

Case No. 001/18-07-2007-ECCC/TC

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

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du dossier:..... Uch Arun

**CIVIL PARTIES (GROUP 4)
FINAL WRITTEN SUBMISSION**

Filed by:

Co-Lawyers for the Civil Parties:

Mr HONG Kimsuon
Mr KONG Pisey
Mr Pierre-Olivier SUR

Before:

The Trial Chamber:

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Copied to:

The Accused:

KAING Guek Eav alias Duch

Lawyers for the Defence:

Mr KAR Savuth
Mr François ROUX
Ms Marie-Paule CANIZARES

Co-Lawyers for Civil Parties:

Mr YUNG Phanith
Ms Silke STUDZINSKY
Ms TY Srinna
Mr KIM Mengkhy
Mr MOCH Sovannary
Ms Martine JACQUIN
Mr Alain WERNER
Mr Brianne McGONIGLE
Mr Karim KHAN
Mr Philippe CANONNE
Ms Annie DELAHAIE
Ms Elizabeth RABESANDRATANA
Ms Fabienne TRUSSES
Mr Brianne McGONIGLE

The Office of the Co-Prosecutors:

Ms CHEA Leang
Mr Will SMITH

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I. INTRODUCTION

1. On 17 February 2009, the trial of Kaing Guek Eav, alias Duch, aged 66, commenced. The Accused stands charged with crimes against humanity, grave breaches of the Geneva Conventions of 12 August 1949 and violations of the 1956 Cambodian Penal Code, i.e. murder - articles 501 and 506 - and torture - article 500, offences defined and punishable under articles 3 (New), 5, 6, 29 (New) and 39 (New) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, for the crimes committed at S-21, in Phnom Penh. The Co-Lawyers for the Civil Parties will be making their closing statements on 23 November 2009, which will be followed by those of the Co-Prosecutors, then by the closing statements of the Co-Lawyers for the Defence.

2. On 27 August 2009, the Trial Chamber of the ECCC issued a Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions,¹ stating that, pursuant to Rule 23 of the Internal Rules of the Extraordinary Chambers, Civil Parties bore the burden of proof regarding the admissibility of their applications and of the substance of their claims for reparations.

3. On 14 September 2009, the Co-Lawyers for the Civil Parties of the four groups filed a joint submission before the Trial Chamber on the forms of moral and collective reparations that they contended should be awarded against the Accused, if convicted,² including at least:

- The compilation and publication of the apologetic statements made by the Accused, DUCH, during the trial, acknowledging the suffering caused to the victims, together with comments of the Civil Parties;
- Access to free medical care, including physical and psychological therapy, and payment of transportation costs to and from health facilities;
- Funding of educational programs, both in schools and museums, that inform Cambodians of the crimes that took place under the Khmer Rouge at S-21 in particular;

¹ *Case against Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, *Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions*, 27 August 2009.

² *Case against Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Parties' Co-lawyers' Joint Submission on Reparations, 14 September 2009, ERN 00375447-00375465.

- Erection of memorials and pagodas both at S-21 (Cheung Ek and Prey Sar) as well as in the villages of the Civil Parties;
- Inclusion of the names of all the Civil Parties in this case in the final judgment, including a specification as to their connection with S-21.

4. The purpose of this submission is thus to confirm the civil party application of each of the ten victims and heirs of the victims of Group 4 in order that the Trial Chamber can find and declare them admissible and well founded and grant the applicants the reparation sought.

II. DISCUSSION

5. At the hearing of 25 August 2009, the Co-Lawyers for the Defence voiced their objections to the admissibility or substance of 26 of the civil party applications, in respect of the identity of the applicants and the existence of any kinship between them and an S-21 victim.³ The impugned civil party applications concern only victims or heirs of victims belonging to Groups 1, 2 and 3, and in respect of whom their Co-Lawyers were immediately given the opportunity to respond and furnish additional documents. **In other words and, *a contrario*, the Defence considered that the 10 Group 4 civil party applications were wholly admissible and had merit.**

6. In fact, it will be shown below that the Co-Lawyers for the Civil Parties (Group 4) have gathered sufficient material evidencing the identity of their clients, the existence of a kinship with an S-21 victim, who was himself or herself the subject of a biography, a photograph or confessions found at Tuol Sleng and placed on the case file.

- Mr OU Savrith (E2/26), Mrs NHEK OU Davy (E2/31), and Miss OU Kamela (E2/27)

7. Mr OU Savrith, 54, is the brother of **OU Vindy**, who died at S-21 on 20 May 1976. Mr OU Savrith's national identity card is in the case file (ERN 00364092-00364093); so also is his birth certificate (ERN 00364089-00364091).

8. Mrs NHEK OU Davy, 61, was the wife of **OU Vindy**. They were married in Phnom Penh on 1 August 1969, as is evidenced by Mrs NHEK OU Davy's family record book (ERN

³ Hearing of 25 August 2009 before the Trial Chamber of the ECCC, Case 001, ERN 00371018-00371023.

00274209-00274213). Mrs NHEK OU Davy's national identity card is also in the case file (ERN 00274208).

9. Finally, Miss OU Kamela, 38, is the daughter of Mrs NHEK OU Davy and **OU Vindy**, as indicated on the family civil status record (ERN 00274213). Miss OU Kamela's national identity card is also in the case file (ERN 00273257-00273258).

10. In 1975, **OU Vindy**, 31, a graduate of the National School of Administration of Phnom Penh, and an official with the Ministry of Foreign Affairs, seconded to the Office of the Prime Minister, was married and father of three children. On 13 February 1976, he entered S-21, where he was executed on 20 May 1976. In particular, the name **OU Vindy** appears on the list of S-21 prisoners (1975-1978) at number 7059 (ERN 00171639). In addition, the victim's confessions at the Tuol Sleng prison were found (ERN 00274217-00274264), as well as a photograph showing him at Tuol Sleng (ERN 00364094-00364095).

11. It appears from reading his confessions that **OU Vindy** admitted, under torture, that he had been a member of the CIA, and had "stirred up" people in Phnom Penh against the Angkar, by engaging in the following actions:

1. Educated students at the National School of Administration to believe in the Republican regime. 2. Made propaganda for those students to understand the political situation not to believe Angkar's propaganda and not to demonstrate against the government of the Republic. 3. Made propaganda and explained to students, officials, and people to have them hate Angkar and not believe Angkar using the pretexts 4. Whenever necessary, like whenever there are negotiations between the Khmer Republic and the Front, all the government officials, people and students absolutely have to demonstrate in support of the Republican government ... (ERN 00274284 in English)

12. At the time of **OU Vindy**'s arrest and subsequent execution, his brother, 11 years his junior, was in France where he was studying, while his wife and children lived with him in Cambodia. His daughter, Miss OU Kamela, was then 4 years old, and testifies today that "[h]is absence left a cruel mark on my youth and my life as a woman. Not to have had a father standing beside me during the major events of my life has thoroughly wounded me." They only found evidence of their disappeared relative in 1979, when they discovered his name on the list of persons imprisoned at S-21.

13. Mr OU Savrith testified before the Trial Chamber, in his capacity as a civil party, by videoconference from the *Tribunal de grande instance* in Versailles, France, on 20 August

2009.⁴ In his testimony, he recalled the cruel absence of a brother whom he had always sought to emulate, but who was not there for him at all stages of his life.

14. With respect to reparations, like Mrs NHEK OU Davy and Miss OU Kamela, Mr OU Savrith stated:

I claim no financial reparation, no material relief. I would simply like to know what happened during the 97 days and throughout these 50 pages of confession. That is the reason why I applied to be a civil party. Indeed, my representations before this Court is of a different nature. I seek moral redress. One person alone, my wife, was aware of my suffering during these 10,950 nights when I would wake up on a regular basis in a start, shouting and crying, unable to express my suffering in any other manner. Mr. President, like any Cambodian, modesty is required. Everyone internalizes feeling. The effort that I made before you today is very great, but it is a necessary effort, and for me it is through this testimony that a certain form of reparation begins to be born.⁵

- **Mrs CHUM Neou (D 25/16)**

15. Mrs **CHUM Neou**, 59, should be considered both as a direct victim and an indirect victim of S-21.

16. On the one hand, she is a victim of S-24 where she spent approximately two years, as is evidenced by a biography of Mrs **CHUM Neou** found at Tuol Sleng, together with an identity size photograph of the detainee (ERN 00289729 in French and ERN 00211380 in Khmer).

17. She voluntarily joined the ranks of the Revolution after the coup d'état of 18 March 1970, and between 1972 and 1973, she was appointed chairwoman of the sub-district in which she lived before being promoted in 1974 to the position of female combatant of the village military unit for the East Zone, and subsequently assigned by Angkar to guard an ammunition warehouse. She injured herself then and still has shell fragments in her arms to this day. In late 1976, she married NOU Samouen, another Khmer Rouge soldier.

18. In 1977, Mrs **CHUM Neou**, who was then five months pregnant, and her husband, were successively sent to Prey Sar or S-24 where Mrs **CHUM Neou** spent two years hard labour. She testified before the Trial Chamber on 20 and 24 August 2009:⁶

⁴ Videoconference testimony of Mr OU Savrith before the Trial Chamber of the ECCC, Case 001, 20 August 2009, ERN 00368423-00368452.

⁵ Ibid., ERN 00368435.

⁶ Mrs CHUM Neou's testimony before the Trial Chamber of the ECCC, Case 001, 20 August 2009, ERN 00368453-00368462, and 24 August 2009, ERN 00370760-00370786.

During the time (1978) that I harvested the rice in around December, then in late December we went to raise a dam. And there were some other Jews from other various units were also working there but we work in separate group, a loud speaker playing the revolutionary songs and some propagandas. I worked there only for one week and I lost all the strength to carry the soil to the top of the dam. When I could no longer carry the soil, I was asked to dig the ground but due to my disabled hand I was asked to then stamp and level the soil. Another event ... I pretended to be sick in order to save my strength. I went, while I was walking, I pretend to fall and vomited. Then I was relieved from work and I was given a little extra porridge.⁷

19. She also gave birth to her son at S-24, who died there for lack of care in late 1978:

During the time that I was tempered at S-24, a branch of S-21, we had to follow the instructions, the orders that were given to us. After the death of my baby I requested permission to go back to work in a rice field because I did not know what else I could do at the hospital where my baby died. At that time, my baby was about seven or eight months old as I delivered the baby in January, and the transplanting season was somewhere around August. ... Upon my return, there was an announcement that I was a CIA so nobody dared to talk to me. I tried to ask my friends what's going on; nobody said anything. I tried to tempered my feeling to give into them. I pretend to be a person like a crazy person and not to show my discontent with their behaviour and just try to go along with the group.⁸

20. She was twice called to get on board the truck that was to take her to be executed, but was only saved by an error in her family name.

21. Mrs CHUM Neou is also an indirect victim of S-21, since she was the wife of Mr **NOU Samouen**, who was arrested and subsequently killed at S-21 in late 1977. Mr **NOU Samouen**'s name appears on the list of prisoners at S-21 (1975-1978) at number 6708 (ERN 0171629), on the list entitled "Prisoners list – Zone or Unit General Staff" at number 61 (ERN 00181657), on the list entitled "S-21 Prisoners from the RAK" at number 3030 (ERN 00331375), on the list entitled "S-21 prisoners from RAK Center Units" at number 1827 (ERN 00331803) as well as on the list entitled "S-21 prisoners identified as men", at number 3210 (ERN 00331076).

22. Evidence of kinship between Mrs CHUM Neou and **NOU Samouen** is inferred from the detainee's biography found at S-21 in which her husband's name appears (ERN 00289729 in French and ERN 00211380 in Khmer).

23. **NOU Samoeun** had been summoned by the Angkar in the summer of 1977, and entered the S-21 Detention Centre on 30 July 1977 according to the date on the various lists of

⁷ Ibid, ERN 00370754 in French and ERN 00370644 in English.

⁸ Ibid, ERN 00368461 in French and ERN 00368365 in English.

prisoners. **NOU Samouen** alias Sem is therein referred to as “combatant of office 62, logistic staff”.

- **Mr TOUCH Monin (D 25/14)**

24. Mr TOUCH Monin, 54, applied to be joined as a civil party in these proceedings on account of the death of his first cousin, **CHEA Khan**.

25. **CHEA Khan alias Chin**, was arrested and subsequently detained at the S-21 prison when he was a 35-year engineer who had returned from Russia. His name appears on various lists of prisoners, including the S-21 main list of prisoners at number 676 (ERN 00171449), the list of prisoners whose interrogations were completed in the month of February 1977 at number 74 (ERN 00233730), or the list of S-21 prisoners described as being teachers, professors, students, doctors, lawyers or engineers at number 13 (ERN 00333600). A biographical note about **CHEA Khan** was also provided by DC-CAM (ERN 00211333).

26. A copy of Mr TOUCH Monin’s identity card is also in the case file (ERN 00231878 in English, 00211332 in Khmer).

27. **CHEA Khan** was the last son of MAO Khon, the aunt of Mr TOUCH Monin, specifically the sister of his mother MAO Em. The two men were thus first degree cousins. Mr TOUCH Monin provided additional information as to the nature of his kinship with the victim at S-21 when he testified before the Trial Chamber on 24 August 2009.⁹

28. It should also be pointed out that **CHEA Khan** having lost all the members of his family under the Khmer Rouge regime, Mr TOUCH Monin was the only person who could apply to be joined as a civil party on account of the death of his cousin, who had always been there for his family:

My intention is to pay my gratitude to my cousin, Chea Khan alias Chin, who had great and kind sacrifice and hurt on my family. He went to study in Russia in '65 and in '75, three -- that is three months after the fall of Phnom Penh, he returned to Cambodia. My family did not know that he returned; even his parents did not know. We were all surprised.

29. Mr TOUCH Monin only discovered the fate that befell his cousin in the 1990s, when he read a book entitled “List of Traitors”. The name of his cousin was also on the list of prisoners at Tuol Sleng in the register of traitors to the Revolution with the notation: “*Person*

killed is a student from Russia (construction engineer)". In his confessions, **CHEA Khan** was forced, under torture, to admit having been a member of the KGB.

30. **CHEA Khan** had studied in France before settling in Russia. He was a friend of Duch, a fact that the latter did not dispute when Mr TOUCH Monin testified before the Trial Chamber on 24 August 2009.

- **Mrs KAUN Sunthara (D 25/17)**

31. Mrs KAUN Sunthara, 57, applied to be joined as a civil party on account of the death of her brother, **CHIM Lang**, who, like his wife OM Yn Dony, entered S-21 on 8 November 1976.

32. This is evidenced by the Tuol Sleng report on **CHIM Lang** (ERN 00285232-00285234 in French and ERN 00211404-00211406 in Khmer), as well as by the prisoner's biographical note prepared by DC-CAM (ERN 00211402-00211403). The name of the wife of **CHIM Lang**, OM Yn Dony, is also on the list of S-21 prisoners arrested since S-24, at number 337 (ERN 00333690).

33. Mrs KAUN Sunthara's national identity card was also placed on the case file (ERN 00211401).

34. **CHIM Lang** was arrested on 7 September 1975, at the age of 35; he was then an electrical network engineer at the Toch market. In a report concerning him prepared at Tuol Sleng, he confessed to the following facts (ERN 00285232-00285234 in French and ERN 00211404-00211406 in Khmer):

*Incited unhappy feeling among workers in the factory toward the revolutionary Angkar which caused disorder, together with spreading rumours that this regime would last only for 7 months and 10 days. ... In the old regime, **CHIM Lang** was closely linked with Hv SutsaophoanTha, who was a C.I.A. agent. He also had connections with Americans, his close friends were all C.I.A members. ... In this new regime, every evening, he attended meetings with C.I.A members who lived in the Phsa Tauch Electricity Community.*

35. Mrs KAUN Sunthara, who witnessed the disappearance of her entire family during the Kampuchea Democratic period, only discovered the death of her brother and sister-in-law after 1979, during a visit to the Tuol Sleng prison. She remembers that in 1975, her brother

⁹ Mr TOUCH Monin's testimony before the Trial Chamber of the ECCC, Case 001, 24 August 2009, ERN 00370835-00370854.

was in possession of a passport, ready to leave for France. The Khmer Rouge had called on all engineers to report to or to remain in Phnom Penh. That is when he disappeared.

- **Mrs ROS Chuor Siy (E2/28)**

36. Mrs ROS Chuor Siy applied to be joined as a civil party as a result of the death of her husband, **ROS Sarin**, at S-21 in March 1977.

37. The name **ROS Sarin alias Krin** appears on various prisoner lists, such as the list of new prisoners who arrived on 12 December 1976, at number 5 (ERN 00234961 in English, ERN 00188853-00188856) or on the list of prisoners from France who are being questioned, at number 6 (ERN 00234958 in English, 00188847-00188850 in Khmer). In addition, **ROS Sarin's** photograph found at the Toul Sleng prison is in the case file (ERN P 00001295).

38. A copy Mrs ROS Chuor Siy's identity card is attached as an annex to her civil party application.

39. Mr and Mrs ROS had been living in France since 1972 when they were recalled by IENG Sary who, while travelling abroad, made propagandistic speeches exhorting all his expatriate compatriots to return to Cambodia in order to contribute to the reconstruction of a liberated country.

40. **ROS Sarin**, former Director of the Pochentong International Airport and representative of Air Cambodia in France at the time of the events, thus returned to Cambodia in 1976 together with his wife, Mrs ROS Chuor Siy and their three daughters full of great hope for their country.

41. Upon their arrival, the ROS family was placed in a re-education camp. In February 1977, **ROS Sarin** was participating in a political education session chaired by IENG Sary when he was called urgently to Pochentong International Airport under the pretext of having to work on its reconstruction. His family will never see him again. In fact, he was taken to Tuol Sleng and executed one month later in March 1977.

42. For two years, Mrs ROS Chuor Siy and her children, who had sacrificed their life in France in order to help their country, lived with the hope of one day seeing their husband and father again before they visited Tuol Sleng in 1979 and discovered the unthinkable: the photograph of **ROS Sarin** among the prisoners at S-21. The family then returned to live in France where they presently reside.

- **Mrs ROS Men (D 25/9)**

43. Mrs ROS Men, 59, is the elder sister of **ROS Thim**, who was executed at S-21 at the age of 21 because he was a monk.

44. This is evidenced by his prisoner biography found at Tuol Sleng together with his photograph which are in the case file (ERN 00234039 in English, ERN 00079580 in Khmer), as well as the list of prisoners interrogated in the month of February 1977 where the name **ROS Thim** appears at number 44 (ERN 00233728).

45. There is no doubt about the kinship between Mrs ROS Men and **ROS Thim**: the names of the parents of the two brothers and sisters appear both in the detainee's S-21 biography and on Mrs ROS Men's Information Form (ERN 00285207 in French, ERN 00211236 in Khmer) whose identity is verified by his national voter's identity card (ERN 00233374-00233375 in English, ERN 00211244-00211245 in Khmer).

46. Mrs ROS Men was 25 years old in 1975. Her family lived in Mream sub-district, Romeas Haek district, in Svai Rieng Province. In April 1975, Khmer Rouge soldiers arrived in their village and launched a work cooperative. Two or three months after their arrival, they arrested all the monks of the pagoda where **ROS Thim** was and forced them to leave. The monks were then compelled to dress in black in order to join the army.

47. Mrs ROS Men only learned of the execution of her brother at S-21 in 2007, when DC-CAM brought her his Tuol Sleng biography together with his photograph.

- **Mrs KONG Teis (D 25/19)**

48. Mrs KONG Teis, 72, applied to be joined as a civil party in these proceedings on account of the death her husband, **SEK Chhiek**, who died at S-21 en 1978.

49. For the purposes of proof, a photograph of **SEK Chhiek** taken at the Tuol Sleng prison was placed on the record (ERN 00211460). As for the identity of Mrs KONG Teis, proof is provided by her birth certificate, attached as "Annex 1" to her civil party application. In addition, a copy of the voter's identity card of her legal representative, her daughter, Mrs SEK Au is in the case file (ERN 00211458-00211459).

50. Mrs KONG Teis and her husband **SEK Chhiek**, who were also from the Mream sub-district, Romeas Haek district, in Svai Rieng Province, were assigned as from April 1975 to

the production of rice in the labour camps set up in their sub-district. They spent close to three difficult years there up to the day in 1978, when the heads of the Southwest Zone arrived and summoned a number of persons “from the new people”, including **SEK Chhiek**, to a meeting. Mrs KONG Teis thus saw her husband climb onto a truck without knowing his destination.

51. Mrs KONG Teis learned of the death of her husband at S-21 when she discovered his photograph at Tuol Sleng.

- **Mr CHRAING Sam-Ean (D 25/12)**

52. Mr CHRAING Sam-Ean, 64, applied to be joined as a civil party in these proceedings on account of the death of one of his brothers at S-21, **CHRAING Sam-On alias SOAM Sam On**, in 1978.

53. This is evidenced by a Tuol Sleng biography of the prisoner, mentioning his arrest on 25 March 1978 (ERN 00287238 in French, ERN 00211300 in Khmer).

54. **CHRAING Sam-On alias SOAM Sam On** was one of the younger brothers of Mr CHRAING Sam-Ean. A copy of his identity card is in the case file (ERN 00211298-00211299 in Khmer and 00233155-00233156 in English). Kinship between the two men can be inferred easily from the prisoner’s biography which mentions the names of both of their parents.

55. When the Khmer Rouge arrived in their village located in Mream district, Romeas Haek district, in Svai Rieng Province, in April 1975, the two brothers were forcibly enrolled in SOR Phim’s resistance movement. That is when **CHRAING Sam-On alias SOAM Sam On** disappeared. Mr CHRAING Sam-Ean only escaped the fate that befell his brother thanks to his experience of traditional pharmacy which enabled him to work as a nurse taking care of wounded soldiers.

56. Mr CHRAING Sam-Ean was without news of his brother for 30 years, and it was only through documents compiled and brought to his knowledge by DC-CAM in 2007 that Mr CHRAING Sam-Ean learned of the execution of his brother **CHRAING Sam On** at S-21.

III. CONCLUSION

The Co-Lawyers for Civil Parties (Group 4) request the Trial Chamber of the ECCC to:

- Adjudge and declare that the civil party applications of Mr OU Savrith (E2/26), Mrs NHEK OU Davy (E2/31), Miss OU Kamela (E2/27), Mrs CHUM Neou (D

E159/4

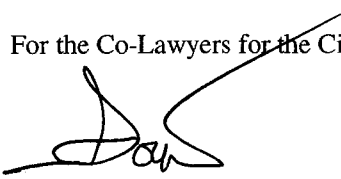
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25/16), Mr TOUCH Monin (D 25/14), Mrs KAUN Sunthara (D 25/17), Mrs ROS Chuor Siy (E2/28), Mrs ROS Men (D 25/9), Mrs KONG Teis (D 25/19), and Mr CHRAING Sam-Ean (D 25/12) are admissible and have merit;

- Find and declare the Accused, Kaing Guek Eav alias Duch, guilty of crimes against humanity, grave breaches of the Geneva Conventions of 12 August 1949 and violations of the 1956 Cambodian Penal Code, crimes for which he was sent for trial before this Trial Chamber by order of the Co-Investigating Judges dated 12 August 2008;
- Award the Civil Parties reparation in the forms indicated by the Co-Lawyers for the four groups of Civil Parties in their joint submission concerning the form of moral and collective reparations.¹⁰

Signed in Phnom Penh, on 7 October 2009.


For the Co-Lawyers for the Civil Parties (Group 4),



HONG Kimsuon



KONG Pisey



Pierre-Olivier SUR

¹⁰ *Case against Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Parties' Co-lawyers' Joint submission on Reparations, 14 September 2009, ERN 00375447-00375465.