these requests must qualify as collective and moral reparations within the meaning of Internal Rule 23(1)(b), and be sufficiently certain or ascertainable to give rise to an enforceable order against the convicted person.



44. The key features of Civil Party participation are that awards are borne exclusively by convicted persons following a determination of responsibility for the harm established by Civil Parties to have resulted from the criminal offending. The ECCC lacks the competence to enforce reparations awards. The Chamber has no jurisdiction over Cambodian or other national authorities or international bodies. Nor can it properly impose obligations on or grant rights to persons or entities that were not parties to the proceedings before it. In the present context, constraints also stem from the overwhelming losses suffered by the Civil Parties and the unlikelihood of recovery from the Accused, who appears to be indigent.

45. The Chamber has granted the Civil Parties' request that their names be included in the final judgement, including a specification as to their connection with the crimes committed at S-21. The Chamber has also granted their request for the compilation and publication of all statements of apology made by the Accused during the trial.

46. The Chamber has rejected all other requests made by the Civil Parties on the grounds that they either lacked specificity, or were beyond the scope of available reparations before the ECCC.

#### G. Disposition

47. The Chamber will now read its disposition. Will the Accused KAING Guek Eav please rise.

48. Having considered all the evidence and the submissions of the Parties, the Chamber decides as follows:

49. The Chamber finds KAING Guek Eav **GUILTY** pursuant to Articles 5, 6 and Article 29 (new) of the ECCC Law of:

- Crimes against humanity (persecution on political grounds) (subsuming the crimes against humanity of extermination (encompassing murder), enslavement, imprisonment, torture (including one instance of rape), and other inhumane acts);
- Grave breaches of the Geneva Conventions of 1949 (wilful killing, torture and inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of a fair and regular trial, and unlawful confinement of a civilian).

50. For the reasons given in its Decision on the Preliminary Objection, the Chamber has not evaluated the guilt or otherwise of the Accused in respect of national crimes of premeditated murder and torture, violations of Articles 501, 506 and 500 of the 1956 Penal Code and punishable before the ECCC pursuant to Article 3 (new) of the ECCC Law.

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

52. The Chamber has decided that there are significant mitigating factors which mandate the imposition of a finite term of imprisonment rather than one of life imprisonment. These factors include cooperation with the Chamber, admission of responsibility, limited expressions of



remorse, the coercive environment in Democratic Kampuchea, and the potential for rehabilitation.

53. On the basis of the foregoing, the majority of the Chamber sentences KAING Guek Eav to a single sentence of 35 (thirty-five) years of imprisonment.

54. The Chamber considers that a reduction in the above sentence of 5 (five) years is appropriate given the violation of KAING Guek Eav's rights occasioned by his illegal detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007.

55. The Accused is entitled to credit for the entirety of his time spent in detention, that is from 10 May 1999 to 30 July 2007 (under the authority of the Cambodian Military Court) and from 31 July 2007 until the judgement becomes final (under the authority of the ECCC).

56. The Chamber has previously named all Civil Parties who have suffered harm as a direct consequence of the crimes for which KAING Guek Eav has been convicted. The Chamber shall compile all statements of apology and acknowledgements of responsibility made by KAING Guek Eav during the course of the trial. This compilation shall be posted on the ECCC official website within 14 days of the date of this judgement becoming final. It rejects all other Civil Party claims.

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

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

