



21 August 2008

STATEMENT OF THE CO-PROSECUTORS

After due consideration, the Co-Prosecutors have decided to appeal the Closing Order of 8 August 2008 that indicted Kaing Guek Eav alias DUCH for crimes committed in the Khmer Rouge's S-21 Security Centre in Phnom Penh.

In making their decision, the Co-Prosecutors have taken into account the expectation of the Cambodian people and the international community to bring to trial, as early as possible, those who are believed to have committed some of the most egregious violations of international humanitarian law in the history of the twentieth century.

However, while the judicial investigation of DUCH's criminality has been conducted by the Co-Investigating Judges, it is the responsibility of the Co-Prosecutors to prove a case beyond reasonable doubt before the Trial Chamber. The Co-Prosecutors' mandate is not just to prosecute certain individuals but, consistent with the purpose of this Court, also to ensure the recording of a full and truthful account of the crimes of the Khmer Rouge and the individual criminality of those responsible for them.

In the Co-Prosecutors' assessment, while the Closing Order arguably contains charges that may ensure DUCH's conviction, it limits DUCH's criminality and the modes of his criminal liability. The Closing Order does not charge DUCH for his responsibility, as a co-perpetrator, for a significant number of crimes that occurred as part of a joint criminal enterprise inside S-21. This may prevent the Trial Chamber from fully accounting for DUCH's criminal responsibility at S-21.

The Closing Order omits to charge DUCH under the Cambodian Penal Code of 1956, even if the ECCC statute grants the Court jurisdiction over these crimes. Charges under that Code would reflect DUCH's complete criminal conduct, would advance domestic Cambodian law and would be highly significant for the Cambodian people and their sense of ownership over the judicial proceedings.

The legal defects of the Closing Order and their possible negative consequences at the trial stage have guided the Co-Prosecutors in their decision to appeal. They will file a full appeal brief before 10 September 2008, the statutory deadline. Thereafter, the Co-Prosecutors will work with all other relevant organs of this Court for an expedited disposal of this appeal.

