

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S MOTION TO USE CERTAIN
S-21 STATEMENTS**

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I. Introduction

1. The Co-Prosecutors hereby respond to Nuon Chea's Rule 92 Motion to Use Certain S-21 statements,¹ in which he seeks the Trial Chamber's ("Chamber") permission to use the S-21 statements of Koy Thuon, Yim Sambath and Chea Non *alias* Suong.² In the alternative, he requests the Chamber to conduct additional investigations into the circumstances in which the said S-21 statements were obtained before making its decision on the permissible use of these statements³ (the "Request").
2. For the reasons outlined below, the Co-Prosecutors oppose the use in the Case 002/02 trial of all confessions given by the three individuals, except to the extent that (a) their use falls within the exception stated in Article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁴ ("CAT"), or (b) they are used in the limited circumstances already authorised by the Chamber.⁵ In addition, the Co-Prosecutors submit that further investigations into the circumstances in which these confessions were made are unnecessary and impractical.
3. Despite Nuon Chea's contentions to the contrary, there remains a "real risk" that confessions from these individuals were obtained by mental and/or physical torture within the meaning of Article 1 of the CAT and customary international law. There is compelling specific evidence that Koy Thuon was subjected to both physical and mental torture in the course of his interrogation, and there is a "real risk" that the confessions of Yim Sambath and Chea Non *alias* Suong are the product of severe mental and physical pain and suffering. The Chamber has received ample evidence demonstrating that S-21 was a place where "severe pain or suffering, whether physical or mental, [was] intentionally inflicted".⁶ Even those few detainees who might have avoided physical torture applied specifically during interrogations "confessed" as a result of the severe mental and physical pain they suffered at S-21.

¹ E399 Nuon Chea's Rule 92 Motion to Use Certain S-21 Statements, 20 April 2016 ("NC Motion") (notified in English and Khmer on 20 April 2016).

² E399 NC Motion, paras 15-32.

³ E399 NC Motion, para. 32. The Co-Prosecutors note, however, that Nuon Chea makes specific submissions only with regard to further investigations into the circumstances in which Chea Non *alias* Suong's S-21 confessions were made (E399 NC Motion, para. 30).

⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/RES/39/46, 1465 UNTS 113 (1984).

⁵ These exceptions are detailed in fn. 10.

⁶ CAT, Article 1.

Interrogators used extreme mental coercion, such as threat and other psychological devices, to instil fear and break any last vestiges of resistance from their victims. As the S-21 prisoners struggled to survive in desperate and inhumane conditions, they were constantly barraged with the sights, smells, and sounds of the brutal methods of mental and physical torture used there, and the knowledge that such measures could be used on them at any time.

4. Nuon Chea's attempt to rely on confessions obtained at a security office that systematically resorted to brutal torture during interrogations is precisely what the CAT intended to prohibit – the use of evidence obtained by torture to justify the detention and other measures taken by the detaining authority against the tortured individuals.

II. Applicable Law

5. Article 15 of the CAT states that:

any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

6. This Chamber has confirmed that the invocation of torture-tainted evidence for the truth of the matter asserted, for example by confronting a witness with a confession to confirm or deny facts contained therein, is not permitted.⁷ Similarly, making references to statements contained in S-21 confessions without identifying that such information is derived from confessions is not allowed.⁸ Moreover, this Chamber has held that reading directly from a torture-tainted statement in court, regardless of the intent for doing so, leads to the impression that it is being used to establish the truth of the statement, and is therefore unlikely to be accepted by the Chamber.⁹ The Chamber has also identified certain uses of S-21 confessions that are permitted.¹⁰

⁷ E350/8 Decision on Evidence Obtained through Torture, 5 February 2016 (“TC Torture Decision”), paras 85, 88.

⁸ E350/8 TC Torture Decision, para. 82.

⁹ E350/8 TC Torture Decision, para. 88.

¹⁰ E350/8 TC Torture Decision, paras 81, 84, 87. Parties may use S-21 statements where (1) questions refer to annotations or inquire as to basic identifying (i.e. biographical) information; or (2) the torture-tainted statement is not put to the witness as an assertion of the fact contained in the confession and the question instead focuses on the knowledge of the witness. Further, questions to witnesses based on notebooks or prisoner logbooks from security centres containing the thoughts and perceptions of torturers are permissible, so long as they are not invoked to establish the truth of statements made by those subject to torture. For example, if it can be demonstrated that the people listed were later arrested or executed, it may serve as proof of reliance on this information by the Accused or others within the CPK structure.

Standard and burden of proof

7. The Supreme Court Chamber (“SCC”) has found that the standard of proof to be applied to determine whether it has been “established” that a statement was made as a result of torture for the purposes of the exclusionary rule in Article 15 of the CAT is whether there is a “real risk” that it was obtained through torture.¹¹ Likewise, this Chamber also considered “real risk” to be the standard of proof applicable in deciding whether certain evidence needs to be excluded on the grounds of torture.¹² The Chamber emphasised that it will “consider evidence on a case-by-case basis to determine whether there is a real risk that such was obtained through torture,”¹³ and that the initial assessment of whether evidence was obtained through torture falls to the Chamber.¹⁴
8. Both the SCC and this Chamber have already found that such a “real risk” exists in respect of confessions collected from detainees at S-21. Recalling the findings of “torture, physical mistreatment and psychological suffering” at S-21 that it upheld in Case 001,¹⁵ the SCC was satisfied that there is a real risk that the S-21 statements in question were obtained through torture *and each statement may thus be presumed to be so obtained*.¹⁶ This Chamber has similarly already found “a real risk that any confessions obtained at S-21 were the result of torture.”¹⁷
9. However, any party seeking to rely upon such evidence may rebut this preliminary determination, in particular upon a showing of specific circumstances negating this risk.¹⁸ The SCC concluded that “a statement taken at S-21 may only be admitted into evidence if it has been established, on the balance of probabilities, that it was *not* the result of torture.”¹⁹ This Chamber has held that “upon assessment of all relevant circumstances, the Chamber will determine whether there is a real risk that the evidence was obtained by torture”.²⁰ As such, the invocation of such evidence is not permitted, unless the party proposing to use such evidence

¹¹ **F26/12** Decision on Objections to Documents Lists: Full Reasons (“SCC Decision”), 31 December 2015, paras 55-56.

¹² **E350/8** TC Torture Decision, paras 33-35.

¹³ **E350/8** TC Torture Decision, para. 35. See also para. 88.

¹⁴ **E350/8** TC Torture Decision, para. 36.

¹⁵ **F26/12** SCC Decision, paras 56-57.

¹⁶ **F26/12** SCC Decision, para. 57. See also para. 56.

¹⁷ **E350/8** TC Torture Decision, para. 79.

¹⁸ **E350/8** TC Torture Decision, para. 36; **F26/12** SCC Decision, para. 58.

¹⁹ **F26/12** SCC Decision, para. 58 (emphasis in original).

²⁰ **E350/8** TC Torture Decision, para. 38.

establishes that a “real risk” does not exist that it was obtained through torture, or it falls within the exception stated in Article 15.²¹

Definition of Torture

10. Article 1 of the CAT defines “torture” as follows:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

11. This Chamber, relying on the CAT and jurisprudence from the ICTY and ICTR, has found that torture, as a matter of customary international law, comprises “the infliction, by an act or omission, of severe pain or suffering, *whether physical or mental*”.²² The crime of torture requires that the act or omission is inflicted in order to attain a certain result or purpose.²³

12. In determining whether an act or omission constitutes severe pain or suffering, the Chamber is required to consider all subjective and objective factors.²⁴ Objective factors include the severity of the harm inflicted. Subjective criteria may include the age, sex, state of health of the victim, or the physical or mental effect of treatment on a particular victim.²⁵ In addition, the nature and context of the infliction of pain, the premeditation and institutionalisation of the ill-treatment, the physical condition of the victim, the manner and method used, and the position of inferiority of the victim are all relevant factors.²⁶ There is no exhaustive classification of the acts that may constitute torture.²⁷ The consequences of the act or omission need not be visible on the victim,²⁸ nor is there a requirement that the injury be permanent.²⁹

²¹ E350/8 TC Torture Decision, para. 79, pp. 33-34.

²² Case 001-E188 Judgment, 26 July 2010 (“Duch Trial Judgment”), paras 353-354 (emphasis added) *citing Kunarac*, IT-96-23&IT-96-23/1-A, Appeals Chamber, Judgment, 12 June 2002 (“Kunarac Appeal Judgment”), paras 142, 146; *Ntagerura*, ICTR-99-46-T, Trial Chamber, Judgment, 25 February 2004, para. 703; *Delalić*, IT-96-21-T, Trial Chamber, Judgment, 16 November 1998 (“Čelebići Trial Judgment”), para. 459; *Furundžija*, IT-95-17/1-A, Appeals Chamber, Judgment, 21 July 2000, para. 111; *Furundžija*, IT-95-17/1-T, Trial Chamber, Judgment, 10 December 1998, paras 160-161.

²³ Case 001-E188 Duch Trial Judgment, para. 356, *citing Krnojelac*, IT-97-25-T, Trial Chamber, Judgment, 15 March 2002 (“Krnojelac Trial Judgment”), para. 180.

²⁴ Case 001-E188 Duch Trial Judgment, para. 355, *citing Kvočka*, IT-98-30/1-T, Trial Chamber, Judgment, 2 November 2001 (“Kvočka Trial Judgment”), para. 143.

²⁵ Case 001-E188 Duch Trial Judgment, para. 355, *citing Kvočka* Trial Judgment, para. 143.

²⁶ Case 001-E188 Duch Trial Judgment, para. 355, *citing Krnojelac* Trial Judgment, para. 182.

²⁷ Case 001-E188 Duch Trial Judgment, para. 355, *citing Čelebići* Trial Judgment, para. 469.

²⁸ Case 001-E188 Duch Trial Judgment, para. 355, *citing Kunarac* Appeal Judgment, para. 150.

Acts that are sufficiently severe to constitute torture may arise from conditions imposed upon detention and have included beating, sexual violence, prolonged denial of sleep, deprivation of food, hygiene and medical assistance, as well as threats to torture or to kill relatives.³⁰ Living in a constant state of anxiety as a result of physical abuse and confinement constitutes mental suffering amounting to torture.³¹ Similarly, the credible threat of physical torture constitutes psychological torture.³² Moreover, a person may suffer serious mental harm by witnessing acts against others.³³

Additional Investigations

13. Under Internal Rule³⁴ 93(1), “[w]here the Chamber considers that a new investigation is necessary it may, at any time, order additional investigations.”

III. Submissions

²⁹ Case 001-E188 Duch Trial Judgment, para. 355, citing *Kvočka* Trial Judgment, para. 148, *Brđanin* IT-99-36-T, Trial Chamber, Judgement, 1 September 2004, para. 484.

³⁰ Case 001-E188 Duch Trial Judgment, para. 355, citing *Čelebići* Trial Judgment, para. 467, *Kvočka* Trial Judgment, para. 151. See further fn. 32 below.

³¹ *Hajrulahu v Former Yugoslav Republic of Macedonia*, App. No. 37537/07, ECHR, Judgment (Merits and Just Satisfaction), 29 January 2016, paras 101-102 (“The Court is convinced that the applicant’s abduction and incommunicado detention for three days in a house, an extraordinary place of detention outside any judicial framework, which was covertly organised and executed by the security forces of the respondent State, intimidated the applicant on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. He undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate. The actual treatment during the interrogation sessions to which he was subjected must be regarded as having caused him considerable physical pain, fear, anguish and mental suffering. The Court notes that the above-mentioned measures were used in combination and were intentionally meted out to the applicant with the aim of extracting a confession about his alleged involvement in the bomb incident [...] In the Court’s view, such treatment amounted to torture [...]”).

³² See, for example, *Estrella v Uruguay*, Merits, Communication No 74/1980, UN Doc CCPR/C/18/D/74/1980, IHRL 2557 (UNHRC 1983), 29 March 1983, Human Rights Committee, para. 8.3 (“They were brought blindfolded to a place where he recognized the voices of [two individuals]. There the author was subjected to severe physical and psychological torture, including the threat that the author’s hands would be cut off by an electric saw, in an effort to force him to admit subversive activities.”) See also paras 1.6, 10; *Maritza Urrutia v Guatemala*, Merits, reparations and costs, IACHR Series C No 103, IHRL 1486 (IACHR 2003), 27 November 2003, paras 58.6, 85, 94 (The victim was “shown photographs of individuals who showed signs of torture or had been killed in combat and she was threatened that she would be found by her family in the same way. The State agents also threatened to torture her physically or to kill her or members of her family if she did not collaborate.” The Inter-American Court of Human Rights found that “it has been proved that Maritza Urrutia was subjected to acts of mental violence by being exposed intentionally to a context of intense suffering and anguish, according to the practice that prevailed at that time [...] The Court also considers that the acts alleged in this case were prepared and inflicted deliberately to obliterate the victim’s personality and demoralize her, which constitutes a form of mental torture”).

³³ *Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber, Judgment, 21 May 1999, para. 153 (“The Chamber is in no doubt that a third party could suffer serious mental harm by witnessing acts committed against others”)

³⁴ Extraordinary Chambers in the Courts of Cambodia (“ECCC”), Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rule(s)” or “Rule(s)”).

Torture was Systematically Used to obtain S-21 Confessions

14. Nuon Chea seeks to use the confessions of Koy Thuon, Yim Sambath and Chea Non *alias* Suong (“Suong”) on the basis that “the evidence clearly shows that there is no ‘real risk’ of torture in [these] cases”.³⁵ This position is both factually and legally unfounded. As set out in further detail below, there is compelling specific evidence that Koy Thuon was subjected to “severe pain or suffering, whether physical or mental, [which was] intentionally inflicted”³⁶ during the course of his interrogations. The evidence in Case 002/02, as well as the findings of this Chamber in Case 001,³⁷ demonstrate that, even in the absence of physical coercion directly applied to a prisoner in the course of interrogation rising to the level of torture, the conditions of detention in S-21, and the extreme mental coercion used during interrogations, including the actual and implied threats of torture if ‘satisfactory’ confessions were not provided by the prisoners, mean that there is a “real risk” that the confessions of anyone interrogated at S-21 were obtained using mental and physical torture within the meaning of Article 1 of the CAT and customary international law.
15. Detainees at S-21 lived in a “permanent climate of fear”.³⁸ All prisoners there were deemed to be enemies³⁹ and deprived of their basic rights and freedoms.⁴⁰ As everyone was destined for execution, there was no need to treat detainees humanely.⁴¹ The near-certainty of death at S-21

³⁵ E399 NC Motion, para. 31. See also para. 1.

³⁶ CAT, Article 1. See *infra* paras 20-24.

³⁷ Which were upheld by the SCC on appeal. See Case 001-F28 Appeal Judgement, 3 February 2012, para. 209.

³⁸ Case 001-E188 Duch Trial Judgment, para. 258. See also para. 359 (describing “*an environment of extreme fear.*” (emphasis added)); para. 232 ([“Vann Nath and Civil Parties Bou Meng and Chum Mey] [a]ll described the terrible conditions of their capture and detention, the physical and mental abuse, torture and *ever-present fear.*”). See further E3/5799 Kaing Guek Eav *alias* Duch, Transcript 15 June 2009, p. 91 (“Q. Do you acknowledge that the harassing conditions that were imposed upon them, whether individually or on a collective basis, were set up to break their morale, to degrade them and to dehumanize them in such a way so that they be kept in a state of constant fear? A. [...] I accept [that] without rejecting any of it at all.”)

³⁹ Case 001-E188 Duch Trial Judgment, para. 245; Chum Mey, Draft Transcript, 18 April 2016, p. 41 (“At the time, they said that they would smash all of us who were considered the traitors.”); p. 45 (“At the time, I was considered a traitor.”); Lach Mean, Draft Transcript, 25 April 2016, p. 97 (“We received such instruction that anyone brought into S-21 were considered as traitor of the nation. [...] [T]hose who were brought into the prison were consider[ed] as [the] enemy.”).

⁴⁰ Case 001-E188 Duch Trial Judgment, para. 259; Chum Mey, Draft Transcript, 18 April 2016, p. 45 (“At the time, I was considered a traitor. I was regarded as an animal in terms of my rights to speak and my rights to eat. I had no freedom.”); Lach Mean, Draft Transcript, 25 April 2016, p. 71 (“All prisoners who were detained there they did not have any lawyer or anyone who came to defend them. Those prisoners were brought in by their own group without any legal representation [...] During the regime, prisoners did not have any means to defend themselves.”).

⁴¹ Case 001-E188 Duch Trial Judgment, para. 259; E3/5799 Kaing Guek Eav *alias* Duch, Transcript 15 June 2009, pp. 35-36 (“[T]here would not be any rules to safeguard [...] to protect their rights. [...] So we already treated them as dead people. We only waited for time when they would be smashed”); pp. 86-87 (“[T]he reason that

left prisoners entirely without hope.⁴² Indeed, the terror instilled by S-21 detention was unequivocally confirmed by Duch:

Q. Would you agree to say that generally speaking there was a permanent climate of fear and absolute terror that was imposed upon all the detainees?

A. Absolutely. Frankly speaking, yes.⁴³

16. The S-21 detention conditions caused severe mental and physical suffering and weakened prisoners in preparation for interrogation. Incoming prisoners to S-21 were handcuffed and blindfolded, and some had their mouths sealed.⁴⁴ With the exception of certain important detainees, male prisoners were stripped to their underwear or short trousers.⁴⁵ Inmates were kept under armed guard,⁴⁶ and when removed from their cells for interrogation, they were handcuffed and blindfolded, leaving them disoriented and afraid.⁴⁷ The individual cells at S-21 lacked windows or adequate lighting, while collective cells were larger rooms with bars mounted on the windows.⁴⁸ Regular detainees were chained and shackled to a metal bar in their cells,⁴⁹ and slept directly on the floor.⁵⁰ There is also evidence that prisoners were forced

people were regarded as animals, we could see this in all aspects, especially the terms used to communicate to the detainees [...]. Young people addressed the senior people as the contemptible, “A”, in Khmer. [...] [T]here was no plan to eliminate such a practice or to try to relieve the moral hardship. [...] Because if I tried to do so I would be in the situation that I could not make a clear distinction between enemies and friends, otherwise I would be perceived as regarding the enemies as friends.”).

⁴² Nhem En, Draft Transcript, 20 April 2016, p. 74 (“They were so hopeless after they had been arrested and brought to the centre.”); Chum Mey, Draft Transcript, 18 April 2016, p. 45 (“It was so fearful for me and I was so concerned when it was my day that I would be killed, although they did not kill me at that location; I would die one day.”); E3/2126 Book by Vann Nath entitled “A Cambodian Prison Portrait”, p. 42, EN 00396817 (“We have no hope”), p. 47, EN 00396822 (“[W]e have no hope now [...] We will surely meet the same fate as those who were here before us.”).

⁴³ E3/5799 Kaing Guek Eav *alias* Duch, Transcript 15 June 2009, p. 89.

⁴⁴ Nhem En, Draft Transcript, 20 April 2016, p. 51 (“[A] hundred percent of [the incoming prisoners] would be handcuffed and blindfolded except women”); p. 73 (“Some of them had their mouths sealed and they were all handcuffed and blindfolded”); Chum Mey, Draft Transcript, 18 April 2016, p. 22 (“When we got off the pick-up truck (arrived at S-21), we were handcuffed and blindfolded with the scarf for all the three of the detainees.”).

⁴⁵ Case 001-E188 Duch Trial Judgment, para. 260; Lach Mean, Draft Transcript, 26 April 2016, pp. 57-58 (“Prisoners who came with their clothes on at certain times they were ordered to take them off and remove those clothes. [...] I never saw any prisoner who came with a shirt on. Their shirts had been removed before they were transported in. [...] I could confirm that none of those prisoners had any shirt on.”).

⁴⁶ Case 001-E188 Duch Trial Judgment, para. 260; Tay Teng, Draft Transcript, 21 April 2016, p. 81 (“[When we were on guarding duty] we were given a weapon. [...] For example, when it was my guarding duty that gun would be given to me and I would return it at the end of my shift.”).

⁴⁷ Case 001-E188 Duch Trial Judgment, para. 263; Prak Khan, Draft Transcript, 28 April 2016, pp. 17-18 (“[U]sually they were handcuffed when they were being brought inside the interrogation room. And they were also shackle[d]. They were also blindfolded.”).

⁴⁸ Case 001-E188 Duch Trial Judgment, para. 260; Chum Mey, Draft Transcript, 18 April 2016, p. 23 (“they used the bags to block the window.”).

⁴⁹ Case 001-E188 Duch Trial Judgment, para. 260; Chum Mey, Draft Transcript, 18 April 2016, p. 23 (“I was pushed inside the room and I was told to sit down. After I sat down, my ankle was shackled.”).

⁵⁰ Case 001-E188 Duch Trial Judgment, para. 260; Lach Mean, Draft Transcript, 25 April 2016, p. 75 (“Prisoners

to lick urine and faeces from the cell floors,⁵¹ were not permitted to bathe themselves,⁵² and were virtually starved.⁵³ These conditions left victims exhausted during their interrogations.⁵⁴

17. Throughout their detention, S-21 prisoners lived in constant fear of being removed for interrogation, beaten, tortured and executed. They saw that other inmates returning from interrogations had bruises, cuts, mutilations and other visible signs of severe beatings.⁵⁵ Prisoners could hear screaming and crying,⁵⁶ and in many cases, detainees removed from the common cells never returned.⁵⁷ The real threat of physical torture was therefore constant and pervasive.⁵⁸ The impact of this regime on the prisoners' mental health was so unbearable⁵⁹ that

slept directly on the tile. They did not sleep on the mat and they were not given any mat or pillow.”).

⁵¹ Case 001-E188 Duch Trial Judgment, para. 272; Chum Mey, Draft Transcript, 18 April 2016, pp. 25, 34 (“I was told I had to relieve myself into the cell and if I had to spill that cell, I would require to lick the spillover on the floor.” [...] “When we relieved ourself, either urinating or excrement, if our waste spilled onto the floor and then we were required to lick the spillover ... The defecate that spill over onto the floor were – we were required to lick with our tongue until the floor became clean.”).

⁵² Case 001-E188 Duch Trial Judgment, para. 270; Lach Mean, Draft Transcript, 25 April 2016, p. 74 (“For prisoners who were allowed to bathe, they did not allow prisoners to have baths individually. They used a water hose to bathe the prisoners collectively at the same time. [...] For individual prisoners who were detained in small cells they had no chance to have a bath. They were never allowed to have baths.”).

⁵³ Case 001-E188 Duch Trial Judgment, paras 268-269; Chum Mey, Draft Transcript, 18 April 2016, p. 26 (“On the day that I was beaten and interrogated, I was given the -- a ladle of watery gruel in the morning and also in the evening, and only a little water was provided to me to drink.”); p. 32 (“In the morning, we were given a ladle of gruel, and in the evening, also a ladle of gruel.”).

⁵⁴ Chum Mey, Draft Transcript, 18 April 2016, p. 44 (“Q. [...] did you have any time to rest between interrogations? A. I had no strength and energy as a result of lack of food and also because I was asked to sleep directly on the floor; that is why I had no energy and strength.”).

⁵⁵ Case 001-E188 Duch Trial Judgment, para. 264; Lach Mean, Draft Transcript, 25 April 2016, p. 80 (“I saw bleeding, scars and wounds on the backs, hands and feet of prisoners [...] They were tortured. They were beaten. That’s why they had wounds on their backs and the wounds – scars remained there.”); E3/2126 Book by Vann Nath entitled “A Cambodian Prison Portrait”, p. 42, EN 00396821 (“Sometimes some of the prisoners came back with wounds or blood on their bodies, while others disappeared.”).

⁵⁶ Case 001-E188 Duch Trial Judgment, para. 262; E3/2126 Book by Vann Nath entitled “A Cambodian Prison Portrait”, p. 53, EN 00396828 (“At the same time I could hear screams of pain from every corner of the prison. I felt a twinge of pain in my body at each scream. [...] I could hear the guards demanding the truth, the acts of betrayal, the names of collaborators.”); Prak Khan, Draft Transcript, 28 April 2016, p. 50 (“Q. Do you know whether it was possible for prisoners on the compound of S-21 to hear your voice or the voice of the person who was interrogated? A. Regarding the loud voice, the loud voice could be heard since the house was located around 50 or 60 metres away from the prison”).

⁵⁷ Case 001-E188 Duch Trial Judgment, para. 264; E3/2126 Book by Vann Nath entitled “A Cambodian Prison Portrait”, p. 42, EN 00396821 (“Sometimes some of the prisoners came back with wounds or blood on their bodies, while others disappeared.”); Lach Mean, Draft Transcript, 25 April 2016, p. 69 (“Prisoners who were transported out never returned. They fully disappeared.”).

⁵⁸ E3/2126 Book by Vann Nath entitled “A Cambodian Prison Portrait”, pp. 47-48, EN 00396822-00396823 (describing the moment he was called from his cell, “My hands and feet turned cold, realizing that it was my turn now. [...] I tried to control my heart so that my tears wouldn’t flow. [...] I was so weak I could barely stand up. [...] I couldn’t feel anything at all because I was 80 percent dead.”); p. 53 (describing hearing the screams of others during interrogation, “I felt a twinge of pain in my body at each scream. [...] When would they take me for interrogation again, I wondered. Oh God, please help me avoid such interrogation! I could not endure it.”).

⁵⁹ Chum Mey, Draft Transcript, 18 April 2016, p. 64 (“I considered myself a psychotic person, rather, and

some detainees attempted suicide. The S-21 authorities therefore implemented steps to prevent prisoners killing themselves before the all-important confessions could be obtained.⁶⁰

18. During the interrogations themselves, even where direct physical torture was not applied, interrogators used other methods amounting to mental torture on prisoners “to break their resistance and to keep them in a state of constant fear” in order to extract confessions.⁶¹ The threat of physical torture was ever-present in interrogations, with interrogators displaying torture instruments such as clamps, sticks, knives and axes to the petrified detainees.⁶² If a prisoner did not adequately “confess” to their traitorous activities during interrogation, he or she was either physically tortured or threatened with torture.⁶³ That some detainees may have confessed in order to *avoid* physical torture under interrogation does not make their confessions any less the product of torture. Interrogators used threats against victims’ families to frighten them.⁶⁴ Given the number of detainees’ families transferred to S-21, where they

sometimes I have spent – I spend time crying.”).

⁶⁰ Case 001-**E188** Duch Trial Judgment, para. 265; Lach Mean, Draft Transcript, 25 April 2016, pp. 79-80 (“That was the order from the leader in the centre that we had to be constantly on the move to monitor the prisoners and to make sure that the prisoners did not break the shackles or that they did not try to commit suicide by hanging themselves. These were the main responsibilities of guards. [...] Prisoners might attempt to commit suicide because they felt hopeless or they were scared, so that they might commit that suicide. [...] They might feel that they would be interrogated and tortured. That could be their primary concern that they would be tortured and interrogated. [...] [T]he instructions from the leadership was that there had been cases where prisoners committed suicide and that a prisoner grabbed a gun from a guard and shot himself to death. So these were the instructions from the upper echelon that they had to be vigilant regarding these matters. And this information were relayed to us in the guard unit.”); Lach Mean, Draft Transcript, 26 April 2016, p. 57 (“We were concerned that a prisoner would use their clothes to hang themselves.”).

⁶¹ Case 001-**E188** Duch Trial Judgment, para. 245.

⁶² Case 001-**E188** Duch Trial Judgment, para. 245; **E3/5800** Kaing Guek Eav *alias* Duch, Transcript 16 June 2009, p. 22, EN 00341979, KH 00342769 (“Q. [...] [A] clamp or electrocution wire[,] [w]ere those tools [...] prepared on the table ready for the torture or it could be a deterrence for the prisoner to confess? A. [...] [S]ome interrogators said these were the deterrents. So I believed the clamps or the sticks were already prepared for the torture and, regarding the hand-held telephone [for electrocution], I think every interrogator would have it. [...] [B]ig or short knives [were] only displayed as deterrents.”).

⁶³ Lach Mean, Draft Transcript, 26 April 2016, p. 70 (“And sometimes we have to threaten the prisoners to ensure that they give us the correct answers.”); Lach Mean, Draft Transcript, 25 April 2016, pp. 97-98 (“We were instructed to interrogate until we obtained the confession because those who were brought into the prison were consider[ed] as enemy. [...] For those prisoner[s] who refused to confess, those prisoners would be tortured.”); **E3/7543** DC-Cam Statement of Top Ri, 9 October 2003, EN 00184169 (“He was not beaten the first time, but the second time [...] he was whipped for giving an inappropriate response.”); **E3/5800** Kaing Guek Eav *alias* Duch, Transcript 16 June 2009, p. 27, EN 00341984, KH 00342773 (“the frequency of interrogation and the time required was based on the confession. If a confession that I deemed was adequate [was obtained] then the interrogation would finish. However, for some important or very important prisoners [...], the interrogation was done five times. [...] So it’s all based on their confessions, whether we were satisfied with the confession and whether the upper echelon was satisfied with the confessions.”).

⁶⁴ Case 001-**E188** Duch Trial Judgment, para. 245; **E3/5802** Kaing Guek Eav *alias* Duch, Transcript, 22 June 2009, pp. 36-37 (“So the instructions from the upper echelon [...] [were] to tell brother Ya that the wife and the children were detained... Q. [I]s this a threat for Ya to confess further regarding his traitorous activities? A. [I]ndeed, it is

were also tortured and executed,⁶⁵ this threat would have been credible and powerful. Interrogators also exploited other fears of detainees,⁶⁶ and treated them with contempt,⁶⁷ causing them extreme humiliation.⁶⁸

19. The confessions obtained at S-21 were undoubtedly a product of severe mental and physical pain and suffering, whether or not physical torture methods were put into practice inside the interrogation room. Evidence extracted in circumstances such as these are *exactly* what the CAT sought to exclude when it prohibited mental as well as physical torture.

Koy Thuon

20. Nuon Chea's contention that "there is convincing evidence showing that in the particular case of Koy Thuon, his S-21 Statements were not obtained through torture"⁶⁹ entirely overlooks the reality of Koy Thuon's detention and interrogation at S-21. None of the evidence cited by Nuon Chea negates the facts demonstrating that there is a "real risk" that Koy Thuon's confessions were elicited through torture.
21. Even in the purported absence of physical torture, it is clear that the circumstances in which Koy Thuon found himself when he entered S-21 in January 1977,⁷⁰ and was interrogated by Duch, constitute *mental* torture. When Koy Thuon arrived at S-21, he had already been under house arrest for eight or nine months.⁷¹ As one of the highest ranking CPK, officials he cannot

the case."); **E3/834** The Pon/Tuy Notebook, 12 April 1978 – 17 December 1978, p. 29, EN 00184511, KH 00077523 ("We must strive to think about the family environment").

⁶⁵ Nhem En, Draft Transcript, 20 April 2016, p. 64 ("I saw children had been transported into the centre by vehicles and whole – sometimes these were brought in with the entire family."); **E3/5799** Kaing Guek Eav *alias* Duch, Transcript 15 June 2009, p. 62 ("[M]ost of the women who were detained at S-21 were detained because of their husbands. [...] And the others were arrested because they were the daughters of the people who were arrested."); **E3/5154** Written Record of Interview of Him Huy, EN 00161603; KH 00146651 ("CB: The mothers who were killed, what happened to their children? HH: [...] Peng took them and killed them right inside the Tuol Sleng compound.").

⁶⁶ Case 001-**E188** Duch Trial Judgment, para. 245; **E3/834** The Pon/Tuy Notebook, 12 April 1978 – 17 December 1978, p. 29, EN 00184511, KH 00077523 ("We must discover their weak points.").

⁶⁷ Case 001-**E188** Duch Trial Judgment, para. 245; **E3/5800** Kaing Guek Eav *alias* Duch, Transcript 16 June 2009, p. 88, EN 00342045, KH 00342820.

⁶⁸ Chum Mey, Draft Transcript, 18 April 2016, p. 47 ("[The interrogator] sat on my head [...] [L]et me tell you it is very humiliating to sit on someone's head.")

⁶⁹ **E399** NC Motion, para. 18.

⁷⁰ **E3/355** Written Record of Interview of Kaing Guek Eav *alias* Duch, 19 November 2008, p. 3, EN 00242874, KH 00239832. See also fn. 71 *infra*.

⁷¹ See **E3/16** Khieu Samphan, Considerations on the History of Cambodia, EN 00498271-73 (stating that Koy Thuon had been "confined to a house under the monitoring of the Standing Committee" from April 1976 until January 1977. In January 1977, "the Standing Committee sent him to S-21 for interrogation."); **E3/355** Written Record of Interview of Duch, 19 November 2008, pp. 3, 7, EN 00242874, 00242878, KH 00239832, 00239836 (stating that Koy Thuon was under house arrest for about 8 months); **E3/5810** Kaing Guek Eav *alias* Duch,

have failed to know that S-21 was a centre for excruciating torture and certain death, for himself and most likely his family.⁷² He was then shackled,⁷³ denied an opportunity to appeal his case directly to *Angkar*,⁷⁴ and personally interrogated by the Chairman of S-21 himself. Duch's chilling account of the intimidating circumstances in which he extracted information from Koy Thuon, using so-called 'cold methods'⁷⁵ of interrogation 'without torture', demonstrate the extreme mental coercion used to obtain Koy Thuon's early confessions. Duch threatened Koy Thuon with physical abuse if he did not confess⁷⁶ in accordance with the Party's expectations,⁷⁷ and punished him for "reacting".⁷⁸ Indeed, Duch's repeated concern that Koy Thuon might kill himself shows that he was aware of Koy Thuon's extreme mental

Transcript, 25 November 2009, p. 52, EN 00406696 (stating that Koy Thuon was placed under house arrest from 8 April 1976 and sent to S-21 on 25 January 1977).

⁷² Indeed, in Koy Thuon's case, this threat was realised. Duch admitted that Koy Thuon's wife, Yon, was arrested and sent to S-21 as a direct result of his arrest. See **E3/5799** Kaing Guek Eav *alias* Duch, Transcript 15 June 2009, p. 62 ("the wife of Thuon, or Khuon. So these women only were arrested because their husbands who were also arrested"). She was then killed at S-21. See **E3/342** Revised S-21 Prisoner List, Entry No. 12149.

⁷³ **E3/347** UNHCHR Suspect Statement of Kang Keck Eav *alias* Duch, 4-6 May 1999 ("Duch May 1999 Statement"), p. 13, EN 00185008, KH 00160897 ("I had him put in a special prison that had already been prepared. I had him sleep on a rattan bed and had his feet shackled"); **E3/5799** Kaing Guek Eav *alias* Duch, Transcript 15 June 2009, p. 45 ("I saw personally and the photos show that Koy Thuon was shackled to a rattan bed where he slept on").

⁷⁴ **E3/347** Duch May 1999 Statement, p. 13, EN 00185008, KH 00160896 ("Comrade you don't have to ask me, just wait until I see Angkar. I will report this to Angkar (Pol Pot). Facing this situation, as an interrogation cadre, what attitude was I to take? I laughed a little with a smile and told him he now had reached only this level, and he should not hope to meet with Angkar and report to Angkar -- the only reports to Angkar would go through me. I said only that much, and had them take him away.")

⁷⁵ See **E3/1570** Written Record of Interview of Duch, EN 00154194, KH 00154224 ("*Cold method*: no torture, no insults, but use of propaganda. For example, when I interrogated KOY Thuon...").

⁷⁶ **E3/347** Duch May 1999 Statement, p. 14, EN 00185009, KH 00160897 ("I smiled at him, and began to tell him that he was playing the game of having me beat him for answers. No way, they all know that trick by now. I said much to him, but the main point was just that. I had him write again. He reacted again -- He wrote again for a bit, then reacted again [...] Then I sent Pon, about an hour later. I absolutely forbade Pon from doing anything at all to him, but told him to attack him with words to win and to gain advantage over him. Soon afterwards he began writing again.")

⁷⁷ **E3/347** Duch May 1999 Statement, p. 14, EN 00185009, KH 00160897 ("Then Son Sen telephoned me at my house. I informed Son Sen that we had gotten it, it was not necessary to beat him, just curse him. He told me to make a copy and he would send someone to get it immediately. This was how Son Sen got this first confession to read. He said by telephone to have him keep writing, clearly and in detail."); p. 29, EN 00185024, KH 00160904 ("Q: And in what case were hot methods used? A: When they did not answer or the answers were unsatisfactory."). See also **E3/5800** Kaing Guek Eav *alias* Duch, Transcript 16 June 2009, p. 27, EN 00341984, KH 00342773 ("the frequency of interrogation and the time required was based on the confession. If a confession that deemed was adequate then the interrogation would finish. However, for some important or very important prisoners such as Koy Thuon, the interrogation was done five times. [...] So it's all based on their confessions, whether we were satisfied with the confession and whether the upper echelon was satisfied with the confessions.")

⁷⁸ **E3/347** Duch May 1999 Statement, p. 14, EN 00185009, KH 00160897 ("Then I sent him (Pon) to strike him one blow in return for his reaction. (I sent Pon to go and punch him once to make him stop acting up).")

anguish after arriving at S-21.⁷⁹

22. In addition, the available confessions that Nuon Chea seeks to use in Case 002/02,⁸⁰ are almost certainly not those obtained by Duch. Duch testified that the first two confessions from Koy Thuon were made on 29 January 1977.⁸¹ Thereafter, the remainder of Koy Thuon's interrogations were assigned to S-21 interrogator Pon.⁸² The dates of the confessions in evidence before the Chamber are February, March and April 1977, the earliest dated 2 February 1977.⁸³ Duch's statements that he did not personally torture Koy Thuon therefore bear little relevance to the Chamber's determination as to whether there is a "real risk" that the confessions Nuon Chea seeks to use were the result of torture.
23. In fact, it is clear from the available confessions that these were obtained using physical torture. For example, there is an annotation on one of Koy Thuon's confessions clearly establishing that "[o]nly after [we] had made a hole in one side did he answer".⁸⁴ Another note reads, "he answered when we punched another side".⁸⁵ Similarly, other annotations show the highly coercive nature of the interrogation: "After the guards handcuffed him, 'A' Thuch still tried to write this story further. He asked us to take off the handcuffs, saying that 3 days in handcuffs is enough. 'He will write everything about Comrade Nhim and brother Phim story.'"⁸⁶

⁷⁹ **E3/347** Duch May 1999 Statement, p. 13, EN 00185008, KH 00160897 ("I had my special team guard him so he could not kill himself."); p. 14, EN 00185009, KH 00160897 ("I took the following measures: first, do whatever necessary to guard him so as to ensure he did not kill himself.")

⁸⁰ **E399** NC Motion, fn. 21 *citing* **E3/1604** S-21 Confession of Koy Thuon; **E3/1753** Confession of Koy Thuon about the Anti-Revolutionary Committee at Siem Reap and Ouder Meanchey; **E3/3856** Confession of Koy Thuon *alias* Khuon.

⁸¹ **E3/5810** Kaing Guek Eav *alias* Duch, Transcript 25 November 2009, p. 52, EN 00406696; **E3/451** Written Record of Interview of Duch, 5 May 2008, p. 18, EN 00204355, KH 00187669.

⁸² **E3/5800** Kaing Guek Eav *alias* Duch, Transcript 16 June 2009, p. 27, EN 00341984, KH 00342773 ("I did it two times and then the upper echelon assigned Comrade Pon to continue questioning again."); p. 30, EN 00341987, KH 00342775 ("And when I interrogated Koy Thuon I interrogated him two times, the first and the second, but after these two interrogations Pon was assigned to interrogate him because I did not want to be involved in interrogating him any more").

⁸³ **E3/1604** S-21 Confession of Koy Thuon, KH 00005709-00005832 (14 February 1977 - 4 March 1977); KH 00005844-00005993 (2-23 February 1977); KH 00006757-00006956 (18 February 1977 - 9 April 1977); KH 00005994-00006184 (19 February 1977 - 4 March 1977); **E3/1753** Confession of Koy Thuon about the Anti-Revolutionary Committee at Siem Reap and Ouder Meanchey, EN 00178180 - 00178182, KH 00006182-00006183; **E3/3856** Confession of Koy Thuon, *alias* Khuon, KH 00026253-00026318 (5 February 1977-4 March 1977).

⁸⁴ **E3/1604** S-21 Confession of Koy Thuon, EN 00769831, KH 00006159.

⁸⁵ **E3/1604** S-21 Confession of Koy Thuon, KH 00006930.

⁸⁶ **E3/1604** S-21 Confession of Koy Thuon, EN 00773088, KH 00006757.

24. Indeed, the assertion that “Koy Thuon was not tortured, either by him [Duch] or by others”⁸⁷ is belied by Duch’s own words:

In the case of Koy Thuon, we used torture because he reacted. ... when we saw a confession that did not satisfy us, we beat them. This is what they called a 'too direct' confession. ... I was thinking of the case of Koy Thuon, we used hot methods⁸⁸ when he reacted back.⁸⁹

Yim Sambath

25. Nuon Chea’s application to use the confession of Yim Sambath,⁹⁰ a soldier from Division 170 who confessed to detonating a hand grenade at the Royal Palace,⁹¹ is based on Duch’s testimony that, on the instructions of Son Sen, torture was not used during his interrogation.⁹² However, for the reasons set out above, even if this confession was not elicited using physical violence during the interrogation, the circumstances of detention and interrogation at S-21⁹³ mean that there is a “real risk” that Yim Sambath’s confessions are the product of severe mental and physical pain and suffering.
26. The Co-Prosecutors note further that it was through subsequent arrests and interrogations that the supposed plot implicating Chakrei and others emerged.⁹⁴ Indeed, the confessions Nuon Chea seeks to rely on include and summarise the confessions of others in addition to Yim Sambath, including Sok Sarin, Thi Thoeun, Soam Thann *alias* Than and Chakk Yornn,⁹⁵ which are to be presumed to have been elicited through torture, and cannot be used by Nuon Chea with reference to their contents.⁹⁶

⁸⁷ E399 NC Motion, para. 16.

⁸⁸ E3/1570 Written Record of Interview of Kaing Guek Eav *alias* Duch, 29 November 2007, EN 00154195, KH 00154224 (“*Hot method*: insults, beatings and other torture.”)

⁸⁹ E3/347 Duch May 1999 Statement, pp. 29-30, EN 00185024-00185025, KH 00160904-00160905 (emphasis added).

⁹⁰ E3/7397 S-21 Confession of Yim Sambath.

⁹¹ E3/7397 S-21 Confession of Yim Sambath, EN 00284003, KH 00245206

⁹² E399 NC Motion, paras 20-21, *citing* E3/356 Written Record of Interview of Kaing Guek Eav *alias* Duch, 25 November 2008, EN 00242900 and E319/42.3.1 Written Record of Interview witness Kaing Guek Eav *alias* Duch, 1 February 2016, A 13.

⁹³ See *supra* paras 14-19.

⁹⁴ E3/356 Written Record of Interview of Kaing Guek Eav *alias* Duch, 25 November 2008, p. 6, EN 00242900 KH 00242889 (“The confession of Yim Sambath was then sent to the superior along with some photographs. A meeting was called amongst Son Sen, Seat Chhe, Chan Chak Krey and myself. Chan Chak Krey said that Yim Sambath had acted on his own and that it was therefore useless to look for other associates. However, other arrests were conducted and finally Chan Chak Krey was also arrested.”).

⁹⁵ E3/7397 S-21 Confession of Yim Sambath, EN 00284004, KH 00245207 (“Summary of Confessions of Yim Sambath, Sok Sarin, Thi Thoeun [and] Saom Thann *alias* Than”); EN 00284005, KH 00245208 (“Confession of Chakk Yornn”).

⁹⁶ See *supra* paras 6, 8.

Chea Non alias Suong

27. Nuon Chea seeks to use the statements of Suong, Secretary of Division 450, on the basis of an annotation on the first page of one of his S-21 statements, which indicates that it was written before he was tortured.⁹⁷ As in the case of Yim Sambath, even if Suong's confession was not elicited using direct physical violence during the interrogation, the circumstances of detention and interrogation at S-21⁹⁸ mean that there is a "real risk" that the confession was obtained using mental and physical torture.
28. Moreover, Nuon Chea fails to recognise that this annotation relates only to the statement made by Suong on 20 February 1977,⁹⁹ when he first entered S-21.¹⁰⁰ In this statement, Suong asserts his innocence and describes his relationship with Koy Thuon.¹⁰¹ The annotation does *not* refer to the remainder of the confession,¹⁰² which is presumed to have been elicited through torture.¹⁰³ Nuon Chea complains that this Chamber previously refused to allow him to rely on Suong's confession¹⁰⁴ and seeks reconsideration of its decision.¹⁰⁵ However, the

⁹⁷ **E399** NC Motion, paras 23-26 *citing* **E3/1892** S-21 Confession of Chea Non *alias* Suong, EN 00096949 ("Written before He Was Tortured.") See also **E3/1892** S-21 Confession of Chea Non *alias* Suong, EN 00769596 ("This confession was written by him before being tortured"). This statement in the English version refers to the Khmer document with ERN KH 00012693, on which there is a similar statement.

⁹⁸ See *supra* paras 14-19.

⁹⁹ **E3/1892** S-21 Confession of Chea Non *alias* Suong, Secretary of Division 450, KH 00012694-00012698. Each page of this Khmer confession is annotated with the 20 February 1977 date. See also EN 00096949 ("six-page handwritten document dated 20 February 1977 on margin").

¹⁰⁰ **E393.2** OCIJ S-21 Prisoners List 31 March 2016, Entry 433 (Date of Entry at S-21: 19 February 1977).

¹⁰¹ **E3/1892** S-21 Confession of Chea Non *alias* Suong, Secretary of Division 450, EN 00096949, KH 00012693-00012698 ("after liberation when he [Khuon] encouraged us to think of nothing but having fun, eating and drinking and women flesh. However, I myself didn't know how to drink beer, and I had never messed around with women flesh ever. I would like to affirm this to the Organization honestly, and if the Organization doesn't believe me go ahead and follow up inside my unit. ... the question of my activities does not involve entry in the Khmer Serei Party or a revisionist Party. I merely had contact with Khuon without being aware that Khuon was a Khmer Serei ..."). The Co-Prosecutors observe that statements asserting a detainee's innocence are not a confession obtained by torture that would be barred by CAT.

¹⁰² Dated 21 February 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012699-00012705); 23-28 March 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012706-00012761); 9-11 April 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012763-00012794, 00012865-00012866); 13-16 April 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012796-00012825); 21-23 April 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012827-00012864); 27-28 April 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012868-00012882); 28-29 April 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012913-00012921); 30 April - 2 May 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012890-00012912, 00012922-00012923); 3-4 May 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012925-00012943); 10 May 1977 (**E3/1892** S-21 Confession of Chea Non *alias* Suong, KH 00012945-00012957).

¹⁰³ See *supra* para. 8.

¹⁰⁴ **E399** NC Motion, paras 23-26 referring to **E1/318.1** Transcript 17 June 2015, pp. 79-82 and **E350/8** TC Torture Decision, para. 86.

¹⁰⁵ **E399** NC Motion, para. 29.

passage from which the Nuon Chea defence sought to quote in that instance appears to come from Suong’s later confessions¹⁰⁶ and not the initial statement allegedly obtained before the use of direct torture during interrogation. Nuon Chea’s request for reconsideration is therefore unfounded.

Additional Investigations

29. Pursuant to Rule 93(1), the Chamber *may* conduct additional investigations that it finds *necessary*.¹⁰⁷ In light of all the evidence demonstrating a “real risk” that the S-21 confessions of Koy Thuon, Yim Sambath and Suong were obtained through torture, the Co-Prosecutors submit that no further investigations into the circumstances in which they were made are necessary. There is no obligation on the Chamber to conduct any investigations under Rule 93(1), which expressly leaves such a decision to the Chamber’s discretion. Nor, the Co-Prosecutors submit, is it prudent use of the Chamber’s time and resources to conduct further investigations, particularly in view of the inevitable delay to trial proceedings, and the fact that those best placed to know about these circumstances surrounding these interrogations – the individuals themselves—are now deceased, having been executed following their confessions.

IV. Relief Requested

30. With the exception of permitting the use of S-21 statements for the limited purposes noted in paragraphs 2 and 6 above, the Co-Prosecutors respectfully request the Trial Chamber to dismiss the Request.

Respectfully submitted,

Date	Name	Place	Signature
2 May 2016	CHEA Leang Co-Prosecutor	Phnom Penh 	
	Nicholas KOUMJIAN Co-Prosecutor		

¹⁰⁶ In Court, the Nuon Chea Defence sought to read to the Civil Party an excerpt from the section of Suong’s confession “specifically about the division hospital” (E1/318.1 Transcript 17 June 2015, p. 80, referring to the English translation of E3/1892 S-21 Confession of Chea Non *alias* Suong at EN 00096949). The Co-Prosecutors note that the only references to the “division hospital” in the English translation of E3/1892 appear at EN 00096953, 00096966, 00096970, all of which form part of confessions from Suong dated March and April 1977.

¹⁰⁷ Emphasis added.